

COMMISSION DECISION

of 28-09-1995

finding that the remission of import duties in a particular
case is not justified

(request submitted by GERMANY)

REM 1/95

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 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 27 March 1995, received by the Commission on 3 April 1995, Germany 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,³ as last amended by Regulation (EEC) No 3069/86,⁴ whether the remission of import duties is justified in the following circumstances:

A Bremen company imported honey from the former Soviet Union. Up to 1984, it negotiated purchasing agreements with a Hamburg dealer which included handling charges for the storage of the honey in the free port of Hamburg while it was checked to see that it complied with German law. From 1984 onwards, these costs were taken over by the Hamburg dealer and invoiced to the Bremen company separately.

In 1992, customs checks revealed that the handling charges had not been included as part of the purchase price when declaring the customs value of the goods. The national customs administration then issued five recovery notices.

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 175, 12.7.1979, p.1.

⁴ OJ No L 286, 9.10.1986, p.1.

Upon an appeal by the company, the recovery notices were suspended. When the appeal was rejected, the company challenged the decision on one of the cases in the courts. The competent court ruled that the charges in question did indeed represent part of the customs value, but nevertheless upheld the appeal. It ruled that 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,⁵ the customs authorities had committed an error which could not reasonably have been detected by the person liable, since, at the time of a 1987 external audit of the company's honey imports in 1985 and 1986, the auditor had not objected to its failure to declare the charges.

Without having contested the other four recovery notices, the company applied for remission of duty on the strength of the outcome of the proceedings brought in respect of the notice which was overturned;

Whereas, 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 30 May 1995 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, 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;

Whereas, in accordance with Article 3 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, the charges in question represented part of the transaction value of the goods and should therefore have been declared;

Whereas the customs debt should therefore have been calculated on the basis of the value of the goods, including those charges;

Whereas the duty claimed by the competent national authority was therefore due;

⁵ OJ No L 197, 3.8.1979, p.1.

Whereas the fact that the competent national authorities did not point out the irregularity at the time of a previous audit does not constitute special circumstances within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas the legal situation created by the national court's judgment is not such as to affect the application of Community law, and does not constitute special circumstances within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas, moreover, the company was manifestly negligent in failing to declare the charges in question as part of the customs value of the goods;

Whereas, therefore, the remission of import duties requested is not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of xxxxx requested by Germany on 27 March 1995 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 28-09-1995

For the Commission