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REC/NON

COMMISSION DECISION of 28.9.1992
cancelling its decision of 24 October 1991 and
finding that it is justified not to proceed with the
post-clearance recovery of import duties in a particular case

(request submitted by Italy)

Ref: REC 4/91

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 2164/91 of 23 July 1991, 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 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,³ and in particular Article 6 thereof,

Whereas by letter dated 5 April 1991, received by the Commission on 29 April 1991, Italy requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the recovery of import duties could be waived 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 201, 24.7.1991, p. 16.

On 3 February 1988 an importer in La Spezia released for free circulation some wild onions of the genus *Muscari comosum* originating in Morocco and classified them under Combined Nomenclature code (CN Code) 0703 for which there was a 12% duty. In fact these onions should have been classified under CN code 0709 for which there was a 16% duty.

The importer's classification was accepted by the Italian customs services on the basis of the customary national tariff which gave information on the products concerned which did not correspond to that contained in the Integrated Community Tariff (TARIC), as circulated to all Member States at the beginning of December 1987.

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the 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 Article 4 of Regulation 2164/91 provides that the competent authority of the Member State where the error was committed shall transmit the case to the Commission where it is in doubt as to the scope of the criteria of Article 5(2) of Regulation (EEC) No 1697/79 with regard to the case concerned, irrespective of the amount involved;

Whereas in accordance with Article 6 of Regulation (EEC) No 2164/91, a group of experts composed of representatives of all the Member States met on 18 September 1991 within the framework of the Committee on Duty-Free Arrangements to examine the case;

Whereas the Commission Decision of 24 October 1991 was adopted on the basis of an evaluation of the facts which made it possible to state that "the error committed by the Italian administration could have been detected by the importer", and to conclude that it was justified to proceed to the post-clearance recovery of the import duties in question;

Whereas, however, it emerged that the tariff situation on the basis of the information published in the Official Journal of the European Communities was not clear;

Whereas it is not therefore possible to consider that the error committed by the Italian administration could reasonably have been detected by the importer when the declaration of release for free circulation of the products was made;

Whereas the importer 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 the Decision of 24 October 1991 should be amended and it should be found that it is justified not to proceed with post-clearance recovery of the import duties amounting to ECU [REDACTED]

HAS ADOPTED THIS DECISION:

Article 1

The Commission Decision of 24 October 1991 (REC/4/91) shall be amended to the effect that the import duties of ECU [REDACTED] which are the subject the request by Italy dated 5 April 1991 shall not be recovered.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 28.7.1992

For the Commission