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COURT OF APPEAL

YA DATUK HAJJAH AZIZAH BINTI HAJI NAWAWI
YA DATUK SEE MEE CHUN
YA DATO' DR. CHOO KAH SING

13th NOVEMBER 2024

Section 39, Subsubitem 22(1)(a) and 22(1)(b) of the First Schedule, Stamp Act 1949

PEMUNGUT DUTI SETEM
v.
ANN JOO INTEGRATED STEEL SDN BHD
[W-01(A)-227-04/2022]

The Revenue's appeal had been unanimously allowed in part on the issue of interest upon refund and disallowed on merit.

The Court of Appeal heard on two issues i.e. whether the Letter of Offer dated 27.12.2018 qualified for remission under the Stamp Duty (Remission) (No. 2) Order 2012 [P.U.(A) 258] ("the Remission Order") and whether interest may be imposed on the amount of stamp duty to be refunded.

The Respondent sought to claim relief under the Remission Order on the Letter of Offer for trade facilities from Alliance Bank on the basis that the terms of the Letter of Offer falls within the Order under the stipulation of "repayable on demand" that provides as follows: "The amount of stamp duty that is chargeable under subsubitem 22(1)(b) of the First Schedule to the Act upon a loan agreement or loan instrument without security for any sums or sums of money repayable on demand or in single bullet repayment under that subsubitem which is in excess of zero point one per cent (0.1%) is remitted." The Respondent relied on a clause in the Letter of Offer that reserved the right of Alliance Bank to recall/cancel the facility without assigning any reason and upon a written notice that the facility will be cancelled and the whole debt will be repayable on demand.

The Revenue argued that the Letter of Offer would not fall within the Remission Order based on the following grounds:

a) The Remission Order only applied to instrument assessed under item 22(1)(b), whereas the Letter of Offer was assessed under item 22(1)(a) of the First Schedule of the Stamp Act 1949 ("the Act") as evidenced by the rate of stamp duty applied to the Letter of Offer.
b) The Letter of Offer did not spell out that the loan was to be paid only upon demand.
c) The specific condition for Trade Facilities and Forward Foreign Exchange contained in the Letter of Offer only provided for the right of Alliance Bank to cancel or recall the credit facilities under the Letter of Offer. Only when such event occurred would Alliance Bank has the right to demand the whole loan or part thereof to be paid.
d) The trade facilities had a tenure of 180 days and failure to pay within the said period would attract interest. This indicated that the trade facilities when utilized would have a repayment period, thus negating the argument that it is only repayable upon demand by Alliance Bank.

The Respondent argued that the Letter of Offer fell within subsubitem 22(1)(b) of the First Schedule as the Letter of Offer had no fixed determinable period. The Letter of Offer qualified as the specific condition for the trade facilities stated that upon recall or cancel of the facilities by the Bank, the amount of money due would be repayable on demand.

On the issue of interest, the High Court Judge had ordered the stamp duty to be refunded within 14 days from the date of High Court's Order with interest accruing at the rate of 8% on the said sum from the date the payment being made to the Revenue. The Revenue argued that stamp duty appeal is not a trial to recover debt or damages as contemplated by section 11 of Civil Law Act 1956. Tax appeal involved a legal process where a taxpayer challenged on the raising of assessment. It would only limited to issues of tax assessment and not recovery of debt or damages.

The Court of Appeal held that the Letter of Offer qualified for remission and ordered the amount paid to be refunded. However, the order of the High Court on interest was set aside.