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REC 5/99



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31-3-2000

NOT FOR PUBLICATION

COMMISSION DECISION

Of 31-3-2000

finding that requests for a waiver of post-clearance entry in the accounts of import duties and repayment of the duties are inadmissible in a particular case

(request submitted by the Kingdom of Denmark)

(REC 5/99)

FR

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(request submitted by the Kingdom of Denmark)

(REC 5/99)

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 code¹, as last amended by Regulation (EC) No 955/1999²,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92³, as last amended by Regulation (EC) No 1662/1999⁴, and in particular Articles 873 and 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 197, 29.7.1999, p. 25.

Whereas:

- (1) By letter of 1 June 1999, received by the Commission on 3 June 1999, Denmark asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether a waiver of post-clearance entry in the accounts of import duties was justified, and, in the alternative, under Article 239 of the Regulation, whether repayment of the duties was justified, in the following circumstances.
- (2) In 1994 and 1995, a Danish firm obtained prior authorisations to use the economic outward processing arrangements for certain textile and clothing products. In particular, the authorisations were granted for the manufacture of blouses and skirts in Poland from fabric previously exported from the European Community.
- (3) A post-clearance examination carried out by the competent Danish authorities in 1997 found that, in the course of the economic outward processing operations in Poland, goods had been used that had originated in Turkey.
- (4) As a result, the authorities established that import duties of XXXX were payable on operations carried out between 2 February 1995 and 29 February 1996. The firm requested that post-clearance entry in the accounts be waived and the duties be repaid.
- (5) In support of the request from the competent Danish authorities, the firm has stated, under Articles 871 and 905 of Regulation (EEC) No 2454/93, that it has seen the dossier submitted by them to the Commission and has nothing to add.
- (6) In accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all Member States met on 22 October 1999 within the framework of the Customs Code Committee (Section for general customs rules / repayment) to consider the case in question.

- (7) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, subsequent entry in the accounts is not to occur where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (8) Under Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238 of the Regulation which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (9) In this case, the competent Danish authority received applications from the firm in 1994, 1995 and 1996 for prior authorisations for economic outward processing for the manufacture in Poland of women's clothing. The applications were made under Council Regulation (EC) No 3036/94 of 8 December 1994, establishing economic outward processing arrangements applicable to certain textiles and clothing products reimported into the Community after working or processing in certain third countries⁵.

⁵ OJ L 322, 15.12.1994, p. 1.

- (10) The prior authorisations applied for in 1994 and 1995 were granted by the competent Danish authority and used for operations carried out between 2 February 1995 and 29 February 1996. It was only on examining the application for a prior authorisation submitted in 1996 (for operations to be carried out subsequently) that the authority realised that the prior authorisation could not be granted, as the firm was using fabric originating in Turkey in its economic outward processing. A post-clearance examination was then carried out, as a result of which it was found, on the one hand, that fabric originating in Turkey had been used in operations between 2 February 1995 and 29 February 1996 and, on the other hand, that the competent Danish authority had been wrong to issue the prior authorisations applied for in 1994 and 1995, since it was stated explicitly in the applications that fabric originating in Turkey would be exported to Poland under the authorisations, if granted. Furthermore, the Danish authority acknowledged its error in a letter to the firm's representative dated 6 August 1998.
- (11) Nevertheless, the prior authorisations in question were not revoked. As is clear from Article 9 of Regulation (EEC) No 2913/92, referred to in particular by Article 5(7) of Commission Regulation (EC) No 3017/95 of 20 December 1995 laying down provisions for the implementation of Regulation (EC) No 3036/94⁶, the authorisations remain valid until or unless revoked.
- (12) It follows from the above that no customs debt was incurred in the case in question as the operations carried out by the firm were covered by the prior authorisations granted to it by the competent national authorities.
- (13) As no customs debts were incurred in the course of the operations carried out between 2 February 1995 and 29 February 1996, this request for a waiver from the post-clearance entry in the accounts of import duties and for repayment of the duties is inadmissible,

⁶ OJ L 314, 28.12.1995, p. 40.

HAS ADOPTED THIS DECISION:

Article 1

1. The request contained in the Kingdom of Denmark's submission of 1 June 1999 that import duties of XXXXX should not be entered in the accounts, is inadmissible.
2. The request contained in the Kingdom of Denmark's submission of 1 June 1999, for repayment of import duties of XXXXX is inadmissible.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 31-3-2000

For the Commission

Member of the Commission