

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL
CIVIL APPEAL NO 256 OF 2017
(ON APPEAL FROM HCAL 102/2016)**

BETWEEN

KWP QUARRY COMPANY LIMITED

Applicant

and

INLAND REVENUE BOARD OF REVIEW

Respondent

THE COMMISSIONER OF INLAND REVENUE

Interested Party

Before: Hon Kwan VP, Yuen JA and Barma JA in Court
Dates of Written Submissions: 15 and 23 December 2021 and
4 January 2022
Date of Judgment: 16 February 2022

J U D G M E N T

Hon Barma JA (giving the Judgment of the Court):

1. By a judgment dated 11 April 2019, reasons for which were handed down on 3 November 2021, this court (Kwan VP, Yuen JA and Barma JA) dismissed the appeal of the applicant against the judgment of Anthony Chan J (“the Judge”) dated 10 October 2017, by which the Judge dismissed the applicant’s application for judicial review of the decision of the Inland Revenue Board of Review dated 8 April 2016 refusing to state a case on a question of law for the opinion of the Court of First Instance under the then prevailing provisions of s 69 of the Inland Revenue Ordinance, Cap 112.

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2. The facts and issues in the appeal, as well as the court’s reasons for dismissing it, are set out in our judgment.¹ We will not repeat them here.

3. The applicant subsequently applied, by an Amended Notice of Motion filed on 1 December 2021, for leave to appeal to the Court of Final Appeal. Both the applicant and the Commissioner of Inland Revenue (as interested party) have filed written submissions in respect of the application. Having considered the Amended Notice of Motion and the parties’ submissions, we are of the view that this application should be dealt with on paper, in accordance with the usual practice.

4. The Amended Notice of Motion does not put forward any questions of great general or public importance arising from the substantive appeal. Leave to appeal to the Court of Final Appeal is sought solely on the “or otherwise” ground under section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance, Cap 484.

5. As rightly acknowledged by the applicant in its written submissions dated 15 December 2021, it is the practice of this court to defer to the Appeal Committee of the Court of Final Appeal in respect of any question as to whether leave to appeal should be granted on the “or otherwise” ground. We therefore do not think it appropriate to comment on the merits of the present application and shall simply leave it to the Court of Final Appeal for determination.

6. For the foregoing reasons, this application must necessarily be dismissed.

7. The application having been dismissed, we see no reason why costs should not follow the event. We therefore order that the applicant to pay the Commissioner’s costs of this application. Having considered the statement of costs lodged by the Commissioner, we assess such costs on a gross sum basis in the amount of HK\$125,000.00.

(Susan Kwan)
Vice-President

(Maria Yuen)
Justice of Appeal

(Aarif Barma)
Justice of Appeal

Written Submissions by Mr Clifford Smith SC and Mr Justin Lam, instructed by Linklaters,
for the applicant

Written Submissions by Ms Yvonne Cheng SC, instructed by Department of Justice, for the
interested party

¹ See [2021] HKCA 1627