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REC 10/99

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.4.2001
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NOT FOR PUBLICATION

COMMISSION DECISION

of 30.4.2001

finding that post-clearance entry of import duties in the accounts is not justified in a particular case

(Request submitted by Denmark)

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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[3] laying down provisions for the implementation of Regulation (EEC) No 2913/92, as last amended by Regulation (EC) No 2787/2000, [4] and in particular Article 873 thereof,

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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 330, 27.12.2000, p. 1.

Whereas:

(1) By letter dated 15 October 1999, received by the Commission on 19 October 1999, Denmark asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it was justified to waive post-clearance entry of the import duties in the accounts in the following circumstances.

(2) A Danish company imported unmanufactured filler tobacco and wrappers and binders for cigars. The leaves were imported under the quota for unmanufactured tobacco intended to be used for wrappers and binders, as set out in Council Regulation (EC) No 1835/95 of 24 July 1995 opening and providing for the administration of Community tariff quotas for certain industrial, fishery and agricultural products and amending Regulation (EC) No 2878/94 opening and providing for the administration of Community tariff quotas for certain agricultural and industrial products (fourth series 1995).[5] The quota was opened again in subsequent years (Regulations (EC) Nos 3059/95,[6] 2505/96[7] and 2631/97[8]).

(3) From the autumn of 1995 onwards, the company declared batches of raw tobacco under various tariff headings for which the import duty was zero.

(4) Release into free circulation, at a zero rate of duty, of goods classified in these CN tariff headings was possible under the quota provided for in Regulation (EC) No 1835/95 and the Regulations quoted above which subsequently replaced it.

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5 OJ L 183, 2.8.1995, p. 1.
6 OJ L 326, 30.12.1995, p. 19.
7 OJ L 345, 31.12.1996, p. 1.
8 OJ L 356, 31.12.1997, p. 1.

(5) However, in order to qualify for this benefit and in so far as the quota covered raw tobacco for use as wrappers or binders for the production of products in subheading 2402 10 00, the company should have held an authorisation which would have allowed it to qualify for favourable tariff treatment on the basis of end-use of goods.

(6) Although the company did not have an authorisation of this kind, the local customs office nevertheless accepted the customs declarations without any queries and even corrected certain declarations itself; they had been lodged in December 1995 and referred to an incorrect code. The office did not check whether the company had an end-use authorisation.

(7) Several months later, the local customs office also informed the company of the tariff classification to be used. The company used this classification but still did not present any authorisation allowing it to qualify for favourable tariff treatment on the basis of end-use of goods.

(8) During a subsequent check carried out in 1998, the customs authorities realised that the company did not hold the necessary end-use authorisation for goods coming under the tariff headings concerned.

(9) The Danish authorities consequently claimed payment of the duties owed for the period between 1 November 1995 and 2 September 1998, namely XXXXX, the amount which is now the subject of the application for non-entry in the accounts.

(10) Under Article 871 of Regulation (EEC) No 2454/93, the company stated that it had seen the dossier submitted to the Commission by the Danish authorities and had nothing to add.

(11) By letter dated 11 May 2000, sent on 12 May 2000, the Commission notified the company of its intention to withhold approval and explained the grounds for its decision.

(12) By letter dated 9 June 2000, received by the Commission on the same date, the company expressed its opinion on the Commission's objections. It maintained its position that the particular circumstances amounted to an error on the part of the customs authorities, which it could not reasonably have detected. It stressed the fact that the local customs authorities had committed an active error in correcting the declarations without asking the company to present an end-use authorisation. This error justifiably led the company to think that the imports it was effecting did not need the authorisation in order to qualify for a zero rate of import duty. It considered that it had always obeyed the instructions of the local customs services and that it had always acted in good faith. Lastly, it stated that it was only over a short period of time that it declared the goods by error under a non-existent Combined Nomenclature code and that it changed the classification as soon as the local customs service informed it which classification should be used.

(13) The administrative procedure was therefore suspended in accordance with Article 873 of Regulation (EEC) No 2454/93 between 12 May and 9 June 2000.

(14) By letter of 5 July 2000, the Commission asked the Danish authorities for some additional information. This information was provided by letter dated 23 March 2001, received by the Commission on the same day. The administrative procedure was therefore suspended in accordance with Articles 871 and 873 of Regulation (EEC) No 2454/93 between 5 July 2000 and 23 March 2001.

(15) 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 3 July 2000 and 3 April 2001 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.

(16) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts shall be waived where the amount of duty legally owed was not entered in the accounts as a 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.

(17) In this case, the goods in question could only be eligible for preferential tariff treatment by virtue of their particular end-use on condition that the company held an authorisation. The company did not hold an authorisation. The competent Danish authorities therefore considered that a customs debt had been incurred, in that the goods in question had not been eligible for the zero rate of import duties.

(18) The local authorities nevertheless made errors within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.

(19) First of all on seven occasions they corrected the tariff classification used by the company, on their own initiative and without informing the company. When making these corrections, the local authorities considered, without demanding presentation of the authorisation and without checking whether the company held an authorisation, that the company qualified for favourable tariff treatment on the basis of the end-use of the goods.

(20) The fact that the local customs authorities had over a long period, namely three years, accepted many declarations, granting favourable tariff treatment without demanding the presentation of an end-use authorisation and without checking that the company held an authorisation, is also an active error on their part within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.

(21) In order to determine whether the import duties need not be entered in the accounts, it is advisable to check whether the errors made could reasonably have been detected by the company.

(22) With regard to the seven declarations on which the company indicated an erroneous tariff classification, it should be pointed out that the company was not informed of the corrections made by the local customs office. Consequently, the company could not detect the error made by that office. The company could not have known that the customs authorities had on their own initiative corrected the declarations it had lodged and had used a tariff classification requiring presentation of an authorisation in order to qualify for favourable treatment on the basis of end-use.

(23) With regard to the other declarations lodged, the company could not have detected the error made by the local customs authorities, namely acceptance over a long period of a large number of customs declarations without demanding that the company supply the authorisation required for the purposes of favourable treatment on the basis of end-use or without checking whether the company held an authorisation of this kind.

(24) The company imported the same goods over a number of years and in each case qualified for zero import duty. When, several months after the start of these imports, the customs office informed it of the tariff heading under which it should classify these goods, the office did not indicate that it should also present, to support its customs declaration, an authorisation which would enable it to qualify for favourable tariff treatment on the basis of end-use of goods.

(25) Consequently, in so far as the competent customs office had repeatedly granted the zero rate of import duty without demanding the end-use authorisation and in so far as it itself had indicated the classification to use without pointing out that an authorisation was needed and without indicating that, for the imports already carried out, an authorisation should have been presented, the company could justifiably have thought that the office had carried out the necessary checks and that it was not necessary to obtain an end-use authorisation in order to qualify for the zero rate of import duty. The various errors by the competent authorities could only serve for the company as repeated confirmation of the rightfulness of its position.

(26) It could only see further confirmation in the fact that it had not needed an end-use authorisation before August 1995 to benefit from the zero rate of import duty and in the fact that, in practice, the goods imported were given the end use which allowed the zero rate of import duty to be granted.

(27) Even though a footnote in the customs tariff drew traders' attention to the existence of other Community provisions to be observed, it should be pointed out that the footnote did not specify exactly which the other Community provisions to be observed were, nor did it refer to any specific Community text. When the quota was introduced in August 1995, the company did not have any experience of end use in that the imports it effected before that date qualified for a zero rate of import duty irrespective of any end-use system.

(28) These circumstances combined to render the customs authorities' error undetectable by the company, in particular by sustaining its belief that there was nothing wrong with its operations.

(29) Furthermore, as the Danish authorities confirmed, the company has always acted in good faith. It has always followed the instructions of the competent customs authorities and it had never previously been reproached for wrongful application of the customs rules. The Danish authorities also said that, if the company had made an application, it would, at the time of the events, have obtained the authorisation it needed for the end-use system.

(30) It emerges from the foregoing that post-clearance entry in the accounts is not justified,

HAS ADOPTED THIS DECISION :

Article 1

The import duties in the sum of XXXXXX which are the subject of the request by Denmark dated 15 October 1999 need not be entered in the accounts.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 30.4.2001

For the Commission

Member of the Commission