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**REM 50/99**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.7.2000  
C(2000)

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 25.7.2000**

**finding that the repayment of import duties in a particular case is justified**

**(request submitted by the Kingdom of Denmark)**

**(REM 50/99)**

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,<sup>1</sup> as last amended by Regulation (EC) No 955/1999,<sup>2</sup>

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,<sup>3</sup> as last amended by Regulation (EC) No 1662/1999<sup>4</sup> and in particular Article 907 thereof,

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1 OJ L 302, 19.10.1992, p.1

2 OJ L 119, 7.5.1999, p. 1

3 OJ L 253, 11.10.1993, p. 1

4 OJ L 197, 29.7.1999, p. 25

Whereas:

- (1) By letter dated 17 November 1999, received by the Commission on 22 November 1999, the Kingdom of Denmark asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties was justified in the following circumstances.
- (2) On 16 November 1994, a Danish company obtained an authorisation for inward processing. That authorisation was amended on 22 August 1995, amongst other things, to include imported goods falling under Combined Nomenclature Code 0304903800.
- (3) On 6 September 1996, the company applied to the relevant Danish authorities for the renewal of its inward processing authorisation, referring to the existing authorisation and the amendment of 22 August 1995.
- (4) Since a number of the relevant goods codes had been altered since the issue of the original authorisation, the customs authorities then requested the company by telephone to submit a complete list of the goods codes it wanted covered by the new authorisation.
- (5) The company submitted the list on 29 October 1996. However, the company neglected to include the imported goods covered by the amendment of 22 August 1995.
- (6) The renewal of the inward processing authorisation was granted by the competent customs authorities on 22 November 1996. However, though referring to the company's application of 6 September 1996, the renewal was based on the list of codes from the Combined Nomenclature submitted by the company on 29 October 1996.

- (7) In the period 1996 to 1998, the company, not realising that the renewed authorisation did not extend to the goods covered by the amendment of 22 August 1995, presented twelve customs declarations entering goods falling under Code 0304 90 38 00 of the Combined Nomenclature for inward processing.
- (8) Following a post-clearance check, the competent authorities found that owing to the lack of an authorisation the goods in question could not be given inward processing treatment and consequently claimed from the company a total of XXXXX in import duty due in respect of the twelve declarations, the repayment of which is being sought in this case.
- (9) In support of the application submitted by the competent Danish authorities, the company, pursuant to Article 905 of Regulation (EEC) No 2454/93, declared that it had read the file addressed by the Danish authorities to the Commission and that it had nothing to add.
- (10) Pursuant to Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 13 March 2000 within the framework of the Customs Code Committee – Section for General Customs Rules (Repayment).– in order to examine this case.
- (11) Pursuant to Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in situations, other than those laid down in Articles 236, 237 and 238 of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (12) Court of Justice case law indicates that Article 239 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.

- (13) In the case in point, since the company had carried out inward processing operations on goods that were not covered by the inward processing authorisation held by it, the customs authorities took the view that this situation had given rise to a customs debt.
- (14) However, the company thought that the said operations could be carried out under the inward processing authorisation in its possession. In actual fact, its authorisation as amended on 22 August 1995 did cover the goods in question and it believed that the renewal of its authorisation covered both the goods referred to in the original authorisation and those referred to in the amendment, a belief which was strengthened by the fact that its renewal application of 6 September 1996 referred explicitly to the initial authorisation and the amendment. By mistake, however, it had sent the competent customs authorities, at their request and subsequent to the application for renewal, a list of goods covered by the authorisation which made no mention of the goods specified in the amendment of 22 August 1995.
- (15) Even if, strictly speaking, the operations in question were not covered by the renewed authorisation in the case in point, they were nonetheless carried out under the inward processing procedure. The technical and administrative conduct of the inward processing procedure used by the company was not contested by the competent Danish authorities and, except as regards the matter of the type of goods covered by the authorisation, proceeded in compliance with the rules of the procedure.
- (16) Consequently, the goods remained under customs supervision for the entire duration of the operations and the processed goods were exported out of the European Community. They were therefore not released into free circulation in the Community.
- (17) Furthermore, the Danish authorities claim that the renewal of the inward processing authorisation would have been granted to the company in respect of the goods in question had it applied for it. The relevant conditions were met and the company had already held an authorisation for this type of goods in the past by virtue of the amendment of 22 August 1995.

- (18) Lastly, by referring explicitly in their authorisation renewal to the application submitted by the company on 6 September 1996, which clearly mentioned the amendment of 22 August 1995, the relevant Danish authorities may have helped to confirm the company in its legitimate belief that the new authorisation was identical to the original authorisation as modified by the amendment of 22 August 1995.
- (19) These circumstances therefore constitute a situation of the type covered by Article 239 of Regulation (EEC) No 2913/92.
- (20) In the circumstances of the case in question, no deception or obvious negligence may be attributed to the company, as the relevant Danish authorities moreover confirm. The latter have furthermore stated that the local customs authorities were well acquainted with the company, as well as with its activities.
- (21) The repayment of customs duties is therefore justified in this case,

HAS ADOPTED THIS DECISION:

*Article 1*

The repayment of import duties in the sum of XXXXX requested by the Kingdom of Denmark on 17 November 1999 is justified.

*Article 2*

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels 25.7.2000

*For the Commission*

*Member of the Commission*