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SWAZILAND GOVERNMENT GAZETTE

VOL. XXIII]

MBABANE, Friday, December 27th., 1985

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PUBLISHED BY AUTHORITY

NOTICE

TRADING LICENCES ORDER NO. 20 OF 1975

Notice is hereby given that applications have been made by Oliveira Motors (Pty) Limited to trade under the style "MBABANE SERVICE STATION," for the transfer to it of a Motor Garage License and a Motor Vehicle Dealer's Licence held by Tracar Ltd. in respect of premises on Portion 487 of Farm No. 2, Mbabane urban area and that such applications will be heard in the Offices of the Regional Secretary, Mbabane at 10.00 a.m. on the 21st January 1986.

Objections, if any, must be lodged with the undersigned and the Applicant's Attorneys R.D. Friedlander and Co, P.O. Box A1, Swazi Plaza, Mbabane by noon on the 3rd January, 1986.

The Licensing Officer

P.O. Box 45,
Mbabane.

W1102 27.12.85

NOTICE

Notice hereby given that we intend applying for a Certified Copy of CROWN GRANT

No. 37/1978 registered on the 16/5/1978
in favour of ALEXANDER WILLIAM WILSON
in respect of

Certain Lot No. 48, situate in MUNGA ROAD, in the Pigg's Peak Township, HHOHHO District, Swaziland;

MEASURING 1708 (One Thousand Seven Hundred and Eight) square Metres

Any person having objection to the issue of such copy is hereby requested to lodge it in writing with the Registrar of Deeds within (3) Three weeks of the last publication of this notice.

DATED at MBABANE this 19th day of December, 1985.

Robinson, Bertram & Co
Attorneys for/Applicant
P.O. Box 24,
MBABANE.

W1098 2x3.1.86

NOTICE

Notice is hereby given that an application has been made by DENNIS JAMES RITCHIE for the grant of:

1. Import and Export Licence to operate under the style of "TREE AND TURF (PTY) LIMITED" at Jonston Street, Mbabane. The application will be heard in the District Commissioner's Conference Room on the 28th January 1986 at 10.00 a.m.

Objection thereto must be lodged with the undersigned as well as the Applicant's Attorneys of or before the 24th January, 1986.

Licensing Officer Mbabane
J.M. MAHLALELA & PARTNERS
OFFICES NO. 5 & 7 EAGLE HOUSE
Jonston Street Mbabane

W1100 27.12.85

NOTICE

TRADING LICENCE ORDER NO. 20 OF 1975

Notice is hereby given in terms of Business and Insolvency Act that Application will be made for transfer of a General Dealer Licence carried on at Lot 204 Matsapa Industrial Site by Richard Dlamini to Nicolas Kouletsis under the style "FONTANA GENERAL DEALER LICENCE" after the third publication hereof. The Application will be heard on the 7th January, 1986 at 10.00 a.m.

Objections thereto must be lodged in writing with the Applicant's Attorneys and the Regional Secretary¹ P.O. Box 13, Manzini not later than the 3rd January, 1986.

CARLSTON AND COMPANY
Applicant's Attorneys
Emcozini Building
Ngwane Street
P.O. Box 143,
MANZINI

W1073 3x27.12.85

NOTICE

TRADING LICENCE ORDER NO. 20 OF 1975

Notice is hereby given that in terms of Registration of Business and Insolvency Act that Application will be made for a transfer of a Restaurant Licence carried on at Shop No. 2 Enterprise Shopping Complex, Louw Street, Manzini under the name or style "O.K. RESTAURANT" by John Sussman to Cedric Alexander and Garth Jacobs under the same style. After the third publication hereof or the grant of a transfer, the licence will be heard on the 14th January, 1986 at 10.00 a.m. at the Regional Secretary's Office Manzini.

Objections thereto must be lodged in writing with the Applicants Attorneys and the Regional Secretary P.O. Box 13, Manzini not later than the 10th January, 1986.

CARLSTON AND COMPANY
Applicant's Attorney
Emcozini Building
Ngwane Street
P.O. Box 143,
MANZINI.

W1083 3x3.1.86

NOTICE

**ESTATE OF THE LATE NICOLAAS WILHELMUS VAN RHEEDE
VAN OUDTSHOORN**

(Identity No. 031212 5002 005) a Farmer (Retired) of 90 Boul Street, Belfast,
Married in community of property to ISABELLA CORNELIA VAN RHEEDE VAN
OUDTSHOORN. Date of death 17th January 1983.
No. E4285/84

The First and Final Liquidation and Distribution Account in the above Estate will lie for
inspection at the offices of the Master of the High Court Mbabane for twenty-one (21) days from

BARCLAYS NATIONAL BANK LIMITED
(Registered Commercial Bank)
PRETORIA Trustee Branch
P.O. Box 40076,
ARCADIA, 0007

W1101 27.12.85

SUPPLEMENT TO
THE
SWAZILAND GOVERNMENT
GAZETTE

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PUBLISHED BY AUTHORITY

THE CUSTOMS, FISCAL EXCISE AND SALES DUTY (AMENDMENT)
BILL, 1985

(Bill No. 23 of 1985)

(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, Fiscal, Excise and Sales Duties Act, 1971 (Act No. 21 of 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 amend the title by which the Act may be cited;
- (b) to further define certain expressions used in the Act;
- (c) to provide for a Commissioner of Customs in place of a Secretary;
- (d) to make other provision regarding goods imported by post;
- (e) to further determine the manner in which any person entering or leaving Swaziland shall declare goods in his possession and to pay such duties as may be assessed thereon;
- (f) to regulate the transfer or pledging of warehoused goods;
- (g) to provide for the determination of the time of exportation of certain goods;
- (h) to determine the value for customs purposes of goods sold in transit;
- (i) to further regulate the adjustment of bills of entry which have been passed in error;
- (j) to further regulate the liability of a container operator for duty;
- (k) to provide for the determination of the duty applicable to dutiable goods imported into or manufactured in Swaziland which were removed without entry for home consumption having been made;
- (l) to prohibit certain acts in respect of goods intended for home consumption which have not been duly entered for such purpose;
- (m) to make provision for the lapse of amendments of Schedule No. 2 made under section 56 (*1 bis*);
- (n) to make further provision for the imposition of anti-dumping duties;
- (o) to make new provision for the determination of the value of certain imported goods and certain goods manufactured in Swaziland;
- (p) to further regulate the calculation of the value for duty purposes of certain imported goods;
- (q) to make further provisions with regard to the interpretation of sections 65, 66 and 67 of the Act;
- (r) to delete the provisions in relation to the entry of kerosene under rebate of duty;

S2

- (s) to empower the Minister of Commerce, Industry and Tourism to authorise entry of imported goods under rebate of duty;
- (t) to make further provision for refunds of duty in respect of dutiable goods;
- (u) to extend the provisions relating to offences;
- (v) to empower the Secretary to approve certain persons as container operators;
- (w) to create a certain legal fiction in connection with particular forms and invoices;
- (x) to restate the conditions on which certain goods may be allowed to pass from customs control; and
- (y) to extend the lien in favour of the Government for duties unpaid to certain additional goods, machinery, plant and equipment.

D.P. MAKANZA
Attorney-General

A BILL
entitled

AN ACT TO AMEND THE CUSTOMS, FISCAL, EXCISE AND SALES DUTIES ACT, 1971.

Enacted by the Regent and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Customs, Fiscal, Excise and Sales Duties (Amendment) Act, 1985 and shall be read as one with the Customs, Fiscal, Excise and Sales Duties Act, 1971, hereinafter referred to as the "principal Act".

Amendment of section 1.

2. Section 1 of the principal Act is amended by replacing subsection (1) with the following —

"This Act may be cited as the Customs and Excise Management Act, 1971 and, subject to subsection (2) shall, except as may otherwise be provided, be deemed to have come into force on 1st March, 1969".

Amendment of section 2.

3. Section 2 of the principal Act is amended —

- (a) by inserting after the definition "beer" the following —
"‘Commissioner’ means the Commissioner of Customs and Excise appointed under section 3;";
- (b) by replacing the definition "container operator" with the following —
"‘container operator’ means any person providing international transportation of containerized goods, and approved by the Commissioner under section 97 (*bis*), for operating containers in Swaziland;"; and
- (c) by deleting the definition "secretary".

Amendment of section 3.

4. Section 3 of the principal Act is amended by replacing the word "secretary" with the word "Commissioner", and any reference in the Act thereafter to "secretary" shall be deemed to be a reference to "Commissioner".

Amendment of section 12.

5. Section 12 of the principal Act is amended —

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

"(1) For the purposes of entry and collection of duty on goods imported into the Republic by post, any form or label completed by the sender in respect of the postal item in question and on which the particulars necessary for the assessment of duty are set forth, shall be deemed to be an entry made under the provisions of this Act, and the particulars on any such form or label shall, for the purposes of this Act, be taken as the declaration to be made by the importer under section 38:

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

(b) by deleting subsection (2);

(c) by replacing subsection (3) with the following —

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

(d) by replacing subsection (4) with the following —

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

Amendment of section 13.

6. Section 13 of the principal Act is amended —

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

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

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

- “(1) bis. Any declaration made under 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.”.

Amendment of section 24.

7. Section 24 of the principal Act is replaced with the following —

“24 (1) Except with the prior permission of the Commissioner —

- (a) the owner of any dutiable goods in a customs and excise warehouse may not enter into any agreement whereby —
 - (i) his ownership of such goods is transferred to any other person;
 - (ii) such goods are pledged or otherwise hypothecated in favour of any other person;
 - (b) any person in whose favour such goods have been pledged or hypothecated may not enter into any agreement whereby any rights obtained by him by virtue of such pledge or hypothecation are ceded to any other person.
- (2) Any agreement entered into in contravention of subsection (1) shall for the purposes of this Act be null and void.”.

Amendment of section 37.

8. Section 37 of the principal Act is amended —

- (a) by replacing subsection (4) with the following —

“(4) (a) Every exporter of any goods shall, before such goods are exported from Swaziland, deliver to the controller a bill of entry in the prescribed form, but the Commissioner may —

- (i) if no export duty is payable on and no obligation or condition is to be fulfilled or complied with under law in respect of such goods; or
- (ii) in the case of goods to be exported overland by means of a vehicle (excluding an aircraft and a railway train) which are loaded for export at a place other than a place appointed under section 6 where goods may be entered for customs and excise purposes,

allow such a bill of entry to be delivered at such time as he deems reasonable.

- (b) For the purpose of paragraph (a), in relation to the delivery of a bill of entry, the goods referred to therein shall be deemed to have been exported from Swaziland—
- (i) in the case of goods to be exported by ship, at the time when such goods are delivered to the railway operator, a depot operator, the master of the ship concerned or a container operator, as the case may be;
 - (ii) in the case of goods to be exported by aircraft, at the time when such goods are delivered to the pilot of the aircraft concerned or are brought within the control area of the airport authority concerned, as the case may be.
 - (iii) in the case of goods to be exported by railway train, at the time when such goods are delivered to the railway operator; or

- (iv) in the case of goods to be exported overland by a vehicle other than an aircraft or a railway train, subject to paragraph (a), at the time when such goods are loaded on such vehicle.”.

Addition of section 38 bis.

9. The principal Act is amended by adding the following section after section 38 —

“Sale in transit.

38. *bis* Notwithstanding anything to the contrary in this Act, the importer of any goods purchased from any Customs Union Consignee after shipment of such goods but before the date of entry thereof, shall produce to the Controller the invoice relating to such purchase, and the price actually paid or payable for such goods by virtue of such purchase shall for the purposes of subsection 65 (1) be the transaction value of such goods.”.

Amendment of section 39.

10. Section 39 of the principal Act is amended —

- (a) by replacing subsection (3) with the following—

“(3) Subject to the provisions of subsections 76 and 77 and on such conditions as the Commissioner may impose and on payment of such fees as the Minister may prescribe by regulation —

- (a) an importer, exporter or manufacturer of goods shall on discovering that a bill of entry presented by him does not in every respect comply with section 38, or is invalid in terms of subsection (1), forthwith adjust that bill of entry by means of a voucher of correction or in such other manner as the Commissioner may prescribe; or

- (b) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 18 or for purposes or use under rebate of duty under section 75, the Commissioner may allow the importer, exporter or manufacturer concerned to adjust that entry by substitution of a fresh entry and cancellation of the original entry provided such goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate;

- (b) by replacing subsection (4) with the following —

“(4) The provisions of subsection (3) (ii) shall apply *mutatis mutandis* in respect of a bill of entry in which goods have according to the tariff, or circumstance according to which such goods are charged with duty, been described in error as goods other than goods intended for —

- (a) storage or manufacture in a customs and excise warehouse under section 18; or
- (b) purposes or use under rebate of duty under section 75, in consequence of the fact that —
- (i) a determination of any such tariff heading, subheading or item is, under section 46(12)(d), amended with retrospective effect as from a date before or on the date on which the goods described in such bill of entry have been entered for home consumption;

- (ii) any such determination is, under the said section 46(12)(d), withdrawn with such retrospective effect, and a new determination is thereunder made with effect from the date of such withdrawal; or
 - (iii) any Schedule is amended with retrospective effect, and in which such goods, if the amendment or new determination had been in operation on the date on which the goods were so entered, would have been described as goods intended for the said storage or manufacture or the said purposes or use.”; and
- (c) by adding after subsection (4) the following —
- “(5) No application for a substitution under this section 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 three months —
- (a) from the date on which the duty to which the application relates was paid; or
 - (b) in the case of any amendment of a determination under subsection (4)(b)(i), or a new determination under subsection (4)(b)(ii) from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by the notice in the Gazette, the date on which such amendment or new determination is so published; or
 - (c) in the case of an amendment referred to under subsection (4)(b)(iii), from the date on which such amendment is published by notice in the Gazette.”.

Amendment of section 43.

11. Section 43 of the principal Act is amended —

- (a) by replacing subsection (5) *bis* (b) with the following —
 - “(b) in respect of goods containerized in —
 - (i) L.C.L. containers; and
 - (ii) other containers referred to in subsection (5)(c) delivered to a container operator and specified in a list to be compiled by the container operator concerned,
 upon delivery thereof to a depot operator; or”; and
- (b) by replacing subsection (5) *ter* (a) with the following —
 - “(a) in respect of goods containerized in L.C.L. containers and the other containers referred to in subsection (5) *bis* (b)(ii), upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or”.

Amendment of section 44.

12. Section 44 of the principal Act is amended —

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

"(1) Notwithstanding anything to the contrary contained in this Act, all goods consigned to or imported into Swaziland 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 and countervailing duties specified in Schedule No. 2 and new or increased duties referred to in section 58(1) and duties imposed under section 53, as may at the time of such entry be leviable upon such goods."; and

(b) by adding the following subsection after subsection (2) —

"(3) Notwithstanding subsection (1) and subject to section 39 any goods imported into or manufactured in Swaziland, which are liable to duty and which were removed, taken or delivered without 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."

Addition of section 46 bis.

13. The principal Act is amended by adding the following after section 46 —

46 bis "*Prohibition of dealing with goods not entered for home consumption.*

- (1) Subject to 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 Swaziland has concluded such an agreement in terms of section 51 and he has reasonable cause to believe that such goods have not been so 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 subsection (1) not been duly entered for home consumption in Swaziland."

Amendment of section 56.

14. Section 56 of the principal Act is amended by replacing subsection (7) with the following—

"(7) The provisions of section 47(5), (6) and (7) shall *mutatis mutandis* apply in respect of any amendment made under subsection (1) or (1) bis of this section."

Amendment of section 57 bis.

15. Section 57 bis of the principal Act is amended by replacing subsection (1) with the following —

"(1) If the Minister is satisfied before any anti-dumping duty is imposed under section 56 that the requirements of section 56 (1)(a), (b) and (c) are met in respect of any class or kind of imported goods, he may by notice in the Gazette impose a provisional charge in relation to anti-dumping duty on imported goods of that class or kind for a period not exceeding four months as from date of publication of such notice, or, if requested thereto by the exporter concerned before the expiry of the said period, for a further period not exceeding two months."

Amendment of section 65.

16. Section 65 of the principal Act is amended by replacing subsection (7) with the following —

“(7) (a) Notwithstanding 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 fifteen 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) Section 70(3) or (4) 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 69.

17. Section 69 of the principal Act is amended by replacing subsections (4) and (5) with the following —

“(4) Notwithstanding subsections (1) and (2), the value for excise duty purposes of any goods manufactured in Swaziland and specified in Section B of Part 2 of Schedule No. 1 (other than goods entered under item 617.01 of Schedule No. 6) shall be the value for excise duty purposes of such goods calculated or determined in the terms of subsection (1) or (2), plus any non-rebated excise duty payable under section A of Part 2 of Scheduled No. 1 on such goods.

(5) Section 70(3) or (4) shall *mutatis mutandis* apply to the calculation or determination of the value for excise duty purposes of any goods specified in Section B of Part 2 of Schedule No. 1 and entered in terms of item 617.01 of Schedule No. 6.”.

Amendment of section 71.

18. Section 71 of the principal Act is amended by replacing the words in subsection (2) preceding the first proviso with the following —

“If any motor vehicle is imported by an individual for his own use and not for resale, the Commissioner may, notwithstanding section 65(1) and (4) but with due regard to section 66, determine a value which shall, subject to a right of appeal to a Magistrate's court, *mutatis mutandis* in accordance with section 65(6), be deemed to be the value for duty purposes of such vehicle.”.

Replacement of section 74 bis.

19. Section 74 *bis* of the principal Act is replaced with the following —

“74 *bis* (1) The interpretation of section 65, 66 and 67 shall be subject to the agreement concluded at Geneva on 12th April, 1979 and known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the Interpretative Notes thereto and the Advisory Opinions, Commentaries, Explanatory Notes, Case Studies and Studies issued under the said Agreement of Implementation of Article VII of the General Agreement on Tariffs and Trade.

(2) The Commissioner shall obtain and keep in his office two copies of such Agreement, Interpretative Notes, Advisory Opinions, Commentaries, Explanatory Notes, Case Studies and Studies and shall effect thereto any amendment thereof of which he is notified by the Secretariat of the General Agreement on Tariffs and Trade.

(3) Whenever in any legal proceedings any question arises as to the contents of such Agreement, 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 effected 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 be accepted as sufficient evidence of the contents thereof or of the effective date of any amendment thereto as the case may be.

(4) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 65, 66 or 67.”.

Amendment of section 75.

20. Section 75 of the principal Act is amended —

(a) by replacing subsection (4) *bis* with the following —

“(4) *bis* (a) notwithstanding anything to the contrary in this Act, any distillate fuel or residual fuel oil which may be entered under rebate of duty under any item of Schedule No. 4 or 6, shall be so entered by the supplier thereof;

(b) any distillate fuel or residual fuel oil so entered shall if supplied to a reseller or user thereof, be so supplied in such manner and on such conditions as may be prescribed by regulation;

(c) any reseller so supplied who supplies such distilled fuel or residual fuel oil to any user, shall so apply it in such manner and on such conditions as may be prescribed by regulation;

(d) Notwithstanding anything to the contrary in this Act, 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 so supplied such distillate fuel or residual fuel oil for a purpose other than a purpose or use provided in any item of Schedule No. 4 or 6, and shall be liable for and shall pay on demand by the Commissioner, the following duty:

(i) in the case of such supplier, the duty as is referred to in paragraph (e);

(ii) in the case of such reseller, the duty referred to in paragraph (f).

(e) If a supplier referred to in paragraph (a) supplies any distillate fuel or residual fuel oil entered as stated in paragraph (a) to any reseller or user contrary to the manner or conditions prescribed therefore by regulation, he shall be liable for such duty thereon as may be leviable thereupon at the time of such entry, or if the duty concerned has after such entry been increased, to the payment of such increased duty, as if no rebate of duty applied thereto.

(f) If any reseller referred in paragraph (c) supplies any distillate fuel or residual fuel oil to any user contrary to the manner or conditions prescribed by regulation, he shall be liable for the duty thereon to the extent of the rebate allowed to the supplier referred to in paragraph (a) at the time of entry.

Provided that if the duty in question has after such entry under rebate been increased, the extent of such rebate shall be deemed to be —

- (i) the difference between the duty actually paid on entry for home consumption and such increased duty; or
- (ii) such increased duty if no duty was paid on entry for home consumption.”.

- (b) by replacing the words preceding the proviso to subsection (6) with the following —

“(6) Any person to whom any distillate fuel or residual fuel oil has been supplied from stocks which have been entered under rebate of duty at a price which has been reduced to the extent of such rebate for a purpose stated in the item under which such distillate fuel or residual fuel oil were so entered, and who applied such distillate fuel or residual fuel oil or any portion thereof to any other purpose, shall be guilty of an offence and notwithstanding subsection (5) be liable for the duty to the extent of the rebate allowed on entry for home consumption of such distillate fuel or residual fuel oil on the full quantity of them so supplied to him or on such portion thereof as the Commissioner may determine.”; and

- (c) by adding after subsection (16) 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 imported goods may in terms of any item of Schedule No. 3, 4, 5 or 6 be entered under rebate of duty has been refused by him, 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 purposes of section 39(3) —

- (i) any bill of entry passed in relation to imported 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 section 75;
- (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 imported goods concerned shall be deemed to have been paid on the date on which the permit referred to in paragraph (a) was issued.”.

- (d) by replacing the words preceding paragraph (a) in subsection (19) with the following—

“(19) Subject to subsection 18(8) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 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 specified below in the case of—”;

- (e) by replacing subsection 19(a) with the following —

“(a) Wine spirits (ethyl alcohol) manufactured in Swaziland and entered for storage in a customs and excise storage warehouse, excluding spirits specified in subsection (19)(b) *bis* 1,5 per cent of the quantity so entered;”;

- (f) by adding after subsection 19(b) the following —

“(b) *bis* unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in a customs and excise warehouse approved for that purpose, the percentage, but not exceeding 1,25 per cent of the quantity so removed, as may in the opinion of the Commissioner represent a loss incurred while the spirits in question are so removed and stored as the Commissioner may determine;”;

- (g) by replacing subsection (19)(e) with the following —

“(e) imported crude naphtha for use in the refining of petroleum products, or imported excisable petrol, 0,25 per cent of any quantity entered for storage in any customs and excise storage warehouse;”;

Amendment of section 76.

21. Section 76 of the principal Act is amended by replacing subsection (4) with the following —

“(4) No application for a refund or payment in terms of this section shall be considered by the Commissioner unless it is received by the Controller, duly completed and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section, within a period of two years —

- (a) from the date on which the duty or charge to which the application relates was paid; or
- (b) where a determination of a tariff heading, subheading or item referred to in section 46 (12) (a) or of a value referred to in section 65(4)(a), under section 46(12)(d) or section 65(5) as the case may be, amended with retrospective effect from a date before or on the date on which the duty to which the application relates was paid, or any such determination is, under section 46(12)(d) or section 65(5), as the case may be, withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal, from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the Gazette, the date on which such amendment or new determination is so published; or
- (c) where any Schedule is amended with retrospective effect, from the date on which such amendment is published by notice in the Gazette;

Provided that the Commissioner may, in such circumstances as he may consider exceptional, consider any such application after expiration of such period.”.

Amendment of section 80.

22. Section 80 of the principal Act is amended in subsection (1)—

- (a) by deleting the word “or” at the end of paragraph (n);
- (b) by replacing paragraph (o) with the following—
“(o) contravenes section 18(7), 33 *bis* (4), 60(1), 63(1) or 75(20); or”; and
- (c) by inserting after paragraph (o) the following —
(p) fails to comply with any conditions determined under section 106(2).”.

Addition of section 96 bis.

23. The principal Act is amended by adding the following section after section 96 —

“Approval of container operators.

96 *bis*. The Commissioner may, subject to such conditions as he may generally or in respect of a particular case determine, approve for operating containers in Swaziland any person providing international transportation of containerized goods.”.

Amendment of section 102.

24. Section 102 of the principal Act is amended by replacing subsection (4) 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 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 have not been so furnished, as the case may be, unless the contrary is proved.”.

Amendment of section 106.

25. Section 106 of the principal Act is amended by replacing subsection (2) with the following —

- (2) Subject to this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him, allow goods to pass from his control until he has satisfied himself that this Act or any law relating to the importation or exportation or transit carriage through Swaziland of goods has been complied with in respect of such goods, and the Government or the Commissioner or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Commissioner or for the cost of such detention.”.

Amendment of section 114.

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

- “(1) The correct amount of duty payable in respect of any goods imported into or exported from Swaziland or any goods manufactured in Swaziland 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 Government by the person concerned, and any goods in a customs and excise warehouse or in the custody of any officer (including goods in a rebate storeroom) and belonging to that person, and any goods afterwards imported or exported by the person by whom the debt is due, and any imported goods in the possession or under the control of such person or on any premises in the possession or under the control of such person, and any goods in respect of which an excise or sales duty is prescribed (whether or not such duty has been paid) and any materials for the possession or under the control of such person or on any premises in the possession or under the control of such person and any vehicles, machinery, plant or equipment in the possession or under the control of such person in which dutiable fuel is used, transported or stored may be detained in accordance with the provisions of subsection (2) and shall be subject to a lien until such debt is paid.”.

LEGAL NOTICE NO. 141 OF 1985

THE INCOME TAX ORDER, 1975

(Order No. 21 of 1975)

THE INCOME TAX (CLEARANCE CERTIFICATES) REGULATIONS, 1985

(Under Section 69)

In exercise of the powers conferred by section 69 of the Income Tax Order, 1975 the Minister for Finance hereby makes the following Regulations—

Citation.

1. These Regulations may be cited as the Income Tax (Clearance Certificates) Regulations, 1985, and shall come into force on the 1st January, 1986.

Transactions requiring tax clearance certificates.

2. The transactions requiring income tax clearance certificates shall be as set out in the Schedule hereto.

SCHEDULE*Transactions requiring income tax clearance certificates.*

- (1) The issue, renewal, or transfer of any licence or similar document relating to any trade, business, profession or vocation.
- (2) The grant, transfer, endorsement or any act requiring registration of immovable property.
- (3) The purchase, sale or transfer of shares in companies.
- (4) The registration and deregistration of companies.
- (5) The registration of motor vehicles in Swaziland for the first time.
- (6) The tendering for the provision of goods and services to the Government and parastatal bodies in excess of E5,000.

K. MBULI
Principal Secretary

MBABANE,
17th December, 1985.