

**SECTIONS 2, 4, 38A(4), 38A(5), 39 & ITEM 32(a)
FIRST SCHEDULE STAMP ACT 1949**



BY LEGAL DEPARTMENT



HIGH COURT KUALA LUMPUR



YA DATO' AMARJEET SINGH A/L SERJIT



24th OCTOBER 2024

GENTARI SDN BHD

V.

PEMUNGUT DUTI SETEM

RAYUAN NO. WA-24-75-10/2023

On 13.09.2023, Pemungut Duti Setem, the Defendant assessed the Novation Agreement with ad valorem duty for the amount of RM8,220,010.00 pursuant to Item 32(a) First Schedule Stamp Act 1949. Gentari Sdn Bhd (The

Plaintiff) dissatisfied with the duty assessed on the Novation Agreement and appeal against it under Subsection 39(1)(a) Stamp Act 1949 as the Novation Agreement should have been assessed as an agreement under Item 4 First Schedule Stamp Act 1949 which duty to be paid is only RM10.00. The framed issue before the High Court is whether the ad valorem duty chargeable under Item 32(a) First Schedule Stamp Act 1949 on the Novation Agreement is correct?

The Plaintiff submitted that by operation of law, when something is novated, the old contract is extinguished, and the new one is created. Hence there is no transfer. If by operation of law there is no transfer or assignment, then Item 32(a) First Schedule Stamp Act 1949 cannot be applied. The intention of parties to novate is clear from the language of the Novation Agreement. It is an instrument to change parties to the contract, not an assignment or transfer of debt. The Novation Agreement extinguishes rights and obligations under the old contract for which the new contract is made. The Novation Agreement discharges the rights and obligations of one of the original parties from the original contract entirely.

In response, the Defendant submits that the nature of the Novation Agreement itself is a 'conveyance on sale' based on subject matter, consideration amount and completion date. The definition of 'conveyance on sale' under Section 2 Stamp Act 1949 should not be limited to normal sale and purchase only, but the court must look into the substance and the construction of the instrument i.e. in this case, the Novation Agreement. The label given to an instrument is inconclusive. The substance and real character of the instrument has to be established to ascertain whether a particular instrument is liable to stamp duty within the meaning of the Act. The Defendant submits that in order to determine whether the instrument is a conveyance on sale, the document must be construed as a whole, so that the real substance of that transaction be known and henceforth ascertain the respective parties' rights and obligation under the said instrument. The Defendant further submits that the Novation Agreement is related to the Shareholder's Loan Agreements. Even if it's a new contract but still this Novation Agreement shall not exist without the existence of the Shareholder's Loan Agreement. The Novation Agreement is actually a contract to transfer all PETRONAS rights and liabilities under the Shareholder's Loan Agreement over the Gentari Renewables Sdn Bhd's debt to the Plaintiff. The construction of the Novation Agreement itself shows that the property is actually passed/transferred to the Plaintiff under the Novation Agreement which was in this case a 'conveyance on sale' within the meaning of the Stamp Act 1949 and chargeable with ad valorem duty. Since the instrument fulfils the condition as a 'conveyance on sale', therefore, it is subject to ad valorem duty under Item 32(a) First Schedule Stamp Act 1949.

On 24.10.2024, the High Court has allowed the Plaintiff's appeal with costs.

Editorial Note

The Collector has the right to appeal to the Court of Appeal within 30 days from the date of the decision.