

(Legislative Supplement No. 51)

CORRIGENDA

Kenya Gazette supplement No. 60 (Acts No. 5) published on 14th September, 1990—

Delete "No. 8 of 1990" appearing on page 97 and *insert* "No 9 of 1990".

Legal Notice No. 433 on pages 489 and 490—

Delete the figures "148 and 228" appearing under the heading "Rate of Excise Duty" and *insert* "176 and 260" respectively.

LEGAL NOTICE No. 433

THE CUSTOMS AND EXCISE ACT

(Cap. 472)

IN EXERCISE of the powers conferred by section 234 of the Customs and Excise Act, the Vice-President and Minister for Finance makes the following Regulations:—

THE CUSTOMS AND EXCISE (AMENDMENT)
REGULATIONS, 1990

1. The Regulation may be cited as the Customs and Excise (Amendment) Regulations, 1990 and shall be deemed to have come into operation on the 1st September, 1990.

2. The Customs and Excise Regulations are amended by inserting the following new regulation immediately after regulation 240. Sub. Leg.

The remission of duty on goods imported for use in the production of goods for export

EPPO. 240A (1) In this regulation "EPPO" means the Export Promotion Programmes Office.

General application of remission. (2) Subject to this regulation, a remission of duty may be granted by the Minister in respect of—

(a) goods imported for use in, or to be attached to goods manufactured or produced in Kenya for subsequent exportation; and

(b) imported goods, other than fuel, lubricants, plant, machinery or equipment, for direct consumption, or to be expended in the manufacture or production in Kenya of goods for subsequent exportation.

Limitations on application of remission. (3) The remission of duty referred to in paragraph (2) is restricted to the manufacturer or producer of goods for export, and to specified export industry sectors or commodities and to specified imported goods used in each such export sector or commodity as determined by the Minister.

List of
eligible
exports,
imported
inputs and
value of
imports.

(4) The Minister may, from time to time, on the recommendation of the EPPO, prescribe a list of imported goods that are eligible for remission of duty for a specified export industry sector or commodity, and may prescribe a ratio to limit the maximum import content in terms of the value of exports applicable to the specified goods produced for export.

Amend-
ments of
list.

(5) The Minister may amend the list and the ratios referred to in paragraph (4), as required. —

Application
for
remission.

(6) Subject to paragraph (2), an application for remission of duty may be allowed by the EPPO in either of the following cases—

(a) on receipt of an application on Form C. 56 supported by—

- (i) a *bona fide* export order or export contract for specified export goods;
 - (ii) a letter of credit;
 - (iii) detailed production plans including production processes or formulae, and specifying the types and quantities of goods to be imported;
 - (iv) a list of the goods to be imported including description, tariff classification, quantity, value and the estimated amount of duty to be remitted; and
 - (v) a completed application for an import licence;
- or

(b) where an exporter has an established record of exports of specified goods over a period of at least one year, on receipt of application on Form C. 56 for the imports required to produce exports of value up to the value exported on average over a three month period where the application is supported by—

- (i) export entries documenting the value of exports of specified goods over the immediately preceding year, or such longer immediately preceding period not exceeding three years;
- (ii) detailed production plans including production processes or formulae, and specifying the types and quantities of goods to be imported;
- (iii) a list of the goods or materials to be imported including description, tariff classification, quantity, value and the estimated amount of duty to be remitted; and
- (iv) a completed application for an import licence;

and a copy of the approved application shall be returned to the applicant duly certified by the EPPO.

Frequency
of making
application.

(7) Application under paragraph (6) (b) can only be made once every three months except where evidence can be provided that exports have or will reasonably be expected to exceed the average export value for a three month period.

Register of
applicants.

(8) The EPPO shall maintain a register of applicants for duty remission under this regulation which shall include the name, postal address and location of business premises, and any other information that the Commissioner may require.

Undertakings
by applicant.

(9) Remission of duty on goods under this regulation is conditional on the applicant undertaking in Form C. 56—

(a) to pay the duty on any imported goods—

(i) that have not been used in the production of specified exports; or

(ii) that have not been re-exported; or

(iii) that have not been transferred to an approved bonded factory as provided for under paragraph (24); or

(iv) that have not been transferred to the next production period as provided for in paragraph (25);

(b) to complete and submit to the Commissioner a reconciliation declaration as required under paragraph (22);

(c) to keep and maintain books and records in accordance with paragraph (18); and

(d) to provide security in the form and manner referred to in paragraph (13).

Exclusion of
other
exemptions
and
export
compensation.

(10) No remission of duty shall be granted in respect of imported goods where the same goods are the subject of any other remission, exemption or export compensation, or where the same goods are used in the production of goods for export for which export compensation is claimed under any other authority.

By-products.

(11) Where a by-product results from a process of manufacture or production utilizing goods subject to duty remission under this regulation, duty shall be payable on such imported goods in the same proportion that the value of the by-product bears to the total value of all goods manufactured or produced from such imported goods, unless the by-products are exported.

Scrap or
waste.

(12) Where any scrap or waste of commercial value results from a process of manufacture or production utilizing goods subject to duty remission under this regulation, duty shall be payable on the prevailing value of the scrap

or waste in accordance with sections 127 or 127B, as the case may be and the First Schedule, unless the scrap or waste is exported, or destroyed under the supervision of the proper officer.

Entry and
bond forms.

(13) Goods imported under this regulation—

- (a) shall be entered on Form C. 15 with a declaration of "REMISSION UNDER APPROVED MANUFACTURE, Legal Notice Number of" endorsed on each copy in block 39; and
- (b) shall have a security bond posted in an amount determined by the Commissioner, but not exceeding the duty that would otherwise be payable, and executed on the prescribed Form CB. 13.

Security
bond
cancelled.

(14) The security bond shall be cancelled only—

- (a) after the reconciliation declaration has been verified and approved by the Commissioner; and
- (b) any unused imported goods have been re-exported or transferred to an approved bonded factory; or
- (c) the duty has been paid.

Time period
for
processing
application.

(15) The EPPO shall within seven days of the receipt of a satisfactorily completed and supported application give approval or advise the applicant of a rejection stating the reasons for rejection.

Application
for
remission for
unlisted
goods.

(16) Subject to paragraph (4), pending the compilation and prescription of a list of eligible imported goods for the production of specified exports and the maximum import content ratio, the EPPO is authorized to grant a remission on the basis of the information submitted in those cases where the eligible list and ratio do not exist.

Time period
for
processing
applications
of unlisted
goods.

(17) The time period referred to in paragraph (15) may be extended to thirty days in the circumstances described in paragraph (16).

Maintenance
of books
and records.

(18) Every person who has been granted a remission from duty, shall keep and maintain at his place of business detailed books and records relating to the purchase, importation, stocks of goods, production, packing, sales, shipping and exportation of all goods.

Access to
books and
records.

(19) The books and records referred to in paragraph (17) shall be kept for five years from the time of the application for remission and shall be made available, upon request, to the proper officer, including an officer of the EPPO, for examination and verification at all reasonable times.

Separate books and records for imported and domestic goods.

Right to inspect books.

(20) Separate books and records shall be maintained for stocks of imported goods from those maintained for domestic goods.

(21) A proper officer, including an officer of the EPPO, is authorized to examine and verify the books and records, inspect the production facilities of any remission applicant and examine any goods or materials within the production facility or any storage place related thereto.

Submission of reconciliation declaration.

(22) A reconciliation declaration in Form C. 57 in respect of the duty remission granted shall be submitted to the Commissioner in three copies within a six month production period from the time of the approval of the remission application or, for applications approved under paragraph (6) (a), on completion of the export order or contract, whichever is the earlier.

Supporting documents for reconciliation declaration.

(23) The declaration referred to in paragraph (22) shall be supported by—

(a) certified copies of all import entries to which the reconciliation declaration relates;

(b) a document showing—

(i) the linkage between the imported goods and the exported goods produced or manufactured from these imported goods, or any waste or scrap of commercial value, or any waste or scrap destroyed, or any by-products either exported or sold domestically resulting from the manufacturing or production of the exported goods; and

(ii) the disposal of any remaining unused imported goods by re-export, transfer to an approved bonded factory, retention for future use in export production as provided for under paragraph (25), or domestic sale subject to duty.

(c) certified copies of all export entry documents or a list of the export entry numbers to which the declaration relates; and

(d) the invoices for the exported goods.

Transfer of goods to approved bonded factory.

Renewal of remission.

(24) Subject to section 58A, imported goods for which a remission has been authorized may be sold or transferred to an approved bonded factory.

(25) The remission from duty granted under this regulation may be renewed on the basis of the conditions of the initial authorization after the six month production period referred to in paragraph (22), by submission of a new application under paragraph (6) where—

- (a) fulfillment of an export contract has been delayed, or only partially achieved; or
- (b) where export production and delivery can be established to be regular and ongoing.

Offences
under the
regulation.

(26) Any person who fails to comply with or contravenes any provision of this regulation shall be guilty of an offence and be liable to a fine not exceeding two hundred thousand shillings or up to three times the value of the goods involved, or be liable to imprisonment for a term not exceeding three years, or both.

Rejection or
revocation of
approval.

(27) Without prejudice to the provisions of paragraph (26), where any person—

- (a) fraudulently contravenes the provisions of this regulations; or
- (b) is grossly negligent in complying with the provisions of this regulation; or
- (c) repeatedly acts in a manner inconsistent with the intent of this regulation,

the EPPO may reject or revoke approval of an application under this regulation.

Made on the 5th October, 1990.

GEORGE SAITOTI,
Vice-President and Minister for Finance.

LEGAL NOTICE No. 436

THE NATIONAL HOSPITAL INSURANCE ACT

(Cap. 255)

DECLARATION OF HOSPITAL

IN EXERCISE of the powers conferred by section 29 of the National Hospital Insurance Act, the Minister for Health, after consulting the Advisory Council, declares the following maternity and nursing home to be a hospital for the purposes of the Act—

DARAJA MBILI NURSING AND MATERNITY HOME, KISUMU

This notice shall be deemed to have come into operation on the 1st August, 1990.

Made on the 18th October, 1990.

MWAI KIBAKI,
Minister for Health.