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REC 6/00



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20-8-2001

NOT FOR PUBLICATION

COMMISSION DECISION

of 20-8-2001

finding that post-clearance entry of import duties in the accounts is not justified in a particular case and refusing the Netherlands authorisation under Article 875 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation.

(Request submitted by Germany)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities,

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 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 993/2001,⁴ and in particular Article 873 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, 28.05.2001, p.1

Whereas:

- (1) By letter dated 13 October 2000, received by the Commission on 9 November 2000, Germany asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it was justified to waive post-clearance entry of import duties in the accounts in the following circumstances:
- (2) Between January 1995 and July 1997, a German company (hereinafter “the company”) imported methionine into Germany.
- (3) Between January 1995 and 1 March 1995, the declarations described the goods as DL-methionine of Combined Nomenclature subheading 2930 40 00. Import duties were paid for that period.
- (4) On 3 April 1995, the company’s representative requested repayment of customs duties paid on the methionine imported since 1 January 1995 on the grounds that the product was for use in animal feed under CAS RN 63-68-3 (CAS: Chemical Abstracts Service Number), and the exemption from import duties applicable to products covered by that CAS number should be granted. The competent customs office granted the application and on 7 April 1995 repaid the import duties collected in respect of the declarations made for the first two months of 1995. An opinion was sent to the company stating that in accordance with Annex III of Commission Regulation (EC) No 3115/94 of 20 December 1994, amending Annexes I and II of Council Regulation (EEC) No 2658/87 relating to the Tariff and Statistical Nomenclature and the Common Customs Tariff,⁵ methionine classified under CN sub-heading 2930 40 00 had been exempt from import duties since 1 January 1995.

⁵ OJ L 345, 31.12.1994, p.1.

- (5) Thereafter, and until 29 February 1996, all the customs declarations relating to the import of the goods contained the following details: DL-methionine, animal feed, CN code 2930 40 00, additional code 2500. In box 44 of the declaration it was stated that the goods were pharmaceutical products covered by CAS RN 63-68-3.
- (6) On 10 April and 25 April 1995 the company wrote to the German customs authorities requesting confirmation that DL-methionine (CAS RN 63-68-3) used for animal feed had indeed been exempt from import duties since 1 January 1995.
- (7) On 4 May 1995 the customs laboratory and training college wrote to the company stating that methionine was classified under CN code 2930 40 00 and was listed in Annex III to Regulation (EC) No 3115 referred to above. Customs exemption applied to the products referred to in that Annex with effect from 1 January 1995.
- (8) From April 1995 the competent customs office accorded the goods duty-free treatment on release for free circulation.
- (9) During post-clearance checks, a sample of the product was examined. It was found that the product was in fact DL-methionine of CAS RN 59-51-8 and not CAS RN 63-68-3. But only methionine of CAS RN 63-68-3 (methionine-L) was entitled to exemption from import duties. DL-methionine was in fact subject to a duty of 7.4% in 1995 and 6.9% in 1996/1997. The relevant customs office therefore found that with regard to the imports by the company in the period from January 1995 to July 1997, a customs debt had been occurred for an amount of XXXXX, the sum for which the company requested that post-clearance entry in the accounts be waived in this case.

- (10) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the company stated that it had seen the dossier sent to the Commission by the German authorities. It stated its position and made comments, which were passed on to the Commission by the German authorities in their letter of 13 October 2000.
- (11) By letter dated 28 May 2001, sent on 30 May 2001, the Commission notified the company of its intention to withhold approval and explained the grounds for its decision.
- (12) By letter dated 26 June 2001, received by the Commission on the same date, the company expressed its opinion on the Commission's objections. It restated its position that the competent customs authorities had made active errors which it could not have detected. In particular, it stressed that the error could not have been detected because several customs administrations had made the same type of error and because the relevant regulations were complex. In this respect it pointed out that customs administrations in Germany, the Netherlands and Italy had admitted the DL-methionine duty-free for several years. In addition, it stressed that the CAS abbreviation had been introduced for the first time into Regulation (EC) No 3115/94, referred to above. This completely new numbering system, unfamiliar even to tariff experts, had been introduced without any explanation regarding the abbreviation itself or the coding it followed. The company concluded that when the customs tariff of the period was studied, the concepts used lacked clarity, making it impossible for a trader to associate the various types of methionine with a precise CAS number. With regard to the entry of the wrong CAS number in the declarations lodged by the company, it stated that the Commission's criticism of the company on this point, in its letter of 28 May 2001, was unjustified since, again, CAS numbers were wholly new to the customs tariff at the time.
- (13) The administrative procedure was therefore suspended, in accordance with Article 873 of Regulation (EEC) No 2454/93, between 31 May and 26 June 2001.

- (14) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 17 July 2001 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (15) Article 220(2)(b) of Regulation (EEC) No 2913/92 requires post-clearance entry in the accounts to be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves that could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (16) It results from the facts of this case that the German relevant authorities made a number of errors with regard to the imports by the company.
- (17) Indeed, over a long period of time, namely from March 1995 to July 1997, they accepted numerous declarations, granting exemption from import duties, when the products imported were not entitled to exemption and it was clear from those declarations that the imported products consisted of "DL-methionine for animal use". Moreover, there was a contradiction on the declarations between the name given to the imported products and the CAS number stated.
- (18) In addition, on 7 April 1995 the relevant German authorities, at the request of the company's representative, granted repayment of the import duties paid on identical products imported between January 1995 and 1 March 1995, considering that the aforementioned products were entitled to exemption from import duties when that was not the case.
- (19) The errors committed by the German authorities, taken together, must therefore be considered an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.

- (20) It remains to be verified whether the active error could have been detected by the company. The Court has consistently ruled that in order to determine this, account must be taken of the nature of the error, the experience of the firm and the diligence shown by it.
- (21) With regard to the nature of the error, the complexity of the applicable regulations should be taken into consideration. In this case, the regulations must be regarded as complex.
- (22) In the case in question, the exemption from import duties for methionine was set out in Annex III of Regulation (EC) No 3115/94, referred to above. This text, which introduced the concept of CAS numbers into customs legislation for the first time, without clarifying it, stipulated that methionine covered by CAS RN 63-68-3 could be imported duty-free. However, no distinction was made between the various forms of methionine. Thus, it was not made clear whether “DL-methionine” was exempt or not. Moreover, other evidence tends to show that the regulations in question in this case were complex. There is, for example, the length of time for which the German authorities persisted in this error, the fact that Member States interpreted the regulations in question differently, the fact that certain Member States, notably the Netherlands and Germany, took the view over a number of years that the products in question were eligible for exemption from import duties, and the fact that the German authorities, having examined the case submitted by the company’s representative, agreed in April 1995 to repay the duties paid on the products in question for the period from January to March 1995.
- (23) In view of the complexity of the regulations in question, the errors made by the German relevant authorities could not reasonably have been detected by the company. Indeed, despite its professional experience, it had legitimate grounds, from the first imports in question, for believing that the exemption from import duties regularly granted by the German administration was justified.

- (24) The fact that the company had legitimate expectations is further borne out by the following facts. Firstly, at the time of the facts in question the German customs working tariff did not specify the different forms of methionine. It was not until 1997 that the working tariff was amended to distinguish between the different forms of methionine. Secondly, on 4 May 1995 the customs laboratory and training college wrote to the firm stating that methionine was classified under CN code 2930 40 00 and was listed in Annex III of Regulation (EEC) No 3115/94 and that products included in that Annex had been exempt from import duties since 1 January 1995.
- (25) The circumstances in this case reveal an error on the part of the customs authorities themselves which could not have been detected by an operator acting in good faith within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (26) Post-clearance entry of import duties in the accounts is therefore not justified in this case.
- (27) Where the circumstances under consideration are such that the duties in question need not be entered in the accounts, Article 875 of Regulation (EEC) No 2454/93 authorises the Commission, under conditions which it shall determine, to authorise one or more Member States to refrain from post-clearance entry in the accounts in cases involving comparable issues of fact and of law.
- (28) By letter dated 17 July 2001, the Netherlands asked for authorisation to refrain from post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law to this one.
- (29) However, given the type of failure involved, this decision is very unusual in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXXXXX need not be entered in the accounts, as requested by the Federal Republic of Germany on 13 October 2000.

Article 2

The authorisation requested by the Netherlands in its letter of 17 July 2001 under Article 875 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

Article 3

This Decision is addressed to Germany and the Netherlands.

Done at Brussels, 20-8-2001

For the Commission

Member of the Commission