



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.12.1999

NOT FOR PUBLICATION

COMMISSION DECISION

Of 13.12.1999

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

(request submitted by Denmark)

Ref. REM 7/99

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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 Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1662/1999,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p.1.

² OJ L 119, 7.5.1999, p.1.

³ OJ L 253, 11.10.1993, p.1.

⁴ OJ L 197, 29.7.1999, p.25.

Whereas:

- (1) By letter dated 12 March 1999, received by the Commission on 16 March 1999, Denmark asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,⁵ as last amended by Regulation (EEC) No 1854/89,⁶ whether repayment of these duties was justified in the following circumstances.
- (2) On 9 July 1991, a Danish operator (the applicant) imported a 1958 Porsche into Denmark, via an agent. The vehicle was declared as a motor car of heading 8703 of the Combined Nomenclature. Such imports carry a 10% ad valorem duty. The applicant accordingly paid XXXX of import duty.
- (3) In the light of a judgment delivered by the Court of Justice of the European Communities on [10 October 1985](#),⁷ the Commission, pursuant to Article 10(1) of Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff,⁸ published in the Official Journal of the European Communities of 30 April 1996⁹ explanatory notes to CN heading 9705.
- (4) According to these explanatory notes, vehicles in their original state, without substantial changes to the chassis, steering or braking system, engine etc., at least 30 years old and of a model or type which is no longer in production, and all vehicles manufactured before 1950, actually fall within CN heading 9705 (collections and collectors' pieces) and are therefore exempt from duty.

⁵ OJ L 175, 12.7.1979, p.1.

⁶ OJ L 186, 30.6.1989, p.1.

⁷ Case 200/84 Erika Daiber v Hauptzollamt Reutlingen ECR 3363.

⁸ OJ L 256, 7.9.1987, p.1.

⁹ OJ C 127, 30.4.1996, p.3.

- (5) Inasmuch as the car in question was imported before the explanatory notes were published and the Danish authorities consider that it satisfies the criteria for classification in CN heading 9705, the applicant requested repayment of the duty paid, namely the sum of XXXXX.
- (6) To back up the Danish authorities' request, and in accordance with Article 905 of Regulation (EEC) n° 2454/93, the applicant stated that he had seen the dossier submitted to the Commission by the Danish authorities and had nothing to add.
- (7) By letter of 13 September 1999 the Commission informed the applicant of its intention to refuse his request and stated the reasons for its objections.
- (8) However, the applicant failed to reply to the Commission within the deadline laid down by Article 906a of Regulation (EEC) n° 2454/93.
- (9) The administrative procedure was consequently suspended for one month, in accordance with Article 907 of Regulation (EEC) n° 2454/93.
- (10) 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 22 November 1999 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case.
- (11) 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 referred to in Sections A to D of the Regulation which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (12) The Court of Justice of the European Communities, in its judgment of 10 October 1985, ruled that cars could be collectors' pieces if they represented a significant step in the evolution of human achievement or illustrated a period of that evolution.

- (13) The publication on 30 April 1996 of an amendment to the explanatory notes to CN heading 9705 was intended to take account of the above-mentioned judgment and lay down the criteria determining whether a car could be classified under this heading.
- (14) The CN explanatory notes are purely interpretative and therefore without retroactive effect. They must nevertheless be considered to represent what should always have been the correct interpretation of the headings concerned.
- (15) The explanatory note in question must therefore be considered to represent what should always have been the correct interpretation of CN heading 9705.
- (16) Publication of the said explanatory note could therefore be used in support of requests for the repayment of import duties under Article 236 of Regulation (EEC) No 2913/92 in respect of import duties payable after 1 January 1994 or Article 2 of Regulation (EEC) No 1430/79 in respect of import duties payable before 1 January 1994.
- (17) However, these provisions require repayment requests to be submitted within three years of the date on which the amount of the duties was communicated to the debtor.
- (18) In the case in question, the application for repayment was submitted after that deadline.
- (19) For reasons of legal certainty, the state of the law in a given situation should not constantly be called into question.
- (20) The fact that it is too late to submit an application for repayment of import duties under Article 236 of the Regulation (EEC) No 2913/92 or Article 2 of Regulation (EEC) No 1430/79 cannot therefore be held to constitute a special situation within the meaning of Article 13 of Regulation (EEC) 1430/79, particularly as nothing prevented the application from being made within the specified deadline.

- (21) The fact that the explanatory notes to CN heading 9705 were not published until 1996 is not such as to give rise to a special situation within the meaning of Article 13 of Regulation (EEC) 1430/79. The fact is that since the publication of the Court of Justice's judgment of 10 October 1985, operators had been free to declare as collectors' pieces vehicles corresponding to the Court's definition and to contest any other tariff classification applied by the competent Danish authorities.
- (22) The Commission is under no obligation to publish explanatory notes to the Combined Nomenclature.
- (23) While it may be true that the Commission was unable in several similar cases to adopt a Decision within the deadline laid down by Article 907 of Regulation (EEC) No 2454/93, such a circumstance does not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79. Applications for repayment are never completely identical, particularly as regards the points of fact and points of law raised, and each must therefore be considered on its own merits. The absence of a Commission decision in a similar case cannot therefore give rise to any legitimate expectation on the part of the applicant, because at no time could the Commission give precise assurances as to the possibility of granting the repayment requested. The absence of a Commission Decision on cases involving similar issues cannot, as a consequence, be taken to place the applicant in a special situation.
- (24) The repayment of import duties requested in this case is therefore not justified,

HAS ADOPTED THIS DECISION

Article 1

Repayment of import duties in the sum of XXXXXX, requested by Denmark on 12 March 1999, is not justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 13.12.1999

For the Commission

Member of the Commission