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REC 14/98



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-7-1999

COMMISSION DECISION

of 19-7-1999

**finding that waiving post clearance entry in the accounts of customs duties is
justified in a particular case
(request submitted by Denmark)**

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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 Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 502/1999,⁴ and in particular Article 873 thereof,

Whereas by letter dated 19 November 1998 received by the Commission on 25 November 1998 Denmark asked the Commission to decide under Article 220(2)(b) of Regulation (EEC) No 2913/92 whether it was justified to waive post clearance entry in the accounts of import duties in the following circumstances:

¹ OJ No L 302, 19.10. 1992, p.1

² OJ No L 119, 7.5.1999, p. 1

³ OJ No L 253, 11.10.1993, p. 1

⁴ OJ No L 65, 12.3.1999, p. 1

On several occasions up to the end of 1995 a Danish importer imported frozen sugar peas from the People's Republic of China. The goods were then resold, before clearing customs, to a Danish wholesaler who undertook to deal with customs clearance formalities. The wholesaler held an authorisation for zero-rate import duties on the grounds of the end-use of the goods.

From 1 January 1996, the importer decided to carry out customs clearance formalities himself. Zero-rate import duties continued to be applied on the grounds of the end-use of the goods.

The Ballerup local customs authorities still accepted the customs declarations without asking to see the end-use authorisation.

On 12 May 1997 the Vejle local customs authorities found that the importer was not the holder of the authorisation, and therefore amended the two customs declarations, on the grounds that the zero rate of import duties could not be granted and a rate of 16.8% should have been applied.

The importer appealed to the Ballerup local customs authorities on the same day, and they again altered the two declarations concerned so as to grant the zero rate of import duties without asking to see the end-use authorisation.

As a result of a post-clearance check on the twenty-five declarations submitted over the period 9 February 1996 to 24 October 1997, the Vejle customs authorities found that the importer had benefited from the end-use procedure without authorisation. They therefore claimed payment of import duties totalling XXXXX.

On the grounds that he had acted in good faith and, in particular, that the goods covered by ten of the customs declarations that had been checked had been resold to the Danish wholesaler who held the end-use authorisation, the importer asked the competent Danish authorities to waive post clearance entry in the accounts of import duties totalling XXXXX for the goods covered by these ten declarations.

Since the Danish authorities found that the alterations made on 12 May 1997 were such as to give the importer legitimate expectations regarding the correctness of the customs procedure followed, they asked the Commission if they could waive entry in the accounts of the import duties being claimed from the importer for the customs declarations submitted after 12 May 1997, for an amount of XXXXX;

Whereas the importer said that he had examined the dossier submitted to the Commission by the Danish authorities and had nothing to add;

Whereas, in accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 25 February 1999 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts is waived where the duties payable were not entered in the accounts owing to an error on the part of the customs authorities that could not reasonably have been detected by the person liable for payment, the latter for his part having 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 goods concerned were eligible for favourable tariff treatment on the grounds of end-use only if the importer held an authorisation;

Whereas, unlike the consignee of the goods, the importer did not hold such an authorisation;

Whereas, on 12 May 1997, the Vejle local customs authorities amended two customs declarations on the grounds that the importer did not hold an end-use authorisation for zero-rate import duties;

Whereas, however, on the same day the Ballerup local customs authorities altered the amendments; whereas, without asking to see the authorisation, the Ballerup authorities believed that the importer was eligible to benefit from the favourable tariff treatment on the grounds of the end-use of the goods;

Whereas this fact must be considered to be an error committed by the competent Danish authorities within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92 ;

Whereas the alterations concerned were made in writing;

Whereas the importer could therefore legitimately rely on the information supplied in writing by the Danish authorities on the two customs declarations;

Whereas, moreover, the importer did not usually deal with the customs clearance of the goods concerned;

Whereas, therefore, the good faith of the importer cannot be doubted and he could not reasonably have detected the error of the competent Danish authorities;

Whereas, therefore, entry in the accounts of the import duties is not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The import duties totalling XXXXX which were the subject of Denmark's request of 19 November 1998 shall not be entered in the accounts.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 19-07-1999

*For the Commission
Member of the Commission*