

COMMISSION DECISION

of 24/4/91

finding that the remission of import duties in a particular case is not justified

(request submitted by the Federal Republic of Germany)

REM: 11/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,¹ as last amended by Regulation (EEC) No 3069/86,²

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties,³ and in particular Article 8 thereof,

Whereas by letter dated 23 October 1990, received by the Commission on 5 November 1990, the Federal Republic of Germany requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the remission of import duties is justified in the following circumstances:

1 OJ No L 175, 12.7.1979, p.1.

2 OJ No L 286, 9.10.1986, p.1.

3 OJ No L 352, 13.12.1986, p. 19.

On 5 December 1989, an Austrian firm was cited in liability orders concerning import duties totalling DM 4 230 888.60 as the principal in 21 external Community transit procedures (meat imports from Yugoslavia and Czechoslovakia) which had not been discharged. The liability orders arose from fraud committed by third parties during transit which came to light when suspect import invoices were checked at the premises of a meat supplier. The offenders are known but are insolvent, and the investigation into their activities has been closed. No department or employee of the firm was involved in the fraud.

The firm in question is a medium-sized business with 50 employees, and was established twenty years ago as a customs agent at nine major Austrian frontier crossings. Acting as principal, it handles some 24 000 external Community transit procedures each year. It claims that no objections have ever been raised by the customs authorities to date.

The firm has appealed against the liability orders, although a decision on this matter is still outstanding. On 2 April 1990, the firm also applied for remission of import duties (including import VAT) totalling DM 3 285 725 90 on the following grounds.

It acknowledges its liability in principle for the unpaid import duties, even though it cannot in the least be blamed for the fraud. It is, however, unable to pay the amount demanded. The insurance taken out for each T1 transit document provides only DM 50 000 of cover per document. The Austrian firm had not previously realized that the insured sum would be inadequate in this case. It has since increased the amount of cover for goods subject to high rates of duty. If remission of the greater part of the amount concerned is not granted, the firm will be forced to initiate bankruptcy proceedings.

According to the firm, a comparative assessment of its assets reveals that the revenue authorities would receive only approximately DM 1 113 000 in the event bankruptcy. With a view to avoiding bankruptcy, the firm's partners are prepared - without any legal obligation on their part - to put up several hundred thousand German Marks from their own resources, to the effect that a total of DM 1 400 000 could be paid. On this basis, the revenue authorities, and consequently the Community budget, would receive almost DM 300 000 more than if bankruptcy proceedings were initiated.

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 18 February 1991 within the framework of the Committee on Duty Free Arrangements 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 the customs debt amounts to DM 4 230 888 60, and remission of import duty is sought for an amount of DM [REDACTED]

Whereas the Austrian firm is a customs agent which, by declaring the goods in question in its capacity of principal within the meaning of Article 11(a) of Regulation (EEC) No 222/77, has accepted financial responsibility for the correct discharge of the transit arrangements;

Whereas the fraudulent disappearance of the goods whilst being transported and the insolvency of the offenders cannot be regarded as "special situations" within the meaning of Article 13 of Regulation (EEC) No 1430/79; whereas these are standard commercial risks which customs agents face, and against which they can take precautions; whereas it is clearly not for the Community to assume a risk incumbent on the principal;

Whereas, therefore, the remission of import duties requested is not justified,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties of DM [REDACTED] which is the subject of the request submitted by the Federal Republic of Germany on 23 October 1990 is not justified.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 24/4/91

For the Commission