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REM 24/98



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-7-1999

COMMISSION DECISION

of 19-7-1999

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

(request submitted by the Federal Republic of Germany)

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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 as last amended by Regulation (EC) No 955/1999;²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 502/1999,⁴ and in particular Article 907 thereof,

Whereas by letter dated 20 November 1998, received by the Commission on 4 December 1998, the Federal Republic of Germany asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, 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 119, 7.5.1999, p. 1

³ OJ No L 253, 11.10.1993, p. 1

⁴ OJ No L 65, 12.3.1999, p. 1

A German firm held an inward processing authorisation (suspension system) under a job processing contract for the production of rectified undenatured ethyl alcohol from undenatured ethyl alcohol of an alcoholic strength of 80% vol or higher of CN heading 2207 10 00 and undenatured ethyl alcohol of an alcoholic strength of less than 80% vol of CN heading 2208 90 99 . There were no limits on the authorisation's duration or the quantities covered.

On 11 October 1994, at the request of the firm, the authorisation was extended to cover not only the rectification of alcohol but also the production of compensating products such as vodka, liqueurs and spirituous beverages other than spirits of CN heading 2208. The extended authorisation allowed the firm inter alia to dilute the alcohol, and to bottle the products for retail sale.

Although the firm only held an authorisation in the context of a job processing contract under Article 552(1) of Regulation (EEC) No 2545/93, it purchased alcohol already rectified on an inward processing basis and carried out on its own account further processing covered by the additional authorisation of 11 October 1994, namely the production of spirituous beverages bottled for retail sale. The processed goods were subsequently re-exported to countries in the Commonwealth of Independent States.

Since these operations had not been carried out under a job processing contract and the firm did not hold an own-account inward processing authorisation, the German authorities considered that they had been carried out without authorisation.

They therefore claimed import duties from the firm on the grounds that a customs debt of XXXXXX had been incurred, which is the amount for which the firm is requesting remission in this case;

Whereas the firm has stated that it has seen the dossier submitted to the Commission by the German authorities and has nothing to add;

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 25 February 1999 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas Article 239 of Regulation (EEC) No 2913/92 allows import duties to 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;

Whereas the firm carried out own-account inward processing although it held an authorisation only for inward processing under a job processing contract; whereas, therefore, that authorisation did not apply to the own-account inward processing;

Whereas this situation gave rise to a customs debt;

Whereas, however, the firm believed that the own-account inward processing was covered by the inward processing authorisation which it held; whereas its application to the competent customs authorities for an extension of the authorisation it already held rather than for a new own-account authorisation was an error;

Whereas the processing was indeed carried out under the inward processing arrangements;

Whereas the technical and accounting aspects of the inward processing procedure used by the firm were uncontested by the competent German authorities and, with the exception of the type of authorisation applied for, were in compliance with the relevant rules;

Whereas the goods remained under customs supervision throughout the operations and the processed goods were exported from the European Community and were not therefore released for free circulation there;

Whereas the German authorities state that an own-account inward processing authorisation would have been granted to the firm if it had applied for one since the conditions for granting such authorisation, as set out in Article 552(1)(a)(v) of Regulation (EEC) No 2454/93, were fulfilled;

Whereas the value of the imported goods did not exceed the amount set in Article 552(1)(a)(v) of Regulation (EEC) No 2454/93;

Whereas all these circumstances constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92 ;

Whereas no deception or obvious negligence may be attributed to the firm in this case;

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 the Federal Republic of Germany on 20 November 1998 is justified.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19-07-1999

*For the Commission
Member of the Commission*