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Tax Case Update — JT Broadway Sdn Bhd ("taxpayer") v Director General of Customs ("Customs") and the Customs Appeal Tribunal ("Tribunal")

Recently, the High Court ruled in **JT Broadway Sdn Bhd ("taxpayer") v Director General of Customs ("Customs") and Customs Appeal Tribunal ("Tribunal")** [Originating Summons No. WA-24-27-05/2021], that the taxpayer ought to be given an extension of time ("EOT") by the Tribunal to file its notice of appeal.

Facts of the Case

During the GST era, the taxpayer applied to Customs for a refund of its input tax under Regulation 46 of the Goods and Services Tax Regulations 2014. After more than a year, Customs approved only a portion of the input tax claimed, subject to certain conditions to be complied with ("1st Response"). Three months later, another letter was issued by Customs approving an even smaller portion of the input tax claimed, without reference to the 1st Response ("2nd Response"), stating that no approval had yet been issued for the input tax refund.

Eight months later, Customs suddenly credited the amount of input tax indicated in the 1st Response into the taxpayer's bank account whilst the amount of refund stated in the 2nd Response never materialised.

EOT Application

Under section 143 of the **Customs Act 1967**, appeals to the Tribunal must be filed within 30 days from the date of being notified of the Director General of Customs' decision. Accordingly, the taxpayer filed an EOT application to the Tribunal under Regulation 3 of the Customs (Appeal Tribunal) Regulations 2007 ("Regulation 3"), under which the Tribunal may grant an EOT if it is "*reasonable in all the circumstances to do so*".

The EOT Application was rejected by Tribunal ("Tribunal's Decision") and the taxpayer appealed to the High Court.

Tax & Revenue Law Update

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High Court's Decision

At the High Court, the learned Judge overturned the Tribunal's Decision and held that the taxpayer ought to have been granted the EOT, the Tribunal having failed to take into account all relevant factors and circumstances of the case in exercising its discretion.

Among others, the learned Judge held that at the material time, due to Customs' conflicting and ambiguous responses, it was reasonable for the taxpayer not to file any appeal until the monies were credited to the taxpayer's bank account when it became clear that the input tax amount allowed was as per Customs' 1st Response, and not the 2nd Response. Hence, the actual delay in filing the appeal was only 11 days, and not 403 days, as contended by Customs.

The learned Judge also alluded to the numerous previous occasions in which the Tribunal had granted EOTs for filing appeals and also took into account the fact that Customs had never once informed the taxpayer of its right to appeal if dissatisfied with its decision, the timeline to appeal, or whether which of Customs' two conflicting decisions was final. Further, in the absence of written grounds and sound reasons, there were no good reasons at all for the Tribunal to reject the EOT Application.

Customs has appealed against the High Court's Decision to the Court of Appeal.

Conclusion

Whilst taxpayers have to strictly comply with the prescribed timelines to file their appeal to the Tribunal, EOT provisions such as Regulation 3 exist to ensure that taxpayers' rights of appeal are not defeated simply by means of obfuscating and ambiguous responses from tax authorities. This case confirms that EOT applications must be properly considered, as any refusal means that the taxpayer's appeal would not be able to be heard on its merits at all.

The taxpayer was represented in this matter by Irene Yong (Partner) from our Tax & Revenue Practice Group.