

Commission Decision

Of 28.4.99

finding that it is justified to take action for the post-clearance recovery of import duties and that remission of these duties is not justified in a particular case

(request submitted by Ireland)

Ref. **REC: 5/98**

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

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, and in particular Articles 873 and 907 thereof,²

Whereas by letter dated 29 June 1998 received by the Commission on 30 June 1998, Ireland asked the Commission to decide, under Article 5(2) of 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,³ as last amended by Regulation (EEC) No 1854/89,⁴ whether it was justified not to take action for recovery of import duties and in the alternative to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,⁵ as last amended by Regulation (EEC) No 1854/89, whether remission of these duties was justified in the following circumstances:

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 253, 11.10.1993, p. 1.

³ OJ L 197, 03.08.1979, p. 1.

⁴ OJ L 186, 31.06.1989, p. 1.

⁵ OJ L 175, 12.07.1979, p. 1.

From 1991 onwards a firm imported polyester film from the Republic of Korea for use in the manufacture of videotapes. On import the goods were classified under CN code 3920 69, which in 1991 corresponded to a duty rate of 13% ad valorem.

From 1 January 1992, CN code 3920 69 attracted a zero rate of duty under the Generalised System of Preferences. To obtain preferential tariff treatment, imported polyester film had to be accompanied by a Form A certificate issued by the competent authorities in Korea. The goods in question were imported under CN code 3920 69.

In October 1992 the Irish customs authorities noticed that there was a discrepancy between the code given on the customs declarations, i.e. code 3920 69, and that given on the Form A certificates that accompanied them, i.e. code 3920 62. A customs duty of 13% ad valorem was applicable to the latter once the quota was exhausted.

Following examination of a sample, the Irish customs authorities informed the firm in February 1993 that the film in question should be classified under CN code 3920 62.

After contacting its suppliers, the firm nevertheless continued to use the same classification as before (namely code 3920 69) and corrected the classifications given on the Form A certificates accompanying the declarations. It also contested the classification used by the Irish administration, but owing to a misunderstanding the latter did not reply officially. The firm accordingly deduced that the Irish authorities accepted the use of CN code 3920 69 for the import of the polyester film in question.

In December 1993 the customs authorities took further samples and again concluded that the film in question should be classified under CN code 3920 62. The firm then requested another analysis from an independent laboratory, which considered that the polyester film should be classified under code 3920 69.

However, following another analysis the Irish customs authorities confirmed their own classification.

In December 1994 the Irish customs services therefore requested the firm to pay import duties of XXXXXX for imports between January 1992 and December 1993, a sum for which the firm requested waiver of recovery and, in the alternative, remission.

Whereas the operator states that he has seen the dossier submitted to the Commission by the Irish authorities and has nothing to add;

Whereas by letter dated 21 December 1998 the Commission informed the firm of its intention to refuse its request and gave the reasons for its objection;

Whereas by letter dated 8 February 1999 received by the Commission the same day, the firm stated its position on the objections; whereas it contended that the administrative procedure followed by the Commission in considering Ireland's request of 29 June 1998 should have been based on the implementing provisions of Regulations (EEC) No 1697/79 and (EEC) No 1430/79 rather than on those of Regulation (EEC) No 2913/92; whereas it pointed out that the conditions laid down in Article 5(2) of Regulation (EEC) No 1697/79 and Article 13 of Regulation (EEC) No 1430/79 had been fulfilled in the case in question and that waiver or remission of the duties should therefore be granted by the Commission for the entire period under consideration, namely the period between January 1992 and December 1993; whereas alternatively it noted that the said conditions should be considered as having been met for the period between January 1992 and February 1993 or at least for the period between January 1992 and October 1992;

Whereas the administrative procedure was suspended in accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93 for a period of one month;

Whereas, in accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 29 March 1999 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas the Irish authorities based their request on Article 5(2) of Regulation (EEC) No 1697/79 and on Article 13(1) of Regulation (EEC) No 1430/79; whereas it should therefore be considered whether these provisions apply;

Whereas procedural rules, unlike substantive rules, apply to all pending cases from the time they enter into force; whereas Ireland's request of 29 June 1998 must therefore be examined on the basis of Regulation (EEC) No 2454/93;

Whereas under Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may refrain from taking action for the post-clearance recovery of import or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having acted in good faith and

observed all the provisions laid down by the rules in force as far as the customs declaration is concerned;

Whereas the Irish customs authorities repeatedly accepted customs declarations that gave the wrong tariff classification of the goods in question;

Whereas, however, in such an event there is only an active error by the competent authorities if, despite the number and size of the consignments imported by the person liable, those authorities raised no objection concerning the tariff classification of the goods in question, even though a comparison between the tariff heading declared and the explicit description of the goods in accordance with the indications of the nomenclature would have disclosed the incorrect tariff classification;

Whereas in the present instance the incorrect tariff classification could not be disclosed by a simple comparison but required an in-depth examination of the goods in question; whereas therefore the Irish authorities did not make an error in this regard, even though the customs declarations, as pointed out by the firm in its letter of 8 February 1999, were always lodged with the same customs office;

Whereas, however, the Irish customs services repeatedly accepted customs declarations which up to October 1992 gave a different CN code to that which appeared on the corresponding Form A certificates;

Whereas this circumstance must be considered an error attributable to the customs authorities; whereas from the time that the codes on the two documents corresponded, the competent Irish authorities could no longer be considered as having committed an error in so far as the situation appeared to have been regularised by the firm concerned;

Whereas in order to determine whether the error by the competent authorities was detectable by the person liable, account must be taken of the nature of the error, the experience of the firm and the care showed by it;

Whereas the firm concerned is one of the principal importers in the European Community of the type of polyester film in question, even though it only began operations in 1991;

Whereas given the significant financial implications of the decision as to the tariff classification of the goods in question, this classification should have been made with particular care;

Whereas when an economic operator is in doubt as to whether goods are classified under the correct heading, it should make thorough enquiries to find out whether these doubts are justified or not; whereas this requirement may be considered satisfied where the operator concerned holds tariff information issued by the customs authorities of a Member State;

Whereas the tariff classification of the goods in question was a complex issue;

Whereas the tariff headings given on the import declarations and those appearing on the Form A certificates accompanying them differed from January 1992 to October 1992;

Whereas these circumstances should have alerted the firm as to the possibility of an incorrect tariff classification; whereas it did not proceed with due care in so far as it did not apply to the Irish authorities for tariff information, which would have removed all doubt as to the classification of the goods in question;

Whereas in regard to the imports made after October 1992, even if the competent authorities cannot be considered as having made an error during that period, the firm did not proceed with due care in that between the date of the investigation by the Irish authorities in October 1992 and the date from which the tariff classification appearing on the Form A certificate comprised only four figures, namely February 1993, it corrected the tariff classification appearing on the Form A certificates and from February 1993 kept its initial tariff classification even though the Irish authorities had informed it that this classification was incorrect;

Whereas, therefore, the error made by the competent authorities could have been detected by the firm concerned;

Whereas it is therefore justified to take action for the post-clearance recovery of import duties in this case;

Whereas under Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations other than those referred to in Sections A to D of that Regulation which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the repeated acceptance from January 1992 to October 1992 of customs declarations containing a different tariff classification from that appearing on the accompanying Form A certificates could, insofar as it constitutes an error by the competent authorities, constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas, however, the firm concerned did not proceed with the care that would have enabled it to detect the error made by the competent national authorities;

Whereas even if from February 1993 the Irish customs authorities did not demand payment of the relevant duties with due promptness, the firm did not proceed with the necessary care in regard to the imports made after October 1992 since up to February 1993 it corrected the tariff classification appearing on the Form A certificates, an act which constitutes falsification of documents, and from February 1993 it kept its initial tariff classification even though the Irish authorities had informed it that this classification was incorrect;

Whereas the firm concerned showed obvious negligence;

Whereas, therefore, the remission of import duties requested is not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

1. The import duties in the sum of XXXXX which are the subject of the request by Ireland dated 29 June 1998 shall be recovered.
2. Remission of the import duties in the sum of XXXXX, requested by Ireland on 29 June 1998, is not justified.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 28.4.99

For the Commission

