

REC YES

REC NO

COMMISSION DECISION

of 16.9.1993

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

(request submitted by Belgium)

REC 2/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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,¹ as last amended by Regulation (EEC) No 918/83,²

Having regard to Commission Regulation (EEC) No 2164/91 of 23 July 1991 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 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 and in particular Article 6 thereof,

1 OJ No L 197, 3.8.1979, p.1.

2 OJ No L 105, 23.4.1983, p.1.

3 OJ No L 201, 24.7.1991, p.16.

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,⁴ as last amended by Regulation (EEC) No 3069/86,⁵

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, and in particular Article 8 thereof,

Whereas by letter dated 11 February 1993, received by the Commission on 17 February 1993, Belgium asked the Commission to decide under Article 5(2) of Regulation (EEC) 1697/79 whether it is justified not to take action for the recovery of import duties and, alternatively, to decide under Article 13 of Regulation (EEC) No 1430/79 whether or not the remission of import duties is justified, in the following circumstances:

For several years SA Honda has repeatedly imported and cleared for free circulation goods invoiced as laminate sheets. The goods were declared as "other articles of leather" of Japanese origin under tariff heading 4205 000 000 OK attracting an import duty of 4%.

As a result of post clearance examination of the declarations and a physical inspection of similar goods imported at a later date, the goods were classified by Decision No DT 83 965 of the Belgian customs authorities dated 8 October 1992 under tariff heading 3926 9091 090 OZ attracting an import duty of 8.4%.

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

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

Belgian customs claimed post-clearance recovery of the duty not paid on the earlier imports, totalling BFR [REDACTED]

The firm is asking for the duty not to be recovered or, alternatively, for remission of the duties.

Whereas in accordance with Article 6 of Regulation (EEC) No 2164/91, a group of experts composed of representatives of all the Member States met on 3 June 1993 within the framework of the Committee on Duty Free Arrangements to examine the case;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, 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 the customs authority had not indicated the tariff classification before the post-clearance check was carried out, and the goods had not been analysed;

Whereas the customs authorities had, nevertheless, repeatedly accepted customs declarations bearing the wrong tariff classification for the goods in question;

Whereas even if in certain circumstances this repeated acceptance could be regarded as an error by the customs authorities, it could reasonably have been detected by the person concerned by simple reference to the wording of the heading under which the goods were declared (articles of leather rather than plastic);

Whereas it is not justified to not recover a posteriori the import duties in this 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 referred to 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 repeated acceptance of declarations containing a mistaken tariff classification does not of itself constitute special circumstances within the meaning of the said Article 13;

Whereas since it is evident from the wording of the tariff position declared that it did not correspond to the goods in question, there is clear negligence on the part of the person concerned;

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

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of BFR [REDACTED] which are the subject of the request by Belgium dated 11 February 1993 shall be recovered.

The remission of import duties in the sum of BFR [REDACTED] requested by Belgium on 11 February 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to Belgium.

Done at Brussels, 16.7.1993

For the Commission