

LEGAL ASPECTS IN THE MANAGEMENT AND CONTROL OF CUSTOMS AND EXCISE WAREHOUSES

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By

N. Kock
12302090

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Study supervisor: Prof GTS Eiselen

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1. Introduction and problem statement

In terms of the *Customs and Excise Act*¹ certain importers, exporters and manufacturers must register their premises as customs and excise warehouses. The problem in many of these warehouses is that obsolete methods of control and management are practiced which does not fully comply with the requirements of the Act. Customs and Excise warehouses are also known as bonded stores or warehouses and rebate stores. A bonded warehouse is used when you import dutiable goods for storage. A rebate store is used when dutiable goods are used for specific manufacturing purposes that allow a rebate of duty.²

Goods cleared into a bonded store will only incur customs and excise duties when they are removed from the store for consumption on the domestic market. If they are exported or re-exported, no duty is incurred. Bond stores must be licensed with the local Customs office and are subject to regular inspection. Facilities must always be secure and meticulous records are required. A surety payment of at least R500 000 must be lodged with Customs to cover any defaults. A limit of two years is imposed on such bonded goods.³ Except with the permission of the Commissioner,⁴ no imported goods entered for storage shall be retained in any customs and excise warehouse for a period of more than five years from the time the imported goods were first entered for storage or from the time that the excisable goods were deemed to have been manufactured.⁵

The question of liability for customs and excise duties stands central in the management and control of these warehouses. The provisions of the Act in this regard are complex and distributed in a number of different articles. There is as yet no systematic exposition of the duties and liabilities of manufacturers and

¹ 91 of 1964

² <http://www.strategicplanning.co.za/customsconsulting.htm>

³ Ananymous Business Blue Book of South Africa: Investing in KwaZulu Natal 2002

⁴ Which shall only be granted in circumstances which he considers to be exceptional and subject to such conditions as he may impose in each case.

⁵ Section 19(9)

license holders contained in the Act. It must be kept in mind that the Act is of general application and therefore the approach has been selective. The purpose of this overview is to provide clients with pertinent information thereby facilitating improved service to business as well as the public.⁶ In this study the responsibility for the management and control of such warehouses in terms of the Act as well as the liability for the payment of duties on the goods and any other duties and liabilities will be investigated in order to give clear guidance to manufacturers and license holders. This will include an any civil and criminal and fiscal liability created by the provisions of the Act.

2. The customs and excise process

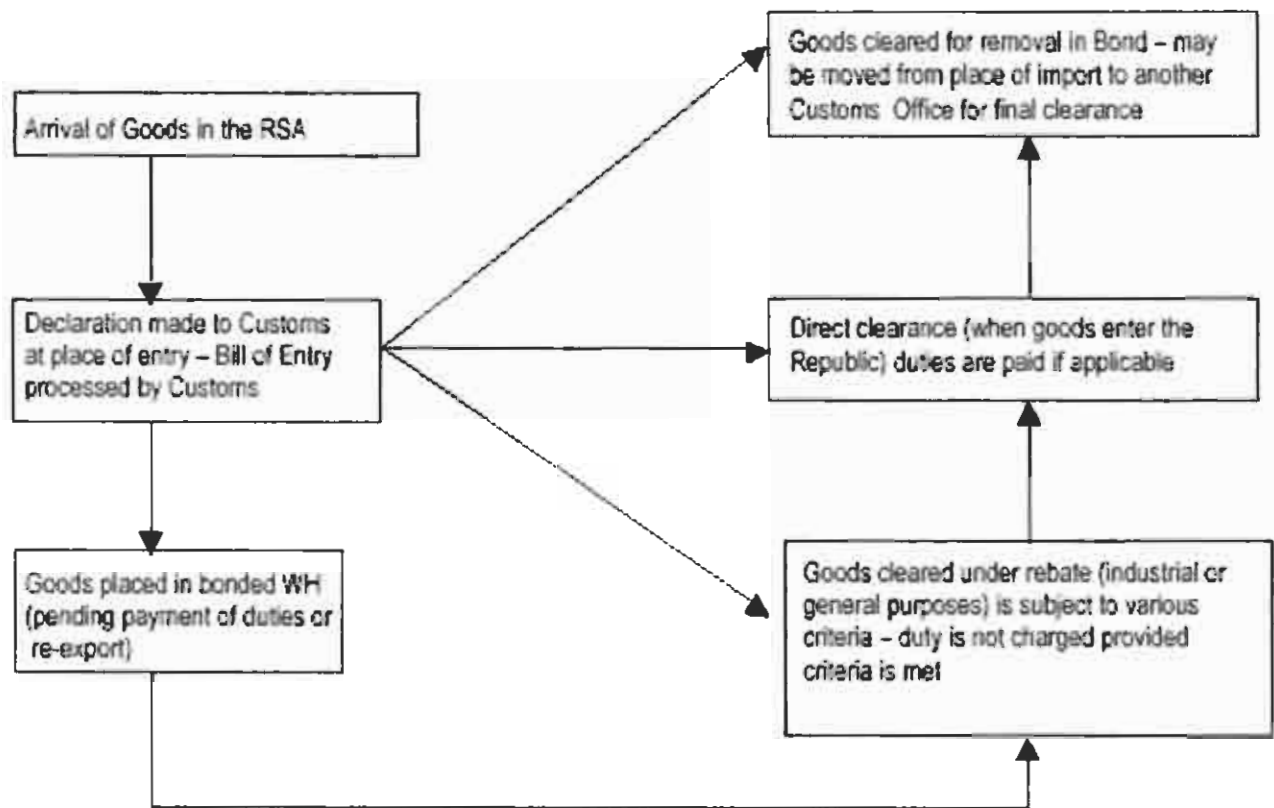
The South African Customs Administration plays an integral role in the facilitation of movement of goods and persons entering or exiting the borders of the Republic. The core functions are to:

- a) enforce Customs as well as related trade laws;
- b) collect duties and taxes;
- c) ensure the social welfare of the citizens of the Republic by controlling the import and export prohibited and restricted goods;
- d) ensure timeous clearance of goods and facilitate the speedy movement of travellers through South African borders.

The customs and excise warehouses forms part of the customs and excise process and therefore the owner of such a warehouse should also be aware of the process in order to manage such a warehouse sufficiently. The flow charts below provides the reader with a high level overview of the process involved in relation to imports, exports and transit of all goods.

⁶ F:\Fairs-Link International (Pty) Ltd - Custom Procedures.htm

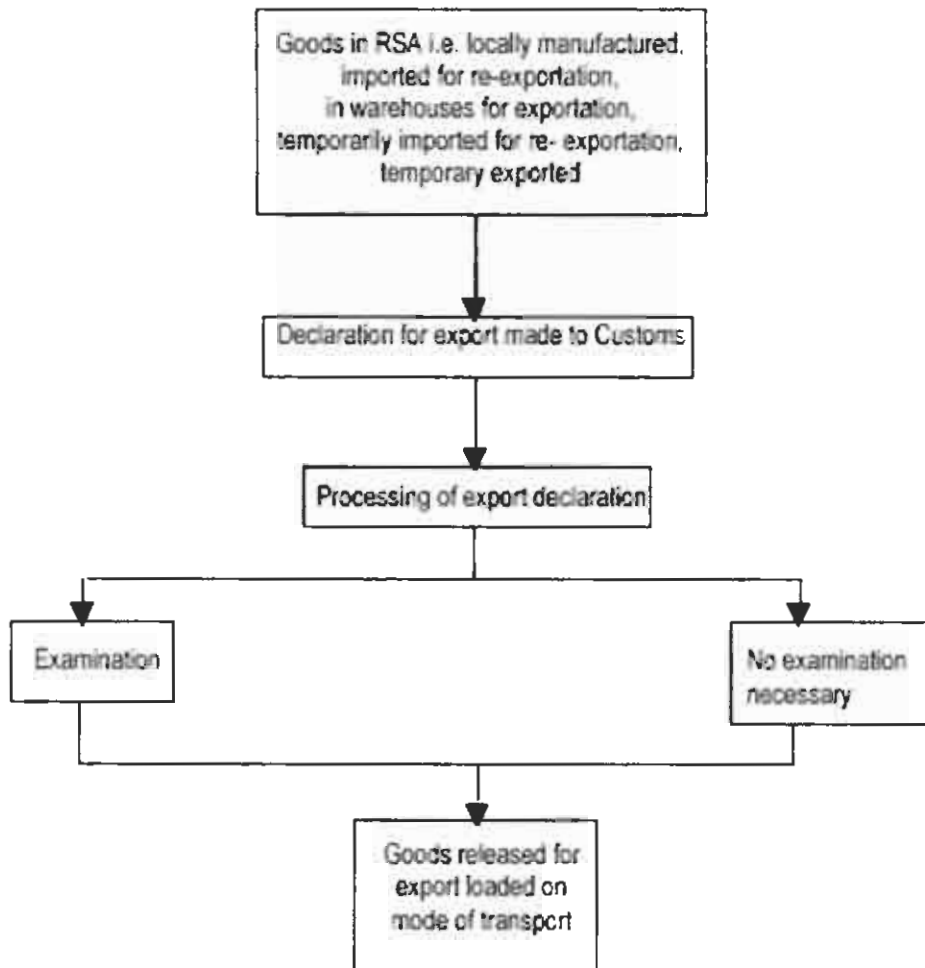
2.1 Importation



All goods are subject to examination by Customs to ascertain if correctly declared and correct duties and VAT paid

Undeclared / Detained / Illicit goods will be detained/ seized and placed in the State Warehouse - may be auctioned/sold, re-exported or destroyed by Customs

2.2 *Exportation*

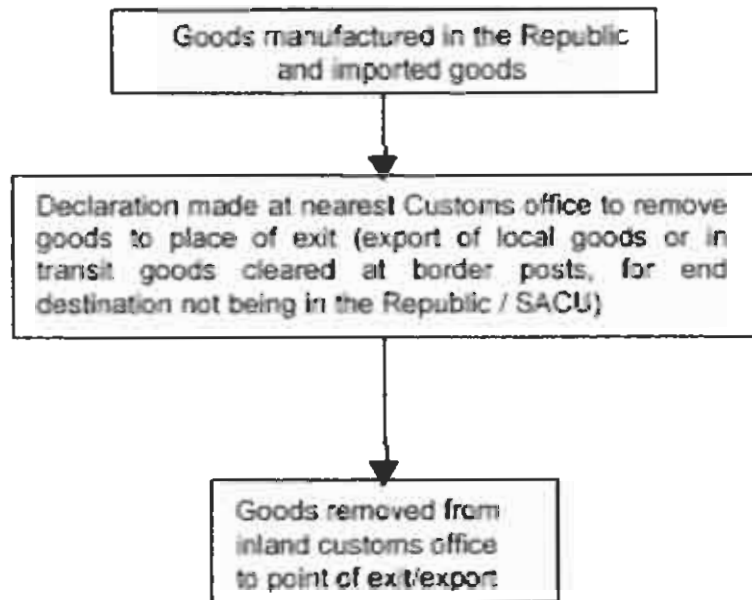


2.3 *Transit in bond*

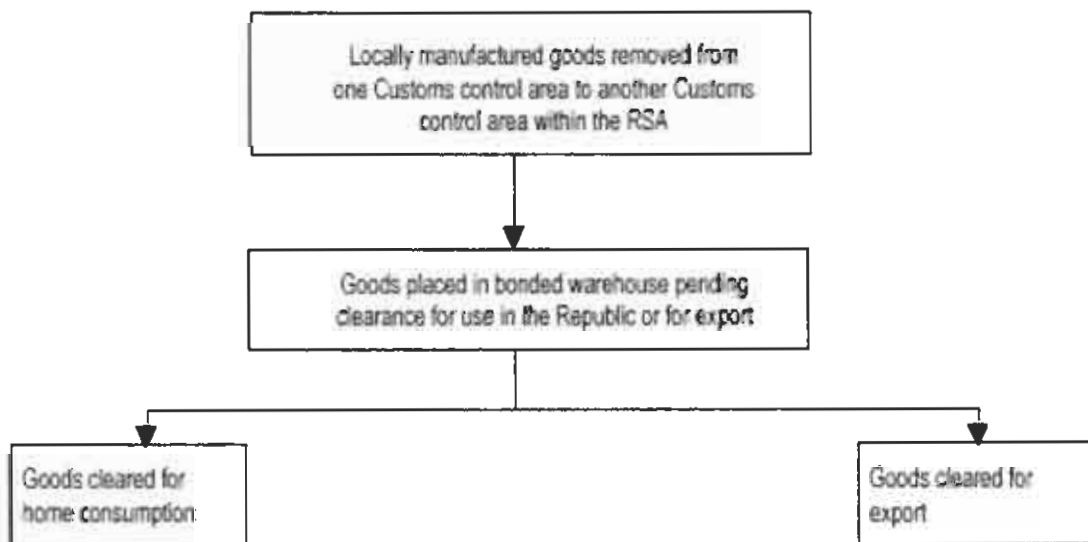
2.3.1 *Imports*



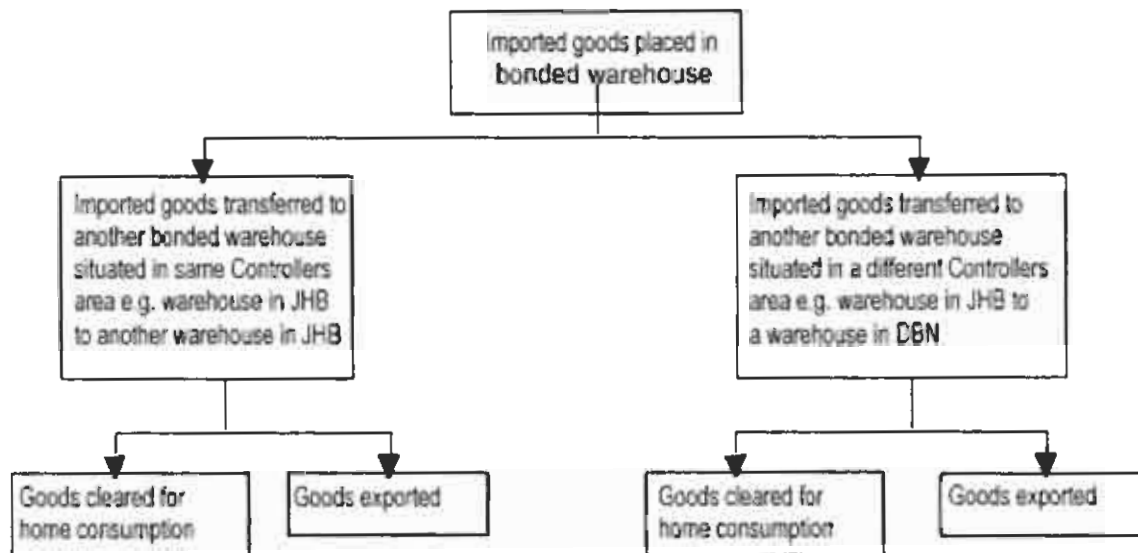
2.3.2 Exports



2.3.3 Removal in bond within RSA (local goods)



2.3.4 Removal in bond within RSA (imported goods)



3. The legal requirements for the management and control of Customs and Excise warehouses in terms of the Act

3.1 Licensing of customs and excise warehouses

Previously licensing was a complex field riddled with regulations, numerous and difficult exemptions, prescribed forms, applications, boards and inspectors. This has changed considerably.⁷ There are still regulations, applications, licensing authorities and inspectors, but the trades that must be licensed have been narrowed and the process somewhat simplified.⁸ The rights that must be balanced are, on the one hand, the common law and constitutional right to freedom of trade, occupation or profession, the established trading and business interests of traders and professional persons, the right of applicants for licenses

⁷ Joubert The Law of South Africa 3

⁸ Joubert The Law of South Africa 3

and of objectors to be heard,⁹ and administrative justice, and, on the other hand, the interest of the general public in sanitary, safe, healthy and sound trading conditions.¹⁰

Section 19 states that:¹¹

"Such warehouses may be licensed either for the storage of dutiable goods¹² or for the manufacture of dutiable goods,¹³ but the Commissioner may license a storage and manufacturing warehouse on the same premise provided they are separated in a manner approved by him."

Therefore an application can also be made to the Controller in respect of different premises, stores, vessels, tanks, yards or other places on a single site, or on more than one site as a single customs and excise storage warehouse, a single customs and excise manufacturing warehouse or a single special customs and excise warehouse in the name of one licensee.¹⁴

Separate customs and excise warehouses may be licensed on the same site in the names of different persons however such licensing is subject to the same conditions as referred to in rule 19.02. But it must be kept in mind that a license may be transferred from one premise to another, but not between persons.¹⁵ Multiple licences may, therefore, be issued to both the owner of a warehouse where fuel is stored and to those who obtain fuel for distribution from that warehouse.¹⁶ A customs and excise storage and manufacturing warehouse may be licensed on the same premises if they are separated in a manner approved by the Commissioner.¹⁷

⁹ *Audi alteram partem*

¹⁰ Joubert The Law of South Africa 6

¹¹ Section 19(2)

¹² To be known as customs and excise storage warehouses

¹³ To be known as customs and excise manufacturing warehouses

¹⁴ Rule 19.01

¹⁵ Joubert The Law of South Africa 258; Section 61(3)–(4).

¹⁶ Section 61(4)(a)

¹⁷ Cronje Customs and Excise p4-2

The licensee of a warehouse must always notify the Controller of any change, of whatever nature, whether in his legal identity, name or address of his business or of the structure or plant in such warehouse.¹⁸

In regulating and controlling a complex sphere of activity such as licensing, the legislature must take into account the fact that circumstances vary in that different customs and excise warehouses exist.

3.1.1 Bonded warehouse

Once goods have landed in the Republic, the importer or owner may choose to delay the payment of duties. Such goods are placed in a Customs controlled bonded warehouse for a specified period.¹⁹ Although these warehouses are not owned by Customs, the goods deposited therein are strictly controlled by Customs. Duties and value added tax become payable on removal of such goods from these warehouses. The goods may also be exported from such warehouses. An example of this would be a duty free shop. The Customs warehousing procedure is therefore to a large extent designed to facilitate trade.²⁰

A license is issued by a designated or appointed licensing authority. Therefore section 21(3) of the Act²¹ empowers the Commissioner to prescribe by rule the purpose for which customs and excise warehouses may be established, the goods and activities that may be allowed in such warehouses and the procedure applicable to such warehouses.²² The Commissioner for Customs and Excise is responsible for the administration of the Act.²³ Section 19 of the act states that:²⁴

¹⁸ Rule 19.07
¹⁹ Chapter IV¹⁹ deals with the storage and manufacture of goods in warehouses.
²⁰ F:\Fairs-Link International (Pty) Ltd - Custom Procedures.htm
²¹ *Customs and Excise Act 91 of 1964*
²² Explanatory Memorandum on the Second Revenue Laws Amendment Bill 2004, 12
²³ Department of Trade and Industry "import and export controle: Establish a business guide"
²⁴ Section 19(1)

"The Commissioner may license at any place appointed for that purpose under the provisions of this Act, approved by him for the storage of such dutiable imported or such dutiable locally-produced goods or for the manufacture of such dutiable goods from such imported or locally-produced materials or such imported and such locally produced materials as he may approve in respect of each such warehouse."

Therefore in terms of the Act²⁵ certain importers, exporters and manufacturers must register their premises as customs and excise warehouses at an appointed place approved by him for the storage of dutiable goods.²⁶ According to section 60(1) a person is not allowed to perform an act possess or use anything if a license is required unless he or she has obtained the appropriate license and paid the appropriate license fee.²⁷

When one wants the approval of a customs and excise warehouse an application for the licensing must be completed in detail and must always be accompanied by the plans, description of the warehouse or other particulars as may be required.²⁸

3.1.2 Manufacturing warehouses

Customs furthermore provides for manufacturing warehouses. The premises on which the manufacture of excisable goods is conducted,²⁹ must be approved by the commissioner for customs and excise. These premises must not only be secured to the commissioner's satisfaction, but its plans must also have received departmental approval.³⁰ The controller of customs and excise may specify in

²⁵ 91 of 1964

²⁶ Sections 19(1)–(2) and 6(1)(c); Customs and Excise Rules rules 19.01-19.02

²⁷ Procedural requirements are peremptory and must be complied with before an application is considered; see *Efstratiou v Health Committee, Port Elizabeth Municipality* 1977 2 SA 362 (E)

²⁸ Rule 19.01

²⁹ Termed a manufacturing warehouse

³⁰ Joubert *The Law of South Africa* 286

what part of the premises manufacture may be carried on and to what part storage must be confined.³¹

Not only the premises, but also the plant used in manufacturing warehouses, is subject to regulation and control, requiring the commissioner for customs and excise's approval. The business conducted in the premises is confined to that for which the approval has been granted. There is, therefore, a general prohibition against the alteration of plant, the introduction of new or the removal of old plant without the commissioner's consent. His consent is also required for the placing of plant below ground.³² The reason for the inspections is to monitor the use of the rebated goods that are imported subject to certain conditions, for example, materials in rolls for the manufacture of infants garments. All or part of the duties is not payable provided the conditions of the rebate item are adhered to.³³

Special storage warehouses in which the character of the goods to be kept is circumscribed may also be licensed.³⁴ Such a place may not be used for the storage of other goods except with the written permission of the Controller.³⁵ Therefore the proposed amendment on the existing section 21(3) of the Act empowers the commissioner to license special customs and excise warehouses for the storage for export of any imported goods free of duty³⁶ for a period longer than six months.³⁷ The Commissioner may however extend this period for three months on application by the importer.³⁸

In terms of section 35(1) the Commissioner is empowered to license the premises of a wine-grower, wine-growers' co-operative agricultural society, the

³¹ Section 27(8)

³² Joubert The Law of South Africa 290

³³ F:\Fairs-Link International (Pty) Ltd - Custom Procedures.htm

³⁴ To these premises the same regulations apply as are of force in other warehouses.

³⁵ Section 21; rule 19.04

³⁶ Only importers accredited in terms of section 64E may store goods which are free of duty in such a warehouse.

³⁷ If the importer fails to export the goods before the six months expires such a person is guilty of an offence and such goods must be destroyed or abandoned.

³⁸ Cronje Customs and Excise p4-11

Deciduous Fruit Board or the premises of a person who holds a licence to deal in wine in wholesale quantities, as a special customs and excise warehouse for the purpose of manufacturing wine.³⁹ Such special warehouse is deemed for the purposes of chapter IV to be a customs and excise manufacturing warehouse and unless the permission of the Commissioner has been obtained to manufacture wine, no person shall manufacture wine except in a special customs and excise warehouse licensed under the Act.⁴⁰

Therefore an application for the licensing of a customs and excise manufacturing warehouse must state the nature of materials and the processes to be used in the manufacture of every product, the expected annual quantities of such materials and the expected annual production of every excisable product.⁴¹ Plans must be given to the Controller of the premises to be used for the manufacturing of the goods in such a manufacturing warehouse and the location of such premises, with as many copies as he may require. No alteration may therefore be made without the permission of the Controller.⁴²

No rules have been made⁴³ to prescribe the days or hours during which operations in a customs and excise manufacturing warehouse may be carried out.⁴⁴ However, operations are subject to the right of supervision and the commencement of any distilling operation are prohibited until the whole or any part of the distilling system or plant, has been provided, at the expense of the licensee, with fittings and requirements to permit of the insertion or affixing of customs and excise meters, gauges, rods, locks and seals according to the rules for the purpose of securing such system or plant, and until the plant has been duly secured by the Controller.⁴⁵ The licensee has a duty to repair or renew any meter, rod, lock or fitting which is tampered with or damaged, or any pipe, lock,

³⁹ Special provision can also be found for the production of cigarettes and beer

⁴⁰ Cronje Customs and Excise p4-22

⁴¹ Rule 27.01

⁴² Rule 27.02

⁴³ In terms of section 27(11)

⁴⁴ Cronje Customs and Excise p4-16

⁴⁵ Cronje Customs and Excise p4-16

fastening or fitting connected with a still or vessel which is pierced or damaged. An officer may effect the repair or renewal at the expense of the licensee.⁴⁶

3.1.3 State warehouse

A state warehouse is a place provided by the state for the deposit of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods.⁴⁷ Such a warehouse is also managed by Customs. Therefore these warehouses are licensed and controlled by the state and customs. Goods are placed therein if uncleared; prohibited; seized or abandoned. States warehouse rent is payable by the client for the storage of these goods.⁴⁸

It must also be kept in mind that in terms of Section 43(2) if goods are placed or moved to a premise other than a state warehouse, such a place is seen according to the Act as a state warehouse.⁴⁹

3.2 Goods in customs and excise warehouses

3.2.1 Goods imported and entered into a customs warehouse

Proper dealing with goods under the Act essentially entails that goods must be duly entered, and where necessary, appropriately dealt with in accordance with the purpose of the entry.⁵⁰ Goods may be delivered to a warehouse only by the appropriate successor to the South African transport services or by a carrier who has provided security to the satisfaction of the commissioner for customs and excise for his observance of the provisions of the act.⁵¹ Therefore goods which

⁴⁶ It appears that the officer may elect to effect the repair or renewal in any but particularly in the circumstances referred to in section 27(14).

⁴⁷ Joubert The Law of South Africa 261; Section 1

⁴⁸ F:\Fairs-Link International (Pty) Ltd - Custom Procedures.htm

⁴⁹ Cronje Customs and Excise p3-18(1)

⁵⁰ *BP Southern Africa v Secretary for Customs and Excise* 1984 3 SA 367 (C) 369J-370F

⁵¹ Joubert The Law of South Africa 258

have been entered for warehousing or for removal to a customs and excise warehouse must be conveyed to the warehouse immediately after such entry.⁵²

The first duty of the licensee of a storage warehouse upon entry and landing of goods for storage is to take stock of and record accurately what he receives. Any excess found over the entry must be reported to the controller of customs and excise and debited to stock. Goods in the form of packages which have been damaged or is missing, shall not be moved to the warehouse, unless it is first examined.⁵³ If they are so removed without the discrepancies being accounted for, the full invoiced contents of such a package are deemed to have been imported.⁵⁴

Any person who enters goods in a warehouse, must deliver to the licensed holder a copy of the relevant bill of entry as soon as the goods are to be received in the warehouse.⁵⁵ Thereafter the person who wants to deposit the imported goods must produce to the Controller a written approval from the licensed holder, wherein he gives permission to such a person to store the goods concerned in his warehouse⁵⁶

The licensed holder must notify the owner of any imported goods entered for warehousing and the Controller of the non-receipt of any such goods in writing, and the owner must then take immediate steps to account to the Controller for such goods or to pay the duty due thereon.⁵⁷ The licensed holder must therefore

⁵² Goods manufactured or stored in and removed from a customs and excise warehouse must be accounted for by due entry (section 20(4)) or deemed due entry and a subsequent validating bill of entry (sections 38(4) and 39(2A)), and by rendering accounts where specified, such as under the rules for sections 20, 36 and 36A (see prescribed forms DA75 and DA260.00 (item 202.00 of the Schedule to the rules) and bill of entry forms DA600 and DA610).

⁵³ Rule 20.02 states that if such a package is removed to the warehouse without examination, the full invoiced contents are deemed to have been imported and must be accounted for under the provisions of the Act.

⁵⁴ Joubert The Law of South Africa 258

⁵⁵ Rule 20.01

⁵⁶ Rule 20.03

⁵⁷ According to the rules the licensed holder of a customs and excise warehouse must keep, in a safe place accessible to the Controller, a record in a form approved by the

ensure that all goods have been duly entered for warehousing.⁵⁸ Unless proof that such goods have been so entered is in the licensed holder's possession at the time of receipt of the goods, he must keep the goods separated from other goods in the warehouse and report immediately to the Commissioner. If the licensed holder however becomes aware at any time that goods were incorrectly entered, he must let the Controller know and produce any documents or any other evidence in his possession.⁵⁹

Such goods deposited in the warehouse may at any time be examined and stock taken⁶⁰ by the Controller⁶¹ and must be arranged and marked in such a manner that it will be easily identifiable and accessible for inspection.⁶² However goods that is in closed containers may not be examined, nor opened, unless immediate action is necessary for the safety of the goods.⁶³ The licensee is however allowed, for the preservation of the goods or the sale or exportation thereof to sort, separate, pack or repack the goods in his warehouse.⁶⁴ The Commissioner may also permit the goods to be reconditioned, mixed or blended in the warehouse with other goods.⁶⁵ If the stock is found to be greater than the quantity which should be in the warehouse, the excess must, be debited to stock and the duty thereon paid on entry for home consumption.⁶⁶ The Commissioner may⁶⁷ *inter alia* allow a deduction of the dutiable quantity of certain fixed percentages.⁶⁸ Once the Commissioner has allowed the deduction of the percentages, the actual loss may be less than the percentages allowed and the quantity may be in excess of the dutiable quantity, but in terms of section

58 Controller of all receipts into and deliveries or removals from the warehouse of goods not exempted from entry in terms of section 20(3).
59 Rule 20.04
60 Rule 38.07
61 Section 4(a)
62 Rule 20.07
63 Rule 20.06
64 Rule 20.08
65 Section 25
66 Cronje Customs and Excise p4-13
67 Cronje Customs and Excise p4-2
68 In terms of section 75(18), apart from the proviso to section 20(5) and the losses allowed in terms of the items enumerated.
69 As specified in paragraphs (a), (b), (c) and (cA) of the section

19(4)(b) such excess need not be debited to stock and the duty thereon paid on entry for home consumption.⁶⁹

Different schedules of the *Customs and Excise Act* make provision for customs duties⁷⁰ on imported products and for excise duties⁷¹ on a relatively limited number of locally produced products.⁷² Provision is also made for rebate and drawback of the customs and excise duty under specified circumstances. After goods are imported, provision of warehousing has been made in the Act⁷³ to enable the importer to store goods without payment of customs duty and clear such goods from the warehouse only when these are actually required by him, or he can further distribute the products. Furthermore he or she can supply the goods to buyers from the warehouse, after paying the customs duty. Thus, small importers, duty free shops etcetera can procure goods from the warehouse without actually importing the goods and even duty free clearances can be made from a bonded warehouse, if the buyer is otherwise eligible for obtaining such goods duty free.⁷⁴ If however he decides to keep the goods in the warehouse, he can pay customs duty and clear imported goods as and when needed. This facility is available to traders as well as direct importers. The importer therefore only has to pay all the warehousing charges until the goods are cleared.

Commercial practice requires the importation, storage and consolidation of goods in South Africa, followed by the subsequent exportation of those goods particularly to destinations in Africa. Not all such goods attract custom duties and are as a result thereof normally excluded from storage in bonded customs

⁶⁹ Cronje Customs and Excise p4-3

⁷⁰ Customs duty according to the *Customs and Excise Act* means, "subject to the provisions of subsection (3) any duty leviable under Part 2 of Schedule 1 on goods which have been manufactured in the Republic."

⁷¹ Excise duty according to the *Customs and Excise Act* means, "subject to the provisions of subsection (3) any duty leviable under Schedule 1 or 2 on goods imported into the Republic."

⁷² Department of Trade and Industry "Import and export controle: Establish a business guide"

⁷³ 91 of 1964

⁷⁴ As confirmed vide MF(DR) circular No. 79/2000-Cus dated 22-9-2000

warehouses. In this circumstances entry for home consumption⁷⁵ must be made in respect of the goods and the value added tax paid thereon.⁷⁶

In the case of bonded warehouses the goods are cleared from customs port under bond and kept in the warehouse. The goods kept in warehouse are then cleared on payment of duty when needed. Even goods under a negative list can be imported by traders and kept in warehouse and these can later be supplied on payment of duty against a specific license. Therefore for the removal of goods in bond section 18(1)(a) states that:

"Notwithstanding anything in this Act contained, the importer or the owner of any imported goods landed in the Republic or the manufacturer, owner, seller or purchaser of any excisable goods manufactured in a customs and excise warehouse or the licensee of a customs and excise warehouse in which dutiable goods are manufactured or stored may be remove such goods in bond to any place in the Republic appointed as a place of entry or warehousing place under this Act or to any other place outside the Republic, provided that such goods manufactured or stored in a customs and excise warehouse may only be so removed to any such warehousing place in the Republic or any place in a territory in the common customs area approved by the government of that territory for rewarehousing at that place in another customs and excise warehouse."

It may not suit the convenience of an importer to take immediate physical control of imported goods upon landing. This could arise in the nature of his trade, where, for instance, in the manufacture of fuel and motor vehicles a mingling of local material is made with imported items over an extended period so as to produce an excisable product. He may also seek to avail himself of the rebates available to certain manufacturers. The Act,⁷⁷ therefore, permits the establishment of customs and excise storage warehouses in which imported goods may be deposited until required and over which the office exercises a considerable measure of control.⁷⁸

⁷⁵ Before goods may be removed from storage warehouses they must be entered for either home consumption, rewarehousing or export.⁷⁵ In this context "home consumption" means consumption or use in the Republic, while "entry for home consumption" includes an entry for industrial and general rebates of customs duty as well as specific drawbacks or refunds of customs duty. Entry for home consumption entails the payment of duty.

⁷⁶ Explanatory Memorandum on the Second Revenue Laws Amendment Bill 2004, 12
⁷⁷ 91 of 1964

⁷⁸ Joubert The Law of South Africa 257

Section 20(4) *bis* relates to goods entered for removal from or delivery to a customs and excise warehouse in accordance with any customs procedure not requiring duty to be paid on removal from the warehouse.⁷⁹ Failure to abide by the prohibition against diversion is an offence,⁸⁰ as it is in respect of the diversions.⁸¹ Goods may therefore only be diverted to a destination other than the destination declared on entry if they have been entered for the payment of the duty due thereon, that is for home consumption. Goods may further only be diverted for any other purpose with the written permission of the Controller. Such permission will also be necessary if it is intended to return the goods to the warehouse from which they were entered for removal.⁸²

No allowance, for duty purposes, is made for any loss or diminution of goods being transported to or kept in a warehouse or while being transported between warehouses or removed in bond. Upon discovery of any deficiency the duty thereon becomes payable immediately. An exception to this provision applies in the case of imported goods, for loss by evaporation of naphtha entered for use in the refining of petroleum products⁸³ or as fuel in the manufacture of ammonia.⁸⁴

3.2.2 *Goods deposited into a state warehouse*

A state warehouse is a place provided by the state for the deposit of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods.⁸⁵ Due entry is required of imported goods within seven days of the date of importation, failing which the goods may be removed by the controller of customs and excise to the state warehouse. Rentals are established for the warehoused goods. When entry is made by bill of sight the place of examination is regarded as a special state

⁷⁹ That is, entry for home consumption
⁸⁰ In terms of section 80(1)(o),
⁸¹ Provided for in sections 18(13), 18A(9) and 75(19)
⁸² Cronje Customs and Excise p4-9
⁸³ Section 75(18)(d)
⁸⁴ Joubert The Law of South Africa 259
⁸⁵ Joubert The Law of South Africa 261; Section 1

warehouse.⁸⁶ Goods being deposited in a state warehouse could, for example, be goods not cleared,⁸⁷ goods under lien,⁸⁸ or seized⁸⁹ and detained goods.⁹⁰

Section 17(2) states that:

Any officer who has the custody of any goods in any State Warehouse may refuse delivery thereof from such warehouse until he has been furnished with proof that-

- a) The person claiming the goods is lawfully entitled to such goods;
- b) All relevant provisions of this Act or any law relating to the importation or exportation or transit or coastwise carriage of goods have been complied with;
- c) Freight and other charges (including landing and wharfage charges) and rent due in respect of the goods have been paid.

Therefore the officer who has custody of the goods in a state warehouse may refuse to deliver the goods unless proof is furnished as specified in section 17(2). The requirements are cumulative and the officer should thus duly consider the proof produced to him in all respects.⁹¹ He may therefore authorize delivery when all the requirements have been met or refuse delivery when any requirement has not been complied with.

In terms of section 17(2)(a) "lawfully entitled" may include, for example, in the case of goods received uncleared in the state warehouse, that the person claiming the goods is in possession of the bill of lading or other document of title suitably endorsed where necessary.⁹² Further a representative taking delivery must be duly authorized by the importer or the person on whose behalf he is acting. It is necessary to ensure that goods have been duly entered and, in the

⁸⁶ Joubert The Law of South Africa 261

⁸⁷ Section 43 and 44

⁸⁸ Section 114

⁸⁹ If goods are legally seized (section 88), the discretion to release the goods rests with the Commissioner under section 9340 (If goods liable to forfeiture cannot readily be found the value for duty purposes or export value and the unpaid duty may be claimed as provided under section 88(2).) Section 89 provides for notice of claim in respect of seized goods⁴ and sections 94 to 96 relate to the institution of legal proceedings.

⁹⁰ Cronje Customs and Excise p3-18

⁹¹ Including authenticity

⁹² Cronje Customs and Excise p3-18(1)

case of a state warehouse sale, that any condition has been complied with.⁹³ A carrier has a common law lien on freight and will not allow delivery of the goods unless freight has been paid.

Whenever any goods are deposited in a state warehouse, the Commissioner may require rent to be paid for the period that the goods remain therein.⁹⁴ In terms of subsection 17(2)(c) proof of payment of freight and other charges⁹⁵ has to be produced and in this respect the officer giving delivery has to ensure that the interest of the persons entitled to payment are protected.⁹⁶

Subsection 17(3) indemnifies the state or an officer in respect of any loss⁹⁷ or diminution of or damage to any goods in a state warehouse or in respect of any loss or damage sustained by reason of wrong delivery of such goods.⁹⁸ In terms of section 107(1)(a) goods are dealt with or handled for the purposes of the Act at the risk of the importer, exporter, manufacturer or owner, and such persons would therefore be at risk in respect of goods handled in the state warehouse. Various persons whose goods may be removed to the state warehouse could be liable for the duty on such goods. Whether or not such persons would be absolved from liability for duty for any loss or diminution of or damages to goods appears to depend on whether the duty is rebateable or refundable.⁹⁹

In section 17(4) "immediately" is not considered to mean simultaneously, but as soon as is reasonably possible in an objective sense, thus if the warrant is granted on one day, the goods must be removed on the following day, also

⁹³ In terms of section 17(2)(b)

⁹⁴ At the rate fixed by rule

⁹⁵ It seems that "other charges" should be interpreted by reference to the charges recognized by section 43(3) and not restricted to those relating to freight by application of the *iusdem generis* rule. Whatever legal right the person may have to payment of charges attaching to uncleared goods, entitlement thereto is limited as specified in section 43(3).

⁹⁶ Cronje Customs and Excise p3-19

⁹⁷ The loss of goods do not encompass theft of goods by a customs officer.

⁹⁸ Cronje Customs and Excise p3-19

⁹⁹ As envisaged by section 75(18) or section 76(2)(d)

considering the date until which the rent is paid. If imported goods should be dealt with as if they were not entered, section 43 would be applicable.¹⁰⁰

In the case of a state warehouse any officer who has custody of the goods may refuse delivery thereof until he or she has proof that the person claiming the goods is lawfully entitled to such goods, that all relevant statutory provisions have been complied with, and that all freight, rent and other charges of the goods have been paid.¹⁰¹

After three months goods in the state warehouse which remain unentered may be sold so as to meet, in the following order, the duty, charges incurred by the office of the commissioner, charges due to the office, charges due to the South African transport services, a container operator or depot operator, and the freight.¹⁰² Thereafter any surplus may be paid over to the owner upon proof of ownership lodged within two years from the date of the sale.¹⁰³

3.2.3 *Goods manufactured in a customs and excise warehouse*

Goods that may be entered for storage in such a customs and excise storage warehouse are locally produced goods and any beverages produced from excisable spirits in pursuance of any permission granted under the provisions of section 31(2) being beverages¹⁰⁴ of a class or kind approved by the Commissioner in respect of each warehouse.¹⁰⁵ The goods may include, if allowed, prohibited goods for export or supply as stores for foreign-going ships and aircraft.¹⁰⁶ Goods on which no duty is payable may, be taken into a customs

¹⁰⁰ Cronje Customs and Excise p3-20

¹⁰¹ Section 17(2)

¹⁰² Section 43(3)

¹⁰³ Joubert The Law of South Africa 261

¹⁰⁴ Such beverages will contain the spirits on which payment has been deferred by the Commissioner in terms of section 31(2).

¹⁰⁵ Cronje Customs and Excise p4-6(3)

¹⁰⁶ Section 23

and excise warehouse for the purpose of being used in the manufacture of or in conjunction with¹⁰⁷ dutiable goods.¹⁰⁸

The term “manufacture” is widely defined in the act, well beyond its ordinary dictionary meaning. It is stated to include:

- (a) the manufacture or assembly of excisable goods;
- (b) the conversion of goods into excisable goods;
- (c) the recovery of excisable goods from excisable goods or other goods;
- (d) a process by which the dutiable quantity or value of imported goods the subject of a charge under part B of the schedule or excisable goods is increased in any manner;
- (e) the packing or measuring off of any imported goods caught by part B of the schedule or excisable goods.¹⁰⁹

In terms of section 19(9)(a), except with the permission of the Commissioner¹¹⁰ no imported goods entered for storage or excisable goods or fuel levy goods manufactured in a customs and excise warehouse, excluding spirits or wine in the process of maturation or maceration, may be retained in any Customs and excise warehouse for a period of more than two years from the time the imported goods were first entered for storage or from the time the excisable or fuel levy goods were deemed to have been manufactured in terms of section 44(2).¹¹¹

In terms of rule 31.01 spirits removed from a customs and excise manufacturing warehouse to any customs and excise storage warehouse shall be reduced by the licensee of the warehouse by the percentage relating to spirits specified in section 75(18) and such reduced quantity shall be deemed to have been received in the warehouse”.¹¹²

¹⁰⁷ Goods used “in conjunction with” may be goods used for packing or repacking; section 25

¹⁰⁸ Cronje Customs and Excise p4-6(3)

¹⁰⁹ Joubert The Law of South Africa 286

¹¹⁰ Which may only be granted in circumstances he on good cause shown considers reasonable and subject to such conditions as he may impose in each case

¹¹¹ Cronje Customs and Excise p4-5

¹¹² Cronje Customs and Excise p4-3

A quarterly account must be presented on form DA 75 and the duty paid as required by Rule 36A.04.¹¹³ Rule 36.04 to 36.06¹¹⁴ specifically prescribe documents and procedures in respect of beer¹¹⁵ removed from a customs and excise manufacturing warehouse. The said rules also regulate the clearance and removal of goods from a customs and excise warehouse¹¹⁶ and the submission of validating bills of entry and supporting documents.¹¹⁷

Deferment of payment of duty without the obligation to warehouse the goods is permitted only with the commissioner's consent and upon the conditions prescribed by him, the most important being the provision of security.¹¹⁸ The payment of value added tax on these goods is therefore deferred while the goods are stored in a special customs and excise warehouse.¹¹⁹ The Act also provides for a further extension for the storage period that does not exceed three months, and creates an offence for failing to export the goods within the prescribed period, as well as for the incidental matter relating to the clearance, abandonment or destruction of such goods.¹²⁰

3.2.4 Goods exported

Except as otherwise provided in section 18 and the rules no goods shall be removed in bond until the remover has been authorised by the Controller to remove such goods.¹²¹ Furthermore the Controller may require any goods entered for export from any customs and excise warehouse to be delivered to any examination shed or other place indicated by him or may require such goods

¹¹³ In respect of the goods in Section B of Part 2 of Schedule 1.

¹¹⁴ Forms DA 260.00 and DA 75 and their schedules are prescribed in the rules.

¹¹⁵ Note 2 to Section 19A of Part 2 of Schedule 1 prohibits the removal of beer packed in retail packings from one manufacturing warehouse to another such warehouse. Note 3 to Section A of Part 2 of Schedule 1 further determines: "If duty should become payable on any beer which is in the process of manufacture such duty shall be calculated according to the registered strength and quantity of the final product."

¹¹⁶ Section 38(4)

¹¹⁷ section 39(2A).

¹¹⁸ Joubert The Law of South Africa 258; Section 39(1)(b) proviso

¹¹⁹ Explanatory Memorandum on the Second Revenue Laws Amendment Bill 2004, 12

¹²⁰ Explanatory Memorandum on the Second Revenue Laws Amendment Bill 2004, 12

¹²¹ Rule 18.02

to be retained in such warehouse for the purpose of examination or sealing prior to such export or supply.¹²² The goods in question shall be kept separate from any other goods conveyed on the same vehicle and shall be accompanied by a copy of a relative bill of entry, certificate or invoice.¹²³ The licensee of a customs and excise warehouse from which goods for supply to a foreign-going ship or aircraft as stores are removed, shall obtain on a copy of the bill of entry, certificate or invoice relating to such goods, a receipt signed by an officer of the ship or aircraft to the effect that the stores have been received on board, and such receipted copy must, be handed to the Controller before the departure of the ship or aircraft.¹²⁴

4. Civil, criminal and fiscal liability of licensed holder of a Customs and Excise warehouse and manufacturers

4.1 Introduction

The law enforcement mechanisms, individually and as an integrated whole, may conceivably be essential to facilitate clearly acceptable objectives of a democratic government for preventing mischief which undermines the entire basis of the Act namely tax evasion,¹²⁵ and to achieve the objectives of the South African Revenue Service as stated in the *South African Revenue Service Act*,¹²⁶ that is the efficient and effective collection of revenue by securing the efficient and effective and widest possible enforcement of, for instance, the provisions of the *Customs and Excise Act*.¹²⁷

122

Rule 18A.01

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As mentioned in Rule 20.11

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Rule 18A.03 Therefore the Controller must have proof that the goods entered for export have in fact been exported

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Report of the Commission of Enquiry into Certain Aspects of Tax Structure of South Africa par 6.3.23, which paragraph dealt with the secrecy provisions of the *Income Tax Act 58 of 1962*. Regarding section 4 of the Act see par 6.3.5 of the Report. Regarding section 16 of the Constitution of the Republic of South Africa, Act 108 of 1996

126

34 of 1997

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Cronje Customs and Excise Int-25

In this chapter the liability for the payment of duties on the goods and any other duties and liabilities will be investigated in order to give clear guidance to manufacturers and license holders. This will include any civil, criminal and fiscal liability created by the provisions of the Act.

4.2 Civil liability

The licensee of a customs and excise manufacture warehouse has a duty to repair or renew any meter, rod, lock or fitting which is tampered with or damaged, or any pipe, lock, fastening or fitting connected with a still or vessel which is pierced or damaged. An officer may effect the repair or renewal at the expense of the licensee.¹²⁸

Once goods liable to forfeiture have passed from departmental supervision and cannot readily be found, the commissioner for customs and excise may demand from the importer or the person who committed the offence which rendered the goods liable to forfeiture, payment of a sum equal to the value of those goods for duty purposes, together with the unpaid duty on them.¹²⁹ This sum may be recovered by the commissioner by way of civil action as if it were an item subject to forfeiture.¹³⁰ In so far as may be, the provisions of the act relating to forfeiture apply to a sum recovered in this manner.¹³¹

It must however be kept in mind that the Act indemnifies the state or any officer for any loss or damage of whatever nature to goods in a customs and excise warehouse or by reason of wrong delivery of goods.¹³²

¹²⁸ It appears that the officer may elect to effect the repair or renewal in any but particularly in the circumstances referred to in section 27(14).
¹²⁹ Section 88(2)(a)
¹³⁰ Section 88(2)(b)
¹³¹ Section 88(2)(c)
¹³² Section 19(5)

4.3 Criminal liability

Few customs offences ever result in criminal prosecution in court. Alleged offenders may be given the opportunity of electing, or may request, to be dealt with administratively under the provisions of the Act.¹³³ If however certain of the provisions of the Act should be the subject of constitutional attack, it appears not unlikely that the regulatory nature of the Act may be considered.¹³⁴

Law enforcement in its total execution often involves, not only the administrative adjudication of the contravention under, but also forfeiture and detention or seizure of goods¹³⁵ or a claim in lieu of forfeiture,¹³⁶ mitigation of detention or seizure,¹³⁷ and placement of a lien as security for duty and/or forfeiture.¹³⁸ Prosecutions for trading without a license and contraventions of the regulations may be instituted and conducted when the licensing authority is a local authority or a person in the employ of a local authority, by a person empowered to prosecute offences under the by-laws of that local authority.¹³⁹

In a general sense contraventions occur when an imperative or peremptory provision of the Act couched in positive or negative terms¹⁴⁰ is not complied with due to an act or omission, that is a person contravenes or fails to comply with a provision which is an offence in terms of the Act, but not all provisions so couched are subject to criminal sanction. In certain instances the provisions of the Act,¹⁴¹ declare that a person who performs an act is guilty of an offence.

¹³³ In terms of section 91

¹³⁴ *S v Coetzee* 1997 4 BCLR 457 (CC) pars 193—196 (per O'Regan J) regarding the distinction between criminal offences and regulatory offences in considering the constitutionality of the onus of proof on an accused (ie the reverse onus).

¹³⁵ Sections 87 to section 89

¹³⁶ Section 88(2).

¹³⁷ Section 93

¹³⁸ Cronje Customs and Excise p11-1

¹³⁹ *Official Gazette (Natal)* Provincial Notice 24, 24 February 1994, reg 34

¹⁴⁰ That is, an injunction or prohibition "shall" or "no person shall"

¹⁴¹ For example sections 27(14) and 38(1)(b).

Furthermore, in the case of sections 80(1) (h) and 82 the punishable acts are not related to any peremptory provision specified in the Act.¹⁴²

The recognised terminology expressly indicating that culpability¹⁴³ is a requirement for criminal liability is not present in all penal provisions and the question may thus arise whether strict liability is intended by the legislature in respect of those provisions.¹⁴⁴ In such cases the relevant provisions should be considered in accordance with the principles for determination of strict liability. As a point of departure one must presume that parliament did not intend to exclude culpability, unless there are clear and convincing indications to the contrary.¹⁴⁵ The onus of proving culpability however rests with the state even where the legislature is silent on culpability but the court interprets the provision as requiring it.

Section 27(14) provides that the licensee, in addition to liability for the cost of repair or renewal, is guilty of an offence if the tampering, damage or piercing¹⁴⁶ is directly or indirectly caused by the wilful act or by the neglect or with the connivance of the licensee or his employee.¹⁴⁷ Subsection (15) states: "The burden of showing that any such tampering, damage or piercing was not caused as aforesaid shall rest on the licensee."¹⁴⁸

The court has jurisdiction to declare that goods are liable to forfeiture when the circumstances creating that liability have been proved.¹⁴⁹ Whether forfeiture should be ordered in a criminal case may depend upon whether or not the offence was directed to commercial ends.¹⁵⁰ In such cases the deterrent effect of

¹⁴² Cronje Customs and Excise p11-2

¹⁴³ Fault or *mens rea*

¹⁴⁴ Cronje Customs and Excise p11-2

¹⁴⁵ Cronje Customs and Excise p11-2

¹⁴⁶ Referred to in subsection (13)

¹⁴⁷ It appears that the licensee may be vicariously liable for the acts of his employee where the employee connives with other persons

¹⁴⁸ Cronje Customs and Excise p4-16

¹⁴⁹ *Secretary for Customs and Excise v Tiffany's Jewellers (Pty) Ltd* 1975 SA 578 (A) 588

¹⁵⁰ *S v Manyesa* 1975 4 SA 846 (RA).

the sentence is important.¹⁵¹ Other factors which should be considered are the real value of the goods to the accused,¹⁵² the purpose of importation,¹⁵³ the importance of retention by the accused, his difficulty in replacing the goods, and whether he would be able to pay an adequate monetary penalty in circumstances which do not justify imprisonment.¹⁵⁴ A purely quantitative approach to the matter is not to be taken, since this would avoid the appraisal of the subjective factors in determining a sentence.¹⁵⁵ It appears, however, that a court order of forfeiture normally presupposes a conviction for an appropriate offence.¹⁵⁶

4.4 Fiscal liability

4.4.1 Customs duty

4.4.1.1. Imposition and scope of duty

Duties are levied on goods and the Act¹⁵⁷ prescribe the procedures which regulate acts in respect of goods, for example, the importation or exportation of goods, goods imported and dutiable locally produced goods, the manufacture of dutiable goods and the use of dutiable goods in manufacture and generally the movement of goods until all relevant provisions have been complied with.¹⁵⁸ The owner of all imported goods,¹⁵⁹ are liable for duty on the goods concerned.¹⁶⁰ Section 44 provides for the circumstances wherein and the time when liability for duty on imported goods in the Republic¹⁶¹ commences, who is liable and the procedures by means of which this is effected. The provisions of the section

¹⁵¹ Joubert *The Law of South Africa* 300

¹⁵² *S v Smith* 1974 1 SA 607 (R).

¹⁵³ *S v Lennon* 1973 1 SA 515 (RA).

¹⁵⁴ *S v Mahomed* 1978 1 SA 219 (K) 222D—F

¹⁵⁵ *S v Lennon* 1973 1 SA 515 (RA).

¹⁵⁶ *Van Wyk v Minister van Finansies* 1971 4 SA 477 (T) 480H.

¹⁵⁷ As well as the Notes to the Schedules and items of Schedules and the rules.

¹⁵⁸ Cronje Customs and Excise Int 21

¹⁵⁹ Section 44(6)(c)

¹⁶⁰ Cronje Customs and Excise p4-12(3)

¹⁶¹ The state not only has a fiscal interest in all duties levied or exempted, but also an economic interest.

should be compared and read with other sections which specify liability when goods are subject to certain customs procedures.¹⁶²

In section 19(6) the person referred to may be the importer or owner¹⁶³ of the imported goods. Where goods are entered under rebate of duty for use in a licensed customs and excise manufacturing warehouse, liability is also fixed.¹⁶⁴ Subsection 19(6) further provides that the licensee of a customs and excise warehouse is, liable for the duty on all goods stored or manufactured in such warehouse from the time of receipt into such warehouse of such goods.¹⁶⁵

If he does not receive the goods or all of the goods, the person mentioned in section 18(2), 44(6) (c) or 44(8), or the licensee of the other warehouse¹⁶⁶ is liable for the duty on the goods not accounted for.¹⁶⁷ When liability has not ceased and the duty becomes due it is payable by the person who is liable for the duty. Duty is also payable when demanded¹⁶⁸ and forfeiture and unpaid duty may be demanded if goods liable to forfeiture cannot readily be found.¹⁶⁹

Liability for duty in respect of goods to which the Act relates, devolves on various persons according to the customs and excise procedure applicable and the relationship of the person to the goods concerned.¹⁷⁰ This is indicated by the following provisions:

¹⁶² For instance goods removed in bond (section 18), goods stored or manufactured in a customs and excise warehouse (sections 19, 20 and 36A) or entered under rebate of duty (section 75(5) and (6)).

¹⁶³ Section 44(6)(c)

¹⁶⁴ In terms of section 75(5) and (6)

¹⁶⁵ In respect of the liability of the licensee, sections 36A(2)(b) and 61(4)(b) further circumscribe the liability of licensees in the circumstances specified.

¹⁶⁶ If goods are removed in bond or re-warehoused from one customs and excise warehouse to another (section 20(4))

¹⁶⁷ However, goods in the process of manufacture which are removed from one customs and excise manufacturing warehouse to another for further manufacturing are deemed to be in the manufacturing warehouse to which they are in transit in terms of note 1(c) to item 608.00 of Schedule 6.

¹⁶⁸ In terms of *inter alia* sections 18(4), 18A(3), 19(8), 20(5) and 75(5) and (6)

¹⁶⁹ Cronje Customs and Excise p5-32

¹⁷⁰ Cronje Customs and Excise p5-32

- a) Licensee of a customs and excise warehouse where goods are stored or manufactured – Section 19(4), 19(6)-(8), 20(5), 36A, 44(2)
- b) Licensed owner of a customs and excise warehouse in which fuel levy goods are stored and a licensed person who obtains goods from such warehouse for distribution for his own account – Section 61(4)(b)
- c) The manufacturer, owner, seller or purchaser of excisable or fuel levy goods¹⁷¹ - Section 36A, 44(2), 44(8)

Section 44(11) generally limits the period of liability for any underpayment of duty after a period of two years from the date of acceptance of a bill of entry or where such underpayment was discovered as a result of, during the course of, or following upon an inspection and that underpayment occurred on a date earlier than two years prior to the date on which such an inspection commenced.¹⁷² Liability will first cease, even if an underpayment is discovered after an earlier assessment and payment of any amount in respect of any inspection during the period concerned where such underpayment is the result of fraud, misrepresentation, non-disclosure of material facts or any false declaration for the purpose of the Act.¹⁷³

Where any person makes a false statement concerning the origin of goods or makes use of any declaration or document containing a false statement, as a result of which such person obtains entry of imported goods at a preferential rate of duty,¹⁷⁴ liability is determined in terms of section 44(12).¹⁷⁵ Such a person is,

¹⁷¹ Even a purchaser may be such a licensee when goods purchased are removed from one warehouse to another by means of in bond procedures

¹⁷² Cronje Customs and Excise p5-34

¹⁷³ Cronje Customs and Excise p5-34

¹⁷⁴ Specified in Part I of Schedule 1 in accordance with any agreement contemplated in section 49 or 51.

¹⁷⁵ Cronje Customs and Excise p5-35

liable for the payment of duties at the general rate, for a period of three years prior to the date such false statement was made or used.¹⁷⁶

Section 19A¹⁷⁷ contains enabling provisions to introduce the so-called duty-at-source system, which in essence means that duty is payable when manufactured excisable or fuel levy goods are removed for home consumption from the customs and excise manufacturing warehouse. The proposed amendments will diminish the number of licensed storage warehouses for excisable or fuel levy goods manufactured in the Republic and also restrict the licensing of such warehouses.¹⁷⁸

Goods in a customs and excise manufacturing warehouse which have been entered for home consumption on the date of receipt in such warehouse or at the time prescribed or any goods manufactured from such goods, may be removed in bond or exported from a warehouse by the licensee as if such goods have not been so entered or deemed to have been so entered for home consumption..¹⁷⁹

4.4.1.2 Time of liability to pay duty

Liability for duty in respect of imported goods,¹⁸⁰ commences from the time when such goods are deemed to have been imported into the Republic.¹⁸¹ The correct amount of duty payable in respect of goods imported into the Republic constitutes a debt due to the state, as does any interest, fine, penalty or forfeiture incurred under the act.¹⁸² Goods belonging to a person by whom duty is due and

¹⁷⁶ Unless if the Commissioner, in terms of the proviso, on good cause shown, decides to reduce such period

¹⁷⁷ This section was inserted by section 40 of the *Revenue Laws Amendment Act 19 of 2001*. The section or any part thereof will come into operation on the date or dates fixed and in respect of the goods specified, by the President by proclamation in the *Gazette*. The purpose of the legislation is explained in the first paragraph of the Explanatory Memorandum.

¹⁷⁸ Cronje Customs and Excise p4-6

¹⁷⁹ Cronje Customs and Excise p4-6(2); Such goods would therefore be subject to the procedures contemplated in section 18 or 18A, as the case may be, and any other conditions or procedures the Commissioner may prescribe by rule for the purposes of the paragraph

¹⁸⁰ To which Section 10 relates.

¹⁸¹ In terms of section 44(1)

¹⁸² Section 114(l)(a)(i)-(ii).

which are in a customs and excise warehouse, and any goods subsequently imported, or imported goods in the possession of or under the control of the debtor are subject to a lien until the duty is paid.¹⁸³ Should surcharge on capital goods have been remitted by the director-general of trade and industry, the lien in favour of the state persists until the conditions prescribed by him have been complied with as if the goods have been detained unless other suitable security has been arranged. Otherwise the terms of this section which grant a lien to the state affect excise duty and fuel levy as well as customs duty.¹⁸⁴ For these provisions to be effective it is necessary that some form of appropriation should take place. This is done by detention of the goods.¹⁸⁵

Such liability ceases if¹⁸⁶ it is proved that such goods were not landed at any place in the Republic.¹⁸⁷ Section 44(2) provides that any liability for duty shall cease when it is proved by the exporter that the said goods have been duly taken out of the common customs area or, may determine by rule, that the goods have been duly accounted for in the country of destination.¹⁸⁸ If goods are entered for home consumption, due entry and payment of the duty due thereon will release the licensee from liability. The proof of export required to release the licensee from liability is considered to be the same as the proof required to release the exporter of warehoused goods from liability.¹⁸⁹ Section 44(1) does not apply¹⁹⁰ where the relevant duties, each taken separately, does not exceed R25 in respect of goods missing from an individual package.¹⁹¹ If goods are missing from a imported package no refund is granted to the importer if the customs duty, surcharge or fuel levy paid thereon, each taken separately, does not exceed R25.¹⁹²

183

Section 114(l)(a).

184

Joubert *The Law of South Africa* 260

185

Secretary for Customs and Excise v Millman 1975 3 SA 544 (A)

186

Subject to the provisions of subsection 7 and the exclusion stated in brackets.

187

Cronje *Customs and Excise* p5-22(4)

188

As amended by section 120 of the *Second Revenue Laws Amendment Act* 60 of 2001.

189

Section 18A(2)).

190

Save in so far as the rules otherwise provide.

191

Cronje *Customs and Excise* p5-22(4)

192

Section 44(7)

Subsection 19A(2) specifies the consequences if duty is not paid on the due date. The amount unpaid constitutes a debt due to the State and the Commissioner may without notice to the licensee:

- a) prohibit for any reasonable period the removal of any goods from a warehouse unless the goods are duly entered and the duty paid prior to such removal.
- b) Claim the amount from the surety where security is furnished in the form of a surety bond or take such legal steps, including enforcement of the provisions of the Act, as the Commissioner may deem necessary and appropriate in the circumstances.

The licensee is therefore liable,¹⁹³ to payment of an amount not exceeding 10 per cent of the duty concerned as a penalty or to the payment of interest from the day following the date on which payment should have been made.¹⁹⁴ The Commissioner may¹⁹⁵ on good cause shown, mitigate or remit any penalty incurred under this Act on such conditions as he deems fit.¹⁹⁶ The Commissioner may also impose any reasonable condition when removing the prohibition. When the section comes into operation the excisable or fuel levy goods concerned may not be removed to any customs and excise warehouse unless such warehouse is another such manufacturing warehouse.

4.2.2 Excise duty

4.2.2.1 Imposition and scope of duty

Excise duty is defined as any duty leviable in terms of part 2 of schedule on goods manufactured in the Republic.¹⁹⁷ Excisable goods are correspondingly defined with reference to part 2 of schedule 1 with the added requirement of

¹⁹³ Cronje Customs and Excise p4-6(2)
¹⁹⁴ As contemplated in section 105.
¹⁹⁵ In terms of section 93
¹⁹⁶ Cronje Customs and Excise p4-6(3)
¹⁹⁷ Joubert The Law of South Africa 284

manufacture.¹⁹⁸ The charge to duty comes from two sections of the act.¹⁹⁹ The first imposes excise duty on all excisable goods in accordance with the provisions of schedule 1 at the time of entry for home consumption of those goods. This provision is wide enough to cover the production of illicit goods. A specific rate of duty, for instance, is applicable to the manufacture of illicit beer.²⁰⁰ Since it is forbidden to manufacture goods subject to excise duty save in a licensed manufacturing warehouse, the second charging provision provides for the taxation of goods manufactured in a customs warehouse on entry for home consumption at the rate of duty applicable according to schedule 1.²⁰¹

In addition to those persons named above, the licensee of a manufacturing warehouse is liable to duty on goods manufactured in that warehouse from the time of manufacture until the time of entry for home consumption and delivery, or entry for and export thereof.²⁰² In addition the licensee of the customs and excise warehouse is liable for duty if goods are not duly exported.²⁰³

4.2.2.2 Manufacture and time of liability to pay duty

Excisable goods are deemed to have been manufactured at that stage of the manufacturing process when they have acquired the essential characteristics of and are, in the opinion of the commissioner for customs and excise, capable of use as excisable goods.²⁰⁴ Liability for the duty arises at that time.

The licensee is further liable for goods manufactured in such warehouse from the time of manufacture of such goods. "Manufacture" has the meaning ascribed to it for the purpose of the manufacture of excisable or fuel levy goods.²⁰⁵ Any excisable goods or fuel levy goods shall, for the purposes of the Act be deemed

¹⁹⁸ Section 1
¹⁹⁹ Section 47(1) and Section 37(1)(b)
²⁰⁰ Schedule 1, part 2, item 126.05.50
²⁰¹ Joubert The Law of South Africa 285
²⁰² Joubert The Law of South Africa 286
²⁰³ Cronje Customs and Excise p3-26
²⁰⁴ Section 44(2)
²⁰⁵ Cronje Customs and Excise p4-3

to have been manufactured²⁰⁶ at that stage in the manufacturing process when the goods have acquired the essential characteristics²⁰⁷ of and are in the opinion of the Commissioner capable of use as such excisable goods or fuel levy goods and liability for duty shall commence at the said stage.²⁰⁸ The licensee's liability therefore commences when the goods are deemed to have been manufactured in terms of section 44(2).²⁰⁹

In *Autoware (Pty) Ltd v Secretary for Customs and Excise*,²¹⁰ the interpretation of subsection (2), was argued but the court did not find it necessary to decide thereon for the purposes of judgment.²¹¹ However, the Court was of the opinion²¹² that subsection (2) applies to the 'essential characteristics' test which appears in Note IX(2) (a).²¹³ It seems that generally "essential characteristics" of excisable or fuel levy goods in subsection (2) must be interpreted according to the rules of interpretation.²¹⁴

Where any process is taking place as specified in paragraphs (a) to (e), goods are being manufactured and licensing of the premises as a customs and excise warehouse is necessary.²¹⁵ Goods manufactured in a customs and excise warehouse need not necessarily be liable to excise duty or fuel levy.²¹⁶ In

²⁰⁶ The meaning assigned to "manufacture" in section 1(1) in respect of excisable and fuel levy goods is relevant. In paragraphs (c), (e) and part of (d) the processes concern goods which already have the essential characteristics of goods of Part 2 or 5 of Schedule 1, that is goods classifiable under those Parts (and also the appropriate headings of Part I of Schedule 1 as Contemplated by section 47(7)).

²⁰⁷ See s 47 in respect of "essential characteristics".

²⁰⁸ Cronje Customs and Excise p5-23

²⁰⁹ Cronje Customs and Excise p4-4

²¹⁰ 1075 4 SA 318(W)

²¹¹ 328E

²¹² 325F. At 325E it was said: "it seems to me from the content of note IX(2)(a) that it was intended to apply to the first part of the Schedule, which deals with import duty. Its counterpart for excise and sales duty purposes is sec 44(2)".

²¹³ Now Note A2(a) to Schedule 1

²¹⁴ Part I of Schedule 1. Not only because of the provisions of Note A of the General Notes to Schedule I, but also having regard to the paramountcy of Part I of Schedule 1 in the classification of goods under other Parts of Schedule 1 or other Schedules (sections 47(7) and 75(8)).

²¹⁵ Sections 19, 21, 27(1), 36A, 60 and 61 and Schedule 8

²¹⁶ Cronje Customs and Excise p5-24

section 37(1) separate provisions relate to goods manufactured²¹⁷ and goods reconditioned, mixed or blended under the circumstance there provided.²¹⁸

The time at which classification of the manufactured goods is done, is at the time of entry for home consumption. It is the duty of the licensee of a manufacturing warehouse, upon the completion of the manufacturing operation, to provide the office of the commissioner for customs and excise with the particulars that may be required of him. He must also supply the relevant bill of entry before removal of the goods from the warehouse. The rate of duty to be applied is the rate prevailing at the date of entry for home consumption.²¹⁹

In practice the excise duty liability of a taxpayer is maintained as a current account with the office with inputs and withdrawals being recorded as required by the regulations. 8 The use of the manufacturer's sales records in dealing with withdrawals from stock is apt to create the impression that the tax is one on turnover. This is not so. It is a charge on production.²²⁰

The excise duty payable on fuels varies between petrol and distillate fuels, while that on spirits varies not only according to their raw materials, but also according to their content of absolute alcohol. The control exercised over the manufacture and use of stills is, therefore, strict.²²¹

5. Penal Provisions

Any person who contravenes or fails to comply with any provision of the *Customs and Excise Act*²²² or contravenes the prohibitions against trading without a license in where such a license is required, or trades contrary to a condition imposed by a licensing authority,²²³ shall even where such contravention or

²¹⁷ Section 37(1)
²¹⁸ Section 37(2), (3) and (4))
²¹⁹ Section 48(6)
²²⁰ Joubert The Law of South Africa 286
²²¹ Joubert The Law of South Africa 290
²²² 91 of 1964
²²³ Joubert The Law of South Africa 24

failure is not elsewhere declared an offence, be guilty of an offence.²²⁴ All penalties are prescribed in terms of section 55. Section 56 provides however that a Magistrates Court²²⁵ has the jurisdiction to impose any penalty provided for in this Act.²²⁶ In the event of non-compliance the Act provides for sanctions and enables the Commissioner to implement enforcement measures.²²⁷

The penal provisions of the Act may be grouped in two broad categories: those which carry a defined criminal sanction,²²⁸ being the less serious offences, and those which carry the possibility of the imposition of a fine equal to treble the value of the goods in respect of which the offence is committed. This latter group includes all offences for which no specific penalty is established,²²⁹ including all contraventions of the act even if not elsewhere declared an offence. The diversion of a third of these penalties to the commissioner for customs and excise applies to these funds. The commissioner enjoys the power to remit penalties,²³⁰ and has the power to recover them by civil proceedings.²³¹ The criminal court, in passing sentence, may impose civil penalties. This procedure should be at the request of the prosecution.²³²

To determine jurisdiction over the person who committed an offence one must look at the whereabouts or movement of the goods in respect of which the offence was committed.²³³ Section 95(1A) creates jurisdiction in respect of any person who at any place deemed under section 6(1A)²³⁴ to be a place of entry for the Republic or in any territory with the government of which an agreement has been concluded, performs any act which constitutes an offence "under this

224

Section 78(1)

225

Sections 95(2) to (3) relate to jurisdiction of a magistrate's court

226

Cronje Customs and Excise Int-18(5)

227

Cronje Customs and Excise Int-20

228

Section 79

229

Section 78(2)

230

Section 93

231

Section 94

232

Joubert The Law of South Africa 300

233

Section 95(1)

234

Section 6(1A) refers to the appointment of Maputo as a place of entry for the Republic, but the office there has been closed

Act".²³⁵ Such a person is guilty of an offence and the offence it deemed to have been committed where the accused happens to be.²³⁶

Although the offences²³⁷ in certain instances refer to "this Act", which by definition includes the rules,²³⁸ provides for penalties as authorised under the provisions of section 120(3).²³⁹ The penalties under the rules may not exceed those specified in section 78(2).²⁴⁰

Where no punishment is expressly provided, such person shall be liable on conviction to a fine not exceeding R8 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine or imprisonment.²⁴¹ A person who is convicted of an offence referred to above within a period of 3 years after he was convicted of such an offence, shall be liable to a fine not exceeding R16 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding four years, or to both such fine or imprisonment.

6. Conclusion

Customs and Excise warehouses plays a very important role in the Trading industry, and as the procedures for these warehouses is based on a act of general application, the management and control of these warehouses are very complex. In terms of the Act importers, exporters and manufacturers must register their premises as customs and excise warehouses and such warehouses must also be licensed with the local Customs office. A person is not allowed to

²³⁵ Cronje Customs and Excise p11-37

²³⁶ Cronje Customs and Excise p11-37

²³⁷ For instance section 78

²³⁸ Rule 120.10 and 120,11

²³⁹ In this respect section 86(k) is an exception as it creates the offence for contravention of any rule made in terms of section 73 or 101.

²⁴⁰ Cronje Customs and Excise p11-1

²⁴¹ Section 78(2)

perform an act, possess or use anything if a license is required unless he or she has obtained the appropriate license and paid the appropriate license fee.²⁴²

In regulating and controlling a complex sphere of activity such as licensing, the legislature must take into account the fact that circumstances vary in individual cases and in different towns, regions and even provinces, and must give due consideration to the rights and interests of those who may be involved.²⁴³ Different types of warehouses can be licensed, such as bonded warehouses which is used when you import dutiable goods for storage, and rebate store which is used when dutiable goods are used for specific manufacturing purposes that allow a rebate of duty.²⁴⁴ All warehouses must be and are subject to regular inspection. Facilities must always be secure and meticulous records are required.

Within the individual operations, such as the warehouse, computerised systems are being implemented to aid communication and streamline operations. As well as linking warehouses to its customers, software is increasingly used for liaisons between the bonded warehouse and Customs & Excise.²⁴⁵ Although the computerised systems would appear to be an additional complication in the link between bonded warehouse and customs, it should eventually make this process swifter and safer. These systems will try to eliminate the need for paperwork and reduce forgeries by electronic means through e-mail or the Web. This means it should be done faster, as before, documentation had to be returned.

Commercial practice requires the importation, storage and consolidation of goods in South Africa, followed by the subsequent exportation of those goods particularly to destinations in Africa. Not all such goods attract custom duties and are as a result thereof normally excluded from storage in bonded customs

²⁴² Procedural requirements are peremptory and must be complied with before an application is considered; see *Efstratiou v Health Committee, Port Elizabeth Municipality* 1977 2 SA 362 (E)

²⁴³ Joubert *The Law of South Africa* 6

²⁴⁴ <http://www.strategicplanning.co.za/customsconsulting.htm>

²⁴⁵ These systems must be reliable, as if errors occur, it is the warehouse that is liable for duty

warehouses. In this circumstances entry for home consumption must be made in respect of the goods and the value added tax paid thereon.

Proper dealing with goods under the Act essentially entails that goods must be duly entered, and where necessary, appropriately dealt with in accordance with the purpose of the entry.²⁴⁶ All relevant documents must be delivered as soon as the goods are to be received in the warehouse.²⁴⁷ Meticulous records are required of all the goods in the warehouses, in order to assist the Controller, licensee as well as the importer and exporter of the goods. All goods are dealt with or handled for the purposes of the Act at the risk of the importer, exporter, manufacturer or owner, and such persons would therefore be at risk in respect of goods handled in the warehouse.

Where trading is conducted contrary to a condition imposed by the licensing authority by a person who is a manager, employee or agent of the license holder, vicarious liability is attributed to the licensed holder as if he himself performed that act and he is liable to the prescribed penalties. There is as yet no systematic exposition of the duties and civil, criminal and fiscal liabilities of manufacturers and license holders contained in the Act.

If certain of the provisions of the Act however should be the subject of constitutional attack, it appears not unlikely that the regulatory nature of the Act may be considered.²⁴⁸ With respect, the law enforcement mechanisms, individually and as an integrated whole, may conceivably be essential to facilitate clearly acceptable objectives of a democratic government for preventing mischief which undermines the entire basis of the Act namely tax evasion,²⁴⁹ and to

²⁴⁶ *BP Southern Africa v Secretary for Customs and Excise* 1984 3 SA 367 (C) 369J-370F

²⁴⁷ Rule 20.01

²⁴⁸ *S v Coetzee* 1997 4 BCLR 457 (CC) pars 193—196 (per O'Regan J) regarding the distinction between criminal offences and regulatory offences in considering the constitutionality of the onus of proof on an accused (ie the reverse onus).

²⁴⁹ Report of the Commission of Enquiry into Certain Aspects of Tax Structure of South Africa par 6.3.23, which paragraph dealt with the secrecy provisions of the *Income Tax Act* 58 of 1962. Regarding section 4 of the Act see par 6.3.5 of the Report. Regarding section 16 of the Constitution of the Republic of South Africa, Act 108 of 1996

achieve the objectives of the South African Revenue Service as stated in the *South African Revenue Service Act*,²⁵⁰ that is the efficient and effective collection of revenue by securing the efficient and effective and widest possible enforcement of, for instance, the provisions of the *Customs and Excise Act*.²⁵¹

As transport and logistics become more critical to the bottom line than ever, I see warehousing and in-warehouse services becoming more important in the overall contribution to product profitability.

²⁵⁰

34 of 1997

²⁵¹

Cronje Customs and Excise Int-25

7. Bibliography

6.1 Literatuur

Cronje HC *Customs and Excise Service* (Butterworths, Durban, 1998)

Joubert WA, Faris JA and Harms LTC *The Law of South Africa Vol 15 & Vol 22 Part 2* (Butterworths, Durban, 1999)

6.2 Anonymous contributions

Anonomous Business Blue Book of South Africa: Investing in KwaZulu Natal 2002

6.3 Acts

Criminal Procedure Act 51 of 1977

Customs and Excise Act 91 of 1964

Income Tax Act 58 of 1962

Revenue Laws Amendment Act 19 of 2001

Second Revenue Laws Amendment Act 60 of 2001

6.4 Internet

HYPERLINK <http://www.strategicplanning.co.za/customsconsulting.htm> [Date of use 3 May 2005]

HYPERLINK <http://www.sars.gov.za> [Date of use 23 February 2005]

HYPERLINK [F:\Fairs-Link International \(Pty\) Ltd - Custom Procedures.htm](F:\Fairs-Link International (Pty) Ltd - Custom Procedures.htm) [Date of use 12 Maart 2006]

6.5 Cases

Autoware (Pty) Ltd v Secretary for Customs and Excise 1075 4 SA 318(W)

BP Southern Africa v Secretary for Customs and Excise 1984 3 SA 367 (C)

Department of Customs and Excises Maybaker (SA) (Pty) Ltd 1982 3 SA 809 (A).

Efstratiou v Health Committee, Port Elizabeth Municipality 1977 2 SA 362 (E)

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S v Lennon 1973 1 SA 515 (RA).

S v Mahomed 1978 1 SA 219 (K)

S v Manyesa 1975 4 SA 846 (RA)

S v Smith 1974 1 SA 607 (R).

Secretary for Customs and Excise v Tiffany's Jewellers (Pty) Ltd 1975 SA 578 (A)

Van Wyk v Minister van Finansies 1971 4 SA 477 (T)

6.6 Memorandum

Explanatory Memorandum on the Second Revenue Laws Amendment Bill 2004

6.7 Journal

Official Gazette (Natal) Provincial Notice 24, 24 February 1994, reg 34

APPLICATION FORM: REGISTRATION / LICENSING OF CUSTOMS AND EXCISE CLIENTS

For official use

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1. NOTES FOR THE COMPLETION OF FORM

1. Please indicate with an "X" in the applicable box.
2. If the space provided on form DA185 and applicable annexure(s) is insufficient, the information must be furnished on a separate page, which must be attached to the form DA185 and the annexures.
3. Where the asterisk (*) appears, delete which ever is not applicable.
4. Please reflect the relevant customs and excise client number, customs and excise warehouse number or rebate user number when applying for the amendment of existing information or for a total cancellation per client type.
5. Please take note that a separate application form must be completed for each client type.
6. Please complete annexure DA185.A where security must be furnished.

2. EXISTING REGISTRANT/LICENSEE PARTICULARS

If currently registered/licensed with SARS, please state allocated customs code of client number:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

3. PURPOSE OF APPLICATION

New Registration/Licensee or renewal: Amendment of existing information: Cancellation:

4. CLIENT TYPES

4.A REGISTRATION (section 59A and the rules thereto)		4.B LICENSING (section 60 and 61 and the rules thereto)
4A1 Importer - Annexure DA 185.4A1	<input type="checkbox"/>	4B1 Special Manufacturing Warehouse - Annexure DA 185.4B1 (Sec 21 and 61) <input type="checkbox"/>
4A2 Exporter (Annexure DA 185.4A2)		4B2 Manufacturing Warehouse - Annexure DA 185.4B2 (Sec 19A, 27 and 61) <input type="checkbox"/>
• Exporter	<input type="checkbox"/>	4B3 Storage Warehouse - Annexure DA 185.4B3 (Sec 61) <input type="checkbox"/>
• Exporter for AGOA - DA 46A1.03 (rule 46A1.02)	<input type="checkbox"/>	4B4 Special Storage Warehouse - Annexure DA 185.4B4 (Sec 19A, 21 and 61) <input type="checkbox"/>
• Exporter for SADC - (rules 49A and 49B)	<input type="checkbox"/>	4B5 Clearing Agent - Annexure DA 185.4B5 (Sec 64B) <input type="checkbox"/>
• Approved exporter for EC / SA Agreement - DA 49A.02 (rule 49A.18 (20))	<input type="checkbox"/>	4B6 Remover of goods in bond - Annexure DA 185.4B6 (Sec 64D) <input type="checkbox"/>
• Exporter for GSP (various countries) - DA 46A2.01 (rule 46A2.18)	<input type="checkbox"/>	4B7 Distributor of fuel - Annexure DA 185.4B7 (Sec 64F) <input type="checkbox"/>
4A3 Rebate user (Schedule 3, 4 and 6) - Annexure DA 185.4A3 (Sec 75)	<input type="checkbox"/>	
4A4 Manufacturer for AGOA - Annexure DA 185.4A4 (Rule 46A1.03)	<input type="checkbox"/>	
4A5 Special Manufacturing Warehouse: MIDP - Annexure DA 185.4A5	<input type="checkbox"/>	
4A6 Electronic communication with SARS - Annexure DA 185.4A6 (Sec 101A)	<input type="checkbox"/>	
4A7 Producer for GSP - Annexure DA 185.4A7 & DA 46A2.02 (rule 46A2.18)	<input type="checkbox"/>	
4A8 Commercial manufacturer of biodiesel - Annexure DA 185.4A8 (Section 37B and rule 37B.02(b))	<input type="checkbox"/>	
4A9 Non-commercial manufacturer of biodiesel - Annexure DA 185.4A9 (Section 37B and rule 37B.02(a))	<input type="checkbox"/>	

5. BUSINESS / PERSON PARTICULARS

Registered name of business or name of applicant:			
Business address: Street name and number:			
Building name and floor number:			
Suburb:			
City/Town:			Street code:
Postal address:			
Suburb:			
City/Town:			Postal code:
Business Telephone and Fax numbers (including code):			
Business e-mail address:			

6. NATURE OF BUSINESS												
Company	<input type="checkbox"/>	Close Corporation	<input type="checkbox"/>	Trust	<input type="checkbox"/>	Sole Proprietor	<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Other	<input type="checkbox"/>	
Company Registration number:												
Close Corporation Registration Number:												
Trust Registration Number:												
Other (Please specify):												

7. REGISTRATION PARTICULARS			
VAT Registration Number:		Income Tax Number:	
PAYE Number:		SDL Number:	
UIF Number:			

Full name, surname and ID/Passport number(s) of "Sole Proprietor and/or all Partners"/ Managing Director/ Financial Director/ Directors/ Members/ Trustees:												
i)	Initials:					Full Name:						
Surname:												
ID. No.:												
Passport No.:												
ii)	Initials:					Full Name:						
Surname:												
ID. No.:												
Passport No.:												
iii)	Initials:					Full Name:						
Surname:												
ID. No.:												
Passport No.:												

8. CONTACT PERSON (Particulars of person who can be contacted regarding this application)												
Surname:												
First Name:												
Telephone Dialing Code:												
Cellular Phone Number:												
Capacity:												

9. ACCOUNTANT/ACCOUNTING DETAILS												
Name of Accountant/Accounting firm:												
Particulars of the Accountant/Auditor or Accounting Officer:												
Initials:					First Name:							
Surname:												
Telephone Dialing Code:												
Telephone Number:												
Business address: Street name and number:												
Building name and floor number:												
Suburb:												
City/Town:									Street code			
Postal address:												
Suburb:												
City/Town:									Postal code			

10: INFORMATION REGARDING CONTRAVENTIONS AND OTHER MATTERS

Please indicate whether during the preceding five years, any person contemplated in the rules for section 59A or 60:-

(a) Has contravened or failed to comply with the provisions of the Act.	Yes:		No:	
(b) Has failed to comply with any condition, obligation or other requirement imposed by the Commissioner.	Yes:		No:	
(c) Has been convicted of any offence under the Act.	Yes:		No:	
(d) Has been convicted of any offence involving dishonesty.	Yes:		No:	
(e) Has made any false or misleading statement in any material respect or omitted to state any material fact which was required to be stated in any application for registration or for any other purpose under the Act.	Yes:		No:	
(f) Has ever been insolvent or in liquidation.	Yes:		No:	

Note:

- If the answer is "yes" to any of the above questions in Block 10, full details must be furnished on a separate page and attached to the application.
- Any applicant may, where it is contended in respect of paragraphs (a) and (b) that the contravention or failure was inadvertent, without fraudulent intent or gross negligence, a submission to this effect should be furnished on a separate page and attached to the application.

Declaration:

I hereby-

- (a) declare that the particulars in the application and all enclosures are true and correct; and
- (b) undertake to-
- inform the South African Revenue Service immediately of any changes in the particulars furnished in the application;
 - comply with such customs and excise laws and procedures.

(Initials and Surname)_____
(Status / Capacity, e.g. Director)_____
(Signature)_____
(Date & Place)

Originals or certified copies to accompany the application:	
(a)	Registration certificate of business (as issued by the Registrar of Companies or Master of the Supreme Court in the case of a Trust)
(b)	Resolution/consent or other authority as applicable
(c)	Identity/passport documents of -
	• Individual
	• Partnership, Close Corporation and Trust (All Members / Partners / Trustees)
	• Company (All Directors, including Managing Director and Financial Director)

Declaration:	
I hereby -	
(a)	declare that the particulars in the application and all enclosures are true and correct; and
(b)	undertake to -
	(i) inform the South African Revenue Service immediately of any changes in the particulars furnished in the application;
	(ii) comply with the customs and excise laws and procedures.
.....	
(Initials and Surname)	(Status / Capacity, e.g. Director)
.....	
(Signature)	(Date & Place)

FOR OFFICIAL USE												
File Number:												
Type of Warehouse:	SVM											
Warehouse Number:												
Licence Number:												
Licence Date:												
District office with whom Licensed:												

Originals or certified copies to accompany the application:

(a) Registration certificate of business (as issued by the Registrar of Companies or Master of the Supreme Court in the case of a Trust)

(b) Resolution/consent or other authority as applicable

(c) Identity/passport documents of -

- Individual
- Partnership, Close Corporation and Trust (All Members / Partners / Trustees)
- Company (All Directors, including Managing Director and Financial Director)

Declaration:

I hereby -

(a) declare that the particulars in the application and all enclosures are true and correct; and

(b) undertake to -

(i) inform the South African Revenue Service immediately of any changes in the particulars furnished in the application;

(ii) comply with the customs and excise laws and procedures.

..... (Initials and Surname) (Status / Capacity, e.g. Director)
..... (Signature) (Date & Place)

FOR OFFICIAL USE				
File Number:				
*Details of First License:				
Type of Warehouse:	VM	VMP	VMS	
Warehouse Number:				
Licence Number:				
Licence Date:				
District office with whom Licensed:				
*Details of Second License:				
Type of Warehouse:	VM	VMP	VMS	
Warehouse Number:				
Licence Number:				
Licence Date:				
District office with whom Licensed:				
*Details of Third License:				
Type of Warehouse:	VM	VMP	VMS	
Warehouse Number:				
Licence Number:				
Licence Date:				
District office with whom Licensed:				
* Delete whichever is not applicable				

LICENSING CLIENT TYPE 4B3 – STORAGE WAREHOUSE

Notes:

- Whenever an asterisk (*) appears, please delete whichever is not applicable
- Indicate with an X in the appropriate block(s) whichever is applicable

Trading Particulars:

Please supply all trade names and physical addresses if the business is conducted from a different address or under a different name as that stated in Block 5 of the application form (DA 185).

Trade name of business:	
Customs Client Number (if already registered):	
Physical address: Street name and number:	
Building name and floor number:	
Suburb:	
City/Town:	
Street code:	

Authority to apply:

I/We,

(name of applicant)

herein represented by:

(1) (2)

(Capacity) (Capacity)

being duly authorised thereto by virtue of –

(a) *a resolution passed at a meeting of the Board of Directors, held at on the day of (CCYY); or

(b) *express consent in writing of all the members of the close corporation / * partners of the partnership / * trustees of the trust; or

(c) * being a person having the management of any other association; or

(d) * delegated officer of an organ of State,

hereby apply for licensing of a Storage Warehouse.

Warehouse Particulars:

(a) Indicate with an X what the warehouse will be used for:

- Storage of locally manufactured goods (OS)
- Storage of imported goods (OS)
- Storage of Imported Goods – Stockist (OS)

(b) Please state the rebate item(s), tariff subheading(s) / item(s) (if applicable), and describe the goods that will be stored in the warehouse.

Rebate item(s)	Tariff subheading(s) / item(s)	Rebate Code	Description of goods stored
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			
(8)			
(9)			
(10)			
(11)			
(12)			

Continues overleaf

Originals or certified copies to accompany the application:

- (a) Registration certificate of business (as issued by the Registrar of Companies or Master of the Supreme Court in the case of a Trust)
- (b) Resolution/consent or other authority as applicable
- (c) Identity/passport documents of -
 - * Individual
 - * Partnership, Close Corporation and Trust (All Members / Partners / Trustees)
 - * Company (All Directors, including Managing Director and Financial Director)

Declaration:

I hereby -

- (a) declare that the particulars in the application and all enclosures are true and correct; and
- (b) undertake to -
 - (i) inform the South African Revenue Service immediately of any changes in the particulars furnished in the application;
 - (ii) comply with the customs and excise laws and procedures.

.....
(Initials and Surname)

.....
(Status / Capacity, e.g. Director)

.....
(Signature)

.....
(Date & Place)

FOR OFFICIAL USE	
File Number:	<input type="text"/>
Type of Warehouse: (Please mark with an X)	OS <input type="checkbox"/>
Warehouse Number:	<input type="text"/>
Licence Number:	<input type="text"/>
Licence Date:	<input type="text"/>
District office with whom Licensed:	<input type="text"/>