

COMMISSION DECISION

of 4-3-1996

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

(request submitted by Germany)

REM 9/95

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 2913/92,¹
and in particular Article 907 thereof,

Whereas by letter dated 26 July 1995, received by the Commission on 1 August 1995,
Germany 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,¹ as last amended by Regulation (EEC) No 3069/86,¹ whether the remission of
import duties is justified in the following circumstances:

On 5 June 1992 a private individual imported by post two amplifiers for radio-
telephony, declaring them under CN heading 8527 90 10. The customs authorities
examined the goods, accepted the declaration and authorized the import at zero rate of
duty.

When a post-clearance check was undertaken it was found that the CN code declared
was applicable solely to goods destined for civilian aircraft. The goods should in fact
have been classified under CN code 8527 90 99. A demand for XXXXX was sent to the
importer who lodged an appeal and the recovery was suspended.

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.

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 4 December 1995 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, 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 the person concerned states in support of his request for remission that the competent customs authorities committed an error by accepting the import declaration under the wrong tariff subheading after physically examining the goods; whereas, given his lack of experience in customs matters, he could not reasonably have detected this error; whereas he maintains that prior to importing the goods he asked the relevant customs office how much duty he would be required to pay and was informed that the goods were not subject to duty; whereas, in his opinion, these circumstances constitute a special situation within the meaning of Article 13 of Regulation 1430/79;

Whereas the duty claimed by the competent national authorities was payable;

Whereas, with a control system based largely on the post-clearance examination of documents there is a possibility that classification under the wrong subheading may not be detected by the customs authorities at the time when the goods are released for free circulation; whereas this is frequently the case when the customs inspection is limited to a physical examination of the goods;

Whereas the information on the rate of duty supplied by the administration concerned was not binding tariff information within the meaning of Council Regulation (EEC) No 1715/90 of 20 June 1990 and was therefore in no respect binding on the said administration;

Whereas in the circumstances of the case in question a special situation does not exist within the meaning of Article 13 of Regulation 1430/79;

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

Whereas in application of the judgement of the Court of First Instance of the European Communities (Case T-346/94) the Commission had invited the German applicant authorities to ask the party concerned for a declaration acknowledging that he was cognisant with the file transmitted to the Commission and that he had nothing to add;

Whereas the German authorities have not replied to the Commission and have not given evidence that the party concerned had been duly heard accordingly to the abovementioned jurisprudence;

whereas therefore in these circumstances and despite the silence of the German authorities, the Commission, for reasons of good management, is obliged to adopt the present decision solely on the basis of the information available to it;

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by Germany on 26 July 1995 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 4-3-1996

For the Commission