COMMISSION REGULATION (EEC) No 3799/86

of 12 December 1986

laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import duties [1], as last amended by Regulation (EEC) No 3069/86 [2] and in particular Article 25 (2) thereof,

Whereas Commission Regulation (EEC) No 1575/80 [3] laid down provisions for the implementation of Article 13 of Regulation (EEC) No 1430/79; whereas those provisions consist mainly of procedural rules under which applications for repayment or remission must be forwarded by the appropriate authorities of the Member States to the Commission and processed by the latter; whereas a Commission decision is required in every case;

Whereas experience has shown that in certain specific situations the conditions for authorizing repayment or remission of duties are always met; whereas on the other hand, other situations cannot in themselves be considered special situations constituting grounds for repayment or remission;

Whereas a precise definition of those different situations should make it possible to transfer to the appropriate authorities of the Member States responsibility for deciding whether or not repayment or remission of duties should be authorized each time such a situation arises; whereas, on the other hand, all other cases should continue to be referred to the Commission in order to ensure uniform application of Article 13 of Regulation (EEC) No 1430/79;

Whereas the provisions laid down for the implementation of Article 13 of Regulation (EEC) No 1430/79 should consequently be amended;

Whereas, moreover, Regulation (EEC) No 3069/86 inserted into Regulation (EEC) No 1430/79 an Article 4a, an Article 6a and an Article 11a defining the conditions under which import duties could be repaid or remitted when the procedural requirements laid down respectively in Articles 4, 6 and 11 of the said Regulation had not been complied with; whereas, in order to ensure uniform application of new Articles throughout the Community, certain concepts to which they refer should be clarified;

Whereas it is desirable, for the sake of clarity, to set out in a new Commission Regulation all the provisions henceforth applicable for the practical implementation of Articles 4a, 6a, 11a and 13 of Regulation (EEC) No 1430/79 and, consequently, to repeal Regulation (EEC) No 1575/80;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee on Duty Free Arrangements,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Regulation (EEC) No 1430/79 hereinafter referred to as the 'basic Regulation'.

2. For the purpose of this Regulation 'decision-making authority' means the authority competent to decide on an application for repayment or remission of import or export duties in the Member State where the duties to which the said application relates were entered in the accounts.

TITLE I

REPAYMENT OR REMISSION OF IMPORT DUTIES

A. Provisions for the implementation of Articles 4a, 6a and 11a of the basic Regulation

Article 2

For the purposes of Articles 4a (1) (b), 6a (1) (b) and 11a (1) (b) of the basic Regulation:

(a) 'person concerned' means the person referred to in the first paragraph of Article 15 of the basic Regulation, as well as, if necessary, any other person who is involved in the completion of customs formalities for the goods concerned or who has given the necessary instructions for the completion of such formalities;

[1] OJ No L 175, 12. 7. 1979, p. 1.
[2] OJ No L 286, 9. 10. 1986, p. 1.
[3] OJ No L 161, 26. 6. 1980, p. 13.

(b) 'serious negligence' may be attributed to the person concerned where he has failed to comply with the procedural requirements which in principle are a condition for the granting of repayment or remission although he must have been aware of their existence.

'Serious negligence' may be attributed to the person concerned in particular where :

— a person not in business as a customs declarant has failed to comply with the procedural requirements which in principle are a condition for the granting of repayment or remission although he has already been in a similar situation and he was consequently aware of the legal requirements for obtaining such repayment or remission ;

— a person practising as a customs declarant, representing the person in whose name and application for repayment or remission is made, has failed to take the steps laid down by legislation in relation to the customs authorities, as instructed by that person, in order to secure such repayment or remission.

Article 3

1. For the purpose of applying Articles 4a (2) (a), 6a (2) (a) and 11a (2) (a) of the basic Regulation :

(a) the proof necessary to enable the competent authorities to satisfy themselves that the goods for which repayment or remission is requested have definitely been re-exported outside the customs territory of the Community must consist, in the submission by the person concerned, of :

— the original or a certified copy of the export declaration for the goods outside the customs territory of the Community, and

— certification by the customs office through which the goods actually passed on dispatch outside the customs territory of the Community.

Where such certification cannot be produced, proof of dispatch of the goods outside the customs territory of the Community may be demonstrated by the production :

— either of certification by the customs confirming the arrival of the goods in the third country of destination,

— or of the original, or a duly authenticated copy, of the customs declaration for the goods concerned made in the third country of destination.

To these documents must be affixed the administrative and commercial documentation allowing the customs authorities dealing with the repayment or remission request to verify that the goods which are the subject of export outside the customs territory of the Community are the same as those which had been declared for release for free circulation, namely :

— the original or a certified copy of the declaration of release for free circulation ;

— insofar as considered necessary by the customs authorities, commercial or administrative documents (such as invoices, dispatch details, transit documents, health certificates) bearing a precise description of the goods (commercial description, quantities, model and other marking particulars) which have been affixed, on the one hand, to the declaration of release for free circulation and, on the other, to the declaration for export outside the customs territory of the Community or, as the case may be, to the customs declaration made for the goods in the third country of destination.

(b) the proof necessary to enable the competent authorities to satisfy themselves that the goods for which repayment or remission is requested have definitely been destroyed under official control or by persons entitled to act in an official capacity must consist, in the statement submitted by the person concerned, of :

— either a record of or a declaration of, the destruction, prepared by the authorities under whose control the destruction took place, or a certified copy thereof,

— or a certificate prepared by the person entitled to confirm the destruction, accompanied by evidence of his authority.

These documents must bear a sufficiently precise description of the destroyed goods (such as commercial description, quantities, model and other marking particulars) to enable the customs authorities, by comparing them with the statements in the declaration of release for free circulation and the commercial documents (such as invoices, dispatch details) which are affixed, to satisfy themselves that the destroyed goods are those which had been declared for release for free circulation.

2. Where the documents referred to in paragraph 1 contain insufficient detail to allow the customs authorities to take, in full knowledge of the facts, a decision on the case submitted to them, or where certain details may not have been submitted to them, proof may be completed or replaced by any other documents considered necessary by the said authorities.

B. Provisions for the implementation of Article 13 of the basic Regulation

I. *Special situations which do, and those which do not, constitute grounds for the repayment or remission of import duties*

Article 4

For the purposes of Article 13 (1) of the basic Regulation, and without prejudice to other situations to be considered case by case as part of the procedure laid down in Articles 6 to 10 :

1. Special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned shall in particulr be the following :

   (a) where non-Community goods placed under a customs procedure involving total or partial relief from import duties or goods released for free circulation under favourable tariff treatment by virtue of their treatment or use for particular purposes are stolen, provided that the goods are recovered promptly and assigned their original customs status in the state they were in when they were stolen ;

   (b) where non-Community goods are inadvertently withdrawn from the customs procedure involving total or partial relief from import duties under which they had been placed, provided that as soon as the error is found, they are assigned their original customs status in the state they were in when they were withdrawn ;

   (c) where it is impossible to operate the mechanism for opening the means of transport on which goods previously released for free circulation are located and accordingly to unload them on arrival at their destination provided that they are immediately re-exported from the customs territory of the Community under the supervision of the customs authorities ;

   (d) where goods originally released for free circulation in the Community are subsequently returned to their non-Community supplier, under the outward processing arrangements, to enable him — free of charge — to eliminate defects existing prior to the release of the goods (even if found after release of the goods) or to bring them into line with the provisions of the contract under which they were released for free circulation, and where that supplier decides to keep the goods permanently because he is unable to remedy the defects or because it would not be economic to do so ;

   (e) where it is found, at the time when the customs authorities decide on post-clearance collection of import duties, where goods originally released for free circulation with full release from such duties were in fact liable, that the goods in question have been re-exported from the customs territory of the Community without the supervision of the customs authorities, provided that it is established that the substantive conditions laid down in the basic Regulation for the repayment or remission of such import duties would in fact have been met at the time of re-exportation if the amount had been levied when the goods were released for free circulation ;

   (f) where it is forbidden, by judicial order, to market an item previously entered for free circulation under normal conditions by the person concerned, and where the said item is re-exported outside the customs territory of the Community or destroyed under the control of the competent authorities, when it is established that the item in question has not actually been used in the Community.

2. The following situations shall not by themselves be special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned :

   (a) re-exportation from the customs territory of the Community, for reasons other than those referred to in sections B, C or D of the basic Regulation, and notably on account of failure to sell, of goods previously entered for free circulation ;

   (b) save in the cases expressly provided for by Community legislation, destruction, for any reason whatsoever, of goods entered for free circulation after their release by the competent authorities ;

   (c) production, even in good faith, for the purpose of securing preferential tariff treatment of goods entered for free circulation, of documents subsequently found to be forged, falsified or not valid for the purpose of securing such preferential tariff treatment.

II. *Procedural rules*

1. Decisions of the competent authorities of the Member States

Article 5

1. Where the competent authority of a Member State establishes that the grounds on which an application under Article 13 (2) of the basic Regulation are based reflect one of the situations described in Article 4 (1), it shall repay or remit the amount of import duties concerned.

2. Where the competent authority of a Member State establishes that the grounds on which an application is made under Article 13 (2) of the basic Regulation are based solely on one of the situations described in Article 4 (2) it shall not repay or remit the amount of import duties concerned.

2. Decisions of the Commission

Article 6

1. Where the competent authority of a Member State cannot decide, by reference to Article 4, whether an application for repayment or remission under Article 13 (2) of the basic Regulation should be granted, it shall refuse the application if it is not supported by evidence of a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

In all other cases it shall submit the case to the Commission for a decision, in accordance with the procedure laid down in Articles 7 to 10. The relevant documents submitted to the Commission shall contain all the information required to enable a comprehensive examination of the case to be carried out.

As soon as it receives the relevant documents the Commission shall inform the Member State concerned accordingly.

Should it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied.

2. The decision-making authority may, at the applicant's request and without awaiting completion of the procedure laid down in Articles 7 to 10, authorize completion of the customs formalities relating to the re-exportation or destruction of the goods before the Commission has given a ruling on the application in question. Such authorization shall be entirely without prejudice to the final decision on the application.

Article 7

Within 15 days following receipt of the documents referred to in Article 6 (1) the Commission shall forward a copy thereof to the Member States.

Consideration of the case in question shall be included as soon as possible on the agenda of a meeting of the Committee on Duty-Free Arrangements.

Article 8

After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Committee on Duty Free Arrangements to consider the case in question, the Commission shall decide whether the special situation which has been considered justifies repayment or remission.

That decision shall be taken within six months of the date on which the documents referred to in Article 6 (1) are received by the Commission. Where the Commission has found it necessary to request additional information from the Member State in order to give a ruling, the period of six months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information.

Article 9

1. The Member State concerned shall be notified of the decision referred to in Article 8 as soon as possible and in any event within 30 days of the expiry of the period specified in Article 8.

A copy of the decision shall be sent to the other Member States.

2. The decision-making authority shall decide whether to grant or refuse the application on the basis of the Commission's decision notified in accordance with paragraph 1.

Article 10

If the Commission fails to take a decision within the period referred to in Article 8, or fails to notify a decision to the Member State in question within the period referred to in Article 9, the decision-making authority shall grant the application.

TITLE II

REPAYMENT OR REMISSION OF EXPORT DUTIES

Article 11

The provisions of this Regulation shall apply *mutatis mutandis* where application is made for the repayment or remission of export duties on grounds of the existence of special circumstances analogous to those referred to in Article 13 of the basic Regulation.

TITLE III

FINAL PROVISIONS

Article 12

Regulation (EEC) No 1575/80 is hereby repealed.

Article 13

This Regulation shall enter into force on 1 January 1987.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 December 1986.

For the Commission

COCKFIELD

Vice-President