

COMMISSION DECISION

of 17-12-1996

finding that it is justified to take action for the post-clearance
recovery of import duties in a particular case

(request submitted by the Netherlands)

REC 4/96

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

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,² and in particular Article 873 thereof,

Whereas by letter dated 25 June 1996 received by the Commission on 1 July 1996 the Netherlands asked the Commission to decide under Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties,³ whether it is justified not to take action for the recovery of import duties in the following circumstances:

Between April and December 1993, an operator imported double-cab pickups on a number of occasions, declaring them under CN code 8703 33 19 as passenger vehicles. This was done on the advice of a customs official who had been visiting the company to deliver a customs warehousing authorization and was asked for his opinion on the tariff classification of the vehicles.

The customs authorities examined the declarations and deemed them to be in order.

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 197, 3.8.1979, p.1.

A post-clearance check revealed that the goods in question had been wrongly classified as passenger vehicles, and that they should have been classified as goods vehicles under CN code 8704 (thus attracting a higher rate of import duty).

The competent authorities in the Netherlands requested that import duty of XXXXX be paid. The operator in question asked that for recovery of the duties to be waived.

Whereas the company in question declares that he has taken note of the dossier sent to the Commission by the Dutch authorities and has nothing to add; Whereas 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 11 November 1996 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may refrain from taking action for the post-clearance recovery of import or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned;

Whereas the interested party argues in his application for remission that the competent authorities in the Netherlands acted erroneously by accepting import declarations bearing the wrong tariff heading on seven occasions, that his lack of experience in customs matters meant that he could not reasonably have detected that error, and that before importing the vehicles in question he had in addition received information on their classification from the customs administration;

Whereas the XXXXX of import duties were not collected;

Whereas under a system of controls relying on post-clearance documentary checks it is quite possible for incorrect tariff classification to remain undetected by the customs authorities when the goods are put into free circulation, particularly if customs checks are confined to an examination of the customs declarations for those goods;

Whereas the tariff classification information provided by a representative of the competent customs administration could not in any way be considered binding on that administration, as it was not an item of binding tariff information within the meaning of Council Regulation (EEC) No 1715/90;⁴

⁴ OJ L 160, 26.6.1990, p.1.

Whereas there was therefore no error on the part of the competent authorities within the meaning of Article 5(2) of Regulation (EEC) No 1697/79;

Whereas it is therefore justified that action be taken for the post-clearance recovery of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX which are the subject of the request by the Netherlands dated 25 June 1996 shall be recovered.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 17-12-1996.

For the Commission