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### Anti-Dumping Duties Imposed on Licensed Warehouse Manufacturer Struck Down

*S Sdn Bhd v Director General of Customs & Anor*

In the recent case of ***S Sdn Bhd v Director General of Customs & Anor***, the High Court struck down anti-dumping duties imposed on an exporter who is a licensed manufacturing warehouse (“**LMW**”) and enjoying customs duty exemptions granted under the Customs Act 1967 (“**Customs Act**”). The Court rejected the argument by the Director General of Customs (“**Customs**”) that customs duty exemption granted under the Customs Duties (Exemption) Order (“**Exemption Order**”) did not extend to anti-dumping duties imposed under the Countervailing and Anti-Dumping Duties Act 1993 (“**Anti-Dumping Duties Act**”).

#### Brief Facts

S Sdn Bhd (“**Taxpayer**”) manufactures kitchen products solely for export purposes. The Taxpayer is

a licensed warehouse ("**LW**") and an LMW regulated by S.65 and S.65A of the Customs Act respectively. To manufacture the exported kitchen products, the Taxpayer imported steel from China, which was subject to anti-dumping duty pursuant to the Customs (Anti-Dumping Duties) Order 2018. The Taxpayer refused to pay anti-dumping duty on the imported steel used solely for the manufacture of the kitchen products, contending that it was exempted as a LW and LMW licensee. The Customs Appeal Tribunal upheld the imposition of anti-dumping duties on the Taxpayer.

### **High Court's Decision**

Upon hearing the parties, the High Court allowed the Taxpayer's appeal. The High Court accepted that the customs duty exemption granted to LWs and LMWs under the Exemption Order includes anti-dumping duty pursuant to the definition of "customs duty" under S.2(1) of the Customs Act.

### **Conclusion**

This landmark decision is of critical importance to exporters. Anti-dumping duties exist to protect domestic manufacturers from unfair competition. There is no reason why anti-dumping duties should be imposed on products manufactured solely for export. The attempt by Customs to impose such duties would only result in manufacturers moving their facilities to more tax-friendly jurisdictions. The High Court has correctly upheld the intention of Parliament and the Ministers to encourage increased investment in Malaysia by export industries.

The Taxpayer was successfully represented by Dato' Nitin Nadkarni, Ivy Ling Yieng Ping, and Jay Fong Jia Sheng from the Tax, Customs & Trade Practice Group of Lee Hishammuddin Allen & Gledhill.

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