

D.R. 40/2006

RANG UNDANG-UNDANG

bernama

Suatu Akta untuk meminda Akta Kastam 1967.

[]

DIPERBUAT oleh Parlimen Malaysia seperti yang berikut:

Tajuk ringkas dan permulaan kuat kuasa

1. (1) Akta ini bolehlah dinamakan Akta Kastam (Pindaan) (No. 2) 2006.

(2) Akta ini mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*, dan Menteri boleh menetapkan tarikh yang berlainan bagi permulaan kuat kuasa peruntukan yang berlainan dalam Akta ini.

Pindaan seksyen 2

2. Akta Kastam 1967 [*Akta 235*], yang disebut "Akta ibu" dalam Akta ini, dipinda dalam seksyen 2 dengan memasukkan selepas takrif "customs port" takrif yang berikut:

¹ "customs ruling" means the customs ruling made by the Director General under section 10B;'

Bahagian baru IIa

3. Akta ibu dipinda dengan memasukkan selepas seksyen 10 Bahagian yang berikut:

"PART IIA

CUSTOMS RULING

Application for customs ruling

10A. (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:

- (a) the classification of goods;
- (b) the principles to be adopted for the purposes of determination of value of goods; or
- (c) on any other matters to be prescribed by the Director General.

(2) An application under subsection (1) may be made —

- (a) in respect of imported goods —
 - (i) at any time before the goods, that are the subject matter of the application, are to be imported or intended to be imported into Malaysia; or
 - (ii) at any later time, if the Director General may in his discretion permit; or
- (b) in respect of manufactured goods —
 - (i) at any time before the goods that are the subject matter of the application, are to be manufactured; or
 - (ii) at any later time, if the Director General may in his discretion permit.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

Making of customs ruling

10B. (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in

the application made under section 10A and such ruling shall bind the applicant.

(2) Any such customs ruling may be subject to such conditions as the Director General may deem fit to impose.

(3) The Director General may decline to make a customs ruling if, in his opinion —

- (a) the information given by the applicant is insufficient to do so;
- (b) the application is for a hypothetical situation; or
- (c) an appeal under this Act is pending involving the subject matter referred to in the application.

Amendment, modification or revocation of customs ruling

10c. (1) A customs ruling may be amended, modified or revoked by the Director General if—

- (a) it contains an error which needs to be corrected;
- (b) the customs ruling was based on an error of fact or law;
- (c) there is a change in law relating to customs; or
- (d) there is a change in the material fact or circumstances on which the ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any duty liability in respect of any goods, and—

- (a) the goods are imported within 3 months of the date the notice of the amendment, modification or revocation is given pursuant to a binding contract entered into before that date;

- (b) the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Malaysia on the date the notice of the amendment, modification or revocation of the ruling is given; or
- (c) the goods are imported on or before the date the notice of the amendment, modification or revocation is given but have not been released for home consumption,

then the customs ruling which was made prior to the amendment, modification or revocation under this section shall be applied to such goods.

(4) Notwithstanding subsection (2), and subject to section 16, if the amendment, modification or revocation to a customs ruling has the effect of decreasing any duty liability in respect of any goods, any higher duty that has been paid shall be treated as if the higher duty has been paid in error.

Director General to declare rulings to be null, etc.

10D. The Director General shall by a notice declare a customs ruling made under section 10B to be null, void and of no effect if the ruling has been obtained by the applicant by way of fraud, misrepresentation or falsification of facts.

Receiving of two customs rulings

10E. Where an applicant receives two or more different customs ruling on the same subject matter, such rulings shall be treated as being null and void and such applicant shall immediately notify the Director General who shall, within thirty days from the date of the notification, issue a new customs ruling."

Pindaan kepada seksyen 22A

4. Seksyen 22A Akta ibu dipinda dengan memasukkan selepas perkataan "under section" perkataan "10B,".

Pindaan kepada seksyen 135

5. Seksyen 135 Akta ibu dipinda—

(a) dengan menggantikan subperenggan (l)faj(i) dengan subperenggan yang berikut:

"(i) in the case of goods included in a class of goods appearing in an order made under section 11(1)-

(aa) be liable for the first offence to a fine of not less than ten times the amount of the customs duty and of not more than twenty times the amount of the customs duty, or to imprisonment for a term not exceeding three years or to both; and

(bb) be liable for a second offence or any subsequent offence to a fine of **not** less than twenty times the amount of the customs duty and of not more than forty times the amount of the customs duty, or to imprisonment for a term not exceeding five years or to both:

Provided that when the amount of the customs duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both;" and

(b) dengan menggantikan subperenggan (l)(a)(m) dengan subperenggan yang berikut:

"(iii) in the case of prohibited goods —

(aa) be liable for the first offence to a fine of not less than ten times the value of the goods and of not more than twenty times the value of the goods, or to imprisonment for a term not exceeding three years or to both; and

(bb) be liable for a second or any subsequent offence to a fine of not less than twenty times the value of the goods and of not more than forty times the value of the goods, or

to imprisonment for a term not exceeding five years or to both:

Provided that where the value of the goods cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both."

Bahagian **bam** XIVA

6. Akta ibu dipinda dengan memasukkan selepas seksyen 141 Bahagian yang berikut:

"PART XIVA

CUSTOMS APPEAL TRIBUNAL

Interpretation

141A. In this Part, unless the context otherwise requires —

"Chairman" means the Chairman of the Tribunal appointed under paragraph 141c(l)(a)

"Deputy Chairman" means the Deputy Chairman of the Tribunal appointed under paragraph 141c(l)(a);

"Secretary" means the Secretary to the Tribunal appointed under section 141H;

"Tribunal" means the Customs Appeal Tribunal established under section 141B.

Establishment of Tribunal

141B. A tribunal to be known as "the Customs Appeal Tribunal" is established.

Membership of Tribunal

141c. (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman and a Deputy Chairman from amongst members of the Judicial and Legal Service; and

(b) not less than two other members being persons with special knowledge and experience in customs or taxation matters.

(2) The members referred to in paragraph (1)(b) —

(a) shall hold office for a term not exceeding three years; and

(b) shall be eligible for reappointment upon the expiry of his term of office but shall not be appointed for more than three consecutive terms.

Temporary exercise of functions of Chairman

141D. Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

Revocation of appointment

141E. The Minister may revoke the appointment of a member of the Tribunal appointed under paragraph 41c(b) if—

(a) his conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;

(b) he has become incapable of properly carrying out his duties as a member of the Tribunal;

(c) there has been proved against him, or he has been convicted on, a charge in respect of—

(i) an offence involving fraud, dishonesty or moral turpitude;

(ii) an offence under a law relating to corruption;

(iii) an offence under this Act, the Excise Act 1976 [Act 176], the Sales Tax Act 1972 [Act 64] or the Service Tax Act 1975 [Act 151]; or

(iv) any other offence punishable with imprisonment for more than two years;

- (d) he is adjudicated a bankrupt;
- (e) he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs;
or
- (f) he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

Resignation

141F. A member of the Tribunal appointed under paragraph 141c(1)^{f^J} may at any time resign his office by notice in writing to the Minister.

Remuneration

141G. All members of the Tribunal shall be paid such remuneration as the Minister may determine.

Secretary to Tribunal and other officers

141H. (1) There shall be appointed a Secretary to the Tribunal and such number of officers as may be necessary for carrying out the functions of the Tribunal.

(2) The Chairman shall have general control of the Secretary and officers of the Tribunal.

(3) The Secretary to the Tribunal shall be deemed to be an officer of the Tribunal.

Public servant

141i. All members, officers and the Secretary of the Tribunal while discharging their duties shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Sitting of Tribunal

141 j. (1) The jurisdiction of the Tribunal shall be exercised by any of the following persons sitting alone:

- (a) the Chairman;

- (b) the Deputy Chairman; or
- (c) any member of the Tribunal determined by the Chairman.

(2) The Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine.

(3) If the person presiding over any proceedings in respect of an appeal dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the appeal shall be heard afresh by another member of the Tribunal, unless the parties agree that the appeal be continued by another member of the Tribunal.

(4) Where the term of appointment of any member of the Tribunal expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

Hearing by three members

141k. (1) Notwithstanding section 14 1j, where, upon an application made by the appellant to the Chairman before the commencement of an appeal the Chairman is satisfied that the issue in the proceedings —

- (a) is of public interest; or
- (b) has, as determined by the Minister, substantial revenue implication to the Government,

the Chairman may make an order that the appeal shall be heard and disposed of by a panel of three members of the Tribunal.

(2) The Chairman shall appoint a member of the panel to preside the proceedings.

(3) The decision of the panel shall be taken by the majority of members composing the panel.

(4) Where a member of the panel under subsection (1) dies or becomes incapable of exercising his functions as a member, the proceedings shall continue before, and decision shall be given

by, the remaining members of the panel, not being less than two, and the panel shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death or incapability of the member as aforesaid.

(5) In any such case as is mentioned in subsection (4), the decision shall be taken by the majority of the remaining members of the panel, and if there is no majority decision, by the member presiding the proceedings.

(6) Where the term of appointment of any member of the panel expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

Disclosure of interest

141L. (1) A member of the Tribunal having, directly or indirectly, by himself or his family member, any interest in an appeal brought before him as a member, such member shall, immediately, disclose the fact and the nature of his interest to the Chairman.

(2) Upon receipt of the disclosure of interest under subsection (1), the Chairman shall appoint another member to hear and dispose of the appeal.

Jurisdiction of Tribunal

141M. (1) The Tribunal shall have jurisdiction to determine any appeal made under section 143 of the Act, section 47 of the Excise Act 1976, subsection 68(2) of the Sales Tax Act 1972 and subsection 50(2) of the Service Tax Act 1975.

(2) Without affecting subsection (1), the Minister may by order prescribe any additional matters to be within the jurisdiction of the Tribunal.

(3) An appellant may lodge with the Tribunal an appeal in the prescribed form together with the prescribed fee.

Exclusion of jurisdiction of court

141N. (1) Where an appeal is lodged with the Tribunal and the appeal is within the jurisdiction of the Tribunal, the issues in dispute in such appeal, whether as shown in the initial appeal or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless —

- (a) the proceedings before the court were commenced before the appeal was lodged with the Tribunal; or
- (b) the appeal before the Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1)(a) applies, the issues in dispute in the appeal to which those proceedings relate, whether as shown in the initial appeal or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the appeal before the court is withdrawn, abandoned or struck out.

Notice of appeal and hearing

141o. Upon an appeal being lodged under section 141M, the Secretary shall give notice of the details of the day, time and place of hearing in the prescribed form to the Director General and the appellant.

Negotiation for settlement

141p. (1) The Tribunal shall, as regards every appeal within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to the proceedings to negotiate an agreed settlement in relation to the appeal.

(2) Without limiting the generality of subsection (1), in making an assessment the Tribunal shall have regard to any factor that in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall then take effect as if it were a decision of the Tribunal.

(4) Where-

(a) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the appeal; or

(b) the parties are unable to reach an agreed settlement in relation to the appeal,

the Tribunal shall proceed to determine the appeal.

No advocate and solicitor at hearing

141Q. (1) An advocate and solicitor shall not be allowed to represent an appellant at the hearing of an appeal before the Tribunal.

(2) Notwithstanding subsection (1) and section 37 of the Legal Profession Act 1976 [Act 166] —

(a) a corporation or an unincorporated body of persons may be represented by a full-time paid employee of the corporation or body; or

(b) a minor or any other person under a disability may be represented by his next friend or guardian *ad litem*.

Proceedings to be closed

141R. Unless agreed by the parties to the appeal, all proceedings before the Tribunal shall be closed from the public.

Evidence

141s. (1) Any proceedings before the Tribunal shall be conducted without regard to formality and technicality and the Tribunal may —

(a) procure and receive all such evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses, as the Tribunal thinks necessary to procure, receive or examine;

- (b) require the production before it of books, papers, documents, records and things;
- (c) administer such oath, affirmation or statutory declaration as the case may be;
- (d) seek and receive such other evidence and make such other inquiries as it thinks fit;
- (e) summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, records or other thing in his possession or otherwise to assist the Tribunal in its deliberations;
- (f) receive expert evidence; and
- (g) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the appeal.

(2) A summons issued under this section shall be served and enforced as if it were a summons issued by a subordinate court.

Decision of the Tribunal

141T. (1) The Tribunal shall make its decision without delay and where practicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) The Tribunal shall have the power-

- fa J to affirm the decision of the Director General;
- (b) to vary the decision of the Director General; or
- (c) to set aside the decision of the Director General and substitute it with a new decision.

(3) The Tribunal shall give its reason for its decision in any appeal heard before it.

Decision and settlement to be recorded in writing

141u. The Tribunal shall make or cause to be made a written record of the terms of—

- (a) every agreed settlement reached by the parties under subsection 141p(3); and
- (b) every decision made by it under section 14It.

Decision of Tribunal to be final

141v. (1) A decision of the Tribunal shall be —

- (a) final and binding on all parties to the proceedings; and
- (b) deemed to be an order of a Sessions Court and be enforced accordingly by the parties to the proceedings.

(2) For the purpose of subsection (1)(b), the Secretary shall send a copy of the decision made by the Tribunal to the Sessions Court having jurisdiction in the place to which the decision relates or in the place where the decision was made and the Court shall cause the copy to be recorded.

Appeal to the High Court

141w. Any person aggrieved by the decision of the Tribunal may appeal to the High Court on a question of law or of mixed law and fact.

Tribunal to adopt procedure

141x. Subject to this Act, the Tribunal may adopt such procedure as it thinks fit and proper.

Want of form

141y. NO proceedings, decision or document of the Tribunal shall be set aside or quashed for want of form.

Disposal of documents, etc.

141z. (1) The Tribunal may, at the conclusion of the proceedings before it, order that any document, record, material, thing, goods or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit.

(2) Where no person has taken delivery of the document, record, material, things, goods or other property referred to in subsection (1) after a period of six months, the ownership in the document, record, material, thing, goods or other property shall be deemed to have passed to and become vested in the Government.

Act or omission done in good faith

141AA. NO action or suit shall be instituted or maintained in any court against—

- (a) the Tribunal;
- (b) a member of the Tribunal; or
- (c) any person authorized to act for or on behalf of the Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act.

Regulations in respect of the Tribunal

141 AB. (1) The Minister may make such regulations as may be necessary or expedient in respect of the Tribunal.

(2) Without prejudice to the generality of subsection (1), regulations may be made for—

- (a) prescribing the responsibilities of members of the Tribunal;
- (b) prescribing the procedure of the Tribunal;
- (c) prescribing the forms to be used in the proceedings under this Part;

- (d) prescribing and imposing fees and providing the manner for collecting and disbursing such fees;
- (e) prescribing anything required to be prescribed under this Part."

Pindaan kepada seksyen 142

7. Seksyen 142 Akta ibu adalah dipinda dengan memasukkan selepas perenggan (35B) perenggan yang berikut:

"(35c) to regulate the conduct of all matters relating to customs rulings;

(35D) to prescribe and impose fees relating to customs rulings and provide the manner for collecting and disbursing such fees;

(35E) to prescribe the forms to be used for the purpose of customs rulings;"

Pindaan kepada seksyen 143

8. Akta ibu adalah dipinda dengan menggantikan seksyen 143 dengan seksyen yang berikut:

"Appeal from decision of Director General

143. Any person aggrieved by the decision of the Director General may, except in any matter relating to compound or subsection 128(3), within thirty days from the date of the notification in writing of the decision to him, appeal to the Tribunal, and the decision of the Tribunal shall be final."

Pembatalan seksyen 143A

9. Akta ibu adalah dipinda dengan membatalkan seksyen 143A.

Kecualian dan peralihan

10. (1) Walau apa pun peruntukan seksyen 3 Akta ini, mana-mana ketetapan kastam yang dibuat oleh Ketua Pengarah

sebelum berkuatkuasanya seksyen itu, adalah disifatkan telah dibuat di bawah seksyen itu dan sah bagi tempoh tiga tahun dari tarikh kuat kuasanya seksyen itu.

(2) Mana-mana rayuan di bawah seksyen 143 Akta ibu kepada Menteri yang dibuat sebelum tarikh ditetapkan dan masih belum selesai pada tarikh demikian hendaklah, selepas tarikh yang ditetapkan, diteruskan seolah-olah Akta ibu tidak dipinda oleh Akta ini.

(3) Mana-mana rayuan di bawah seksyen 143A Akta ibu kepada Menteri yang dibuat sebelum tarikh ditetapkan dan masih belum selesai pada tarikh demikian hendaklah, diteruskan seolah-olah Akta ibu tidak dipinda oleh Akta ini.

(4) Bagi maksud subseksyen (2) dan (3), "tarikh ditetapkan" ertinya tarikh yang ditetapkan oleh Menteri di bawah subseksyen 1(2).

HURAIAN

Rang Undang-Undang ini bertujuan untuk meminda Akta Kastam 1967 ("Akta 235").

2. *Fasal 1* mengandungi tajuk ringkas dan kuasa Menteri untuk menetapkan tarikh permulaan kuat kuasa Akta yang dicadangkan.

3. *Fasal 2* bertujuan untuk meminda seksyen 2 Akta 235 bagi memasukkan takrif "customs ruling" atau ketetapan kastam ke dalam seksyen itu.

4. *Fasal 3* bertujuan untuk memasukkan Bahagian baru IIA ke dalam Akta 235 bagi memperuntukkan tentang permohonan bagi ketetapan kastam, pembuatan ketetapan itu dan pemakaiannya. *Fasal* ini membenarkan Ketua Pengarah meminda, mengubah suai atau membatalkan sesuatu ketetapan kastam. Ketua Pengarah juga diberi kuasa untuk mengisytiharkan sesuatu ketetapan kastam itu sebagai batal, tak sah dan tiada kesan jika ketetapan itu diperolehi dengan cara fraud, salah nyataan atau pemalsuan fakta. Seseorang pemohon tidak dibenarkan untuk memegang dua atau lebih ketetapan kastam bagi hal perkara yang sama.

5. *Fasal 5* bertujuan untuk meminda seksyen 135 Akta 235 bagi menyatakan denda minimum yang boleh dikenakan bagi kesalahan yang dilakukan di bawah seksyen itu.

6. *Fasal 6* bertujuan untuk memasukkan Bahagian baru XIVA ke dalam Akta 235. Antara lain, *fasal* ini memperuntukkan bagi penubuhan Tribunal Rayuan Kastam ("Tribunal") dan perantikan anggotanya. *Fasal* ini juga memperuntukkan bagi bidang kuasa, persidangan dan kuasa Tribunal.
7. *Fasal 7* bertujuan untuk meminda seksyen 142 Akta 235 bagi memberi kuasa kepada Menteri untuk membuat peraturan-peraturan berhubung dengan ketetapan kastam.
8. *Fasal 8* bertujuan untuk meminda seksyen 143 Akta 235 bagi membolehkan mana-mana orang yang terkilan dengan keputusan Ketua Pengarah, selain keputusan yang berhubung dengan kompaun, untuk merayu kepada Tribunal.
9. Pindaan lain yang tidak diperkatakan secara khusus dalam Huraian ini merupakan pindaan yang kecil dan berbangkit.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini akan melibatkan Kerajaan dalam perbelanjaan wang tambahan yang amaunnya belum dapat ditentukan sekarang ini.

[PN(U²)2559]