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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11-12-2002
C(2002)4920

Not for publication

COMMISSION DECISION

Of 11-12-2002

finding that remission of import duties is justified in a particular case and refusing the Netherlands authorisation to repay or remit duties in cases involving comparable issues of fact and of law under Article 908 of Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92

(Only the Dutch text is authentic.)

(request submitted by the Netherlands)

(REM 05/2002)

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(request submitted by the Netherlands)

(REM 05/2002)

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 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ 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 68, 12.3.2002, p. 11.

Whereas:

- (1) By letter dated 6 March 2002, received by the Commission on 11 March 2002, the Netherlands asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties was justified in the following circumstances.
- (2) A Dutch customs agent (hereinafter the "applicant"), acting for various importers, including company A, the client in this case, submitted declarations for the release of linear rails into free circulation. According to the dossier sent by the Dutch authorities, these rails are part of a linear motion system with one or more compartments designed to transport instruments and tools to a precisely determined place.
- (3) The declarations of release for free circulation concerned were made by the applicant on behalf of the client. The goods were declared as parts or accessories for machines for working metal and classified under CN heading 8466.
- (4) As a result of an investigation arising from a complaint, the competent customs authorities at Schiphol Airport found, in 1989, that the goods should have been classified under CN heading 8428 as apparatus for handling goods. A ruling was adopted on this matter and the client notified thereof.
- (5) From then on the client asked the applicant to use the classification agreed by the Schiphol customs authorities when clearing goods within the customs jurisdiction of the authority which had issued the ruling and in other customs districts in the Netherlands (including Rotterdam district).
- (6) When the client was subsequently given a licence to run a type E customs warehouse, the classification of the goods concerned was reviewed but the classification under heading 8428 was not contested. The client therefore asked the applicant to carry on declaring the goods under heading 8428.

- (7) Moreover, as the Dutch authorities point out in their letter of 6 March 2002, the classification under heading 8428 was checked and approved several times by the competent customs authorities.
- (8) In September 1999, the German customs authorities carried out a check at the premises of the client's German subsidiary on goods declared for import into Germany and the Netherlands. One purpose of the inspection was to check the classification of linear motion systems. The German authorities concluded that goods of this type should be classified as ball bearings under CN heading 8482.
- (9) Following the inspection by German customs, on 4 January 2000 samples were taken by the Dutch customs authorities of three linear motion systems at the client's warehouse in the Netherlands. On the basis of their investigation, the Dutch authorities decided that the goods concerned should actually be classified under heading 8482, the heading agreed by the German authorities at their 1999 inspection. As the rate of customs duty for heading 8482 was higher than for heading 8428, the one used by the applicant since the Dutch administration's classification ruling in 1989, the competent Dutch authorities accordingly requested the post-clearance payment by the applicant of the difference in customs duties owed on the goods released for free circulation in 1999. The duties total XXXXXX and it is that amount for which the applicant is now requesting remission.
- (10) As the Dutch authorities state in their letter of 6 March 2002, the applicant justifies its request on the grounds that, since 1989, the goods concerned had been classified in the declarations under CN heading 8428, that classification had been approved and checked on numerous occasions by the customs authorities and it had not acted with obvious negligence.

- (11) In support of the application submitted by the competent Dutch authorities the applicant stated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossiers the authorities had sent to the Commission. It stated its position and made comments, which were passed on to the Commission by the Dutch authorities in their letter of 6 March 2002.
- (12) 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 17 September 2002 within the framework of the Customs Code Committee (Section for Repayment) to consider the case.
- (13) 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.
- (14) 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 a special 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.
- (15) According to the dossier sent to the Commission on 6 March 2002, the competent authorities had specifically indicated the tariff classification to be used, i.e. 8428, as a result of examining the goods in 1989 and, on numerous occasions over a period of several years, had checked and approved customs declarations giving the classification now found to be incorrect for the goods concerned. In so doing, the competent authorities have committed an active error which constitutes a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.

- (16) Neither the applicant nor the client had any reason to doubt the accuracy of the tariff classification approved by the competent administration following the ruling adopted in 1989 as it was the result of an examination of the goods concerned and an investigation into the classification to be used. Furthermore, the fact that the competent customs authorities of different districts had repeatedly accepted the tariff classification declared without question over a period of several years only served to confirm the conviction of the client and the applicant that the classification was correct.
- (17) In the light of these considerations, obvious negligence cannot therefore be attributed to the applicant.
- (18) Remission of import duties is therefore justified in this case.
- (19) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 allows the Commission, under conditions that it may determine, to authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.
- (20) In a letter of 6 March 2002, the Netherlands requested authorisation to repay or remit import duties in cases involving issues of fact and law comparable to the present case.
- (21) However, 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 remission of import duties in the sum of XXXXXX requested by the Netherlands on 6 March 2002 is justified.

Article 2

The authorisation requested by the Netherlands in its letter of 6 March 2002 under Article 908 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 the Kingdom of the Netherlands.

Done at Brussels, 11-12-2002

For the Commission
Frits Bolkestein
Member of the Commission