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*(Acts whose publication is obligatory)***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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the amount of the import duties or export duties which the person liable for payment has been required to pay on goods entered for a customs procedure involving the obligation to pay such duties may prove to be lower than the amount which was legally due, either as a result of an error of calculation or copying on the part of the competent authorities or because those authorities used inaccurate or incomplete information, particularly as regards the nature, quantity, value, origin or end-use of the goods in question; whereas, because of the essentially economic nature of the import duties or export duties in force in the Community, failure to collect the correct duties has prejudicial consequences for the Community economy; whereas it is therefore justified to permit the competent authorities to make post-clearance recovery of the duties remaining due, where they establish that such an error has been made;

Whereas the post-clearance recovery of import duties or export duties involves some degree of prejudice to the certainty which persons liable for payment have the right to expect from official acts having financial consequences; whereas it is therefore appropriate to limit the possible scope of action of the competent authorities in this field by fixing a time limit after

which the original determination of the import duties or export duties must be considered as definitive; whereas this restriction on action by the competent authorities cannot apply where at the time of the customs clearance of the goods the authorities have been unable, on account of an act that could give rise to criminal court proceedings, to determine the exact amount of the import duties or export duties; whereas, however, the taking of action for post-clearance recovery is under no circumstances justified where the original determination of import duties or export duties has been established on the basis of information given by the competent authorities themselves which is binding on them or on the basis of elements of taxation expressly recognized by them as complying with those declared by the person liable for payment, where the latter had acted in good faith and had complied in all respects with the rules in force for completing his customs declaration;

Whereas there is no technical or economic reason to grant, in respect of the amounts of import duties or export duties to be recovered after clearance, the facilities provided for in Council Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties (4); whereas, however, amounts recovered by the competent authorities after clearance should be exempt from interest on overdue payments, where the non-collection of the amounts of import duties or export duties legally due is attributable to an error on the part of those authorities;

Whereas the post-clearance recovery of amounts of 10 European units of account or less would not appear to be worthwhile;

Whereas Regulation (EEC, Euratom, ECSC) No 2891/77 (5) lays down in Article 1 that the Communi-

(1) OJ No C 138, 11. 6. 1977, p. 13.

(2) OJ No C 36, 13. 2. 1978, p. 12.

(3) OJ No C 59, 8. 3. 1978, p. 45.

(4) OJ No L 146, 2. 6. 1978, p. 19.

(5) OJ No L 336, 27. 12. 1977, p. 1.

ties' own resources shall be established by Member States in accordance with their national provisions; whereas uniform rules should be adopted at Community level on this establishment; whereas pending the implementation of these rules, it appears advisable, that at the same time as common rules are laid down by this Regulation providing that in certain cases the Communities' own resources comprising customs duties shall not be recovered, to recall that the Member States are not obliged in these cases to make a corresponding establishment;

Whereas this Regulation is concerned with post-clearance recovery of import duties and export duties whether they result from the application of the common agricultural policy or from the application of the provisions of the Treaty relating to the customs union; whereas, as far as this second aspect is concerned, the provisions of the Treaty do not confer on the institutions of the Communities the power to adopt binding provisions in respect of the post-clearance recovery of import duties or export duties; whereas it therefore also appears necessary to base the provisions of this Regulation on Article 235 of the Treaty,

HAS ADOPTED THIS REGULATION :

Article 1

1. This Regulation shall determine the conditions under which the competent authorities shall undertake post-clearance recovery of import duties or export duties on goods entered for a customs procedure involving the obligation to pay such duties for which, for whatever reason, payment has not been required of the person liable for payment.

2. For the purposes of this Regulation :

(a) 'import duties' means customs duties and charges having equivalent effect as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(b) 'export duties' means agricultural levies, and other export charges laid down within the framework of the common agricultural policy, or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(c) 'entry in the accounts' means the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined;

(d) 'customs debt' means the obligation on a natural or legal person to pay the amount of the import duties or export duties which apply under the provisions in force to goods liable to such duties.

Article 2

1. Where the competent authorities find that all or part of the amount of import duties or export duties legally due on goods entered for a customs procedure involving the obligation to pay such duties has not been required of the person liable for payment, they shall take action to recover the duties not collected.

However, such action may not be taken after the expiry of a period of three years from the date of entry in the accounts of the amount originally required of the person liable for payment or, where there is no entry in the accounts, from the date on which the customs debt relating to the said goods was incurred.

2. Within the meaning of paragraph 1 action for recovery shall be taken by notifying the person concerned of the amount of import duties or export duties for which he is liable.

Article 3

When the competent authorities find that it is following an act that could give rise to criminal court proceedings that the competent authorities were unable to determine the exact amount of the import duties or export duties legally due on the goods in question, the period laid down in Article 2 shall not apply.

Under these circumstances, the competent authorities shall take action for recovery in accordance with the provisions in force in this respect in the Member States.

Article 4

The action for recovery shall be taken by the competent authorities, subject to the relevant provisions in force, against the natural or legal persons responsible, whether in a principal or in a subsidiary capacity, for the payment of the import duties or export duties on the goods in question, or against their legal successors.

Article 5

1. No action may be taken by the competent authorities for recovery where the amount of the import duties or export duties subsequently found to be lower than the amount legally due was calculated :

— either on the basis of information given by the competent authorities themselves which is binding on them,

— or on the basis of provisions of a general nature subsequently invalidated by a court decision.

2. The competent authorities may refrain from taking action for the post-clearance recovery of import duties 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.

The cases in which the first subparagraph can be applied shall be determined in accordance with the implementing provisions laid down in accordance with the procedure provided for in Article 10.

Article 6

The provisions adopted for implementing Directive 78/453/EEC shall not apply in respect of the amounts to be recovered under Article 2 of this Regulation, without prejudice to Article 7 of that Directive.

Article 7

Where the non-collection of import duties or export duties legally due is attributable to an error made by the competent authorities, no interest on overdue payments shall be charged on sums recovered post-clearance.

Article 8

No action shall be taken for the post-clearance recovery of import duties or export duties where the amount involved for a given action for recovery is less than 10 European units of account.

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

Done at Brussels, 24 July 1979.

Member States may round up or down the amount resulting from the conversion into their national currency of the figure given in the first subparagraph.

Article 9

Until the implementation of Community provisions specifying the conditions under which Member States shall establish the own resources accruing from the imposition of import duties or export duties, Member States are not obliged, where, pursuant to this Regulation, they have taken no action for the post-clearance recovery of such duties, to establish the corresponding own resources within the meaning of Regulation (EEC, Euratom, ECSC) No 2891/77.

Article 10

1. The Committee on Duty Free Arrangements provided for in Article 7 of Council Regulation (EEC) No 1798/75 of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials⁽¹⁾ may examine any question concerning the implementation of this Regulation which is raised by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The provisions necessary for the implementation of Articles 2, 3 and 5 of this Regulation shall be adopted following the procedure laid down in Article 9 (2) and (3) of Regulation (EEC) No 1798/75.

Article 11

This Regulation shall enter into force on 1 July 1980.

For the Council

The President

M. O'KENNEDY

⁽¹⁾ OJ No L 184, 15. 7. 1975, p. 1.