

COMMISSION DECISION

of 18-12-1996

finding that it is justified not to take action for the post-clearance recovery of import duties in a particular case and authorizing Germany to waive such recovery in cases which are comparable in fact and in law

(request submitted by Germany)

REC 5/96

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 2913/92,² and in particular Article 873 thereof,

Whereas by letter dated 20 June 1996, received by the Commission on 1 July 1996, Germany 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 whether it is justified not to take action for the recovery of import duties in the following circumstances:

A German firm was authorized to use the outward processing procedure for an unlimited period for the manufacture of women's and children's clothing in Poland, duty being payable using the differential method.

From July 1992 onwards the firm's products were admitted duty-free under the concessionary treatment provided for in respect of the compensating products by Protocol No 1 to the EEC-Poland Agreement.

¹ OJ No L 302, 19.10.1992, p. 1.

² OJ No L 253, 11.10.1993, p. 1.

³ OJ No L 197, 3.8.1979, p. 1.

However, it was subsequently noted that in respect of goods covered by Regulation (EEC) No 636/82 the duty-free concession could only be granted to operators having sought and obtained authorization to use the textile outward processing procedure under that Regulation. That condition not having been met, duty was claimed on the goods.

The firm requested that post-clearance recovery of duty in the sum of XXXXX be waived under Article 5(2) of Regulation (EEC) No 1697/79 on the grounds that the customs authorities had granted duty-free admission without asking for the requisite authorization or stating that such authorization was required. The authorization was subsequently granted;

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

Whereas in accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 13 September 1996 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment 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 failure to collect the duties was due to an error on the part of the competent authorities, who should have asked the operator to present the authorization necessary for duty-free admission;

Whereas Protocol No 1 to the EEC-Poland Agreement states that "the rates of duty applied to reimports into the Community of textile products falling within the categories listed in the Annex to Council Regulation (EEC) No 636/82 after processing, manufacturing or working in Poland shall be eliminated on the date of entry into force of the Agreement"; whereas it is not clear from that provision whether the authorization provided for in the Regulation in question is required;

Whereas the provision has been interpreted differently in different Member States;

Whereas the Commission, aware of the need to clarify the situation, has more than once informed Member States of the correct interpretation of the provision; whereas the parallel provisions in the later agreements with Romania and Bulgaria were amended to make them clearer;

Whereas there was therefore genuine uncertainty about the proper interpretation of this provision and the person liable for the duty could not reasonably have detected the customs authorities' mistake;

Whereas the person liable observed all the provisions laid down by the rules in force as far as his customs declaration was concerned;

Whereas, therefore, it is justified not to take action for the post-clearance recovery of import duties in this case;

Whereas Article 875 of Regulation (EEC) No 2454/93 provides that where the circumstances under consideration are such that the duties in question need not be recovered the Commission may, under conditions which it shall determine, authorize a Member State to refrain from recovery in cases involving comparable issues of fact and of law;

Whereas by letter dated 20 June 1996, received by the Commission on 1 July 1996, Germany requested authorization to waive post-clearance recovery of duties in a number of cases comparable in law and in fact,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX which are the subject of the request by Germany dated 20 June 1996 shall not be recovered.

Article 2

Germany is hereby authorized to refrain from recovering the duty owed in cases involving issues of fact and of law comparable to those in the case described in Germany's request dated 20 June 1996.

Article 3

This Decision is addressed to Germany.

Done at Brussels, 18-12-1996.

For the Commission