

**CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT, 1979**

No. 30



of 1979

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short title
2. Amendment of section 2 of Cap. 50:01
3. Amendment of section 16 of principal Act
4. Amendment of section 39 of principal Act
5. Amendment of section 44 of principal Act
6. Amendment of section 48 of principal Act
7. Amendment of section 65 of principal Act
8. Amendment of section 66 of principal Act
9. Substitution of section 74 of principal Act
10. Amendment of section 76 of principal Act
11. Amendment of section 77 of principal Act
12. Amendment of section 101 of principal Act
13. Continuation of certain amendments of Schedule Nos. 1, 3, 4, 5 and 6

**AN ACT to amend the Customs and Excise Duty Act**

*Date of Assent:* 10.9.79.

*Date of Commencement:* 19.9.79.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Customs and Excise Duty Short title  
(Amendment) Act, 1979.

2. Section 2 (1) of the Customs and Excise Duty Act (hereinafter Amendment  
referred to as "the principal Act") is hereby amended by substituting of section 2 of  
for the definition of "manufacture", which appears therein, the Cap. 50:01  
following new definition —

““manufacture” includes, in the discretion of the Director, any process —

- (a) in the manufacture of any excisable goods or sales duty goods;
- (b) in the conversion of any goods into excisable goods or sales duty goods;
- (c) whereby the dutiable quantity or value of any excisable goods or sales duty goods is increased in any manner;
- (d) in the recovery of excisable goods or sales duty goods from excisable goods or any other goods; or
- (e) in the packing or measuring off of any excisable goods or sales duty goods;”.

Amendment  
of section 16  
of principal  
Act

3. Section 16 of the principal Act is hereby amended by substituting for subsection (3) thereof the following new subsection —

“(3) The State or any officer shall in no case be liable in respect of any loss or diminution of or damage to any goods in a State warehouse or in respect of any loss or damage sustained by reason of wrong delivery of such goods.”.

Amendment  
of section 39  
of principal  
Act

4. Section 39 (1) of the principal Act is hereby amended by substituting for paragraphs (a) and (b) thereof the following new paragraphs —

“(a) The person entering any imported goods for any purpose in terms of the provisions of this Act shall deliver to the Director a bill of entry in the prescribed form, setting forth the full particulars as indicated on the form and as required by the Director, and according to the purpose (to be specified on such bill of entry) for which the goods are being entered, and shall make and subscribe to a declaration in the prescribed form as to the correctness of the particulars and purpose shown on such bill of entry.

(b) The said person shall further produce the transport documents or such other documents in lieu thereof as may be approved by the Director, invoices as prescribed, shipper’s statement of expenses incurred by him, copy of the confirmation of sale or other contract of purchase and sale, importer’s written clearing instructions and such other documents relating to such goods as the Director may require in each case, and shall answer all such questions relating to such goods as may be put to him by the Director, and furnish in such manner as the Director may determine such information regarding the tariff classification of such goods as the Director may require.”.

Amendment  
of section 44  
of principal  
Act

5. Section 44 of the principal Act is hereby amended —

- (a) by substituting for subsection (4) thereof the following new subsection —

“(4) The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or other document was issued on loading of such goods on to the ship, aircraft or vehicle by means of which they were imported, stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed and placed in a transit shed appointed or prescribed under section 6 (1).”;

(b) by substituting for subsection (8) thereof the following new subsection –

“(8) The manufacturer, owner or purchaser of any excisable goods or sales duty goods shall, subject to the provisions of Part VII, be liable for the duty on such goods and his liability shall continue until such goods have been duly entered and the duty due thereon paid.”.

6. (1) Section 48 of the principal Act is hereby amended by adding thereto, immediately after subsection (8), the following new subsections –

Amendment  
of section 48  
of principal  
Act

“(9) (a) (i) The Director may determine the tariff headings, tariff subheadings or items of any Schedule under which any imported goods or goods manufactured in Botswana shall be classified.

(ii) The acceptance by any officer of a bill of entry or the release of any goods as entered shall be deemed not to be any such determination.

(b) Any determination so made shall, subject to appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(c) The Director may within 90 days from the date of any such determination publish it by notice in the Gazette.

(d) The Director may whenever he deems it expedient amend any such determination or withdraw it and make a new determination with effect from the date of –

- (i) first entry of the goods in question;
- (ii) the notice referred to in paragraph (c);
- (iii) the determination made under paragraph (a);
- (iv) such new determination; or
- (v) such amendment.

(e) An appeal against any such determination shall be lodged with a court of competent jurisdiction in Botswana in

the area wherein the determination was made or the goods in question were entered for home consumption.

(f) Such appeal shall be prosecuted within a period of 90 days from the date of the determination.

(10) Save where —

(a) a determination has been made under subsection (9) (a) or (d); or

(b) any false declaration is made for the purpose of subsection (9),

there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect tariff heading, tariff subheading or item of any Schedule, after a period of two years from the date of entry of such goods.”

(2) Subsection (1) shall come into operation on 1st October, 1979.

Amendment  
of section 65  
of principal  
Act

7. Section 65 of the principal Act is hereby amended by substituting for subsection (3) thereof the following new subsection —

“(3) If the value of any imported goods of a single denomination according to the provisions of this section is —

(a) in excess of one unit of account, such value shall, for the purpose of assessing the amount of duty payable, be calculated to the nearest unit of account, an amount of 0,50 unit of account being regarded as less than one-half of one unit of account;

(b) less than one unit of account, such value shall be calculated as one unit of account.”

Amendment  
of section 66  
of principal  
Act

8. Section 66 of the principal Act is hereby amended —

(a) in subsection (1) thereof, by substituting for paragraph (e) the following new paragraph —

“(e) the price includes all costs, charges and expenses incidental to the sale and to delivery of the goods to the place of final dispatch in the territory of export but does not include any other costs, charges and expenses incidental to the delivery thereof to Botswana;”;

(b) in subsection (3) thereof, by deleting paragraph (c).

Substitution  
of section 74  
of principal  
Act

9. The principal Act is hereby amended by substituting for section 74 thereof the following new section —

“Conversion of prices expressed in foreign currency  
74. The Minister may by regulations determine the rate and time at which the price paid or payable in respect of imported goods shall, if expressed in a foreign currency, be converted into the currency of Botswana.”

Amendment  
of section 76  
of principal  
Act

10. Section 76 of the principal Act is hereby amended —

(a) by inserting, immediately after subsection (4) thereof, the following new subsection —

“(4A) (a) Notwithstanding anything to the contrary contained in this Act, any kerosene, distillate fuel or residual fuel oil which may be entered under rebate of duty under any item of Schedule No. 4 or 6 shall be so entered by the supplier thereof.

(b) Any kerosene, distillate fuel or residual fuel oil so entered shall, if supplied to a reseller or user thereof, be so supplied in such manner and on such conditions as may be prescribed by regulations.

(c) Any reseller so supplied who supplies such kerosene, distillate fuel or residual fuel oil to any user shall so supply it in such manner and on such conditions as may be prescribed by regulations.

(d) If a supplier mentioned in paragraph (a) supplies any kerosene, distillate fuel or residual fuel oil entered as stated in paragraph (a) to any reseller or user contrary to the manner or conditions prescribed therefor by regulations, he shall be liable for such duty thereon as may at the time of such entry, or, if the duty concerned has after such entry been increased, of the payment of such duty, be leviable thereupon as if no rebate of duty applied thereto.

(e) If any reseller mentioned in paragraph (c) supplies any kerosene, distillate fuel or residual fuel oil to any user contrary to the manner or conditions prescribed therefor by regulations, he shall be liable for the duty thereon to the extent of the rebate allowed to the supplier mentioned in paragraph (a) at the time of entry:

Provided that, if the duty in question has after such entry under rebate been increased, the extent of such rebate shall be deemed to be —

- (i) the difference between the duty actually paid on entry for home consumption and such increased duty; or
- (ii) such increased duty if no duty was paid on entry for home consumption.”;

(b) in subsection (5) thereof —

(aa) by inserting, immediately after the word “(a)”, which appears therein, the word “(i)”; and

(bb) by adding, immediately after paragraph (a) (i), the following new subparagraphs —

“(ii) The Director may at any time take stock of goods entered for home consumption and stored on any premises registered by virtue of subsection (10) and duty shall, subject to the provisions of subparagraph (i), be paid forthwith on demand upon any deficiency detected.

(iii) If the stock is found to be greater than the quantity which should be on such premises, the excess shall be debited to stock.”; and

(c) in subsection (15) thereof, by adding, immediately after paragraph (a), the following new paragraph —

“(aa) The Minister may, whenever he deems it expedient in the public interest so to do, by like notice amend any such Schedule with retrospective effect from such date as he may specify in that notice.”.

Amendment  
of section 77  
of principal  
Act

11. Section 77 (2) of the principal Act is hereby amended by substituting for paragraph (c) thereof the following new paragraph—

“(c) a determination under section 48 (9) or incorrect tariff classification;”.

Amendment  
of section  
101 of principal  
Act

12. Section 101 of the principal act is hereby amended by substituting for subsection (2) thereof the following new subsection—

“(2) (a) An agent appointed by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal and any person who represents himself to any officer as the agent of any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal by this Act to any penalty which may be incurred in respect of that matter.

(b) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall by virtue of the provisions of paragraph (a) be relieved from liability for the fulfilment of any obligation imposed on him by this Act and to any penalty which may be incurred in respect thereof.”.

Continuation  
of certain  
amendments  
of Schedule  
Nos. 1, 3, 4,  
5 and 6

13. (1) Every amendment of Schedule Nos. 1, 3, 4, 5 and 6 made under section 50 (1) or (2) or 76 (15) of the principal Act prior to 2nd February, 1979, shall not lapse by virtue of the provisions of section 50 (8) or 76 (16) of the principal Act.

(2) The amendments of Schedule Nos. 1 and 6 made under sections 50 (1) and (2) and 76 (15) of the principal Act by Statutory Instrument No. 28 of 1979 shall not lapse by virtue of the provisions of section 50 (8) or 76 (16) of the principal Act.

(3) (a) Item 410.04 of Schedule No. 4 and item 609.06 of Schedule No. 6 to the principal Act, as published by Statutory Instrument No. 34 of 1979, shall, for the purposes of the Control of Goods Act and the Essential Supplies and Services Act, be deemed not to constitute rebates.

Cap. 43:07  
Cap. 22:07

(b) Paragraph (a) shall be deemed to have come into operation on 12th April, 1979.

(4) The Note to item 317.05 of Schedule No. 3 to the principal Act, published by Statutory Instrument No. 6 of 1978, shall be deemed to have come into operation on 6th January, 1978.

(5) Insofar as it relates to tariff heading No. 85.01.13 of Schedule No. 1 to the principal Act, Statutory Instrument No. 36 of 1978 shall be deemed to have come into operation on 21st May, 1976.

(6) Insofar as it relates to tariff heading No. 59.11 in item 312.01 of Schedule No. 3 to the principal Act, Statutory Instrument No. 67 of 1978 shall be deemed to have come into operation on 7th August, 1975.

(7) During the period 18th April, 1975, to 18th January, 1979, item 306.04 of Schedule No. 3 to the principal Act shall be construed as if there were included therein a provision providing for a rebate of the full duty on hydroxypropyl methylcellulose for the manufacture of colour, paint, varnish and allied products.

(8) Insofar as it relates to tariff heading No. 90.07.60.50 of Schedule No. 1 to the principal Act, Statutory Instrument No. 11 of 1978 shall be deemed to have come into operation on 8th June, 1973.

(9) Paragraph (3) of tariff heading No. 90.07 in sales duty item 148.00 of Schedule No. 1 to the principal Act shall be construed as if it provided for a rate of sales duty of 15% during the period 8th June, 1973, to 23rd August, 1973, a rate of sales duty of 5% during the period 24th August, 1973, to 30th March, 1976, a rate of sales duty of 6.5% during the period 31st March, 1976, to 6th March, 1977, and a rate of sales duty of 8% during the period 7th March, 1977, to 31st December, 1977.

**PASSED** by the National Assembly this 16th day of August, 1979.

**I.P. GONTSE,**  
*Clerk of the National Assembly.*