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Indirect Tax Alert

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Goods and Services Tax (GST)

GST Board of Review's decision in the case of GHY v Comptroller of GST

This alert provides a summary of the outcome of the GST Board of Review's decision in the case of GHY v the Comptroller of Goods and Services Tax [2023] SGGST 1.

Background

The Appellant is a Singapore incorporated company that claimed to have purchased Osperia Micro Secure Digital Cards (SD cards) and Osperia flash drives (collectively referred to as the Osperia goods) from a local GST-registered supplier and subsequently supplied them to two overseas customers.

As a GST-registered business, the Appellant has declared approximately S$1,300,000 of input tax claims relating to the purchase of the Osperia goods in its GST returns for the period 1 April 2016 to 31 August 2016 (Relevant Period).

The Comptroller of GST (Comptroller) disallowed the Appellant's input tax claims on the basis that there was no conclusive evidence that a supply of the Osperia goods has occurred and asserted that these were not genuine business transactions. The Appellant appealed to the GST Board of Review (Board) on the eligibility of the input tax claims but the appeal was dismissed.

GST issue in dispute

The key issues in the appeal are whether:

- There were actual supplies of the Osperia goods (as stated in the invoices) which the Appellant claimed to have purchased from the local GST-registered supplier.
- There were actual supplies of the Osperia goods (as stated in the invoices) which the Appellant claimed to have sold to the overseas customers.

The Appellant's arguments

The Appellant made several arguments during the appeal to justify the input tax claims, amongst others:

- The current provisions in section 20(2A) of the GST Act that only came into operation in 2021 to combat Missing Trader Fraud (MTF) schemes resulting in loss of government revenue was not in effect during the Relevant Period. The Appellant stated that allowing the Comptroller to deny any input tax claims before 2021 on the grounds that the taxpayer should have known about the alleged fraud would essentially be giving effect to the provision before it was enacted.

- As there was no statutory duty or market practice in 2016 requiring the Appellant to trace the source of the Osperia goods purchased beyond its immediate supplier, the Appellant should be entitled to claim the input tax as it had complied with the requirement of maintaining tax invoices issued by the local GST-registered supplier to support the input tax claims and the Osperia goods onward supplied to the overseas customers were exported from Singapore.

- The Appellant contended that the Comptroller had not been able to prove that the supplies of the Osperia goods made was fraudulent and that the Appellant knew of or ought to have known about the alleged fraud.

- Lastly, the Appellant pointed that if the Comptroller's argument succeeds, the standard of care imposed on taxpayers would be too onerous and stringent because they would be required to look beyond their immediate supplier and determine the origin of the goods purchased.

The Comptroller's position

Responding to the Appellant, the Comptroller made the following key arguments:

- According to the Comptroller's position, the Appellant bears the burden of proving that the input tax claims are allowable, and this legal burden continues through to the appeal. As a result, to justify the dismissal of the input tax claims, the Comptroller is not required to prove that the supply of the Osperia goods was fraudulent. The onus was on the Appellant to prove, on a balance of probabilities, that the Osperia goods were in fact supplied.

  The Comptroller contended that the Appellant failed to prove that there were genuine supplies of the Osperia goods and hence the input tax claims should be disallowed. The Comptroller provided various reasons including:

  - There were serious doubts on the authenticity of the Osperia goods as they were not available for sale in the market and both directors of alleged upstream suppliers denied ever transacting in such goods.

  - Numerous red flags were also highlighted on the characteristics of the sales arrangement between the Appellant and the overseas customers such as no due diligence checks were performed and there was no written contract despite the substantial sums involved.

- Although the Comptroller did not prosecute any of the parties involved in the above supply chain for fraud, it was alleged that there was evidence to suggest that the supplies of the Osperia goods was not genuine. The Comptroller is of the view that the input tax claims should be disallowed on the basis that the Appellant failed to prove that it traded the Osperia goods as claimed in the invoices.

The Board's decision

The Board agreed with the Comptroller's position that the legal burden is on the Appellant to prove that the supplies of the Osperia goods were genuine business transactions in order to recover the input tax. As the GST collection system operates on a self-assessment basis and the Comptroller is not privy to the details of the sales arrangement between the parties, it therefore should not be required to prove that the goods as stated in the invoices were not supplied.

The Board is also not convinced by the evidence submitted by the Appellant to prove that it had purchased the Osperia goods from the local GST-registered supplier and subsequently supplied them to the overseas customers. Concerns on the supplies of the Osperia goods were raised by the Comptroller but the Appellant did not offer additional evidence to support its argument that these business transactions were genuine.

With the above, the Board dismissed the Appellant's appeal to recover the input tax relating to the purchase of the Osperia goods.

Key takeaways

Businesses must ensure that they understand the legislative requirements and input tax claim conditions under the GST Act. Many businesses assume that it is sufficient to simply maintain documentary evidence to support their input tax claims. The Board's decision serves as an example on how businesses may still fail to recover input tax despite maintaining some relevant supporting documents.

This case also reinforces the need for businesses to ensure that a supply has indeed taken place for the purpose of claiming the input tax. If businesses are unable to adhere to the statutory requirements and provide evidence that a genuine transaction has taken place, the Comptroller could potentially deny the input tax claims.

Lastly, businesses should be aware of the arguments raised and decision made in this particular case. With the new input tax requirements as set out under Section 20(2A) of the GST Act, businesses would now need to perform reasonable due diligence checks to avoid being unwittingly caught up in a MTF scheme.

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