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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27-6-2002

COMMISSION DECISION

Of 27/06/2002

finding that remission of duties is justified in a particular case and refusing Germany authorisation under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92.

(Only the German text is authentic)

(Request submitted by Germany)

(REM 24/2001)

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(REM 24/2001)

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 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 444/2002,⁴ and in particular Article 907 thereof,

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 68, 12.3.2002, p. 11.

Whereas:

- (1) By letter dated 20 September 2001, received by the Commission on 28 September 2001, Germany asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties was justified in the following circumstances.
- (2) A German firm had held an inward processing authorisation (suspension system) since 28 September 1995 to produce drive shafts for the motor industry under a job-processing contract.
- (3) Though the authorisation was only for operations carried out under a job-processing contract in accordance with Article 552(1) of the version of Regulation (EEC) No 2454/93 in force at the time, the firm began purchasing journals in 1998 from its sister company outside the Community and carrying out processing operations on its own account which consisted of friction-welding and mounting the journals to shafts of its own manufacture. The processed goods were then re-exported to countries outside the Community.
- (4) Since these operations were not carried out under the job-processing contract and as the firm did not hold an inward processing authorisation on its own account, the German authorities found that the inward processing operations were unauthorised and that a customs debt had therefore been incurred.
- (5) The German authorities therefore asked the firm to pay import duties of XXXXXX - the amount in respect of which remission has been requested.
- (6) In support of the application submitted by the competent German authorities the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.

- (7) 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 26 February 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (8) Under Article 239 of Regulation (EEC) No 2913/92 import duties may be repaid or remitted in special situations (other than those laid down in Articles 236, 237 and 238 of the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (9) The Court of Justice of the European Communities has consistently taken the view that these provisions represent a general principle of equity designed to cover an exceptional situation in which an operator, which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties, might find itself compared with other operators carrying out the same activity.
- (10) It should be noted that the firm undertook inward processing operations for its own account despite holding an inward processing authorisation for a job-processing contract only. Its authorisation consequently did not apply to the processing operations which it carried out on its own account and a customs debt therefore arose.
- (11) The operations concerned were in fact carried out under the inward processing arrangements.
- (12) It should also be borne in mind that the German authorities raised no technical or accounting objections to the firm's use of the inward processing procedure, which, with the exception of the type of authorisation applied for, complied with the relevant rules.
- (13) The import goods remained under customs supervision while in the Community customs territory and the processed goods were exported outside the Community and not therefore released for free circulation in the Community.

- (14) The German authorities pointed out in their request that if the firm had held an inward processing authorisation on its own account, the same operations would not have given rise to import duties. The economic conditions for authorising the firm to carry out inward processing on its own account under Article 117(c) of Regulation (EEC) No 2913/92 and Article 552(1)(e)(iii) and (3) of the version of the Regulation (EEC) No 2454/92 in force at the time were fulfilled as the firm was under specific instructions from the customer to use semi-finished third-country components in the drive shafts.
- (15) All the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (16) In the circumstances of this case no deception or obvious negligence can be attributed to the firm concerned, as the competent German authorities confirm in their correspondence of 20 September 2001.
- (17) The circumstances in this case therefore constitute a special situation in which no deception or obvious negligence may be attributed to the firm concerned.
- (18) Remission of import duties is therefore justified in this case.
- (19) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it shall determine, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.
- (20) In a letter of 20 September 2001, received by the Commission on 28 September 2001, the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.

(21) However, this decision is very unusual in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXXXXX requested by the Federal Republic of Germany on 20 September 2001 is justified.

Article 2

The authorisation requested by the Federal Republic of Germany in its letter of 20 September 2001 under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27-6-2002

For the Commission

[...]

Member of the Commission