

COMMISSION DECISION

of 18-02-1998

finding that the remission of import duties in a particular  
case is justified

(request submitted by Germany)

Ref. **REM 14/97**

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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,<sup>1</sup>

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, and in particular Article 907 thereof,<sup>2</sup>

Whereas by letters dated 21 July and 6 August 1997, received by the Commission on 29 July and 25 August 1997, Germany asked the Commission to decide under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,<sup>3</sup> as last amended by Regulation (EEC) No 1854/89,<sup>4</sup> whether the remission of import duties is justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ No L 253, 11.10.1993, p. 1.

<sup>3</sup> OJ No L 175, 12.7.1979, p. 1.

A German haulier, hereinafter referred to as the person concerned, placed a total of 9 835 000 cigarettes under the Community transit procedure on 29 May 1992 in his capacity as principal;

However the consignment was not presented to the office of destination, giving rise to a customs debt of XXXXX;

The person concerned applied for remission of the import duties chargeable in this case on the grounds that he had acted in good faith and that a customs official had actively abetted the fraud;

Whereas the haulier states that he has seen the dossier submitted to the Commission by the German authorities and has nothing to add; whereas he further sent a statement of his position to the German authorities, which forwarded it to the Commission in annex to their letter of 6 August 1997;

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 31 October 1997 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) 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 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 because the consignment placed under the Community transit procedure had not been presented at the office of destination the haulier incurred a customs debt;

Whereas, however, in this case a customs official had, according to the German authorities, knowingly and actively abetted the fraud by confirming on the transit document that the consignment in question had been exported;

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<sup>4</sup> OJ No L 186, 30.6.1989, p. 1.

Whereas the customs official's involvement meant the haulier could not have known that the goods had not left Community territory;

Whereas the German authorities' testimony has been borne out by the fact that the officer in question has been convicted;

Whereas the haulier is the principal and as such responsible to the authorities for the proper implementation of Community transit operations even if he was the victim of the fraudulent activities of an organised criminal gang;

Whereas when he assumes the risk involved in the proper implementation of a transit operation the principal cannot be expected also to take on the risk of a customs official abetting a fraud; whereas the principal, who had no involvement in these activities, can reasonably expect the functioning of the administration not to be undermined by corrupt customs officials;

Whereas the activities of an official directly involved in the operations in question is of particular concern and seriously undermines the system on which Community transit is based; whereas the effectiveness of that procedure depends on two factors, namely the responsibility a principal accepts for proper implementation of an operation and the correct certification by customs officers on the appropriate transit documents that an operation has been completed, on which the person concerned may legitimately rely;

Whereas it was a representative of the authorities themselves who deliberately misled the person concerned and placed him in a situation where he became financially liable to those same authorities;

Whereas it would therefore be unjust to require payment of the customs debt, particularly as this would create flagrant legal uncertainty for traders;

Whereas these factors are such as to constitute a situation covered by Article 13 of Regulation (EEC) No 1430/79;

Whereas in the special circumstances of the case in question no deception or obvious negligence may be attributed to the person concerned; whereas the latter has stated that in practice he will authorise no further transport operations under Community transit until he has seen a copy of the previous TI transit document, duly discharged;

Whereas, therefore, the remission of import duties requested is justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by Germany on 21 July and 6 August 1997 is hereby found to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 18-02-1998

For the Commission

