



**SECTIONS 2, 4, 21, 38A (5), 39(1) & ITEM 4 & 32(a)**

**FIRST SCHEDULE STAMP ACT 1949**

**PETRONAS DAGANGAN BERHAD v.**

**COLLECTOR OF STAMP DUTY**

**WA-24-6-01/2023**



**HIGH COURT OF KUALA LUMPUR**



**YA DATO' AMARJEET SINGH A/L SERJIT**



**25<sup>TH</sup> NOVEMBER 2024**

The duty payer, Petronas Dagangan Berhad (PDB) had entered into the Business Transfer and Share Subscription Agreement (the BTSSA) with Petrosniaga Sdn Bhd and Petroleum Sarawak Berhad on 9.3.2022.

PDB agrees to sell PDB Business which includes the PDB Contracts and the PDB Equipment which includes PDB Assets and PDB Liabilities but shall exclude the Excluded Assets. On 15.9.2022, the Collector of Stamp Duty (the Collector) assessed the BTSSA with ad valorem duty for RM1,584,040 pursuant to Item 32(a) First Schedule Stamp Act 1949 (SA 1949) for the consideration cash value of RM40,000,000 received by PDB. PDB being dissatisfied with the duty assessed on the BTSSA, appealed under section 38A (5) SA 1949 as the BTSSA should have been assessed with nominal duty of RM10.00 under Item 4 First Schedule SA 1949. PDB objected to the Notis Taksiran Pindah Milik Perniagaan (Duti Ad Valorem) dated 15.9.2022 in which the Collector rejected the objection and issued the Notis Taksiran Pindaan Pindah Milik Perniagaan (Duti Ad Valorem) dated 4.1.2023 for the same amount of RM1,584,040. PDB then appealed to the High Court vide section 39(1) SA 1949 by way of the Originating Summons and the Case Stated. The issue before the High Court is whether the ad valorem duty chargeable under Item 32(a) First Schedule SA 1949 on the BTSSA is correct?

PDB submitted that the BTSSA does not fall within the ambit of Section 21(1) SA 1949 as there is no equitable interest in property transferred and referred to the case of *Pemungut Duti Setem v Havi Logistics (M) Sdn Bhd (2024) 1 MLJ 177*. There is no conveyance, assignment or transfer of property that warrants the application of Item 32(a) First Schedule SA 1949. The BTSSA is a mere written contract for the sales of its business. Clause 2.2 of the BTSSA clearly provided that PDB Business will be transferred through a novation agreement, thus there is no transfer of property legally or equitably or a sale of interest. There was also no deeming provision in the BTSSA for the transfer of the Equipment. PDB relied on Havi's case that the meaning of 'goods' is wide enough to cover the Equipment i.e gas cylinders and the cages holding the cylinders and those 'goods' are clearly exempted from the application of Section 21(1) SA 1949. In addition, all the requirements under Item 4 First Schedule SA 1949 have been fulfilled, therefore the BTSSA should be assessed under Item 4 First Schedule SA 1949.

In response, the Collector submitted that it is settled law that stamp duty is imposed on the instrument and not the transaction. Item 4 First Schedule SA 1949 is a general provision whereby the BTSSA dated 9.3.2022 is a conveyance on sale and should be charged with ad valorem duty. The BTSSA fulfilled all the elements of business transfer which falls under Section 21(1) SA 1949. There is a deeming provision of the PDB Equipments in paragraphs 6.3 and 6.4.1 of the BTSSA, therefore Havi's case is not applicable in this case. The Novation Agreement is just merely to substitute PDB with Petrosniaga and it cannot be considered as a separate act. There is no consideration also mentioned in the Novation Agreement. The construction of the BTSSA itself shows that PDB's Business and Equipment are passed and transferred to Petrosniaga which in this case is a 'conveyance on sale' within the meaning of Section 2 SA 1949 and chargeable with ad valorem duty under Item 32(a) First Schedule SA 1949.

On 25.11.2024, the High Court has dismissed PDB's Originating Summons with costs.

### **Editorial Note**

*The duty payer has the right to appeal to the Court of Appeal within 30 days from the decision of the High Court.*