

PART IX

DUTIES, REFUNDS AND DRAWBACK

Power to impose duties.

79. (1) The National Assembly may, by resolution—

- (a) impose import and export duties on any goods imported or exported;
and
- (b) revoke, reduce, increase or alter any of the duties chargeable.

(2) Without prejudice to subsection (1), the Minister may, by Regulations not inconsistent with this Act, exempt imported or exported goods from payment of customs duty for the purposes and in the circumstances specified in the List of Conditional Duty Exemptions set out in the Common External Tariff.

(3) All import or export customs duties and all exemptions from customs duties shall continue in force until revoked, reduced, increased or altered in the manner provided under this Act or Regulations made under this Act.

(4) Notwithstanding subsections (1), (2) and (3), the Minister may, by Regulations—

- (a) revoke, reduce or increase any import or export customs duties;
- (b) make additions to or deletions from the list of goods exempted from customs duties; or
- (c) subject to subsection (5), impose new import or export customs duties.

(5) The duties imposed under subsection (4)(c) apply from the date of publication of the Regulations in the *Gazette* until the expiration of the Regulations, but in no case shall any such duty apply for a period in excess of six months.

Rate of duty.

80. (1) Unless otherwise provided by or under this Act, duty is payable on goods of a class or description at the rate in force with respect to such goods—

- (a) when an entry for home use is submitted, whether in electronic form or any other form;
- (b) when the entry in respect of the imported goods is delivered to a proper officer;
- (c) when an export declaration in respect of the goods is submitted, whether in electronic form or other form;
- (d) when the declaration in respect of the goods to be exported is delivered to a proper officer;
- (e) where the goods are removed from a vessel or an aircraft under any bond or other security, at the time of the delivery of the goods;
- (f) where the goods are removed from a warehouse for home use, at the time of the removal of the goods from warehouse;
- (g) where the goods are exported, at the time of release for export; or
- (h) in any other case, at the time of the importation or exportation of the goods.

(2) A person making an entry of goods shall, on making the entry, specify the classification of the goods and the rate of duty applicable to the goods.

Valuation.

81. (1) Goods shall be valued in accordance with the Second Schedule.

(2) A person making an entry of goods shall, on making the entry, specify the customs value of the goods, determined in accordance with the Second Schedule.

(3) The currency exchange rate in effect on the date of submission of the entry applies in determining the value of goods, unless otherwise provided for by Regulations made under this Act.

Deemed assessment of duty.

82. Unless otherwise provided in this Act, an entry with respect to the importation of goods or a declaration with respect to the exportation of goods made under this Act is deemed to be an assessment by the importer or exporter in relation to—

- (a) the value of the goods;
- (b) the rate of duty applicable to the goods; and
- (c) any other determination required before the importation or exportation of the goods.

Assessment and reassessment of duty by Comptroller.

83. (1) Where the Comptroller has reasonable cause to suspect that duty or any other charge is payable on goods for which no entry or declaration has been submitted, the Comptroller may determine the duty due at such amount as the Comptroller thinks proper, based on the provisions of this Act.

(2) The Comptroller shall, by notice in writing, advise the importer or exporter of the assessment under subsection (1).

(3) Subject to subsection (5), the Comptroller may make such amendments to an assessment of duty due under section 82 or subsection (1) as the Comptroller thinks necessary to ensure the correctness of the assessment notwithstanding that—

- (a) the goods to which the duty relates are no longer subject to customs control; or
- (b) the duty originally assessed has been paid.

(4) Where—

- (a) a re-assessment is made under this section; and
- (b) such re-assessment has the effect of imposing a new liability or altering an existing liability,

the Comptroller shall give to the importer or exporter written notice to that effect.

(5) The Comptroller is not entitled to make amendments to any duty assessment after the expiration of five years from the date on which the original assessment was made.

(6) An importer or exporter who is dissatisfied with a decision of the Comptroller under this section, may, within fourteen working days after the date on which notice of the decision is given, appeal to the Commission against that decision.

Requirement to keep documents, records and information.

84. (1) A person who makes an assessment under section 81 shall—

- (a) keep the documents, records and information in respect of that entry in such manner and for such period as required under this Act; and
- (b) when required by a customs officer, produce those documents, records and information for the purpose of establishing the accuracy of the assessment.

(2) A person who fails to produce any document, record or information required by a customs officer under subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

Payment of duty on imports.

- 85.** (1) The duty or any other charge on imported goods—
- (a) shall be based on the Common External Tariff; and
 - (b) immediately on the submission of an entry in respect of such goods, constitutes a debt due to the State.
- (2) The duty and any other charges payable under subsection (1) are—
- (a) owed by the importer of the goods, and, if more than one, jointly and severally by all the importers of the goods; and
 - (b) recoverable by action at the suit of the Comptroller on behalf of the State.
- (3) The right to recover duty as a debt due to the State is not affected by any or all of the following—
- (a) the goods have ceased to be subject to customs control;
 - (b) a bond or other security has been given for the payment of the duty;
 - (c) a proper assessment of the duty has not been made under this Act.
- (4) Unless expressly permitted by a customs enactment, imported goods shall not be delivered or removed on importation until the importer has paid to a proper officer the duty chargeable on those goods and any other charges which apply to the goods.
- (5) Where an importer of goods fails to settle a debt due under this Act, the Comptroller may detain subsequent shipments of the importer until such debt is settled.
- (6) The Comptroller may, where appropriate security is provided in accordance with Regulations, approve any person or any class of persons as persons who may defer the payment of duty due under this section.
- (7) Where—
- (a) the payment of any duty has been deferred in accordance with subsection (6); and
 - (b) such duty remains unpaid by the due date for payment,
- the duty shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.
- (8) The obligation to pay and the right to receive and recover duty under this Act are not suspended by the commencement of any appeal or other legal proceedings.
- (9) The Minister may make Regulations respecting the importation of goods.

Payment of duty on exports.

- 86.** (1) The duty on exported goods constitutes, immediately on the submission of the entry, a debt due to the State.
- (2) The duty payable under subsection (1) is—
- (a) owed by the exporter of the goods, and, if more than one, jointly and severally by all the exporters of the goods; and

(b) recoverable by action at the suit of the Comptroller on behalf of the State.

(3) The right to recover duty as a debt due to the State is not affected by any or all of the following—

- (a) the goods have ceased to be subject to customs control;
- (b) a bond or other security has been given for the payment of the duty;
- (c) a proper assessment of the duty has not been made under this Act.

(4) The Comptroller may, where appropriate security is provided in accordance with Regulations, approve any person or any class of persons as persons who may defer the payment of duty due under this section.

(5) Where any duty, the payment of which has been deferred in accordance with subsection (4), remains unpaid by the due date for payment, it shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

(6) The obligation to pay duty under this Act and the right to receive and recover duty under this Act are not suspended by any appeal or other legal proceedings.

Date for payment of deemed assessed duty.

87. Where an entry is required on the importation or exportation of goods, the duty deemed to have been assessed under section 82 is due and payable immediately on submission of the entry to a proper officer.

Date for payment of assessed and reassessed duties.

88. (1) Unless otherwise specified in this Act, the due date for the payment of duty assessed or reassessed by the Comptroller under section 83 is twenty-one working days commencing from the date of service of the notice of assessment or reassessment on the importer or exporter.

(2) Where the whole or part of any assessed or reassessed duty remains unpaid after the period specified in subsection (1), the amount of duty which remains unpaid shall bear interest at a rate of one per cent per month or part of a month during which such amount remains unpaid.

Payment of additional duties.

89. (1) Where an appeal or other proceeding results in a reassessment in an amount which is in excess of the duties paid in respect of the goods, the additional amount due shall be paid to the Comptroller within thirty days of the re-assessment.

(2) Where the additional duties, wholly or in part, specified in subsection (1) are not paid by the due date, the amount of the duty which is unpaid shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

Refunds.

90. (1) Where—

- (a) an amount is paid as duty; and
- (b) the Comptroller finds that such amount is in excess of the duty due and payable,

the Comptroller shall refund the excess duty paid, unless the whole or a part of the excess duty is set off against other debts.

(2) Where an appeal or any other proceeding results in a reassessment in an amount which is less than the amount which has been paid in duties or given as security for payment of duty, the Comptroller shall—

- (a) refund the excess duties paid to the appellant; or
- (b) release the appellant from any security given for payment of the duties in excess of the amount properly payable.

(3) Subject to subsection (4), where a person has paid duty in an amount which is in excess of the amount of duty payable—

- (a) the person may file, with the Comptroller, a claim for a refund of the excess amount paid; and
- (b) the claim shall be in the prescribed form accompanied by the prescribed documentary evidence of the payment of the excess amount.

(4) A claim for a refund cannot be made after three years from the date on which the overpayment is alleged to have been made.

(5) Where a claim for refund of the excess amount of duty paid is filed with the Comptroller—

- (a) the Comptroller shall, within thirty days of the filing of the claim, serve on the claimant a notice in writing of the decision or determination of the Comptroller; and
- (b) if the Comptroller determines that the claimant is entitled to the refund, the Comptroller shall, within thirty days of the date of the decision or determination, refund the excess amount paid as duty.

(6) Where the refund required by or under—

- (a) subsection (1) is not paid within thirty days;
- (b) subsection (5) is not paid within the thirty-day period specified in that subsection,

the amount of the refund which remains unpaid shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

(7) An obligation on the part of the Comptroller to refund duties under subsection (1) is suspended pending the outcome of any appeal filed by the Comptroller under this Act or any other Act against the decision requiring the duty to be refunded.

General relief from duty.

91. (1) Subject to section 81, goods may be entered into Saint Christopher and Nevis without payment of customs duties where—

- (a) the Comptroller permits goods to be imported for temporary use for such periods as the Comptroller sees fit;
- (b) goods permitted to be warehoused on importation are warehoused;
- (c) the Comptroller permits goods entered for transshipment to be removed for that purpose; or

- (d) goods previously entered for home use in Saint Christopher and Nevis are exported and are subsequently re-imported into Saint Christopher and Nevis and it is shown to the satisfaction of the Comptroller that—
- (i) no duty was chargeable on such goods on any previous importation into Saint Christopher and Nevis;
 - (ii) if any duty was chargeable on such goods, the duty has been paid;
 - (iii) no drawback has been paid or duty refunded on the exportation of the goods or any drawback paid or duty refunded has been repaid; and
 - (iv) the goods have not undergone any process outside Saint Christopher and Nevis since their exportation.

(2) Where—

- (a) goods are exempted from duty by or under any provision of this Act or any other customs enactment; and
- (b) a customs officer makes a demand to the owner of such goods to produce the goods or otherwise account for the goods,

the owner of such goods shall comply with the demand made by the customs officer.

(3) Where, under any provision of any customs enactment, goods are subject to a condition or restriction exempting the goods from the payment of duty, and the condition or restriction is contravened—

- (a) the duty becomes payable by the person who, but for that exemption, would have had to pay the duty; and
- (b) the goods in respect of which the exemption was granted become liable to forfeiture.

(4) A person who fails to produce or account for goods referred to in subsection (2) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or equivalent to three times the value of the goods, whichever is greater.

(5) If the goods referred to in subsection (2) are subsequently found, such goods are liable to forfeiture.

Abatement of duty.

92. (1) Subject to subsection (2), where the Comptroller is satisfied in respect of any imported goods that—

- (a) before or upon the importation of the goods, such goods, in whole or in part, have deteriorated or have been damaged, lost or destroyed;
- (b) goods lost, before or upon their importation, have not entered or will not enter into home use in Saint Christopher and Nevis; and
- (c) the carrier or insurer of such goods has made an allowance to the importer of the goods in respect of the deterioration, damage, loss or destruction,

the Comptroller shall allow such abatement of the duty chargeable on such goods to the extent which, in the opinion of the Comptroller, the amount of the deterioration, damage, loss or destruction bears to the original value of the goods.

(2) Where duty has already been paid on goods in respect of which an abatement would be allowable under subsection (1), no repayment of the amount of the abatement shall be made unless the claim is made within twelve months of the date of the payment of the duty.

Power of Cabinet to refund duty.

93. (1) Cabinet may remit or authorise the refund of the whole or part of any duty paid or payable by any person in respect of any goods.

(2) Any remission or refund made or authorised to be made under this subsection may apply either to specific instances or generally or in respect of specified persons or to persons of a specific class and may be subject to such conditions and restrictions as Cabinet may see fit to impose.

Goods temporarily imported.

94. (1) Where the Comptroller is satisfied that goods have been temporarily imported, the Comptroller may—

- (a) require security of a sum equal to the amount of the duty payable on the goods had they been entered for home use; and
- (b) on receipt of the security, release the goods from customs control without payment of duty.

(2) Subject to regulations which may be prescribed, the person giving the security under subsection (1) shall be released from the conditions of the security if, within twelve months from the date of the entry of the goods, or within such longer period as the Comptroller may allow in any particular case, the Comptroller is satisfied that the goods have been—

- (a) exported;
- (b) packed for export into a bulk cargo container in a customs controlled area and the container is secured to the satisfaction of the Comptroller;
- (c) destroyed; or
- (d) dealt with in such manner as the Comptroller may allow.

(3) Subject to such conditions as the Comptroller may impose, duty is not payable on goods temporarily imported in accordance with any treaty, agreement or arrangement concluded by the Government.

(4) If, at the expiration of the twelve-month period specified in subsection (2), the goods have not been dealt with in accordance with that subsection—

- (a) any sum secured by way of deposit of money shall be retained by the State; or
- (b) any sum otherwise secured shall be paid to the State by the importer within ten working days after the expiration of the twelve-month period or such longer period as the Comptroller may allow, but the security shall be released upon such payment being made.

(5) Except as the Minister may permit, this section does not apply to duties imposed under the Customs Duties (Dumping and Subsidies) Act, Cap 20.05 or any other enactment respecting the imposition of countervailing duties.

(6) This section does not apply to any goods which are listed in the Common External Tariff as goods which cannot be treated as temporarily imported goods.

Claims for drawback.

95. (1) A claim for drawback shall be made in such form and manner and shall contain such particulars as the Comptroller directs.

(2) No drawback is payable—

- (a) unless it is shown to the satisfaction of the Comptroller that all duty due on the goods in respect of which the claim for drawback is made has been paid and not otherwise drawn back;
- (b) until the person making the claim for drawback has furnished the Comptroller with the information and produced to the Comptroller any books of account or other documents relating to the goods which the Comptroller may demand; and
- (c) until the goods which are the subject of the claim have been exported.

(3) The Minister may make Regulations prescribing any goods, class or description of goods in respect of which no drawback can be claimed.

Drawback of duty on certain goods.

96. (1) Subject to this section, drawback of duty may be allowed on goods, at such amounts and subject to such conditions as may be prescribed.

(2) Where—

- (a) the Comptroller is satisfied that goods have been shipped for export;
- (b) goods have been packed for export into a bulk cargo container in a customs controlled area and the container has been secured to the satisfaction of the Comptroller; or
- (c) goods have been entered into an export warehouse and the Comptroller is satisfied that such goods will be exported,

the Comptroller may, for the purposes of this section, if he or she thinks fit, treat the goods as having been exported.

(3) Where drawback has been allowed on any goods treated as having been exported, the goods shall not, without the permission of the Comptroller, be unshipped, re-landed or unpacked before export.

(4) Where—

- (a) drawback has been allowed or paid on goods treated as exported; and
- (b) such goods are unshipped or re-landed or unpacked before export,

the amount of drawback allowed in respect of such goods, immediately on their un-shipment, re-landing or unpacking, constitutes a civil debt due to the State.

(5) A civil debt due under subsection (4)—

- (a) is immediately payable by the owner of the goods at the time of the un-shipment, re-landing or unpacking of the goods; and
- (b) is recoverable by legal action brought at the suit of the Comptroller on behalf of the State.

(6) Where under this section drawback is allowed to any person, the Comptroller may apply the whole or any part of the sum allowed towards the payment of any duty which is owed by that person.

(7) Except as the Minister may permit, this section does not apply to duties imposed under the Customs Duties (Dumping and Subsidies) Act or any other Act respecting the imposition of countervailing duties.

Extent of drawback.

97. (1) Subject to this section, where goods are entered for—

- (a) shipment for use as stores; or
- (b) warehousing for subsequent exportation or shipment for use as stores,

drawback may be claimed in respect of any duty paid at the time of the original importation of those goods.

(2) Subject to subsection (3) and any Regulations made under this Act, no drawback may be claimed in respect of—

- (a) goods of a value, at the time of original importation, of less than five hundred dollars;
- (b) goods which were imported more than twelve months before the date of submission of the claim for drawback;
- (c) subject to paragraph (d)—
 - (i) goods not in the packages in which they were originally imported; or
 - (ii) bulk goods if the bulk has been broken; or
- (d) goods which have been tampered with or used.

(3) Subsection (2) does not apply to imported goods which—

- (a) are exported, within six months of their importation, by the importer back to the country and to the person or firm from which the goods were originally imported; or
- (b) are entered for shipment for use as stores.

Drawback on goods destroyed and damaged after shipment.

98. (1) Where it is proved to the satisfaction of the Comptroller that goods, after being shipped for exportation or for use as stores, have been—

- (a) destroyed by reason of accident on board the exporting vessel or aircraft, drawback on such goods is payable as if the goods were exported to their destination; or
- (b) materially damaged by reason of accident on board the exporting vessel or aircraft, such goods may be brought back into Saint Christopher and Nevis and re-landed or unloaded—
 - (i) with the consent of the Comptroller; and
 - (ii) in accordance with such conditions and restrictions as the Comptroller may impose.

(2) Where any goods brought into Saint Christopher and Nevis under subsection (1)(b) are re-entered for home use, such goods are chargeable with the duty normally chargeable on the importation of damaged goods.

Offences in relation to drawback.

99. (1) A person commits an offence if the person, with or without intent to defraud the revenue of the Customs Department—

- (a) obtains or attempts to obtain; or
- (b) assists another person to obtain or attempt to obtain, drawback for which there is no lawful entitlement.

(2) Where an offence is committed under this section—

- (a) the person who commits the offence is liable on summary conviction—
 - (i) subject to sub-paragraph (ii), to a fine of twenty-five thousand dollars or equivalent to three times the amount obtained or attempted to be obtained, whichever is greater; or
 - (ii) if the offence is committed with the intent to defraud the revenue of the Customs Department, to a fine of one hundred thousand dollars or equivalent to three times the amount obtained or attempted to be obtained, whichever is greater, or to imprisonment for two years; and
- (b) the goods in respect of which the offence is committed are liable to forfeiture.