



GST Missing Trader Fraud

Demystifying the decision in GHY v Comptroller of GST

20 October 2023, Friday

Facilitated by:
Accredited Tax Practitioner (Income Tax & GST) Ma HanFeng

KEY TAKEAWAYS

- To successfully make input tax claims, there must be actual supplies of goods or services.
- Businesses, not the Comptroller, bear the burden to prove that they have actually engaged in the trading transactions as stated in the transaction documents.
- Businesses should understand their obligations and undertake the necessary due diligence to safeguard their own business transactions.

Businesses should understand their obligations and undertake the necessary due diligence to safeguard their own business transactions.

The recent Goods and Services Tax (GST) Board of Review's (the "Board") decision in *GHY v the Comptroller of GST* [2023] SGGST 1 ("*GHY*") relates to the disallowance of input tax claims for supplies that allegedly took place between 1 April 2016 to 31 August 2016 (the "Relevant Period").

"While the *GHY* decision concerns transactions that took place before the introduction of section 20(2A) to combat MTF (missing trader fraud), it remains relevant today as an alternative basis upon which the Comptroller can deny GST," shared Accredited Tax Practitioner (Income Tax & GST) Ma HanFeng, Tax Partner, Oon & Bazul LLP, at a recent webinar organised by the [Singapore Chartered Tax Professionals](#). "Specifically, the *GHY* case illustrates how input tax claims may be denied when there is insufficient evidence to prove that there were actual supplies as stated in the invoices."

Background

The Appellant, GHY, is a Singapore-incorporated company involved in the wholesale trade business. It claimed to have acquired "Osperia" Micro Secure Digital Cards and "Osperia" flash drives (collectively known as the "Osperia goods") from a local supplier, and thereafter exported the Osperia goods to two overseas customers in Malaysia.

The Appellant had declared a total of S\$1,341,557 in input tax claims in relation to the purchase of the Osperia goods in its GST returns for the Relevant Period. The Comptroller denied the above claims on the basis that there was no conclusive evidence of supply, and that these were not genuine business transactions.

The Appellant's Main Arguments

SUFFICIENT PROOF TO SHOW BUSINESS TRANSACTIONS WERE GENUINE

The Appellant argued that it had sufficiently demonstrated that the business transactions were genuine by providing documentary evidence (for example, purchase orders and tax invoices).

NO DUTY ON THE APPELLANT TO PROVE THE SOURCE OF THE OSLERIAN GOODS

The Appellant argued that as long as a supply of goods was made in the course of its business and such goods were exported, it was entitled as a matter of law to the refund of input tax from the Comptroller. This is because there was no statutory duty placed on the Appellant to prove the source of the Osperia goods or to conduct due diligence.

The Comptroller's Main Arguments

THE BURDEN OF PROOF

The Comptroller argued that the Appellant bears the burden of proof to show that input tax is claimable. In other words, the Comptroller is not required to prove that the trading transactions were in fact sham or fraudulent transactions (such as an MTF scheme), or to prove whether the Appellant knew, or should have known, that it was a participant in an MTF scheme.

However, evidence which suggested that the Appellant had knowingly participated in, or was wilfully blind to an MTF scheme, may cast doubt on the genuineness of the purported transactions in question.

THE TAXPAYER FAILED TO PROVE THAT THERE WERE GENUINE TRANSACTIONS

The Comptroller contended that the Appellant had failed to prove that there were genuine supplies of the Osperia goods, and hence, the input tax claims should be disallowed.

THE COMPTROLLER FAILED TO PROVE THAT THE SUPPLY OF GOODS WAS FRAUDULENT OR A SHAM

The Appellant submitted that, having submitted comprehensive documentary evidence and witness testimony to show that the supply of goods is genuine, the evidential burden has shifted to the Comptroller to prove that the business transactions are not genuine.

The Appellant also contended that the Comptroller had failed to prove that the supplies of the Osperia goods made were fraudulent and that the Appellant knew, or should have known, about the fraud. In any case, given that section 20(2A) of the GST Act was enacted after the Relevant Period, the Appellant expressed doubt whether the Comptroller should even be permitted to deny input tax claims on the basis that the Appellant knew, or should have known, about an arrangement to cause loss of public revenue.

The Comptroller's reasons include:

- Numerous red flags on the characteristics of the sale arrangement. For example, the suppliers and customers were already pre-sourced without any effort required on the Appellant's part. The Appellant also did not bear any commercial risk.

NOT UNFAIR TO DISALLOW THE TAXPAYER'S INPUT TAX CLAIMS

The Comptroller argued that the Appellant's failure to conduct due diligence and safeguard its own commercial interest renders it a reckless, or grossly negligent, trader. Had the Appellant been the victim of a fraud, it should look to its supplier (and not the Comptroller) to make good its losses.

The Board's Consideration And Decision

WHETHER THE TAXPAYER HAS DISCHARGED ITS BURDEN OF PROOF

The Board agreed with the Comptroller that the burden of proof should be placed on the Appellant as Singapore's GST collection system operates on a self-assessment basis, and the Comptroller is not privy to the contemporaneous circumstances or details behind the purported transactions.

The Board was 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. It was noted that the Comptroller has cast sufficient doubt on the account put forth by the Appellant, but the Appellant did not offer additional evidence to support its argument that these business transactions were genuine. Accordingly, input tax cannot be claimed as there was no actual supply of goods as stated in the tax invoices.

Key Takeaways

GENUINE SUPPLY REQUIRED FOR INPUT TAX CLAIMS

The GHY case illustrates that the mere possession of tax invoices does not necessarily entitle one to claim input taxes.

To successfully make input tax claims, there must be actual supplies of goods or services. Otherwise, the Comptroller can deny such input tax claims even if businesses have paid GST to their suppliers and/or have tax invoices on the alleged transactions.

WHETHER THE COMPTROLLER OF GST NEEDS TO PROVE FRAUDULENT OR SHAM TRANSACTIONS

The Board highlighted that the Comptroller need not prove the existence of an MTF scheme, and that it was sufficient for the Comptroller to simply rebut the evidence brought forth by the Appellant.

The Board also indicated that, had the Appellant truly suffered loss as a result of a fraud perpetrated on it by an upstream supplier, its legal recourse should lie against the said supplier (and not the Comptroller).

For the reasons above, the Board dismissed GHY's appeal.

BURDEN ON BUSINESSES TO PROVE THAT THEY HAVE ENGAGED IN THE TRADING TRANSACTIONS

The burden is on businesses, not the Comptroller, to prove that they have actually engaged in the trading transactions as stated in the transaction documents. Input tax claims may be denied even though the businesses are not knowing participants of, or are complicit in, an MTF scheme.

Ultimately, businesses should understand their obligations and undertake the necessary due diligence to safeguard their own business transactions.

Please click [here](#) to rate this article.



Mr Ma HanFeng

Tax Partner

Oon & Bazul LLP

Accredited Tax Practitioner (Income Tax & GST)

Email: hanfeng.ma@oonbazul.com

This technical event commentary is written by SCTP's Tax Head, Accredited Tax Advisor (Income Tax) Felix Wong and Tax Manager, Joseph Tan. For more insights, please visit <https://sctp.org.sg/Tax-Articles>.

This article is intended for general guidance only. It does not constitute professional advice and may not represent the views of Oon & Bazul LLP, the facilitator or SCTP. While every effort has been made to ensure the information in this article is correct at time of publication, no responsibility for loss to any person acting or refraining from action as a result of reading this article or using any information in it can be accepted by Oon & Bazul LLP, the facilitator or SCTP.

SCTP reserves the right to amend or replace this article at any time and undertake no obligation to update any of the information contained in this article or to correct any inaccuracies that may become apparent. Material in this document may be reproduced on the condition that it is reproduced accurately and not used in a misleading context or for the principal purpose of advertising or promoting a particular product or service or in any way that could imply that it is endorsed by Oon & Bazul LLP, the facilitator or SCTP; and the copyright of SCTP is acknowledged.

© 2024 Singapore Chartered Tax Professionals. All Rights Reserved.