SIGNIFICATION TO PHRASE "ENGAGE IN AGRICULTURE" IN PU(A) 128/1999

DIRECTOR GENERAL OF INLAND REVENUE
v.
CLASSIC JAPAN (M) SDN BHD

Court of Appeal, Putrajaya

March 9th, 2021

Legal Department, IRBM

JUDGES

Datuk Seri Kamaludin Bin Md Said

Datuk Ravinthran A/L Paramaguru

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COUNSEL FOR DGIR

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Keywords: Tax Appeal – Engage in Agriculture –P.U.(A) 128/199 – Schedule 3 – Penalty – Section 113(2) – Income Tax Act

The taxpayer filed an appeal against the assessments raised by the DGIR on the following issues:

a) the increased export allowance under the Income Tax (Allowance for Increased Export) Rules 1999 (PUA 128/1999);

b) the industrial building allowance under Schedule 3 of the ITA 1967; and

c) the Penalty imposed under subsection 113(2) of the ITA 1967.

The taxpayer's appeal on the issue of increased export allowance was dismissed by the Special Commissioner of Income Tax (SCIT) whereas the SCIT allowed the taxpayer's appeal on the industrial building allowance issue. The SCIT also confirmed the penalty imposed by the DGIR is in accordance with the law. Both parties then filed an appeal to the High Court where the High Court allowed the taxpayer's appeal and dismissed the DGIR's appeal

The High Court in allowing the taxpayer's appeal decided that even though the taxpayer was merely buying and exporting the fresh flowers supplied by the grower and not planting those fresh flowers nevertheless the taxpayer is eligible for the tax incentive under the Rule

On appeal, the Court of Appeal found the Judicial Commissioner of the High Court fell into error in interpreting the Income Tax (Allowance for Increased Exports) Rules 1999 (P.U(A) 128/1999) where the JC concluded that there is ambiguity in the Rules which ought to be construed liberally in favour of the taxpayer.

The Court of Appeal in overturning the High Court's decision enunciated that the Rule is clear and unambiguous and should be given its literal and ordinary meaning. Having considered the relevant dictionary meaning the phrase "engage in agriculture" under the Rules clearly denotes the involvement in the planting or growing of the agricultural produce. In agreement with the DGIR's submission of "engage in agriculture" being purposely inserted by Parliament restricting its application thus the Rules applies to companies engage directly in agricultural activity being planting, cultivating and producing the agricultural produce. The Court of Appeal unanimously, decided that the taxpayer was not engage in agriculture. The taxpayer is not entitled to claim the increased exports allowance under the Rules.

The Learned JC had also erred in deciding element of good faith be considered in the determination of penalty imposition under subsection 113(2) of the Income Tax Act 1967.

As regards to the claim of industrial building allowance by the taxpayer, the Court of Appeal affirmed the decision of the SCIT and the High Court that the taxpayer's factory is an industrial building as defined under paragraph 63 of Schedule 3, Income Tax Act 1967 and therefore eligible to claim industrial building allowance.