DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)

PERMOHONAN BAGI SEMAKAN KEHAKIMAN NO: 25-325-12/2015

Dalam perkara suatu Keputusan Responden yang terkandung dalam notis-notis taksiran tambahan bertarikh 3.12.2015 dan telah disampaikan kepada Pemohon pada 4.12.2015;

Dan

Dalam perkara suatu permohonan untuk antara lain, suatu Perintah Certiorari;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012.

ANTARA

Glocomp Systems (M) Sdn. Bhd. ... **Pemohon**

DAN

Ketua Pengarah Hasil Dalam Negeri ... **Responden**

Grounds of Decision

Azizah Nawawi, J:

Application

[1] This is the Applicant's application for judicial review seeking the following prayers:

(i) An order of certiorari to quash the notice of additional assessment for the Year of Assessment 2010 dated 3.12.2015 raised by the Respondent **("Decision")** which essentially subjected the payments made by the Applicant for the purchase, distribution and marketing of various computer software and hardware products **("Payments")** manufactured by Symantec Asia Pacific Pte. Ltd **("Symantec")** to withholding tax under section. 109 of the Income Tax Act 1967 **("ITA 1967")** on the premise that the Decision is erroneous and ultra vires and is therefore is null and void;

(ii) A declaration that the Payments made by the Applicant to Symantec are not royalties payments under section. 2 of the ITA 1967 but business profits of Symantec and are only taxable in Singapore pursuant to Article 7 of the Malaysia-Singapore Double Taxation Agreement ("**Malaysia-Singapore DTA**");

(iii) A declaration that the Respondent is bound by the decisions of the superior court in ***Ketua Pengarah Hasil Dalam Negeri v. Damco Logistics Malaysia Sdn. Bhd.*** which ruled the Double Taxation Agreement shall prevail over the Act in determining whether a payment is royalty or business profits and accordingly, the Respondent's internal policy on the interpretation of the Act in this respect is without any legal basis and has no force of law;

(iv) A declaration that in any event the imposition of penalty under S.113(2) of the ITA 1967 is without any legal basis and as such, is set aside; and

(v) An order that the Respondent returns to the Applicant any sums of money paid by the Applicant to the Respondent in consequent to the Decision and that the Respondent returns the said sums within 14 days from the date of this order is granted by the court with interest accruing at the rate of 8% on the said sum from the date the payment was made to the Respondent.

[2] The grounds of the application are as follows:

(i) The Respondent's decision is ultra vires, illegal, void, unlawful and/or in excess of authority and had failed to take into account the following considerations in arriving at its decision:

(a) That the Respondent failed to take into account the decisions of the superior courts in that the Applicant's purchase, distribute and market various computer software and hardware products manufactured by Symantec support the Applicant's contention that the Payments to Symantec for the purchase and sale of its products including the computer products are not subject to withholding tax. Based on these decisions, such Payments are business profits which are only taxable in Singapore by virtue of Article 7 of the Malaysia-Singapore DTA.

(b) That the Authorized Distributor Agreement does not grant the Applicant any proprietary right, copyright or know-how of any nature on the Symantec products purchased, distributed and marketed by the Applicant. Neither is the Applicant given the right to reproduce the program by Symantec.

(c) That the Payments made by the Applicant were not for the right to distribute but instead were the cost of purchasing the Symantec products, which the Applicant resells at a mark-up price in Malaysia.

(d) That such Payments are not within the meaning of royalty, either under the ITA 1967 or the Malaysia-Singapore DTA, supplemented by the OECD Commentary on Article 12.

(e) That the Payments did not include any payment for the granting of licenses or copyright or partial copyright by Symantec. The Applicant did not at any time have any such right in relation to the products purchased and sold from Symantec.

(f) That the Payments are not for the "right of use" of any software systems as it was not a payment made for the rights to exploit a 'know-how' or information. The Applicant also does not acquire a general license for the use of the software or the grant of a license or copyright from Symantec.

(g) That the Payments received by Symantec from the Applicant were treated and recognized as its business income in Singapore and not as royalty, which is indicative of the true nature of the payments.

(h) That the fact that the Malaysia-Singapore DTA clearly defines royalty to mean *"a payment of any kind received as a consideration for the use of, or the right to use, any copyright, any patent, trade mark, design or model, plan, secret formula or process or for the use of, or the right to* *use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience".*

(i) That in accordance with the law, when there is a conflict between the provision of the ITA 1967 and Malaysia-Singapore DTA, the provisions of the latter shall prevail.

(ii) The Respondent had failed to ask a question which it ought to have asked, i.e. whether its Decision has any legal and constitutional authority in raising the impugned additional assessment; and in the alternative or additionally, whether the Respondent may disregard the decisions of the superior courts which have ruled that in the event of a conflict the Malaysia-Singapore DTA shall prevail over the Act.

(iii) The Respondent in making its Decision had no regard to the decisions of our superior courts in relation to the interpretation and construction of case law and legislation. The Respondent had clearly acted without any legal authority and without jurisdiction.

(iv) The Decision is so unreasonable that no reasonable person could have come to that decision. This is especially when the Respondent failed to give any valid justification, reason or basis for its Decision. With due respect, it may be inferred that the Respondent has no reason or good reason for its Decision.

(v) There is a good basis for the Applicant to believe that the Respondent had exercised its authority arbitrarily and/or mechanically without applying its mind to the facts and circumstances of the Applicant as:

(a) The business of the Applicant which is merely purchasing and selling Symantec's products;

(b) Nothing in the Respondent's decision suggest that the Respondent had considered the Applicant's letter dated 26.11.2015 and 3.12.2016;

(c) The Applicant at all material times acted in good faith, gave full co-operation, made full and frank disclosure and obtained professional advice in managing its finance and tax affairs;

(d) The superior courts' decisions in relation to the interpretation and construction of legislation and case law are part of the laws of Malaysia and binding on the Respondent. The Respondent had clearly failed to take cognizance of those decisions; and

(e) The failure to appreciate and give effect to the true effect of the Malaysia-Singapore DTA especially Article 7 and the relevant OECD Commentary.

(vi) The Respondent had improperly exercised its statutory and acted arbitrarily in arriving at its Decision.

(vii) The Respondent's decision was made without having any regard to the decisions of the superior courts in relation to the interpretation and construction of legislation, and this constitutes a denial of the legitimate expectations of the Applicant that the Respondent will take cognizance of the same.

[3] Having considered the application and the submission of the parties, this Court has allowed the application with costs.

The Salient Facts

[4] The Applicant is a company incorporated in Malaysia and its business involves marketing and distributing information technology infrastructure manufactured by Symantec, a company incorporated in Singapore.

[5] The Applicant claimed that it had been in this business since 1.4.2010 and the payments made to Symantec were never subjected to withholding tax in Malaysia.

[6] On 6.3.2015, the Respondent conducted a field audit on the Applicant, and on 28.5.2015, the findings of the audit were served on

the Applicant,that is the Payments made to Symantec in 2010 of RM17,730,190.06 is subject to withholding tax.

[7] Despite the explanations and submissions given by the Applicant's tax agent, Messrs K-Konsult Taxation Sdn. Bhd. to the Respondent that the Payments to Symantec do not fall within the meaning of royalty under section 2 of the ITA 1967, the Respondent maintained its position that the Payments are subject to withholding tax.

[8] Subsequently, on 3.12.2015, the Applicant gave to the Respondent a copy of Symantec's letter dated 30.11.2015 which confirmed that it does not have a permanent establishment in Malaysia and that the payments received by Symantec are taxed in Singapore as business profit.

[9] However on 4.12.2015, the Applicant received the notice of additional assessment dated 3.12.2015 for the year 2010. Hence, the Applicant filed this application to challenge the Respondent's decision.

The Findings of the Court

[10] The test in an application for judicial review has been set out in the case of **Booi Kim Lee v YB Menteri Sumber Manusia & Golden Plus Geaniait Sdn Bhd** [1999] 3 MLJ 515, where Justice KC Vohrah adopted Lord Diplock's classification of grounds of judicial review in the House of Lords case of *Council of Civil Service Unions V. Minister*

for the Civil Service [1985] AC 374. The three (3) grounds described by Lord Diplock are:

(i) illegality;
(ii) irrationality; and
(iii) procedural impropriety.

[11] By illegality as a ground for judicial review, it means *"that the decision-maker must correctly understand the law that regulates his decision-making power and must give effect to it'* and that *"... the authority concerned has been guilty of an error of law in its action as for example, purporting to exercise a power which in law it does not possess."*

[12] By irrationality it means 'Wednesbury unreasonableness' and "*applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided upon could have arrived at it*"

[13] By procedural impropriety, it includes *'failure by an administrative tribunal to observe procedural rules that are expressly laid out.."* and *"duty to act fairly"*.

[14] In the present application, the Applicant is relying only on the issue of illegality, in that the Respondent had wrongly interpreted the provisions of the Malaysia-Singapore DTA in arriving at his decision. The Applicant takes the following position:

(i) the definition of the word 'royalty' under Article 12 of the Malaysia-Singapore DTA takes precedence over the definition of same word in section 2 of the ITA 1967;

(ii) that the Payments made by the Applicant to Symantec are not royalty within the meaning of Article 12 of the Malaysia-Singapore DTA; and

(iii) that pursuant to Article 7, the payments are the business profit of Symantec and are therefore only taxable in Singapore.

[15] The Respondent however, takes the position that the Payments are payment of royalties, and therefore the Payments falls within the definition of royalties under section 2 of the ITA 1967. Consequently, such Payments to the non-resident company Symantec, were subject to withholding tax under section 109 of the ITA 1967.

[16] The Respondent's Decision is based on the following facts:

(i) that the Payments made by the Applicant to the non-resident, Symantec, are not in dispute;

(ii) however, from the Authorized Distributor Agreement (exhibit GTE-3) ("**Distributor Agreement**"), these Payments were payments of royalty because under the said Agreement the Applicant became a distributor of the hardware and software products under Symantec trademark;

(iv) Therefore, the Applicant has been granted the licence to transfer the said products to their customers. This is based on the terms of the Agreement with regards to the price (which was controlled by Symantec) and the licence fee to the Distributor (Applicant) on each and every product distributed by the Applicant;

(v) That under section 2 of the ITA 1967, 'royalty' is defined to include '*any sum paid as consideration for the use of, or the right to use ...(i) ... trademark..*';

(vi) Therefore, the definition of the word 'royalty' would include the 'right to use', and since the Payments made by the Applicant to Symantec are for the 'right to use' the Symantec trademark, then its falls within the definition of royalty under section 2 of the ITA 1967; and

(vii) Consequently, the Payments were subject to withholding tax under section 109 of the ITA 1967.

Issue (i) whether definition of 'royalties' in Article 12 of Malaysia-Singapore DTA takes precedence over section 2 of ITA 1967

[17] The first issue is whether the definition of the word '*royalty*' in section 2 of the ITA 1967 takes precedence over the definition of same under Article 12 of the Malaysia-Singapore DTA.

[18] Section 132(1) of the ITA 1967 provides that in the event that there is conflict between the ITA 1967 and the DTA, the provisions of the DTA shall prevail. This has been settled by the Federal Court in **Director General of Inland Revenue v. Euromedical Industries Ltd** [1983] CLJ (Rep) 128, where the Court held as follows:

> "*It appears to us that the learned Judge never intended it to be understood that he had found the management fees to be royalty under s. 2 of the Act. What he obviously means is that whilst the parties agree that the fee does appear to come under the definition of " royalty " under that section, it does not come within the definition of that term in the Relief Order, and that* ***because under s. 132(1) of the Act in the event of conflict the provisions of the Relief Order should prevail,*** *the fees should be treated as income or profit and not as royalty.-0* ***This provision is not peculiar to our tax law****. Counsel for the respondent drew our attention to* ***a similar provision in the United Kingdom Income Tax Act, 1918 where in the event of any inconsistency between the provision of the Act on one hand and a Double Taxation Relief Agreement on the other, the Agreement must prevail over the Act*** *- see Ostime(H.M. Inspector of Taxes), v. Australian Mutual Provident Society 38 Tax Cases 492.*" (emphasis added)

[19] The decision of the Federal Court in **Director General of Inland Revenue v. Euromedical Industries Ltd (supra)** was applied by Justice Rohana Yusuf (as Her Ladyship then was) in **Damco Logistic Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri** [2011] MSTC 30 – 033, where Her Lordship held as follows:

> *"14. However, in treating EDP charges as royalty, I agree with the submission of learned counsel for the Applicant that* ***the definition of 'royalty' under the DTA applies and not the ITA****. It is difficult to come to terms with the contention of the learned counsel for the Respondent that the definition in the ITA applies,* ***in light of the clear authority that the DTA takes precedence over ITA as decided in the Federal Court*** *case of Director General of* ***Inland Revenue v. Euromedical Industries Ltd*** *[1983] 3 CLJ (Rep) 128."*(emphasis added)

Issue (ii) whether the Payments made by the Applicant to Symantec are not royalty within the meaning of Article 12 of the Malaysia-Singapore DTA

[20] Article 12 of the Malaysia-Singapore DTA read as follows:

> ***"ARTICLE 12 ROYALTIES***

1. *Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 8% of the gross amount of the royalties.*
3. *The term "royalties" as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting), any patent, trademark, design or model, plan, secret formula or process, or for the use of,or the right to use,industrial, commercial or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience."*

[21] On the construction of the provisions of the Malaysia-Singapore DTA, the Court in **Damco Logistic Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri** (supra) held as follows:

"15. The ***DTA modelled after the OECD Model Convention containing Commentary that determines***

the construction of Article XII of DTA. In OA Pte Ltd v. Ketua Pengarah Hasil Dalam Negeri [1996] MTSC 2, 752 it was observed that the Commentary of the OECD model has been used to determine the construction of the treaty. *This seems to be also the position in other countries using the same model as seen in the decisions of the Australian High Court in Thiel v. Commissioner of Taxation of the Commonwealth of Australia [1990] 171 CLR 338, the Supreme Court of Canada in Crown Forest Industries Ltd v. Canada [1995] 2 SCR 802 s well as the United Kingdom in the case of Sun Life Assurance Co of Canada v. Pearson (Inspector of Taxes) [1986] STC 335, 59 TC 250.*" (emphasis added)

[22] Therefore, the Commentary of the OECD will be used to determine the constructions of the relevant articles in the Malaysia- Singapore DTA.

[23] With regards to the definition of '*royalties*' within Article 12, paragraph 11 of the OECD Commentary reads as follows:

"*11. [Concept of know-how]* ***In classifying as royalties payments received as consideration for information concerning industrial, commercial or scientific experience, paragraph 2 is referring to the concept of know-how.*** *Various specialist bodies and authors have formulated definitions of know-how.The words "payments*

[...] for information concerning industrial, commercial or scientific experience" are used in the ***context of the transfer of certain information*** *that has not been patented and does not generally fall within other categories of intellectual property rights.* ***It generally corresponds to undivulged information of an industrial, commercial or scientific nature arising from previous experience, which has practical application in the operation of an enterprise and from the disclosure of which an economic benefit can be derived.*** *Since the definition relates to information concerning previous experience, the Article does not apply to payments for new information obtained as a result of performing services at the request of the payer.*

*11.1 [**Know-how contract**] In know-how contract,* ***one of the parties agrees to impart to the other, so that he can use them for his own account, his special knowledge and experience which remain unrevealed to the public****. It is recognised that the grantor is not required to play any part himself in the application of the formula granted to the licensee and that he does not guarantee the result thereof.*

*11.2 [**Service contract**] This type of contract thus differs from contracts for the provision of services, in which one or the parties undertake to use the customary skills of his calling to execute work himself for the other party.*

Payments made under the latter contracts generally fall under Article 7.

*11.3 [**Distinction between supply of know-how and services**] The need to distinguish this two types of payment i.e. payments for the supply of know-how and payments for the provisions of services sometimes give rise to practical difficulties. The following criteria are relevant for the purpose of making that distinction:*

- *Contracts for supply of **know-how concern information of the time described in paragraph 11 that already exist or concern the supply of that type of information after its development or creation and include specific provisions concerning the confidentiality of that information.***

- *In the case of **contracts for the provision of services**, the **supplier undertakes to perform services** which may require the use, by the supplier of special knowledge skill and expertise but **not the transfer of such special knowledge or skill or expertise to the other party.***" (emphasis added)

[24] Therefore, Paragraph 11 of the OECD Commentary explains that royalties refer to the concept of know-how, and in a know-how contract, one party agrees to impart his special knowledge and experience (which involved confidentiality) to the other party. The know-how contract differs from contracts for the provision of services, in which one of the parties undertake to use his customary skills of his calling to execute the work himself for the other party.The contract for the provision of services does not involve the transfer of special knowledge or skill or expertise to the other party. Added to that, payments made under the contracts for the provision of services generally fall under Article 7.

[25] Paragraph 11 of the OECD Commentary was considered in **Damco Logistic Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri** (supra) where the court summarised it as follows:

> *"16. Paragraph 11 of the Commentary explains the difference between contract for provision of services and a know-how contract. In fact, paragraph 11.3 outlines these distinctions. Examples given are of payments which should not be considered to include know-how, includes payments for after sale service, service rendered under guarantee, for technical assistance, professional opinion by engineer, advocate or accountant, payments for advice provided electronically, for assessing through computer network etc."*

[26] In the present case, the Distributor Agreement entered by the Applicant with Symantec is for the Applicant to '*act as **an independent distributor of Symantec Products** in the territory described below under the terms and conditions set forth herein.*' Therefore, the nature of the Distributor Agreement is merely in the nature of contract for service, and not a know-how contract.

[27] Having considered the Distributor Agreement, which forms the basis of whether the Payments made by the Applicant to Symantec are payments of royalty or not, I am of the considered opinion and I agree with the Applicant that the said Payments are not royalty payments within the ambit of Article 12 of the Malaysia-Singapore DTA. This finding is based on the following reasons:

(i) the Payments are not payments for the 'right to use' the software systems as the payments were not made for the rights to exploit a 'know-how' or information;

(ii) the Payments are not payments for the granting of licences or copyright or partial copyright by Symantec;

(iii) the Applicant does not acquire a general licence for the use of the software or the grant of a license or copyrights from Symantec;

(iv) the Applicant did not obtain any proprietary right, copyright or know-how in Symantec's products as all the intellectual property rights vest or remains with Symantec – see Clause 3.6/Addendum; and

(iv) the Applicant was not given the right to reproduce the computer program by Symantec, but merely acts as an intermediary distributor of the Symantec products to the Malaysian subscribers.

[28] Therefore, the Applicant was only paying for the distribution of the Symantec products and had not exploit any rights in the software copyrights of the products. Consequently, the Payments are not royalty within Article 12 of the Malaysia-Singapore DTA.

[29] Recital B and Clause 5 of the Distributor Agreement were relied by the Respondent to support its contention that the Applicant has been granted the licence to transfer the products under Symantec trademark and trade name, which amounts to the payments of 'royalty' under section 2 of the ITA 1967.

[30] I am of the considered opinion however that Recital B is merely to state that the Symantec products are distributed under trademarks and trade names of Symantec, which simply means that for all intent and purpose, the Symantec products belonged to Symantec. With regards to Clause 5, it is merely on the prices of the Symantec products to the distributor. It does not state that the price is for the purpose of transfer of rights, such as copyright or know-how information, of the Symantec products to the Applicant. This can be

seen from the letter dated 30.11.2015 from Symantec to the Applicant, where Symantec has explained the following facts:

(i) that its products '*provide solutions for backup, storage, deduplication, recovery capabilities and protection against any threat, viruses and malware attacks*';

(ii) that Symantec '*sells software products by way of delivering a digital product key to end users for them to download the software licenses from a server residing outside Malaysia*';

(iii) that Symantec '*did not transfer any copyright to your Company to reproduce, modify, decompile and adapt the products in any way for use to create any derivative product*'; and

(v) that the sale of the software license is merely a sale of produce/product.

[31] Therefore, I am of the considered opinion that the Payments made by the Applicant to Symantec are not royalty within Article 12 of the Malaysia-Singapore DTA.

Issue (iii) whether pursuant to Article 7 of the Malaysia-Singapore DTA, the Payments are the business profit of Symantec and are therefore only taxable in Singapore

[32] The said Payments are business profits of Symantec in Singapore and Symantec is subject to be taxed by the Inland Revenue Authority in Singapore on that basis. Therefore, pursuant to Article 7, the business profit of Symantec shall not be taxable in Malaysia, unless Symantec carries on business in Malaysia through a permanent establishment. In the present case, it is not in dispute that Symantec does not have a permanent establishment in Malaysia.

Issue (iv) whether the matter should be referred to Special Commissioners of Income Tax under section 109H (1) of the ITA 1967

[33] The Respondent also submits that since this is an application to quash the additional notice of assessment under section 91 of the ITA 1967, then the matter should have been referred to the Special Commissioners of Income Tax ("**SCIT**") under section 109H(1) of the ITA 1967. The Respondent relied on established legal principles that where there is a remedy provided in the ITA 1967 (appeal to the SCIT), certiorari would not normally lie unless there is a clear lack of jurisdiction or blatant failure to perform statutory duty or there has been a serious breach of natural justice (see **Government of Malaysia & Another v. Jagdis Singh** [1987] 2 MLJ 185).

[34] In **Ketua Pengarah Hasil Dalam Negeri v. Mudah.My Sdn Bhd** [2017] MLJU 162, in a similar issue on withholding tax, the Court of Appeal held as follows:

"[31] It is to be emphasized that the dispute raised by the respondent could be dealt with by the Special Commissioners of Income Tax like any other appeals on assessment. ***The merits of this application significantly involved disputes of facts and being as such, it is our opinion that the Special Commissioners of Income Tax being judges of fact are the best for hearing and deciding ion tax grievances.*** *The position of the Special Commissioners of Income Tax as judges of fact has been confirmed by the Federal Court in Kerajaan Malaysia v. Dato' Haji Ghani Gilong [1995] 3 CLJ 161 when it authoritatively said –*

> *"We say so because Special Commissioners are the judges of fact, and have the jurisdiction to consider not only the plea of limitation based on subsections 1 and 3 of s. 91 of the Act but also other issues such as whether the amount of tax sought to be recovered is excessive, incorrectly increased, all of which are issues which the Court in proceedings for recovery of tax by suit is prohibited by s. 106(3) of the Act from entertaining."* (emphasis added)

[35] In the present case however, I am of the considered opinion that there are no dispute of facts. The Applicant had admitted that they have made the Payments to Symantec in Singapore. It is also not in dispute that Symantec has no permanent establishment in this country. The only issue is on the interpretation of the Distributor Agreement. The Respondent has interpreted it to show that the Payments are royalties within the meaning of section 2 of the ITA 1967, whilst the Applicant takes the opposite position, that the Payments do not fall within Article 12 of the Malaysia-Singapore DTA, which takes precedence over the ITA 1967, and consequently the Payments fall within Article 7 and therefore withholding tax is not applicable.

[36] As this case does not involve any disputed facts, but is only on the interpretation of the Distributor Agreement as well as the application of the Malaysia-Singapore DTA, then the discretion lies with this court as to whether to proceed with the substantive application.

[37] Since the Respondent did not apply to set aside the leave granted on the basis of the doctrine of alternative remedy, then this Court will have to consider this issue in light of the substantive application as well. And in light of my findings on the substantive application, the failure to refer the subject matter to SCIT is not fatal to the application.

Conclusion

[38] Premised on the reasons enumerated above, I find that the Payments made to Symantec are not royalty payments under Article 12 of the Malaysia-Singapore DTA, and are therefore not subject to withholding tax. In the premise, the application is allowed with cost.

(AZIZAH BINTI HAJI NAWAWI)
JUDGE
HIGH COURT MALAYA
(Appellate and Special Powers Division 2)
KUALA LUMPUR

Dated: 11th February 2019

For the Applicant	:	D.P Naban Messrs Lee Hishamuddin Allen & Gledhill Kuala Lumpur
For the Respondent	:	Tuan Abd. Aziz (PKH) bersama Puan Farah Nordin (PH) Peguam Kanan Hasil Kuala Lumpur

Cases referred:

1. Booi Kim Lee v YB Menteri Sumber Manusia & Golden Plus Geaniait Sdn Bhd [1999] 3 MLJ 515.

2. Director General of Inland Revenue v. Euromedical Industries Ltd [1983] CLJ (Rep) 128.

3. Damco Logistic Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2011] MSTC 30 – 033.

4. Government of Malaysia & Another v. Jagdis Singh [1987] 2 MLJ 185.

5. Ketua Pengarah Hasil Dalam Negeri v. Mudah.My Sdn Bhd [2017] MLJU 162.

Salinan Diakui Sah

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Setiausaha Kepada
Y.A. Datuk Hajjah Azizah Binti Haji Nawawi
Rayuan dan Kuasa-Kuasa Khas 2
Mahkamah Tinggi Kuala Lumpur