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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4-12-2001

NOT FOR PUBLICATION

COMMISSION DECISION

of 4-12-2001

finding that post-clearance entry of import duties in the accounts is not justified in a particular case and refusing to grant the Federal Republic of Germany authorisation under Article 875 of Commission Regulation (EEC) No 2453/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92

(Request submitted by Germany)

REC 01/2001

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(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 Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 993/2001,⁴ and in particular Articles 873 and 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 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 8 February 2001, received by the Commission on 5 March 2001, Germany asked the Commission to decide, under Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979,⁵ whether it is justified to waive post-clearance entry of import duties in the accounts in the following circumstances:
- (2) From 1990 to 1992 a German firm declared dried peppers cut into lengths of several millimetres for release for free circulation at various German customs offices. The CN code given in the declarations for the goods was 0904 20 90. That, however, is the code for crushed or ground dried peppers.
- (3) The declarations were accepted by all the customs offices, none of which contested the classification of the peppers. Customs duties were charged at the rate applicable to the CN code declared.
- (4) Following subsequent investigations the customs office for the district in which the firm has its headquarters concluded that the peppers should have been classified under CN code 0904 20 10. This is the code for dried peppers that are neither crushed nor ground. The rate of customs duties applied to the releases for free circulation in question should therefore have been that for CN code 0904 20 10. The customs office that carried out the control thereupon charged the firm, on its own behalf and that of the other customs offices concerned, XXXXXX in duty on the goods released for free circulation in the period 1990-92. The firm is requesting that post-clearance entry in the accounts of this sum be waived in this case.

⁵ OJ L 197, 03.08.2001, p. 1.

- (5) In support of the application submitted by the competent German authorities the company indicated that, in accordance with Article 871 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (6) 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 28 September 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (7) Under Article 5(2)(b) of Regulation (EEC) No 1697/79, post-clearance entry in the accounts shall 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.
- (8) In this case, customs duties on the dried peppers released for free circulation by the firm in the period 1990-92 were entered in the accounts at a level lower than that legally due because they were calculated at a lower rate of duty than they should have been. When, in the wake of controls, the competent authority realised this it sought to recover the difference from the firm.
- (9) The dossier provided shows that several German customs offices accepted, over a period of two years, the firm's declarations even though they mentioned CN code 0904 20 90. Not one of these offices expressed the slightest objection to the CN code figuring in the declarations. This classification was, moreover, confirmed by spot checks.

- (10) The above circumstances show that the competent German authorities committed an active error within the meaning of Article 5(2) of Regulation (EEC) No 1697/79.
- (11) 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.
- (12) 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.
- (13) This case hinges on the difference between two CN codes, to wit 0904 20 10 for dried peppers neither crushed nor ground and 0904 20 90 for crushed or ground dried peppers. More specifically, the issue was just how many millimetres a product has to measure to be considered crushed or ground. The issue was only resolved when the Court of Justice of the European Communities ruled in [Case C-143/96](#) that the term “sonst zerkleinerte” (“otherwise ground”) in the German description of CN code 0904 20 90 did not apply to a product cut into pieces measuring between 4 and 8 mm.
- (14) The fact that the matter was eventually referred to the Court of Justice for a preliminary ruling proves the complexity of the legislation in question.
- (15) In view of the complexity of the regulations in question, the errors made by the competent German authorities could not have been detected by the firm. Notwithstanding its professional experience, it was legitimate for the firm, after the first few import operations, to rely on the fact that the authorities were accepting its declarations without the slightest objection.

- (16) The fact that the firm had legitimate expectations is further borne out by the following facts. When the firm released identical products for free circulation in 1989, its customs agent declared them under CN code 0904 20 10. After examining samples taken in the course of a control the Frankfurt and Karlsruhe laboratories stated that the goods should have been classified in CN code 0904 20 90. From then on the firm, having received written information from the administration to the effect that a product identical to that involved in this case belonged in CN code 0904 20 90, could legitimately rely on the code it gave in its declarations for release for free circulation and the fact that the customs authorities accepted them without objection.
- (17) 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 5(2) of Regulation (EEC) No 1697/79.
- (18) Furthermore, as the German customs authorities explain in their request, the firm has acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (19) Entry of import duties in the accounts is therefore not justified in this case.
- (20) 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.
- (21) By letter of 8 February 2001, Germany asked the Commission 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.

(22) However, given the special circumstances, 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 XXXXX referred to in the request from the Germany of 8 February 2001 need not be entered in the accounts.

Article 2

The authorisation requested by Germany in its letter of 8 February 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 the Federal Republic of Germany.

Done at Brussels, 4-12-2001

For the Commission

Member of the Commission