

COMMISSION DECISION

of ...17.11.1993

finding that a request for repayment of import duties
in a particular case is inadmissible

(request submitted by Italy)

REM 15/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the
repayment or remission of import or export duties,¹ as last amended by
Regulation (EEC) No 3069/86,²

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986
laying down provisions for the implementation of Articles 4a, 6a, 11a and
13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of
import or export duties,³ and in particular Article 8 thereof,

Whereas by letter dated 4 May 1993, received by the Commission on 17 May
1993, Italy asked the Commission to decide under Article 13 of Regulation
(EEC) No 1430/79 whether or not the repayment of import duties is justified
in the following circumstances:

1 OJ No L 175, 12.7.1979, p.1.
2 OJ No L 286, 9.10.1986, p.1.
3 OJ No L 352, 13.12.1986, p.19.

A container bearing the identification "OCLU 112730/7" and containing 746 boxes of footwear originating in the USA was presented to the Italian customs on 28 November 1991.

On 29 November the container was loaded on a ship instead of another, containing tiles, bearing the identification "OCLU 112015/4", for which export formalities were completed on 2 December (declaration 4774/A).

At the port of Livorno, the discrepancy between the container identification and the accompanying documents was noticed by customs staff who amended the documents to read "OCLU 112730/7".

On 11 December the container "OCLU 112730/7" was declared for free circulation (form 198/A) at the Castelmaggiore customs office. The declaration was accepted as being consistent with the goods (first import).

On 12 December the exchange was discovered and the shippers gave instructions for the container not to be unloaded in the US but to be returned to Italy.

The container of shoes reached the port of Livorno on 2 January 1992 and on 16 January it was declared for free circulation (form 240/W) at the customs office of Castelmaggiore (second import). On the occasion a thorough inspection of the merchandise was carried out which showed:

1. that the articles contained in the consignment corresponded to those described on the loading list and on the invoice submitted during the first customs clearance operation;
2. that the seal described in the original bill of lading No 949444 issued for the previous shipment was intact;
3. that the security lock applied prior to the first shipment was intact.

The company submitted a request for repayment of the import duties paid on the second import on 6 January 1992.

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 3 September 1993 within the framework of the Committee on Duty Free Arrangements to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations other than those referred to in sections A to D of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas formalities were carried out on 16 January 1992 for the release for free circulation (on the occasion of the second import) of goods presented at customs in respect of which a customs debt was incurred; whereas there is no reason to call that declaration, or any of its particulars, into question;

Whereas, on the other hand, when the goods in question were first declared for free circulation on 11 December 1991, they were outside the customs territory of the Community; whereas acceptance of the declaration for free circulation on the part of the customs service was not, therefore, in accordance with customs legislation;

Whereas the declaration for free circulation made on 11 December 1991 should not have been accepted because the goods to which it relates were not presented;

(7)

Whereas when acceptance of a declaration is revoked the goods are no longer released for free circulation; whereas accordingly no customs debt was incurred in respect of the goods covered by the declaration in question and the Italian authorities may, therefore, themselves repay the duty paid on the occasion of the first import pursuant to Article 2 of Regulation (EEC) No 1430/79,

HAS ADOPTED THIS DECISION:

Article 1

The request for repayment of import duties in the sum of ITL [REDACTED] in respect of a declaration for free circulation dated 16 January 1992 and submitted by Italy on 4 May 1993 is hereby found to be inadmissible.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 17.11.1993

For the Commission