



 Court of Appeal, Putrajaya
 October 1, 2019
 Special Appeal Division
Legal Department IRBM

COURT OF APPEAL ALLOWED INTERIM STAY PENDING APPEAL

SPSA v KETUA PENGARAH HASIL DALAM NEGERI

BACKGROUNDS

SPSA (“the Appellant”) filed a leave application (together with stay application sought therein) pursuant to Order 53 of the Rules of Court 2012 (“ROC”) for a certiorari to quash the decision of KPHDN (“the Respondent”) made in the form of notices of assessments / additional assessments for the Years of Assessment (Y/As) 2012, 2014, 2015 and 2016 all dated 31.7.2019 (“the impugned Decision”).

The leave application was made based on the complaint that the Respondent had failed to invoke section 140 of the Income Tax Act 1967 (“ITA 1967”) in disregarding the cost contribution arrangement and re-characterizing the arrangement to an intra group services at a mark-up cost, thus amounts to an error of law which attracts judicial review.

The High Court dismissed the leave application and allowed an interim stay until 3.10.2019 on or before 5.00 p.m pending the Appellant’s appeal to the Court of Appeal.

The Appellant filed an appeal to the Court of Appeal and the appeal is still pending before the Court of Appeal. The Appellant had also filed a notice of motion dated 10.9.2019 pursuant to section 44 of the Courts of Judicature Act 1964 (“CJA 1964”) seeking for an interim order for all further proceedings and the effects of the impugned Decision to be stayed pending the full and final determination of the appeal made to Court of Appeal.

JUDGES

YA Harmindar Singh Dhaliwal
YA Nor Bee Ariffin
YA Azizah Haji Nawawi

REVENUE COUNSELS

Raja Kamarul Zaman Raja Musa
Muazmir Mohd Yusof
Nik Nur Halina Mohd Kashfi
Mohammad Danial Ahmad

APPELLANT'S CONTENTIONS

The Appellant contended that the threshold for stay under section 44 of CJA 1964 is very low and it is an absolute discretion of the Court of Appeal to grant the stay. The Appellant also highlighted that the appeal on the issue of stay will be rendered nugatory if this application of interim stay is dismissed. There is no date for hearing of appeal being fixed yet and the interim stay granted by the High Court will expire on 3.10.2019.

RESPONDENT'S CONTENTIONS

The Appellant is not prejudiced if the Appellant has paid the tax because the Respondent is capable to refund the taxes paid should the apex Court decided in favour of the Appellant. There is no special circumstances that warrant the granting of the interim stay and granting of the stay would prevent the Respondent from exercising his duty to the Government, preventing the operation of Sections 103, 104 and 106 of the ITA.

Also, it was contended that the Appellant's appeal would not be rendered nugatory and there is a proper remedy for appeal provided under domestic law.

COURT'S DECISION

Court of Appeal judges had unanimously allowed the interim stay application pending disposal of the appeal at the Court of Appeal.