



SECTION 21(1), ITEM 4 & ITEM 32(a)
FIRST SCHEDULE STAMP ACT 1949

GTP NETWORK SDN BHD
V.
PEMUNGUT DUTI SETEM
BA-24NCVC-444-03/2024

 HIGH COURT OF SHAH ALAM
 YA DATO' HAZIZAH BINTI KASSIM
 10th OCTOBER 2024

The duty payer is a company in the business of constructing and providing telecommunication infrastructure to network service providers. The duty payer had entered into an Asset Purchase Agreement

(‘Agreement’) with MEBA Holdings Sdn Bhd (‘the Seller’) where the duty payer agreed to purchase 16 telecommunication towers for RM15,000,000.00. The duty payer presented the Agreement to the Collector of Stamp Duties (‘CSD’) through STAMPS for adjudication of stamp duty. The Agreement was first rejected by the CSD and the duty payer was instructed to re-submit the Agreement for adjudication under the category of Novation Agreement. The CSD issued Notice of Assessment dated 11.09.2023 where an *ad valorem* stamp duty of RM584,020.00 was imposed on the Agreement. Dissatisfied with the CSD’s decision, the duty payer filed an appeal to the High Court via an Originating Summons dated 04.03.2024 under section 39(1) Stamp Act 1949 (‘SA 1949’).

The duty payer argued that the legal ownership, risk and title did not pass to the duty payer via the Agreement and there is no deeming provision in the Agreement which stipulated that legal ownership, risk and title are deemed passed to the duty payer on the date of the Agreement. The said legal ownership, risk and title will only be passed and transferred to the duty payer on the “Completion Date”. The duty payer further argued that where certain steps relating to the transfer of assets are not yet completed at the time when the Agreement is executed and the completion is to take place at a future date, then the Agreement does not amount to a “conveyance” as it is merely an “agreement to convey”. The Agreement itself was not a “conveyance” and thus should not be subject to *ad valorem* stamp duty under Item 32(a) First Schedule SA 1949. Additionally, the duty payer contended that the 16 telecommunication towers are to be considered as goods / chattels under Section 21(1) SA 1949 which stipulates that any instrument for the sale of goods, wares, or merchandise is excluded from the imposition of *ad valorem* duty. The duty payer argued that the CSD has failed to read the Agreement as a whole and erroneously imposed *ad valorem* stamp duty on the Agreement based on Item 32(a) First Schedule SA 1949.

The CSD submitted that the Agreement entered into by the duty payer and the Seller is a conveyance on sale as defined under Section 2 SA 1949 where the conveyance must, inter alia, be of 'property' and or 'interest in property'. As there is a sale of property (i.e Sale Assets) together with all title and rights attached thereto in the duty payer’s case, the Agreement has to be treated as an instrument of conveyance and became dutiable to *ad valorem* duty under Item 32(a) of the First Schedule SA 1949. The Agreement also states that the Seller agrees to sell, transfer, deliver, pass, and assign all beneficial ownership and legal ownership of the assets to the duty payer together with economic rights and benefit as of the date of the Agreement. Therefore, the Agreement fulfilled the characteristics of conveyance of sale and thus falls squarely within the ambit of Section 21(1) SA 1949 and was correctly assessed by the CSD to *ad valorem* duty under Item 32(a) First Schedule SA 1949.

On 10.10.2024, the High Court allowed the duty payer’s Originating Summons with costs of RM6,000.00.

Editorial Note: *The CSD has the right to file an appeal to the Court of Appeal within 30 days from the decision of the High Court.*