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REC 06/03

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26-5-2004
C(2004)1902

NOT FOR PUBLICATION

COMMISSION DECISION

Of 26-5-2004

finding that post-clearance entry in the accounts of import duties is not justified in a particular case and authorising France to waive post-clearance entry in the accounts in cases involving comparable issues of fact and of law

(Only the French text is authentic)

**(Request submitted by France)
(REC 06/03)**

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(Request submitted by France)

(REC 06/03)

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 Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 2286/2003,⁴

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 343, 31.12.2003, p.1.

Whereas:

- (1) By letter dated 6 June 2003, received by the Commission on 10 June 2003, France asked the Commission to decide whether waiving the entry of import duties in the accounts under Article 220(2)(b) of Regulation (EEC) No 2913/92 was justified in the following circumstances.
- (2) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003, the provisions of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Articles 871, 873 and 875 of Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.⁵
- (3) For many years a French firm imported a chemical product called *Gen Bag Micraoer* from Japan. The product was initially declared under tariff heading 3824.
- (4) Following the firm's submission of a declaration on 9 June 1997 the competent authorities decided to verify the classification and took samples. The Lyon customs laboratory classified the product under tariff heading 3822, for which a lower rate of duties applied than for heading 3824. After this the firm declared the goods under heading 3822.
- (5) The competent authorities then took further samples from a consignment of the product imported by the firm on 3 December 2001. The Le Havre customs laboratory considered that the product should be classified under heading 3824. This analysis was confirmed on 26 March 2002 by the Paris central laboratory.
- (6) On 10 July 2002 the competent authorities therefore notified the firm of a customs debt of XXXXXX for the imports carried out at Le Havre Port from 13 July 2000 to 1 October 2001.
- (7) The firm applied for a waiver of post-clearance recovery of these import duties, citing its good faith and the mistakes made by the competent authorities, which it could not have detected. It argued that following the checks carried out on its declaration of

⁵ OJ L 134, 29.5.2003, p. 1.

9 June 1997 it had merely acted in accordance with the opinion of the competent authorities, and was entitled to expect the results of those checks to be correct.

- (8) The French authorities stated that the results of laboratory analyses were sent in internal administrative documents, which as a rule should not be sent to tax debtors. Furthermore the customs laboratories would not normally give the tariff classification of a product but merely their technical opinion, following which the competent authority would have to decide on the tariff heading. However, the French administration no longer had the declaration of 9 June 1997 and so the inspection certificate annexed to it could no longer be consulted. Therefore it was no longer possible to establish with certainty whether the customs checks could have given rise to legitimate expectations on the part of the firm. In any case, the heading selected by a local customs office would not be the official position of the administration.
- (9) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the company stated that it had seen the dossier submitted by the French authorities and had nothing to add.
- (10) By letter of 23 September 2003 the Commission requested further information from the French authorities. The French authorities provided the information by letter dated 23 December 2003, received by the Commission on 6 January 2004. The administrative procedure was therefore suspended in accordance with Article 873 of Regulation (EEC) No 2454/93 between 23 September 2003 and 6 January 2004.
- (11) 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 25 March 2004 within the framework of the Customs Code Committee (Repayment Section) to consider the case.
- (12) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, there can be no post-clearance entry in the accounts where the amount of duties legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (13) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectation.

- (14) With regard to the French authorities' argument that local customs services are not competent authorities within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92, it should be noted that the [Court has consistently ruled](#)⁶ that any authority which, acting within the scope of its powers, furnishes information relevant to the recovery of customs duties and which may thus cause the person liable to entertain legitimate expectations must be considered a "competent authority". Therefore, if the firm might have been informed of the customs authorities' decision selecting the wrong tariff heading, that decision must be considered to have been taken by a competent authority within the meaning of Article 220(2)(b).
- (15) Since the declaration of 9 June 1997 has been destroyed by the French customs authorities, it is argued that there is no longer any document that could prove that the competent authorities informed the firm of their classification decision.
- (16) However, when they carried out the checks in June 1997 the competent authorities found that the declaration was false and the firm was therefore found to have committed an infringement. Although in the end the firm was not penalised, it has been established that when the infringement was found the competent authorities notified the firm of the results of the Lyon customs laboratory analyses and also told it that they considered the goods should be classified under heading 3822.
- (17) It is therefore established that when they carried out the checks in June 1997 the customs authorities committed an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (18) The Court of Justice of the European Communities has consistently ruled that, in determining whether the firm could reasonably have detected the customs authorities' error, account must be taken of the nature of the error, the firm's professional experience and the diligence it showed.
- (19) The dossier submitted by the French authorities shows that despite the firm's experience it had no reason to doubt that the results of the checks on its 9 June 1997 import operation were correct. It therefore had grounds for legitimate expectations that the classification selected by the competent authorities was correct.

⁶ Case C-348/89, ("*Mecanarte*"). Judgment of 27.6.1991

- (20) The request submitted by the French authorities also shows that it must be accepted that the firm acted in good faith.
- (21) The circumstances in this case therefore reveal an error on the part of the French customs authorities themselves, which could not have been detected by an operator acting in good faith, within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (22) Moreover, the firm acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (23) Post-clearance entry in the accounts of import duties is not therefore justified in this case.
- (24) Under Article 875 of Regulation (EEC) No 2454/93, where the circumstances under consideration are such that the duties need not be entered in the accounts, the Commission can, under conditions which it is to determine, authorise one or more Member States to waive post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law.
- (25) France has requested authorisation to waive post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and law.
- (26) Such authorisation may be granted to France on condition that it is used only in cases strictly comparable in fact and law to the cases in question. The authorisation should cover requests for waiver of post clearance entry in the accounts submitted within the legal time limits and relating to imports of the product concerned in this case carried out by the same firm between 9 June 1997 and 10 July 2002, the date on which the results of the checks on the import of 3 December 2001 were notified to the firm. In such cases the firm must have acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX which are the subject of the request from France of 6 June 2003 shall not be entered in the accounts.

Article 2

France is authorised to waive post-clearance entry of import duties in the accounts in cases involving issues of fact and of law comparable to the case cited in France's request of 6 June 2003.

Article 3

This Decision is addressed to France.

Done at Brussels, 26-5-2004

By the Commission

Frits Bolkestein

Member of the Commission