REC/NO

COMMISSION DECISION

of 07-01-1998

finding that it is justified not to take action for the post-clearance recovery of import duties in a particular case

(request submitted by Germany)

REC 3/97

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 1 July 1997 received by the Commission on 10 July 1997 Germany 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] as last amended by Regulation (EEC) No 1854/89,[4] 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 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 197, 3.8.1979, p.1.

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

Between early 1992 and October 1995 a firm imported slimming belts from Taiwan, declaring them initially under CN code 9506 9100 at 6% duty.

An audit carried out by the competent customs authorities in 1992 cast doubt on the article's classification. The authorities took the view that the goods concerned belonged in CN code 6212 9000, which attracted 6.5% duty. On 22 October 1992 the Zollehranstalt confirmed the tariff heading proposed by the customs authorities after a careful examination of the goods. The authorities then notified the firm of the content of the opinion in which the reasons for the tariff classification were clearly stated.

Over the following years the firm classified the goods in accordance with the classification given in the 1992 opinion.

When a later audit took place on the firm's premises in November 1995, the auditor queried the classification opinion and concluded that the slimming belts belonged in CN code 6307 9010, which was subject to a duty of 12%.

The German customs authorities therefore issued a post-clearance recovery assessment for XXXXX, an amount in respect of which the firm has applied for non-recovery;

Whereas the firm declares that it has taken note of the dossier sent to the Commission by the German 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 31 October 1997 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, which in this case applies to imports prior to 1 January 1994, 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, in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, which in this case applies to imports from 1 January 1994 onwards, there is no subsequent entry

in the accounts 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 far as his customs declaration is concerned;

Whereas import duties in the sum of XXXXXX were not collected;

Whereas the import duties were not collected owing to an error on the part of the competent German authorities which continued to accept customs declarations in which the goods in question were incorrectly classified and expressly told the firm which tariff classification to use following a careful examination of the goods;

Whereas there was no reason for the firm to doubt the correctness of the classification opinion since it was the result of a careful examination of the goods by the competent authority in Germany for such matters; whereas the firm therefore had no grounds for querying the classification;

Whereas consequently the firm displayed due diligence and whereas its good faith cannot be doubted and it could not reasonably have detected the error on the part of the German authorities; whereas in that respect, as soon as the heading was queried again by the administration in 1995, the firm immediately applied to the relevant authority for binding tariff information;

Whereas the firm has observed all the provisions laid down by the rules in force as far as its customs declaration is concerned;

Whereas it is therefore justified in this case not to take action for the post-clearance recovery of duties,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXXX which are the subject of the request by Germany dated 1 July 1997 shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 07-01-1998

For the Commission