

**CUSTOMS AND EXCISE DUTY (AMENDMENT) (NO. 2)
ACT, 1985**

No. 23



of 1985

ARRANGEMENT OF SECTIONS

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An Act to amend the Customs and Excise Duty Act

Date of Assent: 17.12.85

Date of Commencement: 27.12.85

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Customs and Excise Duty (Amendment) (No. 2) Act, 1985.

Short title
and-com-
mencement

(2) The provisions of paragraph (bB) inserted in subsection (19) of section 79 of the Customs and Excise Duty Act (in this Act referred to as the "principal Act") by section 12 of this Act shall be deemed to have come into operation on 1st July, 1983.

2. Section 7 of the principal Act is hereby amended by the deletion of paragraph (a) of subsection (2) thereof.

Amendment
of section 7
of principal
Act

3. Section 9 of the principal Act is hereby amended by the deletion of subsection (1) thereof.

Amendment
of section 9
of principal
Act

**Amendment
of section 13
of principal
Act**

- 4. Section 13 of the principal Act is hereby amended —**
(a) by substituting for subsection (1) thereof the following new subsection —

“(1) For the purposes of entry and collection of duty on goods imported into Botswana by post, any form or label completed by the sender in respect of the postal item in question and on which the particulars necessary for the assessment of duty are set forth, shall be deemed to be an entry made under the provisions of this Act, and the particulars on any such form or label shall, for the purposes of this Act, be taken as the declaration to be made by the importer under section 39:

Provided that the Minister may by regulation exclude from the provisions of this subsection any goods of a class or kind specified in such regulation or any such goods imported in circumstances so specified.”;

- (b) by the deletion of subsection (2) thereof;**
(c) by substituting for subsections (3) and (4) thereof the following new subsections —

“(3) Notwithstanding anything contained in subsection (1), any goods imported by post which the addressee desires to enter for warehousing, or for removal or export in bond, or under any heading or item of Schedule No. 1 which requires that a certificate be given or a condition be complied with, or under any item of Schedule No. 3, or under any item of Schedule No. 2, 4, 5 or 7 specified by the Director, shall be so entered at a customs and excise office before an officer.

(4) In the case of goods exported by post, any form or label affixed to or completed in respect of a postal item and on which a description of the contents and their value are set forth, shall be deemed to be a bill of entry for export as required by this Act.”

- 5. Section 14 of the principal Act is hereby amended —**
(a) by substituting for subsection (1) thereof the following new subsection —

“(1) Any person entering or leaving Botswana shall, in such manner as the Director may determine, unreservedly declare all goods in his possession which he brought with him into Botswana or proposes taking with him beyond the borders of Botswana, and shall furnish an officer with full particulars thereof, answer fully and truthfully all questions put to him by such officer and, if required by such officer to do so, produce and open such goods for inspection by the said officer, and shall pay the duty assessed by such officer to the proper officer.”;

- (b) by inserting immediately after subsection (1) thereof the following new subsection —**

**Amendment
of section 14
of principal
Act**

“(1A) Any declaration made in terms of subsection (1) shall, for the purposes of this Act, be deemed to be an entry for home consumption or export, as the case may be.”

6. The principal Act is hereby amended by inserting immediately after section 40 the following new section —

“Sale in transit

40A. Notwithstanding anything to the contrary in this Act contained, the importer of any goods purchased from any Botswana consignee after shipment of those goods but before the date of entry thereof, shall produce to the proper officer the invoice relating to such purchase, and the price actually paid or payable for those goods by virtue of such purchase shall, for the purposes of section 69 (1), be the transaction value of those goods.”.

Insertion of section 40A in principal Act

7. Section 46 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsection —

Amendment of section 46 of principal Act

“(1) (a) Notwithstanding anything to the contrary in this Act contained, all goods consigned to or imported into Botswana or stored or manufactured in a customs and excise warehouse or removed in bond shall, upon being entered for home consumption, be liable to such duties (including anti-dumping duties and countervailing duties specified in Schedule No. 2 and new or increased duties referred to in section 60 (1) and duties imposed under the provisions of section 54) as may at the time of such entry be leviable upon such goods.

(b) Notwithstanding the provisions of paragraph (a) but subject to the provisions of section 41, any dutiable goods imported into or manufactured in Botswana and which were removed, taken or delivered without due entry for home consumption having been made in respect of such goods, shall be liable to such duties as may be leviable upon such goods at the time of such removal, taking or delivery or at the time of assessment by an officer which ever yields the greater amount of duty.”.

8. The principal Act is hereby amended by inserting immediately after section 49 the following new section —

“Prohibition of certain acts in respect of goods not entered for home consumption

49A. (1) Subject to the provisions of this Act, no person shall remove, receive, take, deliver or deal with or in any imported or excisable goods intended for home consumption unless such goods have been duly entered for home consumption.

(2) If an officer discovers any imported or excisable goods which are alleged to have been duly entered, in terms of any agreement, for home consumption in any territory with the government of which Botswana has

Insertion of section 49A in principal Act

supply of any such distillate fuel or residual fuel oil so supplied, shall be deemed to have supplied such distillate fuel or residual fuel oil for a purpose or use other than a purpose or use stated in any item of Schedule No. 4 or 6, and shall be liable for, and shall pay on demand by the Director, the following duty —

- (i) in the case of such supplier, such duty as is contemplated in paragraph (d),
 - (ii) in the case of such reseller, such duty as is contemplated in paragraph (e).”;
- (b) by substituting for paragraphs (a) and (b) of subsection (19) the following new paragraphs —
- “(a) in the case of imported crude petroleum naphtha for use in the refining of petroleum products, or imported or excisable petrol, 0,25 per cent of any quantity entered for storage in any customs and excise storage warehouse;
 - (b) in the case of wine spirits (ethyl alcohol) manufactured in Botswana and entered for storage in a customs and excise storage warehouse, excluding spirits specified in paragraph (bB), 1,5 per cent of the quantity so entered;
 - (bA) in the case of spirits (ethyl alcohol), other than wine spirits manufactured in Botswana, 1,5 per cent of the quantity so manufactured and entered for use in making spirituous beverages;
 - (bB) in the case of unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in a customs and excise warehouse approved for that purpose, such percentage, but not exceeding 1,25 per cent, of the quantity so removed as may in the opinion of the Director represent a loss incurred whilst the spirits in question are so removed and stored for such period as the Director may determine;”.

Amendment
of section 107
of principal
Act

13. Section 107 of the principal Act is hereby amended by substituting for subsection (4) thereof, the following new subsection —

“(4) If in any prosecution under this Act or in any dispute in which the State, the Minister or the Director or any officer is a party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully imported, exported, manufactured, removed or otherwise dealt with or in, or whether any forms or invoices required by regulation to be completed and kept, exist or have been duly completed and signed or have been furnished to any officer, it shall be presumed that such duty has not been paid or that such goods or plant have not been lawfully imported, exported, manufactured, removed or otherwise dealt with or

terms of subsection (1) or (2), plus any non-rebated excise duty payable in terms of section A of Part 2 of Schedule No. 1 on such goods.

(b) The provisions of subsection (3) or (4) of section 73 shall *mutatis mutandis* apply to the calculation or determination of the value for excise duty purposes of any goods specified in section B of Part 2 of Schedule No. 1 and entered in terms of item 617.01 of Schedule No. 6.”.

11. Section 78 of the principal Act is hereby amended —

(a) by substituting for subsection (1) thereof the following new subsection —

“(1) The interpretation of sections 69, 70 and 71 shall be subject to the agreement concluded at Geneva on 12th April, 1979, and known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the Interpretative Notes thereto, the Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies issued under the said Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.”;

(b) by substituting for subsection (2) thereof the following new subsection —

“(2) (a) The Director shall obtain and keep in his office two copies of such Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies and shall effect thereto any amendment thereof of which he is notified by the Secretariat of the Customs Co-operation Council, Brussels.

(b) Whenever in any legal proceedings any question arises as to the contents of the said Agreement, or any such Interpretative Note, Advisory Opinion, Commentary, Explanatory Note, Case Study or Study (in this paragraph referred to as the ‘relevant document’), or as to the date upon which any amendment thereof was effected thereto in terms of paragraph (a), a copy of the relevant document shall be accepted as sufficient evidence of the contents thereof or of the effective date of any amendment thereof, as the case may be.”.

12. Section 79 of the principal Act is hereby amended —

(a) by inserting immediately after paragraph (c) of subsection (5), the following new paragraph —

“(cA) Notwithstanding anything to the contrary in this Act contained, any supplier or reseller who has supplied to any reseller or user any distillate fuel or residual fuel oil entered as stated in paragraph (a) and who fails to forthwith furnish an officer at his request with the forms and invoices required by regulation to be completed and kept in respect of the

Amendment
of section 78
of principal
Act

Amendment
of section 79
of principal
Act

in, or that such forms or invoices do not exist or have not been duly completed and signed or have not been so furnished, as the case may be, unless the contrary is proved.”.

14. Section 119 of the principal Act is hereby amended by substituting for paragraph (a) of subsection (1) thereof the following new paragraph —

Amendment
of section 119
of principal
Act

“(a) The correct amount of duty payable in respect of any goods imported into or exported from Botswana or any goods manufactured in Botswana and any interest payable under this Act and any fine, penalty or forfeiture incurred under this Act shall, from the time when it should have been paid, constitute a debt to the State by the person concerned, and any goods in a customs and excise warehouse or in the custody of the department (including goods in a rebate storeroom) and belonging to that person, and any goods afterwards imported or exported by the person by whom the debt is due, and any imported goods in the possession or under the control of such person or on any premises in the possession or under the control of such person, and any goods in respect of which an excise or sales duty is prescribed (whether or not such duty has been paid) and any materials for the manufacture of such goods in the possession or under the control of such person or on any premises in the possession or under the control of such person and any vehicles, machinery, plant or equipment in the possession or under the control of such person in which dutiable fuel is used, transported or stored, may be detained in accordance with the provisions of subsection (2) and shall be subject to a lien until such debt is paid.”.

15. The insertion, by Statutory Instrument No. 47 of 1985, published on 3rd May, 1985, of item 409.07 in Schedule No. 4 to the principal Act, shall be deemed to have come into operation on 25th October, 1983.

Commence-
ment date
of S.I. 47
of 1985

16. For the purposes of section 41 (3) of the principal Act —

- (a) bills of entry passed during the period 12th June 1984 up to and including 2nd August, 1984 in relation to panel vans shall, notwithstanding the provisions of item 460.17 (in relation to tariff heading No. 87.02) of Schedule No. 4, be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under section 79;
- (b) such panel vans shall be deemed to have qualified at the time duty was paid thereon in all respects for rebate;
- (c) the duty paid on the panel vans concerned shall be deemed to have been paid on the date of commencement of this Act.

Application
of section
41 of
principal
Act in
relation to
panel vans

PASSED by the National Assembly this 27th day of November, 1985.

C.G. MOKOBI,
Clerk of the National Assembly.