

COMMISSION DECISION
of 21.04.1993

finding that it is justified to take action for
the post-clearance recovery of import duties
in a particular case

(request submitted by Italy)

REC 4/93

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 1697/79 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 9 April 1993 received by the Commission on 21 April 1993, Italy 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 1989 several Italian firms entered for free circulation blank video tapes from China. On presentation of Form A origin certificates issued by the proper Chinese authorities, customs duties on these imports were suspended under a GSP (generalized system of preferences) ceiling.

A subsequent investigation showed that the video tapes did not satisfy the criteria for the granting of preferences under the GSP. The certificates accompanying the import declarations were therefore not valid and the procedure was initiated for the post-clearance recovery of the customs duties from the firms concerned.

Invoking Article 5 of Regulation (EEC) No 1697/79 and arguing that they had acted in good faith, the firms then appealed against recovery.

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 3 September 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 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 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, under a system of preferences, goods admitted for importation into the Community receive preferential tariff treatment on presentation of an origin certificate issued by the proper authorities of the country of export; whereas it is for those authorities to do whatever is necessary to verify the origin of the goods;

Whereas acceptance of these certificates by the Member State of import cannot be considered an error by its authorities; whereas the initial acceptance of origin certificates by those authorities does not preclude subsequent checks that might render these certificates not valid;

Whereas, in cases where a certificate is subsequently found to be invalid, moreover, this fact is deemed to be detectable by the importer;

Whereas, moreover, similarly, Article 4(2)(c) of Regulation (EEC) No 3799/86⁴ laying down provisions for the implementation of Article 13 of the Regulation (EEC) No 1430/79⁵ provides that the production, for the purpose of securing preferential tariff treatment, of documents subsequently found to be forged, falsified or not valid shall not in itself be a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned and warranting the repayment or remission of duties;

Whereas the case in question could also be examined in terms of the remission of import duties under Regulation (EEC) No 1430/79;

Whereas equity precludes an application for the waiving of post-clearance recovery of duties being treated more favourably than an application for the remission of duties;

4 OJ No L 352, 13.12.1986

5 OJ No L 175, 12.7.1979

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

HAS ADOPTED THIS DECISION:

Article 1

The import duties totalling LIT [REDACTED] which are the subject of the request by Italy received by the Commission on 9 April 1993 shall be recovered.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 26.10.1993

For the Commission