

COMMISSION DECISION

of 27-01-1999

finding that post-clearance entry in the accounts of import duties
is justified in a particular case

(request submitted by Denmark)

REC 2/98

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

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, and in particular Article 873 thereof,²

Whereas by letter dated 23 March 1998, received by the Commission on 30 March 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 in the following circumstances:

A firm enjoyed favourable tariff treatment for imports of frozen cod of CN codes 0303 60 11, 0303 60 19 and 0303 60 90 on the basis of their end-use.

On 27 July 1995 the firm entered a consignment of frozen Russian cod originating in South Korea for free circulation under CN heading 0303 60 19. In accordance with Council Regulation (EC) No 915/95 of 21 April 1995 opening and providing for the administration of autonomous Community tariff quotas for certain fishery products,³ the

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 95, 27.04.1995, p.1.

customs agent declared the goods at a duty of 6% *ad valorem*. The customs declaration was accompanied by a copy of the end-use authorisation. However, the information given in box 47 of the declaration concerning the calculation method was incorrect, the code 1150 (end-use) having been entered instead of 1122 (tariff quota).

On 31 July 1995 the customs authorities in Århus amended the declaration without notifying the firm or its agent, mistakenly believing that the goods in question could be imported without payment of duties on the basis of the end-use authorisation.

Retrospective checks by the Holstebro customs office in 1997 revealed that XXXXX in duties payable on the consignment in question had not been entered in the accounts.

Whereas the firm states that it has seen the dossier submitted to the Commission by the Danish authorities and has nothing to add;

Whereas by letter dated 17 July 1998, the Commission notified the firm that it intended to refuse its request and explained the grounds for its objections;

Whereas by letter dated 17 August 1998, received by the Commission the same day, the firm responded to those objections;

Whereas in accordance with Article 873 of Regulation (EEC) No 2454/93, the administrative procedure was suspended from 17 July to 17 August 1998 inclusive;

Whereas in accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 16 October 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts is waived where the duties payable were not entered in the accounts owing to an error on the part of the customs authorities 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 rules in force as far as his customs declaration is concerned;

Whereas a 6% duty should have been applied when the goods in question were released for free circulation;

Whereas import duties in the sum of XXXXXXXX were not entered in the accounts;

Whereas the failure to enter the duties in the accounts resulted from an error on the part of the customs authorities; whereas the firm had correctly declared the goods and the amount of duties payable; whereas the failure to enter the duties in the accounts resulted from the customs authorities' undue amendment of the declaration without notifying the firm or its agent;

Whereas, however, even if the firm had not been notified of the amendment, it should have wondered why a sum declared had still not been requested several months after import; whereas a firm exercising due care could, by contacting the relevant customs authorities, have found out that the declaration had been amended and realised the error made by the office in so doing;

Whereas the error could have been detected by a firm exercising due care;

Whereas, moreover, the firm did not fully comply with all the provisions laid down by the rules in force as far as its customs declaration is concerned; in that it entered the wrong code in box 47, an error which in turn led to the mistake made by the customs authorities in their attempt to correct it;

Whereas post-clearance entry of import duties in the accounts is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXXX requested by Denmark on 23 March 1998 must be entered in the accounts.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 27-01-1999

For the Commission

MEMORANDUM TO THE COMMISSION

A Danish firm enjoyed favourable tariff treatment for its imports of frozen cod under headings 0303 60 11, 19 and 90 on the strength of their end-use.

On 27 July 1995 the firm entered for release for free circulation a consignment of frozen Russian cod originating in South Korea under heading 0303 60 19. The firm's customs agent declared the goods at a 6% duty in accordance with Regulation (EC) No 915/95. The declaration was accompanied by a copy of the authorisation granting favourable tariff treatment on the basis of the goods' end-use. However, the wrong code was entered in box 47 of the declaration for the calculation method: 1150 (end-use) was entered instead of 1122 (tariff quota).

On 31 July 1995 the Århus customs office corrected the declaration without notifying the firm or its agent. The customs office mistakenly believed that the goods in question could be imported free of customs duties on the strength of the end-use authorisation.

In 1997 the Holstebro customs office checked the firm's records and found that the duties relating to the consignment in question, a sum of DKR 54 527.70, had not been entered in the accounts.

Though the failure to enter the duties in the accounts resulted from an error by customs, the firm should have wondered, even if it had not been notified of the correction, why it had not yet been asked to pay the sum declared several months after the consignment had been imported. A firm exercising due care could have contacted the relevant customs authorities and discovered that the declaration had been miscorrected.

The firm has, moreover, failed to comply with all the provisions laid down by the rules in force as far as its customs declaration is concerned: its declaration contained the wrong code in box 47. This mistake led to that made by the customs authorities in their attempt to correct it. Post-clearance entry of the duties in the accounts is therefore justified.

When the Customs Code Committee was consulted on the case, all delegations present voted for recovery of the duties, save for the Danish delegation, which voted against. The Greek delegation was not present.