

COMMISSION DECISION

of 17-11-1995

finding that it is justified not to take action for the post-clearance recovery of import duties in a particular case and authorizing Germany not to take action for the post-clearance recovery of duties in cases involving comparable issues of fact and of law

(request submitted by Germany)

REC 5/95

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 873 thereof,

Whereas by letter dated 12 June 1995, received by the Commission on 20 June 1995, Germany asked the Commission to decide, under Article 5(2) of 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 whether it is justified not to take action for the recovery of import duties in the following circumstances:

A German firm was granted an unrestricted outward processing authorization for the manufacture of women's and children's clothing in Czechoslovakia, with customs duties to be paid according to the differential method.

On 1 March 1992 the EEC-Czechoslovakia Agreement entered into force. From July 1992 the firm's goods were admitted free of duty on the basis of Protocol 1 to the Agreement.

It later emerged that one of the conditions for the exemption from duty had not been satisfied and customs duties were demanded. Traders were, in fact, entitled to exemption from duty for

1 OJ No L 302, 19.10.1992, p.1.

2 OJ No L 253, 11.10.1993, p.1.

3 OJ No L 197, 3.8.1979, p.1.

goods covered by Regulation (EEC) No 636/821 only where they had sought and obtained authorization to use the outward processing arrangements for textiles, as laid down in that Regulation.

The firm has applied for recovery of duties totalling XXXXX to be waived on the basis of Article 5(2) of Regulation (EEC) No 1697/79, arguing that it was the customs administration itself which had informed it of the possibility of obtaining exemption from duty and which had granted that exemption without demanding the requisite authorization or notifying the firm that such authorization was needed. The firm was later granted such authorization.

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 2 October 1995 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case;

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 or export duties which were not collected as a result of an error made 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 it was as a result of an error by the customs office of import that the firm was not required to produce the authorization required for the admission free of duty of the goods in question and that customs duties were not collected;

Whereas Protocol 1 to the EEC-Czechoslovakia Agreement, which states that the duties "applied to reimports into the Community of textile products falling within the categories listed in the Annex to Council Regulation (EEC) No 636/82 shall be eliminated on the date of entry into force of the Agreement", leaves room for doubt as to the need to demand the authorization provided for in the said Regulation;

Whereas the Member States have differed in their interpretation of this passage;

Whereas the Commission, aware of the need to clarify matters, has several times notified the Member States of the interpretation to be placed on this passage; whereas the corresponding passages in the Agreements subsequently concluded with Romania and Bulgaria were made clearer;

Whereas there was therefore genuine uncertainty as to the correct interpretation of the texts and the error by customs could not reasonably have been detected by the firm concerned;

Whereas, therefore, it is justified not to take action for the post-clearance recovery of import duties in this case;

Whereas, under Article 875 of Regulation (EEC) No 2454/93, where the circumstances under consideration are such that the duties in question need not be entered in the accounts, the Commission may, under conditions which it shall determine, authorize a Member State to refrain from post-clearance recovery in cases involving comparable issues of fact and of law;

Whereas by letter dated 12 June 1995, received by the Commission on 20 June 1995, Germany asked for authorization under Article 8 of Regulation (EEC) No 2164/91 to refrain, in 25 cases comparable in fact and in law, from post-clearance recovery of duties totalling XXXXX,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX which are the subject of the request by Germany dated 12 June 1995 shall not be recovered.

Article 2

Germany shall be authorized to refrain from recovering, within the limits of the sum of XXXXX, the duties payable in the cases involving comparable issues of fact and of law which are the subject of the request by Germany dated 12 June 1995.

Article 3

This Decision is addressed to Germany.

Done at Brussels, 17-11-1995