

COMMISSION DECISION

of 22 July 1991

finding that it is justified not to proceed with the recovery of import duties in a particular case

(request submitted by France)

REC 2/91

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties⁽¹⁾, as last amended by Regulation (EEC) No 918/83⁽²⁾,

Having regard to Commission Regulation (EEC) No 2380/89 of 2 August 1989 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 on the post-clearance recovery of import duties of export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties⁽³⁾, and in particular Article 6 of said Regulation (EEC) No 2380/89,

Whereas, by letter dated 5 March 1991, received by the Commission on 7 March 1991, France requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties was justified in the following circumstances :

(1) OJ No L 197, 3.8.1979, p. 1

(2) OJ No L 105, 23.4.1983, p. 1

(3) OJ No L 225, 3.8.1989, p. 30

In 1988 a French company imported on several occasions frozen cod (CN Code 03.03.60.10) originating in Portugal.

These imports were entered for free circulation without payment of customs duty on the basis of the 1988 national customs tariff published in the Official Journal of the French Republic.

However, frozen cod originating in Portugal was still subject in 1988 to residual customs duty of 6.8% in accordance with Council Regulation (EEC) No 4161/87 of 22 December 1987 laying down, consequent on the entry into force of the combined nomenclature, the basic duties to be adopted within the Community as constituted on 31 December 1985 for the purpose of calculating the successive reductions provided for in the Act of Accession of Spain and Portugal (Article 300).

The error in the rate of customs duty for frozen cod originating in Portugal contained in the 1988 national customs tariff arose from the late distribution of Council Regulation (EEC) No 4161/87, which, although dated 22 December 1987 and published in Official Journal No L 395 of 31 December 1987, was not available in France until 7 March 1988.

The entry into force on 1 January 1988 of the new international customs nomenclature created considerable transcription work for the Commission. This meant that not all Community instruments concerning the tariff rules for goods imported into the European Community in 1988 could be published by 1 January 1988.

Faced with this situation, and in order to assist firms engaged in foreign trade, the Directorate-General of Customs and Indirect Taxation decided, despite the risk of error, to provide users from 1 January 1988 with a new 1988 customs tariff published in the Official Journal of the French Republic and based only on preparatory documents.

There was indeed an error in the case of frozen cod originating in Portugal, for which the zero rate of duty shown in the 1988 national customs tariff was corrected to the 6.8% actually due on such products in 1988 by a notice to importers published in the Official Journal of the French Republic on 3 December 1988 and taking effect from 1 January 1988. The reason for the delay was that the error was detected only when the national customs tariff for 1989 was being prepared.

On 31 May 1990 the customs authorities therefore asked this company to pay the uncollected customs duties that had not been collected on their imports in 1988 (ECU 11,147).

On 27 November 1990, this company requested that post-clearance recovery of these duties be waived pursuant to Article 5(2) of Council Regulation (EEC) No 1697/79.

Whereas, in accordance with Article 6 of Regulation (EEC) No 2380/89, a group of experts composed of representatives of all the Member States met on 24 June 1991 within the framework of the Committee on Duty-Free Arrangements to examine the case in question;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, competent authorities may refrain from taking action for the post-clearance recovery of import duties or export duties which were not collected as a result of an error by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part 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 customs duties amounting to ECU 11,147 were not collected;

Whereas that situation is the result of an error of commission on the part of the competent authorities, which, when faced with an exceptional situation caused by the late distribution of Regulation (EEC) No 4161/87, attempted to assist firms by making available to them a national tariff in which some rates were based on preparatory documents;

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Whereas, in view of the constant rulings of the Court of Justice (in Cases 98/78, 99/78 and 161/88), this error could not reasonably have been detected by the person liable until the actual date of publication of Regulation (EEC) No 4161/87 in the Official Journal of the European Communities; this was the date when the O.J. was available at the Publications Office in Luxembourg, i.e. 29 February 1988; whereas, in these circumstances, only those imports carried out between 1 January 1988 and 29 February 1988 should be considered in the context of this Decision; whereas the uncollected customs duties relating to that period amount to ECU [REDACTED]

Whereas the person liable acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration was concerned;

Whereas it is consequently justified not to proceed with post-clearance recovery of import duties in this case,

HAS ADOPTED THIS DECISION:

Article 1

The import duties of ECU [REDACTED], the subject matter of the request by France dated 5 March 1991, shall not be recovered.

Article 2

This Decision is addressed to France.

Done at Brussels, 22 July 1991

For the Commission