



THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 063 OF 2023

CHINA NORTH MACHINE COMPANY LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. GRACE SAFI

RULING

I. Introduction

1. This ruling is in respect of an application, challenging an Administrative Additional VAT Assessment of **Shs. 1,265,705,370**. The Assessment arises out of a dispute, relating to the construction of **S. 24(6)** of the **VAT Act** and **Paragraph 1(z)** of **Schedule 3** of the **VAT Act**.

II. Background Facts

2. The Applicant, a Private Limited Liability Company, incorporated in Uganda, is an importer, wholesaler and retailer of agricultural machinery and other equipment. Following an application for a VAT Input refund, the Respondent conducted an audit on the Applicant and raised a VAT assessment of **Shs. 1,768,793,502** on the grounds that supplies made by the Applicant to **Sino-hydro Corporation Ltd** and **China International Water and Electric**

Corporation, who were contractors of the Karuma and Isimba hydro-electric dam projects, were not deemed supplies under **S. 24(6)** of the **VAT Act**.

3. The Applicant's objection to the VAT assessment was disallowed by the Respondent on the grounds that the supplies in question were exempt supplies under the provisions of **Paragraph 1(z)** of **Schedule 3** of the **VAT Act**, and could therefore not qualify as deemed supplies for the purposes of **S.24 (6)** above.

III. Issues of Determination.

4. The following issues were set down for determination.
 1. Whether the applicant is liable to pay the VAT assessed?
 2. What remedies are available to the parties?

IV. Representation and Evidence

5. The Applicant was represented by Mr. Bright Natumanya and Ms. Damalie Tibugwisa, while the Respondent was represented by Ms. Charlotte Katutu, Ms. Eseza Victoria Sendege and Mr. Simon Peter Orishaba.
6. The Applicant's sole witness (AW1) was, its tax consultant, Mr. Joshua Tumwine Bamwine. The witness testified that the Applicant's core business is the importation and supply of machinery from China to clients in various sectors.
7. The witness testified that between the periods 2017 to 2022, it imported goods for its business. AW1 further stated that the Applicant paid VAT on these goods at importation since they were taxable supplies.
8. The witness stated that the Applicant was automatically entitled to input tax credit for all taxable supplies made by it during the tax period on a monthly

- basis. The witness testified that the goods imported and supplied by it, did not fall under any category of exemptions.
9. The witness testified that the Applicant supplied the goods in question to the contractors on the understanding that they qualified for deemed VAT on the basis that they were constructing aid funded projects, which fact also made the Applicant a subcontractor.
 10. The witness testified that because the goods in question were Standard rated at the time of importation, the Applicant paid VAT on the goods in the expectation that they would charge VAT at the time of sale.
The witness stated that the goods in question were sold to Sinohydro Corporation Ltd and China International Water and Electric Corporation.
 11. AW1 stated that the equipment supplied to these two entities as contractors of hydro-electric power aid-funded projects at Karuma and Isimba-Bujagali Power projects.
 12. The witness testified that at the time of the supply of the goods in question the Applicant realized that both contractors were VAT exempt because they were contractors of hydro-electric power projects in accordance with Paragraph 1(dda) of the Second Schedule of the VAT Act, accordingly the Applicant issued all its tax invoices, purchase orders and contracts without VAT.
 13. The witness stated that it also discovered that the projects for which the goods were supplied were aid-funded government projects.
 14. The witness testified that in February 2022, the Applicant filed a cash refund return for the period in question. AW1 testified that this return triggered a refund tax audit and gave rise to the assessment in question. The witness testified that at the audit it was established that the Applicant had not apportioned the input tax in accordance with **S. 28(7)** of the **VAT Act**.
 15. The witness testified that the Applicant believing that the provisions of S. 28(7) disadvantaged it, applied to the Respondent for approval to apply the Standard Alternative Method of Apportionment.

16. The witness stated that the Respondent notified the Applicant by a letter dated 13 October 2022, that its total liability for the period **1 January 2017 to 28 February 2022**, stood at **Shs. 1,266,548,128.38**. The witness stated that the Applicant immediately initiated engagements with the Respondent with a view to having its VAT liability adjusted on account of supplies made by the Applicant to the above mentioned contractors.
17. The witness further stated that on **30 January 2023**, the Respondent wrote to the Applicant rejecting the Applicant's claim for input tax credit. The witness stated that on 29 March 2023, the Respondent issued a Third Party Agency Notice.
18. The respondent's sole witness (RW1), was Mr. Fred Kyomuhendo, an officer in the Respondent's Independent Review of Objections, Domestic Taxes Department. The witness testified that he participated in the issuance of the objection decision under review.
19. RW1 testified that following an application for a VAT refund in February, 2022, the Respondent undertook a VAT refund audit of the Applicant for the period January 2017 to February 2022.
20. The witness further testified that the audit established that the Applicant had erroneously declared supplies made by it to Sino-hydro Corporation Ltd and China Water as zero-rated supplies instead of declaring them as exempt supplies and that the Applicant had undeclared sales which were established by the discovery of a variance between the Applicant's VAT and Income Tax Sales.
21. RW1 testified that the Respondent reclassified the above-mentioned zero-rated supplies to exempt supplies and apportioned the Applicant's allowable input VAT.
22. The witness testified that on 31 August 2022, the Applicant sought the Respondent's approval to apply the Standard Alternative Method of Apportionment, which request was duly granted by the Respondent following which on 10 October 2022, the Respondent issued the Applicant with an

Administrative Additional VAT Assessment of Shs. 1,265,705,370 and Income Tax Assessment of Shs. 2,256,832,971 for the period in question.

23. The witness stated that the Applicant partially objected to the Income tax assessment and fully objected to the VAT assessment on the grounds that the supplies of the goods in question to the said contractors were not exempt but standard rated supplies made to an exempt project, the supplies in question also qualified as deemed VAT sales since they were supplied to an aid-funded project.
24. The witness stated that the Applicant contended that in these circumstances the Respondent ought not to have apportioned the input tax.
25. RW1 stated that upon a review of the Applicant's objection, it was determined that the Respondent had correctly re-classified the Applicant's supplies as exempt supplies and that its input tax had been correctly apportioned. RW1 added that the use of the Standard Alternative Method (SAM) did not yield different results from the Standard Method of Apportionment (SMA) because the VAT incurred as both purchases and Administrative expenses, were apportioned. RW1 further testified that apportionment of expenses was done so because the Applicant could not provide details of input tax directly attributable to Standard rated sales or input tax directly attributable to exempt sales and that all the Applicant's exempt sales had been made to the contractors in question from imports of Standard rated goods which had incurred input tax.
26. The witness stated that supplies made by the Applicant to the said contractors were exempt supplies which necessitated apportionment of input VAT. The witness stated further that the Applicant had already been allowed the input tax on the supplies as an expense under the Income Tax.
27. The witness stated that the Applicant is not entitled to deemed VAT because the supplies in question were exempt supplies and that according to the law deemed VAT only applies to Standard rated supplies.

28. The witness testified that the new prayer by the Applicant that VAT paid at importation be refunded was untenable as the goods in question were standard rated at the time of importation and there is no legal provision permitting such a refund.

V. Applicant's Submission

29. The applicant submitted that it has discharged the requirement to prove on a balance of probabilities that the assessment made by the Respondent is wrong and /or erroneous. The Applicant submitted that the assessments in issue are erroneous, untenable, irregular, arbitrary and illegal and should be reviewed and/or set aside.
30. The Applicant submitted further that it is entitled to an input VAT credit/refund for goods supplied to China Water and Electric Co. Ltd and Sino Hydro, as contractors of the aid-funded Karuma and Isimba Hydropower projects.
31. The Applicant submitted that it is not in dispute that it is an importer of heavy machinery and equipment which at the time of importation were classified as standard-rated goods in respect of which the Applicant paid VAT at importation.
32. The Applicant submitted that no input credit was allowed to it for the goods that it supplied to Sino Hydro and China Water and Electric Company on the grounds that the goods in question were exempt supplies.
33. The Applicant submitted that the Respondent erred in disallowing the Applicant's input credit claim as VAT on supplies made to contractors executing an aid-funded project as "deemed paid" by the contractor under S.24 (6) of the VAT Act, hence, it is entitled to claim input tax credits as the supplier of the goods in question.
34. The Applicant submitted that in determining this dispute it must be resolved by the tribunal whether the Applicant's supplies to the Contractors Sinohydro and China Water should have been treated as taxable supplies with deemed

- VAT paid under S. 24(6) or as VAT- exempt supplies under the Second Schedule.
35. The Applicant submitted that **S. 24(6)** of the **VAT Act** was introduced by the **VAT (Amendment) Act 2016** to create a special VAT treatment for aid-funded projects. The Applicant relied on the guidance of the Ministry of Finance set out under exhibit AEX05 where with effect from 1st July 2016, all suppliers were required to invoice contractors of aid-funded projects with VAT in the normal way, but the contractors would not be required to pay the VAT so invoiced for the reason that the law deems that the VAT in question has been paid by the Contractor.
 36. The Applicant submitted that it is not in dispute that the supplies in issue were made to the contractors executing aid-funded projects by the Applicant.
 37. Relying on the above guidance by the Ministry of Finance, the Applicant submitted that VAT on supplies made to contractors executing aid-funded projects by the Applicant should have been considered as “deemed paid” by the contractors under **S. 24(6)** of the **VAT Act**. Accordingly, the Applicant submitted that as a supplier it is legally entitled to claim input tax credits on related purchases.
 38. The Applicant submitted that the position taken by the Respondent creates a contradiction. On one hand, the project is treated as VAT-free for the contractors (exempt output), but on the other hand the Government retained the VAT collected at earlier stages namely on imports by the Applicant, resulting in an unintended tax burden at the supplier level contrary to the intention of the legislature.
 39. The Applicant submitted that the enactment of **S. 24(6)** of the **VAT Act** was intended to achieve the result of no VAT cost on project input but through a deemed payment mechanism rather than a straightforward exemption so as to preserve the VAT chain for suppliers while relieving the project from the burden of tax.

40. The Applicant submitted that treating its supplies as ordinary exempt supplies defeats this legislative intent and renders **S. 24(6)** above nugatory.
41. As proof of the legislative intent of Parliament the Applicant relied on report of the Parliamentary Committee on the 2016 VAT (Amendment) Bill which stated that the objective of the bill was to exempt from tax the supply of goods and services to the contractors and sub-contractors of hydroelectric power, solar power and geothermal power projects.
42. The Applicant also relied on the Uganda Tax Expenditure Report FY22/23, in support of the same argument. The Applicant submitted that the Respondent's refusal to follow **S. 24(6)** of the VAT Act is inconsistent with the concept of VAT neutrality on aid-funded projects.
43. The Applicant submitted that **S. 24(6)** be given full effect by recognizing the supplies made to Sinohydro and China Water by the Applicant as taxable supplies with VAT deemed paid by the contractor. The Applicant submitted that this would entitle the Applicant to its input tax credits and place it in a tax neutral position, as intended by the legislature.
44. The Applicant submitted that the approach by the Respondent of blanket exemption should be rejected as it ignores the provisions of **S. 24(6)** and unfairly places the burden on the Applicant.
45. The Applicant submitted that the introduction of **S. 24(6)** was intended to achieve the result of no VAT cost on project inputs through a deemed payment mechanism rather than a straightforward exemption so as to preserve the VAT chain for suppliers while relieving the project of tax.
46. The Applicant submitted that the Respondent's refusal to apply **S. 24(6)** in the instant case frustrates that mechanism and is inconsistent with the approach of VAT Neutrality on Aid projects.
47. The Applicant submitted on the authority of the decision of the tribunal in **Enviroserve (U) Ltd vs. URA, TAT Application No. 24 of 2017**, that **S. 28(1) (a) and (b), (7) and (8)** of the VAT Act entitles a taxable person to an input tax credit for all imported goods made by that person regardless of the fact that the taxable person deals in mixed supplies which are either both standard

- rated and exempt or standard-rated and zero-rated or standard rated, zero-rated and exempt.
48. The Applicant submitted that because supplies to aid-funded projects are treated as taxable supplies (**standard-rated**) by law, the supplying taxpayer retains the normal right to claim input VAT credits on related purchases or imports. The Applicant submitted on the authority of the VAT Act and on the decision in **Okuja vs Uganda Revenue Authority (Application No. TAT 72 of 2018) 2020 Ugtat 23 (15 October 2020) – Studocu** that a registered taxpayer may credit input tax on purchases to the extent the inputs are used to make taxable (non-exempt) supplies.
 49. The Applicant submitted further that there is no exception in the VAT Act which takes away a taxpayer's entitlement to input credit merely because the output VAT was "deemed" paid.
 50. The Applicant submitted that since the output transaction is categorized as taxable (and output tax has been accounted for, albeit not remitted in cash), the supplier has satisfied all the conditions for an input VAT claim.
The Applicant submitted further that the Respondent's own guidance confirms the above treatment.
 51. Relying on a Practice Note issued by the Respondent in the year 2018, the Applicant submitted that the Respondent set out the VAT procedure for aid-funded projects by explaining that when a supplier makes a taxable supply to an aid-funded project contractor, the supplier charges VAT in the invoice but the contractor pays only the price net of VAT because the law deems that the VAT on a supply to an aid-funded project to have been paid by the contractor. The supplier then accounts for the deemed output VAT in their VAT returns without having to remit the corresponding output VAT to the URA.
 52. The Applicant submitted that this guidance leaves the supplier in a net VAT refundable position since it has input VAT on its own costs but does not actually hand over output VAT. The Applicant submitted that the

Respondent's VAT return template accommodates the deemed VAT treatment by allowing the supplier to claim the excess of input tax over output tax. The Applicant submitted that in practical terms the transaction is treated similarly to a zero-rated supply for the supplier; output tax is recorded at 18% but effectively not paid, so any input tax attributable to that supply is refundable.

53. The Applicant drew parallels with **S. 24(5)** of the **VAT Act** which provides a "deemed VAT paid" rule for supplies by a mining/petroleum contractor to the licensee.
54. The Applicant submitted that in that context, it is well understood that the contractor can claim input credits and the licensee cannot claim any input since it is deemed to have paid no VAT.
55. The Applicant took the argument further by submitting that the **Fourth Schedule** of the VAT Act which provides the formula for calculating VAT payable was amended in the year 2016 to ensure that deemed-paid VAT is excluded from the output tax when computing a person's net tax liability,
56. The Applicant submitted that the law anticipated that the supplier would not actually pay that output tax, leaving their input tax potentially exceeding output tax which yields a refund entitlement.
57. In support of the above arguments, the Applicant relied on the decisions of the tribunal in **Uganda Electricity Transmission Co. Ltd vs. URA (TAT Application No. 46 of 2018)** and **Electric Power Services Ltd vs. URA (TAT No. 04 of 2022)**.
58. Relying on the concept of VAT neutrality, the Applicant submitted that expenditure incurred by a business in producing taxable output should not carry irrecoverable VAT. In support of this argument the Applicant relied on the decision of the tribunal in **Chestnut Uganda Ltd vs. URA (TAT No. 94 of 2019)**.
59. The Applicant submitted that the entire purpose of granting VAT relief for aid-funded projects is to maintain neutrality by ensuring that the VAT system does

- not increase the cost of donor-funded development projects. The Applicant submitted that if the position taken by the Respondent is upheld, it would mean that VAT collected at the time of importation becomes a final tax on the supplier, not on consumption.
60. The Applicant submitted that the supplier either has to absorb that cost by reducing its profit or pass it on by inflating the price to the contractor which ultimately burdens the project and the Government.
 61. The Applicant submitted that this outcome contradicts the neutrality principle and effectively results in the Government taxing its own development project's inputs.
 62. The Applicant submitted that the argument by the Respondent to the effect that no input credit is allowable under S. 28(7)(b) because the Applicant's sales were to an exempt entity, fails to acknowledge that the exempt status of the project was simply a method of VAT relief and not an end in itself.
 63. In this regard, the Applicant submitted that the law provided the "deemed VAT" method as an alternative to achieving relief without harming suppliers. The Applicant submitted that the approach taken by the Respondent imposes a tax burden in the middle of what should have been a tax free chain.
 64. The Applicant submitted that in order to uphold VAT neutrality, either the supplies must be zero-rated/deemed-taxed so that input VAT is recovered, or no VAT should have been charged at importation in the first place. The Applicant implored the Tribunal to be guided by the principle of VAT neutrality to interpret and apply the provisions of the VAT Act in a harmonious way.
 65. The Applicant submitted that a neutral VAT system should not burden businesses except in the case of the final consumer. The Applicant submitted that its business is not the final consumer of the goods that it supplied.
 66. The Applicant submitted that the fact that the final consumer of the goods in question was the Government was confirmed by the Respondent's own witness.
 67. The Applicant submitted that any ambiguity between S. 24(6) and the Second Schedule must be resolved in favor of neutrality. The Applicant submitted that

such an approach is consistent with Uganda's obligations to ensure a fair tax system.

68. The Applicant submitted that the Respondent does not dispute that it paid import VAT since at the time of importation no exemption had been processed.
69. The Applicant submitted that once it was established that the machinery in question were supplied for an aid-funded, VAT exempt project, equity and consistency demanded a refund or credit of the import-stage VAT.
70. The Applicant submitted that the Respondent's refusal to refund the VAT paid is a classic case of VAT cascading as the Government collected VAT on the machinery when they came into the country and now refuses to refund the input tax.
71. The Applicant submitted that the doctrine of unjust enrichment or fairness in taxation suggests that the Respondent should not unjustly benefit from a tax that was ultimately not due.
72. The Applicant submitted that taxation should neither create a double benefit for the fiscus nor a double burden on the taxpayer, as a result S. 24(6) of the VAT Act strikes a balance by ensuring that the Government foregoes output VAT to support the project, and the supplier is made whole on its inputs via credit/refund, leaving no party unjustly enriched or impoverished.
73. The Applicant submitted that the Respondent cannot keep its input VAT on the theory that the output was exempt, because the output was not exempt (it was taxed as it was deemed paid).
74. The Applicant submitted that to deny the refund would mean the Respondent keeps a windfall (input VAT collected at import or from local vendors to the supplier) while also claiming no output was due. This the Applicant added amounts to an inequitable result not supported by the VAT Act.
75. The Applicant submitted that the position taken by the Respondent does not recognize the Applicant as an official sub-contractor under the project agreement and therefore not entitled to the VAT privileges that the main

- contractors enjoyed. The Applicant submitted that this was a form over substance argument which should be rejected by the tribunal.
76. The Applicant submitted further that while it did not have a written sub contract agreement with Sinohydro/China Water, it functioned in that capacity for VAT purposes and should be treated as such.
 77. The Applicant submitted that **S. 24(6)** is not limited to formal sub-contractors but covers any supplier to the contractor for the project.
 78. The Applicant submitted further that the Respondent's audit adjustment applied the input tax retroactively to the periods in question with the result that a substantial part of the Applicant's input VAT claims for the period in question were disallowed.
 79. The Applicant submitted that it had initially claimed input VAT in full in the belief that its output VAT would be treated as taxable under deemed VAT or at least zero-rated. The Respondent however reclassified the output VAT as exempt and disallowed the input credit accordingly without giving the Applicant an opportunity to mitigate the impact through proper apportionment or corrective filings.
 80. The Applicant submitted that if the Respondent's view was that the supplies in question were exempt, it ought to have communicated that fact to the Applicant so that the Applicant would have apportioned input VAT in respect of each return thereby claiming only the portion attributable to taxable sales. The Applicant submitted that the above act by the Respondent violated its reasonable expectation and ability to comply prospectively.
 81. The Applicant submitted that the doctrine of legitimate expectation is relevant to the instant dispute because **S. 24(6)** created an expectation that the Applicant's supplies would be treated in a particular manner (Deemed VAT).
 82. The Applicant submitted that being aware of this provision, it arranged its affairs (importing and supplying the machinery) in expectation that the transaction in question would be covered by the said provision. The Applicant submitted that the refusal by the Respondent to apply the said provision shattered the said expectation.

83. The Applicant submitted further that its case is also supported by the principle of tax certainty which requires that businesses should be able to predict tax outcomes and not be ambushed by sudden changes or arbitrary interpretations.
84. The Applicant submitted that in the instant case there was evident uncertainty in the Respondent's application of **S. 24(6)** of the **VAT Act**.
85. The Applicant submitted that had it known that the Respondent would refuse to apply the said provision it would have applied for an exemption from the Ministry of Finance upfront.
86. The Applicant submitted that the Respondent cannot allow the project to be VAT free for the contractor but keep the supplier's VAT without undermining confidence in the consistency of the tax system. The Applicant submitted further that **Article 42** of the **Constitution** guarantees the right to just and fair treatment in Administrative decisions.
87. The Applicant submitted that the Respondent's decision to retain the import VAT while denying the output credit is neither just nor fair and results in double taxation.
88. The Applicant urged the Tribunal to order a VAT refund for the Applicant's import VAT on project goods and any related duties that were supposed to be exempt so as to correct the imbalance and align the outcome with the Government's policy of tax exemption for the Karuma and Isimba projects.
89. The Applicant submitted further that a specific or a later provision of the law should prevail over a general or an earlier provision in case of conflict between the two provisions. The Applicant submitted that **S. 24(6)** was a later enactment aimed specifically at aid-funded projects whereas the renewable energy exemption was more general and therefore applying the established canons of statutory construction, **S. 24(6)** overrides the general exemption for the projects in question.
90. The Applicant submitted that **S. 24(6)** was a later enactment aimed specifically at aid-funded projects whereas the renewable energy exemption was more general. The Applicant submitted that applying the established canons of

statutory construction, **S. 24(6)** overrides the general exemption for the projects in question.

91. The Applicant submitted that the intention of Parliament was to provide for the tax treatment of suppliers to contractors executing aid funded projects in the 2016 amendments. The Applicant submitted that this signaled an intent to carve out aid-funded projects from the usual exempt category and instead handle them through the deemed paid mechanism.
92. The Applicant submitted further that, the later-enacted specific provisions override earlier general provisions. The Applicant submitted that **S. 24(6)** of the **VAT Act** was introduced in the year 2016, to specifically govern aid-funded project supplies.
93. The Applicant submitted that **S. 24(6)** as the later and more specific law should prevail. In support of this argument the Applicant cited the decision in **Jaferali M. Alibhai v. Commissioner of Income Tax (1961)** for the proposition that subsequent legislation on the same subject may be referred to as an aid in construing an earlier ambiguous provision. The Applicant also relied on the decision in **Kuehne + Nagel Ltd v. URA (TAT 2022)** to justify the use of a 2022 Amendment to clarify prior law.
94. The Applicant submitted further that it is well settled that taxing statutes are interpreted strictly and any ambiguity as to the tax liability or tax exemptions are usually resolved in favor of the taxpayer. In support of this argument the Applicant cited the decision of the Court of Appeal in **URA v. Uganda Taxi Operators Association (Civil Appeal No. 13 of 2025)**.
95. The Applicant submitted further that primary legislation prevails over schedules unless explicitly stated. In support of the above arguments, the Applicant relied on the following decisions; **Republic v Kenya Revenue Authority Ex parte Universal Corporation Ltd (2020) eKLR**, **H. Young & Co. (E.A) Ltd v Commissioner (2021)**, **Rompelman v Minister of Finance (ECJ 1985)**.

96. As an alternative argument by the Applicant that the supply of goods or service to contractors or subcontractors of hydroelectric power generating projects is exempt under **S. 19(1)** and **Schedule 2 Paragraph 1(z)** of the VAT Act.
97. The Applicant submitted that although in the instant case, the supplies in question were not specifically imported for the project but were generally imported to be supplied to the public in Uganda as part of the Applicant's business, upon reclassification of the supplies made to the contractors as exempt, the same treatment should have been extended to the Applicant. In support of this argument the Applicant relied on **S. 20(1) (b)** of the VAT Act.
98. The Applicant prayed for the following remedies:
- 1) A declaration that **S. 24(6)** of the VAT Act applies to the Applicant's supplies to SinoHydro and China Water for the Karuma and Isimba projects with the result that the supplies in question should be treated as taxable supplies with VAT deemed paid by the contractors and the Applicant's output tax on the supplies in question being considered as accounted for and the Applicant being entitled to full input tax credits on its related purchases.
 - 2) In the alternative, a declaration that the Applicant's supplies were effectively zero-rated (or exempt by law) but that the Applicant being within the class of project suppliers intended to be relieved, is entitled to a refund of the VAT paid at importation.
 - 3) Order the adjustment or vacation of URA's assessments that disallowed the Applicant's input VAT. If **S. 24(6)** is applied, the Respondent's basis for disallowance vanishes with the result that the assessments for the periods in question should be vacated in full since the Applicant's input claims were proper for taxable supplies.
 - 4) In the alternative recognize the Applicant as a de facto subcontractor/supplier under the project's tax-exempt umbrella entitled to

the same VAT treatment (exemption or zero-rating) that the main contractors enjoyed.

5) Costs of the Application.

VI. Respondent's Submission

99. The Respondent submitted that the VAT assessments in issue arose from apportionment of input tax allowable after the Respondent reclassified the Applicant's supplies to Sinohydro Corporation Ltd and China Water from zero-rated sales as declared by the Applicant to exempt sales in accordance with paragraph 1(z) of the Third Schedule to the VAT Act.
100. The Application by the Applicant to the Respondent for the Standard Alternative Method of Apportionment was granted. The Applicant submitted that the Applicant's objection to the VAT assessment of Shs. 1,265,705,370 was based on the following grounds;
- 1) Firstly, that the supplies to Sinohydro and China Water were not exempt supplies but standard rated supplies made to an exempt project in accordance with paragraph 1(dda) of the Second Schedule of the VAT Act and as such, the input tax should not have been apportioned by the Respondent.
 - 2) Secondly, that the supplies qualified as deemed VAT sales on the ground that they were supplied to an aid-funded project.
101. The Respondent submitted that the supplies in question were exempt supplies because they did not qualify as taxable supplies in accordance with **S. 18** of the **VAT Act** and accordingly, they could not qualify for deeming under **S. 24(6)** of the **VAT Act**.
102. The Respondent submitted that the supplies in question are provided for in Paragraph 1(dda) of the Second Schedule now Paragraph 1(z) of the Third Schedule of the VAT Act and not S. 24(6) of the VAT Act, which is a general provision.

103. The Respondent submitted that the input tax had to be apportioned in accordance with the Standard Alternative Method. The Respondent submitted that it agreed that the disallowed input tax would be granted to the Applicant as an expense for income tax purposes.
104. The Respondent submitted that **S.1** of the **VAT Act** defines an “exempt supply” as a supply of goods and services to which section 19 applies. Relying on **S. 19(1)** of the **VAT Act** and **Schedule 3** to the **VAT Act**, the Respondent submitted that goods in question were exempt supplies because they were supplied to the contractors and subcontractors of hydro-electric power, as provided for under **Schedule 3 paragraph 1(z)** of the **VAT Act**.
105. The Respondent submitted that this fact was known to the Applicant. In support of this argument the Respondent relied on exhibit REX3, which is a correspondence between the Applicant and the Respondent dated 31st August 2021.
106. The Respondent submitted that **S. 4(a)** of the **VAT Act** provides that;
“Value Added Tax shall be charged on every taxable supply made by a taxable person.”
107. The Respondent submitted that it was not in dispute that the Applicant had both standard-rated supplies and exempt supplies and as such the input tax could not be allowed in full and thus had to be apportioned.
108. The Respondent submitted further that when its officials reviewed the machinery supplied to Sinohydro and China Water, they found that most of the machinery, were according to their description, standard-rated, and a schedule of sales was requested for the machinery that did not have proper description.
109. The Respondent submitted further that the Applicant was partly allowed to claim input tax credit as a refund, but that this did not include the supplies in question.

110. The Respondent submitted that its officials properly apportioned the input tax in accordance with the law as the supplies in question were exempt supplies. The Respondent submitted that the supplies in question did not qualify for deemed VAT. The Respondent submitted that **S. 24(6)** of the **VAT Act** which provides for deemed VAT states that *“the tax payable on a taxable supply made by a supplier to a contractor executing an aid-funded project is deemed to have been paid by the contractor provided that the supply is for use by the contractor solely and exclusively for the aid-funded project.”*
111. The Respondent also relied on **S. 18(1)** of the **VAT Act** which defines *“a taxable supply as a supply of goods and services other than an exempt supply made in Uganda by a taxable person for consideration as part of his or her business activities.”*
112. Relying on **S. 18(1)** of the **VAT Act**, the Respondent submitted that the definition of a taxable supply makes it clear that an exempt supply is not a taxable supply. The Respondent submitted that it must therefore follow that since **S. 24(6)** limits deemed VAT to only taxable supplies, the supplies in question being exempt supplies, cannot qualify for deemed VAT.
113. The Respondent submitted that the reliance by the Applicant on exhibit AEX5, a letter from the Permanent Secretary, Ministry of Finance to all Accounting Officers, dated 5th October, 2022, together with its attachments, namely; a notice issued by the Respondent in the Daily Monitor Newspaper of 28th February 2018, on the treatment of VAT on Aid funded projects and a circular from the Ministry of Finance dated 7th August, 2017, to all Accounting officers and Chief Executive Officers of State Enterprises, on the VAT treatment of taxable supplies made under aid-funded projects, do not further the Applicants case, as all these documents provide for VAT treatment in respect of taxable supplies. The Respondent submitted that nowhere do the above documents provide that exempt supplies qualify for deemed VAT status.

114. The Respondent took this argument further by submitting that even if the above guidance from the Ministry of Finance was contrary to the law such guidance would still not operate to supersede the law. In support of this argument the Respondent relied on the decision in **Rubya Investors Limited vs. URA, HCCA No. 16 of 2022**.
115. In response to the argument by the Applicant that the **Parliamentary Committee Report** and the **Uganda Tax Expenditure Report**, showed that the legislative intent was for **S. 24(6)** to apply to exempt supplies, the Respondent submitted that none of the above reports provided that deemed VAT status would apply to exempt supplies.
116. The Respondent rejected the submissions by the Applicant that there existed an ambiguity between **S. 26(6)** of the **VAT Act** and the **Second Schedule**. The Respondent submitted that the words of the above provisions are clear and unambiguous.
117. The Respondent submitted that the doctrine of legitimate expectation as asserted by the Applicant does not apply to the facts of the instant case for the reason that there has been no expression from the Respondent to the effect that the Applicant's exempt supplies would be treated as taxable supplies.
118. The Respondent submitted further that even if the doctrine of legitimate Expectation was applicable to this case, the clear provisions of the law would still override any contrary expectations, however, founded. In support of this argument, the Respondent cited the decision in **Justice Kalpana Rawal vs. Judicial Service Commission & 3 Others** and the decision in **Kenya Revenue Authority Ex parte Shake Distributors Limited (2016) E Klr, CA (2012) e KLR**.
119. The Respondent disagreed with the argument by the Applicant that its imports should be treated as exempt imports on the grounds that it qualifies as a sub-contractor of a hydro-electric power project. The Respondent submitted that the fact that the Applicant made supplies to Sinohydro and China Water, does not make the Applicant, a sub-contractor.

- The Respondent submitted that there is not sub-contract and that none was presented either to the Respondent or to the Tribunal.
120. Relying on the definition of the word 'subcontract', in **Black`s Law Dictionary, 11th Edition at page 410** and **Collins Dictionary, 7th Edition at page 1654**, the Respondent submitted that the Applicant had failed to provide any evidence that it had been awarded by the general contractor, the duty to perform part of the work or services included in the original contracts in respect of the hydro-electric power projects at Isimba and Karuma dams.
 121. The Respondent submitted that the invoices of supplies made by the Applicant to Sinohydro and China Water, cannot be taken as evidence of the existence of a sub-contract. The Respondent accordingly submitted that the Applicant was neither a sub-contractor *de jure* or *de facto* as even the supply of items integral to the performance of a contract does not suffice to make such a supplier, a subcontractor to the main contract.
 122. The Respondent rejected the argument by the Applicant that, if its supplies to Sinohydro and China Water are exempt supplies then it followed that such supplies were exempt from VAT at the time of their importation, with the result that the Applicant is entitled to a refund of the VAT paid by it at importation of the said goods.
 123. Relying on the testimony of RW1, the Respondent submitted that the Applicant deals in the importation of machinery and equipment and that at the time of importation some of the goods were standard rated while others were exempt. The Respondent submitted that the goods imported by the Applicant paid VAT at importation because they were not exempt imports and therefore VAT in respect of such imports had been rightfully paid.
 124. The Respondent also rejected the argument by the Applicant that its supplies qualified as exempt imports on the basis of **Paragraph 10** of the **5th Schedule** to the **East African Community Customs Management Act (EACCMA)**.

The Respondent submitted that the goods in question could only qualify as exempt imports if they bore that status at the time of importation.

125. The Respondent submitted that to the contrary, the goods in question, were not imported by the Applicant for supply to Sinohydro and China Water. The Respondent submitted that these goods were imported generally as goods imported by the Applicant and not specifically for the Karuma and Isimba hydro-power projects.
126. Further, relying on the provisions of **S. 52 of the VAT Act**, the Respondent submitted that in case of any inconsistency between the VAT Act and the EACCMA, the VAT Act would override the EACCMA on matters specific to VAT.
127. The Respondent submitted further that there is no legal requirement in cases where VAT has been paid at importation on standard rated goods and the supply of such goods constitutes an exempt supply, for the importer of such goods to become entitled to a refund or that the importation of the goods would be deemed to have been exempt.
128. The Respondent submitted that it is trite law that tax exemptions must be specifically provided for. The Respondent submitted that in the instant case there is not provision of the law which exempted the Applicant from paying VAT at importation. In support of this argument, the Respondent relied on the decisions in **Crane Bank vs. URA, CACA 96 OF 2012; URA vs. Siraje Hassan Kajura SCCA 9 of 2015; Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar vs. Commissioner of Central Excise and Service Tax, Alwar, Supreme Court of India, Civil Appeal No. 1482 of 2018.**
129. The Respondent submitted on the basis of the above provisions that there are no words, whatsoever, in the VAT Act that provide or even suggest that the VAT paid at importation by the Applicant was refundable because some of the goods imported were supplied to hydro-electric projects, thus taking on the character of exempt supplies.

130. The Respondent submitted that it permitted the Applicant to claim the VAT paid at importation as an expense for income tax purposes.
131. Relying on **Ss. 29(1), 32(1), 34, 34(1) (a) and 34(2)** of the **Tax Procedures Code Act**, and the decision in **URA vs. Nile Breweries Ltd & Others, TAT Misc. Applications No. 58 of 2022 and 61 of 2022**, the Respondent submitted that the Third-Party agency notices by the Respondent were properly issued.
132. The Respondent submitted that the Applicant did not make payment for the outstanding tax nor did it apply to the Tribunal for a review of the objection decision after the objection decisions were issued on 18th and 19th of January 2023.
133. The Respondent submitted that the Agency notice to Bank of Africa was only issued after a period of 70 days from the date of the issuance of the objection decision.
134. In conclusion, the Respondent summarized its submissions as follows;
- 1) The Applicant is a taxable person within the meaning of the law.
 - 2) The Applicant's supplies to Sino-hydro and China Water, were exempt supplies.
 - 3) The Applicant had both standard-rated supplies and Exempt supplies, which required apportionment of input VAT.
 - 4) The Applicant is not entitled to deemed VAT because the supplies in question were exempt supplies according to the law and deemed VAT only applies to standard-rated supplies.
 - 5) The Applicant is not a sub-contractor of a hydro-electric power plant as there is not such sub-contract in existence, neither de facto nor de jure.
135. The Applicant's new prayer for the refund of the VAT paid at importation is not applicable because the goods were standard rated at the time of importation

and there is no provision of the law permitting such refund. The Respondent prayed that the Application be dismissed with costs.

VII. Applicant's Rejoinder

136. In rejoinder the Applicant reiterated the contents of its submissions and submitted as follows.
137. The Applicant rejoined that it had discharged the burden of proof through the evidence and testimonies presented which confirmed that the supplies to the contractors were taxable supplies for aid-funded projects at Karuma and Isimba. The Applicant stated that the reliance by the Respondent on the **Williamson Diamonds Ltd** decision was misplaced.
138. The Applicant rejoined that **S. 24(6)** of the **VAT Act** treats supplies to contractors executing aid-funded projects as taxable and not exempt. In support of this assertion, the Applicant relied on the decision in **Uganda Electricity Transmission Company Ltd vs. URA TAT No. 46 of 2018**, where the Tribunal stated that; *"supplies made to aid-funded projects qualify for input tax recovery, even when VAT is deemed paid."*
139. The Applicant rejoined that the Respondent had not demonstrated how it could override the specific provisions of **S. 24(6)** with a general exemption under the **Third Schedule** of the **VAT Act**.
140. The Applicant stated that it is an agreed fact that it imported the goods in issue as Standard rated for sale to the general public, as part of its business and paid VAT, this fact qualified the goods in question as taxable supplies at importation. The Applicant stated that the instant dispute arose because it supplied some of the goods to the contractor of the Karuma and Isimba hydropower projects.

141. The Applicant stated that it was these contractors who were VAT exempt and not the goods supplied. The Applicant rejoined that **S. 24(6)** had the effect of maintaining the character of the goods as taxable supplies but the supply took on the character of exempt supplies.
142. The Applicant therefore rejoined that the goods in question did not qualify as exempt goods. The Applicant rejoined further that **S. 24(6)** overrides general exemptions for aid-funded projects.
143. The Applicant stated on the authority of the decision of the Supreme Court of India in **CIT vs. Vegetable Products Ltd (1973) 88 ITR 192**, that where two reasonable interpretations exist, the one favoring the taxpayer must be adopted.
144. The Applicant also relied on the decision in **Whitman vs. IRC (1926) AC 37**, where it was held that the courts may consider legislative intent when reconciling competing interpretations.
145. The Applicant further rejoined that the doctrine, that a later statute overrides earlier conflicting law, supports the precedence of **S. 24(6)** over earlier provisions. In the instant case the Applicant stated that **S. 24(6)** which was enacted in 2016, by virtue of the **VAT (Amendment) Act of 2016** ought to prevail over **Paragraph 1(z)** of the **Third Schedule** which was enacted in the year 2008.
146. The Applicant rejoined further that a specific provision overrides a general one. The Applicant took this argument further by stating that **S. 24(6)** explicitly addresses supplies made to contractors of aid-funded projects while **Ss. 18 and 19** of the **VAT Act** deal with exempt supplies to a broader category.
147. The Applicant stated that **S. 24(6)** must therefore take precedence over the more general provisions.
148. The Applicant further rejoined that the Respondent's submissions fail to address or disprove the legislative intent underpinning **S. 24(6)**, as articulated in the 2016 **Parliamentary Committee Report** and the **Uganda Tax Expenditure Report (FY2022/23)**.

149. The Applicant stated that these reports clearly indicate that the deemed VAT regime was introduced specifically to allow suppliers of goods and services to contractors of aid-funded projects to recover input VAT while maintaining a tax-free outcome for the project.
150. In specific rejoinder to the submissions by the Respondent on the definition of a “sub-contractor” the Applicant stated that the scope of S. 24(6) covers any supplier to aid-funded contractors not just formal sub-contractors.
151. The Applicant stated that the claim by the Respondent that import VAT is non-refundable contradicts equity and the VAT Act. The Applicant rejoined on the authority of **S. 20(1) (b)** of the **VAT Act** that an import of goods is an exempt import if the goods would be exempt had they been supplied in Uganda.

VIII. Determination of the Tribunal

152. Having listened to the evidence and read the submissions of the parties, this is the ruling of the tribunal.

S.4 of the VAT Act, which imposes Value Added Tax, provides as follows;

“A tax, to be known as a value added tax, shall be charged in accordance with this Act on”-

- (a) Every taxable supply made by a taxable person;*
 - (b) Every import of goods other than an exempt import; and*
 - (c) The supply of imported services other than an exempt service by any person.*
153. A taxable supply is defined by **S. 18(1)** of the **VAT Act**; “as a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities.”
154. Exempt supplies are provided for under **S. 19(1)** of the **VAT Act** and **Schedule 3** to the Act.

155. **S. 24(6)** of the VAT Act provides as follows;

“For the purposes of this section, the tax payable on a taxable supply made by a supplier to a contractor executing an aid-funded project is deemed to have been paid by the contractor provided the supply is for use by the contractor solely and exclusively for the aid-funded project.”

156. It is clear from a perusal of the above provision, that the entitlement referred to above, accrues to every supplier, regardless of the kind of aid-funded project, being executed by the contractors.

157. The term ‘deemed and ‘deeming provision’ have been defined by **Black’s Law Dictionary Tenth Edition Bryan A. Garner page 504** as follows;

‘Deemed’ “to treat something as if it were really something else”.

‘Deeming provision’ “A clause in a statute that makes a presumption about a significant fact or treats something as equivalent to another thing”.

158. **S. 24(8)** provides that an ‘aid-funded’ project means a project financed by a foreign government or a development agency through a loan, grant or donation.

Paragraph 1(z) of Schedule 3 of the VAT Act provides as follows;

*The following supplies are specified as exempt supplies for the purposes of **S. 19-(z)** The supply of any goods and services to the contractors and subcontractors of hydro-electric power, solar power, geo-thermal or bio-gas and wind energy projects.*

159. In order for the Applicant to succeed in this Application, it must show that the supplies made by it, to Sinohydro Corporation Ltd and China International Water & Electric Corporation, fall under the provisions of **S. 24(6)** above, with the result, that the tax due on these supplies, were deemed to have been paid by the above-mentioned contractors.

160. For the Applicant to achieve this aim, it must meet the following conditions;
- i. The supplies in question were made by the Applicant to a contractor executing an aid-funded project.
 - ii. The supplies in question were for use by the contractor solely and exclusively for the aid-funded project.
 - iii. The supplies in question were taxable supplies within the meaning of **S. 18(1)** of the **VAT Act**.
161. The first and second conditions present no difficulties. Both parties agree that the supplies in question, were made by the Applicant to the above mentioned contractors, who constructed the Karuma and Isimba hydro-electric power stations.
162. It is common ground that these projects, were aid-funded, within the meaning of **S. 24(8)** of the **VAT Act**. It is also common ground, that the supplies in question were for use by the said contractors solely and exclusively for the aid-funded project.
163. What is in dispute, is whether the supplies in question, were taxable supplies within the meaning of **S. 18(1)** of the **VAT Act**? As can be seen above, a taxable supply, is a pre-condition, for the application of **S. 24(6)**.
164. The Applicant has asserted that the supplies in question, were taxable supplies, because they were imported by the Applicant, as standard rated goods, for sale to the general public and that the requisite VAT in respect of these goods were duly paid, at the time of their importation.
165. The Respondent, on the other hand, contends that the supplies in question, were exempt supplies, within the meaning of **S. 19(1)** and **Paragraph 1(z) Schedule 3** of the **VAT Act**.
166. It is the Respondent's argument, that **S. 24(6)** cannot apply to the Applicant, for the reason that the goods supplied by the applicant to the above mentioned companies, assumed the character of exempt supplies, by the operation of **Paragraph 1(z)**.

167. **Paragraph 1(z)**, characterizes as exempt, the supplies of all goods and services made to the contractors and subcontractors of hydro-electric power, solar, geo-thermal power or bio-gas and wind energy projects.
168. A careful examination of **S. 24(6)** and **Paragraph 1(z)**, shows that these two provisions, are in conflict with each other. This conflict, is not apparent, and only comes to the fore, in cases, where the aid-funded project, under **S. 24(6)**, is either, a hydro-electric power, solar, geothermal, bio-gas or wind energy project.
169. In practice, suppliers of goods and services, to the contractors and subcontractors, of aid-funded, hydro-electric power, solar, geothermal, bio-gas or wind energy projects, cannot avail themselves of this provision, because **Paragraph 1(z)** characterizes their supplies, as exempt.
170. As suppliers of exempt goods and services, they cannot meet the requirements of **S. 24(6)**, for the reason that **S. 24(6)**, only applies to taxable supplies.
171. By characterizing, as exempt, all supplies of goods and services, to the contractors of the above mentioned power projects, **Paragraph 1(z)**, has the unintended effect, of barring, such suppliers, from benefiting from the provisions of **S. 24(6)**, thereby restricting the application, of **S. 24(6)**, to the suppliers, of contractors or subcontractors, not involved, in executing aid-funded, hydro-electric power, solar, geothermal, bio-gas or wind energy projects.
172. Could it have been, the intention of the legislature, to bar, suppliers of contractors executing aid-funded, hydro-electric power, solar, geothermal, bio-gas or wind energy projects, from benefiting from the provisions of **S. 24(6)**?

173. The reasoning behind the enactment of **S. 24(6)** of the VAT Act, can be found in the **Report of the Committee on Finance, Planning and Economic Development on the Value Added Tax (Amendment) Bill, 2016 (April 2016)**. Paragraph 4(iii) of this report states as follows;

“Imported goods for donor-funded projects are exempt from VAT, whereas goods purchased locally attract VAT. This is because goods imported for donor funded projects are exempt from import duty under the Fifth Schedule of the EAC Customs Management Act and under the VAT Act. This discriminatory tax treatment has locked local industrialists, especially of steel, cement and cables out of the large infrastructure projects. The proposed law will adopt a remission scheme for domestic suppliers to donor-funded projects so that no VAT is paid by contractors to the domestic suppliers of goods but the suppliers can claim VAT on the inputs they used in the production of the final goods sold to the contractors. This will make local companies competitive with foreign companies. In future, government should remove VAT on all supplies to government.”

174. The above intention of Parliament, can only be served, by **S. 24(6)**, if the aid-funded projects, being executed, are not hydro-electric power, solar, geothermal, bio-gas or wind energy projects. Where the aid-funded projects, comprise any of the power generation projects, set out above, the provisions of **S. 24(6)** cannot apply.
175. The instant case, which involved the supply of goods to the contractors of aid-funded hydro-electric power projects, is a good example of **Paragraph 1(z)**, restricting the application of **S. 24(6)**, to aid-funded projects which are not hydro-electric power, solar, geothermal, bio-gas or wind energy projects.
176. The application of **Paragraph 1(z)**, to the provisions of **S. 24(6)**, leads to an absurd result, in the construction of the above provisions. Such a result, restricts the legislature, from achieving the objectives of its legislation and from exercising the full extent of its Constitutional powers.

177. The absurd result principle, in statutory interpretation, provides an exception to the rule, that a statute should be interpreted according to its plain meaning. It authorizes, the courts, to ignore a statute's plain words, in order to avoid the outcome those words would require in a particular situation. (See, **Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation, Veronica Dougherty, 44 American University Law Review 127(1994).**)

What amounts to an absurd result, was set out, by the Supreme Court of Canada, in **Piekut v. Canada (National Revenue) 2025 SCC 13 (CanLII)**, in the following observation;

“Courts should interpret legislation under the presumption that a legislature does not intend to produce absurd consequences. An interpretation of a statutory provision produces absurd consequences if, for example, it frustrates the purpose of the legislation; creates irrational distinctions; leads to ridiculous or futile consequences; is extremely unreasonable or unfair; leads to incoherence, contradiction, anomaly, or disproportionate or pointless hardship; undermines the efficient administration of justice; or violates established legal norms such as the rule of law”.

178. In **United States v. Kirby, 74 U.S.482 (1868)**, a statute, prohibited a person from “knowingly and wilfully obstructing or retarding the passage of the mail, or of any driver or carrier”. The defendant, Kirby, was a county sheriff, who had a warrant for the arrest of a man named Farris, who, in addition to having been indicted for murder, also happened to be a mail carrier. Kirby arrested Farris, while he was carrying the mail, and was indicted for violating the statute. The Court ruled that the statute did not apply to the situation before it and stated as follows;

“All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted `that whoever drew blood in the streets should be punished with the utmost severity` did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II, which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, for he is not to be hanged because he would not stay to be burnt.

And we think that a like common sense will sanction the ruling we make that the act of Congress which punishes the obstruction or retarding of the passage of the mail or of its carrier does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder”.

179. In the instant case, **Paragraph 1(z)** frustrates the legislative intent, behind **S. 24(6)**, by preventing suppliers of contractors, executing aid-funded hydro-electric and similar power projects from claiming VAT in respect of supplies made by them.
180. **Paragraph 1(z)**, also creates irrational distinctions by confining **S. 24(6)** to aid-funded projects which are not hydro-electric, solar, geothermal, bio-gas or wind energy projects. This leads to incoherence, contradictions and discrimination in the application of **S. 24(6)**.
181. Tax payers failing to meet the requirements of **S. 24(6)** as a result of the operation of **Paragraph 1(z)** have suffered extremely unreasonable and unfair treatment and pointless hardship through no fault of their own.
182. **S. 24(6)** provides equal treatment, to the suppliers of contractors and subcontractors, of all aid-funded projects regardless of the nature of the aid-funded projects being undertaken.
183. In order to give effect to the intention of Parliament, we find it necessary, that in construing the provisions of **S. 24(6)**, in relation to supplies made to the contractors/subcontractors of aid-funded hydro-electric power, solar,

geothermal, bio-gas or wind energy projects, the provisions of **Paragraph 1(z)** should be disregarded.

This will avoid the absurdity, which arises from a plain and literal construction of the above provisions.

184. This application is accordingly allowed with the following orders;

- 1) The provisions of **S. 24(6)** of the **VAT Act** apply to the Applicant's supplies to Sino-hydro Corporation Ltd and China International Water and Electric Corporation for the construction of the Karuma and Isimba hydro-electric power projects.
- 2) The supplies made by the Applicant to Sino-hydro Corporation Ltd and China International Water and Electric Corporation were taxable supplies in respect of which Sino-hydro Corporation Ltd and China International Water and Electric Corporation were deemed to have paid the requisite VAT.
- 3) The Additional Assessment of Shs. 1,265,705,370 is hereby vacated.
- 4) The Applicant is entitled to full input tax credits on its imports.
- 5) The Applicant is awarded the costs of this Application.

Dated at Kampala this 20th day of February 2026.



MR. SIRAJ ALI
CHAIRMAN



MS. CHRISTINE KATWE
MEMBER

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 063 OF 2023

CHINA NORTH MACHINE COMPANY LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. GRACE SAFI.

RULING

I. Introduction

1. I have read my colleagues' decision. However, I would wish to dissent as set out below:

2. The decisive issue for determination is whether the Applicant's supplies to Sino-hydro Corporation Ltd and China International Water and Electric Corporation, who were contractors of aid-funded Karuma and Isimba hydro-electric dam projects respectively, ought to have been treated as taxable supplies for purposes of Section 24(6) of the Value Added Tax (VAT) Act or as VAT exempt supplies under Section 19(1) specified in Schedule 3 to this Act, thereby depriving the Applicant of the input tax credit.

II. Background Facts

3. The Applicant argued that the supply of goods made to the contractors executing aid-funded projects is deemed taxable under Section 24(6) of the VAT Act and that such supplies do not automatically fall within the exempt category unless expressly listed.

4. The Applicant further contended that contractors Sino-hydro Corporation Ltd and China International Water & Electric were not its only customers and that it remained entitled to full input tax credit on taxable and deemed taxable supplies made to other customers.
5. The Applicant also submitted that, being aware it made both taxable and exempt supplies, it applied both the standard and alternative methods of apportionment which yielded the same result and further argued that the Respondent failed to demonstrate which portion of the assessment related to deemed VAT.
6. The Respondent submitted that section 24(6) applies only to taxable supplies and cannot override express exemptions provided under schedule 3.
7. The Respondent argued that supplies made to contractors of hydro-electric power projects fall squarely within paragraph 1(z) of Schedule 3 and are therefore exempt from VAT.
8. The Respondent further submitted that the Applicant was engaged in both taxable and exempt supplies and was required by law to apportion input tax under section 28, and that the burden lay with the Applicant to prove entitlement to additional input tax credit.

III. **The determination**

9. In resolving the dispute, I examined the manner in which each party treated the disputed supplies for VAT purposes.

The Nature of Supply

10. Section 4 of the VAT Act sets out the transactions upon which VAT is chargeable under the Act, namely:
 - (a) *“every taxable supply made by a taxable person;*
 - (b) *every import of goods other than exempt imports; and*
 - (c) *the supply of imported services other than an exempt service by any person.”*

11. Section 5(1) specifies the persons liable to pay the tax as follows:
- (a) *"in the case of a taxable supply, is to be paid by the taxable person making the taxable supply;*
 - (b) *In the case of the supply of goods through auction, the payment is to be made by the recipient of the proceeds of the auction.*
 - (c) ***In the case of an import of goods, is to be paid by the importer; and***
 - (d) *In the case of a supply of imported services, other than an exempt service, is to be paid by the person receiving the supply."*
12. Section 6 defines a taxable person as a person registered under Section 7, or a person who is not registered but who is required to apply for registration. Section 18(1) of the VAT Act defines a taxable supply as **"a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities."**
13. Section 19(1) of the VAT Act states that "A supply of goods or service is an exempt supply if it is specified in Schedule 3 to this Act."
14. Paragraph 1(z) of Schedule 3 provides in mandatory terms that:
"The supply of any goods and services to the contractors and subcontractors of hydro-electric power, solar power, geo-thermal power or bio-gas and wind energy projects and does not include goods and services used for personal and domestic use."
15. Section 20(1) states that:
- (1) *An import of goods is an exempt import if the goods—*
 - (a) *are exempt from customs duty under the Fifth Schedule of the East African Community Customs Management Act, 2004 except compact fluorescent bulbs with a power connecting cap at the end, and lamps and bulbs made from Light Emitting Diodes (LED) technology for domestic and industrial use; or*
 - (b) *would be exempt had they been supplied in Uganda.*

16. Section 15 provides for place of supply of good:

“A supply of goods shall take place in Uganda if the goods are delivered or made available in Uganda by the supplier, or if the delivery or making available involves transportation, the goods are in Uganda when the transportation commences.”

17. Section 10 (1) defines Supply of Goods as follows.

“Except as otherwise provided under this Act, a supply of goods means any arrangement under which the owner of the goods parts or will part with possession of the goods, including a lease or an agreement of sale and purchase.”

18. It is my considered view that the literal interpretation of Sections 4(b) and 5 (b) is that all imports into Uganda, other than exempt imports, are charged VAT at the standard rate of 18%, payable by the importer under the African Community Customs Management Act (EACCMA).

19. It follows, therefore, that the Applicant was duly charged VAT at importation since the goods were not exempt import under EACCMA. Once the goods entered into Uganda, the place of supply became Uganda, and the supplies were subject to domestic VAT law, as affirmed in ***Crane Bank vs. URA, HCT00-CC-CA 18/2010.***

Exempt Nature of the disputed supplies

20. A proper reading of Section 18(1) reveals that four distinct and cumulative conditions must be satisfied simultaneously for a supply to qualify as a taxable supply. If any one of these conditions is not met, the supply is not a taxable supply under the Act:

- i. There must be a **supply of goods or services** as defined under Sections 10 and 11 of the Act.
- ii. The **Supply must be made in Uganda** as determined under place of supply rules in Sections 15 and 16.
- iii. The **supply must be made by a taxable person as** defined under sections 6 and 7.

- iv. The supply must **not be an exempt supply under section 19 and Schedule 3.** This is the defining boundary between the taxable and exempt supplies, meaning a supply that meets all other conditions but falls within the third Schedule is exempt, not subject to VAT under Section 4; no output tax is charged on it, and any related input tax cannot be claimed under Section 28(1).
21. Having regard to Section 18 (1), I find that the Applicant's supplies to hydroelectric contractors Sino-hydro Corporation Ltd and China International Water and Electric Corporation are exempt under paragraph 1(z) of Schedule 3 in accordance with Section 19.
22. Section 19(1), read together with Paragraph 1(z) of Schedule 3, classifies certain supplies as exempt in binding terms that:
"The supply of any goods and services to the contractors and subcontractors of hydro-electric power, solar power...."
23. It is not disputed that Sino-hydro Corporation Ltd and China International Water & Electric Corporation were contractors of the aid funded Karuma and Isimba hydro-electric power projects.
24. It is also not disputed that the supplies made by the Applicant were for use in those projects. By operation of law, therefore, the supplies squarely fall within paragraph 1(z) of Schedule 3 and are exempt supplies.
Section 18 (1) expressly excludes exempt supplies from taxable supplies.
25. Accordingly, these supplies by the Applicant are not subject to VAT, and thus the Applicant is not entitled to claim input tax.

Applicability of Section 24(6) (Deemed VAT)

26. Section 24(6) of the VAT Act provides as follows:

- 6) *"For the purposes of this section, the tax payable on a taxable supply made by a supplier to a contractor executing an aid-funded project is deemed to have been paid by the contractor provided the supply is for use by the contractor solely and exclusively for the aid-funded project."*

27. Section 24(8) defines an aid-funded project to mean:
“a project financed by a foreign Government or a development agency through a loan, grant or donation.”
28. Section 1 defines a contractor to mean *“a person supplying goods or services other than as an employee to the following-*
(a) A licensee in respect of mining operations undertaken by the licensee; or
(b) A licensee in respect of petroleum operations undertaken by the licensee.”
29. A supplier is defined in the Black’s Law Dictionary 10th Edition at page 1668 as: *“A person or business engaged, directly or indirectly, in making a product available to consumers.”*
30. An analysis of Section 24(6) reveals five preconditions that must be satisfied together for the deemed payment mechanism to apply; the failure to satisfy any one single precondition disqualifies its operation.
- i. There must be a **taxable supply** under Section 18(1).
 - ii. The supply must be made **by a supplier**.
 - iii. The supply must be made **to a contractor executing an Aid-Funded Project** as defined under Section 24(8).
 - iv. The Supply must be **solely and exclusively for Aid-funded Project**.
 - v. The Supply **must not fall within the exclusion provided under Section 24(9)**.
31. It is not disputed that the supplies in question were made to the aid-funded Karuma and Isimba hydro-electric dam projects. However, it is important to note that not all aid-funded projects automatically give rise to taxable supplies where Parliament has expressly classified such supplies as exempt under Schedule 3.
32. Any supply made to contractors executing aid-funded projects is deemed for VAT purposes under section 24(6) only to the extent that such supply constitutes a taxable supply within the meaning of section 18 of the VAT Act.
33. This implies that aid-funded projects are not, by their nature exempt projects. Rather, taxable supplies made to contractors for use in aid-funded projects are

treated as deemed paid for VAT purposes under the law, unless Parliament has expressly exempted those supplies under Schedule 3.

34. Accordingly, aid-funded projects that are not expressly listed under paragraph 1(z) of Schedule 3 fall within the scope of section 24(6), provided that the underlying supplies are taxable. Paragraph 1(z) therefore operates as a specific statutory carve-out from the general deemed VAT regime applicable to aid-funded projects.

35. In my considered opinion, the wording of section 24(6) is clear and unambiguous. The deeming provision applies only where all the above preconditions are met chronologically.

36. Because the threshold precondition of a taxable supply is not satisfied; the remaining four conditions do not need to be considered. Section 24(6) therefore does not apply where the supply is exempt under Section 19, paragraph 1(z).

37. This interpretation flows directly from the statutory definition in section 18(1), which expressly excludes exempt supplies from the category of taxable supplies.

38. As a result, the deemed payment mechanism does not arise. There is no taxable supply, no VAT payable and no deemed input tax available to the supplier.

39. I therefore find that once a supply is classified by Parliament as an exempt supply under Schedule 3, it cannot concurrently qualify as a taxable supply for purposes of section 24(6). To hold otherwise would amount to rewriting the statute and collapsing the clear distinction drawn by the legislature between taxable and exempt supplies.

Interpretation of Section 24 of the VAT Act.

40. From a reading of the title and purpose of Section 24 of the VAT Act: **“Calculation of Tax Payable on a Taxable Transactions.”** I observe that this Section is therefore a computational provision which determines the amount of tax payable on taxable transactions; it does not impose or create tax liability.

41. The opening words of Section 24(6), “for the purpose of this section,” further confine its operations strictly to the calculation framework established under the Section 24.
42. The provision therefore does not create tax liability, alter the character of a supply, or override exemptions provided elsewhere in the VAT Act.
43. The power to impose VAT rests exclusively in Section 4, the charging provision of the Act. Where Section 19 read together with paragraph 1(z) of Schedule 3 classifies a supply as exempt, no VAT is imposed and no tax becomes payable.
44. I therefore conclude that Section 24(6) cannot operate to recharacterise an exempt supply as a taxable supply or create tax payable where none exists.
45. In the circumstances, I find that the supplies made by the Applicant (the supplier) to Sino-hydro Corporation Ltd and China International Water and Electric Corporation, the hydroelectric power contractors constitute exempt supplies under section 19 read in conjunction with paragraph 1(z) of Schedule 3 to the VAT Act.
46. Consequently, the deeming provision under Section 24(6) of the VAT does not apply to the supplies in question. The supplies being exempt, the Applicant’s input tax recovery must be determined solely under Section 28 and the applicable apportionment rules.

Relationship between Section 24(6) and Section 19(1) Schedule 3

47. For emphasis, Section 19(1) of the VAT Act provides that:
- (1) *“A supply of goods or services is an exempt supply if it is specified in Schedule 3 to this Act.”*
48. It is trite law that a substantive provision prevails over a schedule. However, I am not persuaded by the Applicant’s argument that section 24(6) overrides paragraph 1(z) of Schedule 3.
49. Schedule 3 does not operate independently; its legal effect arises from Section 19, as reflected in the title “**Exempt Supplies**”.

50. Paragraph 1 of Schedule 3 reads "*The following supplies are specified as exempt supplies for the purposes of section 19.*" In other words, Section 19, is the central provision that gives the exemptions listed in the Schedule their force and effect.

51. Schedule 3, therefore, simply lists the categories of exempt supplies provided for under Section 19(1), thereby confirming the relationship between the Section and the schedule.

52. Accordingly, when Paragraph 1(z) exempts supplies made to hydroelectric dam contractors, the exemption exists because of Section 19.

Further, Section 24(6) does not create a new category of taxable supplies. Rather, it only sets out a payment mechanism applicable only where a taxable supply already exists. Thus, it presupposes, rather than displaces, the classification framework under Sections 18 and 19 (1) Schedule 3.

53. Accordingly, where Parliament has expressly exempted a category of supplies, section 24(6) does not apply.

54. Consequently, if any apparent conflict arises between the exemption for these supplies and the deemed payment rule under Section 24(6), the issue is not a conflict between the Act and a schedule. Rather, it is a potential conflict between two provisions within the Act itself, namely Section 19(1) and Section 24(6).

55. I am therefore of the opinion that there is no conflict between section 24(6) and paragraph 1(z) of Schedule 3. The two provisions operate in different spheres:

- i. Schedule 3 determines whether a supply is taxable or exempt;
- ii. Section 24(6) addresses how VAT is treated where a taxable supply is made to an aid-funded project.

Input Tax Apportionment

56. Section 25 of the VAT Act provides that;

(1) Subject to Section 26, the tax payable by a taxable person for a tax period is calculated according to the formula specified in Section 1(b) of the Fourth Schedule.

(2) For a contractor, component X of the formula in paragraph 1(b) of the Fourth Schedule, for a tax period does not include the amount of tax that the licensee is deemed to have paid to the contractor under section 24(5) for the period.

(3) "For a supplier, component X of the formula in paragraph 1(b) of Schedule 5 to this Act, for a tax period does not include the amount of tax that the contractor is deemed to have paid to the supplier under section 24(6) for the period."

57. Section 28(1) and (9) states that;

(1) 1. *"Where section 25 applies for the purposes of calculating the tax payable by the taxable person for the taxable period, a credit is allowed to the taxable person for the tax payable in respect of –*

(a) "All taxable supplies made to a person during the tax period;

(b) "All imports of goods made by that person or imports of services made by the contractor or licensee or a person providing business process outsourcing services during the tax period

58. Section 28(9) provides that. *"Subject to subsections (10) and (11), the input tax that may be credited by a taxable person for tax period is-*

(a) Where all the supplies of taxable person for the period are taxable supplies, the whole of the input tax specified in subsections (1) or (2); or

(b) Where only part of the supplies of the taxable person for that period are taxable supplies, the amount calculated according to the formula specified in paragraph 1(f) of Schedule 5 to this Act."

59. The foundational provision governing input tax recovery, from which everything else flows, is **Section 28 of the VAT Act above**. Section 28(1) allows tax credit only to the extent that the goods or services or import of goods are used to **make taxable supplies**. In consequence, input tax incurred in making exempt supplies does not generate a recoverable input tax credit, and where a taxpayer makes both taxable and exempt supplies, section 28(9) (b) mandates apportionment of input tax.

60. The analysis of the evidence on record confirms that the Applicant made two types of supplies:
- i. Supplies to the hydroelectric dam contractors, which are exempt under Paragraph 1(z) of Schedule 3. No VAT should thus be charged on these supplies.
 - ii. Other Supplies, which are taxable under Section 18 of the VAT Act and attract VAT at applicable rates.
61. Because the Applicant made both exempt and taxable supplies, the Applicant is considered to have made partly taxable and partly exempt supplies; Consequently, input tax may only be claimed to the extent that it relates to taxable supplies, as guided under Section 28(9) (b).
62. The recoverable input tax must therefore be apportioned using the formula provided for in paragraph 1(f) of Schedule 5 to this Act.
63. The fact that VAT was paid at importation does not, of itself, convert an exempt output supply into a taxable one, nor does it create an automatic entitlement to a refund in the absence of an express statutory provision.
64. In light of the above finding that the supplies by the Applicant to the hydro-electric contractors were exempt, I therefore, resolutely find that the Respondent acted correctly in law in disallowing full input tax credit and apportioning the input tax using the approved methods.

Guidelines, Policy Documents and Legislative Intent

65. While policy documents, administrative circulars and parliamentary reports may provide useful background, they cannot in my considered view override the clear wording of the statute.
66. Accordingly, to the extent that any administrative guidance suggests that deemed VAT applies to exempt supplies; such guidance cannot prevail over statutory provision of sections 18 and 19 of the VAT Act and Schedule 3 thereto.
67. This position was affirmed by Hon. Justice Geoffrey Kiryabwire in ***Crane Bank vs. URA, HCT00-CC-CA 18/2010*** where the court held that:

“The Bank of Uganda guidelines have no place in the interpretation of the Income Tax Act (ITA).”

68. I therefore in my determination find that tax exemptions and entitlement to input tax credits must be derived strictly from the statute. Considerations of equity or perceived policy objectives cannot substitute for clear legislative authority. This principle was equally affirmed in *Crane Bank vs. URA (supra)*

Conclusion

69. In the circumstances, I therefore would have found that:

- (i) The Applicant's supplies to Sinohydro Corporation Ltd and China International Water & Electric Corporation were exempt supplies under Section 19(1) and paragraph 1(z) of Schedule 3 of the VAT Act.
- (ii) Section 24(6) of the VAT Act applies only to taxable supplies and does not apply to supplies that are exempt by law.
- (iii) The Respondent lawfully apportioned the Applicant's input VAT in accordance with section 28 of the VAT Act.
- (iv) The Administrative additional VAT Assessment of Shs.1,265,705,370 was properly raised and is legally sustainable.

Accordingly, I would have dismissed the application with costs to the Respondent.

Dated at Kampala this 20th day of February 2026.



MS. GRACE SAFI