DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM

SAMAN PEMULA NO: BA-24NCvC-420-02 /2025

Dalam Perkara Notis Taksiran Duti Setem Bertarikh 31.12.2024;

Dan

Dalam Perkara Suatu Keputusan Responden Di Bawah Seksyen 38A(5) Akta Setem 1949 Yang Terkandung di dalam Notis Taksiran Sekuriti (Duti Kekal Selepas Rayuan) bertarikh 22.1.2025;

Dan

Dalam Perkara Suatu Rayuan Di Bawah Seksyen 39(1) Akta Setem 1949 bagi, Antara Lain, Suatu Perintah di bawah Seksyen 39(4) Akta Setem 1949;

Dan

Dalam Perkara Aturan 55A Kaedah 1 dan Aturan 7 Kaedah 2 Kaedah-Kaedah Mahkamah 2012.

ANTARA

1. **Binastra Land Sdn Bhd**
   [No. Syarikat: 200401015463 (653966-W)]

2. **Binastra Ablebuild Sdn Bhd**
   [No. Syarikat: 201301013219 (1043057-W)] ... PERAYU-PERAYU

DAN

PEMUNGUT DUTI SETEM ... RESPONDEN

Introduction

1. This is an appeal by the duty payer ("The Appellants") pursuant to Subsection 39(1)(a) of the Stamp Act 1949 ("SA 1949") by way of case stated ("The Case Stated") signed by the Collector of Stamp Duties ("The Respondent").

2. The Appellants is dissatisfied with the assessment made by the Respondent *vide* Security Assessment Notice (Remission) dated 31.12.2024 with chargeable duty for RM250,000.00 duty plus RM50,000.00 as penalty in respect of the Letter of Award dated 08.02.2022.

Salient facts

3. The First Appellant **awarded a contract worth RM250,000,000.00** to the Second Appellant through a Letter of Award dated 08.02.2022 for the proposed development of the Suria Garden Project, with a **contract period of 33 months**, starting from 15.02.2022 until 17.12.2024.

4. On 07.11.2024, the Respondent conducted an audit visit at the First Appellant's business premises and discovered that the Letter of Award was not stamped.

5. Following the audit review, the Respondent issued an audit findings notification on 18.12.2024, where annexure A to the

notification letter stating the stamp duty together with a penalty was imposed on the Letter of Award.

6. The Respondent, via email dated 27.12.2024, informed that the Letter of Award dated 08.02.2022 is subject to stamp duty because the instrument relates to a service contract, which can be imposed duty under Section 4(1) of the SA 1949 and Item 22(1)(a) of the First Schedule of the SA 1949.

7. The Respondent, via email dated 27.12.2024, also informed that since the Letter of Award relates to a service contract, it qualifies for remission under P.U.(A) 428/2021.

8. The Appellants disagreed with the audit findings. Through an email dated 27.12.2024, the Appellants stated that the Letter of Award dated 08.02.2022 is not a service contract.

9. On 31.12.2024, the Respondent issued a Security Assessment Notice (Remission) on the Letter of Award, with stamp duty imposed at RM250,000.00 together with a penalty of RM50,000.00. The total amount of duty payable by the Appellants was RM300,000.00 after deducting the amount of duty remitted/exempted under P.U.(A) 428/2021, which amounted to RM1,000,000.00.

10. Based on the STAMPS system log, the Appellants made payment of the duty on 16.01.2025.

11. On 20.01.2025, the Appellants submitted a notice of objection/appeal against the assessment through the STAMPS system (Appeal Reference No. B016Y1252353737) on the grounds that the Letter of Award should not be subject to stamp duty under Item 22(1)(a) of the First Schedule of the SA 1949 because –

a) The Letter of Award is not a "security" within the meaning of Item 22(1)(a)

b) The Letter of Award does not contain a "total amount to be ultimately payable" that "can be ascertained" as required for an instrument to be subject to stamp duty under Item 22(1)(a).

12. On 21.01.2025, the Respondent, through the STAMPS system, informed the Appellants that their appeal was rejected and the duty was maintained. Therefore, the Security Assessment Notice (Remission) dated 31.12.2024, with the total duty payable amounting to RM300,000.00, was upheld after the appeal.

Issue to be determined

13. This Court herein is to determine in the present appeal whether the stamp duty imposed on the Letter of Award dated 08.02.2022 under Item 22(1)(a) of the First Schedule of the Stamp Act 1949 is correct.

The Law

i. Section 2 of the Stamp Act 1949

14. Interpretation or definition of the following under section 2 of the SA 1949 are –

a. "executed" and "execution"

"executed" and "execution", used with reference to instruments not under seal, mean "signed" and "signature";

b. "instrument"

"instrument" includes every written document;

ii. Section 4 of the Stamp Act 1949

15. **Section 4 of SA 1949** gives authority for a duty to be assessed on a document/instrument. Schedule 1 of the Stamp Act 1949 lists out instruments which are chargeable with duties. **Section 4(1) of the SA 1949** provides that –

> "Subject to this Act and subject to the exemptions contained in this Act and in any written law for the time being in force, the several instruments specified in the First Schedule shall, from and after the commencement of this Act, be chargeable with the several duties specified in such Schedule."

16. **Section 4(3) of the SA 1949** provides that where there are more than one instrument documenting a transaction, **only the principal instrument would be chargeable with duty in accordance with the First Schedule.**

> **"Instruments chargeable with duty**
>
> 4. (1) ...
>
> (2) ...
>
> (3) Where in the case of any sale, lease, charge, settlement, exchange or **partition several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in the First Schedule** for the conveyance, lease, charge, settlement or partition and each of the other instruments shall be chargeable with a duty of ten ringgit only; and **the parties may determine for themselves which of the instruments so employed shall, for the purpose of this subsection, be deemed to be the principal instrument."**

iii. Item 22(1)(a) of First Schedule of the SA 1949

17. **Item 22(1)(a) of First Schedule of the SA 1949** provides that –

> "22 BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:

(1) Being the only or principal or primary security any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack—

(a) for a definite and certain period so that the total amount to be ultimately payable can be ascertained **Proper Stamp Duty** – The same ad valorem duty as charge or mortgage for such total amount.

18. The instrument in dispute is the Letter of Award dated 08.02.2022 whereby the said Letter of Award is the only instrument that exists in this project.

19. There is no agreement executed between the First Appellant and the Second Appellant other than this Letter of Award dated 08.02.2022 for the development of the Suria Garden Project.

20. Hence, the Letter of Award is the only principal instrument executed between the First Appellant and the Second Appellant. Accordingly, the Letter of Award must be assessed and subjected to stamp duty under item 22(1)(a) of the First Schedule of the SA 1949.

Considerations of the Court

21. In **Words, Phrases and Maxims Legally & Judicially Defined 6 E**, execution has been defined as the accomplishment of a thing; the completion of an act or instrument; the fulfillment of an undertaking (as) execution of a contract or deed.

22. In other words, the Letter of Awards dated 08.02.2022 is a valid written instrument which has legal effect between the Appellants.

23. Furthermore, **Section 4(3) of the SA 1949** provides that where there are more than one instrument documenting a transaction, only the principal instrument would be chargeable with duty in accordance with the First Schedule.

24. This Letter of Award dated 08.02.2022 could be construed to be the 'transaction' referred to in section 4(3) of the SA 1949. Accordingly, the said letter of award was the only instrument providing for such payment obligations and would, therefore, be dutiable under the First Schedule.

25. By the terms of **item 22(1)(a) of the First Schedule of SA 1949**, if an instrument comes within the description provided there, the instrument would be charged with the same *ad valorem* duty.

26. The Letter of Award was the primary security for sums of money at stated periods. The times specified for the payments were also definite and certain under the Letter of Award and the total sum payable was also ascertainable. Therefore item 22(1)(a) of the First Schedule of SA 1949 applied in the present case. Further, the use of the expression 'instrument of any kind whatsoever' was sufficiently wide to cover the Letter of Award dated 08.02.2022.

27. The *ejusdem generis* rule of construction was supplanted by the plain words of the provision, which employed the formula 'of any kind whatsoever'.

28. The Rule of 'ejusdem generis' is a rule of construction and not a rule of substantive law where a list of a specific items is followed by general concluding clause. This is deemed to be limited to things of the same kind as those specified under the Item 22(1)(a) of the First Schedule of SA 1949.

29. There are essentially 2 issues raised by the appellants herein:

    a) Whether the respondent has a statutory power to issue the assessment dated 31.12.2024 arising from the audit discovery of the non stamped Letter of Award before 1.1.2026, which is the date that section 36CA came into force providing the respondent to raise assessments or additional assessments.

30. Upon a perusal of section 3A of the Stamp Act, the respondent is empowered to require any person to produce any instrument to determine whether it is taxable and whether duty has been paid.

Power of Collector

3A. (1) The Collector may by notice in writing require any person to produce any instrument for the purpose of ascertaining whether it is chargeable with duty under this Act and, if so, whether that duty has been paid.

31. Section 36 of the said Act provides that any person shall submit an instrument to the respondent for adjudication in order to determine the correct amount of stamp duty payable and the respondent will assess and notify as to the sum to be paid.

32. It is thus the position of the law as provided in the Act, in accordance with section 36 that it is for the party that executed the instrument *i.e* appellants herein to bring forward the Letter of Award to the respondent since it has been executed by both appellants way back in 2022 though the audit visit that led to the discovery was done in 2024.

Mode of adjudication as to proper stamp

36. (1) All instruments chargeable with duty and executed by any person in Malaysia (except an instrument which by virtue of section 47 cannot be stamped after execution) shall be brought to the Collector and the Collector shall assess the duty, if any, with which in his judgment the instrument is chargeable.

33. The presence of section 38A of the Act which provides an objection mechanism against such an assessment demonstrates that the Act already contemplates the issuance of assessments that would be subjected to a review by the respondent. Furthermore, section 39 provides a statutory appeal to the High Court, as being pursued by the appellants in this Originating Summons.

Notice of objection

38.A (1) Any person who is dissatisied with an assessment or additional assesstment of the Collector under this Part may, by written notice (referred to in this Act as "notice of objection"), object to the assessment or additional assessment and apply to the Collector to review the assesement or additional assessment.

Appeals to High Court

39. (1) Any person who is dissatisfied with the decision of the Collector under subsection 38A(5) may, within twenty-one days after the person is notified in writing of that decision and upon payment of duty in conformity therewith, appeal against the decision to the High Court in accordance with the procedure and practice for the time being in force in the High Court and may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required, and the decision made by him.

34. Given these prevailing provisions, it is the considered opinion of this Court that the power to issue an assessment is provided by statute with the taxpayer being imposed to put forward the requisite document and not a situation of the taxpayer's voluntary submission.

35. It is the argument of the appellants that section 36CA only comes into operation on 1.1.2026 with the respondents not having the power prior to that date to issue an assessment for an instrument such as in this case.

36. This Court however is satisfied that the assessment dated 31.12.2024 is provided for within the statutory framework pre 2026 given the provisions of section 3A, section 36, section 38A and section 39 of the Act. Since the respondent is empowered to compel the production of an instrument to determine its chargeability then correspondingly it would be illogical for the respondents to not have the power to issue an assessment.

b) Whether the Letter of Award is taxable under section 22(1)(a) or Item 4 of the 1st SCHEDULE of the Stamp Act.

37. It has to be considered by this Court whether the Letter of Award contains no stated intervals as argued by the appellants. Upon a perusal of the Letter of Award it is observed that it expressly provides an interim claim interval of one month and the period for honouring certificates is 30 days from the date of the certificate.

38. This satisfies the stated period requirements in the substance and ordinary meaning, with section 22(1)(a) of the 1st SCH not requiring for a rigid instrument table, but only for the sums are payable through stated time periods.

39. The Letter of Award states that the contract period is 33 months *i.e.* from 15.2.2022 to the completion date being 17.12.2024 hence there is a definite and certain period expressly stated in the Letter of Award, with this issue not being rebutted by the appellants. The Letter of Award is a contract for services which creates obligations and security.

40.. Hence, the Letter of Award constitutes the operative written instrument setting out the service undertaking and the attendant obligations/security for a definite and certain period and the total payable is ascertainable from the contract sum, it falls squarely within the operation of Item 22(1)(a) of the 1st SCH.

41. With the Assessment, it follows as provided under subsection 47A(1)(c) of the Stamp Act 1949, that a penalty that is imposable. Section 47A(1) imposes a penalty whereby an instrument is not stamped within the requisite 30 days from the execution date when executed in Malaysia.

42. Since the Letter of Award was executed in February 2022 and not stamped until the audit discovery in November 2014, section 477A as regards late stamping has been triggered, with the resulting penalty of RM 50,000.00 imposed at the rate of 20% of the Stamp Duty of RM 250,000.00. This Court finds no fault in the penalty imposed by the respondent in this matter.

Conclusion

43. Based upon those considerations, this Court is satisfied that the respondent has correctly imposed the tax on the Letter of award hence the appellants' Originating Summons is dismissed with costs.

Dated: 15 July 2026.

AZMI BIN ABDULLAH
High Court Judge
Shah Alam High Court

COUNSELS

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