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REC 17/98



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.12.1999

NOT FOR PUBLICATION

COMMISSION DECISION

Of 8.12.1999

finding in a particular case, on the one hand, that the post-clearance entry in the accounts of import duties was not justified for one sum and was justified for another and, on the other hand, that the latter sum must be repaid

(Request submitted by Denmark)

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(Request submitted by Denmark)

(REC 17/98)

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 1993³ laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, as last amended by Regulation (EC) No 1662/1999,⁴ and in particular Articles 873 and 907 thereof,

Whereas:

- (1) By letter dated 11 December 1998, received by the Commission on 17 December 1998, Denmark asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether waiving the entry in the accounts of import duties is justified and, in the alternative, whether the repayment of these duties under Article 239 of the same Regulation 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 197, 29.7.1999, p.25

- (2) A Danish firm put 46 consignments of whole egg powder into free circulation between 29 June 1995 and 3 November 1997. An exemption from import duty was granted as the goods were declared under CN code 0408 91 20.
- (3) The goods covered by this CN code have to be unfit for human consumption. A footnote states that “Entry under this subheading is subject to conditions laid down in the relevant Community provisions”. Those provisions are in fact those of Article 16 of Regulation (EEC) No 2454/93, which requires the goods to be denatured by means of certain specific substances (spirit of turpentine, essence of lavender, oil of rosemary, birch oil or various fish meals falling under CN code 2301 20 00). Article 16 also stipulates the minimum quantities of these substances needed for denaturing to be effective.
- (4) Since they had been denatured by means of caramel, the products imported could not be considered unfit for human consumption within the meaning of Article 16 of Regulation (EEC) No 2454/93.
- (5) Following an inspection carried out at the time of importation, on 20 February 1998, and a post-clearance inspection, the Danish authorities found that the products should not have been classed under CN code 0408 91 20 but under CN code 0408 91 80 to which import duties were applicable.
- (6) The Danish authorities thereupon sent the firm a demand for XXXXXX in evaded customs duty, which it paid. The firm is applying for the post-clearance entry of the duty in the accounts to be waived and for the amount to be repaid.

- (7) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the firm stated in support of the request from Denmark's competent authorities that it had seen the dossier submitted to the Commission and set out its arguments in a document annexed to the authorities' letter to the Commission of 11 December 1998.
- (8) By letter dated 7 June 1999, the Commission notified the firm that it intended to refuse its request and explained the grounds for its objections.
- (9) By letters dated 2 July, 8 July and 15 September 1999, received by the Commission on the same days, the firm responded to the objections. It argued that the conditions laid down in Articles 220(2)(b) and 239 of Regulation (EEC) No 2913/92 had been met in this instance and that the Commission should therefore grant a waiver of post-clearance entry in the accounts and repayment of duties for the whole of the period in question. It explained that the Danish authorities had, on 30 June 1996, conducted post-clearance checks on six declarations concerning the goods in question and learned that the egg powder was destined for animal feed and had been denatured with caramel. It went on to explain that the two end-users of the imported products had used them exclusively for the manufacture of animal feedingstuffs and that various other EU Member States had accepted imports of egg powder denatured with caramel under CN code 0408 91 20.
- (10) In accordance with Articles 873 and 907 of Regulation No (EEC) 2454/93, the administrative procedure was suspended from 7 June 1999 to 2 July 1999 inclusive.

- (11) After consulting the firm, the Commission requested further information from the Danish authorities by letter dated 27 July 1999. This information was provided by letter dated 24 September 1999, received by the Commission on 27 September 1999. The administrative procedure was meanwhile suspended once again, in accordance with Articles 871, 873, 905 and 907 of Regulation (EEC) No 2454/93, from 27 July to 27 September 1999 inclusive.
- (12) 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 22 October 1999 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to consider the case.
- (13) The applicability of Articles 220(2)(b) and 239 of Regulation (EEC) No 2913/92 should be examined, the Danish authorities having based their request on those provisions.
- (14) Article 220(2)(b) of Regulation (EEC) No 2913/92 requires post-clearance entry in the accounts to be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves that could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (15) In this instance, the Danish customs authorities over many months accepted a succession of customs declarations containing an erroneous tariff classification. Since the consignments of egg powder had been denatured by means of caramel, a substance not included in Article 16 of Regulation (EEC) No 2454/93, they could not, for the purposes of the customs rules, be considered unfit for human consumption and classified under CN code 0408 91 20.

- (16) However, in such an event the competent authorities can only be held to have made an active error if, despite the number and size of consignments imported by the person liable, they failed to challenge the tariff classification of the goods when comparison of the tariff heading declared and the detailed description of the goods in accordance with the nomenclature would have revealed the incorrect classification.
- (17) In this case, comparison would not have revealed the incorrect tariff classification, as the declarations for release for free circulation did not specify the denaturant used. In-depth analysis of the goods in question was therefore needed to detect the incorrect tariff classification. Thus the Danish authorities made no active error in this respect.
- (18) By contrast, the fact that on 30 June 1996 the Danish customs departments carried out a post-clearance check on all the firm's declarations for the period 1 January to 30 June 1996, including six declarations pertaining to the said egg powder, and failed to discover the incorrect tariff classification does amount to an active error by the Danish authorities. Indeed, during the check the Danish customs departments were told that the egg powder had been denatured by means of caramel.
- (19) In order to determine whether the customs authorities' error of 30 June 1996 could have been detected by the person liable, account must be taken of the nature of the error, the experience of the firm and the diligence shown by it.
- (20) In the case in question, a footnote drew traders' attention to the existence of other Community provisions to be complied with.

- (21) However, the footnote in question did not specify which other Community provisions were to be complied with or refer to any specific piece of legislation. Moreover, the Danish customs authorities had, on 30 June 1996, carried out in-depth checks on six declarations concerning the products in question, in the course of which they were informed of the nature of the denaturant and did not challenge the operations in question. This error and the long period during which the tariff classification of the products in question went unchallenged suggest that the rules were complex or that the firm's practices were accepted by the competent authorities, so removing any doubts that the firm may have had regarding the tariff classification used.
- (22) The firm did actually sell its goods for the manufacture of animal feedingstuffs, and the classification used was widely applied by the other Community importers of such products from the United States, where egg power is normally denatured with caramel.
- (23) These circumstances combined to render the customs authorities' error of 30 June 1996 undetectable by the firm, in particular by removing any doubts it may have had about its operations.
- (24) It is therefore justified in this case to enter in the accounts the import duties relating to customs debts incurred prior to 30 June 1996 and to waive the entry in the accounts of duties relating to customs debts incurred after that date.
- (25) Since some of the import duties have to be entered in the accounts, it is necessary to examine the request for their repayment.
- (26) In accordance with Article 239 of Regulation (EEC) No 2913/92 import duties may be repaid or remitted in special situations (other than those laid down in Articles 236, 237 and 238 of the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

- (27) As the Danish authorities confirm in their letter to the Commission dated 24 September 1999, specific checks by the local customs services at the business premises of the two recipients of products imported by the firm show that the egg powder released for free circulation in the period 29 June 1995-3 November 1997 was used exclusively for the manufacture of animal feedingstuffs. Thus, though the denaturant used did not figure on the list in Article 16 of Regulation (EEC) No 2454/93, the imported goods were not used for human consumption, thereby satisfying the objectives of according them favourable tariff treatment by virtue of their nature. The financial interests of the European Communities were not therefore affected in this case.
- (28) Furthermore, as has been shown, several other factors could reasonably have led the firm to believe that it was complying with the relevant customs rules and entering goods for release for free circulation properly. Caramel being considered a denaturant in the United States, it could conceivably have been recognised as such in the Community too. The firm was also aware that for a number of years the competent authorities of other Member States had been admitting identical products under the same tariff subheading.
- (29) Moreover, the fact that the Danish customs authorities did not challenge declarations for release for free circulation until 30 June 1996, though it cannot be considered an active error constituting a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, does strengthen factors giving rise to such a situation in that repeated acceptance of its declarations sustained the firm's belief that there was nothing wrong with its operations.
- (30) The circumstances of the case in question constitute a situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 in which no deception or obvious negligence may be attributed to the person concerned.

(31) Repayment of the import duties that have to be entered in the accounts is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

1. Of the import duties referred to in the request from Denmark dated 11 December 1998, the sum of XXXXXX did not need be entered in the accounts. The remaining XXXXXX had to be entered in the accounts.
2. The repayment of import duties in the sum of XXXXXX referred to in the request from Denmark dated 11 December 1998 is hereby found to be justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 8.12.1999

For the Commission

Member of the Commission