

**IN THE COURT OF APPEAL OF MALAYSIA
(APPELATE JURISDICTION)
CIVIL APPEAL NO: W-01-(A)-188-03/2024**

BETWEEN

**KETUA PENGARAH KASTAM
DI RAJA MALAYSIA**

... APPELLANT

AND

BATU TIGA QUARRY SDN BHD

... RESPONDENT

CORAM:

**CHE MOHD. RUZIMA BIN GHAZALI, FCJ
AZIZUL AZMI BIN ADNAN, JCA
AZHAHARI KAMAL BIN RAMLI, JCA**

GROUND OF JUDGMENT

INTRODUCTION

1. This is an appeal by the appellant, the Ketua Pengarah Kastam Diraja Malaysia, who is the defendant in the court below, against the decision of the High Court at Penang in allowing the respondent/applicant's judicial review application with regard to the appellant's issuance of the Bill of Demand ('BOD') for the unpaid Goods and Services Tax ('GST') for the goods sold by the

respondent. The GST amount claimed in the BOD was RM 1, 196, 461.46 being of 6% GST for all the respondent's export transaction for the period between 1.8.2016 to 31.8.2018; and the sum of RM 72, 764.32 being 6% of GST for other GST issues.

FACTS OF THE CASE

2. The respondent is in the principal business of operating quarry and trading granite aggregates. Its customers are based in Malaysia and Singapore. The respondent was registered as a GST registered person from 1.4.2015.
3. On 7.4.2011, the respondent entered into a Sale and Delivery Agreement ('the agreement') with YTL Cement Marketing Singapore Pte Ltd (YTL), a company based in Singapore, whereby the respondent agrees to sell and deliver the quarry product to YTL of its end customers in Singapore. Under clause 4 of the agreement, the products are sold on a delivery basis.
4. For this purpose, the quarry product exported to Singapore are made of rock materials extracted from their Kulai Quarry. The respondent's wholly owned subsidiary, CI Quarry & Marketing Sdn Bhd ('CIQ') was the initial operator of Kulai Quarry. On 6.7.2007, the respondent took over the operation of Kulai Quarry and its business of selling the quarry products.
5. Due to the implementation of GST in Malaysia, the respondent charges 6% GST on all its local sales. As for international sales, the respondent zero-rated its supplies pursuant to section 17 (1) (b) of

the GST Act as these quarry products were exported to Singapore by trucks through the causeway in Johor Bahru.

6. For the export of the quarry product to Singapore, it is the practice of the respondent that the Custom's export declaration form ('K2 Form'), used for the declaration purposes at the point of export, would be declared under the name of CIQ. According to the respondent, this long-standing practice (i.e. declaring CIQ in the K2 Form) has been endorsed by the Customs' Officers at the cause-way.
7. On 15.1.2018, the Bahagian Pematuhan Cawangan Pengurusan Pembayar Cukai Utama Unit IV Zon Tengah, Kastam Di Raja Malaysia, Putrajaya had carried out an audit for the taxable period of 1.8.2016 to 31.8.2018 on the respondent. On 13.7.2018, the appellant informed the respondent that the respondent was found to have underpaid GST totalling RM 1, 196, 461.46 for the taxable period between 1.8.2016 to 31.8.2018 as it had zero-rated the quarry products by using the K2 Forms declared under CIQ name.
8. After a series of correspondences and round table discussions ('RTD') between the parties, on 1.10.2020, the appellant issued an Audit Findings Notification letter confirming its earlier finding that the respondent had underpaid GST.
9. On 19.11.2020, the appellant issued the BOD and the respondent was requested to pay a total of RM 1, 269, 225.78 within 14 days. The appellant also imposed a penalty of RM 450, 552.13 on 20.11.2020. On 24.11.2020, the appellant offset RM1,503,939.25 from the input tax credit ('ITC') refunds entitled by

the respondent. On 2.12.2020, the respondent duly paid the remaining outstanding amount payable to the appellant after considering the offset of the input tax credit refunds.

10. In the judicial review application, the respondent sought for the following reliefs namely:

- (i) An order of certiorari to quash the decision of the appellant's decision in issuing the BOD for the taxable period from 1.8.2016 to 31.8.2018 for a total sum of RM 1, 196, 461.46;
- (ii) A declaration that the appellant is bound by and shall give effect to the express wording of section 17 (1) (b) of the GST Act that the respondent's supply of quarry products exported to Singapore were zero-rated supplies;
- (iii) A declaration that taxing legislation must be interpreted strictly, declaring the relevant K2 Forms under the applicant's name, is not a pre-requisite to treat a supply as zero-rated under the GST Act; and
- (iv) An order that the appellant shall refund all the applicant's input tax credits totalling RM 1, 503, 939.25 which were off set by the appellant against the amount of the penalty imposed.

SUMMARY OF THE DECISION OF THE HIGH COURT

11. In allowing the Judicial Review application, the learned High Court Judge (as he then was) ('the learned HCJ') found that, although the respondent is the parent company of CIQ, the evidence shows that for all intents and purposes, it is the respondent who runs the show in so far as the quarry operation is concerned. Based on the 2007 Agreement, the respondent paid for the insurance, tributes and all costs relating to the quarry operations. According to the learned HCJ, the respondent and CIQ are indeed "part and parcel of one and the same organisation". In the circumstances, it does not matter that the K2 Form are in the name of CIQ, since, in the final analysis, the companies are in the same organisation. The learned HCJ also ruled that the K2 Form is inconclusive and is not the only method to prove exportation because section 35 (a) and (b) of the Customs Act 1967, goods are deemed exported once removed from Malaysia and cleared by the Customs. Furthermore, the Customs Department own Sistem Maklumat Kastam records confirmed that the goods were indeed presumed to have been exported to Singapore. The learned HCJ finally held that, the decision of the appellant to issue the BOD was tainted with Anisminic error and Wednesbury unreasonableness, which called for curial intervention. Consequently, the said judicial review application was allowed and decision was quashed.

THE SUMMARY OF THE APPELLANT'S SUBMISSION

12. The appellant submitted that the respondent did not come with clean hands in its judicial review application because when it sought for the declaration that it is entitled to zero-rated supply, when in actual fact,

the applicant used the export permit of CIQ, which is a separate legal entity, to export the respondent's good. In short, the respondent is not entitled to enjoy export supply at zero-rate since the goods were not exported by the respondent. Further, the K2 Forms were not in the respondent's name, hence the respondent was not an exporter. It was further submitted that the export of quarry products is subject to an export licence from the Ministry of Natural Resources and Environment. The respondent did not possess the said export licence to entitle them for the zero-rate export supply. It is further submitted that it was CIQ and not the respondent who holds the Approved Permit for the export of the quarry product. CIQ was also the permit holder issued by the Kulai Land Office for extracting and removing rock materials. CIQ also has the approval to export solid rock from the Director of Lands and Mines, Johor. All these facts show that, at the material time, the respondent was not the exporter of the said quarry products.

SUMMARY OF THE SUBMISSION OF THE RESPONDENT

13. It was submitted for the respondent that declaring the relevant K2 Forms under the respondent's name is not the pre-requisite to treat the supply as zero-rates under section 17 (1) (b) of the GST Act. It was further submitted that the appellant had adopted a narrow interpretation that only the person whose name is declared in the K2 Form is the exporter. This approach is contrary to the express definition of an "Exporter" under section 2 (1) of the Customs Act 1967.

14. It was also submitted that the appellant had exercised his authority mechanically without applying his mind to the facts and circumstances of the case. Further, the respondent reiterated the finding of the learned HCJ that the appellant has failed to rebut the statutory presumption under section 35 of the Customs Act 1967 that goods are deemed to be exported when the goods have been removed from Malaysia and cleared by the Customs officers. In this respect, it was not disputed that the quarry products supplied by the respondent were cleared by the Customs' officers at Tanjung Puteri causeway at Johor Bahru before they were transported by trucks into Singapore. Conversely, there is no evidence that the quarry products were subsequently found in Malaysia, hence the respondent is entitled to zero-rate the supply as there is sufficient documentary evidence that the good were in fact exported out of Malaysia.

ANALYSIS AND OUR FINDING

15. Having carefully considered the memorandum of appeal and the submission of both the appellant and respondent, we are of the view that the determinative issue in this appeal is on the interpretation of the word "exporter" for the purpose of imposing zero-rate GST on exported goods and whether the respondent is an exporter under section 17 (1) (b) of the GST Act.
16. The GST is a multi-level consumption tax charged on most goods and services at every stage of the supply chain. While businesses could claim input tax credit, zero-rated GST is applicable to, among others export goods. The statutory provision regulating the imposition and collection of goods and services tax and for matters connected

therewith was the Goods and Services Tax Act 2014 (the GST Act). However, this Act was repealed on 1.9.2018 and was replaced by the Sales Tax Act 2018.

17. Be that as it may, and for the purpose of this appeal, section 9 (1) of the GST Act provides that:

Imposition and scope of goods and services tax, etc.

9.(1) A tax to be known as goods and services tax, shall be charge and levied on-

- (a) any supply of goods or services made in Malaysia, including anything treated as a supply under this Act; and
- (b) any importation of goods into Malaysia.

18. By virtue of section 9(1), generally, all supply of goods or services for domestic consumption and any importation of goods into Malaysia is subject to GST. However, section 17 (1) (b) of GST Act allows for certain goods to be imposed zero-rated GST. It provides:

Zero-rated supply

17. (1) A zero-rated supply is-

- (a) any supply of goods or services determined to be a zero-rated supply by the Minister under subsection (4); and
- (b) any supply of goods if the goods are exported.

- (2) Where a taxable person supplies goods or services and the supply is zero-rated, whether or not tax would be chargeable on the supply apart from this section, no tax shall be charged on the supply.
- (3) The supply referred to in subsection (2) shall, in any other respect, be treated as a taxable supply and the rate at which tax is treated as charged on the supply shall be zero per cent.

19. In this appeal, it is not disputed that the quarry products had been exported to Singapore. Hence, by virtue of section 17 (1) (b) of the GST Act, the supply is zero-rated and no tax shall be charged on the supply.

20. While the position of the law is clear, the problem lies on the issue of whether the respondent is entitled to claim the zero-rated GST on the supply of the quarry product to Singapore. It is not disputed that the respondent did not charge GST of 6% for the quarry product sold to YTL. The issue now is whether the respondent can claim to be the exporter which qualifies it for zero-rated supply under section 17 (1) (b).

21. In this respect, it is pertinent to identify the parties that were involved in the supply of the quarry product which was the subject matter in the BOD dated 19.11.2020 issued by the appellant. From the facts of the case that have been summarised earlier, the parties are:

PARTIES	ROLE
YTL (a company in Singapore)	Purchaser of the quarry product
CIQ	<ul style="list-style-type: none"> <li data-bbox="858 398 1390 824">i. Holder of export permit, holder of export licence, holder of Approved Permit for export of quarry product and permit holder for extracting and removing solid rock <li data-bbox="858 913 1390 1081">ii. Exporter of the quarry product as declared in Custom K2 Form <li data-bbox="858 1171 1390 1272">iii. The Respondent's wholly owned subsidiary
Batu Tiga Quarry Sdn Bhd	<ul style="list-style-type: none"> <li data-bbox="858 1368 1390 1469">i. The parent company of CIQ) <li data-bbox="858 1559 1390 1603">ii. The respondent.

22. The words “export” and “exporter” are not defined under the GST Act. However, the GST Act allows references to be made to the Customs Act 1967 pertaining to the exportation and importation of goods. Section 174 (1) of the GST Act provides that:

Application of customs legislation

174. (1) Subject to subsection (2), this Act shall be construed as one with the Customs Act 1967 or the Excise Act 1976 with regards to the exportation and importation of goods including in transit and the movement of goods under custom control.

(2) Where there is any inconsistency between the provisions of the Custom Act 1967 or the Excise Act 1976 and the provision of this Act, the provisions of this Act shall prevail.

23. It is the crux of the appellant's case that in the custom's export declaration form i.e. the K2 Form, the respondent was not named as the exporter. Instead, CIQ was named as the exporter. Hence, it was submitted that the respondent is not entitled to zero-rate the supply. However, this stance taken by the appellant is inconsistent with the definition of the word "export" and "exporter" that appear in the Customs Act 1967. Section 2 of the Customs Act 1967 define an "export" and "exporter" as follows:

"export" means to take or cause to be taken out of Malaysia, by land, sea, air, or by any other means or to place any goods in a conveyance for the purpose of such goods being taken out of Malaysia by land, sea, air, or by any other means.

"exporter" includes any person by whom any goods (including goods transferred from an importing aircraft or ship) are exported

from Malaysia or supplied for use as aircraft's or ship's stores, and also the owner, or any person acting on his behalf, and any person who for customs purposes signs any document relating to goods exported or intended for exportation or supplied or intended for supply as aircraft's or ship's stores as aforesaid.

24. Further, section 35 of the Customs Act 1967 provides:

Presumption as to export

35. In relation to export, goods shall be deemed to be taken or caused to be taken out of Malaysia-

- (a) if they have been cleared by a proper officer of customs at the last customs station on their route out of Malaysia;
- (b) if they have been loaded on to a vessel or aircraft which is about to depart from a port or place in Malaysia; or
- (c) if they have been cleared by a proper officer of customs at an inland clearance depot or at an inland customs station on their route out of Malaysia through a customs port or airport.

25. Applying the definition of the word "export" and "exporter" above, it become clear that for the purpose of section 17 (1) (b), once the quarry products were taken out of Malaysia, any person by whom the quarry product were exported from Malaysia, the owner (or any

person acting on his behalf) and any person who, for custom purposes, sign any document relating to goods exported are eligible to claim the zero-rated supply. Further, in the context of this appeal, once the quarry products have been cleared by a proper officer of customs at the last customs station on their route out of Malaysia, the presumption that it had been exported out of Malaysia will be triggered.

26. The main contention by the parties here and below is whether the respondent, who was not named as exporter in the K2 Form can claim for the zero-rated supply of the quarry product. The appellant maintained that since the respondent was not named as the exporter in the K2 Form, they are not eligible to claim for the zero-rated supply. According to the appellant, both CIQ and the respondent are two separate legal entities, hence, even though the respondent is the parent company of CIQ, under the separate legal entity principle in *Salomon v Salomon*, the respondent cannot claim for zero-rated GST. In short, it was submitted that CIQ is entity rightly entitled for the zero-rate GST.

27. The case before us relates to the interpretation of a taxing statute. It is trite law that such statute must be strictly interpreted. In the landmark case of **Palm Oil Research and Development Board Malaysia v Premium Vegetable Oils Sdn Bhd & Other Appeals** [2005] 3 MLJ 97; [2004] 2 CLJ 265; [2004] 1 MLRA 137, the Federal Court held as follows:

“The correct approach to be adopted by a court when interpreting a taxing statute is set out in the advice of the Privy Council

delivered by Lord Donovan in *Mangin v Inland Revenue Commissioner* [1971] AC 739

First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner J said in his (albeit dissenting) judgment in Marx v Inland Revenue Commissioner [1970] NZLR 182 at 208, *moral precepts are not applicable to the interpretation of revenue statutes.*

Secondly, '...one has to look merely at what is clearly said. There is no room for intendment. There is no equity about a tax. There is no presumption so to in a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used' per Rowlatt J in Cape Brandy Syndicate v Inland Revenue Commissioner [1921] 1 KB 64 at 71, *approved by Viscount Simons LC in Canadian Eagle Oil Co Ltd v Regime* [1945]1 All Er 499; [1946] Ac 119.

Thirdly, the object of the construction of a statue being to ascertain the will of the Legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.

Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.

28. Similarly, in **Federal Express Brokerage Sdn Bhd & Ors v Malaysia Airport (Sepang) Sdn Bhd & Anor [2012] 6 MLJ 190 ; [2013] 4 CLJ 208; [2012] 4 MLRA 282**, this court, through Ramly Ali JCA held as follows:

“It is well settled principle of law that imposition of any form of tax, duty, charge, levy, fee or other forms of financial obligations on any person must be expressly provided for in a statute passed by the Parliament of the relevant legislative body.

Such imposition must be expressed in plain and unambiguous language in the particular statute.

....

The intention of the Parliament to impose tax, duty or charge must strictly be construed from the wordings of the statute. It is a well settled principle of law that the wordings of a statute imposing a tax, duty or charge must receive a strict construction in the sense that there is no room for any intendment, and regard must be had to the clear meaning of the words (see Lembaga Pembangunan Industri Pembinaan Malaysia v Konsortium JGC Corp & Ors [2010] MLJU 1524; [2011] 7 CLJ 46).

In the absence of a clear intention in the law that tax, duty or charge should be imposed, the appellant (in the present case)

are not liable to be pay the charge imposed on them. The decision of Gill FJ in Comptroller-General of Inland Revenue Malaysia v T [1970] 2 MLJ 35 clearly supports the above proposition. In that case, it was held that:

It is important canon in the construction of revenue Acts that the subject is not to be taxed unless there are clear words in the Act imposing such tax. In this connection, Lord Blackburn said in the House of Lords in Coltness Iron Company v Black 91880-810 6 App Cas 315 at p 330:

No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him...and I think one safe rule is to look at the words of the enactment and see what is the intention expressed by those words.

Lord Simmonds in Russell v Scott [1948] 2 All ER 15 reasserted the same rule of construction when he addressed the House of Lords in the following words:

My Lords, there is a maxim of income tax law which, though it may sometimes be over-stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the taxing statutes unambiguously impose the tax on him. It is

necessary that this maxim should on all occasion be reasserted and this is such an occasion."

29. Applying the strict interpretation rule to section 17 (1) (b) of the GST Act, it is obvious that the zero-rated supply applies to goods which are exported. There are no other requirements under section 17 (1) (b) before zero-rated supply may be applied. We agree with the submission of learned counsel for the respondent that since there is no other requirement stipulated in paragraph (b); it is not a legal requirement of paragraph (b) that the respondent must be named in the K2 Form or that the respondent must possess an export licence before it can claim zero-rated supply. The particulars in the K2 Form are not conclusive evidence that a person is an exporter.

30. The issue that arises is whether the respondent is entitled to claim the zero-rated supply? As we have stated earlier, the appellant argued that by virtue of the separate legal entity principle, the respondent could not claim for the zero-rated supply for the products that had been supplied by CIQ. According to the appellant, the position is no different where the company is the subsidiary of a parent company.

31. However, in appropriate cases, the court is willing to lift the veil of incorporation when the justice of the case so demands and to treat the parent company and its subsidiary as one single unit. In the case of **Hotel Jaya Puri Bhd v National Union of Hotel, Bar & Restaurant Workers & Anor** [1980] 1 MLJ 109; [1979] CLJ 360; [1979] 1 MLRH 197, Salleh Abas FJ (as His Lordship then was) on behalf of the then Federal Court held:

"It is true that while the principle that a company is an entity separate from its shareholders and that a subsidiary and its parent or holding company are separate entities having separate existence is well established in company law, in recent years the court has, in a number of cases, by-passed this principle if not made an inroad into it. The court seems quite willing to lift "the veil of incorporation" (so the expression goes) when the justice of the case so demands. Thus the fact of the case may well justify the court to hold that despite separate existence a subsidiary company is an agent of the parent company or vice versa as was decided in Smith, Stone and Knight v Birmingham Corporation;⁽¹⁾ Re F.G (Films) Limited;⁽²⁾ and Firestone Tyre & Rubber Company v Llewelyn.⁽³⁾ Professor Gower in his Principle of Modern Company Law, 3rd Edition, Page 213, said that the courts

"are coming to recognise the essential unity of group enterprise rather than the separate legal entity of each company within the group. Other examples of this can be found. In The Roberta (1937) 58 Ll L.R 159, a parent company was held liable on a bill of lading signed on behalf of its wholly owned subsidiary, the court saying that the subsidiary was 'a separate entity...in name alone and probably for the purposes of taxation'. In another case Spittle v Thomas Grit & Aggregates Ltd [1937] 4 All ER 101, the court found no difficulty in treating a subsidiary as 'to all intents and purposes' the same as the parent company which held 90 per cent of its shares. A licencing authority in exercise of its discretion has been held entitled to have

regard to the fact that the parent and subsidiary company, though technically separate legal persons, in fact constituted a single commercial unit (Merchandise Transport Ltd v British Transport Commission [1962] 2 Q.B 173, Devlin L.J. at page 202) ...A good example of this is Bird & Co v Thos. Cook & Son [1937] 2 All ER 227, in which an indorsement of a cheque to "Thos. Cook & son Ltd' was treated as an indorsement to the allied but separate company of Thos. Cook & Son (Bankers) Ltd by regarding it as a mere misdescription to be ignored under the principle of falsa demonstratio non nocet."

32. Based on **Hotel Jaya Puri Bhd (supra)**, what are the evidence in the instant case that would justify the lifting of CIQ's veil of incorporation?
33. In his judgment the learned HCJ had referred to an agreement between CIQ and the respondent dated 6.7.2007 and noted certain clauses thereof:
 - i. Clause 1 whereby the respondent will utilise its experience and knowledge of the quarry industry to continue to operate the quarry in Kulai, Johor (including drilling, blasting, extraction of rock materials, production and process of quarry products from the rock materials extracted, sales of quarry and logistics thereof at the respondent's costs and expense

- ii. Clause 2 whereby the respondent will directly pay tributes with respect to the lands leased from third parties
- iii. Clause 3 (b) whereby the respondent is allowed to utilise CIQ's Approved Permit to export the quarry products to Singapore.
- iv. That the respondent will bear all costs and expenses in relation to carrying out of the quarry operations.

34. We are of the view that the facts in (i) – (iv) above are relevant to show that, despite the separate entity principle, the respondent and CIQ are indeed one single entity for the purpose of the supply of the quarry product to YTL in Singapore. The facts show that it was the respondent who had taken the role of the exporter in the supply of the quarry products to YTL. Besides utilising its expertise in the extraction of rocks material, production and processing of quarry product from rock materials, the respondent also bore all costs and expenses in relation to carrying out the quarry operations. Most importantly, clause 3 (b) of the Hence, despite not having the necessary licence and permits under its name, the respondent was actively involved in the supply of the quarry product to YTL. In this respect, the corporate veil of CIQ ought to be lifted and the respondent is in fact the exporter within the meaning of section 17 (1) (b) of the GST Act.

35. Based on the above reasons, we are of the view that the particulars in the K2 Form is not a conclusive evidence that the respondent is

not the exporter of the quarry goods. Applying the principle in **Hotel Jaya Puri Bhd (supra)**, the respondent is qualified to claim for zero-rated supply under the GST Act as for all intent and purpose, it is the exporter of the quarry products to YTL. That being the case, we agree with the learned HCJ that the impugned decision of the appellant in the form of the BOD is tainted with Anisminic error and Wednesbury unreasonableness and ought to be quashed.

36. Consequently, we find no appealable error on the part of the learned HCJ that warrants our appellate intervention. This appeal is dismissed. We affirm the decision of the learned HCJ with no order as to costs.

Date: 8 January 2026



AZHAHARI KAMAL BIN RAMLI

JUDGE

COURT OF APPEAL MALAYSIA

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