

**IN THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION NO. 16 OF 2024**

EAST AFRICAN MARINE TRANSPORT COMPANY LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. PROSCOVIA R. NAMBI,  
MS. ROSEMARY NAJJEMBA.

**RULING**

This ruling is in respect of an application brought under Sections 16 & 18 of the Tax Appeals Tribunal Act and under Rule 10 of the Tax Appeals Tribunal (Procedure) Rules 2012 seeking for the following orders:

- (i) A declaration that the supply of services of design, building, and delivery of a ferry is exempt from VAT under paragraph 1(ae) of Schedule 3 of the VAT Act; and
- (ii) Costs of the application.

**1. Background Facts**

The Applicant is engaged in the business of marine transportation between inland water ports on Lake Victoria. The Applicant challenges the Respondent's refusal to confirm a Value Added Tax (VAT) exemption provided for under Paragraph 1(a)(e) of the Third Schedule to the VAT Act for the supply of a roll-on, roll-off freight ferry ("the Ferry").

The Applicant contracted Seco Marine (U) Ltd to design, build, and deliver a roll-on, roll-off freight ferry at a consideration of USD 14,997,762. The ferry was for use between Mwanza (Tanzania) and Port Bell (Uganda). On 6 July 2023, the Applicant wrote to the

Respondent seeking confirmation of eligibility for tax exemptions under Section 21(1)(a)(f) of the Income Tax Act and Paragraph 1(a)(e) of the Third Schedule to the VAT Act.

By letter dated 20 November 2023, the Respondent confirmed the income tax exemption but declined to confirm the VAT exemption for the supply of the ferry, arguing that it was neither machinery nor equipment. On 27 November 2023, the Applicant objected to the Respondent's decision, explaining that the ferry qualifies as machinery or equipment for VAT exemption purposes and that the Respondent unjustifiably fragmented the supply of the ferry into distinct services of design, building, and delivery, contrary to the law.

In a letter dated 29 December 2023, the Respondent partially allowed the objection by confirming the VAT exemption for design services but declined the exemption for building and delivery services, stating that these were not covered by the VAT Act.

## **2. Representation**

The Applicant was represented by Mr. Bruno Kalibaala, Mr. Bruno Amany, and Mr. Anil Patel while the Respondent was represented by Mr. Donald Bakashaba, Ms. Doreen Amutuhaire, and Mr. Jordan Lawoko.

The Applicant called one witness, Anil Patel (AW1), the Applicant's tax consultant. He stated in his witness statement that the Applicant contracted Seco Marine (U) Ltd to design, build, and deliver a roll-on, roll-off freight ferry ("the Ferry") for USD 14,997,762.

AW1 further stated that the Applicant applied for VAT exemption under Paragraph 1(a)(e) of the Third Schedule to the VAT Act, supported by its strategic investment of USD 19,400,000 in expanding its marine logistics. The Respondent confirmed their eligibility for income tax exemption but denied the VAT exemption, arguing that the ferry is not machinery or equipment.

The witness stated that the ferry qualifies as machinery and equipment, essential to the Applicant's logistics business and that ancillary services such as design and delivery do not change the nature of the supply. Further, he stated that the denial of VAT exemption

was inconsistent and unfair and increased the Applicant's investment costs contrary to the purpose of tax incentives in strategic sectors.

The Respondent also called one witness, Mr. Lawoko Jordan, a Legal Officer in the Respondent's Legal Services and Board Affairs Department (RW1). He stated that the ferry does not qualify for the VAT exemption as it is not machinery or equipment under Paragraph 1(ae) of the VAT Act. Further, he stated that the supply did not include locally produced raw materials, which was deemed essential for the exemption. In addition, he stated that the Applicant's business does not fall under logistics and warehousing, as required under Paragraph 1(ae). Lastly, the ferry supply is not explicitly listed under the exemption provisions of the VAT Act.

### **3. Issues for Determination**

The issues for determination by the Tribunal are as follows:

- (i) Whether the Ferry qualifies as machinery or equipment under Paragraph 1(a) of the Third Schedule to the VAT Act.
- (ii) Whether the Respondent's decision to deny VAT exemption was lawful.
- (iii) Whether the Applicant is entitled to a refund of the VAT that was paid

### **4. The submissions of the Applicant**

The Applicant submitted that they are engaged in the business of marine logistics, specifically the transportation of goods between inland ports on Lake Victoria. To expand its operations, the Applicant contracted Seco Marine (U) Ltd to design, build, and deliver a Ferry for USD 14,997,762. The Applicant sought a VAT exemption for this acquisition, citing Paragraph 1(ae) of the Third Schedule to the Value Added Tax Act.

The Applicant submitted that the Respondent partially granted the request, confirming the Applicant's eligibility for income tax exemption but denied the VAT exemption. The Respondent argued that the Ferry does not qualify as machinery or equipment, does not meet conditions relating to the use of locally produced materials, and that the Applicant's activities do not fall under logistics or warehousing as required by law.



The Applicant contended that the ferry meets the definition of machinery or equipment as used in Paragraph 1(ae) of the Third Schedule to the Value Added Tax Act. The Applicant relied on ***Kakira Sugar Works v URA, TAT Application 11 of 2006***, where machinery central to a taxpayer's operations was deemed exempt. The Applicant argued that the Ferry is essential to its logistics business and is, therefore, machinery within the meaning of the VAT Act.

The Applicant emphasized that the ferry is integral to the Applicant's operations and that the contract with Seco Marine (U) Ltd was primarily for the supply of the ferry, with design and delivery services being incidental. In addition, the Applicant submitted that although the VAT Act does not define the terms "machinery" or "equipment", courts have established that undefined terms should be given their ordinary and literal meaning.

In ***VIVO Energy Uganda Limited v Uganda Revenue Authority, TAT Application 131 of 2019***, the Tribunal relied on definitions from the Oxford Advanced Learner's Dictionary and Black's Law Dictionary:

*"Machinery: "Machines as a group, especially large ones."*

*Machine: "A piece of equipment with moving parts designed to do a particular job."*

*Equipment: "Articles used for a specific purpose, especially in business operations."*

The Applicant submitted that applying these definitions, the ferry, as the main apparatus used in marine cargo transportation, qualifies as machinery or equipment. Further, the Respondent's Practice Note of 4 March 2010, defines machinery as apparatus used in a business for its operations. The ferry meets this definition as it is integral to the Applicant's business operations.

The Applicant contended that Paragraph 1(ae) imposes no condition requiring the use of locally produced materials and cited ***Bidco Uganda Ltd v URA, TAT Application 16 of 2017***, where the Tribunal emphasized the importance of interpreting statutes as written, without imposing additional requirements.

The Applicant maintained that its operations involve the transportation of goods between Mwanza Port (Tanzania) and Port Bell (Uganda), which constitutes logistics, and argued that the Respondent's narrow interpretation of logistics to include warehousing was erroneous and contrary to the intent of the VAT exemption regime.

The Applicant highlighted the inconsistency in granting income tax exemption for the ferry while denying VAT exemption for the same asset and argued that this inconsistency was arbitrary and violated principles of fairness and reasonableness in tax administration. Therefore, the Applicant argued that the Respondent unjustifiably fragmented the supply of the Ferry into separate components of design, building, and delivery, contrary to Section 12(1) of the Value Added Tax Act, which states that incidental services to the supply of goods form part of the supply of goods.

The Applicant cited the case of ***Uganda Revenue Authority V Total Uganda Limited (Civil Appeal No. 11 of 2012)***, the High Court held that incidental services are minor occurrences consequential to a larger supply and should not be segregated similarly, in ***Card Protection Plan Ltd V Commissioners of Customs and Excise [2001] UKHL 4***, the court ruled that ancillary services that enable better enjoyment of a principal service should not be artificially divided.

In the case of ***Uganda Electricity Transmission Company Limited v Uganda Revenue Authority (TAT Application No. 46 of 2018)***, the Tribunal held that design services are incidental to the installation of transmission lines formed part of the supply. By analogy, the design, building, and delivery services in the Applicant's contract were incidental to the supply of the ferry.

The Applicant submitted that the purpose of VAT exemptions under Paragraph 1(ae) is to encourage investments in strategic sectors thus the denial of VAT exemption for the ferry undermines this objective, contrary to the spirit of the VAT Act.

The Applicant submits that the testimony of the Respondent's witness, Mr. Lawoko Jordan (RW1), should be rejected because it is hearsay evidence as RW1 admitted during cross-examination that he was not personally involved in evaluating the Applicant's exemption request, rendering his evidence hearsay. In ***Multi-Consults Limited v Uganda Revenue Authority, TAT Application No. 72 of 2019***, similar hearsay testimony was rejected and there is a departure from pleadings as RW1's testimony introduced reasons not contained in the Respondent's official correspondence, which contravenes the rule against departure from pleadings as upheld in ***Luyimbazi Sulaiman v Stanbic Bank, SCCA No. 2 of 2019***.

The Applicant prayed that the Tribunal finds that the supply of the ferry exempt from VAT and awards appropriate remedies, for a refund of the VAT paid on the Ferry and for the costs of the application.

## **5. The submissions of the Respondent**

The Respondent submitted that the core of the dispute revolves around the issue of whether the contract to design, build, and deliver a vessel qualifies for exemption under Section 19(1), Paragraph 1(ae) of Schedule 3 of the VAT Act. A determination that the contract does not qualify for VAT exemption implies that SECO Marine (U) Ltd (the contractor) must charge and account for VAT on the supply of the vessel to the Applicant (the owner). Consequently, the Applicant would be liable to pay VAT upon delivery.

The Respondent submitted that services specified in the Applicant's vessel design, build, and delivery contract (EX1) do not fall under the exemptions outlined in Paragraph 1(ae) of Schedule 3 of the VAT Act. Only the supply of services for conducting feasibility studies and designs is exempt under this provision. Once the contract encompasses building and delivering the vessel, it ceases to enjoy the exemption.

The Respondent stated that the burden of proof rests on the Applicant to demonstrate that the supply of the vessel is exempt under the VAT Act. The Respondent cited the case



of **Williamson Diamonds Ltd V. Commissioner General [2008] 4 TTLR 167**, where the Tax Revenue Appeals Tribunal of Tanzania stated:

*"The burden of proving that the assessment issued by the respondent is excessive or erroneous lies on the taxpayer and cannot be shifted to the respondent."*

The Respondent submitted that Paragraph 1(ae) of Schedule 3 outlines three categories of VAT exemptions:

1. Supply of services for conducting feasibility studies and designs.
2. Supply of locally produced materials for constructing a factory or warehouse.
3. Supply of locally produced raw materials, inputs, machinery, or equipment to qualifying entities.

Tax statutes must be interpreted based on their plain language, as established in **Cape Brandy Syndicate V. Inland Revenue Commissioners (1920) KB 64**, which held:

*"In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment."*

Similarly, in **Calcutta Kitwas (2014) 362 ITR 673**, the court stated:

*"While interpreting provisions of a fiscal statute, one should neither add nor subtract from the text."*

The Applicant contends that a ferry qualifies as machinery or equipment under Paragraph 1(ae). However, this interpretation is flawed as the plain language of the statute does not include vessels in the categories listed for exemption.

The Respondent stated that the Applicant's contract with SECO Marine Ltd (EX1) explicitly refers to the supply of a ferry/vessel referring to the Black's Law Dictionary (11th Edition) defines a vessel as a ship or craft used for navigation on water, which is distinct from machinery or equipment. Further, the Oxford Advanced Learner's Dictionary similarly defines a vessel as a ship or boat, emphasizing its role in transportation rather than as machinery therefore the legislature could have explicitly included vessels under

Paragraph 1(ae) if it intended to exempt them. The absence of such inclusion demonstrates that vessels are not covered by this exemption.

To emphasize the distinction between vessels and machinery and equipment, the Respondent relied on the Common External Tariff (CET), where machinery and equipment are categorized separately from vessels and vehicles. This, according to the Respondent, underscores the distinct nature of these items and stated that the Applicant has failed to demonstrate that the supply of a ferry qualifies for VAT exemption under Paragraph 1(ae) of Schedule 3 of the VAT Act. The plain language of the provision does not support the Applicant's contention that a ferry is machinery or equipment. Accordingly, the Respondent's decision to assess VAT on the supply of the ferry was justified and should be upheld by this Tribunal.

#### **6. The submissions of the Applicant in rejoinder**

The Applicant reiterated that the Ferry is the main apparatus used in its logistics business and qualifies as machinery or equipment under the broad interpretation of Paragraph 1(ae). The Applicant argued that *Kakira Sugar Works v URA* supported the inclusion of all apparatus essential to business operations within the definition of machinery.

The Applicant disputed the Respondent's assertion regarding the use of local materials, pointing out that Paragraph 1(ae) contains no such requirement to that effect.

The Applicant clarified that logistics encompasses more than warehousing and includes the transportation of goods, which is central to its business operations, and submitted that the Respondent's narrow interpretation of logistics contradicts the intent of the VAT Act.

#### **7. The determination by the Tribunal**

Having listened to the evidence and read the submissions of the parties, this is the decision of the Tribunal.



The dispute revolves around the VAT treatment of a ferry that was designed, built and supplied to the Applicant. The Applicant's position is that the ferry is exempt from VAT in accordance with section 19 of the VAT Act, read together with paragraph 1 (ae) of the third schedule of the VAT Act. Specifically, the Applicant has argued that the ferry falls squarely within the ordinary definition of "machinery or equipment" as used in the above paragraph 1 (ae).

On the other hand, the Respondent's position is that the Applicant is not entitled to the VAT exemption as the ferry is neither "machinery or equipment" nor was it a supply of local raw materials. The Respondent has also argued that the Applicant is not engaged in the business of logistics and warehousing, which, according to them, is a precondition for the exemption. Further, the Respondent treated the design of the ferry as VAT exempt and treated the actual ferry as a VATable at the standard rate of 18%.

As the dispute concerns the interpretation of paragraph 1 (ae) of the VAT Act, for completeness, it is important to reproduce the provision. The paragraph provides as follows:

*"The following supplies are specified as exempt supplies or the purposes of section 19 –*

*The supply of services to conduct a feasibility study or design;*

*The supply of locally produced raw materials for construction of a factory or warehouse and the supply of locally produced materials for the construction of a factory or warehouse and the supply of locally produced raw materials and inputs OR machinery or equipment, to an operator within an industrial park, free zone or any other person carrying on business outside the industrial park or free zone whose minimum investment capital is ten million united states dollars in the case of a foreigner; or three hundred thousand united states dollars in the case of a citizen; ...and who –*

*...*

*(v) carries out business in logistics and warehousing, information technology and commercial farming."*

***What is the purpose of the above VAT exemptions?***

The above VAT exemptions (which are also contained in section 21 (1) (ae) of Income Tax Act), are intended to encourage and attract investment in manufacturing and other strategic sectors of the Ugandan economy. Hence, key sectors such as the manufacture of agricultural goods, medical appliances, furniture, paper and pulp, vocational or technical institutes, logistics and warehousing among others are the intended beneficiaries of the exemptions. The investment thresholds prescribed by both the VAT and Income Tax Act, namely, USD 10 million for investments by foreigner and USD 300,000 for investments by Ugandan citizen is indicative of a deliberate and intentional effort to encourage significant investment, typically involving large industries or companies with substantial financial resources and global reach.

Specifically, the VAT exemption is aimed at lowering the cost of inputs while at the same time encouraging demand for produced products or services due to the reduction in the final consumer price.

Having ascertained the rationale for the exemptions contained in Paragraph 1 (ae) of Schedule 3 of the VAT Act, we now turn to the conditions that must be fulfilled for one to benefit from the said exemptions.

Based on the reading of Paragraph 1 (ae), for a person to qualify for the above VAT exemption, within the context of the business / industry of the Applicant, they must meet the following conditions:

- (i) There must be a supply of machinery or equipment;
- (ii) The supply should be made to an operator within an industrial park or free zone OR to any other person carrying on a business outside the industrial park
- (iii) The person or operator in (ii) above must have invested a minimum of USD 10 million if they are a foreigner or USD 300,000 if they are a citizen of Uganda.
- (iv) The person should be carrying out any of the businesses activities listed in sub paragraphs (i) to (viii), with the relevant sub paragraph being carrying out business in logistics and warehousing, information technology and commercial farming.

Therefore, the question that must be determined is whether the Applicant meets all the above conditions. We shall now analyse each of the above conditions.

(i) There must be a supply of machinery or equipment

First, we must deal with the Respondent's argument that one of the conditions is the use of locally produced raw materials. While this is one of the conditions under paragraph 1 (ae), it is separate from the condition concerning machinery or equipment. There is no requirement that the machinery or equipment must be made from locally produced raw materials. The wording of the provision is as follows:

*"... the supply of locally produced raw materials and inputs **OR** machinery or equipment"*

The use of the conjunction "OR" indicates alternatives. Therefore, the supply of locally produced raw materials and inputs is distinct and separate from the supply of machinery or equipment. Therefore, the machinery or equipment should not be supplied together with locally produced raw materials.

We now turn to the definition of machinery or equipment to determine whether a ferry falls within the definition.

*What is machinery or equipment?*

As already submitted by the Applicant, the VAT Act does not define the word "machinery". However, in the absence of statutory definition, the Tribunal can turn to the ordinary and literal meaning of the term.

The Black's Law Dictionary, 10<sup>th</sup> Edition at page 1093 defines the term "machine" to mean:

*"A device or apparatus consisting of fixed or moving parts that work together to perform some function."*



It also defines the term “equipment” to mean:

*“articles or implements used for a specific purpose or activity (esp. a business operation)”*

In addition, the Oxford English Dictionary defines a machine to mean:

*“a piece of equipment with moving parts that is designed to do a particular job.”*

Further, it defines machinery to mean:

*“Machines as a group, especially large ones; the parts of a machine that make it work.”*

In addition, from a tax perspective, Simon Taxes, a leading commentary on direct taxes, defines plant and machinery as follows:

*“...the expression has a very wide meaning. It includes items used in factories such as boilers, furnaces, shafting, motors, dynamos, electrical equipment, conveyors, dust extraction plant, hoists, trucks, storage tanks, refrigerating plant, locomotives, rails of railway sidings, railway wagons and piping, items used in offices such as typewriters, accounting machines, computers, adding machines, calculating machines and furniture, and general items such as aircraft, hovercraft, telephone installations, fixtures and fittings, including carpets and linoleum, but not linen, crockery or cutlery...”* (<https://www.lexisnexis.co.uk/tolley/tax/commentary/simons-taxes/business-tax/b3-306-meaning-of-plant-machinery#> )

Therefore, the term “machinery” covers a wide range of applications. Does a ferry consist of fixed or moving parts that work together to perform some function? We believe that the answer is yes.

A ferry is a boat that is used to transport passengers and cargo from one point to another. It comprises of several fixed or moving parts such as:

- a) Bilge and bilge pumps – use to collect, water, oil and other fluids and to remove the same from the boat to prevent it from carrying excess weight;
- b) An engine room comprising of the engine, fuel system and cooling mechanism which all work to propel the boat / ferry;
- c) Mast – which supports the sails and other equipment; and

d) Telecommunication equipment, e.g. antennas for communication.

All the above machines/ equipment, which are housed in the hull/ body of the ferry, work together to enable the ferry to perform its function. Further, the ferry is used or was to be used by the Applicant in their business operations.

Therefore, the Applicant meets the first condition regarding the supply of machinery or equipment.

(ii) The supply should be made to an operator within an industrial park or free zone OR to any other person carrying on a business outside the industrial park

The Applicant's address as per the contract with SECO Marine Uganda Limited is Plot 7. Acacia Avenue. This location is outside an industrial park. The provision extends the exemption to persons, such as the Applicant, whose business is located outside an industrial park.

Therefore, the Applicant meets the second condition.

(iii) The person or operator must have invested a minimum of USD 10 million if they are a foreigner or USD 300,000 if they are a citizen of Uganda.

In the present case, the Applicant contracted its supplier, SECO Marine to build a ferry and the contract value is USD 14,997,762, which exceeds the level of investment for both citizens and foreigners.

Therefore, the Applicant meets this condition.

(iv) The person should be carrying out business in logistics and warehousing, information technology and commercial farming."

The Applicant has submitted that they are in the business of logistics and warehousing while the Respondent argued that the Applicant's is in the transportation business. We must turn to definition of the terms "logistics and warehousing". The VAT Act does not define the term "Logistics and warehousing"; therefore, we must default to the ordinary or literal meaning of the term.

According to the Oxford Advanced Learner's Dictionary, 9<sup>th</sup> Edition, the term "logistics" means:

*"the business of transporting and delivering goods."*

It also defines the term warehousing to mean:

*"The practice or business of storing things in a warehouse (a building where large quantities of goods are stored..."*

Further, the Encyclopedia Britannica defines the term "logistics" as follows:

*"**logistics**, in business, the organized movement of materials and, sometimes, people. The term was first associated with the military but gradually spread to cover business activities."*

According to the Applicant's website, the Applicant offers a schedule roll -on / roll -off vessel which transports cargo across Lake Victoria from Portbell in Uganda to Mwanza in Tanzania. The website states:

*"Our scheduled roll-on / roll-off vessel service provides a convenient and efficient way to transport cargo across Lake Victoria, from Port Bell in Uganda to Mwanza in Tanzania, saving you time and money. Trucks can be driven directly onto the ferry, allowing drivers to rest comfortably while enjoying the journey. In just 18 hours, the trucks will arrive at the destination, ready to be driven off the ferry. Our service can be extended to provide a fully integrated solution - cargo delivered to your premises or from the factory to distributors"*

Therefore, as the Applicant is in the business of moving cargo from Uganda to Tanzania, they are in the business of logistics and warehousing as the logistics business involves transportation and storage of customers' goods until there are delivered to their premises or collected from the providers terminal.



Therefore, the Applicant meets the last and final condition for the exemption.

In conclusion, based on our understanding and interpretation of Paragraph 1 (ae) of the VAT Act, the Applicant qualifies for the exemption.

It is worth noting that the Respondent confirmed the Applicant's entitlement to exemptions under the Income Tax Act, which are premised on the same conditions. It is not clear why the Respondent declined to extend the same under the VAT Act. What is good for the goose is also good for the gander; consequently, there ought to have been symmetrical application of both the VAT and Income Tax Act to the Applicant's facts and circumstances.

#### *Split or single contract?*

We now turn to the splitting of the contract into parts - design services and building and delivery of the ferry and according design the VAT exemption while denying the same to building and delivery of the ferry.

It is important to note that the contract between the Applicant and its contractor was for the supply of a ferry. The contract was not for the supply of design services. While the building of a ferry entails the design of the same, the principal purpose of the contract was to supply a ferry that can move from one port to another. Therefore, the splitting of the contract by the Respondent was artificial and does not reflect the substance of the transaction or contract. Let us envisage a scenario where an intending bride contracts a seamstress to make a wedding gown and on the wedding day, the bride is presented with a design of the gown and a partial invoice for the design work, would we have a happy bride? Would the wedding proceed? We suspect not.

#### Obiter

One of the strategic objectives of the National Development Plan IV ("NDP IV") is to build and maintain strategic sustainable infrastructure in transport, housing, energy, water, industry and ICT (strategic objective 4)

One of the key development programs under this objective is the development of integrated transport infrastructure and services. More importantly, the government has


highlighted the importance of developing Uganda's maritime transport infrastructure to leverage the country's abundant water bodies and reduce the burden on the roads. To this end, the government plans to increase freight cargo on Lake Victoria from 52,599 tonnes as at FY 23/24 to 953,252 tonnes in FY 29/30.


Therefore, in cases such as this where there is a deliberate government policy to promote, attract and retain investment in key sectors to achieve long term growth, it is important that the implementation of the enabling provisions is aligned with the prevailing government policy.


In conclusion, we find that the Applicant was entitled to the VAT exemption and their application is therefore allowed. The Tribunal hereby makes the following orders:

- (i) The supply of services of design, building, and delivery of a ferry is exempt from VAT under paragraph 1(ae) of Schedule 3 of the VAT Act;
- (ii) The Respondent should duly refund the VAT that was paid by the Applicant;
- (iii) Costs are awarded to the Applicant.

Dated this 30<sup>th</sup> day of April 2025.

  
CRYSTAL KABAJWARA  
CHAIRPERSON

  
PROSCOVIA R NAMBI  
MEMBER

  
ROSEMARY NAJJEMBA  
MEMBER