

CUSTOMS AND EXCISE DUTY (AMENDMENT) (NO. 2) ACT, 1983

No. 31



of 1983

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Customs and Excise Duty Act

Date of Assent: 16.12.83

Date of Commencement: 23.12.83

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Customs and Excise Duty (Amendment) (No. 2) Act, 1983.

Short title
and com-
mencement

(2) Sections 2 and 3 shall come into operation 30 days after the date of publication of this Act in the Gazette.

2. Section 25 of the Customs and Excise Duty Act (in this Act referred to as "the principal Act") is hereby amended by substituting for that section the following new section —

Amendment
of section
25 of
Cap. 50:01

“Transfer of ownership or Director —

pledging or hypothecation of warehoused goods

(a) the owner of any dutiable goods in a customs and excise warehouse may not enter into any agreement whereby —

- (i) his ownership of such goods is transferred to any other person;
- (ii) such goods are pledged or otherwise hypothecated in favour of any other person;

(b) any person in whose favour such goods have been pledged or hypothecated may not enter into any agreement whereby any rights obtained by him by virtue of such pledging or hypothecation are ceded to any other person.

(2) Any agreement entered into contrary to the provisions of subsection (1) shall for the purposes of this Act be deemed to be null and void.”

Amendment of section 39 of principal Act

3. (1) Section 39 of the principal Act is hereby amended by substituting for subsection (3) thereof the following new subsection —

“(3) (a) Every exporter of any goods shall, before such goods are exported from Botswana, deliver to an officer a bill of entry in the prescribed form, but the Director may —

- (i) if no export duty is payable on and no obligation or condition is to be fulfilled or complied with under any law in respect of such goods; or
 - (ii) in the case of goods to be exported overland by way of a vehicle (excluding an aircraft and a train) which are loaded for export at a place other than a place appointed under section 6 where goods may be entered for customs and excise purposes, allow such a bill of entry to be delivered at such time as he deems reasonable.
- (b) For the purposes of paragraph (a), in relation to the delivery of a bill of entry, the goods referred to therein shall be deemed to have been exported from Botswana —
- (i) in the case of goods to be exported via a container terminal, at the time when such goods are delivered to the depot operator or the container operator, as the case may be;
 - (ii) in the case of goods to be exported in an aircraft, at the time when such goods are delivered to the pilot of the aircraft concerned or are brought within the control area of the airport authority concerned, as the case may be;
 - (iii) in the case of goods to be exported in a train, at the time when such goods are delivered to the appropriate Railway Authorities in Botswana;

(iv) in the case of goods to be exported overland in a vehicle (excluding an aircraft and a train), subject to the provisions of paragraph (a), at the time when such goods are loaded on the vehicle concerned.”.

4. Section 41 of the principal Act is hereby amended —

Amendment
of section 41
of principal
Act

(a) by substituting for subparagraph (ii) of paragraph (a) of subsection (3) thereof the following new subparagraph —

“(ii) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 19 or for purposes or use under rebate of duty under section 79, the Director may allow the importer, exporter or manufacturer concerned to adjust that bill of entry by substitution of a fresh bill of entry and cancellation of the original bill of entry, provided such goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate:”;

(b) by inserting after paragraph (a) of the said subsection (3) of the following new paragraph —

“(aA) The provisions of paragraph (a) (ii) shall apply *mutatis mutandis* in respect of a bill of entry in which goods have according to the tariff heading, tariff subheading, item or circumstances according to which such goods are charged with duty, been described in error as goods other than goods intended for —

- (i) storage or manufacture in a customs and excise warehouse under section 19; or
- (ii) purposes or use under rebate of duty under section 79,

in consequence of the fact that —

(aa) a determination of any such tariff heading, tariff subheading or item is, under section 49 (9) (d), amended with retrospective effect as from a date before or on the date on which the goods described in such bill of entry have been entered for home consumption;

(bb) any such determination is, under the said section 49 (9) (d), withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal; or

(cc) any Schedule is amended with such retrospective effect,

and in which such goods, if such amendment or new determination had been in operation on the date on which such goods were so entered, would have been described as goods intended for the said storage or manufacture or the said purposes or use.”; and

(c) by substituting for paragraph (b) of the said subsection (3) of the following new paragraph —

“(b) No application for such substitution as is referred to in paragraph (a) (ii) or in that paragraph as read with paragraph (aA) shall be considered by the Director unless it is received by an officer, supported by the necessary documents and other evidence to prove that such substitution is justified, within a period of three months —

- (i) from the date on which the duty to which the application relates was paid; or
- (ii) in the case of any amendment of a determination referred to in subparagraph (aa) of paragraph (aA) or of a new determination referred to in subparagraph (bb) of the said paragraph (aA), from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the Gazette, the date on which such amendment or new determination is so published; or
- (iii) in the case of an amendment referred to in subparagraph (cc) of the said paragraph (aA), from the date on which such amendment is published by notice in the Gazette.”

Amendment
of section 59
of principal
Act

5. Section 59 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsection —

“(1) Whenever, before any anti-dumping duty is imposed under section 57, the Minister is satisfied that the requirements of section 57 (1) (a), (b) and (c) are satisfied in respect of any class or kind of imported goods, he may, on the recommendation of the Ministry of Commerce and Industry, by notice published in the Gazette impose a provisional charge in relation to anti-dumping duty on imported goods of that class or kind for a period not exceeding four months as from the date of publication of such notice or, if requested thereto by the exporter concerned before the expiry of the said period, for a further period not exceeding two months.”

Amendment
of section 80
of principal
Act

6. Section 80 of the principal Act is hereby amended by substituting for the words preceding the proviso in subsection (4) thereof the following new words —

“No application for a refund or payment in terms of this section shall be considered by the Director unless it is received by an officer, duly completed and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section, within a period of two years —

- (a) from the date on which the duty or charge to which the application relates was paid; or
- (b) in the case where a determination of a tariff heading, tariff subheading or item referred to in paragraph (a) of section 49 (9) or of a value referred to in paragraph (a) of subsection (4) of section 69 is, under paragraph (d) of the said section 49 (9) or subsection (5) of the said section 69, as the case may be, amended with retrospective effect from a date before or on the date on which the duty to which the application relates was paid, or any such determination is, under the said paragraph (d) or subsection (5), as the case may be, withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal, from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the Gazette, the date on which such amendment or new determination is so published; or
- (c) in the case where any Schedule is amended with such retrospective effect, from the date on which such amendment is published by notice in the Gazette.”.

7. Section 111 of the principal Act is hereby amended by substituting for paragraph (a) of subsection (2) thereof the following new paragraph —

Amendment of section 111 of principal Act

“(a) Subject to the provisions of this Act, the Director shall not, except on such conditions, including conditions relating to security, as may be determined by him, allow goods to pass from his control until he has satisfied himself that the provisions of this Act or any law relating to the importation or exportation or transit carriage through Botswana of goods, have been complied with in respect of such goods, and the State or the Director or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Director or for the costs of such detention.”.

8. (1) The substitution, by Statutory Instrument No. 88 of 1980, published on 6th June, 1980, of tariff headings No. 51.01.53.20 and 51.01.53.30 of Part 1 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 12th July, 1978.

Commencement of certain Government Notices

(2) The substitution, by Statutory Instrument No. 117 of 1982, published on 8th October, 1982, of tariff heading No. 87.09.30.30 of Part 1 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 22nd September, 1981.

(3) The substitution, by Statutory Instrument No. 117 of 1982, published on 8th October, 1982, of tariff item 126.35 of Part 2 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 22nd September, 1981.

(4) The substitution, by Statutory Instrument No. 44 of 1983, published on 8th April, 1983, of tariff heading No. 40.02.20 of Part I of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 13th July, 1981.

(5) The substitution, by Statutory Instrument No. 10 of 1983, published on 14th January, 1983, of rebate code 01.00.47 to tariff heading No. 76.03 in item 315.07 of Schedule No. 3 to the principal Act, shall be deemed to have come into operation on 14th July, 1980.

Construction
of tariff
heading No.
56.05 in
item 311.02
of Schedule
No. 3 to
principal
Act

9. Paragraph (2) of tariff heading No. 56.05 in item 311.02 of Schedule No. 3 to the principal Act shall be construed as if it provided for a rebate of the full duty on goods mentioned therein which have been entered for home consumption before 31st August, 1981.

PASSED by the National Assembly this 25th day of November, 1983.

G.M. BASELE,
Acting Clerk of the National Assembly.