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Statutory Timeline to Appeal Against a Customs Bill of Demand: Could it be Extended?

Given the tight statutory timelines for appeal to the Customs Appeal Tribunal (**CAT**), taxpayers often miss the deadline for appeal after receiving a bill of demand (BOD) issued by Customs. This could be due to many reasons, most common of which is that the taxpayers lost track of the deadline in trying to negotiate/seek clarification from Customs officers.

In the ordinary course of events, taxpayers will then seek to extend the statutory period for appeal by writing an appeal letter to the Director General of Customs (**DG**), in the hope of initiating a new or final decision letter for appeal. Could a subsequent Customs rejection letter which emanates from such a situation extend the statutory timeline for appeal to the CAT?

The following cases illustrate how the judicial approach differs towards this issue.

In *Ketua Pengarah Kastam v CL Systems Sdn Bhd*,¹ Customs appealed to the High Court against the CAT's decision to set aside BODs issued by Customs.

The case concerns alleged underpayment of import duties and sales tax (under the Sales Tax Act 1972) arising out of K1 Forms and official receipts reportedly falsified by the taxpayer's forwarding agent. The taxpayer sent an appeal letter to the DG, which was subsequently rejected, through a rejection letter (**Rejection Letter**) issued in April 2017. This Rejection Letter was later challenged by the taxpayer before the CAT.

Customs contended that the CAT had no jurisdiction over the taxpayer's appeal as the Rejection Letter was not a "decision" as envisaged in s 143 of the Customs Act 1967 and s 68 of the Sales Tax Act 1972. These provisions permit a person aggrieved by a decision of the DG to appeal to the CAT within 30 days. However, the Rejection Letter merely confirmed Customs' earlier

decision and the validity of the BODs. As such, the CAT had no jurisdiction to hear the appeal pursuant to s 141M of the Customs Act 1967.

The High Court rejected these submissions, interpreting the word “*decision*” widely, and applying the ordinary meaning in the Oxford dictionary as being “*a conclusion or resolution reached after consideration*”. The High Court further found that the Rejection Letter was the final decision in relation to the issuance of BODs, and not merely a confirmation of the earlier BODs issued by Customs. Customs had appealed against the decision of the High Court but subsequently withdrew the appeal before the Court of Appeal.

Similarly, in *Ketua Pengarah Kastam v Starken AAC Sdn Bhd*,² Customs made the same argument before the High Court in challenging the CAT’s decision which set aside the BODs issued by Customs. Interestingly, *Starken AAC* also concerns underpayment of import duties and sales tax arising from Customs receipts that were reportedly falsified by their forwarding agent.

However, in *Starken AAC*, the High Court agreed with Customs that the CAT made a jurisdictional error. In particular, the High Court took the view that the taxpayer was clearly aggrieved by the issuance of the BODs in 2015 but did not appeal against the decision to issue BODs immediately. It was held that the taxpayer’s appeal letter to the DG in January 2017 exceeded the statutory time period of 30 days to appeal against the DG’s decision and that Customs’ reply letter issued subsequently merely has the effect of affirming its previous BODs.

Although the content of the DG’s letters in both cases adopts similar wordings, the outcomes of the appeals are significantly different. The taxpayer in *Starken AAC* subsequently appealed against the decision of the High Court and recently won the appeal in the Court of Appeal.

The above cases shed some light for taxpayers who have inadvertently missed the deadline to appeal to the CAT. There is no harm for taxpayers who have passed the statutory timeline for appeal to write to Customs in the hope that it could initiate a new or final decision letter which could allow them to appeal. Nevertheless, it is crucial for taxpayers to act immediately upon receiving a BOD from Customs. Failure to comply with the relevant statutory timeline may prejudice the taxpayer’s rights of appeal. Customs will not hesitate to raise the same objection if the taxpayer failed to comply with the statutory timeframe.

It is also pertinent to highlight that with effect from 2 January 2019, s 143 of the Customs Act 1967 has been amended by s 13

of the Customs (Amendment) (No 2) Act 2018. The newly inserted s 143(5) now provides that any person aggrieved by any decision of the DG under a review application or any other provision of this Act³ may appeal to the CAT within 30 days. These decisions may now have been statutorily reversed denying taxpayers the ability to adopt similar arguments.

Under the current statutory provisions,⁴ if a taxpayer receives a BOD from Customs, it would be prudent to file a formal review application to the DG within 30 days in the prescribed form along with the necessary supporting documents. Failure to comply with this statutory timeframe for filing a formal review application may well jeopardise any subsequent appeal to the CAT. Alternatively, an appeal could be filed directly to the CAT, within 30 days of receiving a BOD.

In exceptional circumstances where legal requirements are fulfilled, the taxpayer may opt to appeal by way of a judicial review in the High Court within three months.

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³ With exception to matters in relation to compound or under s128(3A) of the Customs Act 1967

⁴ Sections 143 and 141M of the Customs Act 1967, s 96 of the Sales Tax Act 2018 and s 81 of the Service Tax Act 2018