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Court Of Appeal Grants Taxpayer Mandamus Order In GST Remission Application

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Recently, the Court of Appeal allowed the taxpayer's appeal where an order of mandamus was granted to compel the Minister of Finance (Minister) to make a decision in relation to the taxpayer's remission application.

The taxpayer was successfully represented by the firm's Tax, SST & Customs partner, S. Saravana Kumar together with Estine Lim, an associate from the same practice. Mr S Rajendran was the instructing solicitor and appeared in this matter as well.

Background Facts

The taxpayer is a company involved in the trading of investment precious metal, namely gold bars and wafer (IPM Gold). Pursuant to the First Schedule to the Goods and Services Tax (Exempt Supply) Order 2014 (Exempt Supply Order), the supply of IPM Gold qualifies as an exempt supply.

However, the Customs conducted an audit and claimed that, amongst others:

(i) The supply of IPM Gold by the Taxpayer to wholesalers, retailers and non-registered persons did not fall within the First Schedule to the Exempt Supply Order. As such, it was not an exempt supply and was subjected to the standard rate of 6% under Section 9 of the Goods and Services Tax Act 2014 (GST Act);

(ii) The taxpayer had incorrectly declared the supply of IPM Gold as a local supply in the GST-03 Statement; and

(iii) The taxpayer failed to produce the IPM certificates.

The taxpayer explained that it was common industry practice to pass the IPM certificates to customers upon sale and there was no requirement under the law or the Customs Guide requiring a seller like the taxpayer to retain the certificates or its copies.

Despite the taxpayer's explanation, the Customs proceeded to issue bills of demand for the GST shortfall, which the taxpayer paid under protest. Subsequently, the taxpayer made an application under Section 62 of the GST Act to the Minister for a remission of the GST paid. However, no response was given by the Minister.

Aggrieved by the Minister's non-response, the taxpayer filed a judicial review application against the Minister and the Customs.

The High Court's Decision

The High Court dismissed the taxpayer's judicial review application on, amongst others, the following grounds:

(i) The Minister's non-response could not be subjected to judicial review and the taxpayer cannot arbitrarily assume that a decision was made when no reply was received. As such, there was no decision for the purpose of judicial review;

(ii) There was no legal duty imposed on the Minister to remit the GST paid to the taxpayer;

(iii) The taxpayer should have appealed to the Customs Appeal Tribunal; and

(iv) The taxpayer failed to show that the supply had satisfied the investment criteria contained in the Exempt Supply Order.

Dissatisfied with the High Court's decision, the taxpayer appealed to the Court of Appeal.

The Taxpayer's Contentions

On appeal, the crux of the taxpayer's argument was as follows:

(i) The supply of IPM Gold had fulfilled the investment criteria under the First Schedule to the Exempt Supply Order and therefore, it should be treated as an exempt supply;

(ii) There was no requirement under the Exempt Supply Order and the Customs Guide on Investment Precious Metals (Customs Guide) that the seller of IPM Gold must keep the IPM certificates. In fact, it was an established industry practice that the IPM certificates be passed to the customer along with the IPM Gold. In any event, the taxpayer had furnished information such as the relevant invoice number, date of the invoice, and the details of the IPM Gold;

(iii) While the Minister has discretionary power to allow a remission application, such discretion is not unfettered. As held by the Court of Appeal in *Everise Sprint (M) Sdn Bhd v Minister of Finance, Malaysia & Anor* [2015] 7 CLJ 309, the Minister's discretion to remit tax must be exercised based on an objective appreciation of the evidence before him. A decision premised on a wrong appreciation of facts and the failure to consider relevant facts must stand quashed. In the present matter, the taxpayer had fulfilled the conditions to avail itself of the exempt supply and GST had also been paid to the Customs;

(iv) The GST Act did not provide a mechanism for the taxpayer to challenge the Minister's refusal to allow the remission application. Under the GST Act, only the Customs' decision may be challenged through domestic remedy; and

(v) Based on the Court of Appeal's decision in *UEM Land Berhad v Menteri Kewangan Malaysia & Another Appeal* [2025] 3 MLJ 320, the Minister's refusal to respond or non-response amounts to a decision that was amenable to judicial review.

The Minister And Customs' Contentions

On behalf of the Minister and the Customs, the Senior Federal Counsel from the Attorney General's Chambers argued that:

(i) The Minister's failure to respond does not amount to a decision for judicial review. The 10-day timeline given by the taxpayer for the Minister to respond was also unreasonable;

(ii) In any event, the Minister enjoys a discretion but not a legal duty to remit GST to the taxpayer;

(iii) The bills of demand issued by the Customs were in accordance with the GST Act and the taxpayer should have exhausted domestic remedy under the GST Act; and

(iv) Lastly, the taxpayer failed to prove that the supply of IPM Gold fell within the scope of the First Schedule to the Exempt Supply Order.

The Court Of Appeal's Decision

The Court of Appeal in allowing the taxpayer's appeal held that:

(i) The Minister's failure to respond to the taxpayer's remission application was an omission which is susceptible to judicial review;

(ii) The High Court erred in finding that the taxpayer had failed to produce the requisite documents to show that the supply of IPM Gold met the investment criteria under paragraph 4(3) of the First Schedule to the Exempt Supply Order.

(iii) The taxpayer had provided the necessary and relevant details on the invoices as required by the Customs' Guide; and

(iv) Despite the information given by the taxpayer to justify its entitlement to the Exempt Supply Order in compliance with the Customs Guide, the Minister and the Customs failed to make a proper and objective consideration based on such information. The Court of Appeal opined that no other public or administrative body placed in similar circumstances would have acted in the same manner as the Minister and the Customs.

For the reasons above, the Court of Appeal set aside the High Court's decision and granted a mandamus order to compel the Minister to make a decision on the taxpayer's remission application.

Commentary

The Court of Appeal's decision is significant for several reasons. First, this is probably the first instance in a GST matter where the court accepted secondary evidence (information of the invoices and details of the IPM Gold) in lieu of original documents (the IPM certificates).

Second, the Court of Appeal reaffirmed the principle established in *Everise Sprint* that the Minister's discretion must be exercised objectively based on the evidence before him. A decision made on incorrect appreciation of facts and evidence is unlawful and liable to be set aside.

The decision also aligns with *UEM Land Berhad* where the Court of Appeal recently held that the Minister has the power to exempt or give direction in relation to any assessment raised, whether lawful or unlawful.

Lastly, the Court of Appeal's decision also clarified that the Minister of Finance's decisions cannot be challenged through the Customs Appeal Tribunal, as Section 126(1) of the GST Act 2014 only permits appeals against decisions of the Customs. Although the GST Act 2014 has been repealed, this principle established in this ruling is also applicable in similar remission applications under the Customs Act 1967, Sales Tax Act 2018 and Service Tax Act 2018.

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