

ORDER NO. 26 OF 1986

Customs and Excise (Amendment) (No. 2) Order, 1986

[Date of Commencement: Promulgation]

ORDER

To amend the Customs and Excise Act, 1982.

1. (1) This Order may be cited as the Customs and Excise Short title
(Amendment) (No. 2) Order, 1986.

(2) Section 76(1) (c) is deemed to have come into operation on 1st July, 1983 and the other provisions of this Order shall come into operation on the date of its publication in the gazette.

2. Section 7 of the Principal Act is amended —
by deleting paragraph (a) of subsection 2. Amendment
of section 7
of A. 10 of
1982
3. Section 9 of the Principal Act is amended,
by deleting subsection (1). Amendment
of section 9
of A. 10 of
1982
4. Section 13 of the Principal Act is amended, Amendment
of section 13
of A. 10 of
1982
- (a) by deleting in subsection (1),
(i) the word "parcel" immediately after the words
"imported into Lesotho by;" and
(ii) the word "parcel" immediately after the words
"sender in respect of the" and substituting therefor
the words "postal item";
- (b) by deleting subsection (2);
- (c) by deleting in subsection (3);
(i) the words "subsections (1) and (2)" immediately
after the words "anything contained in" and sub-
stituting therefor the words "subsection (1);"
and
(ii) the words "whether by parcel post or otherwise,"
immediately after the words "imported by post;"
- (d) by deleting in subsection (4), the word "parcel" im-
mediately after the words "completed in respect of a"
and substituting therefor the words "postal item."
5. Section 14 of the Principal Act is amended, Amendment
of section 14
of Act 10 of
1982
- (a) in subsection (1) by adding the words "and shall pay
the duty assessed by such officer to the Director" im-
mediately after the words "inspection by the said of-
ficer"; and

(b) by inserting after subsection (1) the following subsection,

“(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.”

Insertion of
section 40 A
of Act 10 of
1982

6. The Principal Act is amended by the insertion immediately after section 40 of 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 Lesotho consignee after shipment of those goods but before the date of entry thereof, shall produce to the Director 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 68(1) be the transaction value of those goods.”

Amendment
of section 46
of Act 10 of
1982

7. Section 46 of the Principal Act is amended by repealing subsection (1) and substituting the following,

“(1) (a) Notwithstanding anything to the contrary in this Act contained, all goods consigned or imported into Lesotho 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 58 and duties imposed under the provisions of section 52) as may be 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 40, any dutiable goods imported into or manufactured in Lesotho 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, whichever yields the greater amount of duty.”

Insertion of
section 48A
in Act 10 of
1982

8. The Principal Act is amended by the insertion immediately after section 48 of the following new section,

“Prohibition of certain acts in respect of goods not entered for home consumption 48A. (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 Lesotho has concluded such agreement in terms of section 51, and he has reasonable cause to believe that such goods have not been entered, he may detain such goods, and such goods shall thereupon be presumed, unless the contrary is proved, not to have been so entered and shall be subject to the provisions of this Act as if they were goods which have, contrary to the provisions of subsection (1), not been duly entered for home consumption in Lesotho."

9. Section 67 of the Principal Act is amended by repealing subsection (8) and substituting therefor the following,

Amendment
of section 67
of Act 10 of
1982

"(8) (a) Notwithstanding the provisions of subsections (1) and (4), the value for the purposes of the duty specified in section B of Part 2 of Schedule No. 1 shall, in respect of imported goods (other than goods entered in terms of item 412.18 of Schedule No. 4), be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 of Schedule No. 1 on such goods, but excluding the duty specified in the said section B of Part 2 of Schedule No. 1 on such goods.

(b) The provisions of subsection (3) or (4) of section 70 shall mutatis mutandis apply to the ascertainment or determination of the value for the purposes of the duty specified in section B of Part 2 of Schedule No. 1 in respect of any imported goods entered in terms of item 412.18 of Schedule No. 4."

10. Section 69 of the Principal Act is amended by repealing subsection (4) and substituting the following,

Amendment
of section 69
of Act 10 of
1982

"(4) (a) Notwithstanding the provisions of subsections (1) and (2), the value for excise duty purposes of any goods manufactured in Lesotho and specified in section B of Part 2 of Schedule No. 1 (other than goods entered in terms of 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 section 70 (4) shall mutatis mutandis apply to the calculation or determination of the value for excise duty purposes of any goods specified in sec-

tion B of Part 2 of Schedule No. 1 and entered in terms of item 617.01 of Schedule No. 6."

Repeal and replacement of section 75A of Act 10 of 1982

11. Section 75A of the Principal Act is repealed and substituted by the following,

"75A (1) The interpretation of section 67, 68, 69 A shall be subject to the agreement concluded at Geneva on 12 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; and

two copies of such Agreement, Interpretative Notes, (2) (a) The Director shall obtain and keep in his office 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 Cooperation 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 (hereinafter in this paragraph referred to as the "relevant document"), or as to the date upon which any amendment thereof was affected thereto in terms of paragraph (a), a copy of the relevant document, or if amended as contemplated in paragraph (a), a copy of the relevant document as so amended, shall unless the contrary is proved, be accepted as sufficient evidence of the contents thereof or of the effective date of any amendment thereof, as the case may be."

Amendment of section 76 (5) of Act 10 of 1982

12. Section 76 (5) of the Principal Act is amended, (a) by the insertion immediately after paragraph (c) of 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 supply of any such distillate fuel or residual fuel oil so supplied, shall be deemed to have supplied such distillate fuel or residual fuel 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 repealing paragraph (a) of subsection (19) and substituting therefor the following,
- “(a) in the case of wine spirits (ethyl alcohol) manufactured in Lesotho and entered for storage in a customs and excise storage warehouse, excluding spirits specified in paragraph (bA), 1.5 per cent of the quantity so entered”;
- (c) by inserting immediately after paragraph (b) of subsection (19) of the following new paragraph,
- “(bA) in the case of the unpacked excisable spirits intended for export 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 as loss incurred while the spirits in question are so removed and stored for such period as the Director may determine”;
- (d) by deleting the words “aviation spirits” in paragraph (d) of subsection (19); and
- (e) by deleting the words “aviation spirits, kerosene” in paragraph (f) of subsection (19).

13. Section 103 of the Principal Act is amended by repealing subsection (4) and substituting therefor the following,

Amendment
of section
103 of Act
10 of 1982

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

14. Section 115 of the Principal Act is amended by repealing paragraph (a) of subsection (1) and substituting therefor the following,

Amendment
of section
115 of Act
10 of 1982

“(a) The correct amount of duty payable in respect of any goods imported into or exported from Lesotho or any goods manufactured in Lesotho 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 office (including goods in a rebate store-room) 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 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 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 lien until such debt is paid."

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