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REC 3/99



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/12/99

NOT FOR PUBLICATION

COMMISSION DECISION

of 01/12/99

finding that it is justified to waive the post-clearance entry in the accounts of import duties in a particular case and authorising the Federal Republic of Germany to refrain from post-clearance entry in the accounts in cases involving comparable issues of fact and of law

(Request submitted by Germany)

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(Request submitted by Germany)

(REC 3/99)

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 955/1999,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1662/1999,⁴ and in particular Article 873 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 119, 7.5.1999, p. 1.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 197, 29.7.1999, p. 25.

Whereas:

- (1) By letter dated 24 February 1999, received by the Commission on 9 March 1999, Germany 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 in the accounts in the following circumstances.
- (2) From May 1993 a German firm imported large quantities of sample collections from Poland, entering them at the Bielefeld customs office for release for free circulation duty-free under Article 91 of Council Regulation (EEC) No 918/83 of 28 March 1993 setting up a Community system of reliefs from customs duty.⁵
- (3) The firm used the samples to advertise its product range (decorative textiles, upholstery textiles, textile products for interior design) to customers.
- (4) The firm temporarily exported all the materials needed to manufacture the sample collections to Poland, supplying them free of charge to various manufacturers. The collections were made up both from goods in free circulation in the European Community and from non-Community goods entered for the firm's customs warehousing procedure and temporarily exported to Poland.
- (5) Post-clearance checks by the competent authorities in Germany revealed that Article 91 of Regulation (EEC) No 918/83 was not applicable to the samples in question and that a 6.3% duty should therefore have been levied.

⁵ OJ L105, 23.4.1983, p. 1

- (6) The competent authorities in Germany therefore found that import duties in the sum of XXXXXX were to be entered in the accounts for sample collections imported in the period December 1994-December 1996; it is the post-clearance entry in the accounts of this sum that the firm wishes to see waived.
- (7) In support of the request from Germany's competent authorities, the firm has stated, pursuant to Article 871 of Regulation (EEC) No 2454/93, that it has seen the dossier submitted to the Commission and has nothing to add.
- (8) 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 2 September 1999 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case.
- (9) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts may be waived where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (10) In the case in point, the fact that the German competent authorities over a period of years cleared many consignments of sample collections for release for free circulation, each time granting duty-free admission under Article 91 of Regulation (EEC) No 918/83, constitutes an active error on their part. From May 1993, when the firm began importing samples from Poland, to June 1997, the end of the period covered by the post-clearance checks at its premises, the customs office concerned failed to realise that the sample collections presented for importation did not fulfil the conditions for duty-free admission under Article 91 of Regulation (EEC) No 918/83.

- (11) Furthermore, the letter sent to the Commission by the German authorities on 24 February 1999 states that the customs authorities checked the particulars provided by the firm on its customs declarations on several occasions. The authorities therefore knew that the imported samples had been manufactured from Community goods and non-Community goods previously entered for the customs warehousing procedure. They should therefore have realised that the imported samples were not intended to solicit orders for goods to be imported into the Community customs territory and were therefore ineligible for relief under Article 91 of Regulation (EEC) No 918/83. They could then have advised the firm to take advantage of the tariff relief afforded by the outward-processing procedure.
- (12) The competent authorities in Germany therefore committed an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (13) The firm acted in good faith and could not reasonably have detected the error by the German authorities.
- (14) The rules in question were relatively complex. Interpretation of Article 91 of Regulation (EEC) No 918/83 was difficult, especially in so far as it applied to samples representing both imported and Community goods. It was not unreasonable of the firm to assume that an article according tariff relief to help seek orders for goods to be imported into the Community customs territory would also apply to samples imported with a view to seeking orders for goods already in free circulation.

- (15) Furthermore, before the firm began importing sample collections from Poland in May 1993, its samples were manufactured in Germany. It had for a number of years held an authorisation to process goods under customs control, entering its sample collections for free circulation duty-free under Article 91 of Regulation (EEC) No 918/83. Given that the customs authorities at no time contested the application of Article 91 to any of the many consignments of sample collections imported from Poland after May 1993, the lengthy period over which these imports occurred and the various checks conducted by the authorities, which never recommended the outward-processing procedure, it was not unreasonable of the firm to believe that its customs declarations were correct and that it was entitled to the customs relief accorded.
- (16) The firm complied with all the provisions laid down by the rules in force as far as its customs declaration was concerned.
- (17) Entry in the accounts of the import duties is not therefore justified in this case.
- (18) Where the circumstances under consideration are such that the duties in question need not be entered in the accounts, Article 875 of Regulation (EEC) No 2454/93 authorises the Commission, under conditions which it shall determine, to authorise one or more Member States to refrain from post-clearance entry in the accounts in cases involving comparable issues of fact and of law.
- (19) By letter of 24 February 1999, received by the Commission on 9 March 1999, Germany asked for authorisation to refrain from post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law to this one,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX referred to in the request from Germany dated 24 February 1999 need not be entered in the accounts.

Article 2

Germany is authorised to refrain from post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law to the case cited in its request of 24 February 1999.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 01/12/99

For the Commission

Member of the Commission