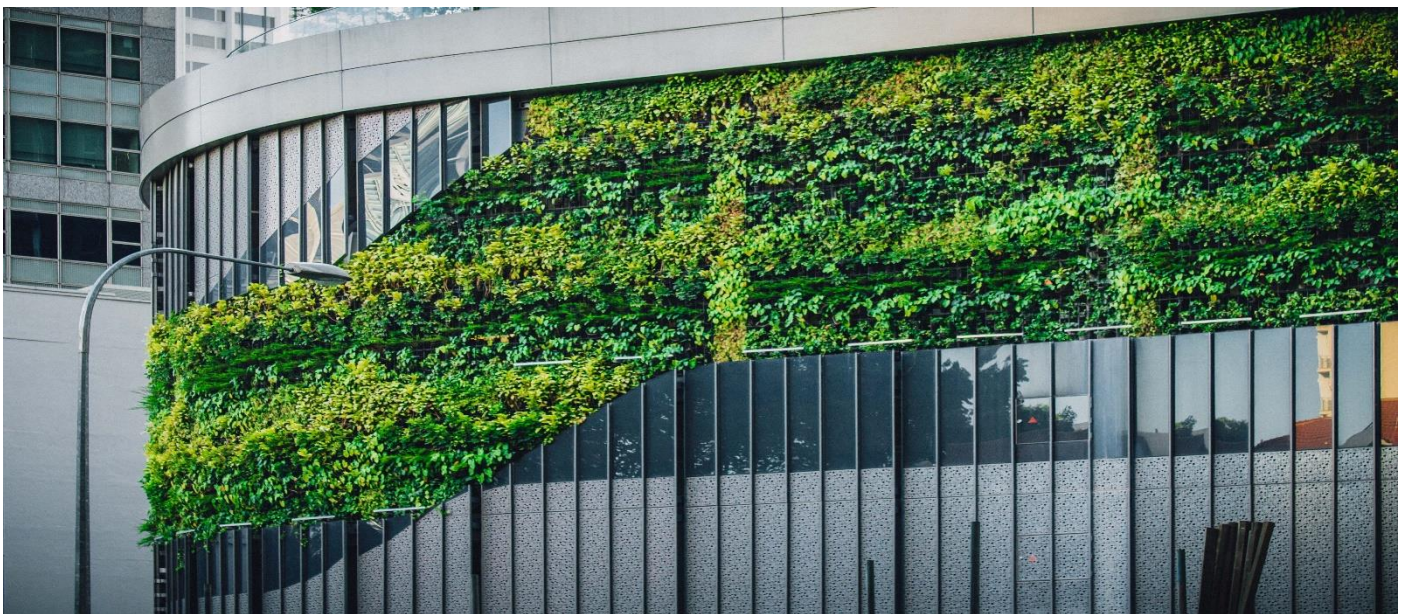


TAX ALERT

ENVIRONMENTAL PROTECTION FEE



Prism Chambers has successfully represented Gamma Materials Ltd in one of the first cases to be heard by the Assessment Review Committee on the environmental protection fee.

Gamma Materials Ltd v Director-General, Mauritius Revenue Authority

On 17 November 2022, the Assessment Review Committee (the “Committee”) delivered one of the very first rulings addressing the application of the environmental protection fee (“EPF”) in the case of Gamma Materials Ltd v Director-General, Mauritius Revenue Authority (ARC/EPF/03-19).

The Committee clarified the scope of the imposition of the EPF, the rationale behind such types of fees/taxes and on what it was actually applicable to. The ruling now stands as persuasive authority as to the application of the EPF since the Mauritius Revenue Authority (“MRA”), having appealed the judgment last year, has since withdrawn its appeal.

What is the Environmental Protection Fee?

The EPF is a lesser-known form of Pigovian tax, imposed to implement the “Polluter Pays Principle”. The onus is on the polluter to pay the tax for the harm being caused to the environment. The EPF is imposed pursuant to section 66(1)(a) of the Environmental Protection Act 2002 (the “Act”) which stipulates that the EPF “*shall be levied on every designated establishment.*”

“Designated establishment” is defined as “*premises, or a set of premises, used in connection with the carrying on of any of the activities specified in Part I of the Eighth Schedule*”. The case concerned the activities related to the production of aggregates, blocks, precast products, and ready-mix concrete by the taxpayer.

The dispute between Gamma Materials and MRA

The issue in dispute concerned the subject of the application of the EPF applied; while the MRA sought to apply the EPF to the turnover of the company, the latter argued that it only applied to the (polluting) activities conducted within the premises of the taxpayer, as specified in Part I of the Eighth Schedule of the Act. The MRA relied on section 66(2)(a) of the Act which provides that “ *the manager of every designated establishment ..., shall, after the end of every month, pay to the Director-General on its monthly turnover in respect of that month, a fee at the corresponding rate ...*”.

Further to its reading of the above section, the MRA determined that, the EPF should be levied on the total turnover of the manager of the designated establishment, which it equated to being the company itself. The taxpayer’s position was that the EPF could not be levied on the turnover of the company as a whole as such an approach would encompass the turnover of other non-polluting activities, in contradiction with the purpose of the Act to tax polluting activities.

The Committee set aside the determination of the MRA on the basis that the intention of the legislator was to impose the EPF on the “premises” where polluting activities were being conducted as opposed to the owner of the premises or even the activities themselves. The Committee refrained from commenting on the modalities of such an imposition and restricted itself to the interpretation of the law as enacted by Parliament.

Therefore, the EPF was held to be leviable on the premises or set of premises where the polluting activities specified in Part I of the Eighth Schedule of the Act were being carried out. Although the MRA disagreed with the ruling of the Committee and proceeded to lodge an appeal before the Supreme Court, it has since withdrawn its appeal.

The ruling in Gamma Materials Ltd now stands as persuasive authority regarding the application of the EPF. It suggests that, in practice, a clear distinction is to be made between the premises where the polluting and non-polluting activities are to be carried out in order for the EPF not to apply to the any non-polluting activity. The ruling also re-affirms that one of the cardinal rules of statutory interpretation whereby where there is no ambiguity in the law or where its application does not present any incongruity, a literal approach to the interpretation of the law should be favoured.

Johanne Hague and Medina Torabally appeared as counsel for Gamma Materials Ltd.

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About Prism Chambers

Prism Chambers is a full-service business law firm based in Mauritius which specialises in all aspects of revenue law.

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