



SWAZILAND
GOVERNMENT GAZETTE
EXTRAORDINARY

VOL. XXVIII]

MBABANE, Friday, August 31st., 1990

[No. 747

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SUPPLEMENT TO
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THE CUSTOMS AND EXCISE (AMENDMENT) BILL, 1990

(Bill No. 11 of 1990)

(To be presented by the Minister for Finance)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend various provisions of the Customs and Excise Act, 1971, so as to bring them into conformity with the corresponding provisions of the Customs and Excise Act, 1964, of the Republic of South Africa, in accordance with Swaziland's obligations under Article 10 of the 1969 Customs Union Agreement, and in particular to amend the Act so as -

- (a) to further define "manufacture";
- (b) to further regulate the opening of packages imported into or exported from Swaziland;
- (c) to further regulate the liability for duty on goods removed in bond and the removal of goods from duty warehouses;
- (d) to provide for the exportation of goods from duty warehouses
- (e) to empower the Commissioner to allow certain spirits to be used or disposed of;
- (f) to provide further for the manufacture of excisable goods and the collection of excise duty;
- (g) to extend the classes of imported goods exempt from entry in certain circumstances;
- (h) to determine the documents to be produced on the exportation of goods;
- (i) to provide for the deferment and payment of duties on certain imported goods;
- (j) to further regulate adjustment of bills of entry which have been passed in error;
- (k) to provide for joint and several liability for duty and the payment of certain amounts;
- (l) to provide further for the determination of the territory of origin of certain goods in regard to their production or manufacture;
- (m) to provide further for the circumstances in which the most-favoured-nation-rate of duty shall apply in respect of certain goods;
- (n) to make new provision for calculating the value for customs duty purposes of imported goods;
- (o) to further regulate the value for excise duty purposes of certain goods manufactured in Swaziland;
- (p) to provide further for rebates and refunds of duty;
- (q) to provide for the recovery of certain amounts not duly capable of set-off;
- (r) to provide for the set-off of certain provisional refunds of duty against amounts due in respect of that duty;

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- (s) to extend the provisions of the Act regarding offences;
- (t) to make fresh provision for the detention and seizure of goods liable to forfeiture;
- (u) to make new provision with reference to the right of appeal to the Minister from certain determinations or orders of the Commissioner of Customs and Excise;
- (v) to apply the provisions of the Act to close corporations;
- (w) to provide for the disposal of certain goods imported or exported in contravention of any law other than the Act and liable to forfeiture;
- (x) to make further provision for the recovery of duty for which any person may be liable; and
- (y) to provide for matters incidental thereto.

A.F.M. THWALA
Attorney General

A BILL

entitled

AN ACT to amend the Customs and Excise Act, 1971.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Customs and Excise (Amendment) Act, 1990 and shall be read as one with the Customs and Excise Act, 1971 (hereinafter called the "principal Act").

Amendment of Long Title.

2. The long title of the principal Act is replaced with the following -

"An Act to provide for the levying of customs, excise and sales duties and a surcharge, the prohibition and control of the import, export or manufacture of certain goods and for incidental matters."

Amendment of Section 2.

3. Section 2 of the principal Act is amended -

(a) in subsection (1) by replacing -

(i) the definition of "common customs area" with the following -

"“common customs area” means the combined area of Swaziland and countries with the governments of which customs union agreements have been concluded under section 51;”;

(ii) the definition of "Customs duty" with the following -

"“customs duty” means, subject to the provisions of subsection (2), any duty leviable under Schedule No. 1 (except parts 3 and 4 thereof) or No. 2 on goods imported into Swaziland;”;

(iii) the definition of "department" with the following -

"“department” means the Department of Customs and Excise within the Ministry of Finance;”;

- (iv) the definition of "excise duty" with the following -

""excise duty" means, subject to subsection (2), any duty leviable under Part 2 of Schedule No. 1 on any goods manufactured in Swaziland;"

- (v) the definition of "manufacture" with the following -

""manufacture", when used as a noun, includes, as the Commissioner may determine, any process -

- (a) in the manufacture or assembly of any excisable goods or sales duty goods;
 - (b) in the conversion of any goods into excisable goods or sales duty goods;
 - (c) whereby the dutiable quantity or value of any imported goods specified in Section B of Part 2 of Schedule No. 1, excisable goods or sales duty goods is increased in any manner;
 - (d) in the recovery of excisable goods or sales duty goods from excisable goods or any other goods; or
 - (e) in the packaging or measuring off of any imported goods specified in Section B of Part 2 of Schedule No. 1, excisable goods or sales duty goods,
- and, when used as a verb, has a corresponding meaning; and "manufacturer" has a corresponding meaning;" and

- (b) by replacing subsection (2) with the following -

"(2) For the purposes of the Agreement concluded under section 51 with the Governments of the Republic of Botswana, the Kingdom of Lesotho and the Republic of South Africa and published by Legal Notice No. 71 of 1969 on 12 December, 1969 -

- (a) "customs duty" includes any duty leviable under Part 4 of Schedule No. 1 on goods imported into Swaziland and, except for the purposes of articles 13 and 14 of the said agreement, any duty leviable under Part 8 of Schedule No. 1 on goods imported;
- (b) "excise duty" includes, except for the purposes of articles 13 and 14 of the said agreement, any duty leviable under Part 8 of Schedule No. 1 on goods manufactured in the common customs area."

Amendment of section 4.

4. Section 4 of the principal Act is amended by replacing -

- (a) subsection (3) with the following -

"(3) No officer shall disclose any information relating to any person, firm or business acquired in the performance of his duties, except -

- (a) for the purposes of this Act; or
- (b) when required to do so as a witness in a court of law; or
- (c) to the Commissioner of Taxes or any officer in the Office of that Commissioner and designated by that Commissioner, for the purposes of any law with the administration of which he is charged."

- (b) subsection (4) (d) with the following -

“(d) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in his opinion may afford evidence of any matter dealt with in this Act.”; and

- (c) subsection 4 (8) with the following -

“(8) An officer or any person assisting him may at any time break up any ground or flooring on any premises for the purpose of search and if any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, may open such room, place, safe, chest, box or package in any manner.”.

Amendment of section 5.

5. Section 5 of the principal Act is amended in subsection (3) by deleting the words “directly from a place outside the common customs area”.

Amendment of section 6.

6. Section 6 of the principal Act is amended -

- (a) in subsection (1) by replacing the words “Chief Customs Officer” with the word “Commissioner”;
- (b) in subsection (4) by replacing the words “the common customs area” with the word “Swaziland”; and
- (c) in subsection (6) by replacing the words “the common customs area” with the word “Swaziland”.

Amendment of section 9.

7. Section 9 of the principal Act is amended in subsection (1) by deleting the words “from a place outside the common customs area”.

Amendment of section 10.

8. Section 10 of the principal Act is amended in subsection (1) by deleting the words “directly from a place outside the common customs area”.

Amendment of section 11.

9. Section 11 of the principal Act is amended -

- (a) in subsection (1) by deleting the words “directly from a place outside the common customs area,”;
- (b) in subsection (4) by deleting the words “directly from a place outside the common customs area”; and
- (c) in subsection (7) by deleting the words “directly from a place which is outside the common customs area” and
- (d) in subsection (11) by deleting the words “other than directly to a place within the common customs area”.

Amendment of section 12.

10. Section 12 of the principal Act is amended in subsection (3) (a) and (b) by replacing the words "the Director of Posts and Communications" where they appear, with the words "the Managing Director of the Posts and Telecommunications Corporation".

Amendment of section 14.

11. Section 14 of the principal Act is replaced with the following -

"Opening of packages in absence of importer or exporter.

14. The controller may, in the absence of the importer or exporter of any package imported into or landed in or exported from or suspected by the controller to have been imported into or landed in or exported from Swaziland, open and examine such package at the importer's or exporter's risk and expense:

Provided that wherever possible the controller shall first make all reasonable efforts to ascertain the whereabouts of such importer or exporter and afford the said importer or exporter the opportunity of himself appearing before the controller and opening the package in question."

Amendment of section 16.

12. Section 16 of the principal Act is amended by replacing -

(a) subsection (1) (a) with the following -

"(a) the importer or owner of any imported goods landed in Swaziland or the manufacturer, owner, seller or purchaser of any excisable goods or sales duty goods manufactured in a duty warehouse or the licensee of a duty warehouse in which dutiable goods are manufactured or stored may remove such goods in bond to any place of entry or warehousing place or to any place outside Swaziland;

Provided that such goods manufactured or stored in a duty warehouse may only be so removed to any such warehousing place in Swaziland or any place in a country in the common customs area approved by the government of that country for rewarehousing at that place in another duty warehouse;" and

(b) subsections (3) (a) and (b) with the following -

"(a) removed to a place in the common customs area, that such goods have been duly entered at that place; or

(b) which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area."

Addition of new section 16 bis.

13. The principal Act is amended in Part III, after section 16, by adding the following new section -

"Exportation of goods from duty warehouse.

16 bis. (1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a duty warehouse to any place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods which he so exports.

(2) Subject to subsection (3), any liability for duty in terms of subsection (1) shall cease when it is proved to the satisfaction of the Commissioner by the exporter that the said goods have been duly taken out of the common customs area.

(3) If the exporter fails to submit any such proof as is referred to in subsection (2) within a period of 30 days from the date on which the goods concerned were entered for export, he shall upon demand by the Commissioner forthwith pay the duty due on those goods.

(4) No goods shall be exported in terms of this section until they have been entered for export.

(5) No such entry for export shall be tendered by or may be accepted from a person who has not furnished such security as the Commissioner may require, and the Commissioner may at any time require that the form, nature or amount of that security be altered in such manner as he may determine.

(6) The said exportation of goods shall be subject to the regulations and such conditions as the Commissioner may impose in respect of the goods concerned or any class or kind of those goods or those goods exported in circumstances specified by him, and the Commissioner may refuse to accept bills of entry for the said exportation of goods from an exporter who has persistently failed to comply with the said regulations or conditions or who has committed an offence referred to in section 80.

(7) The Commissioner may refuse the said exportation of goods in respect of which a provision of this Act has not been complied with or which are liable to forfeiture.

(8) The Commissioner may determine the roads and routes and the means of carriage of any goods so exported or any class or kind of those goods or any such goods carried in circumstances specified by him.

(9) No person shall, without the permission of the Commissioner, divert any goods so exported to a destination other than the destination declared on entry for exportation.

(10) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods so exported or any class or kind of those goods or any such goods exported in circumstances or to a destination specified by him.”.

Amendment of section 18.

14. Section 18 of the principal Act is amended by -

(a) replacing subsection (6) (b) with the following -

“(b) rewarehousing in another duty warehouse or removal in bond as provided in section 16;”;

(b) deleting subsection (6) (c).

Replacement of section 22.

15. The principal Act is amended by replacing section 22 with the following -

“Aircraft stores consumed in the common customs area.

22. If any goods taken from a duty warehouse under section 18(6) as stores aboard an aircraft destined for a place outside the common customs area, or goods shipped as stores for such aircraft outside Swaziland, are consumed, sold or disposed of on such aircraft at any place in the common customs area when the aircraft is not airborne or on the aircraft on a flight between any places in the common customs area, the pilot of such aircraft shall be liable for the duty on the goods so consumed sold or disposed of and shall, upon demand by the Commissioner forthwith pay the duty due on such goods:

Provided that the Commissioner may by rule exempt any class or kind of stores or aircraft to which the circumstances specified in such rule apply from any provision of this section.”.

Amendment of section 32.

16. Section 32 of the principal Act is amended after subsection (5) by adding the following subsection -

“(6) Notwithstanding subsection (5), the Commissioner may allow spirits so manufactured to be used or disposed of in such circumstances and at such places as he may deem fit and subject to such conditions as he may impose in each case.”.

Amendment of section 34.

17. Section 34 of the principal Act is amended in subsections (1), (2), (3) and (8) by replacing the words “specific gravity” wherever they appear with the words “relative density”.

Amendment of section 35.

18. Section 35 of the principal Act is amended -

(a) by replacing subsection (1) with the following -

“(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 Commissioner, 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 duty 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 this Act.”; and

(b) in the proviso to subsection (2) by deleting the words “or dealer”.

Amendment of Section 36.

19. Section 36 of the principal Act is amended -

(a) in subsection (3) by replacing the words before paragraph (a) with the following -

“(3) Notwithstanding subsection (2), but subject to subsections (5), (6), (7), (8) and (9), the Commissioner may, on such conditions as he may impose, for the purpose of preserving any goods in a duty storage warehouse or reconditioning such goods which have, as a result of contamination or deterioration or for any other reason, become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods to be reconditioned or mixed or blended in such warehouse with other goods, and in that event duty shall be paid, in lieu of the duties prescribed in subsection (2), according to the first account taken of any such goods or the total quantity of such reconditioned, mixed or blended goods, whichever quantity is the greater, as follows -”;

- (b) in subsection (4) by adding the following proviso -

“Provided that no rebate for any loss or deficiency in respect of petrol and distillate fuel so reconditioned, mixed or blended exceeding the rebate specified in section 75 (19) (e) and (f) shall be allowed on such goods.”;

- (c) by replacing subsection (5) with the following -

“(5) Notwithstanding anything to the contrary in this Part, the Commissioner may, on such conditions as he may impose, and in such circumstances and at such place as he may specify, permit the mixing or blending of any mineral oil products with one another or with other goods whether or not such products or goods are in a duty storage warehouse or have been entered for home consumption and have passed out of customs and excise control for any purpose, including that of rendering such goods saleable or more readily saleable or of fulfilling special orders.”; and

- (d) by replacing subsection (12) with the following -

“(12) There shall be paid on entry for home consumption, in addition to any duty payable in terms of this section and subject to the provisions of sections 25 (5) and 75, sales duty or surcharge at the rate applicable in terms of Schedule No. 1 on any sales duty goods or surcharge goods used or incorporated in the manufacture, reconditioning, mixing or blending of any goods to which this section relates and on any such manufactured, reconditioned, mixed or blended goods which are liable to sales duty or surcharge in terms of the aforementioned Schedule.”.

Amendment of section 37.

20. Section 37 of the principal Act is amended -

- (a) in subsection (1) by deleting the words “from a place outside the common customs area”;
- (b) in the proviso to subsection (1) by replacing the words “one hundred emalangeni” where they appear in item (v) with the words “two hundred emalangeni”; and
- (c) by replacing subsection (4) (b) (i) with the following -

“(i) in the case of goods to be exported by container, at the time when such goods are delivered to the depot operator or container operator, as the case may be;”

Amendment of section 38.

21. Section 38 of the principal Act is amended -

- (a) at the end of subsection (2) by replacing the full stop with a colon and adding the following proviso -

“Provided that the Commissioner may, on such conditions, including conditions relating to security, as he may determine, allow the deferment of payment of duties due in respect of such bills of entry and for such periods as he may specify.”; and

- (b) after subsection (8) by adding the following new subsection -

“(8 bis) The Commissioner 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 39.

22. Section 39 of the principal Act is amended -

- (a) at the end of subsection (1) (e) by replacing the full stop with a colon and adding the following proviso -

“Provided that no bill of entry shall be invalid by reason of any deferment referred to in the proviso to section 38 (2)”; and

- (b) in subsection (5) by replacing the words before subsection (a) and subsection (a) with the following -

“(5) No application for any substitution under subsection (3) (ii) or in that subsection as read with subsection (4) shall be considered by the Commissioner unless it is received by the controller, supported by the necessary documents and other evidence to prove that such substitution is justified, within a period of six months -

- (a) from the date of entry for home consumption as provided in section 44 (2), of the goods to which the application relates; or”.

Addition of section 43 bis.

23. The principal Act is amended in Part V after section 43 by adding the following new section -

“Joint and several liability for duty or certain amounts.

43 bis. Subject to the provisions of sections 35 (3) (b) (i) and 99 (2) (b), whenever in terms of this Act liability for duty or any amount demanded under section 88 (2) (a) devolves on two or more persons, each such person shall, unless he satisfies the Commissioner that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved *pro tanto*.”.

Amendment of section 45.

24. Section 45 of the principal Act is amended by replacing subsection (2) with the following -

“(2) The Minister may by regulation increase the percentage prescribed in subsection (1); in regard to any class or kind of imported goods, or any class or kind of such goods from a particular territory, to which that subsection applies.”.

Amendment of section 46.

25. Section 46 of the principal Act is amended -

- (a) by deleting subsection (1);
- (b) in subsection (4) by replacing the words before paragraph (a) with the following -

“(4) In addition to any fiscal duty which may be payable under subsection (2), customs duty at the most-favoured-nation-rate specified in Column V in any tariff heading or subheading in Part 1 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 -”;

- (c) replacing subsection (5) with the following -

“(5) In addition to any fiscal duty which may be payable under subsection (2), customs duty at the general rate specified in Column IV in any tariff heading or subheading in Part 1 of Schedule No. 1 shall apply to any goods to which such heading or subheading relates if the most-favoured-nation-rate of duty does not apply to such goods in terms of subsection (4).”;

- (d) by replacing subsection (6) with the following -

“(6) Any export duty which may become payable in terms of section 47 shall be paid into the Consolidated Fund, at the time of entry of export, on such goods as may be specified in Part 6 of Schedule No. 1 in terms of the provisions of the said section.”;

- (e) by replacing subsection (8) with the following -

“(8) Wherever the tariff heading or subheading under which any goods are classified in Part 1 of Schedule No. 1 is expressly quoted in any tariff item, or sales duty item, or surcharge item or item of Part 2, 3, 4 or 6 of the said Schedule or in any item in Schedule No. 2 in which such goods are specified, the goods so specified in the said tariff item, or sales duty item, or surcharge item or item of the said Part 2, 3, 4 or 6 or in the said item of Schedule No. 2, shall be deemed not to include goods which are not classified under the said tariff heading or subheading.”;

- (f) in subsection (9) by replacing the words before the proviso in paragraph (a) with the following -

“(9) The interpretation of Part 1 of Schedule No. 1 shall be subject to the Explanatory Notes to the Harmonised System and to the Customs Co-operation Council Nomenclature issued by the Customs Co-operation Council, Brussels, from time to time;” and

- (g) by replacing subsection (12) (a) (i) with the following -

“(i) The Commissioner may in writing determine the tariff headings, tariff subheadings or items of any Schedule under which any imported goods or goods manufactured in Swaziland shall be classified.”.

Addition of new section 47 bis.

26. The principal Act is amended in Part V after section 47 by adding the following new section -

“Ordinary Levy.

47. bis. Notwithstanding anything to the contrary contained in this Act, -

(1) any amount leviable under any item of Part 8 of Schedule No. 1 shall be called an ordinary levy;

(2) any such ordinary levy shall be paid into the Consolidated Fund of Swaziland and shall, for the purposes of section 46 (2) be deemed to be a duty paid in accordance with the provisions of Schedule No.1; and

(3) any ordinary levy paid in respect of any goods intended for consumption in any territory, other than Swaziland, which forms part of the common customs area shall be paid by the Commissioner to the government of such territory at such times as he may determine.”.

Amendment of section 48.

27. Section 48 of the principal Act is amended in subsection (1) by replacing the words before paragraph (a) with the following -

“(1) Notwithstanding anything in this Act the Minister may by notice in the Gazette, after consultation with the Minister for Commerce, Industry and Tourism, amend the Schedules so as to levy a new, increased or additional duty on any goods -”;

Amendment of section 53.

28. Section 53 of the principal Act is amended by replacing -

(a) the words “Minister for Finance” where they appear between subsections (1)(b) and (1)(b)(i) with the words “Minister for Commerce, Industry and Tourism”; and

(b) subsection (2) with the following -

“(2) Any additional duty imposed in terms of subsection (1) shall be set out in the form of a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 7 thereof and to constitute an amendment of Schedule No 1.”.

Amendment of section 56.

29. Section 56 of the principal Act is amended after subsection (6) by adding the following subsection -

“(7) The provisions of section 47 shall *mutatis mutandis* apply in respect of any amendment made under subsection (1) or (1 bis) of this section. .

Amendment of section 65.

30. Section 65 of the principal Act is amended in subsection (7) by replacing paragraph (b) with the following -

“(b) Subsection (1) (a) and (b) or (3) of section 69 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.”.

Amendment of section 66.

31. Section 66 of the principal Act is amended -

(a) by replacing the Section title “Normal Price:” with the words “Transaction value.”;

(b) in subsection (8) by replacing paragraph (d) with the following -

- “(d) the cost of transportation, 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 on any vehicle, at that port place, ready for export to Swaziland;”; and
- (c) in subsection (11) by replacing paragraph (a) with the following –
 - “(a) placed on board ship or on any vehicle in the country of exportation, ready for export to Swaziland; or”.

Amendment of Section 67.

32. Section 67 of the principal Act is amended –

- (a) by adding the following heading to the Section –

“Adjustments to price actually paid or payable.”;
- (b) in subsection (1) by replacing paragraph (e) with the following –
 - “(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 on any vehicle, at that port or place, ready for export to Swaziland.”; and
- (c) in subsection (4) by replacing paragraph (a) with the following –
 - “(a) placed on board ship or on any vehicle in the country of exportation, ready for export to Swaziland; or”.

Amendment of Section 69.

33. Section 69 of the principal Act is replaced with the following –

- “69. (1) (a) For the purpose of assessing the excise duty on any goods manufactured in Swaziland and specified in Section B of Part 2 of Schedule No. 1 (other than goods specified in terms 122.10 to 122.40), the value thereof shall, subject to this section, be taken as –
- (i) the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale for consumption in Swaziland, for purposes of trade in the principal markets of Swaziland in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any independent merchant wholesaler in Swaziland under fully competitive conditions;
 - (ii) the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser; and
 - (iii) any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 on such goods:

Provided that the Commissioner may, where such goods are not sold to such merchant wholesalers in Swaziland or are so sold in quantities which he considers to be insignificant in relation to the total quantities of such goods sold in Swaziland, regard any other class of purchaser of such goods as such a merchant wholesaler and may make such adjustment to the price charged by the manufacturer to such class of purchaser as he considers reasonable, having regard to the wholesale functions taken over by such manufacturer and such class of purchaser and to such other factors relating to such price as he may deem relevant.

(b) For the purpose of assessing the duty on any imported goods entered in terms of item 412.18 of Schedule No. 4 on removal from a duty warehouse and any goods manufactured in Swaziland and specified in items 122.10 to 122.40 of Section B of Part 2 of Schedule No. 1, the value thereof shall be, in a sale between –

- (i) a manufacturer as seller and an independent wholesale dealer or an independent bulk buyer or a buyer purchasing at a preferential price or other reseller as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) at which the manufacturer sells such goods at factory to an independent retail dealer, without any deduction except a cash discount not exceeding two and a half per cent, if any, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser;
 - (ii) a manufacturer and end consumer or between a wholesale dealer or retail dealer or other reseller as seller and an independent retail dealer or end consumer as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) at which such goods are sold by any such seller to an end consumer without any deduction except thirty-three and a third per cent, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser.
- (c) For the purposes of this subsection the Commissioner may specify –
- (i) The quantity which shall be deemed to be the usual wholesale quantity;
 - (ii) The packing which shall be deemed to be the usual packing ready for sale in the retail trade;
 - (iii) The cost of packing or packages or any other expenses incidental to placing the goods on rail.
- (2) (a) For the purpose of assessing the excise duty on any goods specified in Section A of Part 2 of Schedule No. 1, the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 66 (2)(a), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding the non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods.

(b) For the purpose of paragraph (a) 'price paid or payable', means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods.

(3) If in the opinion of the Commissioner goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained in terms of subsection (1)(a), (1)(b) or (2), as the case may be, the Commissioner may determine a value, which shall, subject to the right of appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(4) The Commissioner may whenever he deems it expedient amend or withdraw any such determination and make a new determination with effect from –

- (a) the date of first entry of the goods in question;
- (b) the date of the determination made under subsection (3);
- (c) the date of such new determination; or
- (d) the date of such amendment.

(5) (a) An appeal against any such determination shall lie to the High Court of Swaziland as established under the High Court Act, 1954.

(b) Such appeal shall be prosecuted within a period of 90 days from the date of the determination.”

Amendment of Section 75.

34. Section 75 of the principal Act is amended –

(a) in subsection (1) by –

(i) replacing paragraph (b) with the following –

“(b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any fiscal and customs duties applicable in respect of such goods at the time of entry for home consumption, to the extent stated in, and subject to compliance with the provisions of, the item of Schedule No. 4 in which such goods are specified;”;

(ii) by replacing paragraph (c) with the following –

“(c) a drawback or a refund of the ordinary customs duty, anti-dumping duty, countervailing duty and surcharge actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall, subject to paragraph (f)(i), be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified;”;

(iii) by replacing paragraph (d) with the following –

“(d) in respect of any excisable goods described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the excise duty actually paid at the time of entry for home consumption shall, subject to paragraph (f)(i), be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6;”

(iv) by adding after paragraph (e) the following paragraphs –

“(f) (i) a refund of the ordinary customs duty, anti-dumping duty, countervailing duty or surcharge 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 item, or a refund of the excise duty 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 subparagraph (i), the Commissioner may 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 (4 bis)(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 such user, shall be determined by the Commissioner according to the information at his disposal;
 - (g) any refund referred to in subparagraph (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 Commissioner.”;
- (b) after subsection (1) by adding the following subsection –
- “1 bis) (a) Notwithstanding anything to the contrary in this Act, the Commissioner may subject to such conditions as he may 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 provisional refund shall be granted in accordance with an estimate of intended use furnished by such user to the person concerned.
 - (c) The Commissioner may pay to such person or allow him to set off in terms of section 77 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 Commissioner may specify.
 - (d) Any amount paid in error by the Commissioner to such person shall be recoverable from such person as provided in section 76 bis.
 - (e) The Commissioner may cancel the said registration of such person if such person claims or receives any amount or payment to which he is not entitled.
 - (f) Any provisional refund granted by such person to such user shall, subject to paragraphs (g), (h) and (i), be deemed to be a refund paid by the Commissioner 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 Commissioner 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.
 - (iii) Such declaration shall be deemed to be an application for a refund referred to in subsection (4 bis)(b)(i).

- (h) (i) If the Commissioner 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 item 609.05.10 of Schedule No. 6, such excess shall be paid by that user upon demand by the Commissioner and any shortfall shall be refunded by the Commissioner to him.
 - (ii) If the user fails to pay the amount demanded in terms of subparagraph (i), such amount shall be recoverable in terms of section 76 bis.
 - (i) Any user of fuel who has been granted a provisional refund and who fails to comply with 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 76 bis.”;
- (c) by replacing subsection (4 bis) with the following –
- “(4 bis) (a) No person shall be entitled to a refund of customs or excise duty on any distillate fuel in terms of the provisions of item 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 Commissioner.
 - (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 vehicle, machinery or other equipment in which such fuel is used or any other particulars as may be prescribed by regulation.
 - (d) (i) Notwithstanding anything to the contrary in this Act, 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 other than 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.

- (ii) A user referred to in subparagraph (i) shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Commissioner may 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 Commissioner may refuse to register any person mentioned in paragraph (a) or cancel his 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 any refund or payment to which he is not entitled in terms of the said items of Schedule No. 5 or 6.”;
- (d) after subsection (9) by adding the following subsection –
- “(9 bis) Any person to whom a refund of customs or excise duty has been granted on any distillate fuel in terms of item 533.01 of Schedule No. 5 or 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 Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Commissioner may determine, during such period of two years as the Commissioner may determine, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned.”;
- (e) by replacing subsection (12) with the following –
- “(12) (a) No goods may be entered or acquired under rebate of duty under this section or the regulations until the person to entering or acquiring them has furnished such security as the Commissioner may required and has complied with such other conditions (including registration with the Commissioner of this premises and plant) as may be prescribed in respect of goods specified in any item of Schedule No. 3, 4, 6 or 7:
- Provided the Commissioner may, subject to such conditions as he may in each case impose, exempt, with or without retrospective effect, any such person from the provisions of this subsection.
- (b) Application for such exemption for the purpose of applying for a refund of duty shall be made to the Commissioner within six months from any date specified in section 39(5)(a), (b) or (c), as the circumstances may require.
 - (c) For the purposes of the application of section 39(5) to any such exemption –
 - (i) any bill of entry passed in relation to goods in respect of which exemption is granted under paragraph (a) of this subsection, shall 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 75;

- (ii) the goods concerned shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and
 - (iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the exemption referred to in subparagraph (i) was granted.”;
- (f) replacing subsection (13) with the following –
- “(13) Notwithstanding anything to the contrary in this Act, the Commissioner may, in respect of Schedule 5, 6 or 7, for the purpose of calculating the amount of duty refundable on any imported, excisable or sales duty goods used in the manufacture, reconditioning, mixing or blending of any goods exported or marketed in Swaziland, determine the quantity of such exported goods or such goods marketed in Swaziland which shall be deemed to have been produced, reconditioned, mixed or blended from a given quantity of such imported, excisable or sales duty goods or the quantity of such imported, excisable or sales duty goods which shall be deemed to have been used in the production, reconditioning, mixing or blending of a given quantity of such exported goods or such goods marketed in Swaziland.”;
- (g) in subsection (16) by replacing paragraph (b) with the following –
- “(b) (i) in respect of any refund referred to in subsection (1)(f), within a period of six months from the last date of any period of use of any distillate fuel to which the application for such refund relates:

Provided that no refund shall be paid if the quantity of distillate fuel to which the application for such refund relates is less than such quantity as may be prescribed; and
 - (ii) in all other cases, within a period of six months from the date on which such refund first becomes due.”;
- (h) by replacing subsection (16 bis) with the following –
- “(16 bis)(a) Subject to the concurrence of the Minister, the Minister for Commerce, Industry and Tourism may at any time after a permit by virtue of which goods may, in terms of any item of Schedule 3, 4 or 6, be entered under rebate of duty has been refused, but not later than two years after duty was paid on those goods, issue a permit authorising entry of those goods under rebate of duty in accordance with the provisions of the item concerned if, with due regard to any facts which became known after such a permit has been refused, he is satisfied that he would have issued such a permit if those facts were then known.
- (b) For the purposes of subsections 39(3), 39(4) and 39(5) –
- (i) any bill of entry passed in relation to goods in respect of which a permit is issued under paragraph (a) shall 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 this section;

- (ii) the goods in respect of which such a permit is issued shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and
 - (iii) the duty paid on the goods concerned shall be deemed to have been paid on the date on which the permit referred to in paragraph (a) was issued.”;
- (i) after subsection (16 bis) by adding the following subsection –
- “(16 ter)(a) Subject to the provisions of subsection (16 bis), any authorised official, or the Commissioner, may, in respect of goods which may, in terms of any item of Schedule No. 3, 4, 5 or 6, be entered under rebate of duty or be subject to a drawback or a refund of duty, issue, subject to such conditions as such authorised official or the Commissioner may specify, with or without retrospective effect, a permit or certificate authorizing entry of those goods under rebate of duty, or authorizing a drawback or a refund of duty in accordance with the provisions of the item concerned:
- Provided the Commissioner is satisfied in respect of the goods concerned, where the permit or certificate concerned is issued with retrospective effect, that the provisions of such item and such conditions have been complied with.
- (b) Subsection (16 bis)(b) shall apply *mutatis mutandis* in respect of any permit or certificate referred to in paragraph (a).
 - (c) Application for such permit or certificate shall be made to the authorised official referred to in paragraph (a) or the Commissioner within six months from any date specified in section 39(5)(a), (b) or (c), as the circumstances may require.”;
- (j) in subsection (17) by replacing paragraph (b) with the following –
- “(b) An amendment made under paragraph (a) which –
- (i) repeals any existing provision in Schedule No. 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods, excluding distillate fuels referred to in item 533.01 of Schedule No. 5, which were imported prior to the date of the relevant notice in the Gazette; and
 - (ii) embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods,
- shall not, except in so far as the Commissioner so directs and subject to such conditions as he may determine, apply in respect of goods which were imported prior to the date of the relevant notice in the Gazette.”;

- (k) in subsection (19) by –
- (i) replacing the words before paragraph (a) with the following –
- “(19) Subject to the proviso to section 18(8) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02, 615.03, 707.01, 707.02 and 707.03 of Schedules Nos. 4, 5, 6 and 7, no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Commissioner may allow the deduction from the dutiable quantity of the undermentioned goods of a quantity equal to the percentage stated below in each case, namely – ”; and
- (ii) replacing paragraphs (d) and (e) with the following paragraphs –
- “(d) imported crude petroleum naphtha for use in the refining of petroleum products, or imported or excisable petrol, a percentage equal to the full net loss incurred but not exceeding 0,25 of any quantity entered for storage and stored in a duty storage warehouse during such period as the Commissioner may determine;
- (e) imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, such percentage, but not exceeding 0,25, for any quantity so entered as may in the opinion of the Commissioner represent a loss by evaporation”; and
- (iii) adding after paragraph (e) the following paragraph –
- “(f) distillate fuels entered for storage and stored in a duty storage warehouse, a percentage equal to the full net loss incurred but not exceeding 0,15 of any quantity so entered and stored in such warehouse during such period as the Commissioner may determine.”.

Amendment of Section 76.

35. Section 76 of the principal Act is amended –

- (a) by replacing subsection (1) with the following –
- “(1) No refund of any duty or other charge in respect of imported goods, excisable goods, sales duty goods or surcharge goods, other than a refund provided for under section 75 or 77, shall be paid or granted except in accordance with the provisions of this section and any regulations.”;
- (b) in subsection (2) by replacing the full stop at the end of the paragraph (f) with a semi-colon and adding the word “or” and adding thereafter the following paragraph –
- “(g) the duty having been reduced or withdrawn as provided for in section 47(3) and (4).”;
- (c) in subsection (4) by –
- (i) replacing paragraph (a) with the following –
- “(a) from the date of entry for home consumption as provided in section 44(2), of the goods to which the application relates; or”; and
- (ii) by adding paragraph (a) the following paragraph –
- “(a bis) from the date of which the charge to which the application relates was paid; or”.

Addition of Section 76 bis.

36. The principal Act is amended in Part X after section 76 by adding the following new section –

“Recovery of certain amounts not duly payable.

76 bis (1) If the Commissioner, acting under the provisions of section 75 or 76, pays to any person by way of a refund or drawback any amount which was not duly payable to that person under those provisions or which was in excess of the amount due to that person by way of a refund or drawback under those provisions, that amount or the excess, as the case may be, shall be repaid by the person concerned to the Commissioner upon demand, failing which it shall be recoverable in terms of this Act as if it were the duty or charge concerned or part of such duty or charge, as the case may be.

(2) Subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 77(1).”

Amendment of Section 77.

37. Section 77 of the principal Act is amended by replacing –

(a) subsection (1) with the following –

“(1) Any amount due to a licensee of a duty warehouse who, in terms of the regulations, is permitted to pay excise duty or 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 75(1 bis) or which is refundable to him in terms of item 534.00 of Schedule No. 5 or any item of Schedule 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 or sales duty:

Provided the accounts or bills of entry submitted by such licensee in respect of the payment of 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 or 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 Commissioner may in each case require.”; and

(b) subsection (3) with the following –

“(3) With the permission of the Commissioner and subject to such conditions as he may impose, any amount of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1 paid by the licensee of a duty warehouse licensed in terms of this Act in respect of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 sold by him to any person whose premises are not so licensed and who has exported such goods or supplied them to any other person entitled to acquire such goods under rebate of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1, may be set off against any amount for which such licensee subsequently becomes liable in respect of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1:

Provided proof to the satisfaction of the Commissioner of such export or supply under rebate of duty and the identity of the sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 so exported or supplied is submitted by such licensee, together with such documentary proof as the Commissioner may in each case require regarding the sale of such goods by the licensee.”.

Amendment of Section 80.

38. Section 80 of the principal Act is amended by –

(a) replacing subsection (1)(j) with the following –

“(j) claims or receives any rebate, drawback, refund or payment to which he knows he is not entitled under this Act.”;

(b) replacing subsection (1)(o) with the following –

“(o) contravenes the provisions of section 16(13), 16 bis (9), 18(7), 33 bis (4), 60(1), 63(1), 75(9 bis), 75(20) or 114(2 bis); or”;

9c) adding after subsection (2) the following subsection (3) –

“(3) When any person is charged with a contravention of subsection (1)(j) he shall, until the contrary is proved, be presumed to have known that he was not entitled to the rebate, drawback, refund or payment concerned.”.

Deletion of Section 82.

39. The principal Act is amended in part XI by deleting section 82.

Amendment of Section 85.

40. Section 85 of the principal Act is replaced with the following –

“Beer of higher or lower density than indicated by label or container.

85. Any manufacturer of beer in whose duty warehouse or on whose delivery vehicle beer packed for sale is found of a relative density before fermentation higher or lower than such density specified in the sub-item of tariff item 104.10 registered in terms of section 34(4) in relation to beer of the name indicated on the container of beer so found shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand emalangeni or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding two years, or both, and the goods in respect of which the offence was committed shall be liable to forfeiture.”.

Amendment of Section 88.

41. Section 88 of the principal Act is amended by replacing –

(a) (a) subsection 1 with the following –

“(1)(a) An officer, magistrate or member of the police force may detain any vehicle, plant, material or goods at any place for the purpose of establishing whether that vehicle, plant, material or goods are liable to forfeiture under this Act.

(b) Such vehicle, plant, material or goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer, magistrate or member of the police force, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

(c) If such vehicle, plant, material or goods are liable to forfeiture under this Act the Commissioner may in his discretion seize that vehicle, plant, material or goods.

(d) The Commissioner may in his discretion seize any other vehicle, plant, material or goods liable to forfeiture under this Act.”; and

(b) subsection 2(a) with the following –

“(2) (a) (i) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act, demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to the provisions of this Act or committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods plus any unpaid duty thereon, as the case may be.

(ii) For the purposes of subparagraph (i) the value for duty purposes shall be calculated in terms of the provisions of this Act relating to such value whether or not the goods in question are subject to *ad valorem* duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.”.

Amendment of Section 91.

42. Section 91 of the principal Act is amended in subsection (3) by replacing the words “five hundred emalangen” with the words “one thousand emalangen”.

Amendment of Section 92.

43. Section 92 of the principal Act is amended by replacing the full stop at the end of the section with a colon and adding the following proviso –

“Provided that the Commissioner may in his discretion withhold a sum not exceeding one-third of any such fine, penalty or proceeds which he may then award to any person (including any officer) by whose means or information the fine or penalty or forfeiture was imposed or the seizure made.”.

Amendment of Section 102.

44. Section 102 of the principal Act is amended by replacing –

(a) subsection (1) with the following –

“(1) Any person selling, offering for sale or dealing in imported, excisable or sales duty goods or any person removing the same, or any person having such goods entered in his books or mentioned in any documents referred to in section 75(4 bis) or 101, shall, when requested by an officer, produce proof as to the person from whom the goods were obtained and, if he is the importer or manufacturer or owner, as to the place where the duty due thereon was paid, the date of payment, the particulars of the entry for home consumption and the marks and numbers of the cases, packages, bales and other articles concerned, which marks and numbers shall correspond to the documents produced in proof of the payment of the duty.”; and

- (b) subsection 94) with the following –

“(4) If in any prosecution under this Act or in any dispute in which the government, the Minister or the Commissioner 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 used, imported, exported, manufactured, removed or otherwise dealt with or in, or whether any books, accounts, documents, forms or invoices required by regulation to be completed and kept, exist or have been duly completed and kept 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 used, imported, exported, manufactured, removed or otherwise dealt with or in, or that such books, accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished, as the case may be, unless the contrary is proved.”.

Replacement of Section 103.

45. Section 103 of the principal Act is replaced with the following –

“103. For the purposes of this Act any reference to a person shall be deemed to include a reference to a company, close corporation, co-operative society, firm, partnership, statutory body or club, and in the event of a contravention of or non-compliance with this Act or the incurring of any liability under this Act by any company, close corporation, co-operative society, firm, partnership, statutory body or club any person having the management of any premises or business in or in connection with which the contravention or non-compliance took place or the liability was incurred may be charged with the relevant offence and shall be liable to any penalties provided therefor and shall be liable in respect of any liability so incurred.”.

Amendment of Section 110.

46. Section 110 of the principal Act is amended by replacing subsection (1) with the following –

“(1) Except as elsewhere provided in this Act, the Minister may prescribe the instruments, meters, gauges and other appliances and the tables, formulae and other methods of calculating to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristic of any goods for the purposes of this Act.”.

Amendment of Section 113.

47. Section 113 of the principal Act is amended –

- (a) in subsection (1) by –

- (i) replacing paragraph (a) with the following –

“(a) cigarettes with a mass of more than 2 kilograms per 1,000 cigarettes;”;

- (ii) deleting paragraph (b);

- (b) by renumbering subsection (7) as “(7)(a)” and adding thereafter the following paragraphs –

“(b) Any officer, magistrate or member of the police force may detain any goods for the purpose of establishing whether those goods are liable to forfeiture under paragraph (a).

- (c) Any goods so detained may be released by the Commissioner to the Government department or person concerned.”; and
- (c) by replacing subsection (8) with the following –
 - “(8) No person shall manufacture cigarettes the mass of the tobacco of which exceeds 2 kilograms per 1 000 cigarettes.”.

Amendment of Section 114.

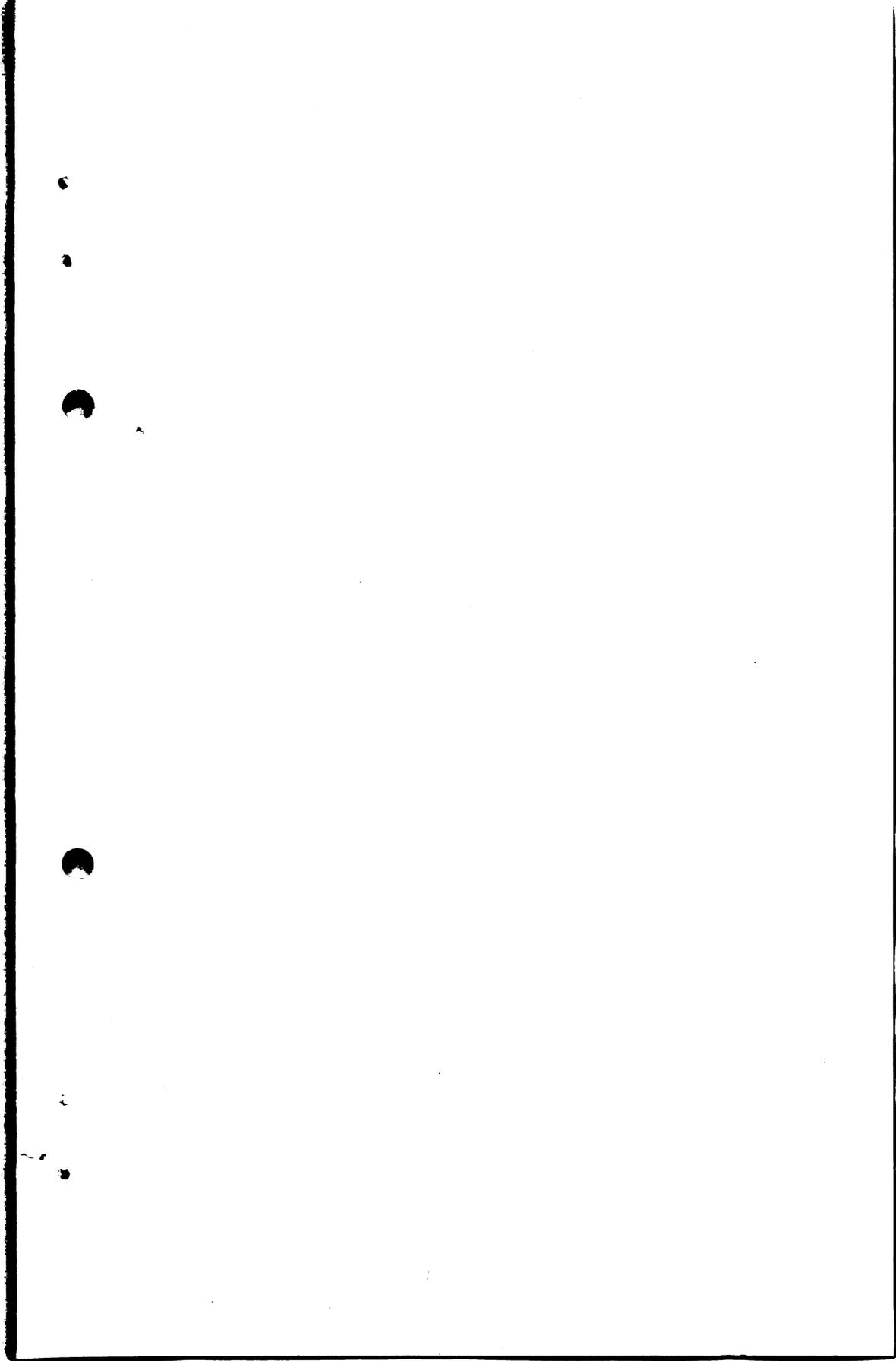
48. Section 114 of the principal Act is amended by replacing subsection (1) with the following –

- “(1) (a) The correct amount of duty for which any person is liable in respect of any goods imported into or exported from Swaziland or any goods manufactured in Swaziland shall from the date on which liability for such duty commences; and
- (b) 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 Government by the person concerned, and any goods in a duty warehouse or in the custody of any officer (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 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 fuel in respect of which any duty is prescribed (whether or not such duty has been paid), is used, transported or stored, may be detained in accordance with subsection (4) and shall be subject to a lien until such debt is paid.”

Deletion of Section 117.

49. The principal Act is amended in Part XII by deleting section 117.



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