



**Tax Appeal – Section 133A & Schedule 7A ITA -
Reinvestment Allowance-Manufacturing**

KETUA PENGARAH HASIL DALAM NEGERI

v.

ULTIMATE RESERVES SDN BHD

[S-01(A)-554-09/2021]



**MAHKAMAH RAYUAN, KOTA KINABALU,
SABAH**



**YA DATUK HAJJAH AZIZAH BINTI HAJI
NAWAWI, HMR
YA DATO' SRI MARIANA BINTI HAJI YAHYA,
HMR**

YA DATUK SEE MEE CHUN, HMR



15 NOVEMBER 2024

This is an appeal by the Revenue against the decision of the High Court on 10.9.2021 allowing the Taxpayer's tax appeal against the decision of the Special Commissioners of Income Tax ("SCIT") on 18.5.2017. The main issues are whether the dump truck, workshop equipment, canopy diesel generator set, heavy machinery and other assets (steel deck road weighbridge, recondition cummins generator set, airman used air compressor) are eligible for Reinvestment Allowance ("RA") claim.

The Taxpayer's principal business activities being running a quarry, concrete and armac premix plant operations, contract works and cultivation of oil palm. The Taxpayer has claimed the items under the category 'plant and machinery' in its EPS Form for Years of Assessment ("YA") 2009 and 2010. The Revenue has disallowed the Taxpayer's claim for RA under the Schedule 7A of the Income Tax Act 1967 ("ITA") for all the items since they were not used for the purpose of manufacturing activity as defined in Paragraph 9 of Schedule 7A ITA. The items were used after the manufacturing stage i.e. to facilitate shipment and transportation. The RA claim has been disallowed following the conduct of field audit on the Taxpayer. The additional assessments have been raised and Notices of Additional Assessment have been issued against the Taxpayer for YA 2009 and 2010. The Taxpayer has appealed against the additional assessments by way of Form Q before the SCIT.

The Taxpayer has failed to prove that the items claimed were used in the manufacturing activity to produce the product of quarry operation and asphalt/premix/asphaltic concrete and thus has failed to prove it being 'qualified project' under Paragraph 8(a) of Schedule 7A ITA. Quarry production process starts with site cleaning, drilling and exploding the quarry to get raw material i.e. rock, stones and sandstone combination, which are the end product. The claimed items are for transportation and transferring the rocks. Whereas in the asphaltic production process, it starts at processing, weight bitumen and raw material, mixing it in the mixing pan and producing end product i.e. asphaltic concrete/premix/black aggregate stone/bitumen. The claimed items under RA are used to load, deliver or transfer the products to the site project. The Taxpayer also claimed RA on machines used at the project sites for works done and levelling roads, which is after the completion of manufacturing or after the stones or asphalt are produced. Paragraph 9 of Schedule 7A ITA defined 'manufacturing' excludes '(gg) any activity to facilitate shipment and transportation'. Besides, the Taxpayer has failed to prove the increase of volume of production as claimed in the EPS Form under "purpose" i.e. expansion and diversifying on plant and equipment which increase the volume of production, before the project and with the project.

The Taxpayer has alleged that the SCIT's findings are incorrect in law and the claimed items are part of the manufacturing activities. The Taxpayer's claim is under the qualified project in expanding and/or modernizing the Taxpayer's existing business in the quarry and asphalt activities which involves manufacturing and supplying the quarry and asphaltic products for construction of roads and other constructing activities. The Taxpayer has also alleged that the SCIT has misconstrued Paragraph 1(a) and Paragraph 8(a) of Schedule 7A of ITA and agreed with the High Court's decision that the plant and machinery must be used for the 'existing business' in respect of manufacturing of a product or any related product within the same industry.

The Court of Appeal has unanimously agreed and decided to uphold the SCIT's decision that the claimed items were not eligible for RA and the claim for plant and machineries are no longer an integral part of the manufacturing of a product. The Revenue's appeal is allowed with no order as to cost.