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Judicial Review For Exceptional Input Tax Credit Claim

In a recent court matter, the Director General of Customs (**DGC**) had only allowed a nominal portion of an exceptional input tax credit claim (**Exceptional ITC Claim**) made by a taxpayer under Regulation 46(1) of the Goods and Services Tax Regulations 2014 (**GST Regulations**).

Tax, SST & Customs partner, S Saravana Kumar, and associate, Ivy Ling, successfully represented the taxpayer in obtaining leave from the High Court to commence judicial review proceedings to set aside the DGC's decision.

Brief Facts

The principal activities of the taxpayer are, among others, to design and maintain a power station. In December 2018, the taxpayer made an Exceptional ITC Claim, which was in the millions, for the expenses incurred prior to its registration under the Goods and Services Tax Act 2014 (**GST Act**). In the first quarter of 2019, the taxpayer was informed that only a small portion of the entire Exceptional ITC Claim had been approved. According to the DGC:

- The expenses incurred by the taxpayer were not eligible to be credited as the taxpayer had not made any taxable supply when it was registered under the GST Act.
- The taxpayer was only entitled to make an Exceptional ITC Claim based on a formula set by the DGC.

High Court's Decision

Upon considering the cause papers and written submission filed, the High Court granted leave to the taxpayer to commence judicial review proceedings against the DGC. The crux of the taxpayer's submissions at the leave stage were that:

- The DGC had failed to take note that GST is not meant to burden businesses with additional costs and that it is a broad-based consumption tax based on the value-added concept.
- The DGC had committed an error of law when only a nominal portion of the Exceptional ITC Claim was allowed despite the

taxpayer's compliance with all the requirements under Regulation 46(1).

- The DGC had acted beyond his jurisdiction by arbitrarily imposing an additional requirement on the taxpayer to make a taxable supply, when such requirement is not expressly stipulated in Regulation 46(1).
- The DGC's decision was made in violation of the taxpayer's legitimate expectation that the DGC would follow the wording and practices set out in its Guidelines.

Conclusion

This is most likely the first GST-related litigation on an Exceptional ITC Claim and demonstrates the High Court's readiness to allow judicial review proceedings in instances where there is an error of law committed by the DGC or when the DGC acts beyond legislative authority.

If you are dissatisfied with any delay or rejection in relation to a GST input tax claim, please contact Tax, SST & Customs senior partner **Datuk D P Naban** or partner **S Saravana Kumar** at tax@lh-ag.com

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