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Taxpayer's Stay Of Proceedings Allowed

Government of Malaysia v RC (HC, 2019)

The taxpayer filed an application for a stay of proceedings pending its appeal to the Court of Appeal against the dismissal of an application for stay against a civil suit brought by the Inland Revenue Board (**IRB**). Our lawyers from the firm's Tax, SST & Customs Practice successfully represented the taxpayer in securing the stay order.

Facts

The IRB filed a civil suit against the taxpayer pursuant to Section 106 (1) of the Income Tax Act 1967 (**ITA**) over the latter's failure to pay additional taxes imposed. The taxpayer had previously appealed to the Special Commissioners of the Income Tax (**SCIT**), and the appeal is under review pursuant to Section 101(1) of the ITA.

Accordingly, the taxpayer applied for a stay of proceedings pending the SCIT appeal, but this application was not granted by the High Court. As the taxpayer had appealed to the Court of Appeal against the High Court's decision, the taxpayer applied for an interim stay of proceedings pending the appeal before the Court of Appeal. The IRB objected to this application.

The Taxpayer's Contention

The taxpayer's argument was that the appeal to the Court of Appeal would be rendered nugatory if the IRB is given the right to collect the disputed taxes pending the appeal. Further, since there is an appeal pending at the SCIT, the delay with respect to the hearing date is beyond the taxpayer's control. Hence making the taxpayer pay the disputed taxes even before the correctness of this High Court's decision has been tested at the next level of the judicial system would prejudice the taxpayer.

Additionally, the appeal to the Court of Appeal is not a frivolous or vexatious appeal. The appeal is premised on a *bona fide* belief of success. The High Court did not rule that there were no merits to the taxpayer's substantive case in their appeal.

The taxpayer also submitted that there are special circumstances in this case that would warrant a stay of proceedings, among which are:

- Abuse of power by the IRB;
- Real threat of collection of unauthorised taxes by the IRB;
- Balance of convenience tilts heavily in favour of the granting of a stay.

Reference was made to *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147, where the question to be answered in this application was such that the status quo presently prevailing should remain undisturbed until the correctness of the High Court's decision has been tested at the Court of Appeal.

The IRB's Response

There are no special circumstances and merits in the taxpayer's application. Further, the government can institute civil proceedings to recover taxes due and payable under Section 106(1) of the ITA. The taxpayer must pay the additional assessment regardless whether the IRB is right in raising the assessment.

The High Court's Ruling

The High Court agreed with the taxpayer's submission and granted the application for an interim stay of proceedings. The court held that the appeal to the Court of Appeal would be rendered nugatory if the stay was not allowed. The court further added that it was for the IRB to expedite the hearing at the SCIT.

The taxpayer was successfully represented by senior associate, Jason Tan Jia Xin, and pupil, Nur Amira, from the firm's Tax, SST & Customs Practice.

If you require any representation or legal strategy to challenge the IRB's tax recovery mechanisms, please contact **S Saravana Kumar** at tax@lh-ag.com

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