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REC 06/02



COMMISSION OF THE EUROPEAN COMMUNITIES,

Brussels, 23-10-2003
C(2003)3864

NOT FOR PUBLICATION

COMMISSION DECISION

Of 23-10-2003

finding in a particular case that post-recovery of one amount of import duties is not justified and post-clearance recovery of another amount of import duties is justified and authorising the Member States to waive post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law

(Request submitted by France)

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(Request submitted by France)

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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 2700/2000,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92³ as last amended by Regulation (EC) No 1335/2003⁴,

¹ OJ L 302, 19.10.1992, p. 1

² OJ L 311, 12.12.2000, p. 17

³ OJ L 253, 11.10.1993, p.1.

⁴ OJ L 187, 26.7.2003, p. 16.

Whereas:

- (1) By letter dated 12 September 2002, received by the Commission on 19 September 2002, France 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 was justified in the following circumstances.
- (2) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003, the provisions of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.⁵
- (3) For a number of years a French firm imported hi-fi equipment from Hong Kong.
- (4) On 11 February 1999 the firm asked the competent customs authorities whether the commissions on purchases entered into the customs value (*related services provided by the Asian manufacturer*). It specified that the related services were quality control, devising the packaging and making local employees available.
- (5) In a letter of 26 February 1999 the competent customs authorities replied in writing that commissions on purchase did not enter into the customs value. However, in their reply the authorities did not take into consideration the nature of the related services listed in the firm's letter of enquiry.
- (6) As a result of post-clearance checks the competent customs authorities found that, under Article 29 of Regulation (EEC) No 2913/92, the related services provided by the Asian manufacturer should have been included in the customs value.

⁵ OJ L 134, 29.5.2003, p. 1

- (7) The competent customs office therefore notified the firm of import duties of XXXXX due for the period 11 February 1998 to 15 May 2001; it is for this sum that waiver of post-clearance entry in the accounts has been requested.
- (8) Under Article 871 of Regulation (EEC) No 2454/93, the firm stated that it had seen the dossier sent to the Commission by the French authorities and had nothing to add.
- (9) By letter of 31 January 2003 the Commission requested further information from the French authorities. This information was provided by letter dated 6 May 2003, received by the Commission on 8 May 2003. The administrative procedure was therefore suspended, in accordance with Article 871 of Regulation (EEC) No 2454/93, between 1 February and 8 May 2003.
- (10) In a letter of 3 July 2003, received by the firm on 7 July 2003, the Commission informed the firm of its intention to refuse part of the waiver requested, and stated its reasons.
- (11) In accordance with the third paragraph of Article 873 of Regulation (EEC) No 2454/93, the period of nine months within which the Commission must take a decision was therefore extended by one month.
- (12) By letter dated 10 July 2003, received by the Commission on 16 July 2003, the firm expressed its opinion on the Commission's objections. It maintained its view that the competent authorities had committed an active error which it could not have detected over the entire period concerned, i.e. from 11 February 1998 to 15 May 2001, since the letter of 26 February 1999 merely formalised in writing the answers which the firm and its customs agents had been given previously.
- (13) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 7 October 2003 within the framework of the Customs Code Committee (repayment section).

- (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 the 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) The dossier sent to the Commission by the competent French authorities on 12 September 2002 shows that the customs authorities committed an error in informing the firm, without taking account of the facts set out in the firm's letter of enquiry, that the commissions on purchase did not enter into the customs value
- (16) The error committed by the French authorities must be considered an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (17) As the Court of Justice of the European Communities has consistently ruled, when determining whether the firm could reasonably have detected the customs authorities' error, account must be taken of the nature of the error, the firm's professional experience and the diligence it showed.
- (18) As regards the nature of the error, once the firm had received the authorities' answer to its enquiries it was entitled to the legitimate expectation that it could rely on the authorities' statement that the services it had listed as commissions on purchase, the nature of which it had stated in its enquiry, did not enter into the customs value.
- (19) The dossier submitted by the French authorities shows that the firm acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (20) For the part of the debt incurred from 26 February 1999 onwards, the circumstances of the case therefore point to an error on the part of the customs authorities themselves which could not reasonably have been detected by an operator acting in good faith, within the meaning of Article 220 (2)(b) of Regulation (EEC) No 2913/92.

- (21) Post-clearance entry of the import duties in the accounts is therefore not justified in this case for the part of the customs debt incurred from 26 February 1999, i.e. XXXXX.
- (22) However, the fact that the competent French authorities gave erroneous information to the firm orally before 26 February 1999 cannot constitute an error on their part since, by its nature, information given orally cannot be the basis for legitimate expectations on the part of the persons liable for duty and so cannot be deemed to constitute precise assurances given by the administration. But the [Court of First Instance of the European Communities has ruled](#) that "*a person may not plead a breach of the principle of the protection of legitimate expectations unless the administration has given him precise assurances.*"⁶
- (23) Therefore, in respect of the part of the debt incurred before 26 February 1999, the firm's arguments do not give grounds for deeming the competent authorities' behaviour to be an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (24) In the absence of any error on the part of the competent authorities for the part of the request relating to the period prior to 26 February 1999, it is therefore not necessary to examine the second condition set out in Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (25) Post-clearance entry in the accounts of the import duties relating to the period prior to 26 February 1999, i.e. XXXXX, is therefore justified.
- (26) Under Article 875 of Regulation (EEC) No 2454/93, where the circumstances under consideration are such that the duties need not be entered in the accounts, the Commission can, under conditions which it is to determine, authorise one or more Member States to refrain from post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law.

⁶ Judgment of 14 September 1995, *Lefebvre* (Case T-571/93).

- (27) At its meeting held on 7 October 2003 within the framework of the Customs Code Committee (repayment section), the group of experts composed of representatives of all the Member States provided for in Article 873 of Regulation (EEC) No 2454/93 asked that all Member States be authorised to waive post clearance entry of import duties in the accounts in cases involving comparable issues of fact and law.
- (28) Such authorisation may be granted to the Member States on condition that it is used only in cases strictly comparable in fact and law to the part of the case in question relating to the part of the debt incurred from 26 February 1999. The importers must have acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX referred to in France's request of 12 September 2002 shall not be recovered.

The import duties in the sum of XXXXX referred to in France's request of 12 September 2002 shall be recovered.

Article 2

The Member States are authorised to waive post-clearance entry of import duties in the accounts in cases involving issues of fact and of law comparable to the case cited in France's request of 12 September 2002.

Article 3

This Decision is addressed to the Member States.

Done at Brussels 23-10-2003

*For the Commission
Frits Bolkestein
Member of the Commission*