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REM 27/01

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3-1-2003
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NOT FOR PUBLICATION

COMMISSION DECISION

of 3-1-2003

finding that the remission of import duties is justified in a particular case for one amount and not for another
(Only the German text is authentic.)

Request submitted by Germany

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FR

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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,[1] as last amended by Regulation (EC) No 2700/2000,[2]

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code,[3] as last amended by Regulation (EC) No 444/2002,[4] and in particular Article 907 thereof,

1 OJ L 302, 19.10.1992, p.1.
2 OJ L 311, 12.12.2000, p.17.
3 OJ L 253, 11.10.1993, p.1.
4 OJ L 141, 11.3.2002, p.11.

Whereas:

(1) In a letter of 4 December 2001, received by the Commission on 7 December 2001, Germany asked the Commission to decide whether, under Article 239 of Regulation (EEC) No 2913/92, remission of import duties was justified in the following circumstances.

(2) Since 27 October 1998 a German firm has regularly placed materials for the construction of civil aircraft directly into Type C warehousing, for which it holds an authorisation. The goods are then transferred to inward processing, released for free circulation for a prescribed end use or released for free circulation normally.

(3) The firm uses the simplified procedure both to place the goods under the customs warehousing procedure and to remove them from it. The firm uses the customs warehousing software ASSIST for its internal stock record keeping; ASSIST takes the data from the following systems: SAP R/3 (register of goods entering), MAS (used for ordering materials) and HELAS (warehouse administration system), and triggers their customs processing in the ZADAT procedure.

(4) Between November 1998 and September 2000, stock records were lost while goods were being placed in the customs warehouse because of an interface error between SAP R/3 and ASSIST, a fact of which the firm informed the customs authorities at the beginning of November 2000. Furthermore, the goods were neither presented nor transferred to another customs procedure. They were therefore removed from customs supervision within the meaning of Article 203 of Regulation (EEC) No 2913/92 and a customs debt was thereby incurred. On 25 April 2001 the XXX main customs office issued a tax notice charging XXXXXX in duties.

(5) Between November 1998 and December 1999, because of an interface error between the HELAS system and ASSIST, 52 107 intended transfers to the inward processing procedure or release for free circulation for a prescribed end-use went unrecorded, and no supplementary declaration was submitted. This interface error was discovered at the end of 1999 during an audit conducted from August 1999 to October 2000 by Hamburg main customs office for audits. On 22 November 2000 the Hamburg Waltershof main customs office issued a tax notice for duties in the sum of XXXXX because the goods had been removed from customs supervision.

(6) In their letter of 4 December 2001, transmitted by the German Authorities, requesting remission of these duties (in total: XXXXXX, the following reasons for the existence of a special situation were given.

(7) It was asserted that remission of the customs debt was allowed under Article 900(1)(o) of Regulation (EEC) No 2454/93, which applied when the debt was incurred, since if the goods had been released for free circulation, they would have been eligible for preferential tariff treatment. This constituted therefore a special situation.

(8) It was also considered that Article 905(1) of Regulation (EEC) No 2454/93 applied in so far as the insertion of Article 212a in Regulation (EEC) No 2913/92 constituted a special situation, because if that Article had already been in force at the time the customs debt was incurred, preferential tariff treatment would have been granted on the grounds of the goods' end-use. The firm also bases the claim that there is a special situation on Article 577(2) of Regulation (EEC) No 2454/93, arguing that if the goods had been placed under the inward processing procedure in accordance with the rules, they would have been exempt from duties on the grounds of their end-use. It is also claimed that the complexity of the hidden computer error constituted a special situation.

(9) It was argued that the firm did not act with obvious negligence since it showed due diligence by employing additional staff and training its staff thoroughly.

(10) In support of the application submitted by the German authorities the firm stated that it had seen the dossier those authorities submitted to the Commission and had nothing to add.

(11) In a letter of 6 May 2002 the Commission asked the German authorities for additional information. This information was sent to the Commission in a letter of 2 July 2002, which arrived at the Commission on 9 July 2002. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 6 May and 9 July 2002.

(12) In their letter of 2 July 2002 the German authorities reduced the amount for which remission is requested to XXXXXX, since the parts not specifically for civil aircraft, representing 1.2% of the goods concerned, should have been released for normal free circulation and consequently would not have been exempt from duties.

(13) In a letter of 25 September 2002, received by the firm on 26 September 2002, the Commission informed the firm of its intention to refuse the request for remission, and stated its reasons.

(14) The firm responded to these arguments in a letter of 23 October 2002, received at the Commission on 24 October 2002. In particular, it asserted that a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 applied to all the imports concerned and that it was guilty of neither deception nor obvious negligence.

(15) It argued that the fact that it had found most of the irregularities itself constituted a special situation.

(16) It further claimed that the German customs authorities had placed it in an exceptional situation by unlawfully failing to check thoroughly the computer systems for carrying out the customs procedure.

(17) The firm also argued for a special situation on the grounds that it would be unfair to charge customs duties if there was no negative impact on the Community budget. The goods were covered by an end-use authorisation and it was certain that the goods had been assigned to the prescribed end-use.

(18) The firm emphasised that it had in no way acted negligently, since it had taken every precaution to avoid errors, and Community law on remission/repayment did not require economic operators to be infallible. In this connection the complexity of the computerised procedures should be taken into account, as should the fact that this was the firm's first customs warehousing authorisation. Its experience in this field was therefore limited.

(19) The administrative procedure was suspended for a month in accordance with Article 907(3) of Regulation (EEC) No 2454/93.

(20) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 12 November 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.

(21) Under Article 239 of Regulation (EEC) No 2913/92 import duties may be repaid or remitted in special situations (other than those laid down in Articles 236, 237 and 238

of the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

(22) The Court of Justice of the European Communities has consistently taken the view that these provisions represent a general principle of equity designed to cover an exceptional situation in which an operator, which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties, might find itself compared with other operators carrying out the same activity.

(23) The customs debt was incurred because the goods were removed from customs supervision within the meaning of Article 203 of Regulation (EEC) No 2913/92. There were irregularities in the computerised customs processing both when the goods entered customs warehousing and when they left it.

(24) The firm has applied for remission of the customs debt on the grounds that there was a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. In this connection the following points should be made:

(25) Article 900(1)(o) of Regulation (EEC) No 2454/93 is not applicable to this case. It provides that import duties are to be repaid or remitted where "the customs debt has been incurred otherwise than under Article 201 of the Code and the person concerned is able to produce a certificate of origin, a movement certificate, an internal Community transit document or other appropriate document showing that if the imported goods had been entered for free circulation they would have been eligible for Community treatment or preferential tariff treatment". Airworthiness certificates cannot be used as appropriate documents within the meaning of Article 900(1)(o) of Regulation (EEC) No 2454/93. Furthermore, Article 900(1)(o) does not cover preferential tariff treatment for a prescribed end-use or for inward processing. If it did, the addition of Article 212a of Regulation (EEC) No 2913/92, which provides for the application of preferential tariff treatment for goods imported under inward processing, even if the customs debt is incurred otherwise than under Article 201 of that Regulation, would have been superfluous. It should also be noted that Article 212a is already excluded as grounds for a special situation by the fact that it did not cover end use at the time the debt was incurred.

(26) The application of Article 577(2)(d) of Regulation (EEC) No 2454/93, which was applicable at the time in question, would have ended the inward processing at the point at which work on the goods began, thereby exempting them from duties. However, the goods were not placed under the inward processing procedure, which means that this provision was not applicable.

(27) Nor does the complexity of the computer system in itself constitute a special situation. Correct, error-free operation of the system is the responsibility of the firm, which can under no circumstances shift responsibility on to the customs authorities. Those authorities were not obliged to check the firm's computer system when they issued the customs warehousing authorisation.

(28) As regards the interface error between the HELAS and ASSIST computerised systems, which affected the processing of the removal of goods from customs warehousing from November 1998 to December 1999, and which was discovered during a customs audit in December 1999, the facts in the dossier do not indicate that this constituted a special situation within the meaning of Regulation (EEC) No 2913/92.

(29) Nor has the Commission been able to find any other facts constituting a special situation in respect of the debt incurred in connection with this interface error.

(30) Nevertheless, a special situation can be seen in respect of the part of the customs debt discovered by the firm which arose from the interface error affecting removal of goods from customs warehousing and that part arising from the interface error detected equally by the firm and affecting the placing of goods in customs warehousing.

(31) Although the customs authorities detected the interface error affecting removal from customs warehousing in the course of their audit of the firm, only a fraction of the customs debt (XXXXX) was detected on this occasion. Immediately after the discovery by the auditors, the firm itself carried out a thorough examination of the system and found further errors for the period covered by the audit. Furthermore, the firm checked the period from August 1999 to December 1999 on its own initiative, and discovered still more irregularities.

(32) At that point the audit period established by the customs authorities was only from November 1998 to July 1999. Only on 9 February 2000 was this extended to cover the period November 1996 to December 1999. The firm therefore showed particular

diligence firstly in reacting immediately to the audit and detecting further errors and notifying them to the customs authorities on its own initiative, and secondly in extending its checks beyond the audit period.

(33) From November 1998 to September 2000 data was lost as the result of an interface error when goods were being placed under the customs warehousing procedure. This error was also detected by the firm itself. The audit by the German customs authorities, covering the period November 1996 to December 1999, failed to detect this error.

(34) The amount of the customs debts corresponding to the irregularities detected by the firm is the total amount of the customs debt for which remission is requested in this case in respect of placing goods in and removing them from warehousing minus the amount corresponding to the errors detected by the German customs authorities.

(35) When evaluating the particular diligence shown by the firm, account should also be taken of the fact that the goods would in any case have been exempt from duties if the computer errors had not occurred and the goods had been released for free circulation in the Community or inward processing in accordance with the rules. An end-use authorisation had been issued, and it has been established that the goods really were used accordingly. Therefore, the computer errors had no negative impact on the Community budget.

(36) These facts constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 for the part of the customs debt relating to interface errors and duties owed which were detected and notified by the firm itself.

(37) No deception or obvious negligence can be attributed to the firm, since it itself informed the German customs authorities of the overwhelming majority of the irregularities giving rise to the customs debt.

(38) Remission of the customs debt incurred in respect of the interface error detected by the firm and of part of the customs debt incurred in respect of the other interface error, in total XXXXXXX, is therefore justified.

(39) However, remission of that part of the customs debt incurred as a direct result of the discovery of an interface error by the customs authorities, namely XXXX, is not justified,

HAS DECIDED AS FOLLOWS:

Article 1

The remission of import duties of XXXXXX requested by Germany on 4 December 2001, as corrected by Germany on 2 July 2002, is justified.

Article 2

The remission of import duties of XXXXXXX requested by Germany on 4 December 2001, as corrected by Germany on 2 July 2002, is not justified.

Article 3

This Decision is addressed to Germany.

Brussels, 3-1-2003

For the Commission
Frits Bolkestein
Member of the Commission