

COMMISSION DECISION

of 3.8.1993

finding that it is justified not to take action for

the post-clearance recovery

of import duties in a particular case

(request submitted by Germany)

REC 1/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties,¹ as last amended by Regulation (EEC) No 918/83,²

Having regard to Commission Regulation (EEC) No 2164/91 of 23 July 1991 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties,³ and in particular Article 6 thereof,

Whereas by letter dated 22 December 1992 received by the Commission on 7 January 1993, Germany asked the Commission to decide under Article 5(2) of Regulation (EEC) No 1697/79 whether it is justified not to take action for the recovery of import duties in the following circumstances:

1 OJ No L 197, 3.8.1979, p.1.
2 OJ No L 105, 23.4.1983, p.1.
3 OJ No L 201, 24.7.1991, p.16.

In January 1988 a German firm applied for an outward processing authorization in respect of insulating materials. The application gave only the trade description of the export goods and compensating products. The classification under the Combined Nomenclature had been written in by hand by an official at the customs office, who had first contact the firm; indeed, after consideration, he amended the initial classification. The classification was then used in the outward processing authorization, dated 8 February 1988. Under the authorization, which was renewed on several occasions, unamended, the firm released the compensating products for free circulation from 18 May 1989 to 25 March 1992.

In February 1992 the importing customs office asked for a classification opinion, and it emerged that it was necessary to change the classifications which had been used until then, for both the unprocessed products (blanks for pipe bends, declared under code 7308 9050 9000 at a rate of 4.1%, now classified under code 73226 9098 9900 at a rate of 5.3%) and the processed products (pipe bends, declared under code 7308 9059 000 at a rate of 4.1%, now classified under code 7307 2310 0900 at a rate of 6.2%).

The authorization was duly amended by letter dated 19 March 1992, and the firm was issued advice of post-clearance recovery in the sum of DM [REDACTED]. The firm appealed against the assessments in respect of all the affected declarations for free circulation, arguing that the wrong classification had been indicated by the customs office which issued the authorization.

Whereas in accordance with Article 6 of Regulation (EEC) No 2164/91, a group of experts composed of representatives of all the Member States met on 25 March 1993 within the framework of the Committee on Duty Free Arrangements to examine the case;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may refrain from taking action for the post-clearance of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned;

Whereas the customs office which issued the post-clearance recovery assessments rightly found that the import duties legally owed on the operations in question had not been charged in full; whereas it rightly took no account of the fact that the wrong classification was shown in the outward processing authorization, which was not corrected until 19 March 1992; whereas the letter of rectification cannot be regarded as an immediate revocation of the authorization within the meaning of Commission Regulation (EEC) No 3787/86 of 11 December 1986,¹ since it did not affect the admissibility of the goods used under the outward processing arrangements, but simply changed the items of charge applicable in the event of release for free circulation;

Whereas the customs authorities' mistake, perpetuated on each renewal of the authorization and whenever goods were released for free circulation, related to a complex, problematic matter of classification; whereas the error was further attributable to the fact that the Harmonized Commodity Description and Coding System had only recently come into force;

1 OJ No L 350, 12.12.1986.

Whereas the error could not reasonably have been detected by the firm when the authorization was first issued in 1988; whereas the subsequent confirmation of the error by the customs authorities, inter alia by their renewal of the authorization, naturally strengthened the firm's belief in the proper conduct of the operations;

Whereas the authorizations were again renewed and the import compensating produced released for free circulation after 1991, when it became possible to apply for binding tariff information in accordance with Council Regulation (EEC) No 1715/90 of 20 June 1990;¹

Whereas the firm's legitimate faith in the proper conduct of the operations, sustained by the consistent practice of the customs administration, suggests that the availability of that instrument did not in this case mean that the error was more readily detectable;

Whereas the firm acted in good faith and observed all the provisions laid down by the rules in force as far as its customs declaration was concerned;

Whereas, therefore, it is justified not to take action for the post-clearance recovery of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of DM [REDACTED] which are the subject of the request by Germany dated 22 December 1992 shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 7.7.1993

For the Commission

1 OJ No L 160, 26.6.1990.