



SECTION 21(1), SUB-ITEM 32(a) OF FIRST SCHEDULE
OF THE STAMP ACT 1949

HAVI LOGISTICS (M) SDN BHD

v.

PEMUNGUT DUTI SETEM

[01(f)-5-02/2024 (W)]



FEDERAL COURT, PUTRAJAYA



YAA DATO' SRI HASNAH BINTI DATO'
MOHAMMED HASHIM

YAA TAN SRI DATO' ABDUL RAHMAN BIN
SEBLI

YA DATO' ZABARAH BINTI MOHD YUSOF
YA DATUK ABDUL KARIM BIN ABDUL JALIL
YA DATUK VAZEER ALAM BIN MYDIN MEERA



20 JANUARY 2025

The Federal Court, comprising a panel of five judges, had unanimously dismissed the Appellant's appeal. The key questions of the appeal were whether an Asset Purchase Agreement made pursuant to a sale of business fell within Section 21(1) of the Stamp Act 1949 ("the Act"), and if so, whether the business assets sold under the Agreement were considered 'goods' and thus exempt from duty under the said provision. If the Agreement did not fall within the exemption, it would then be liable to *ad valorem* duty under sub-item 32(a) of the First Schedule of the Act.

The Appellant ("duty payer") contended that the Agreement was not subject to *ad valorem* duty but rather the fixed duty under item 4 of the First Schedule of the Act. Though the Agreement might fall within Section 21(1) of the Act, the assets sold were fixed assets of the duty payer and thus, qualify as 'goods' under the said provision. It was further argued that the Agreement was not a conveyance on sale as no separate act had been undertaken by parties to transfer the legal title of the assets. The duty payer also raised the issue that the notice of assessment was flawed as the Respondent ("Collector of Stamp Duty") failed to specify the sub-item of item 32 in raising the assessment.

In reply, the Collector of Stamp Duty argued that the Agreement constituted a conveyance on sale within the meaning of Section 21(1) of the Act. Since the Agreement fell within Section 21(1) of the Act, it was treated as if it were an actual conveyance of sale (deemed conveyance). Thus, the Agreement was subject to duty under sub-item 32(a) of the First Schedule of the Act. Further, based on the dictionary meaning of 'goods', 'wares' and 'merchandise', and applying the principle of *noscitur a sociis*, the true meaning of 'goods' must be construed based on its association within the context of 'wares' and 'merchandise', denoting that 'goods' would refer to items or articles of trade. Thus, the fixed assets were not included in the exception, as it was not the trading stock of the duty payer.

The Respondent also distinguished the U.K's tax authority practice of treating non-trading goods as an exception under Section 59(1) of the UK Stamp Act (which formed the basis of our Section 21(1) of the Act), by relying on the legislative intent and history of the UK laws, which had evolved differently from the Stamp Act 1949. With regard to the notice of assessment, it was argued that it was impossible for the duty payer to be misled on which sub-item was applied as there was no other possible provisions under item 32 relating to *ad valorem* duty that could apply to the Agreement other than sub-item (a). All of other sub-items had no possible connection or relevance to the Agreement.

The Federal Court upheld the decision of the Court of Appeal that affirmed the assessment but rejected the rationale of the Court of Appeal that the Agreement was a conveyance of sale due to the clause on deemed conveyance found in the Agreement. The Federal Court further held that the Agreement did not fall within Section 21(1) of the Act as the fixed assets were considered goods within the meaning of the exemption. The Federal Court also agreed that the question of whether the notice of assessment was flawed was a non-issue, as there was no provisions that could apply to the Agreement apart from sub-item (a) of the Act.