



**JUDICIAL REVIEW – ORDER 53 RULE 2 RULES  
OF COURT 2012 – E-MAIL IS NOT A DECISION**

**RICCA PEACOCK ASIA SDN BHD**

**v.**

**MINISTER OF FINANCE & 3 ORS.**

**[BA-25-61-09/2023]**

 **SHAH ALAM HIGH COURT**

 **YA DR. SHAHNAZ BINTI SULAIMAN**

 **25 APRIL 2024**

The Taxpayer applied for leave for judicial review on the alleged 'decision' by the 3<sup>rd</sup> Respondent, Perbadanan Pembangunan Bioekonomi Malaysia Sdn Bhd (PPBM) that was made through an e-mail dated 12.6.2023.

The Director General of Inland Revenue (DGIR) was named as the 2<sup>nd</sup> Respondent and admitted as the Putative Respondent. The DGIR was never involved in making the alleged decision. The Taxpayer had named the Minister of Finance (MOF) as the 1<sup>st</sup> Respondent, the DGIR as the 2<sup>nd</sup> Respondent, PPBM as the 3<sup>rd</sup> Respondent and the Minister of Science, Technology and Innovation as the 4<sup>th</sup> Respondent.

The 3<sup>rd</sup> Respondent, through its e-mail dated 12.6.2023 to the Taxpayer, had informed that it was unable to proceed with the Taxpayer's substantial activity application due to the non-compliance issue (i.e. 100% non-qualifying revenue activity) and thus the 3<sup>rd</sup> Respondent had initiated on the withdrawal of BioNexus Status and the tax incentives process against the Taxpayer. Upon receiving the e-mail, the Taxpayer had filed the application for judicial review seeking the High Court, inter alia, to quash the alleged decision (e-mail dated 12.6.2023) and for an Order of Mandamus to compel the Respondents to discharge, revise, revoke or amend the alleged decision to give effect to and in accordance with the orders of the High Court. However, the notice of assessment had yet to be issued by the DGIR and hence, there was no tax liability being imposed on the Taxpayer. There was no decision on part of the DGIR which was amenable for judicial review.

The Taxpayer's application for judicial review was premature, frivolous, vexatious and had no arguable case since the Taxpayer failed to prove the element of 'grievance' resulting from the decision of the DGIR. The Taxpayer also failed to show exceptional circumstances which would justify for leave to be granted by the High Court. The DGIR's objection would not in any way prejudice the Taxpayer since the Taxpayer would still have the right to appeal to the Special Commissioners of Income Tax under Section 99 of the Income Tax Act 1967 if it was aggrieved by any assessment made by the DGIR.

The learned Judge held that there was no decision and the judicial review application was premature. The Order for Mandamus could not be granted since there was no legal obligation held by the Respondents and thus, the Taxpayer could not compel them to perform its statutory duties. The Taxpayer was not adversely affected by the e-mail of the 3<sup>rd</sup> Respondent. No decision was susceptible for judicial review and leave to commence judicial review was dismissed with cost of RM2,000 to the 1<sup>st</sup> Respondent (MOF) and RM2,000 to the 2<sup>nd</sup> Respondent (DGIR).

*Editorial Notes: The Taxpayer has a right to appeal to the Court of Appeal within 30 days from the date of the decision.*