

CUSTOMS AND EXCISE DUTY (AMENDMENT) (NO. 2), ACT, 1989

No. 13



of 1989

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Customs and Excise Duty Act

Date of Assent: 31st August, 1989.

Date of Commencement: 8th September, 1989.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Customs and Excise Duty (Amendment) (No. 2), Act, 1989. Short title

2. Section 37 of the Customs and Excise Duty Act (hereinafter referred to as the principal Act) is hereby amended by the substitution for subsection (1) thereof of the following new subsection — Amendment of section 37 of Cap. 50:01

“(1) Every manufacturer of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1, every owner of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1, manufactured for him partly or wholly from materials owned by such owner, and every dealer of a class designated by the Director, in pearls, precious and semi-precious stones, precious metals, metals clad with precious metals or articles containing or

manufactured of such pearls, precious and semi-precious stones, precious metals or metals clad with precious metals (excluding imitation jewellery), shall licence his premises as a special customs and excise warehouse for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 in terms of the provisions of this Act and no such manufacturer, owner or dealer shall manufacture or deal in or with sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 unless he has so licenced his premises:

Provided that the Director may in his discretion and to the extent he deems fit, exempt, on the conditions imposed by him in each case, any such manufacturer or owner from the requirements of this Act.

(2) Subsection (1) of this section shall be deemed to have come into operation —

(a) in respect of the deletion of the words “manufacturer of” and the insertion of the words “of a class designated by the Director” and the deletion of the words “or dealer” on 17th June, 1970; and

(b) in respect of the deletion of the word “rolled” and the insertion of the words “metals clad with” on 1st January, 1988.”

Amendment
of section
40 of the
Principal
Act

3. Section 40 of the principal Act is hereby amended by the insertion after subsection (3) of the following new subsection —

“(3A) The Director may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods exported or any class or kind of goods exported or any goods exported in circumstances or to a destination specified by him.”

Amendment
of section
49 of the
principal
Act

4. (1) Section 49 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words —

“In addition to any fiscal duty which may be payable under section (2), customs duty at the most-favoured-nation-rate specified following in any tariff heading or sub-heading in Part I of Schedule No. 1 shall apply to any goods to which such heading or subheading relates if such goods were produced or manufactured in any territory—”.

(2) Subsection (1) of this section shall be deemed to have come into operation on 1st January, 1988.

Amendment
of section
70 of the
principal
Act

5. Section 70 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (9) of the new paragraph —

“(d) the cost of transporting, loading, unloading, handling and insurance and associated costs incidental to delivery of the imported goods at the port or place of export

in the country of exportation and placing those goods on board ship or any vehicle, or in a container as defined in section 2 (2), at that port or place, ready for export to Botswana.”

6. Section 71 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (1) of the following new paragraph —

Amendment
of section
71 of the
principal
Act

“(e) to the extent that they are not included in the price actually paid or payable for the goods, the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board ship or any vehicle or in a container as defined in section 2 (2) at that port or place, ready for export to Botswana.”

7. (1) Section 72 of the principal Act is hereby amended by the substitution for subsection (4) of the following new subsection —

Amendment
of section
72 of the
principal
Act

“(4) (a) Notwithstanding the provisions of subsections (1) and (2), the value for excise duty purposes of any goods manufactured in Botswana and specified in Section B of Part 2 of Schedule No. 1 (other than goods specified in item 617.01 of Schedule No. 6) shall be the value for excise duty purposes of such goods calculated or determined in 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 item 617.01 of Schedule No. 6.”

(2) Subsection (1) shall be deemed to have come into operation on 31st July, 1985.

8. (1) Section 79 of the principal Act is hereby amended —

Amendment
of section
79 of the
principal
Act

(a) by the insertion after paragraph (f) of subsection (1) of the following new paragraph as paragraph (g) —

“(g) (i) a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, surcharge or fuel levy leviable on any distillate fuel shall be granted to the extent stated in item 533.01 of Schedule No. 5 in which such fuel is specified, subject to compliance with the provisions of the said item, or a refund of the excise duty or fuel levy leviable on such fuel shall be granted to the extent stated in item 609.05.10 of Schedule No. 6 in which such fuel is specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to any user who has purchased and used such distillate fuel in accordance

with the provisions of the said items of Schedule No. 5 or 6 or to any person indicated in the notes to the said Schedule No. 5 or 6: Provided that no such refund shall be paid to any government department, administration or any body, institution or authority mentioned in item 401.00 of Schedule No. 4 and item 601.00 of Schedule No. 6 including any university, college, school or other educational institution or any regional or local authority, except as provided in the notes to the said Schedule No. 5 or 6;

(ii) notwithstanding the provisions of subparagraph (i), the Director may in his discretion investigate any such purchase or use to establish whether such fuel has been duly entered or is deemed to have been duly entered in terms of this Act or has been so used and may refuse to allow or pay any such refund if he is not satisfied that such fuel has been so entered or used;

(iii) any such distillate fuel purchased shall be deemed to have been used in the order of the dates of such purchases;

(iv) the extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. 5 or 6 in operation on the date of issue of the invoice concerned referred to in subsection (4A) (b) (ii);

(v) if the extent of such refund is amended and for any reason any liability to repay any refund of duty in respect of any quantity of fuel which the user may incur cannot be assessed or the amount of duty refundable to such user in terms of any item of Schedule No. 5 or 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to the user, shall be determined by the Director according to the information at his disposal;"

(b) by the insertion of the following new paragraph as paragraph (h) to subsection (1) —

"(h) any refund referred to in paragraph (f) (i) may be granted and paid to any person entitled to that refund in terms of this Act, by any official of any administration to which the moneys concerned have been rendered available by the Director."

(c) by the insertion after subsection (1) of the following new subsection —

“(1A) (a) Notwithstanding anything to the contrary in this Act contained, the Director may in his discretion and subject to such conditions, including conditions as to the registration of the person concerned, as he may in each case impose, allow in respect of any refund referred to in subsection (1) (f) (i) any person to grant a provisional refund of duty to any registered user of distillate fuel who purchases such fuel from that person;

(b) any such provisional refund shall be granted in accordance with an estimate of intended use furnished by such user to the person concerned;

(c) the Director may pay to such person or allow him to set off in terms of section 81 against duty for which he is liable, any amount which he granted to such registered user at such times and on furnishing of such particulars as the Director may specify;

(d) any amount paid in error by the Director to such person shall be recoverable from such person as provided in section 80A;

(e) the Director may cancel the said registration of such person if such person claims or receives any amount or payment to which he is not intitled;

(f) any provisional refund granted by such person to such user shall, subject to the provisions of paragraphs (g), (h) and (i), be deemed to be a refund paid by the Director in terms of subsection (1) (f) (i);

(g) (i) Any user who has been granted such a provisional refund shall, in relation to the actual use by him of the fuel concerned, furnish the director at such times as may be prescribed by regulation with a declaration in such form and supported by such documents as may be prescribed by regulation;

(ii) such declaration shall be deemed to be an application for a refund referred to in subsection (4A) (b) (i);

(h) (i) if the Director is satisfied after considering the said declaration that the provisional refund granted to the user concerned either exceeds or falls short of any amount refundable in terms of item 533.01 of Schedule No.5 or items 609.05.10 of Schedule No. 6, such excess shall be paid by that user upon demand by the Director and any shortfall shall be refunded by the Director to him;

(ii) if that user fails to pay the amount demanded in terms of subparagraph (i), such amount shall be recoverable in terms of section 80A;

(i) any user of fuel who has been granted a provisional refund and who fails to comply with the provisions of

paragraph (g) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (h), and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable in terms of section 80A.”

(d) by the deletion of subsection (3) and the insertion after subsection (4) of the following —

“(4A) (a) No. person shall be entitled to refund of customs or excise duty on any distillate fuel in terms of the provisions of items 533.01 of Schedule No. 5 or item 609.05.10 of Schedule No. 6 unless he is registered as a user of such fuel with the Director.

(b) (i) Any application for refund of such duty shall be in such form and shall declare such particulars and be supported by such documents and shall be for such quantities and for such periods as may be prescribed by regulation;

(ii) any seller of such fuel shall furnish any such user with an invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed by regulation.

(c) Any registered user shall complete and keep such books, accounts and documents and furnish at such times such particulars of the ship, vehicle, machinery or other equipment in which such fuel is used or any other particulars as may be prescribed by regulation.

(d) Notwithstanding anything to the contrary in this Act contained, any user of such fuel who has been granted such refund and who fails to forthwith furnish an officer at his request with the books, accounts and documents required by regulation to be completed and kept in respect of the use of any distillate fuel purchased by him shall be deemed to have used such distillate fuel for a purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (a) and the use declared in the relevant application for refund and shall pay on demand to the Director the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Director may in his discretion determine, during a period of two years prior to the date of such request by such officer, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned.

(e) The Director may refuse to register, as provided in paragraph (a), any person mentioned in that paragraph, or cancel such registration, if such person fails to

complete, keep or furnish such accounts, books or documents as may be prescribed by regulation, or claims or receives as any refund or payment to which he is not entitled in terms of the said items of Schedule No. 5 or 6.”

(e) by the insertion after subsection (8) of the following —

“(8A) Any person to whom a refund of customs or excise duty has been granted on any distillate fuel in terms of the provisions of item 533.01 of Schedule No. 5 of item 609.05.10 of Schedule No. 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for refund, shall pay on demand to the Director the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Director may in his discretion determine, during such period of two years as the Director may determine, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned.”

(2) (a) Paragraph (c) of subsection (1) of this section shall be deemed to have come into operation on 1st July, 1984.

(b) Paragraphs (a), (b) and (d) of subsection (1) of this section shall be deemed to have come into operation on 1st November, 1987.

9. Section 80 of the principal Act is hereby amended by the insertion of paragraph (g) to subsection (2) as follows —

“(g) the duty having been reduced or withdrawn as provided for in section 51 (2).”

Amendment
of section
80 of the
principal
Act

10. (1) Section 80A of the principal Act is amended by the insertion of a new subsection (2), the original section becoming subsection (1) of section 80A —

“(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 81 (1) (a).”

Addition
of subsection
(2) to section
80A of the
principal
Act

(2) Section 80A shall be deemed to have come into operation on 1st November, 1987.

11. (1) Section 81 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) thereof of the following new paragraph —

“(a) Any amount due to a licensee of a customs and excise warehouse who in terms of the Regulations, is permitted to pay excise duty, sales duty, monthly or quarterly, in respect of such duty paid by him for which he was not liable, or any provisional refund granted by him in terms of section 79

Amendment
of section
81 of the
principal
Act

(1A), or which is refundable to him in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6 or 7 may, at any time within a period of two years from the date on which such amount first becomes due, be set off against any amount for which such licensee subsequently becomes liable in respect of excise duty, sales duty, provided the accounts or bills of entry submitted by such licensee in respect of the payment or any amount against which any amount so due to him has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars of the excise duty, sales duty so paid and a full account of the circumstances under which the payment thereof took place and by such documentary evidence as the Director may in each case require.”

(2) Subsection (1) of this section shall be deemed to have come into operation on 1st November, 1987.

Application
of tariff item
117.05.15 of
clause A of
Part 2 of
Schedule
No. 1

12. Any motor vehicle models cleared during the periods 26th August, 1987 to 31st August, 1987 and 26th November, 1987 to 30th November, 1987 shall, at the request of any motor vehicle manufacturer to the Director, for the purposes of tariff time 117.05.15 of Section A of Part 2 of Schedule No. 1 to the principal Act, be deemed to have been cleared during the periods 26th May, 1987 to 25th August, 1987 and 26th August, 1987 to 25th November, 1987, respectively.

PASSED by the National Assembly this 10th day of August, 1989.

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