

17
COMMISSION DECISION

of 1993

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

(request submitted by the Netherlands)

REM 8/93

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 2 March 1993, received by the Commission on 9 March 1993, The Netherlands asked the Commission to decide under Article 13 of Regulation (EEC) No 1430/79 whether or not the repayment 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.

A, a Dutch importer of electronic equipment, obtains supplies of goods from a Japanese company, C, via an American company, B. The goods are sent directly from Japan to the Dutch company. By agreement with customs, A decided that the value of the transaction between C and B would represent the customs value of the goods when imported into the EEC.

Between February and August 1992, the company employee handling customs clearance declared as the customs value the value of the transaction between B and A. This was HFL 2 129 091.92 higher than the value of the transaction between C and B, resulting in payment of duties HFL [REDACTED] higher.

The company made an application for repayment on the basis of Article 13 of Regulation (EEC) No 1430/79, citing as the special situation the error made by its employee, who wrongly interpreted long-standing company practice.

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 3 June 1993 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 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 pursuant to Article 8 of Directive 79/695/EEC on the harmonization of procedures for the release of goods for free circulation,⁴ no correction can be made to the customs value once the customs authorities have released the goods for free circulation;

4 OJ L 205, 13.8.1979, p.19.

Whereas pursuant to Article 6 of Commission Regulation (EEC) No 1495/80 of 11 June 1980⁵ implementing certain provisions of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80,⁶ where successive sales of goods for export to the customs territory of the Community occur, the importer is free to select which of the selling prices should be used as a basis for customs valuation; whereas, however, the importer cannot alter his choice once the goods are released;

Whereas, moreover, the European Court of Justice considered in its judgment of 6 June 1990 on a similar case, C-11/89 (Unifert),⁷ that the provisions referred to above could not be overridden by the opportunity provided by the second indent of Article 2(1) of Regulation (EEC) No 1430/79 for a repayment or remission of import duties after release for free circulation to the degree that it is established that the level of those duties exceeds for any reason the amount lawfully payable;

Whereas an error on the part of an employee of a company which has for years handled its own customs formalities cannot, furthermore, be considered a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

5 OJ L 154, 21.6.1980, p.14.

6 OJ L 134, 31.5.1980, p.1.

7 [1990] ECR-6

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of HFL [REDACTED] requested by the Netherlands on 2 March 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 9.9.1993

For the Commission