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REM 06/2000



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.12.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 29.12.2000

finding that a request to remit import duties in a particular case is not admissible

(Request submitted by Italy)

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FR

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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 955/1999,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1602/2000,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1

² OJ L 119, 7.5.1999, p.1

³ OJ L 253, 11.10.1993, p. 1

⁴ OJ L 188, 26.7.2000, p.1

Whereas:

- (1) By letter dated 9 March 2000, received by the Commission on 15 March 2000, Italy asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances:
- (2) The dossier sent to the Commission by the Italian authorities shows that on 11 May 1995 an Italian firm exported two automatic packing or wrapping machines (CN code 8422 40 00) to China via the Bologna customs office as part of a supply contract.
- (3) The machines turned out to be defective, and the client in China wished to return them to the firm and order new ones. The customer officially confirmed its order on 21 June 1997.
- (4) Though the contract obliged the client to return the machines within three years, and the firm reminded it several times that the exported machines had to be returned to the customs territory of the European Community before the end of March 1998, the machines did not re-enter the Community's customs territory until 12 May 1999, i.e. after the expiry of the three-year time-limit provided for in the first subparagraph of Article 185(1) of Regulation (EEC) No 2913/92.
- (5) The competent Italian authorities therefore considered that the machines in question were not eligible for exemption from import duties as returned goods and that a customs debt had been incurred when the previously exported machines were re-imported. They therefore asked the firm to pay import duties of XXXXXX, the amount for which remission has been requested.
- (6) In support of the application submitted by the competent Italian 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) By letter dated 17 October 2000, sent on 20 October 2000, the Commission informed the firm of its position and asked for its reactions.
- (8) By letter dated 13 November 2000, received by the Commission the same day, the firm argued that routine practice in the Member States dictated that the case should normally have been examined in the light of the first indent of the second subparagraph of Article 185(1) of Regulation (EEC) No 2913/92. That Article would have allowed the goods in question to be returned after the normal three-year time-limit to take account of special circumstances. It added that this was a case of special circumstances. In particular, it stood by its position that the circumstances in this case constituted a special situation, within the meaning of Article 239 of Regulation (EEC) No 2913/92, in which no deception or obvious negligence could be attributed to it.
- (9) The administrative procedure was suspended in accordance with Article 907 of Regulation (EEC) No 2454/93 between 21 October and 13 November 2000.
- (10) 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 8 December 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (11) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to 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.

- (12) Under the first subparagraph of Article 185(1) of Regulation (EEC) No 2913/92, Community goods which, having been exported from the customs territory of the Community, are returned to that territory and released for free circulation within a period of three years shall, at the request of the person concerned, be exempt from import duties. The second subparagraph allows the Member States to exceed that three-year period to take account of special circumstances.
- (13) The dossier submitted by the Italian authorities shows that a number of circumstances were invoked in this case to explain the non-compliance with the time-limit. The return of the machines in question was held up because the Chinese customer first wished to ensure that the new ones were properly installed and operating and met the conditions of the contract. Financial problems between the parties concerning payment for the new machines also held up the return of the old ones. Lastly, the restructuring of the customer's business was another source of delay.
- (14) It does seem that circumstances beyond the firm's control led to the return of the goods concerned after the time-limit, despite its having taken care to include in the sales contract a clause expressly providing for the return of the machines within three years in the event of that being necessary.
- (15) It is, moreover, as the firm pointed out in its letter of 13 November 2000, routine practice in the Community to regard such circumstances as special circumstances, within the meaning of the first indent of the second subparagraph of Article 185(1) of Regulation (EEC) No 2913/92, especially where goods are returned after the three-year deadline because a customer outside the Community has not met its contractual obligations.

- (16) There is therefore nothing to prevent the competent Italian authorities from applying the first indent of the second subparagraph of Article 185(1) of Regulation (EEC) No 2913/92 and granting the firm exemption from import duties.
- (17) Inasmuch as the competent national authorities may themselves grant exemption, it is not justified for the Commission to examine the case within the framework of Article 239 of Regulation (EEC) No 2913/92,

HAS ADOPTED THIS DECISION:

Article 1

The request submitted by the Republic of Italy on 9 March 2000 for the remission of import duties in the sum of XXXXXX is inadmissible.

Article 2

This Decision is addressed to the Republic of Italy.

Done at Brussels, 29.12.2000

For the Commission

Member of the Commission