

Commission Decision
of 05-02-1999
finding that the remission of import duties
in a particular case is not justified

(request submitted by Italy)

REM : 14/98

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 1992¹ establishing the Community Customs Code,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993² laying down provisions for the implementation of Regulation (EEC) No 2913/92, and in particular Article 907 thereof,

Whereas by letter dated 28 April 1998, received by the Commission on 6 May 1998, Italy asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979³ on the repayment or remission of import or export duties, as last amended by Regulation (EEC) No 1854/89,⁴ whether the remission of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p. 1

² OJ No L 253, 11.10.1993, p. 1

³ OJ No L 175, 12.07.1979, p. 1

⁴ OJ No L 186, 30.06.1989, p. 1

In September and October 1992 an Italian firm imported television sets from India in two consignments.

An application was made, on the strength of Form A certificates of origin issued by the competent Indian authorities, for preferential tariff treatment under Council Regulation (EEC) No 3831/90 of 20 December 1990 applying generalised tariff preferences for 1991 in respect of certain industrial products originating in developing countries.⁵ Customs at Padua did not query the certificates when the goods concerned were imported and exemption from import duties was duly granted.

When the Indian authorities carried out a post-clearance investigation, they found that some of the television sets imported into the Community could not be considered as originating in India as the percentage of non-originating components exceeded the figure of 40% authorised under the Generalised System of Preferences. The competent Indian authorities therefore withdrew some of the certificates including the ones relating to the two consignments imported by the firm in September and October 1992.

The Italian customs authorities accordingly asked for payment of a total of XXXXX in import duties.

Arguing that it had acted in good faith, the firm applied for the import duties to be remitted.

Whereas the firm stated that it had seen the dossier submitted to the Commission by Italy and had nothing to add;

Whereas by letter dated 29 July 1998, the Commission notified the firm of its intention to withhold approval and explained the grounds for its decision;

⁵ OJ No L 370, 31.12.1990, p. 1. Council Regulation (EEC) No 3587/91 of 3 December 1991 extended into 1992 the application of Regulations (EEC) No 3831/90, (EEC) No 3832/90, (EEC) No 3833/90 and (EEC) No 3835/90 applying generalised tariff preferences for 1991 in respect of certain products originating in developing countries (OJ No L 341, 12.12.1991, p. 1).

Whereas by letter dated 25 August 1998, received by the Commission on the same date, the firm expressed its opinion on the Commission's objections; whereas the firm in question has, in particular, pointed out that no deception could be attributed to it and that it constitutes a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 due to the fact that the certificates of origin, issued by competent authority of the country of export, have been wrongly accepted by the customs authorities of the country of importation; whereas, in the view of the party concerned, it could therefore rely on the validity of the certificates of origin;

Whereas the administrative procedure was suspended in accordance with Article 907 of Regulation (EEC) No 2454/93 between 29 July 1998 and 25 August 1998;

Whereas 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 16 October 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas Article 13(1) of Regulation (EEC) No 1430/79 allows import duties to be repaid or remitted in special situations other than those laid down 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 the granting of preferential tariff treatment for the imports in question was subject to presentation of a Form A certificate;

Whereas the certificates presented to the Italian customs authorities were not valid;

Whereas expectations as to the validity of such certificates, being part of commercial risk and hence the responsibility of the person liable for payment, are not normally protected;

Whereas neither the initial acceptance by a Member State's customs authorities of certificates subsequently shown to be invalid nor the fact that India's competent authorities, acting on inaccurate information from the exporter, issued Form A certificates attesting that goods were of Indian origin constitute grounds for the person liable for duty to entertain legitimate expectations as to the validity of such certificates;

Whereas, therefore, the circumstances of the case do not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas the fact, put forward by the firm, that the Indian authorities withdrew the certificates in question without notifying the exporter, likewise does not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 since it does not alter the fact that the certificates were invalid and, in particular, that the goods concerned did not originate from India and were not therefore eligible for preferential tariff treatment;

Whereas the financial loss to the firm cannot be considered a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79; whereas the Court of Justice of the European Communities has ruled that it is the responsibility of importers, in calculating the benefits from trade in goods likely to obtain tariff preferences, to assess the risks inherent in the market which they are considering and to guard against the risk of action for post-clearance recovery;

Whereas, therefore, the remission of import duties requested is not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by Italy on 28 April 1998 is hereby found not to be justified.

Article 2

This Decision is addressed to the Republic of Italy.

Done at Brussels, 05-02-1999

For the Commission