

TECHNICAL

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## Indirect Taxation

### TAX CASE UPDATE

#### ***Determination of the customs value of goods released for home consumption from a Licensed Manufacturing Warehouse***

**Ketua Pengarah Kastam Dan Eksais & Kerajaan Malaysia v. Pioneer Technology (Malaysia) Sdn Bhd** (Court of Appeal) 2013 [Civil Appeal No. W-01-404-2009]

Date of Judgment: 3 January 2013

#### **Facts:**

The principal activity of Pioneer Technology (M) Sdn Bhd ("the Respondent") is the manufacture of audio and video products. It has a factory in Muar which is licensed as a Licensed Manufacturing Warehouse ("LMW") under S.65A of the Customs Act 1967. Under S65(3)(b), import duty and sales tax on goods released from the LMW for the local market must be calculated on the basis as if such goods have been imported.

Prior to 1/4/2000, goods for the local market were sold through the Respondent's sole distributor, Hwee Seng (Electronics) Sdn Bhd ("HS"). For the purpose of Customs declaration, the Respondent was the "exporter" and HS the "importer", and the price invoiced to HS was accepted as the value of "imported" goods for purposes of import duty and sales tax.

After 1/4/2000, the Respondent's own Sales Division in KL replaced HS as the distributor for the local market (i.e. the "importer") and the value of the goods for purposes of import was the Respondent's invoiced value to the Sales Division. (Earlier on, Customs had been provided with costs breakdown for the production costs of specific goods which was referred to as the ex-factory price.)

By a letter dated 16/9/2002, the Customs Headquarters in KL stated that whilst the Computed Method was acceptable, the seller and buyer being the same entity, general expenses and costs borne by the Sales Division outside the LMW is part of the cost of production and sale pursuant to regulation 9(3), Customs (Rules of Valuation) Regulations 1999 ("CRVR") [P.U.(A) 507/ 1999]. As such, expenses like payroll, marketing, administration and profits of the Sales Division would be added to computed values submitted from the LMW.

The company then appealed to the High Court against the Customs' decision, which appeal was allowed by that Court. Hence the present appeal to the Court of Appeal.

#### **Issue**

The issue was formulated as follows:

*Whether, for purposes of determining customs value of the Respondent's goods that are released for home consumption from the Respondent's LMW in accordance with the computed value under Regulation 9 of the CRVR, the Appellants are entitled to include the Sales Division Profits and*

*General Expenses (payroll, administration and marketing costs) to the ex-factory prices of the Respondent's goods?*

**Decision:**

Appeal allowed with costs. Order of the High Court set aside.

The grounds of the Court's decision are summed up in the Judgment of the Court, and they are quoted below:

- a) *The LMW is a facility to allow a manufacture (sic) to import raw materials without customs duty and to export free its products.*
- b) *Where a manufacturer releases manufactured goods from the LMW for home consumption, the customs duty on the goods is calculated as if the goods had been imported.*
- c) *That section 65A(3)(b) does not provide any qualification to the phrase "had been imported" must mean the goods shall be treated as any other goods imported into Malaysia.*
- d) *The rules of valuation of customs value provide that the primary basis of determination of customs value of imported goods is their transaction value: see Regulation 4. Thus, where the goods are sold by the exporter to an importer distributor, the transaction value is the invoice value with the adjustments under Regulation 5.*
- e) *Where a manufacturer from an LMW sells to home consumptions he may seek exemption on that ground from the Minister.*
- f) *Where such manufacturer has no exemption, the customs value is the transaction value as above.*
- g) *Where such manufacturer has no exemption, and no transaction value, the customs value is to be determined under Regulation 7, 8 or 9 as applicable.*
- h) *Regulation 9 is applicable in this case, and it includes the payroll, marketing, administration and profits of the sales division.*

The Respondent's cross appeal in respect of interest for the prejudgment period was dismissed.

Members may read the full [Grounds of Judgment](#) from the Official website of the Office of Chief Registrar, Federal Court of Malaysia.

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