COMMISSION DECISION

of 28-11-1997

finding that, in a particular case, an application for the repayment of import duties in respect of a certain amount is inadmissible and that the post-clearance recovery of import duties is justified in respect of another amount

(request submitted by France)

Ref. **REM 05/97**

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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,[1]

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92, and in particular Articles 873 and 907 thereof, [2]

Whereas by letter dated 30 May 1997, received by the Commission on 5 June 1997, France asked the Commission to decide, under both Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,[3] as last amended by Regulation (EEC) No 1854/89,[4] and Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties in the amount of XXXXX is justified in the following circumstances:

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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, 12.7.1979, p.1.

4 OJ No L 186, 30.6.1989, p.1.

Whereas, by the same letter, France 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,[5] as last amended by Regulation (EEC) No 1854/89, and Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it is justified not to take action for the recovery of import duties in the amount of XXXXX in the following circumstances:

A company regularly imports polyester film spools from Japan and the United States which are used in the manufacture of ink ribbons.

The products were initially declared under heading 9612 of the Combined Nomenclature, attracting duty of 5.3%. Analyses by the Ile de France customs laboratory in May 1989 and March 1990 confirmed this tariff heading. However, following a further check on 4 July 1991, it was found that the goods should have been classified under heading 3921 90 19 attracting duty of 13%. This new heading was confirmed by binding tariff information (BTI) issued on 2 November 1993 of which the company is the holder.

On 9 June 1995 the authorities cancelled the BTI and issued a new one giving tariff heading 3921 90 90, attracting customs duty of 6.5%.

The company subsequently applied for repayment of the excess duty levied on goods imported under tariff heading 3921 90 19 during the period covered by the BTI issued on 2 November 1993, i.e. from 2 November 1993 to 9 June 1995.

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5 OJ No L 197, 3.8.1979, p. 1.

On 23 December 1996 the Commission adopted Regulation (EC) No 2494/96 on the classification of certain goods in the Combined Nomenclature,[6] by virtue of which the products concerned now had to be classified under tariff heading 3215 90 80 of the Nomenclature. The applicable duty therefore was 7.1% in 1993 and 1994 and 6.6% in 1995.

In addition to the above repayment, the company also asked that no action be taken for the post-clearance recovery of the duties on imports of the same products made on four occasions in 1993 and 1995 under tariff heading 9612 which were consequently less than they should have been under the heading adopted in the BTI of 2 November 1993 and Regulation (EC) No 2494/96;

Whereas the company states that it has seen the dossier submitted to the Commission by the French authorities and has nothing to add;

Whereas in accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 9 September 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, as it applies in this case with regard to the goods imported prior to 1 January 1994, 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, in accordance with Article 239 of Regulation (EEC) No 2913/92, as it applies in this case with regard to the goods imported after 1 January 1994, import duties may be repaid or remitted in special situations, other than those laid down in Articles 236, 237 and 238 of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

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6 OJ No L 338, 28.12.1996, p. 38.

Whereas Regulation (EC) No 2494/96 merely interprets Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff,[7] as last amended by Regulation (EC) No 2493/96;[8]

Whereas the said Regulation 2494/96 creates no new classification; whereas it therefore has merely confirmed classification under tariff heading 3215 90 80 which must be considered as the one which has always applied;

Whereas duty on the goods imported between 2 November 1993 and 9 June 1995 should therefore have been charged at a rate of 7.1% for 1993 and 1994 and at 6.6% for 1995; whereas the excess duty was not therefore legally due;

Whereas Article 2(1) of Regulation (EEC) No 1430/79 provides that import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts relates to goods in respect of which a customs debt has either not arisen or exceeds for any reason the amount lawfully payable;

Whereas Article 236(1) of Regulation (EEC) No 2913/92 provides that import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2);

Whereas the French authorities may therefore take action themselves for the repayment of the duties;

Whereas, given the above, the request for repayment of import duties may not be examined either in the light of Article 13(1) of Regulation (EC) No 1430/79 or of Article 239 of Regulation (EEC) No 2913/92; whereas it must therefore be considered inadmissible;

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7 OJ No L 256, 7.9.1987, p. 1.

8 OJ No L 338, 28.12.1996, p. 27.

Whereas in accordance with Article 5(2) of Regulation (EEC) No 1697/79, insofar as it applies to the imports prior to 1 January 1994, the competent authorities may refrain from taking action for the post-clearance recovery of import duties 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, in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, insofar as it applies to the imports after 1 January 1994, subsequent entry in the accounts shall not occur where the amount of duty 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;

Whereas despite holding a BTI indicating that the goods which it imported regularly were classified under heading 3921 90 19 of the Combined Nomenclature and attracted duty of 13%, the company declared the four import operations, which are now the subject of the request for post-clearance recovery to be waived, under CN heading 96 12 - a heading which attracts duty of 5.3%;

Whereas the company could legitimately rely on the tariff classification expressly issued by the French administration under the BTI issued to it;

Whereas the company did not use the tariff classification contained in the BTI which it held and took the risk of declaring the goods in question under a tariff heading attracting a lower rate of duty than the one which would have applied if the goods had been declared under the tariff heading contained in the BTI; whereas, therefore, it failed to exercise the due care required in order to take advantage either of Article 5(2) of Regulation (EC) No 1997/79 or of Article 220(2)(b) of Regulation (EEC) No 2913/92;

Whereas the post-clearance recovery of the duties owed in respect of the four import operations concerned is therefore justified,

HAS DECIDED AS FOLLOWS:

Article 1

1. The repayment of import duties in the sum of XXXXX requested by France on 30 May 1997 is hereby found to be inadmissible.

2. The import duties in the sum of XXXX which are the subject of the request by France dated 30 May 1997 shall be recovered.

Article 2

This Decision is addressed to France.

Done at Brussels, 28-11-1997

For the Commission