

PREPARING AN APPEAL TO GOODS AND SERVICES TAX APPEAL TRIBUNAL

**By
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Chairman
GST Appeal Tribunal
Ministry Of Finance
Putrajaya**

BACKGROUND

- Established on 1st April 2015
- An independent quasi-judicial body to hear appeals against the decision of the Director General of Customs pursuant to Part XIII of Goods and Services Tax Act 2014 (Act 762)
- Applicable laws
 - GST Act 2014 (Act 762)
 - GST (Review and Appeal) Regulations 2014
 - GST (Advance Ruling) Regulations 2014
 - GST (Exempt Supply) Order 2014
 - GST (Relief) Order 2014
 - GST (Amount Of Taxable Supply) Order 2014
 - GST (Rate Of Tax) Order 2014
 - GST (Applications To Government) Order 2014
 - GST (Tax Agent Application Fee) Order 2014
 - GST (Imposition Of Tax For Supplies In Respect Of Designated Area) Order 2014

MEMBERSHIP

- Section 128 (1) (a) & (b) provides that the Tribunal shall consist of
 - a Chairman and a Deputy Chairman from Judicial and Legal Services, and
 - not less than five (5) members having wide knowledge and extensive experience in GST, customs or taxation
- Section 128 (2) further states that the Members shall hold office for a term not exceeding 3 years, and upon expiry, shall be eligible to be reappointed but not more than 3 consecutive terms.

OBJECTIVE

- To provide an appeal mechanism which is fair, simple and efficient.
- To enhance the efficiency of the GST administration appeal mechanism
- To make it more business friendly.

WHO CAN APPEAL?

- Section 126(1) – provides that any person aggrieved by the decision of the Director General may appeal against the decision.
- (2) the appeal shall be made to the Tribunal within 30 days from the date disputed decision was made known or within any such extension of time granted by Tribunal

JURISDICTIONAL LIMIT

- Pursuant to section 127 (1), the Tribunal shall have jurisdiction to determine appeals relating to good and services tax **except** on matters specified in the Fourth Schedule.

NON-APPEALABLE CASES UNDER THE 'FOURTH SCHEDULE'

- (a) any matter which is inherent of a statutory restriction under this Act
- (b) any direction to treat persons as a single taxable person under section 23
- (c) any refusal of voluntary registration under section 24
- (d) any refusal of group registration under section 27
- (e) any matter relating to reassignment of the taxable period under subsection 40(4)
- (f) Offsetting tax against refund under section 45
- (g) Any seizure and selling of any goods for recovery of any amount under section 47(2)

NON-APPEALABLE CASES UNDER THE 'FOURTH SCHEDULE' (cont'd)

- (h) Any refusal of payment by instalment under section 51
 - (i) Any decision to reduce or disallow any refund under subsection 57(2)
 - (j) Any refusal to refund an amount paid by any person under subsection 57(5)
 - (k) Any refusal to remit any penalty or surcharge under subsection 62(2)
 - (l) Any refusal to approve any application for any scheme under Part VIII
 - (m) Any advance ruling made under section 77
 - (n) the exercising of powers under Part X
 - (o) The compounding of offences under section 121
 - (p) Any matter relating to approval of reward by the Director General under section 171 and
 - (q) Any matter relating to special refund under sections 190, 191 and 192
- Item (a) to (q) are the DG's discretionary power which the Tribunal will not encroach upon.

FILING OF APPEAL

- Regulation 3(1) of Goods and Services Tax (Review and Appeal) Regulations 2014:-
 - (1) every appeal lodged with the Tribunal under section 126 of the Act shall be in **Form B** (Notice of Appeal)
 - (2) Filed in four copies together with a fee of RM200.00 to be paid at GSTAT office
- Additional documents include:-
 - Copy of IC/Passport of Appellant;
 - Representative's Authorization letter from Appellant Company (Company only)
 - Copy of disputed decision

GOODS AND SERVICES TAX ACT 2014
GOODS AND SERVICES (REVIEW AND APPEAL) REGULATIONS 2014

FORM B
(Regulation 3)

NOTICE OF APPEAL

RMCD Decision Reference Number	(i) (ii)
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IN THE GOODS AND SERVICES TAX TRIBUNAL

AT

IN THE STATE/FEDERAL TERRITORY OFMALAYSIA

APPEAL NO.

BETWEEN

APPELLANT

.....

AND

DIRECTOR GENERAL OF CUSTOMS

RESPONDENT

A. APPEAL DETAILS

1. * Full Name/Identification Card No. /Passport No.	2. Appellant's address
3. GST No. /Non Registrant No. (if any)	4. Telephone 5. Fax 6. E-mail
7. **(a) Representative name if any (b) Address (c) Date of appointment (d) Telephone no./fax/e-mail	
8. ***Date the decision was received	9. Date of application
10. Please state the type and details of the disputed decision	

* Please attach a copy of identification card/ passport
** Please attach representative authorization letter
*** Please attach a copy of the disputed decision

11. The amount of tax or penalty if any	
12. State the relevant taxable period	
13. Grounds for appeal	

*Please attach additional appendix if the column is insufficient

14. State the remedy sought	
15. Supporting documents attached	

**Please attach additional appendix if the column is insufficient*

Declaration

I, hereby affirm and declare:

- (i) No application is made on the same matter either to the Tribunal or to the court;
- (ii) All information stated in this application are correct and complete to the best of my knowledge and I have been given the authorization and am competent to make this application and to verify it.

.....
Signature

Name:

Identification Card No.:

Designation:

Date:

.....
Company's official stamp

For the use of the office of the Tribunal only

.....
Date of filing

.....
Secretary
Goods and Services Tax Tribunal

.....
Seal of the Tribunal

FILING OF APPEAL (cont'd)

- ❑ For convenience, Form B can be obtained at GSTAT's office, Aras 2, Perbendaharaan 2, MOF, Putrajaya; or
- ❑ Download from the website: www.treasury.gov.my or gst.customs.gov.my
- ❑ Alternatively, appeal may be filed online by accessing to the portal gst.customs.gov.my. However, the filing fee must be paid at GSTAT office.

MODE OF PAYMENT FOR FILING FEES

Payments can be made via:-

- ❖ Cash at Tribunal Office itself; or
- ❖ Postal Order; or
- ❖ Bank Draft in the name of “PENGGERUSI TRIBUNAL RAYUAN CUKAI BARANG DAN PERKHIDMATAN”

EXTENSION OF TIME FOR FILING APPEAL

- Regulation 5(1):-

The Tribunal may, upon writing application in writing in **Form C** by the appellant, extend the time for filing such appeal if the Tribunal is satisfied that it is reasonable.

- Regulation 5(3):-

Before determining the application for an extension of time, the Tribunal shall give the respondent a right to be heard.

GUIDELINES FOR FILING APPEAL

- ✓ Appellant's Details
- ✓ Grounds for Appeal: the appellant must state clearly and fully the reason as to why he does not agree with the decision made by the Director General
- ✓ Remedy sought: the appellant shall state clearly the remedy sought
- ✓ The Notice shall be signed and dated by the appellant or a representative who has been given authorization in writing. If the appellant is a registered company/business, the notice shall be signed by the Chairman, Director or Secretary or any authorized person. Unless it is an electronic application, no signature is necessary

GUIDELINES FOR FILING APPEAL (cont'd)

- ✓ Notice shall be attached with any supporting documents
- ✓ Manual application shall be completed in black ink and CTC of documents shall be sent to the Tribunal and Respondent by e-mail.
- ✓ For electronic application, the appellant is required to upload the documents and e-mail the documents to the Tribunal and the documents to the Tribunal and Respondent.

NEGOTIATION FOR SETTLEMENT

- Section 140: Negotiation for settlement
 - (1) It is appropriate for the Tribunal to assist the parties to the proceedings to negotiate an agreed settlement in relation to the appeal
 - (2) In making an assessment, the Tribunal shall have regard to any factor that is likely to impair the ability of parties to negotiate an agreed settlement
 - (3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall take effect as if it were a decision of the Tribunal
 - (4) the Tribunal shall proceed to determine the appeal if the parties are unable to reach an agreed settlement in relation to the appeal

NEGOTIATION FOR SETTLEMENT (cont'd)

- Mediation principles will be adopted:-
 - (1) Parties submit to the negotiation procedure voluntarily
 - (2) Tribunal will not force any decision upon the parties
 - (3) Tribunal will not discuss the merit of the case with the parties

REPRESENTATION AT HEARING

- Section 141: Representation at hearing
 - (a) the Appellant may conduct his case himself or may be represented by any person whom he may appoint for that purpose
 - (b) Director General may be represented by any authorized officer appointed by him

LANGUAGE

- Regulation 19:
 - (1) All Tribunals shall be in the national language.
 - (2) Tribunal may on application of any party to the proceedings, order the proceedings to be in the national language and partly in the English language.

HEARING OF APPEALS

- Regulation 6: Date of hearing of appeal
 - the Secretary shall give notice of the details of the date, time and place of the hearing of the appeal in Form D and serve such notice on the appellant and the respondent not less than fourteen days before the date of the hearing
- Regulation 17: Place of sitting
 - The Tribunal shall sit for the hearing of appeals in Putrajaya or such other places as the Tribunal thinks appropriate

HEARING OF APPEAL (cont'd)

- Section 135: Panel members hearing the appeal
 - (1) sitting of every appeal shall consist of a panel of three (3) members
 - (2) the Tribunal shall be presided by the Chairman or Deputy Chairman
 - (3) the decision of the panel shall be decided in accordance with the opinion of the majority of the members
- Section 136: Hearing by a single member
 - If the Chairman deems it fit in the interest of achieving the expeditious and efficient conduct of appeal, the proceedings of the appeal shall be presided over by any of the persons sitting alone:-
 - (a) the Chairman;
 - (b) any of the Deputy Chairman;
 - (c) any other member of the Tribunal

HEARING OF APPEAL (cont'd)

- Rule 8: Non-appearance of parties
- Rule 8(1)- If appellant does not appear but the respondent appears at the hearing of appeal, Tribunal may if satisfied notice has been served, dismiss the appeal.
- Rule 8(2)-If respondent does not appear but the appellant appears at the hearing of appeal, Tribunal may if satisfied notice has been served
 - (a) proceed with hearing in the absence of respondent
 - (b) adjourn the hearing to a later date
- Rule 9: Setting aside decision
- Rule 9(1)- Decision may be set aside by Tribunal on application of the aggrieved party using Form F

HEARING

- Regulation 11: Hearing stage
 - (1) the appellant shall be entitled to adduce evidence, call any witness or produce any document, record, goods or thing in support of his case
 - (2) The respondent shall present his case and may adduce evidence, call any witness or produce any document , record, goods or thing in support of his case
 - (3) After parties have closed their respective cases, a brief oral or written submission may be made by the respondent and later the appellant.
- Regulation 12: Adjournment of hearing
 - Tribunal may from time to time adjourn a hearing on such conditions as it thinks just

Regulation 14: Withdrawal of appeal

Appellant may withdraw at any time by filing notice of withdrawal in Form F

EVIDENCE

- Section 142 (1): Proceedings shall be conducted without regard to formality and technicality and the tribunal may:-
 - (a) procure and receive evidence on oath or affirmation, written or oral and examine any person as a witness
 - (b) require the production of books, papers, documents, records and things
 - (c) administer the oath, affirmation or statutory declaration
 - (d) seek and receive such other evidence and make inquiries
 - (e) summon the parties or any other person to attend to give evidence to assist the Tribunal
 - (f) receive expert evidence
 - (g) direct and do all such things as may be necessary or expedient for determination of claims

EVIDENCE (cont'd)

- Section 137 – Disclosure of Interest
 - (1) duty to disclose by member of Tribunal if he or his family member has any interest in an appeal brought before the Tribunal
 - (2) Upon receipt of disclosure, the Chairman shall appoint another member to hear and dispose of the appeal

EVIDENCE

- Section 138(1) – Exclusion of Jurisdiction of Court:

Issues in Tribunal shall not be subject of proceedings between the same parties in any court unless

- (a) proceedings before the court were commenced before the appeal was lodged with the Tribunal; or
- (b) the appeal before the Tribunal is withdrawn, abandoned or struck out

CLOSED PROCEEDINGS

- Regulation 16: Proceedings to be closed
 - (1) Proceedings before the Tribunal shall be closed unless agreed otherwise by the parties to the appeal
 - (2) Tribunal may authorize the publication of the facts of the case and reasons for the decision without disclosing the identity of the appellant concerned

DECISION

- Section 144:
 - (1) the Tribunal shall make its decision without delay and where practicable, within sixty (60) days from the first day the hearing before the Tribunal commences
 - (2) the Tribunal shall either **affirm** the decision, **vary** or [**set aside and substitute**] the decision of the Director General
 - (3) Tribunal shall give its reason for its decision in any appeal heard
- Section 146 (1) : Decision of Tribunal is **binding** on all parties to the proceedings and deemed an order of a Session Court and enforced accordingly by the parties

DECISION (cont'd)

- Regulation 15:
 - (1) Decision made by the Tribunal shall be in Form E
 - (2) Decision shall be served on each party to the proceedings
 - (3) Where the decision has been served on the parties, any party may within twenty (28) days from the date of the decision, request the Tribunal to furnish him the written reasons of the decision and the Tribunal shall, within thirty (30) days furnish the party such written reasons

DISPOSAL OF APPEAL

- Section 147: the Tribunal shall dispose of an appeal by way of:-
 - (a) agreed settlement reached by the parties
 - (b) withdrawal by the appellant
 - (c) orders by the Tribunal

APPEAL TO THE HIGH COURT

- Section 148:
 - Any party aggrieved by the decision of the Tribunal shall have the right of appeal from the decision of Tribunal to the High Court on a question of law or of mixed fact and law

COST AND EXPENSES

- Section 151: Tribunal shall only make an award as to costs and expenses and shall have full power to determine by whom and to what extent the costs and expenses are to be paid.
 - (a) against appellant if he had conducted his case in a frivolous or vexatious manner
 - (b) against any party to the appeal if it is unjust and inequitable not to do so
- Regulation 21:
 - (1) Each party shall bear its own cost
 - (2) Tribunal may order the appellant to pay cost to the Tribunal a sum not exceeding RM 10,000.00 if the Tribunal is of the opinion that the appeal was scandalous, frivolous and vexatious and affirm the decision of the Director General

STATISTICS ON DISPOSAL OF CASES FOR 2015 - 2016

NO.	TYPE OF CASES	2015	2016
1.	Penalty for late registration - S.21 GST Act 2014 (ACT 762)	3	8
2.	Refusal to de-register - S.26 GST Act 2014 (ACT 762)	6	5
3.	Input Tax Credit against Output Tax - S.38 GST Act 2014 (ACT 762)	-	2
4.	Failure to furnish tax return and/or make payment - S.41,43 GST Act 2014 (ACT 762)	9	20
5.	Refusal to accept registration - S.21 GST Act 2014 (ACT 762)	-	2

6.	Premature appeal (Matter is pending review by DG of Customs)	1	1
7.	Non-appealable matters - S.127 and Fourth Schedule GST Act 2014 (Act 762)	9	10
8.	Marginal Scheme Application - Item 77 of Guide On Relief For Second Hand Goods (Margin Scheme)	2	-
9.	Classification of GST Supply - standard or exempt rates ?	1	-
10.	Lack of details in the Ground of Appeal	-	2
TOTAL		31	50

STATISTICS ON STATUS OF CASES AS AT 30TH MAY 2016

NO.	STATUS	2015	2016
1.	Disposal	31	50
2.	Hearing/Continued Hearing	-	20
3.	Application Rejected	403	154
4.	Pending Payment of Fee (RM200)	-	52
5.	Appeal Withdrawn	7	15
6.	Pending Review	-	16
TOTAL		441	307



THANK YOU