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## Duty To Give Reasons Applies To Tax Authorities

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In the recent case of *UMSB v Ketua Pengarah Kastam dan Eksais*, the Court of Appeal ruled in favour of the taxpayer by setting aside the High Court's order and allowing the taxpayer's judicial review application. The judicial review application was made by the taxpayer to challenge the decision of the Director General of Customs (DGC) in rejecting the taxpayer's application for special refund of sales tax.

This alert highlights the key points of contention and the significance of this case.

### Background Facts

The taxpayer is a company in the retail business. In 2015, the taxpayer submitted an application to the DGC for special refund of sales tax for the goods held on hand by the taxpayer pursuant to Section 191 of the Goods and Services Act 2014 (GST Act 2014). The taxpayer also submitted the relevant documentation after it was requested by the DGC.

However, the DGC rejected the taxpayer's special refund application via a letter dated 16.11.2016 without giving any justifications or reasons for the rejection. The taxpayer subsequently requested for the DGC to furnish their reasons for the decision. Nonetheless, the DGC still did not provide their reasons for rejecting the taxpayer's application for special refund of sales tax.

Being aggrieved by the DGC's decision, the taxpayer filed an application for judicial review to challenge the same. Upon the commencement of judicial review proceedings, the DGC gave his reasons for the rejection.

### The High Court's Decision

The High Court found in favour of the DGC and dismissed the taxpayer's judicial review application based on the following reasons:

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- a) Pursuant to Section 191(3) of the GST Act 2014, the DGC is allowed to reject a claim for a refund where any information on the claim was found to be inaccurate or misleading. Thus, the taxpayer is not entitled to the special refund.
- b) Section 191 of the GST Act 2014 does not provide for a mandatory requirement for the DGC to provide reasons for rejection. Thus, in the present matter, the fact that the DGC had failed to give its reasons for the rejection of the taxpayer's special refund application was not fatal.

Being aggrieved by the High Court's decision, the taxpayer appealed to the Court of Appeal.

## Issues Before The Court Of Appeal

The main issues considered by the Court of Appeal were:

- a) Whether the taxpayer is entitled to the special refund pursuant to Sections 190 and 191 of the GST Act 2014?
- b) Whether the DGC has a duty to give reasons for rejecting the taxpayer's application for special refund?

## The Taxpayer's Contentions

The taxpayer submitted that the High Court had erred in coming to its decision based on the following reasons:

- The taxpayer is entitled to the special refund of the sales tax since all the requirements under Sections 190(1) and 191(2)(b) of the GST Act 2014 had been satisfied.
- The taxpayer had obtained independent declaration by auditor Ernst & Young, which had confirmed the accuracy of the taxpayer's refund application which is in line with Section 191(2) of the GST Act 2014.
- The DGC owes a duty to provide reasons, especially in matters that involve the discretionary powers of public decision-making bodies. Thus, by failing to give any

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reasons for rejecting the taxpayer's special refund application, the DGC had acted illegally.

## The DGC's Contentions

The DGC averred that the High Court had correctly decided in its favour based on the following reasons:

- There is no requirement for the DGC to give reasons under Section 191 of the GST Act 2014.
- The taxpayer did not prove that the sales tax element had been removed from the sales price before the taxpayer had made the application to the DGC for special refund.
- Due to the inaccurate information provided by the taxpayer, the DGC had a right to reject the taxpayer's special refund application pursuant to Section 191(3) of the GST Act 2014.

## The Court Of Appeal's Decision

Upon reading and hearing submissions by both parties, the Court of Appeal allowed the taxpayer's appeal and set aside the High Court's decision.

The Court of Appeal came to the following decision:

- (a) The DGC, being a public decision-making body has a duty to give reasons for its decision.
- (b) The taxpayer has fulfilled the requirements stipulated under Sections 190 and 191 of the GST Act 2014 and thus, should be allowed the special refund.

In coming to its decision, the Court of Appeal had relied on the Federal Court case of *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank*, which held the following:

*"[87] The absence of any provisions in the statute requiring the decision maker to give reasons ought not to be understood or taken to mean that there is*

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*no such duty to give reasons unless that very statute specifies that no reasons need to be given. The absence of such a provision ought not to be regarded as a cloak under which the decision maker can hide his rationale for making the decision, privy only to himself but a mystery to the interested parties or the public at large.”*

The Court of Appeal held that if the DGC does not have a duty to give reasons for its decision, it must be expressly stated in the GST Act 2014. The absence of specific provisions in the GST Act 2014 stipulating that the DGC must give reasons for its decision cannot be interpreted to mean that no reasons need be given.

Further, it is one of the fundamentals of good administration for the DGC to give reasons for its decision, as it inculcates transparency and accountability in public decision-making bodies. The Court of Appeal was also of the view that the reasons must be given when the DGC made the decision. In the present matter, the conduct of the DGC in giving its reasons for rejecting the taxpayer's special refund application after the judicial review application was filed by the taxpayer constitutes an afterthought and cannot be taken into account.

## Conclusion

It is the trite principle that public decision-making bodies are under a duty to give reasons for its decision. This decision by the Court of Appeal shows that this duty extends to tax authorities such as the DGC. The Court of Appeal's decision is much welcomed, as it shows that the powers given to the public decision-making bodies are not unfettered, and any decision made must be justified.

Authored by Nur Hanina Mohd Azham, an Associate with the firm's Tax, SST & Customs practice.

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