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REM 21/99



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.4.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 26.4.2000

finding that remission of import duties is justified in a particular case

(Request submitted by France)

(REM 21/99)

FR

Draft

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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 1662/1999,⁴ and in particular Article 907 thereof,

Whereas:

- (1) By letter dated 13 April 1999, received by the Commission on 16 April 1999, France asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,⁵ as last amended by Regulation (EEC) No 1854/89,⁶ and under Article 239 of Regulation (EEC) No 2913/92, whether remission of duties was justified in the following circumstances.

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

⁵ OJ L 175, 12.7.1979, p.1.

⁶ OJ L 186, 30.6.1989, p.1.

- (2) For many years a French firm imported clock/watch parts falling under Combined Nomenclature codes 9110 12 00 and 9110 90 00 from non-Community countries. The products qualified for the suspension of customs duties on the import of certain goods intended for the manufacture of products falling within Chapter 91 of the Combined Nomenclature. The various parts were then combined to form movement sets (unassembled clock/watch movements) falling under CN code 9110 11 90. The movement sets were then exported for assembly to the Republic of Mauritius under the outward processing procedure.
- (3) Following an investigation carried out by the competent authorities in the firm it was found that the import goods could not be considered to have been given a particular end use (the manufacture of a product falling within Chapter 91 of the Combined Nomenclature) before they were placed under the outward processing procedure. They took the view that the movements sets could not be considered a sufficient working of the watch/clock pieces imported.
- (4) The authorities therefore claimed payment of the amount of import duties owed for the period February 1993 to April 1997, i.e. a total of XXXXX - the amount for which remission has been requested.
- (5) In support of the application submitted by the competent French 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.

- (6) By letter of 23 June 1999 the Commission requested further information from the French authorities. This information was provided by letter dated 21 October 1999, received by the Commission on 29 October 1999. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 23 June 1999 and 29 October 1999.
- (7) 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 22 November 1999 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (8) Under Article 13(1) of Regulation (EEC) No 1430/79, applicable to customs debts incurred before 1 January 1994, import duties may be repaid or remitted in special situations other than those laid down in sections A to D of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (9) Under Article 239 of Regulation (EEC) No 2913/92, applicable to customs debts incurred after 1 January 1994, import duties may be repaid or remitted in situations other than those laid down 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.
- (10) The Court of Justice of the European Communities has ruled that Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92 represent a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.

- (11) In this case the French authorities considered that putting together movement sets from clock/watch parts could not be regarded as the manufacture of products falling within Chapter 91 of the Combined Nomenclature because the imported parts did not undergo working. They concluded that the parts had not been given the particular end use for which they had been imported and by virtue of which the firm had benefited from the suspension of import duties. Consequently, under the second indent of Article 146(1) of Regulation (EEC) No 2913/92, the movement sets were not eligible to be placed under the outward processing procedure since the conditions for suspending duties by virtue of a particular end use were not fulfilled at the point at which the movement sets were placed under the outward processing procedure. The French authorities therefore considered that a customs debt had been incurred.
- (12) However, the dossier sent to the Commission by the French authorities shows that the firm had on several occasions asked whether it was proceeding correctly in its operations. In a letter of 3 October 1988 it addressed such an enquiry to the local customs office. The local customs office did not reply. By letter of 16 June 1994 it again made enquiries to the same office about the same point. The office, after consulting its regional directorate, told the firm in a letter dated 1 June 1995 that the clock/watch parts were to be considered to have been given a particular end use (manufacture of products falling within Chapter 91 of the Combined Nomenclature) when they "became an integral part of the movement set".
- (13) In so far as the watch/clock parts could not in fact be considered to have been given that end use when they were put together in movement sets, the local customs authorities made a mistake, since they made a statement to the contrary in their letter of 1 June 1995 to the firm. That error must be considered to constitute a special situation covered by Article 239 of Regulation (EEC) No 2913/92.

- (14) With regard to the duties due for imports after 1 June 1995, the mistake of the French customs authorities could not have been detected by the firm and so neither deception nor obvious negligence can be attributed to the firm. The fact that the customs authorities had expressly told the firm in writing that it was proceeding correctly is grounds for legitimate expectations on the part of the firm, since the statement was such as to lead the firm to believe that it was carrying out its imports in accordance with the rules in force.
- (15) As regards the duties due for imports between February 1993 and May 1995, it seems that the competent French authorities repeatedly accepted erroneous customs declarations without contesting them over a long period. This circumstance constitutes a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92.
- (16) The dossier sent to the Commission by the French authorities shows that no obvious negligence or deception of any sort can be attributed to the firm as regards its operations between February 1993 and May 1995. Firstly, the firm showed some diligence in that from 1998 it tried to obtain information from the customs authorities as to whether it was proceeding correctly and, secondly, the rules involved were complex. The suspension of import duties could only be granted to products intended for the manufacture of products falling within Chapter 91 of the Combined Nomenclature. The imported clock/watch parts were classified under a new code of Chapter 91 of the Combined Nomenclature once they had been put together in movement sets. This would lead one to believe that the movement sets constituted new products falling, as imported goods, within Chapter 91 of the Combined Nomenclature.

- (17) The confusion caused by the complexity of the rules was increased by the fact that the local customs authorities, after consulting their regional customs directorate, made a mistake in the written opinion they gave on this subject.
- (18) Remission of import duties is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXXX requested by France on 13 April 1999 is hereby found to be justified.

Article 2

This Decision is addressed to France.

Done at Brussels, 26.4.2000

For the Commission

Member of the Commission