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AJ v Pemungut Duti Setem: **High Court Rules Taxpayer Is Entitled To Stamp Duty Remission**

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Last week, in *AJ v Pemungut Duti Setem*, the High Court ruled that the Collector of Stamp Duties had erroneously refused to grant the stamp duty remission under Stamp Duty (Remission)(No.2) Order 2012 (the Order) to the taxpayer. This is the first case of its kind in Malaysia on this point

The taxpayer was successfully represented by the firm's Tax, SST & Customs partner S. Saravana Kumar together with associate, Nur Hanina binti Mohd Azham.

This alert summarises the arguments advanced by both parties in this matter and the significance of this case.

Background Facts

On 27.12.2018, a letter of offer was executed between Alliance Bank Malaysia Berhad (Alliance Bank) and the taxpayer. Pursuant to the Letter of Offer the Agreement, Alliance Bank agreed to provide credit facility amounting to RM 105,000,000 to the taxpayer. This letter was sent for stamp duty adjudication, where the taxpayer sought for the remission of stamp duty granted under the Order.

On 31.1.2019, the Collector of Stamp Duty (the Collector) informed the taxpayer that the instrument in the form of letter of offer is not qualified for remission of stamp duty under the Order. Subsequently, the Collector took the position that the letter of offer is subjected to stamp duty at the ad valorem rate as prescribed under sub-item 27(a)(iii) of the First Schedule to the Stamp Act 1949 (the Act) and on 13.2.2019, raised a stamp duty assessment for the sum of RM525,000.00 (the Assessment).

On 14.2.2019, the taxpayer had paid the stamp duty under protest and submitted an application dated 28.2.2019 to object against the Assessment pursuant to Section 38A(1) of the Act. However, on 8.3.2021, the taxpayer's application was rejected by the Collector and with no reasons were provided. Being aggrieved by the Assessment, the taxpayer subsequently filed

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an appeal to the High Court pursuant to Section 39(1) of the SA 1949.

The Taxpayer's Contention

The submission for the taxpayer can be summarised as follows:

- In order to fall under sub-item 22(1)(b) of the First Schedule to the Act, the instrument must be for the term of life or any other indefinite period. In the present matter, the Letter of Offer clearly falls under sub-item 22(1)(b) of the First Schedule of the Act, in that the letter of offer is for an indefinite period.
- This is evident from the fact that the availability of the facility is subject to the Bank's right to recall/cancel the facility or any part thereof at any time it deems fit whereupon the facility of such part thereof shall be cancelled and the whole indebtedness or such part thereof be repayable on demand.
- The letter of offer falls under the scope of sub-item 22(1)(b) of the First Schedule of the Act. It then follows that the letter of offer falls squarely within the Order and should be stamped at the rate of 0.1% i.e. RM105,000.00. As such, the excess in amount paid (i.e. RM420,000.00) shall be remitted to the taxpayer pursuant to the Order.
- Paragraph 2 of the Order states the following:

"The amount of stamp duty that is chargeable under subitem 22(1)(b) of the First Schedule to the Act upon a loan agreement or loan instrument without security for any sum or sums of money repayable on demand or in single bullet repayment under that subitem which is in excess of zero point one per cent (0.1%) is remitted."
- The Collector has failed to consider the clear wordings of the Order which clearly stipulate that any loan under the scope of sub-item 22(1)(b) of the First Schedule to the Act which has no security whatsoever and is either repayable on demand or repayable in a single bullet

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repayment is eligible for the remission of stamp duty under the Order.

- The taxpayer relied on the case of *UMBC v Pekeliling Triangle Sdn Bhd* where the Supreme Court held that if there is any ambiguity in a taxing act, it is to be construed in favour of taxpayer.
- Furthermore, at the time the instrument was executed, there was no requirement of “for the term of life or any other indefinite period.” Thus, since the letter of offer was dated 27.12.2018, the law as at 27.12.2018 applied.
- In addition, the taxpayer contended that there is no specific requirement under the Order for the sums of money to be paid under the letter of offer to be by way of demand or single bullet repayment in the ordinary course.
- This is in line with the principle of vested rights enunciated by our courts in the cases of *National Land Finance* and *La Salle Brothers*.

The Collector’s Contention

The Collector’s main argument is that the letter of offer was correctly charged to stamp duty under sub-item 22(1)(a) of the First Schedule of the Stamp Act and thus, the Order was not applicable to the letter of offer. Besides that, the Collector also submitted that the letter of offer was not an instrument that is repayable on demand or in single bullet repayment. Based on the letter of offer, the credit facility was for a definite period as the tenure is stated at 180 days.

Further, the Collector claimed that item 22 of the First Schedule was amended via the Finance Act 2018 on 28.12.2018. Hence, the new amendment applied to the taxpayer as the instrument was brought for adjudication on 31.1.2019, after the new amendment had come into force. Thus, the Collector had correctly exercised its statutory duty in assessing the taxpayer’s stamp duty liability.

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The High Court's Decision & Commentary

Upon reading and hearing submissions by both parties, the High Court allowed the taxpayer's application on the premise that the letter of offer qualified for the stamp duty remission under the Order. Thus, the Assessment raised by the Collector was held to be erroneous.

The High Court's decision is much welcomed, as it reminds us that an aggrieved taxpayer is not left without any recourse. When a stamp duty assessment is raised by authorities such as the Collector, the said assessment can be challenged especially when an error of law has been committed by the Collector. Whilst the Collector has the power to collect stamp duty from taxpayer, the Collector shall not arbitrarily raise a notice of assessment for stamp duty. This is in line with the taxpayer's right not to pay unauthorised taxes pursuant to Article 96 of the Federal Constitution which provides that '*No tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law.*'

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

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