

No. S 52

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

CUSTOMS (AMENDMENT) ORDER, 2001

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(Order under section 83(3))

CUSTOMS (AMENDMENT) ORDER, 2001

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation and commencement.

1. This Order may be cited as the Customs (Amendment) Order, 2001 and shall commence on 1st. September, 2001.

Amendment of section 2 of Chapter 36.

2. Section 2 of the Customs Act, in this Order referred to as the Act, is amended in subsection (1) —

(a) by inserting the following new definition immediately after the definition of "customs port"—

"customs value" in relation to imported goods, means the value of goods for the purpose of levying ad valorem customs duty and includes freight, insurance, and all other costs, charges and expenses (except any customs duties) incidental to the purchase and delivery of such goods at the place of payment of duty had been made ;"; and

(b) by deleting the definition of "value".

Insertion of new sections 90A, 90B and 90C.

3. The Act is amended by inserting immediately after section 90 the following new sections —

"Keeping of business records.

90A. (1) Every importer and exporter must keep or cause to be kept in Brunei Darussalam business records, for a period of at least 7 years.

(2) Every such person must, as and when required by a proper officer of customs —

(a) make the records available to the Controller;

(b) provide copies of the records as required; and

(c) answer any questions put to him by any such officer relevant to matters arising under this Act.

(3) Where, for the purposes of complying with subsection (2), information is recorded or stored by means of an electronic or other device, the importer, exporter or agent thereof shall at the request of a proper officer of customs operate the device, or cause it to be operated, to make the information available to him.

(4) Any person who fails to comply with this section shall be liable to a fine of fifty thousand dollars.

Business records.

90B. (1) For the purposes of section 90A, the business records to be kept shall be those records generated by, or that otherwise come within the possession or control of, the importer or exporter that are necessary to verify —

(a) any entry required to be made under this Act;

(b) the importation or exportation of any goods;

(c) the custody or movement of any goods subject to Customs control; or

(d) the manufacture of any goods subject to exercise duty.

(2) Without limiting the generality of subsection (1) and subject to subsections (3) to (5), the following records are required to be kept —

(a) shipping, importation, exportation and transportation documentation including the following —

(i) all entries required to be made under this Act;

(ii) entry documentation, including any declaration, certificate, permit, licence etc.;

(iii) vouchers;

(iv) bills of lading, waybills, air waybills and consolidator waybills;

(v) shipping instructions and freight forwarders' instructions;

- (vi) consignment notes;
- (vii) import charges, accounting details (including agents' fees, customs charges, wharf charges and other fees and charges);
- (viii) packing lists;
- (ix) manifests;
- (x) out-turn records; and
- (xi) goods' tally records;

(b) ordering and purchase documentation, including the following —

- (i) orders and confirmation of orders;
- (ii) purchase agreements;
- (iii) products specifications;
- (iv) contracts and conditions of purchase;
- (v) royalty agreements, pricing agreements, negotiations on pricing arrangements, and warranty agreements;
- (vi) invoices and pro forma invoices;
- (vii) commissions and brokerage agreements and details; and
- (viii) correspondence and any communication between the importer or exporter and any party related to the transaction;

(c) manufacturing, stock and resale documentation, including the following —

- (i) inwards goods register;
- (ii) stock register;
- (iii) sales records;
- (iv) receipts' journal;

(v) costing records; and

(vi) production records;

(d) banking and accounting information, including the following —

(i) letters of credit, applications for letter of credit and bank drafts;

(ii) remittance advice;

(iii) receipts and cashbooks;

(iv) credit card transactions;

(v) telegraphic money transfers;

(vi) offshore monetary transactions;

(vii) cheque records; and

(viii) evidence of payments by any other means, including information detailing non-cash compensation transactions;

(e) charts and codes of accounts, accounting instruction manuals and system and programme documentation that describes the accounting system used by the importer or agent thereof.

(3) Notwithstanding subsection (2) but subject to subsection (1), every exporter shall keep or cause to be kept the records specified in paragraphs (a), (b) and (e) of subsection (2), but shall not be required to keep any of the other records specified in that subsection.

Audit or examination of records.

90C. (1) An officer of customs may at all reasonable times enter any premises or place where records are kept pursuant to section 90A and audit or examine those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored.

(2) For the purposes of subsection (1), an officer of customs shall, subject to section 97A, have full and free access to all lands, buildings and places and to all books, records and documents, whether in the custody or under the control of the importer or exporter, or any other persons, for the

purpose of inspecting any books, records and documents and any property, process or matter that he considers —

(a) necessary or relevant for the purpose of collecting any duty under this Act or for the purpose of carrying out any other provisions of this Act and the regulations or rules made thereunder; or

(b) likely to provide any information otherwise required for the purposes of this Act or any of those functions.

(3) The officer of customs may, without fee or reward, make copies from or take extracts from copies of any such books or documents.

(4) Notwithstanding subsections (2) and (3) and subject to section 98, an officer of customs shall not enter any dwelling house except with the consent of an occupier or owner thereof or pursuant to a warrant issued under section 97."

Insertion of new section 97A.

4. The Act is amended by inserting the following new section 97A immediately after section 97 —

"Conditions for entry into buildings.

97A. Notwithstanding anything in this Act, every provision of this Act that confers on an officer of customs the power to enter any dwelling house, shop, or other building or place, whether under the authority of a warrant or otherwise, is subject to the following conditions —

(a) reasonable notice of intention to enter must be given, except where it would frustrate the purpose of the entry;

(b) entry must be made at a time that is reasonable in the particular circumstances except where it would frustrate the purpose of the entry;

(c) identification must be produced on initial entry and, if requested, at any subsequent time; and

(d) the authority and purpose for the entry must be clearly stated to the owner or occupier of the dwelling house, shop, building or other place if he is present."

Insertion of new section 104A.

5. The Act is amended by inserting the following new section 104A immediately after section 104 —

"Retention of documents obtained during search.

104A. (1) Where an officer of customs or any person authorised under this Act carries out any lawful search, inspection, audit or examination under this Act, and has reasonable cause to believe that any document coming into his possession during such search, inspection, audit or examination are evidence of the commission of an offence against this Act or are intended to be used for the purpose of committing any offence against this Act, such officer or authorised person may, subject to section 119A, take possession of and retain the document.

(2) Where an officer of customs or any person authorised under this Act takes possession of a document under subsection (1), he shall, at the request of the person otherwise entitled to the document, provide that person with a copy of the document certified by or on behalf of the Controller under the seal of the Customs as a true copy.

(3) Every copy so certified is admissible in evidence in all courts as if it were the original."

Insertion of new section 119A.

6. The Act is amended by inserting the following new section 119A immediately after section 119 —

"Seized documents subject to court order and proceedings.

119A. (1) Where an officer of customs or any person authorised under this Act takes possession of and retains any document under section 104A, the following provisions shall apply —

(a) in any proceedings for an offence relating to the document, the court may order, either at the hearing or on a subsequent application, that the document be delivered to the person appearing to the court to be entitled to them, or that they be otherwise disposed of in such manner and under such conditions as the court thinks fit;

(b) an officer of customs or an authorised person may at any time, unless an order has been made under paragraph (a), return the documents to the person from whom they were taken or apply to a Magistrate for an order as to their disposal; and on any such

application the Magistrate may make any order that a court may make under paragraph (a);

(c) if proceedings for an offence relating to any document are not brought within a period of three months after the date on which possession was taken, any person claiming to be entitled to such documents may, after the expiration of that period, apply to a Magistrate for an order that it be delivered to him; and on any such application the Magistrate may adjourn the application, on such terms as he deems fit, for proceedings to be brought, or may make any order that a court may make under paragraph (a).

(2) Where a person is convicted in proceedings for an offence relating to any document to which this section applies, and an order is made under this section, the operation of the order shall be suspended —

(a) until the expiration of the time prescribed for the filing of notice of appeal or of an application for leave to appeal;

(b) where notice of appeal is filed within the prescribed time, until the determination of the appeal;

(c) where application for leave to appeal is filed within the prescribed time, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.

(3) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may by order annul or vary the order made under this section and that order, if varied, shall take effect as varied.

(4) In this section, "court" includes the Intermediate and High Courts, and any references to a Magistrate includes a reference to a Judge of those courts."

Amendment of section 106.

7. The Act is amended in section 106 by inserting "or rules" immediately after "regulation" in paragraphs (a) and (c) of section 106(1).

Amendment of section 133.

8. The Act is amended in section 133 by —

(a) inserting 'rules or' immediately after 'make' in the first line and in the marginal note;

(b) inserting a new paragraph 33A immediately after paragraph 33 —

"33A the adoption and implementation of the provisions of Article VII of the General Agreement on Tariffs and Trade, 1994 in respect of customs valuation and matters related thereof."

Made this 13th. day of Zulkaedah, 1421 Hijriah corresponding to the 7th. day of February, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM