

REC/NO

COMMISSION DECISION

of 1.2.1992

finding that it is justified not to proceed with the post-clearance recovery of import duties in a particular case

(request submitted by Germany)

Ref: REC 3/92

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 20 August 1992 received by the Commission on 1 September 1992 Germany requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties is justified 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 1988 a German firm regularly imported textile products from Hong Kong. In its business with the Far East, the firm often used a Hong Kong-based firm as agents and for supervising transactions, in return for which it received commission. During a spot check carried out in 1991, it was discovered that the commissions concerned were not buying commissions to be deducted for the purposes of determining customs value within the meaning of Article 8(4) of Regulation (EEC) No 1224/80. on the value of goods for customs purposes⁴. On the basis of these findings, the firm was subsequently asked to pay a total of DM [REDACTED] in customs duties. The firm duly lodged an appeal against the assessment within the prescribed time-limit. In the firm's opinion, after a spot check on the firm in 1983/84, information had been given which was binding on the customs office under Article 5(1) of Regulation (EEC) No 1697/79. The aim of this check was to determine the appropriate treatment for customs value purposes of these commissions. At the time, the expert assessor, the customs valuation team and the customs office responsible reached the same conclusion and informed the firm that the commissions paid should be considered as buying commissions which were not to be included in the customs value.

Article 5(1) of Regulation 1697/79 cannot be applied since neither the audit report nor the letter of the customs office constitute information binding the customs authorities in the sense of the fore-mentioned provisions.

However, in the present case, Article 5(2) of the above-mentioned Regulation can be invoked in order to justify renouncing an action for post-clearance recovery of the duties.

4 OJ No L 134, 31.5.1980. p. 1.

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 8 January 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, when the check was made in 1983/84, people who represented different customs departments and who all had specialist knowledge, including the expert assessor and the customs valuation team, reached the same conclusion, namely that the commissions should be considered as buying commissions not to be included in the customs value; whereas this opinion was given in writing;

Whereas the issue was a complicated one and so the error made by the authorities could not reasonably have been detected by the firm;

Whereas the person liable observed all the relevant provisions in relation to the customs declaration and whereas there is no reason to believe that the firm concerned did not act in good faith;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, it is therefore justified not to proceed with post-clearance recovery of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

The import duties of DM [REDACTED], which are the subject of the request by Germany received by the Commission on 20 August 1992, shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 1.3.1993

For the Commission