

COMMISSION DECISION

of 19-7-1996

finding that the repayment of import duties in a particular
case is not justified

(request submitted by Denmark)

REM 3/96

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

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 1 March 1996, received by the Commission on 6 March 1996, Denmark asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,³ as last amended by Regulation (EEC) No 3069/86,⁴ and Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 175, 12.07.1979, p.1.

⁴ OJ No L 286, 09.10.1986, p.1.

A Danish textile firm had obtained authorization to carry out economic outward processing operations in Estonia between 19 August 1992 and 31 July 1993.

In 1992 the firm extended its operations to Lithuania and Latvia. It did not, however, seek an outward processing authorization from customs because, after discussions with Danish customs, it believed such authorization unnecessary. Danish customs argue that they could not have misinformed the firm since there can be no confusion about the need for prior authorization to make use of the outward processing arrangements.

Thus, from 13 November 1992 to 8 July 1994, textile products were sent to Lithuania and Latvia for outward processing under export declarations indicating, in box 37, that the goods were to undergo such processing. The compensating products were reimported from 5 April 1993 to 26 August 1994, with import duties being paid on the value added to the basic goods exported.

When conducting retrospective checks in 1994, the customs authorities found that the firm had, without customs authorization, sent 29 consignments to Lithuania for outward processing and one to Latvia. Duties totalling XXXXX were recovered, and the firm is now claiming repayment.

Whereas the firm concerned declares that it has taken note of the application sent by the Danish authorities to the Commission and has nothing to add to it;

Whereas in accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 3 June 1996 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, which applies to duties entered in the accounts prior to 1 January 1994, import duties may be repaid or remitted in special situations other than those laid down in sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas Article 239 of Regulation (EEC) No 2913/92, which applies to duties entered in the accounts since 1 January 1994, provides for the repayment or remission of import duties in situations other than those laid down in Articles 236, 237 and 238 of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas use of the outward processing procedure is subject to the person concerned applying for and obtaining prior authorization, in accordance with Article 4 of Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system⁵ and Articles 85 and 147 of Regulation (EEC) No 2913/92;

Whereas the firm in question had neither obtained nor applied for such authorization in respect of the exports carried out between 13 November 1992 and 8 July 1994;

Whereas the customs authorities' acceptance of export declarations showing, in box 37, that the export goods were to be reimported after outward processing constitutes neither prior authorization nor even an application for such authorization;

Whereas failure to comply with rules constitutes neither a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 nor a situation covered by Article 239 of Regulation (EEC) No 2913/92;

Whereas the firm had, moreover, already conducted outward processing operations with a non-member country and could not be unaware that this economic procedure required prior authorization; whereas this error has to be considered obvious negligence;

Whereas, therefore, the repayment of the import duties requested is not justified in this case,

⁵ OJ No L 212, 2.8.1986, p.1.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXX requested by Denmark on 1 March 1996 is hereby found not to be justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 19-7-1996

For the Commission