

SUBJECT: TARIFF CLASSIFICATION OF MOTOR VEHICLES FOR TRANSPORT OF GOODS AND SPECIAL PURPOSE MOTOR VEHICLES

ACT: CUSTOMS AND EXCISE No. 10 OF 1982 AS AMENDED

SECTION: SECTIONS 40(1)(c); 41(1)(b); 48 (8) of the Act; Schedule 1; Headings 87.04 and 87.05

DATE: March 2012

1. Preamble

In this Ruling-

- 1.1 Unless the context requires otherwise, the term “Act” means the Customs and Excise Act, 1982 and “regulations” means Customs and Excise Regulations of 1984;
- 1.2 References to sections, schedules and rules herein refers to sections, schedules and rules including rules of interpretation of the Act unless otherwise stated;
- 1.3 Unless the context otherwise indicates, any word or expression in this Ruling bears the meaning ascribed to in the Act;
- 1.4 Reference to the “LRA” herewith means Lesotho Revenue Authority;
- 1.5 HS means the nomenclature referred to as the Harmonised Commodity Description and Coding System developed under the auspices of the Customs Cooperation Council also known as the World Customs Organisation. The HS is the basis for the nomenclature in schedule 1 and the General Rules for Interpretation (GIR) of that schedule;

2. Purpose

The purpose of this public ruling is to provide guidance on the classification of motor vehicles for the transport of goods and special purpose motor vehicles. In particular, to distinguish between motor vehicles that fall under tariff heading 87.04, vis-à-vis those that may be classified under tariff heading 87.05 of Schedule 1, Part 1 of the Act. The distinction herein is highly critical considering that the classification, among other things, dictates the amount of duties payable against each tariff heading. The focus in this ruling is primarily to answer the following questions:

- 2.1 What types of motor vehicles are classified under tariff heading 87.04?

- 2.2 What types of motor vehicles are classified under tariff heading 87.05?
- 2.3 What is the difference between vehicles of 87.04 and those of 87.05?

3. Background

- 3.1 The Act provides for levying of customs duties among other things and subsequently provides for tariff classification in accordance with the GIR specified in part 1 of schedule 1 of the Act.
- 3.2 Importers and exporters are thus expected, among other things, to comply with the rules of tariff classification provided for in part 1 of schedule 1 of the Act;
- 3.3 It is important that classification for customs purposes is correctly done by any person who makes a declaration to Customs. The correct classification herein is highly significant because failure to classify correctly may result in for example, delays in the clearance of goods, imposition of penalties on the declarant, over payments and/or in some cases under payments by the importer of goods;
- 3.4 There is often misclassification for various products which causes problems such as those mentioned in 3.3. above. One area that has caused a number of disputes in the recent years is that where motor vehicles for the transport of goods under heading 87.04 are classified by importers as special purpose motor vehicles in respect of heading 87.05.

It is therefore important to clarify the difference in respect of the application of the provisions of part 1 of schedule 1 of the Act in relation to motor vehicles that fall within the scope of tariff heading 87.04 and those of 87.05.

4. The Law and its application

- 4.1 Section 40(1)(c) provides that a person entering goods for any purpose in terms of the provisions of the Act shall, among other things, furnish information regarding tariff classification of such goods;
- 4.2 Section 41(1)(b) provides that no bill of entry shall be valid unless, amongst others, the goods have been properly described in the entry by the tariff heading according to which they are charged duty or are admitted under the provisions of the Act;
- 4.3 Section 48 (8) provides that interpretation of Schedule 1 shall be subject to the Explanatory Notes issued by the Customs Cooperation Council.
- 4.4 The provisions of the above mentioned subsections and paragraphs, read together mean that the goods would have to be classified under the appropriate tariff heading in accordance with the provisions of part 1 of schedule 1. The proper classification herein will enable the levying of duty to the good(s) in respect of its tariff heading or sub-heading.
- 4.5 There are 6 General Rules for interpretation of, part 1 of Schedule 1 to the Act which must be applied in hierarchical order and provide as follows:

- 4.6 Rule 1 provides that for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes;
- 4.7 Rule 2(a) provides that any reference in a heading to an article shall include reference to that article whether or not it is assembled or disassembled;
- 4.8 Rule 2(b) provides that reference in a heading to a material shall be taken to include reference to mixtures of that material with other materials or substances and that classification of these kind of goods shall be according to rule 3;
- 4.9 Rule 3(a) provides that in the situation indicated in rule 2 (b), the heading with the most specific description shall be preferred to others. However if two or more headings each refer to part only of materials contained in mixed goods, such reference shall be taken to be equally specific;
- 4.10 Rule 3(b) provides that if 3(a) cannot solve the classification of goods with a mixture of materials, substances or components the goods shall be classified as if they consisted of the material or component which gives them their essential character;
- 4.11 Rule 3 (c) provides that if classification cannot be ascertained by reference to 3 (a) or 3(b) it shall be determined in accordance with the heading that occurs last in numerical order;
- 4.12 Rule 4 provides that if goods cannot be classified in accordance with rules 1 – 3, goods shall be classified in accordance with a heading to which they are most akin;
- 4.13 Rule 5 (a) provides that classification of cases and containers specially shaped for specific items shall be classified with such items when presented with them;
- 4.14 Rule 5 (b) provides that containers normally used for packing the specified goods are also classified with the goods except for when they are suitable for repetitive use;
- 4.15 Rule 6 provides that classification in a subheading shall be classified according to the terms of that subheading and related subheading notes and that only subheading at the same digit level are comparable.

5. The types of Motor vehicles that are classified under tariff heading 87.04

The terms of heading 87.04 reads as follows: “**Motor vehicles for the transport of goods**”.

Motor vehicles are classified under this tariff heading provided they have features which indicate that they are designed for the transport of goods. Such as a separate closed rear area or an open rear area platform normally used for transport of goods.

The explanatory notes to the HS indicates that motor vehicles classified in this heading include ordinary lorries/trucks and vans; delivery trucks and vans of all kinds; removal vans; lorries (trucks) with automatic discharging devices; tankers; refrigerated or insulated lorries/trucks; multi-floored lorries/trucks for transport of acid in carboys, cylinders of butane etc.; dropframe heavy duty lorries/trucks with loading ramps for transport of tanks, lifting or excavating machinery, electrical transformers etc.; lorries specially constructed for the transport of fresh concrete (but not concrete mixers); refuse collectors.

Picture examples of Motor vehicles for transport of goods (87.04)



6. The types of motor vehicles that are classified under tariff heading 87.05

The terms of heading 87.05 read as follows: “**Special purpose motor vehicles (excluding those principally designed for the transport of persons or goods) (for example, breakdown Lorries, *crane lorries*, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)**”.

This heading covers special purpose motor vehicles such as those listed in the terms of the heading above. Accordingly by reference to the explanatory notes to the HS, motor vehicles are classified under this tariff heading if they are specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions. In other words, the primary function of the vehicles of this tariff heading is not to transport goods or persons.

Picture Examples for Special Purpose Motor vehicles (87.05)



7. The difference between vehicles of 87.04 and those of 87.05

As importers have often classified motor vehicles falling under 87.04 under 87.05, it is acknowledgeable that sometimes the terms of one of these two headings can be interpreted to include reference to motor vehicles that could be classified in the either heading. The main difference between the vehicles of the two headings is that vehicles are classified under tariff heading 87.04 only if their primary function is transport of goods whereas they are classified under tariff heading 87.05 if they have a certain specified function other than that of transportation of anything.

For example, it has been evidenced that reference to “crane lorries” (indicated in picture 2 below) in the terms of heading 87.05 has lead many importers to classify all lorries fitted with cranes under heading 87.05, not realizing that only trucks which have the crane as their principal feature or function should be classified under 87.05. The trucks which are principally designed for transport of goods even though they are fitted with cranes (see picture 1 below) must be classified in tariff heading 87.04.

In order to resolve any confusion in the classification of these kinds of motor vehicles, rule 1 must be applied as follows:

The terms of the heading 87.04 clearly indicate that vehicles must be for transport of goods to be classified under that heading while the terms of tariff heading 87.05 clearly exclude motor vehicles for transport of goods and for transport of persons. This means that once a motor vehicle has features for the transportation of goods or persons, it cannot be classified under tariff heading 87.05 as indicated in the terms of that heading.

Picture 1: Trucks for the transport of goods fitted with a Crane (87.04) – the crane is an additional function



Picture 2: Truck Mounted Cranes (87.05) – the truck is just to provide mobility to the crane



Disclaimer

This Public Ruling provides the general interpretation of the law and considers broad principles in guiding the implementation of Section 48 and part 1 of Schedule 1 of the Act in regard to classification of goods for customs purposes. The Public Ruling has no binding legal force and does not affect a taxpayer's right of objection and appeal to the Commissioner General, the Revenue Tribunal or the Courts of Law. This Ruling shall not affect the taxpayer's right to argue for a different interpretation, where necessary, in any appeal process, as stipulated in the revenue laws. Neither is this Ruling binding on the Commissioner General, should circumstances arise for deviation as necessary or as the Commissioner General may deem otherwise in his discretion.