

Statutory Instrument No. 167 of 1983

CUSTOMS AND EXCISE DUTY ACT
(50:01)
CUSTOMS AND EXCISE DUTY (AMENDMENT) (No. 2)
REGULATIONS, 1983
(Published on 30th December, 1983)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Amendment of regulation 53 of Cap. 50:01 (Sub. Leg.)
3. Amendment of regulation 54 of principal Regulations
4. Insertion of regulations 54A to 54G in principal Regulations
5. Amendment of Second Schedule to principal Regulations
6. Amendment of paragraph 10, Item 410.00 of Fourth Schedule to principal Regulations

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 125 of the Customs and Excise Duty Act, the following Regulations are hereby made —

1. These Regulations may be cited as the Customs and Excise Duty (Amendment) (No. 2) Regulations, 1983. Citation

2. Regulation 53 of the Customs and Excise Duty Regulations (in these Regulations referred to as "the principal Regulations") is hereby amended by substituting for that regulation the following new regulation — Amendment of regulation 53 of Cap. 50:01 (Sub. Leg.)

"Foreign currency 53. (1) When the value of or the prices paid or payable for any imported goods is expressed in a foreign currency, it shall for the purpose of calculating the customs value thereof, be converted into units of account at a rate determined by the Director to be current at the date of shipment of the goods or, if a rate at that date cannot be determined, the latest rate determined before that date shall be used.

(2) If there is no official rate for a particular currency the Director may determine a rate of exchange.

(3) For the purposes of subregulations (1) and (2), the date of shipment of non-containerised goods shall be the date of the bill of lading, air waybill, consignment note or such other document as the Director may require.

(4) The date of shipment of containerised goods shall be the date on which the container is taken on board ship as endorsed on the bill of lading or arrival notification or, if imported otherwise than by sea, the date of the air waybill, consignment note or such other document as the Director may require."

3. Regulation 54 of the principal Regulations is hereby amended by substituting for that regulation, the following new regulation — Amendment of regulation 54 of principal Regulations

"Exemptions 54. The following classes or kinds of goods are exempted from the requirements of section 70(2)(c) of the Act —
(a) goods not exceeding 1 000 units of account in value;

- (b) goods which are not liable to an *ad valorem* duty, or to an *ad valorem* duty in addition to or as an alternative to any other duty;
- (c) goods cleared under the provisions of paragraphs (i) to (iv) of the proviso to section 39 (1) (a);
- (d) goods entered under rebate of duty provided for in items 401.00 to 404.02, 404.03/30.02, 405.01, 405.02, 405.03/37.05 to 405.03/90.10, 405.04/II to 405.02/92.12, 405.05/92.00, 405.05/92.12, 405.05/II, 405.06 to 405.08, 405.20 to 408.01, 408.02/94.00 to 408.03, 410.01 to 410.02/12.01, 410.03/22.03 to 411.00/85.01 (3), 411.00/89.01, 411.00/89.02, 412.02 to 412.04, 412.06, 412.08 to 412.14, 412.16, 412.20 to 460.06/29.02 (2), 460.06/29.04 to 460.06/29.16 (1), 460.06/29.31, 460.06/29.35, 460.06/30.03 (2) to 460.16/85.21, 460.17/87.01 (2), 460.24 and all items of Part 3 of Schedule No. 4; and
- (e) goods which the Director may from time to time exempt from the obligation to make the prescribed declaration."

Insertion of regulations 54A to 54G in principal Regulations

4. The principal Regulations are hereby amended by inserting immediately after regulation 54 thereof the following new regulations —

"Related persons

54A. The tests provided for in section 70 (3) (b) of the Act shall be used on request of the importer and for comparative purposes only.

Valuation code on bill of entry

54B. (1) For the purposes of section 70 (2) (c) of the Act any importer who is —

- (a) related to the supplier of the goods shall so indicate, in the field "Valuation Code" on the bill of entry, by inserting the letter "R";
- (b) not related to the supplier of the goods shall so indicate, in the field "Valuation Code" on the bill of entry, by inserting the letter "N".

(2) Every importer of goods exempted in terms of regulation 54 shall indicate such exemption by inserting the letter "E" in the field "Valuation Code" on the bill of entry.

Valuation methods.

54C. The valuation methods prescribed in sections 70 (1), 70 (4), 70 (5), 70 (7), 70 (8) and 70 (9) of the Act shall be known as Valuation Methods 1 to 6, respectively, and every importer shall indicate which Valuation Method is applicable to his goods by inserting in the field "Valuation Code" on the bill of entry after the letter "R" or "N" as required by regulation 54B the appropriate method number:

Provided that importers of the classes or kinds of goods enumerated in regulation 54 are exempted from this requirement.

Furnishing of information

54D. The Director shall, whenever he deems it expedient, for purposes of determining a customs value, request the importer to furnish such information as he may require on a form CE 55 or in any other manner, and the importer shall furnish the Director with such information not later than 30 days from the date of such request.

Value determination

54E. The Director shall allocate a number to any determination in respect of a customs value issued by him and shall notify the importer in writing of such determination and its number. The importer shall, in respect of future consignments from the same supplier, insert such value determination number in the field "Additional Information" on the bill of entry.

Method of determining value

54F. The Commissioner shall on request advise the importer in writing of the method used in determining the customs value of his goods, provided such request is received within 30 days from the date of such determination.

Additions to price

54G. The Director shall in determining the value for duty purposes of any imported goods make no additions, except those specified in section 71 (1) of the Act, to the price actually paid or payable for such goods."

5. The Second Schedule to the principal Regulations is hereby amended —

Amendment of Second Schedule to principal Regulations

(a) by deleting therefrom the following Index of Forms, namely, "CE.10, CE.12, CE.13, CE.16, CE.17, CE.18, CE.19, CE.20, CE.21, CE.50, CE.51 and CE.52";

(b) by substituting for Index of Forms, "CE.137, CE.137A and CE.138", the following new Index of Forms —

"CE.137 Declaration to be furnished by users of distillate fuels (Gas Oil and Diesel Oil) and residual fuel oils (Furnace Oil) supplied under rebate of duty

CE.138 Declaration to be furnished by resellers of distillate fuels (Gas Oil and Diesel Oil) and residual fuel oils (Furnace Oil) supplied under rebate of duty

CE.139 Blanket declaration to be furnished by users of distillate fuels (Gas Oil and Diesel Oil) and residual fuel Oils (Furnace Oil) supplied under rebate of duty

CE.140 Blanket declaration to be furnished by resellers of distillate fuels (Gas Oil and Diesel Oil) and residual fuel Oils (Furnace Oil) supplied under rebate of duty."; and

(c) by adding at the end of the Schedule the following new Index of Forms —

"CE.500 Bill of Entry (direct)

CE.501 Continuation Sheet: Bill of Entry (direct)

CE.504 Voucher of Correction: Bill of Entry (direct)

CE.600 Bill of Entry (ex warehouse) Imported Goods

CE.601 Continuation Sheet: Bill of Entry (ex warehouse) Imported Goods.

CE.604 Voucher of Correction: Bill of Entry (ex warehouse) Imported Goods

CE.610 Bill of Entry (ex warehouse) Local Products

CE.611 Continuation Sheet: Bill of Entry (ex warehouse) Local Products

CE.614 Voucher of Correction: Bill of Entry (ex warehouse) Local Products"

Amendment
of
paragraph
10, Item
410.00 of
Fourth
Schedule
to
principal
Regulations

6. Paragraph 10 item 410.00 of the Fourth Schedule to the principal Regulations, is hereby amended by substituting for subparagraph (9) thereof, the following new subparagraph —

“(9) 410.04.04

(I) For the purposes of this regulation —

(a) “supplier” means any of the following companies —

BP Botswana (Proprietary) Limited
Caltex Oil (Botswana) (Proprietary) Limited
Mobil Oil Botswana (Proprietary) Limited
Shell Oil Botswana (Proprietary) Limited
Total Botswana (Proprietary) Limited

“reseller” means any person who deals in rebated fuel as defined in subparagraph (c) in the course of or as part of the activities of a business carried on by him, but excluding any person who supplies such fuel to any other person in terms of a contract of letting or hiring of work or services;

(c) “rebated fuel” means distillate fuels or residual fuel oils entered under rebate of duty in terms of section 79 (5) of the Act for the purposes or uses mentioned in paragraphs (1) to (4) of tariff heading No. 27.10 of item 410.04;

(d) “user” means any person who obtains rebated fuel for the purposes mentioned in paragraphs (1) to (4) of tariff heading No. 27.10 of item 410.04 and includes any persons who supplies such fuel to any other person in terms of a contract of letting or hiring of work or services.

(II) No person shall be entitled to be supplied with rebated fuel, unless, at the time of purchase or delivery thereof he furnishes the supplier or reseller with a declaration in form CE.137 or CE.138, as the case may be, and no supplier or reseller shall supply or sell rebated fuel unless the person to whom it is supplied or sold, has complied with the provisions of this paragraph:

Provided that the Director may allow in lieu of a separate declaration, the furnishing of a blanket declaration in form CE.139 or CE. 140, as the case may be, for purchaser deliveries in bulk quantities of not less than 200 litres per container other than pump deliveries into vehicle fuel tanks:

Provided further that a supplier or a reseller may deliver rebated fuel purchased in terms of the provisions of paragraphs (2) and (3) of tariff heading No. 27.10 of item 410.04 in any quantities and in any manner, except as provided for in item 410.04.04 (4), provided a blanket declaration has been furnished to such supplier or reseller.

(III) The blanket declaration provided for in paragraph (II) or the benefits it confers shall not be transferable.

(IV) No supplier or reseller shall dispense rebated fuel into a vehicle fuel tank from a tanker lorry or trailer or other portable or mobile container.

- (V) Any reseller of rebated fuel may —
- (a) purchase it at a price which includes any of the effective rates of duty;
 - (b) sell it at a price which includes any duty equal to or in excess of the 3.65 UA per 1 000 litre duty paid by the supplier on entering such fuel for home consumption;
 - (c) use it in the ordinary course of his business or dispose thereof in circumstances which render it liable to duty equal to or in excess of 3.65 UA per 1 000 litres; or
 - (d) mix it in his fixed vessel with distillate fuel or residual fuel oil on which the full duty has been paid:

Provided that he alternates his purchases on each occasion at prices which include the different effective rates of duty to the extent that such purchases are duly reconciled with sales, disposals or uses of such fuel in circumstances which render it liable to different effective rates of duty.

- (VI) No supplier or reseller shall supply, sell, otherwise dispose of or use rebated fuel unless a numbered and dated invoice is issued indicating the quantity, price, buyer's name and business address and the registration letters and numbers of the vehicle when it is supplied as fuel into the tank of such vehicle.
- (VII) A supplier or reseller shall keep declarations (excluding blanket declarations) with the copies of the relative invoices issued by him.
- (VIII) The supply or sale of rebated fuel under cover of invoices or declarations which are not completed in all respects shall be regarded as being in conflict with the manner and conditions mentioned in this subparagraph and such supplier or reseller shall be liable for the duty thereon as provided for in section 79 (5) of the Act:

Provided that a supplier or reseller shall be allowed a period of 60 days from the date of receipt of a blanket declaration which is not complete in all respects to have such declaration completed.

- (IX) Any supplier of rebated fuel shall keep a monthly reconciliation of opening stock, receipts, total supplied, sold or used and closing stock of such fuel and shall render to the proper officer in addition to the return specified in sub-subparagraph (XIII) such returns in the form and at the time as the Director may determine.
- (X) (a) Any reseller of rebated fuel shall be registered with the proper officer to obtain such fuel.
- (b) Any reseller of rebated fuel shall keep a bound register in which at least the following particulars shall be entered on a daily basis —
- (i) total purchases and total quantity supplied, sold or used in respect of each of the rebated fuels subject to the different extent of rebate of duty;

- (ii) total quantity of rebated fuel supplied or sold at a price which includes the full duty or used or disposed of in any circumstances which render it liable to such full duty;
 - (iii) purchases and sales of distillate fuels or residual fuel oils at a price which includes the full duty.
 - (c) The register shall be balanced on a three monthly basis and opening and closing stocks as well as any deficiency or surplus must be reflected therein.
 - (d) The register shall contain a declaration certifying to the correctness of all entries made therein. Such declaration shall be entered in the register at the end of each three monthly period and shall, in the case of a sole proprietorship be given by the owner, in the case of a partnership by a partner and in the case of a company by a director, manager, secretary or accountant.
 - (e) The books, documents and stocks of a person registered under this subparagraph (hereinafter referred to as a "registered person") shall at all reasonable times be open for inspection by the proper officer.
 - (f) A registered person shall notify the proper officer immediately, or in advance, of any change, no matter of what nature, in his legal identity, the name under which he trades and the address of his premises.
 - (g) The Director may, at any time, call upon the registered person to submit a statement of account in a form approved by him.
 - (h) Any reseller who supplies, sells, disposes of or uses rebated fuel without the declaration mentioned in sub-subparagraph (II) having been obtained or in any manner whatsoever in circumstances where the full duty is due in terms of section 79 (5) of the Act and these Regulations, shall purchase distillate fuel or residual fuel oil from the supplier at a price inclusive of the full duty in substitution of rebated fuel for the purpose of the reconciliation referred to in sub-subparagraph (V).
- (XI) (a) Any supplier who uses or who supplies or sells rebated fuel to resellers, users or any other person —
- (i) at a price which includes any duty in excess of the 3.65 UA per 1 000 litres duty paid on entering such fuel for home consumption; or
 - (ii) for a purpose which renders it liable to duty in excess of 3.65 UA per 1 000 litres; or
 - (iii) without the declaration mentioned in sub-paragraph (II) having been furnished or obtained; or
 - (iv) in any manner whatsoever in circumstances where duty is due in terms of section 79 (5) of the Act and these Regulations,

shall pay the duty due, in excess of the 3.65 UA per 1 000 litres paid on entering such fuel for home consumption, within 30 days after the date of closing of his accounts for the month in which such supply, sale, disposal or use took place.

- (b) The payment of duty mentioned in the preceding provisions of this sub-subparagraph shall be made in a single amount to the proper officer in whose area of control such supplier is situated or to such other officer as the Director may determine.
- (XII) (a) Any user of rebated fuel subject to different extent of rebate of duty may receive and mix it with distillate fuel or residual fuel oil on which the full duty has been paid in his fixed vessel provided such user, other than a supplier who uses such rebated fuel in the ordinary course of his business, alternates his purchases on each occasion at prices which include the different effective rates to the extent that such purchases are duly reconciled with uses of rebated fuel in circumstances which render it liable to a different effective rate of duty.
- (b) Failure to balance purchases with uses as provided for in the preceding provisions of this sub-subparagraph shall be deemed to be application of rebated fuel contrary to the provisions of the rebate item under which it was acquired and shall render such act and such fuel subject to the provisions of section 79(6) (b) of the Act.
- (XIII) (a) A supplier of rebated fuel shall furnish to the proper officer in the form approved by the Director and at the times required by him, a return for any period of three months or as indicated by him, which shall include —
- (i) depot number;
 - (ii) name, address and account number of purchaser;
 - (iii) invoice number and date;
 - (iv) quantity supplied at each effective rate of duty;
 - (v) names and addresses of resellers purchasing rebated fuel at a price which includes any of the effective rates of duty;
 - (vi) a progressive total of rebated fuel supplied to each purchaser at each effective rate of duty during any accounting year of the supplier.
- (b) A supplier shall maintain a record at his head office reflecting separate quantities of rebated fuel supplied or sold at prices which include in each case a rate of duty in excess of 3.65 UA per 1 000 litres.
- (XIV) (a) Any supplier or reseller shall keep safely copies of the required invoices of purchases, supply or sales, disposals or uses, declarations (including blanket declarations which shall be kept in alphabetical order), the returns and such other books and documents

relating to such purchases, supply or sales, disposals or uses, as the Director may require, for a period of two years from the date of such purchases, supply or sales, disposals or uses and have them available at all reasonable times for inspection by the proper officer.

(b) Any user who —

(i) obtains rebated fuel; or

(ii) obtains rebated fuel as well as distillate fuel or residual fuel oil on which the full duty has been paid, shall keep safely all invoices and receipts, a record of use in the form approved by the Director and such other books and documents as the Director may require, for a period of two years from the date of use and have them available at all reasonable times for inspection by the proper officer.

(XV) Copies of section 79 (5) and (6) of the Act, the relevant rebate items and these Regulations shall be displayed prominently in the office of the supplier or reseller of rebated fuel.

MADE this 16th day of December, 1983.

P.S. MMUSI,
*Vice-President and Minister of
Finance and Development Planning.*

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