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REM 31/00



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20-8-2001

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NOT FOR PUBLICATION

COMMISSION DECISION

of 20-8-2001

finding that an application for repayment of import duties is inadmissible in a particular

case

(Request submitted by Denmark)

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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 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, 28.5.2001, p.1.

Whereas:

- (1) By letter dated 13 November 2000, received by the Commission on 17 November 2000, Denmark asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:
- (2) For a number of years a Danish company (hereinafter “the company”) imported components for the manufacture of hearing aids under the inward processing/drawback system. In 1997, on the advice of the competent customs administration, the company asked for an import authorisation to be issued under the end-use procedure, so that the components which it had so far imported under its inward processing/drawback authorisation might be entitled to the zero rate of import duty. The company obtained that authorisation on 31 July 1997, with immediate effect.
- (3) Subsequently, on 25 August 1997, again at the invitation of the customs authorities, the company applied for an import authorisation under the end-use procedure with retrospective effect from 1 January 1995. This request was granted and on 28 August 1997 the customs administration issued the aforementioned authorisation with retrospective effect from 1 January 1995. On the basis of that authorisation, customs duties totalling DKK 1 820 010 paid by the importer between 1 January 1995 and 31 July 1997 were repaid.
- (4) Following a reorganisation of the Danish administration, the new customs authority in charge carried out post-clearance checks and found that the import authorisation in connection with the end-use procedure had been issued retrospectively, when there was in fact no legal provision for this. The competent Danish authorities therefore asked the company to pay the duties which had been wrongly repaid, i.e. the sum of DKK 1 820 010, which the company duly paid and which it now wants refunded.

- (5) Given that the applicable customs legislation did not make any provision for issuing an import authorisation in connection with the end-use procedure with retrospective effect, on 10 July 2000 the competent Danish authorities withdrew the authorisation which had been improperly issued on 28 August 1997.
- (6) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the company stated that it had seen the dossier submitted to the Commission by the Danish authorities and had nothing to add.
- (7) By letter of 23 March 2001 the Commission requested further information from the Danish authorities. This information was provided by letter dated 20 April 2001, received by the Commission on the same day. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 24 March and 20 April 2001.
- (8) 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 15 June 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (9) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (10) Under Article 9 of the abovementioned Regulation (EEC) No 2913/92, a decision favourable to the person concerned shall be revoked or amended where, in cases other than those referred to in Article 8, one or more of the conditions laid down for its issue were not or are no longer fulfilled.
- (11) The revocation of the decision takes effect from the date of notification. In this case, the revocation decision took effect on 10 July 2000. One must therefore conclude that imports that occurred between 1 January 1995 and 31 July 1997 were indeed covered by the authorisation in question.

- (12) Therefore no customs debt was incurred in this case.
- (13) There is therefore nothing to stop the competent Danish authorities from deciding in this case to apply Article 236 of Council Regulation (EEC) No 2913/92 and thereby grant the company repayment of the import duties.
- (14) In these circumstances, since no customs debt was incurred on operations carried out between 1 January 1995 and 31 July 1997, the request for repayment of duties in this case is inadmissible.

HAS ADOPTED THIS DECISION:

Article 1

The request for repayment of import duties presented by the Kingdom of Denmark on 13 November 2000 for the sum of DKK 1 820 010 is inadmissible.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 20-8-2001

For the Commission

Member of the Commission