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EUROPEAN COMMISSION

Brussels, 7-4-2010
C(2010)2112

COMMISSION DECISION

Of 7-4-2010

**finding that remission of import duties is justified in a particular case
(REM 06/08)**

(Only the Spanish text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹, and in particular Articles 220 and 239 thereof,

Whereas:

- (1) By letter of 7 July 2008, received by the Commission on 10 July 2008, the Kingdom of Spain asked the Commission to decide whether, under Article 239 of Regulation (EEC) No 2913/92, the remission of import duties was justified in the following circumstances.
- (2) Between 28 June and 29 December 2004, a Dutch firm, hereafter "the firm", imported for release for free circulation in Spain devices called "home cinemas", which it classified under tariff heading 8543 89 99 (customs duty: 3.7%), citing a binding tariff information decision (hereinafter "BTI") issued by the Dutch authorities and held by a company from the same group. The goods were cleared under a simplified local clearance procedure for which authorisation was held by a company belonging to the same group as the firm.
- (3) In March 2005 the Spanish customs authorities conducted an audit of the firm's activities. In view of the classification established for devices with the same characteristics by Commission Regulation (EC) No 129/2005 of 20 January 2005 concerning the classification of certain goods in the Combined Nomenclature and amending Regulation (EC) No 955/98², the authorities contested the classification used by the firm and took the view that the goods should be classified under heading 8521 90 00 (customs duty: 14%). Accordingly, they initiated proceedings for post-clearance recovery of duties in the amount of EUR XXXXX, in respect of which the firm has requested remission under Article 239 of Regulation (EEC) No 2913/92.

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 25, 28.01.2005, p. 37.

- (4) In support of the request submitted by the Spanish authorities, the firm, in accordance with Article 905(3) of Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code³, stated that it had seen the dossier that the Spanish authorities had sent to the Commission and had made comments, which were enclosed with the request sent to the Commission.
- (5) In letters dated 29 October 2008 and 29 September 2009 the Commission asked the Spanish authorities for additional information. The authorities replied in a letter of 29 July 2009, which the Commission received on 10 August 2008 and a letter of 9 December 2009, received by the Commission on 4 January 2010. Examination of the request for remission was therefore suspended between 30 October 2008 and 10 August 2009 and between 30 September 2009 and 4 January 2010.
- (6) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to consider the case on 20 January 2010 within the framework of the Customs Code Committee - Customs Debt and Guarantees Section.
- (7) It appears from the request addressed to the Commission by the Spanish authorities that the remission is justified, since, at the time of the customs clearance, the firm was acting on the basis of an erroneous BTI issued by the Dutch authorities. Furthermore, there does not appear to have been any deception or obvious negligence on the firm's part.
- (8) Under Article 239 of Regulation (EEC) No 2913/92, import duties may be remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation if they result from circumstances in which no deception or obvious negligence can be attributed to the person concerned.
- (9) The Court of Justice has ruled that this provision represents a general principle of equity and that the existence of a special situation is established where it is clear from the circumstances of the case that the person liable is in an exceptional situation as compared with other operators engaged in the same business and that, in the absence of such [circumstances](#), he would not have suffered the disadvantage caused by the post-clearance entry in the accounts of customs duties⁴.
- (10) It appears from the case file that the firm belongs to a group one of the subsidiaries of which held authorisation for a local clearance procedure in Spain. The firm was authorised to clear goods using this procedure.
- (11) Another subsidiary from the same group, established in the Netherlands, was responsible for carrying out the logistical tasks involved in import operations. This subsidiary held a BTI for products identical to the ones with which the present case is concerned. These BTIs had been issued by the competent Dutch authorities.

³ OJ L 253, 11.10.1993, p. 1.

⁴ Cases T-186/97, T-190/97 to T-192/97, T-211/97, T-216/97 to T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring AG v Commission* [2001] ECR II-01337

- (12) The [Court ruled](#) in Case C-250/91⁵ that the fact that a trader has acted on incorrect information supplied to a firm belonging to the same group as the person liable by a competent customs authority in a Member State other than that of the customs authority competent to effect recovery may constitute a special situation. Even though this ruling was made in a different legal context, the Commission considers that the same interpretation should be applied to the present case.
- (13) The circumstances of this case are therefore such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (14) The [Court](#) has consistently ruled⁶ that when examining whether there has been deception or obvious negligence account must be taken, in particular, of the complexity of the legislation and the operator's experience and diligence.
- (15) The dossier submitted to the Commission shows that the firm is an experienced trader.
- (16) As to the complexity of the legislation, it should be noted that Commission Regulation (EC) No 129/2005 of 20 January 2005 established the classification of devices of the same type as those with which this case is concerned. This Regulation was published on 28 January 2005. Until that date, the classification of the devices in question must therefore be considered complex.
- (17) Lastly, it is apparent from the dossier and, in particular, from the letter from the Spanish authorities of 9 December 2009, that the firm cannot be considered to have been negligent.
- (18) It follows from the foregoing that there was no deception or obvious negligence on the firm's part.
- (19) The remission of import duties requested is therefore justified.
- (20) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 authorises the Commission to determine the conditions under which the Member States may repay or remit duties in cases involving comparable issues of fact and law.
- (21) Cases comparable to this one in fact and law are repayment or remission requests lodged within the legal time limits in respect of imports of "home cinemas" into the Community, where those imports operations were carried out in circumstances comparable in fact and law to those that gave rise to this case. The declarations for release for free circulation must have been submitted before 28 January 2005, the date on which Regulation (EC) No 129/2005 was published in the Official Journal. There must have been no deception or obvious negligence on the part of the importers concerned.

⁵ Case C-250/91 *Hewlett Packard v Directeur Général des Douanes* [1993] ECR I-01819.

⁶ Case C-48/98 *Firma Söhl & Söhlke v Hauptzollamt Bremen* [1999] I-07877

HAS ADOPTED THIS DECISION:

Article 1

The remission of the import duties amounting to EUR XXXXXX requested by Spain on 7 July 2008 is justified.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 7-4-2010

For the Commission
Algirdas ŠEMETA
Member of the Commission