



[2026] JMRC 03

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

REVENUE COURT

APPEAL NO. 2025 RV 00001

BETWEEN	RESTAURANT ASSOCIATES LIMITED	APPELLANT
AND	COMMISSIONER GENERAL, TAX ADMINISTRATION JAMAICA	RESPONDENT

IN OPEN COURT

Lemar Neale and Nathaniel Webb instructed by Nea | Lex, Attorneys-at-law for the Appellant.

Cecilia Chapman Daley, Gabrielle Warren and Evean Hylton, Tax Counsel for the Respondent.

Heard: 29th and 30th July, and 22nd September 2026

Revenue Law - General Consumption Tax - General Consumption Tax Act - Construction of paragraph 27 Part II of the Third Schedule - Supplies of drinks or meals at restaurant in departure lounge of international airport - Whether exempt supplies under paragraph 27 Part II of the Third Schedule - Whether zero rated supplies pursuant to paragraph 4 Group 5 Part II of the First Schedule and Regulation 18(b) of General Consumption Tax Regulations

C. BARNABY, J

INTRODUCTION

- [1] The Appellant taxpayer is the operator of the quick service restaurant under the Burger King Franchise operating from the departure lounge of the Norman Manley International Airport hereinafter called “the NMIA”, under a concessionaire agreement with the Airport Operator. The eatery so located will be called “the Restaurant”.
- [2] During an audit of the Appellant for the period January 2018 to December 2019, the Respondent discovered that it classified sales of drinks and melas at the Restaurant as *Exempt Supplies* under the **General Consumption Tax Act**, hereinafter called “the GCTA”. The Respondent took the view that the classification was erroneous and treated the supplies as taxable at the rate of 16.5% resulting in additional output tax of \$23,578,406.94 for 2018 and \$30,086,800.43 for 2019, totalling \$53,665,207.37.
- [3] The additional assessment to output tax was confirmed on the Appellant’s Objection prompting an appeal to the Revenue Appeals Division (hereinafter called “the RAD”). By Notice of Decision dated 6th October 2025, the Commissioner of the RAD confirmed the assessment on Objection of additional output tax for the years 2018 and 2019 in the amount of \$53,665,207.37. Aggrieved by that decision, the Appellant appeals to this court and asks for the following relief:
- a. *A Declaration that [it] is entitled to treat its supplies of food and beverage services at the Norman Manley International Airport as Exempt Supplies pursuant to Paragraph 27 of Part II of the Third Schedule of the General Consumption Tax Act; [and] orders that:*
 - b. *[it] is entitled to claim as exempt supplies of \$142,899,436.00 and \$182,344,245.00 respectively for the period January 2018 to December 2019, for a total output tax of \$53,665,207.37 pursuant to the General Consumption Tax Act and Regulations, General Consumption Tax incurred on services charged in its restaurant operations at the NMIA.*

- c. *The decision of the Commissioner of Revenue Appeals, dated the 6th of October 2025, affirming the assessments of output tax of \$53,665,207.37 raised in respect of [its] restaurant operations at the NMIA for the period January 2018 to December 2019 be set aside.*
- d. *Any sum paid by [it] further to said assessments be refunded in full to [it].*
- e. *Costs be awarded to [it].*
- f. *Further and/or other relief be granted as this Honorable Court deems just.*

[4] The Appellant relies on fifteen (15) grounds of appeal which may be summarised thus, with the various contentions addressed in the course of providing the reasons for decision on the appeal.

- (i) Grounds 1 to 3 advance the Appellant's position that during the period January 2018 to December 2019 the Restaurant was serving passengers being transported from Jamaica, and it was entitled to and did treat sales at the Restaurant for the said period as *Exempt Supplies* pursuant to sections 3(1)(a) and 25, paragraph 27 of Part II Third Schedule and paragraph 18(8)(1)(e) of the Fourth Schedule of the GCTA;
- (ii) Grounds 4 to 13 concern the approach taken by the RAD in the interpretation of section 25, paragraph 27 of Part II Third Schedule and paragraph 18(8)(1)(e) of the Fourth Schedule of the GCTA; and the application of the interpretation to the Appellant's business; and
- (iii) Grounds 14 to 15, which are argued further and/or in the alternative, relate to the failure of the Commissioner of the RAD to find that the supply of meals and drinks at the Restaurant constituted a supply of

goods exported from Jamaica so as to be classified as zero rated supply under Group 5, Part II of the First Schedule to the GCTA.

- [5] The Respondent joins issue with the Appellant's grounds of appeal and contends that the decision of the RAD was validly made. He therefore asks that the appeal be dismissed, the decision of the Commissioner of the RAD be confirmed, and for costs of and incidental to the appeal and such further and other relief the court deems fit.
- [6] It is the Respondent's case, in a nutshell, that the presence of the Restaurant at the NMIA does not render the Appellant's activities exempt from GCT. In reply, the Appellant denies that the decision was validly made and in so doing repeats and relies on its grounds of appeal and says that the Respondent's case is founded on a fundamental misconstruction of the GCTA which warrants the appeal being allowed and the decision of the RAD set aside.
- [7] The appeal was heard over the course of two (2) days on 29th and 30th July 2026, and judgment reserved to today's date.

ISSUES AND SUMMARY DETERMINATION

- [8] On consideration of the parties' cases, I find these three core issues to be dispositive of the appeal.
- (i) Whether the Commissioner of the RAD erred in construing paragraph 27 Part II of the Third Schedule to the GCTA.
 - (ii) Whether the Commissioner of the RAD erred in concluding that the Appellant's services did not qualify for exemption under paragraph 27 Part II of the Third Schedule to the GCTA.
 - (iii) Whether the Commissioner of the RAD erred in concluding that the Appellant's services did not qualify for zero-rating pursuant to

paragraph 4 Group 5, Part II of the First Schedule and Regulation 18(b) of the GCTA.

- [9] For reasons to follow, while I find that the first issue is resolved in favour of the Appellant, the second and third are determined in favour of the Respondent. In the result, the appeal fails. In determining the issues, all authorities cited were duly considered but I have not found it necessary to reference each of them in these reasons for decision.

BURDEN AND STANDARD OF PROOF

- [10] Pursuant to section 41(4) of the GCTA, the Appellant has the onus of proving that the assessment complained of is erroneous. As to the meaning of the word “*erroneous*”, which appears in various revenue statutes establishing the burden of proof on tax appeals, it is “... *wide enough to embrace both a complaint that the assessment is wrong in principle and that it is excessive in amount.*”¹ This burden is discharged at the civil standard of a balance of probabilities. On the Respondent rests an evidential burden only.²

- [11] It is well settled that appeals to this court proceed by way of rehearing, and are in the nature of fresh proceedings, the parameters of which are set by the pleadings. Within those parameters, parties are permitted to include other reasons, including evidence, upon which they intend to rely in arguing that an assessment is or is not erroneous.³

¹ **D.R. Holdings Ltd. v the Commissioner of Taxpayer Appeals** (JMCA, 31 October 2008), [25]

² See **Saturn Sales Limited v Commissioner General Tax Administration Jamaica** [2022] JMRC 02, [8] to [13]

³ See **Llandovery Investments Ltd v the Commissioner of Taxpayer Appeals (Income Tax)** [2012] JMCA Civ 19, [15]

ANALYSIS

(i)

Whether the Commissioner of the RAD erred in construing paragraph 27 Part II of the Third Schedule to the GCTA.

Interpretation principles

[12] At Ground 7 of the Amended Notice of Appeal, hereinafter called “the Notice of Appeal”, the Appellant contends that the Commissioner of RAD erred in her application of the purposive approach to statutory interpretation and in so doing, arrived at an incorrect conclusion about the purpose of the GCTA and the character of the service offered by it in relation to the Act. It is submitted that she improperly engaged the principle to restrict the meaning of the clear words of the exempting provision under which the Appellant contends its services at the Restaurant fall. For reasons which I will endeavour to demonstrate, I find the complaint to be without merit.

[13] The Appellant in written submissions contend that principles in respect of the literal rule are to guide this court. Reference is made to dictum from the very old cases of **Partington v Attorney-General** (1869) LR 4 HL 100, **Re Micklethwaite** (1855) 11 Exch 452; and culminates with this statement appearing at paragraph [76] of **Digicel Jamaica Limited v the Commissioner of Taxpayer Appeals** [2014] JMCA Civ 36, which is in essence the point made in the two older cases: “*A subject is only to be taxed on clear words, not on ‘intendment’ or on the ‘equity’ of an Act.*”

[14] The **Digicel Jamaica Limited case** was concerned with construction of section 18(4) of the GCTA, the essence of which is that output tax was chargeable on amounts received by a taxpayer by way of “*reimbursement, recovery or otherwise, in respect of goods or services acquired by him for the purpose of making taxable supplies*”. The issue for the court was whether settlement of the

taxpayer's business interruption claim by its insurers was exigible to GCT within the meaning of that section. The Court of Appeal found that it was and dismissed the appeal.

- [15] The Appellant's submissions neglect to indicate that the words chosen for isolation are part of an extract cited from the more expansive dictum of Lord Wilberforce in **W.T. Ramsay Ltd v Inland Revenue Commissioners et al** [1981] 1 All ER 865, and forms only part of the exposition on the development of the law in relation to the interpretation of revenue statutes. The submissions also disregard the conclusion reached by Morrison, JA (as he then was) on the point. He stated:

*[79] It accordingly seems to me that, in seeking to discover whether section 18(4) applies to the proceeds of the insurance settlement received by Digicel in accordance with the terms of the policy in this case, **it is necessary to have regard to the clear words of the Act, looked at against the context, scheme and purpose of the Act as a whole and section 18(4) in particular.***

[Emphasis added]

- [16] The highlighted words are the essence of purposive construction. Later in **Commissioner of Taxpayer Appeals v Hason Hosang** [2020] JMCA Civ 53 which was cited by the Appellant, Morrison P articulated it this way.

*[36] Happily, there is no dispute between the parties as to the correct approach to the interpretation of revenue legislation. It is in fact no different to the approach to the construction of statutes generally. In this regard, it is now accepted that, "the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose" [Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes) [2004] UKHL 51, [2005] 1 All ER 97, para. [28].] Accordingly, as Lord Nicholls of Birkenhead explained in **MacNiven (Inspector of Taxes) v Westmoreland Investments Ltd** [[2001] UKHL 6*

at [8], [2001] 1 All ER 865 at [8]; see also **Cigarette Company of Jamaica Ltd (In Voluntary Liquidation) v Commissioner of Taxpayer Audit and Assessment** [2010] JMCA Civ 3, para. [75](i), “[t]he paramount question always is one of interpretation of the particular statutory provision and its application to the facts of the case”.

[17] It is beyond doubt that the correct approach to the interpretation of revenue statutes is to have regard to the purpose of a provision and interpret its language, in a way which best gives effect to that purpose.

[18] Also beyond doubt is that where an exemption clause is the concern - no less one which exempts supplies from consumption tax - a strict interpretation is required. As to what such construction entails, this statement of Chadwick LJ in **Expert Witness Institute v Customs and Excise Commissioners** [2002] 1 WLR 1674 is instructive.

[17] ... A “strict” construction is not to be equated, in this context, with a restricted construction. The court must recognise that it is for a supplier, whose supplies would otherwise be taxable, to establish that it comes within the exemption; so that, if the court is left in doubt whether a fair interpretation of the words of the exemption cover the supplies in question, the claim to the exemption must be rejected. But the court is not required to reject a claim which does come within a fair interpretation of the words of the exemption because there is another, more restricted, meaning of the words which would exclude the supplies in question.

...

[19] The task of the court is to give the exempting words a meaning which they can fairly and properly bear in the context in which they are used.

[Emphasis added]

[19] In that case a registered company limited by guarantee without share capital, whose objective was to support the proper administration of justice and the early

resolution of disputes through expert evidence was assessed to VAT by Customs and Excise Commissioners in respect of supplies to its members. This was on the basis that it was not entitled to exemption from VAT as it was not an “*organisation with aims of a ... civic nature*” within the meaning of an EC directive implemented in the UK Value Added Tax Act.

[20] The phrase “*aims of a ... civic nature*” fell to be construed in the context of determining the scope of an exception to the general principle that value added tax should be levied by European Union member states on all services supplied for consideration, by taxable persons within the relevant territory. The institute successfully appealed the assessment on the ground that it was a non-profit organization with aims of a civic nature. The commissioners appealed with the permission of the England and Wales Court of Appeal.

[21] In dismissing the appeal, it was held that even though the phrase “*aims of a ... civic nature*” was to be construed strictly, the court was not bound to give it its most restricted or narrow meaning. There being nothing which suggested that the word “*civic*” was to have, or have only, a local or municipal connotation, the court considered that it should be interpreted as including aims pertaining to citizenship nationwide. Considering the context in which the phrase was used, the court determined that the primary objects of the institute were of a civic nature having regard to the importance of the proper administration of justice in the social contract between the state and citizens, which was promoted through the early resolution of disputes by relevant, fair and unbiased expert evidence.

[22] The **Expert Witness Institute case** was cited and applied in **Target Group Ltd v Revenue and Customs Commissioners** [2023] UKSC 35 where the court was required to determine whether the taxpayer’s loan administration services were “*transactions ... concerning*” “*payments*” and/or “*transfers*” and/or “*debts*” in order to fall within a VAT exemption clause. This was also in the context of determining an exception to the general principle that VAT should be charged on all services supplied for consideration, by taxable persons within EC territories.

- [23] The appellant, taxpayer's appeal against a decision upholding the revenue's assessment to VAT was dismissed on the basis that no individual element of its services answered to the description of transactions in the exemption clause. In so doing, the UK Supreme Court held that a narrow construction of the exemption clause was indeed correct and consistent with the legislative purpose of alleviating difficulties in determining consideration for financial services and by extension the tax base for VAT liability, and to avoid increase in the cost of consumer credit.
- [24] Approaching the construction of the exemption in this way, the court found that the exempt services had to have the effect of transferring funds and changing the legal financial situation of relevant parties. This required Target to show that the services in themselves had that effect and made that change, rather than simply having the causal effect. While the court found that the taxpayer's services were essential to and automatically led to a transfer or payment, they did not amount to functional participation and performance, which was required. In their absence the "*payments*" or "*transfers*" ground of the exemption were not met. Likewise, the court determined that the record of the consequence of transfers effected by others by ledger entries for relevant loan accounts made no changes to the legal and financial situation of the parties and was outside of the "*debt*" ground of the exemption.
- [25] **The Expert Witness Institute** and **Target Group Ltd cases** are undoubtedly factually dissimilar to the instant case, but I regard allusion to the facts of each of them to be necessary to demonstrate that in interpreting exempting provisions strictly but not restrictively, a narrow construction is not excluded if the subject matter and rationale for the exemption require it; and to also show that a narrow interpretation of an exemption provision is not in itself inconsistent with a purposive interpretation of it.

Interpretation of the exemption

- [26] In ground 4 of the Notice of Appeal, the Appellant contends that the Commissioner of the RAD erred in law by misinterpreting section 25, Paragraph 27 Part II of the Third Schedule to the GCTA and paragraph (1)(e) of the Fourth Schedule of the GCTA. A number of other specific but related complaints are also levied, which I have taken the liberty of grouping and summarising for organisational ease. They will be referred to in discussing the other sub-issues hereunder and other broad dispositive issues to which they are most relevant.
- [27] GCT is imposed on the supply of goods and services by a registered taxpayer in the course or furtherance of taxable activities carried on by the taxpayer by reference to the value of the goods and services, pursuant to section 3(1)(a) of the GCTA. Pursuant to section 25 however, *“goods and services specified in the Third Schedule shall be exempt from the payment of tax under [the Act].”*
- [28] Parts I and II of the Third Schedule of the GCTA lists categories of goods and services respectively, which are exempt from GCT. Among the categories of services exempted from GCT are:
- 27. Services (excluding catering services) rendered at a port or international airport in Jamaica in connection with the importation or exportation of goods or the transportation of people into or out of Jamaica.*
- [29] The above provision and how it is to be construed is at the core of the dispute. The interpretation of the term *“in connection with”* is the source of much consternation for the Appellant and I therefore find it convenient to commence the discussion there.

The interpretation of “*in connection with*”

[30] It is the Appellant’s contention that the Commissioner of the RAD:

- (i) erred in and/or misdirected herself on the law by going against the weight of persuasive authorities to apply a narrow construction to the phrase “*in connection with*”, used in paragraph 27 of Part II Third Schedule (Ground 5);
- (ii) erred in law by misinterpreting and/misapplying the purposive approach of statutory interpretation and in doing so:
 - (a) impermissibly reading into the clear words of paragraph 27 of Part II Third Schedule of the GCTA a requirement for a “*direct functional link*” of the Appellant’s service to the “*core transportation function*” of the airport;
 - (b) fundamentally misconstrued “*in connection with*” used in paragraph 27 of Part II Third Schedule of the GCTA by requiring a direct, operational link to the core business of the airport;
 - (c) demanding a strict and narrow interpretation of the words “*in connection with*” used in paragraph 27 of Part II Third Schedule of the GCTA;
 - (d) ultimately finding that the legislature intended to exempt services which are directly and closely related to the transportation function of an international airport, including passenger handling and check in services, security screening and customs processing, aircraft maintenance and fuelling services, baggage handling and storage, freight forwarding and handling, immigration control and similar activities (Grounds 8(i), 8(ii) and 8(iii));

[31] The Appellant submits that the Commissioner of the RAD failed to apply the established principle that the phrase “*in connection with*” has the widest connotation. I cannot agree with such a broad statement.

[32] While the phrase “*in connection with*” has a wide connotation in its ordinary signification, the very case of **Pepper v Hart** [1993] AC 593 on which the Appellant relies demonstrates the error in its contention. The case shows that the connotation can be restricted where the context permits, consistent with the purposive approach to statutory interpretation. The statement of Lord Browne-Wilkinson at page 643 G-H of that decision, which was cited in submissions by the Appellant suggests the very thing.

The words “in connection with” have the widest connotation and I cannot see how they are to be restricted in the absence of some context permitting such restriction.

[33] Lady Justice Arden in **Barclays Bank plc and Anor. v Revenue and Customs Commissioners** [2007] EWCA Civ 442 on which the Appellant also relies put it this way in respect of the meaning of “*in connection with past service*”,

18. The expression “in connection with” could describe a range of links... Lord Hope in Coventry Waste Ltd v Russell [1999] 1 WLR 2093 at 2103, Lord Hope held that in this situation the court must look closely at the surrounding words and the context of the legislative scheme...

[34] In **Standard Life Assurance Limited v Ace European Group and Ors.** [2012] EWHC 104 (Comm), also cited by the Appellant, Eder J had to interpret this clause in a policy of insurance.

All claims or series of claims (whether by one or more than one claimant) arising from or in connection with or attributable to any one act, error, omission or originating cause or source, or the dishonesty of any one person or group of persons acting together, shall be considered to be a single third party claim for the purposes of the application of the Deductible.

[35] He found that

In one respect, the language of the aggregation clause in the present Policy is even wider than that of the clauses considered in [other] cases. Not only does the clause in the Policy use the expression "originating cause or source", but the description of the link required between the "originating cause or source" and the claims which it is sought to aggregate is worded in the broadest possible terms. Whereas in [another case] the words used were "arising from", and in [yet another] the words used were "consequent on or attributable to", the Policy here uses the words "arising from or in connection with or attributable to" [emphasis supplied in the original]. The phrase "in connection with" is extremely broad and indicates that it is not even necessary to show a direct causal relationship between the claims and the state of affairs identified as their "originating cause or source", and that some form of connection between the claims and the unifying factor is all that is required.

[36] It is abundantly clear from the above that the broad construction of the term favoured by Eder J was arrived at on consideration of the context in which it was used and not merely on account that the phrase has the widest connotation.

[37] The Appellant also relies on **United States v Loney** 219 F.3d 281 (3d Cir. 2000). I am not persuaded of its value here, but it nevertheless makes the point made by the other authorities. The court considered the requirement of a four-level adjustment in the United States Sentencing Guidelines thus: "*the defendant used or possessed any firearm or ammunition in connection with another felony offence...*" While the appellant argued that the term "*in connection with*" should be narrowly construed, the court applied an expansive construction to cover a wide range of relationships between the firearm possession and the other felony offence. In addition to being constrained by a rule which required the court to interpret undefined terms in the guidelines by using the ordinary meaning of the term, the court also concluded that even if the matter was to be decided on policy grounds alone it was far from clear that a narrow construction made sense in the

context of the serious problem presented by gun violence. The case is demonstrative of the point that the construction of the term is to be informed by context.

[38] The Appellant goes further in contending that the Commissioner erred in applying the wrong test by requiring a direct, operational link which is akin to the specific statutory scheme in **Hatrick and Company Limited v the King** [1923] A.C. 213.

[39] The Commissioner of the RAD did cite extensively from the **Hatrick case** and concluded that it, together with a number of cases supplied in the course of this appeal - **Commerce Commission v Sportzone Motorcycles** [2013] NZHC 2531 in which dictum from **Yurjevich v Commissioner of Inland Revenue** (1991) 13 NZTC 8⁴ was cited, **Real Resorts Limited v the Commissioner of General Consumption Tax** SCCA No. 11/99, unreported judgment delivered 11th October 1999 -

*... proffer a narrower interpretation of the phrase “in connection with” in the instant **and posit that based on the framing of the provision**, the legislature intended to exempt services which are directly and closely related to the transportation function of an international airport. As a result, this would include passenger handling and check-in services, security screening and customs processing, maintenance and fuelling services for aircrafts, baggage handling and storage, freight forwarding and handling, immigration control and similar thereto.*

[40] In the **Hatrick case** the Minister of Railways had an agreement for the management of a wharf which was the property of the Wanganui Harbour Board, and as agent of the said Harbour Board collected dues imposed by it. The

⁴ The decision submitted for the court's consideration was **Mark Loure Yurjevich** M 414/87, unreported decision delivered 16th July 1991 with the words “NOT RECOMMENDED”. Based on the dictum quoted in **Sportzone case**, it appears to be an earlier version of the judgment although the principles are the same.

Minister purported to make regulations pursuant to section 10 of the Government Railways Act, 1908 charging goods received into a shed "*used in connection with a railway*", in addition to dues imposed by the Harbour Board. The Railway Department built a shed on its own land which adjoined the railway and was used by the Harbour Board to sort goods from ships discharging at the wharf with the aid of some of the Department's staff. Those goods were not to be carried by the railway but were to be delivered directly to consignees.

- [41] On appeal from the New Zealand Court of Appeal, the issue for the Privy Council was whether the Minister through the Railway Department and independent of the Harbour Board had the statutory right to exact dues and charges in respect of the sortage of goods never carried on the railway or delivered or placed under control of the Department for the purpose or intention of being carried on the railway. Reversing the decision of the Court of Appeal, the Privy Council held that neither the section of the Act, the regulations nor the agreement empowered the Minister to make the charges. Their Lordship expressed the view at pages 225-6 of the judgment, which I believe to be correct given the facts of the case, that the words "*used in connection with a railway*"

... could not apply to something done on a space or in a building merely contiguous to or abutting upon a railway, even though it be the property of a railway; if the thing done forms no part of or has no connection with the proper business of a railway, as a carrier of passengers and goods by rail, or in other words that the expression "in connection with a railway" means connected with, subserving and being ancillary to, the business of a railway as such carriers. If that were not so the strangest results would follow.

[Emphasis added]

- [42] Their Lordships in the **Hatrick** case had to consider the expression "*in connection with*" and clearly did so in the context of the legislation and the words which surround the phrase.

[43] In the **Sportszone Motorcycles case** the issue was framed as being whether the phrases “*in connection with*” and “*in relation to*” which appeared in the Credit Contract and Consumer Finance Act, in reference to the unreasonableness of fees were to be narrowly or broadly construed to limit the costs which were recoverable by fees by way of, among other parameters, variable cost or fixed costs or by reference to activities involved in a particular transaction.

[44] Toogood, J quoted this statement attributed to Savage, J in the **Yurjevich case** at paragraph 50.

There must, It seems to me, be a link or connection which is sufficiently close and relevant to the preparation institution or presentation of the objection that it can reasonably be said that the expenditure was incurred in connection with it.

It does not seem to me that it is possible to postulate any test more precise than that which I have just given. I think that each case must be considered in the light of its own particular circumstances, and a practical and common sense judgment made in each instance.

[Emphasis added]

[45] The decision in the **Yurjevich case** was also summarised at paragraph 51 in these terms.

[51] The Court concluded that claiming for the expense of travelling to see relatives to discuss a tax assessment merely because the judgment of the relatives was valued by the taxpayer was “too remote” and “not sufficiently relevant” to be considered in the context of the legislation to be “in connection with” their objection to the assessment.

[46] Toogood, J went on to make this remark at paragraph 68 of his judgment.

[68] While the principle that “in connection with” and “related to” should be given a narrow construction rather than a broader one is capable of relatively straightforward expression, it is less easy to define or prescribe how the

principle is to be applied to specific cases. There is no bright line test and at the margins it will be a matter for judgment in the particular circumstances whether there is a sufficiently close and relevant connection or relationship between the fee matter and the cost claimed in respect of it. Context will assist to resolve marginal cases and the concept of reasonableness is sufficiently flexible to allow practical application.

- [47] While the reference to “*principle*” might have left the impression that there is some rule that the phrases simpliciter are to be narrowly construed, I do not believe that is what was intended to be conveyed. It is my view that the court was stating that it is easy to make a proposition that the phrases should be so interpreted but that the phrases should in fact take their meaning from the words which surround them and statutory purpose, which is no more than what the quoted dictum from the **Yurjevich case** demonstrates. I am fortified in this view when I have regard to the response of Toogood, J to the submission of the defendants that the narrowing of the scope of the expressions “*in connection with*” and “*related to*” in the manner sought by the Commission - that reasonableness requires a closely relevant connection between the cost claimed and the particular transaction - required the court to rewrite the statute. He remarked:

[65]... I am not persuaded that it is necessary to read words into the statute in order to give effect to which I consider to be the meaning provided by the text in the light of the relevant statutory purposes...

[66] Bearing in mind the statutory purposes identified and the focus of the statutory wording upon particular transactions, it is appropriate to adopt the test from Yurjevich. To be reasonable, the cost the creditor seeks to recover must be sufficiently close and relevant to the establishment of the particular loan, to the administration and maintenance of the particular loan, or to the actual consequences of the particular default, such that it can reasonably be said that the cost was incurred in connection with or in relation to the relevant matter.

- [48] On consideration of the purpose of the statute, the focus of statutory wording on particular transactions, Toogood, J determined that it was appropriate to adopt the test in **Yurjevich**. This led him to conclude that in order for costs sought to be recovered by a creditor to be reasonably incurred in connection with or in relation to the relevant matters, the cost must be sufficiently close and relevant to the establishment or administration and maintenance of a particular loan, or to the actual consequences of the particular default.
- [49] The **Real Resorts Limited case** was an appeal to the Court of Appeal against the decision of Orr J confirming the decision of the GCT Commissioner refusing the appellant's application for refund of architectural fees incurred in connection with the construction of a hotel. The court was required to construe section 2(2) of the GCTA, which provides that "*for the purposes of [the] act, a taxable activity includes anything done in connection with the commencement or termination of that activity*". On consideration of section 3(1)(a) of the Act which imposes the tax and the definition of "*taxable activity*" therein, Rattray P in delivering the judgment of the court concluded that the architectural fees incurred in connection with the construction of a hotel were "*not sufficiently part of or closely connected*" with the appellant's taxable activity which was held to be the leasing or renting of the hotel.
- [50] All the foregoing authorities demonstrate that the expression "*in connection with*" is to derive its meaning by looking at the words which surround it, and legislative context. The approach to construction indicated by the Commissioner of the RAD, based on *the "framing of the [exempting] provision"* is not inconsistent with the authorities, nor a purposive approach to interpretation.
- [51] When paragraph 27 Part II of the Third Schedule to the GCTA is read, it is clear that the phrase operates as a bridge between the words which precede it and those which follow. The critical question which must therefore be asked in interpreting the exemption clause is not what does "*in connection with*" in isolation

mean, but how are the words which surround it to be construed to arrive at its proper meaning. It is to that task that the enquiry turns.

The construction of “*services (excluding catering services) rendered at a port or international airport in Jamaica*”

- [52] The Appellant contends in Ground 11, that the Commissioner of the RAD erred in failing to give proper effect to the specific exclusion of “*catering services*” from the exemption under paragraph 27 Part II of Third Schedule and so failed to apply the *expressio unius est exclusion alterius* principle of statutory interpretation.
- [53] It was argued in submissions that the *expressio unius est exclusion alterius* principle applies and that by necessary implication, Parliament’s “*deliberate choice*” to exclude only “*catering services*” means that all other services, are within the ambit of the exemption. It is said that the narrow interpretation taken by the Commissioner renders the specific exclusion of “*catering services*” from the exemption provision redundant and otiose.
- [54] The Appellant’s argument goes, that if Parliament intended to exclude all food and beverage services from the exemption, it would have done so but chose not to. The court is therefore urged not to expand the exception to include services which were “*deliberately*” included within the exemption provision.
- [55] It is also the submission of the Appellant that Parliament did not exclude the supply of drinks or meals in a restaurant, which is consistent with the distinction made between the supply of drinks or meals in a restaurant on the one hand and a catering service on the other hand at paragraph 1(e) of the Fourth Schedule. That paragraph is enacted pursuant to section 18(8) of the GCTA and provides that matters specified in it are to constitute the provision of services. It states, as relevant to the enquiry that:

1. *The following shall be regarded as the provision of services -*

(a) ...

(e) *the supply of drinks or meals in the operation of a bar, canteen, club, hotel, restaurant or other place of business similar thereto or a catering service other than drinks or meals supplied in the cafeteria or canteen of an educational institution approved by the Minister of Education.*

[56] I do not find any merit in the Appellant's submissions.

[57] The Latin maxim *expressio unius est exclusio alterius* means that the expression of one thing is the exclusion of the other. While it should not be dismissed as an interpretative aid, something must be said about its application. No authorities were cited but I am assisted in this regard by these indisputable truths expressed in the dicta of Morris and Jenkins LJ in **Dean v Wiesengrund** [1955] 2 Q.B. 120. At page 137, the former stated:

*The maxim "expressio unius exclusio alterius" was relied upon. In considering the application of this maxim it is desirable to have in mind the warnings expressed by Wills J. and by Lopes L.J. in **Colquhoun v. Brooks** [16 19 Q.B.D. 400, 406; 21 Q.B.D. 52] Wills J. said: "I may observe that the method of construction summarized in the maxim 'expressio unius exclusio alterius' is one that certainly requires to be watched. Perhaps few so-called rules of interpretation have been more frequently misapplied and stretched beyond their due limits. The failure to make the 'expressio' complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind; and the application of this and every other technical rule of construction varies so much under differing circumstances, and is open to so many qualifications and exceptions, that it is rarely that such rules help one to arrive at what is meant...*

Jenkins LJ expressed the limit of the maxim's utility this way at pages 130-1:

... this maxim is, after all, no more than an aid to construction, and has little, if any, weight where it is possible, ... to account for the “inclusio unius” on grounds other than an intention to effect the “exclusio alterius”.

- [58] While the Commissioner of RAD does not expressly indicate that the maxim was considered, implicit in her treatment of the exclusion of “*catering services*” in her decision, is that thought was given to the reason for it being expressed in the statute. She states,

140. ... the “catering service” which is excluded in the provision is a service which is provided to the respective airlines for the purpose of in flight services and thus highlights the nature of the services which the legislature wished to exempt ...

- [59] While the Appellant clearly does not agree with the position taken, as I will seek to demonstrate in the discussion of the words which follow “*in connection with*”, the conclusion was properly open to the Commissioner of the RAD on the application of the maxim. When so viewed, her interpretation cannot be said to have caused the expression of “*catering services*” in the exemption provision to be redundant or otiose.

- [60] Save for the significance of the exclusion of “*catering services*” from the exemption - which I find to be answerable on the proper construction of the phrase “*in connection with*” and the words which follow it - there is no dispute as to the meaning of the words “*services ... rendered at a port or international airport in Jamaica*”.

Construction of “*in connection with the importation or exportation of goods or the transportation of people into or out of Jamaica*”

- [61] The Respondent submits that the phrase “*in connection with*” should be narrowly construed to confine the exempted class of services to those which are

“*necessary*” for the movement of goods and people in and out of Jamaica via a port or international airport. I find merit in the submission that the phrase should be construed narrowly but come to a different view from the Respondent as the restriction to be placed on the connotation of the phrase.

- [62] The Commissioner of the RAD narrowly construed the phrase “*in connection with*” and concluded that based on the framing of the provision the legislature intended to exempt services “*directly and closely related*” to the transportation function of an international airport. It appears that the Commissioner regarded such a connection to be one of “*necessity*” - consistent with the submission of the Respondent - when its application to the services rendered by the Appellant is considered.
- [63] During oral submissions, Counsel for the Appellant referred to the majority decision of the Caribbean Court of Justice (hereinafter called “the CCJ”) in **Cruise Solutions Limited and Anor. v the Commissioner of General Sales Tax & the Attorney General of Belize** [2018] CCJ 27 (AJ) in making the argument that “*in connection with*” at paragraph 27 of the Third Schedule of the GCTA should not be construed to require any “*direct connection*”, in the absence of an express indication by Parliament. There is merit in the submission but before returning to the enquiry, I wish to say something of the decision.
- [64] The case concerned item 6(ii) of the Fourth Schedule of the Belize General Sales Tax Act hereinafter called the GSTA”) which provides for the zero rating of “[a] *supply of services that are provided directly in connection with the operation or management of a ship or aircraft engaged in international transport.*” Reliance was placed on the finding of the majority that tour services to cruise line passengers by the appellant tour operators under contracts with cruise lines visiting Belize in the business of operating their ships qualified for classification under item 6(ii) and are zero rated.

[65] It is my respectful view that the majority decision on the point was incorrect. I prefer the opinion of Saunders P that the services provided by the tour operators were not within the zero rating category of item 6(ii). He opined:

[69] ... What is “directly connected with the operation or management of a ship” ought not to be conditioned or impacted by the pleasurable activity any particular group of the ship’s passengers chooses to enjoy. Far from being connected with a cruise ship’s operations or management, local tours provided by independent tour operators are simply one of several different options in which some cruise line passengers indulge while visiting Belize.

[66] In so concluding, Saunders P rightfully affirmed the approach and view taken by the court at first instance thus.

[71] I agree with Justice Young. We must separate out from the operation or management of a ship, the business in which any particular ship’s owner or group of passengers chooses to engage for their own profit or pleasure. Justice Young noted that when we speak of the operation or management of a ship (the judge actually said operation and management, but very little should be made of this as it does not alter the accuracy of what she stated) we are referring, for example, to -

“...the working, running, handling or performance of the ship which would include the navigation, movement, docking, fuelling, insurance, and registration of the ship, stocking of stores, operation of the equipment, technical support as well as the well-being and administration of the crew and the ship.”

[72] The judge did not regard this as an exhaustive definition and I agree. I would, for example, suggest that matters involved in the operation or management will extend to the safety and well-being of all passengers or crew members of a ship while on board the ship, or in the course of embarking upon or disembarking it, or when making their way to embarkation or disembarkation points. But after passengers have safely disembarked the ship, what domestic transportation service a group of them chooses to engage (whether by themselves or through the ship’s

purser via a contract with the ship) is their personal business and is not at all connected with the ship's operation or management. Justice Young was right to note that services that are directly connected with the operation or management of a ship have to do with the ship itself. Neither the vagaries of some passengers on a ship, nor a profit-making business contrived by ship's owners to cater to the desires of some of their passengers should be confused with the ship's operation or management.

[Emphasis in the original]

- [67] In concluding as he did, Saunders P sought to remind courts engaged in statutory interpretation of the caution sounded by the Court in **Smith v Selby** [2017] CCJ 13 as follows:

The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, coupled with the restraint to avoid imposing changes to conform with the judge's view of what is just and expedient. The courts must give effect to the intention of the Parliament ...

- [68] Returning to the appeal here, I observe that ports and international airports are by their very nature concerned with the importation, exportation and transportation of goods and people as appropriate. Any service rendered at any of them can therefore be said to be in connection with those activities and be exempt from GCT if the phrase "*in connection with*" is given its most expansive meaning as contended by the Appellant, on account that they are rendered at either place. I agree, as submitted by the Respondent, that if that was the intention of the Parliament that would be achieved by enacting a paragraph 27 in Part II of the Third Schedule to the GCTA to read: "*Services (excluding catering services) rendered at a port or international airport in Jamaica.*"
- [69] The Parliament went further however and enacted the words "*in connection with the importation or exportation of goods or the transportation of people into or out*

of Jamaica". This is a strong signal on the face of the provision that the legislature did not intend that all "*services (excluding catering services)*" rendered at port or international airport" in the island should be captured by the exempting provision. It is this context which permits and in fact warrants the restriction of the connotation of the phrase "*in connection with*". The question is, to what extent? It is my judgment that answer is to be found in the words which follow the phrase.

- [70] In the context of the movement of goods or commodities across borders, the word "*importation*" is understood as the process of bringing goods from one country to another; and "*exportation*" the process of sending goods from one country to another. The meaning of the noun "*transportation*" as "*the movement of goods or persons from one place to another by a carrier*" in **Black's Dictionary**, 9th Edn. was cited by the Respondent, which meaning is consistent with the ordinary signification of the word. The exempting provision requires transportation of people into and out of the island giving the noun the cross-border component which it would not usually have. The common concern of each of the defined activities is the physical movement of goods or people, as appropriate into or out of Jamaica. Where movement is done via a port, it is by way of vessels, and aircrafts if by way of an international airport.
- [71] The phrase "*in connection with*" being the bridge between the words which precede and follow it, it appears to me that it must be construed as requiring services, excluding catering services, rendered at a port or international airport in Jamaica to have a "*close connection*" with the physical movement of goods or people into or out of the country. This would no doubt include aviation logistics and border security services including but not limited to "*passenger handling and check in services, security screening and customs processing, aircraft maintenance and fuelling services, baggage handling and storage, freight forwarding and handling, immigration control*", as found by the Commissioner of the RAD and of which one can take judicial notice.

- [72] It is my view that a “*close connection*” should be favoured instead of a direct connection which was applied as “*necessity*” in the decision of the Commissioner of the RAD and argued for by the Respondent. While I agree that the words of the exemption clearly demonstrate that the phrase “*in connection with*” cannot be given its widest signification, its connotation should not be unduly restricted so as to render the phrase preferred by the legislature meaningless.
- [73] I believe judicial notice can be taken of the fact that a vessel or airline may offer on-board or in-flight drink and meal service, and in so doing may obtain supplies from catering services. Whether or not catering services are supplied to carriers at a port or international airport, goods can nevertheless be imported and exported, and people transported into or out of the island. The supply of “*catering services*” is therefore not “*necessary*” for such movement. If “*in connection with*” is construed as a “*direct connection*” which was applied as “*necessity*” by the RAD and argued for by the Respondent, Parliament would have acted in vain in expressly “*excluding catering services*” from the exemption. The presumption against surplusage says it does not. Accordingly, while restriction on the phrase “*in connection with*” is required based on its place in the provision and the words which surround it, it cannot be construed to require “*necessity*”.
- [74] As to the purpose for Parliament’s expressed exclusion of “*catering services*” from the exemption to GCT, the very foundation for the imposition of GCT provides a ready answer. Like other indirect taxes such as VAT⁵, GCT operates on the destination principle which informs that taxes are to be levied and collected in the jurisdiction where the goods or services are ultimately consumed.

⁵ Kathryn James, *The Rise of the Value Added Tax*, (Cambridge Tax Law Series, CUP 2015), 136: “*Most real VATs are designed to be levied on a destination basis so as to tax at the point of final consumption.*”

- [75] “*Catering Services*” are a discrete consumable and when supplied at a port or international airport in Jamaica under a business to business relationship with the airline as consumer, Jamaica is in fact the place of consumption of the supply of “*catering services*”.
- [76] Although the supply of such services are not necessary for the importation or exportation of goods or the transportation of people into or out of the island, where drinks or meals from the supply of “*catering services*” in a business to business relationship between caterer and carriers are in fact used in on-board or in-flight service it would be difficult, if not impossible, to say that “*the catering services*” supplied at a port or international airport was not rendered in connection with the movement of the goods or people into or out of Jamaica. Consistent with the destination principle and leaving no doubt that such supplies are exigible to GCT supplies of “*catering services*” are specifically excluded from the exemption.

Use of Ministerial Paper in statutory construction

- [77] The Appellant complains at ground 12 of its Notice of Appeal that the Commissioner of the RAD erred in law in relying on the Ministerial Paper of 8th September 1993 - which predates the inclusion of paragraph 27 Part II of the Third Schedule to the GCTA - to interpret, contradict and or displace the clear and unambiguous words of the statute.
- [78] Reference to ministerial statements which predate enactments premised on them is not prohibited as an aid to construction of legislation, whether primary or secondary. As indicated in **Pepper v Hart** however, such reference is permitted within these limits: (a) the legislation is ambiguous or obscure or leads to absurdity, (b) the material relied upon consisted of statements by the Minister or other promoter of the Bill with such other Parliamentary material as was necessary to understand the statements and their effect, and (c) the statements relied upon were clear.

- [79] The Commissioner of the RAD refers to **Introduction of Ministry Paper of September 8, 1993** herein after called “the Ministry Paper” and quotes extracts therefrom which she says

*153 ... highlight[s] The administration's intent to limit the zero-rating benefit to exports and narrow the range of goods and services which can be classifiable as exempt for GCT purposes at the material time. Whilst the current status-quo grants exempt status to international freight, passengers and certain ancillary services, the old policy was also to grant zero-rating status only to services supplied **directly in respect to the transport of passengers or goods into or out of Jamaica**. The related ancillary services such as loading, unloading or handling would be exempt. It is humbly posited that it is the aforementioned ancillary services which **Paragraph 27 of Part II of the Third Schedule of the GCT Act** duly covers.*

[Emphasis in the original]

- [80] The competing arguments raised on this appeal as to the proper construction of the exemption and my own judgment as to how it is to be construed, demonstrates that the provision could be regarded as ambiguous at minimum. Subject to other conditions for reliance being met, reference to ministerial statements as an aid to construction would not be inappropriate.
- [81] Understandably, the Ministry Paper was not relied on or supplied by the Appellant. There was also no attempt by the Respondent to defend its use or rely on it in resisting the appeal, which would then have required presentation of the material for enquiry into whether all criteria for its use have been met. It was not produced. In the circumstances I am constrained to conclude that reference to the Ministry Paper by the Commissioner of the RAD to aid in construction was indeed improper.
- [82] In all the foregoing circumstances, while I find no error with the conclusion of the Commissioner of the RAD that the phrase “*in connection with*” as used in the exemption provision should be narrowly constructed, reliance on the Ministry

Paper to restrict its connotation to a direct connection which was applied as “*necessity*” was erroneous. It is my judgment that on a proper construction of the words which surround the phrase, from which it can and should take its meaning, it should be construed as requiring a “*close connection*” between the supply of services (excluding catering services) rendered at a port or international airport in Jamaica and the physical movement of goods or people into or out of the island.

(ii)

Whether the Commissioner of the RAD erred in concluding that the Appellant’s services did not qualify for exemption under paragraph 27 Part II of the Third Schedule to the GCTA.

- [83] The gravamen of the Appellant’s complaints at grounds 6, 9 and 10 of its Notice of Appeal are that the Commissioner of the RAD erred in failing to find that its supplies of drinks and meals to passengers in the sterile departure lounge of the NMIA were rendered “*in connection with the transportation of people out of Jamaica*”, and in so failing erred in finding that services were not exempt pursuant to paragraph 27 Part II of the Third Schedule to the GCTA.
- [84] There is no dispute that the Appellant’s services are rendered in the departure lounge of the NMIA. It is a sterile, restricted area within the airport in which passengers who are scheduled to travel outside of Jamaica are accommodated while they await the boarding of their flights, only after they have gone through security screening and immigration checks.
- [85] The Appellant relies on evidence from its Chairman (hereinafter called “the Chairman”) whose evidence is that once a person enters the departure lounge, they have left Jamaica for all practical purposes. He has produced no evidence that the NMIA or the departure lounge within it is located in any territory that is

outside of the island. I would be surprised if he had. This unsupported claim is repeated on the Appellant's submissions and is at once rejected as meritless.

[86] It is also the Chairman's unchallenged evidence, which is accepted that:

- (i) the Restaurant's business model at the NMIA is predicated on serving passengers who are departing the island;
- (ii) during the pandemic when international travel was severely restricted diminishing the airport's traffic significantly, the restaurant had to close;
- (iii) operations at the Restaurant are entirely dependent on the presence of departing passengers;
- (iv) an overwhelming majority - approximately 98 to 99.7% - of the Restaurant's sales are made to ticketed travelling passengers, with the remaining minimal percentage representing sales to airport staff working in the sterile and restricted zone;
- (v) in the years 2018 and 2019 the total number of transactions per year exceeded 160,000 as determined from Point of Sales data;
- (vi) from time to time airlines will issue instructions for the provision of meals for their agents or employees who are on duty;
- (vii) its concession agreement with the Airport Operator mandates that the Restaurant remain open and operational to provide service to passengers specifically during flight delays; and
- (viii) it has a relationship with various airlines operating out of NMIA whereby it is obliged to honour for compensation, vouchers issued by those airlines to stranded passengers when flights are delayed.

- [87] The Chairman also supplies two photographs which he says were taken by him on a travel out of the island. They are said to show passengers in the departure lounge with the Restaurant's products as they proceeded to board their flights.
- [88] The Appellant submits that the services rendered at the Restaurant are integral to the passenger experience in modern international travel. This is premised on the significant time spent in departure lounges before long-haul flights. While I readily agree that services of the kind offered by the Appellant are a part of the passenger experience, I do not agree with the assessment that it is an integral or essential part, if you will, of the travel experience. In fact, passengers may decide not to use the service at all, which would not impact in any way their transportation out of the country.
- [89] My assessment of the Appellant's evidence is that it discloses a close and strong operational and commercial dependency between its services and air transportation. What it does not demonstrate is that the services are rendered "*in connection with*" - even in its widest connotation - the physical movement of people outside of Jamaica. It certainly does not demonstrate a "*close connection*" with their movement out of the island on the restricted connotation of the phrase. In these premises I do not find that the Commissioner of the RAD erred in finding that the Appellant's services were not GCT exempt pursuant to paragraph 27 Part II of the Third Schedule to the GCTA.

(iii)

Whether the Commissioner of the RAD erred in concluding that the Appellant's services did not qualify for zero-rating pursuant to paragraph 4 Group 5, Part II of the First Schedule and Regulation 18(b) of the GCTA.

- [90] Further and in the alternative, the Appellant challenges the decision of the Commissioner of the RAD in concluding that its supply of drinks and meals at the

Restaurant did not constitute a supply of goods exported from Jamaica to qualify as a zero-rated supply under paragraph 4 Group 5, Part II of the First Schedule and Regulation 18(b) of the GCTA. This is in essence of the matters articulated in Grounds 14 and 15 of the Notice of Appeal.

[91] Pursuant to section 24 of the GCTA,

Tax in respect of the supply in Jamaica or the importation of any taxable goods or services specified in Part II of the First Schedule shall be at a rate of zero per cent.

[92] Paragraph 4, Group 5 of Part II of the First Schedule on which the Appellant relies reads: “*Services exported from Jamaica in prescribed circumstances.*” The circumstances referenced are those prescribed in regulation 18 of the **General Consumption Tax Regulations**. So far as relevant, the regulation states:

The provisions of paragraphs 1 and 4 of Group 5 of Part II of the First Schedule to the Act shall apply to the following goods and services –

...

(b) services -

- (i) which are supplied to a recipient who uses or obtains the advantage or benefit of the service outside of Jamaica;*
- (ii) which are effectively used or enjoyed at the time and place where they are physically performed and the performance of the service takes place outside of Jamaica; and*
- (iii) supplied to a non-resident in relation to immovable property situated outside of Jamaica.*

[93] The Appellant argues that its services fall within regulation 18(b)(i). The Commissioner of the RAD construed the provision to mean that the service is “*treated as supplied outside of Jamaica*” if the person receiving it actually uses or benefits from the supply outside of Jamaica and concluded that the “*material status quo*” required for classification under that provision has not been met in

the circumstances of the case. She regarded regulation 18(b)(ii) and (iii) as inapplicable as they respectively apply to services “*actually*” performed outside of the island, and immovable property.

- [94] In arriving at the above findings, the Commissioner acknowledged that a large portion of the Appellant’s customers may in fact be leaving the island but agreed with the Respondent that it would be difficult to ascertain definitively whether the advantage or benefit was realised outside of Jamaica. Special consideration was accordingly given to the possibility that many customers may well have realised the benefit or advantage here. She referenced pictures purportedly showing departing passengers at the NMIA with food and beverage in hand but indicated that no evidence had been supplied to support the proposition that the items shown in the photographs and those which formed the supplies the subject of the additional assessment, were actually consumed outside of Jamaica.
- [95] The Appellant submits that the Commissioner of the RAD erred in requiring definitive, quantifiable proof of where each meal was consumed, a standard which it says is not required by law, is impracticable and contrary to common sense. It says it provided compelling evidence that its customers are exclusively departing international passengers in a sterile area. It goes on to say that the only reasonable inference to draw is that the vast majority of meals are consumed during international travel so that the benefit of the supply is obtained outside of Jamaica, and the Commissioner’s failure to draw the inference constitutes an error of law. I am unable to agree with the submissions.
- [96] I do not agree with the Commissioner of the RAD that regulation 18(b)(i) is to be construed to mean that the service is “*treated as supplied outside of Jamaica*”. Section 24 of the GCTA requires the supply of service to be made in Jamaica but permits zero rating where the recipient uses or obtains the benefit of the service outside of the island, consistent with the destination principle. That disagreement as to construction aside, I do not find that the Commissioner of the RAD erred in concluding that the condition was not met.

- [97] While the Appellant regards it as impracticable or contrary to common sense to require proof of where each of its supplies for the audit period were consumed, having engaged regulation 18(b)(i) it is required to prove on a balance of probabilities that it made each supply in Jamaica to “*a recipient*” and that the recipient “*use[d] or obtain[ed] the advantage or benefit of the service*” which was supplied, “*outside of Jamaica*”. While there can be no real dispute that its services were supplied at the international airport in Jamaica, the Appellant has not proved by its evidence that recipients used or obtained the advantage or benefit of the services outside of the island.
- [98] I also consider that use, benefit or advantage from a business to customer supply of drinks or meals at a restaurant lie in consumption. Absent a mechanism which prevents consumption of the supply within the jurisdiction, I am unable to find that the recipients of the services the subject of the additional assessments to output tax, used or obtained the advantage or benefit of the service outside of Jamaica. The requirement for zero-rating of a supply under the regulation has not been met, as found by the Commissioner of the RAD.
- [99] The Respondent expresses the opinion that regulation 18(b)(ii) is better suited for the circumstances of this case given the nature of the Appellant’s service and the inability to accurately ascertain where the benefit was obtained. I am unable to agree, if for no other reason than that there is no evidence to support a contention that the service supplied by the Appellant takes place outside of Jamaica to enable engagement of the provision. I agree with the Commissioner of the RAD that this provision would not apply. Regulation 18(b)(iii) is also clearly inapplicable as the services supplied by the Appellant do not have immovable property out of the jurisdiction they concern.
- [100] The Appellant refers in submissions to a letter dated 24th August 1995 from the GCT Department to the Airport Authority which is said to be referenced in the Respondent’s Statement of Case of 19th December 2024, which was apparently filed at the RAD. The letter was not provided but the Appellant refers to it in

submitting that it demonstrates that the GCT Department recognised the principle that goods sold in a sterile area to departing passengers are in fact exported from Jamaica. It says the letter was a critical factor in determining the commercial viability of operating in the departure lounge and placed significant reliance on the stated position that goods sold to departing passengers in the sterile zone would be treated as exported.

[101] As earlier indicated, the pleadings filed in this court set the parameters for the appeal which proceeds by way of rehearing. The matter which the Appellant seeks to introduce by way of submissions forms no part of its pleaded case to have enjoined the Respondent on it. I accordingly decline to inquire into the submission.

ORDER

1. The appeal is dismissed.
2. The decision of the Commissioner of the Revenue Appeals Division dated 6th October 2025 is confirmed.
3. Costs of the appeal to the Respondent, to be taxed, if not sooner agreed.

Carole S. Barnaby
Puisne Judge