

# Goods and Services Tax (GST)

This alert provides a summary of the outcome of the High Court's decision in the case of THM International Import & Export Pte Ltd v the Comptroller of Goods and Services Tax [2024] SGHC 97.

High Court's decision in the case of THM International Import & Export Pte Ltd v Comptroller of GST

## 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 the Osperia goods to two overseas customers.

The Appellant made approximately S\$1.3 million 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). These claims were disallowed by the Comptroller of GST (Comptroller) 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 (see *GHY v The Comptroller of Goods and Services Tax [2023] SGGST 1*).

The Appellant appealed against the decision of the Board to the High Court but the appeal was dismissed.

This tax alert is an update of a [previous tax alert](#) published on 31 October 2023 covering 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*.

## The Appellant's arguments

The Appellant submitted that the appeal should be allowed on three grounds:

- ▶ The Board applied the provisions in section 20(2A) of the GST Act that only came into operation in 2021 to combat Missing Trader Fraud (MTF) schemes was not in effect during the Relevant Period. As these provisions were inapplicable to the present case, there was no legal basis for the Board to deny any input tax claims before 2021 on the grounds that the Appellant should have known about the alleged fraud.
- ▶ The Board failed to prefer the Appellant's direct evidence on the existence and supply of the Osperia goods over the circumstantial evidence led by the Comptroller on the various red flags surrounding the supply of the Osperia goods.
- ▶ The Board required the Appellant to submit evidence concerning facts over and beyond what it had actual knowledge of. Such facts included the identities of the missing personalities in the supply chain and the information on the origin of the goods. The Appellant relied on section 108 of the Evidence Act 1893 (2020 Rev Ed) (EA), which it claimed ought to apply in this case to absolve it of the burden of proving matters outside of its knowledge.

## The Comptroller's position

Responding to the Appellant, the Comptroller submitted that the appeal should be dismissed on the following grounds:

- ▶ The Comptroller and the Board must always satisfy themselves that an alleged supply of goods upon which an input tax claim is made does in fact exist. Thus, the Board had the legal standing to make a finding as to the non-existence of the supply of the Osperia goods and deny the Appellant's input tax refund claim on that basis. Contrary to the Appellant's suggestion, the Board did not, and did not need to, rely on the knowledge-based approach under the new provisions to deny the Appellant's input tax claim.
- ▶ The Comptroller contended that the Board's finding that there were no actual supplies of the goods was a finding of fact, which generally falls outside the scope of appeals to the High Court under section 54(2) of the GST Act.

- ▶ On the merits of the appeal, the Board was correct to find on the evidence that the supplies did not exist.
- ▶ Section 108 of the EA does not apply in this case as, amongst other reasons, the Board was not a party to the transactions and the Appellant could have known of the missing personalities in the supply chain and the origins of the goods had it done proper due diligence. The Board was also correct in identifying the deficiencies in the Appellant's evidence concerning the genuineness of the transactions in its finding that the Appellant had failed to discharge its burden of proof.

## The High Court's decision

The High Court concluded that the grounds of appeal raised by the Appellant were outside the permissible scope of appeal as set out in section 54(2) of the GST Act.

It was mentioned that apart from a de minimis threshold that the appeal must relate to an amount due or payable to the appellant of at least S\$500, the right of appeal is only in respect of "any question of law or of mixed law and fact".

In the Supreme Court of Canada's case *Director of Investigation and Research, Competition Act v Southam Inc [1997] 1 SCR 748*, it was stated that questions of law are questions about what the correct legal test is, while questions of fact are questions about what actually took place between the parties. Questions of mixed law and fact are questions about whether the facts satisfy the legal test.

The primary basis of the appeal was the Appellant's challenges to the Board's findings of fact that there had been no supply of the Osperia goods. The Appellant's appeal only raised questions of fact and no questions of law was raised. The Appellant has also mischaracterised the Board's reasoning and attempted to characterise a pure finding of fact as a legal determination. However, the Board did not deny the Appellant's input tax claim because of its constructive knowledge of fraudulent activity conducted upstream. Rather, the Board had inferred from, amongst others, an inability to trace the Osperia goods to the putative manufacturer and the suppliers that the Osperia goods did not exist.

Following the above, the High Court dismissed the appeal.

## Key takeaways

The case highlights the importance of maintaining clear and provable evidence in support of any input tax claims. 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.

With the new input tax condition on the Knowledge Principle in respect of MTF arrangement as set out under section 20(2A) of the GST Act, businesses should adopt the following three broad pillars in the application of the Knowledge Principle to avoid being unwittingly caught up in a MTF arrangement:

- Pillar 1: Identify and assess risk indicators associated with the transactions.
- Pillar 2: Perform due diligence checks for new business arrangement and know your customers and suppliers.
- Pillar 3: Take adequate and appropriate actions and precautions in response to the risk indicators and the results of the checks.

It should be noted that the MTF arrangement is one of the key GST compliance risk areas identified by the IRAS and hence one of the current areas of audit focus by the IRAS.

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