**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Claim No. 2025/APP/sts/00034**

**ON APPEAL FROM THE TAX APPEAL COMMISSION**

**IN THE MATTER OF AN APPEAL** from the Decision of the Tax Appeal Commission issued on 9th December 2025 in Machinery & Energy Limited v Comptroller of VAT, Tax Appeal No. 5 of 2024

**AND IN THE MATTER PURSUANT TO SECTION 26(4) OF THE TAX APPEAL COMMISSION ACT, 2020**

**BETWEEN**

**MACHINERY & ENERGY LIMITED**

**Appellant**

**AND**

**THE COMPTROLLER OF VALUE ADDED TAX**

**Respondent**

# RULING

**Before:** The Honorable Mr. Acting Justice Raynard S Rigby KC

**Appearances:** Mr. John Wilson KC along with Miss Berchel Wilson for the Appellant/Applicant
Mr. Kirkland Mackey for the Respondent

**Hearing Dates**: Heard on the papers

**Submissions**: 26 June 2026

**Stay of execution – Tax Appeal Commission Decision – Section 16(3) of the Supreme Court Act – Part 26.1(2)(q) of the Supreme Court Civil Procedure Rules 2022 – Prospects of success - Irremediable damage - Risk of prejudice in not recovering tax liability**

**Rigby J (Actg.):**

**Introduction**

1. This is my decision on the Appellant's Notice of Application filed on 19 January 2026 for a stay of the payment of a tax liability in the sum of $1,275,892.02 pending the hearing and determination of the appeal, which was lodged pursuant to section 26 of the Tax Appeal Commission Act, 2000. The Notice of Appeal dated 30 December 2025 arises from the Decision of the Tax Appeal Commission made on 9 December 2025.

2. The Notice of Application is supported by the Affidavits of Antonia Benjamin filed on 20 January 2026 and 10 June 2026, respectively.

3. The Respondent opposes the stay application and relies on the Affidavit of James Rhodes filed on 3 June 2026.

4. At the case management hearing on 20 May 2026, Counsel for the Appellant/Applicant and the Respondent agreed that I should hear the stay application on the papers. I directed the parties to lodge submissions on or before 26 June 2026.I also set the substantive appeal hearing for 8 October 2026 with liberty to the parties to lodge further affidavit evidence.

**The application for a stay**

5. The Appellant's Notice of Application sets out three grounds for the stay, which I set out below.

> **a. The Applicant's appeal, as set out in the Grounds of Appeal annexed to its Originating Application filed herein on 30 December have reasonable prospects of success.**
>
> **b. There is no risk of prejudice to the Respondent as the Applicant has secured its potential liability to the Respondent arising as a consequence of the Decision by a Letter of Guarantee issued by CIBC Caribbean Bank (Bahamas) Limited dated December 30 2025 in favour of the Respondent.**
>
> **c. Immediate enforcement of the significant VAT assessment and penalties prior to the adjudication of the Applicant's appeal would result in serious financial harm to the Applicant and its operations as the monies expended to satisfy the assessment is unlikely to be immediately recoverable should the Applicant succeed on appeal and in**

> **any event the financial costs of meeting the assessment, which will continue until the recovery of the funds expended to meet the assessment.**

6. The supporting Affidavit of Antonia Benjamin (filed on 20 January 2026) asserts that the Appellant "**will suffer serious and irreparable financial prejudice**" and that the "**assessment sum of $1,275,892.02 together with the penalty of $30,000.00 and interest, is substantial and would materially impair the Applicant's cash flow, business operations, and ability to continue trading in the ordinary course**". Ms. Benjamin, the Applicant's financial controller, further refers to the delay in "**the government's payment process**" should the Applicant succeed on the appeal.

7. In her second Affidavit (filed on 10 June 2026), Miss Benjamin's discloses the letter dated 14 January 20206 from CIBC which "**irrevocably and unconditionally guarantees payment to you [Department of Inland Revenue] by the customer [Machinery & Energy Limited] of a total of one Million Two Hundred and Seventy five Thousand Eight Hundred and Ninety Two Dollars Six cents ($1,275,892.06). <u>This Guarantee shall remain in effect up to and including but not after December 31, 2026</u>**". I highlight the further terms of the letter:

> **This Guarantee is issued in connection with:**
> **- Payment of Value Added Taxes for Machinery & Energy Limited**
> **<u>Payment under this Guarantee shall be made on or before the expiry date</u> upon your presentation to the Bank at its Corporate Banking Branch, your written demand for payment in the form, described below along with the Guarantee.**

8. The James Rhodes Affidavit, which is filed in opposition, takes issue with the letter of guarantee and attacks the grounds of appeal. It asserts that the assessment, the subject of the appeal, was made under paragraph 4(1)(a) and that the "**attempt to say that it was not assessable because the goods were assessed to its clients under paragraph (b) had to fail given the clear statutory language of subsection 4(2)**". The Affidavit also suggests that the Applicant failed to establish that the assessment was incorrect.

9. Mr. Rhodes further indicates that the Department of Inland Revenue was "**never contacted to consider a payment plan on behalf of the Applicant**", which "**would take into account the Applicant's cash flow, business operations and ability to continue trading in the ordinary course**".

10. I also highlight paragraphs 16 and 17 of the James Rhodes Affidavit, which were not responded to by the Applicant. The paragraphs state:

**16. On the basis that the value added tax collected on the Applicant's sales represents 10% of the Applicant's gross revenues from sales, and the value added tax paid on the Applicant's expenses represents 10% of the Applicant's expenses, the VAT payable would be an approximation of the Applicant's profit for the period of time from 1 January 2025 to 31 December 2025. That profit would be $7,384,450.**

**17. Without any information being provided by the Applicant to explain its cash flow, business operations, or cash needs for trading in the ordinary course of its business, the assessment sum represents approximately 18% of its profits from the 2025 calendar year.**

## The Appeal

11. The Notice of Appeal filed on 30 December 2025 seeks several orders in the alternative inclusive of vacating the VAT assessment or remitting it to the Tax Appeal Commission for redetermination. The Notice of Appeal sets out several grounds of appeal which include that the "**Commission erred in law in its finding that the assessing VAT on the Accommodation Invoices did not amount to impermissible double taxation within the meaning of the VAT Act 2024**" and that the "**Commission erred ... that section 17 of the Tax Appeal Commission Act imposed the burden of proving that the payment of applicable tax at the border rested with the Appellant**".

12. The Decision of the Tax Appeal Commission dated 9 December 2025 essentially determined that the Applicant had to pay a tax assessment in the sum of $1,275,892.02. For the purposes of the stay application, I am cognizant that my role is not to determine the merits of the Applicant's pending appeal but to determine whether the appeal would be rendered nugatory or useless if the stay is not granted. Further, I must determine whether the appeal, on its face, has a realistic prospect of success.

## Submissions in summary

13. Both parties laid over helpful submissions which I considered and which aided the Court in determining the stay application. An overview of those submissions is set out below.

14. The Applicant's submissions were in part that the appeal has a real prospect of success and is not fanciful. It relies on **Wilson Livingston Saunders and another v Sunshine Finance Limited and another [2024] 1 BHS J. No. 175**. In addressing the matters set out in the Respondent's affidavit, the Applicant submits that the Respondent's "**erroneous position fails to take into account the**

**Applicant's operations expenses, infrastructure and supply costs or the day-to-day financial demands**".

15. The Applicant also submitted that without a stay it would have to settle all future filings of the Department of Inland Revenue ("**the Department**") and that the Respondent would suffer no prejudice by a stay based on the terms of the Letter of Guarantee issued by CIBC.

16. The Respondent attacked the stay application by focusing on the merits of the decision of the Commission and argues that section 56 and regulation 34 of the Value Added Tax Act alleviate any double taxation. It also suggested that the Applicant's "**argument has no reasonable prospects of success**" because whether tax is paid on the import of the taxable supplies is not relevant for the appeal.

17. The Respondent also challenged the premise that the Applicant will suffer prejudice if a stay is not granted. It drew attention to the fact that the Letter of Guarente will expire on 31 December 2026. It argues that the Applicant cannot satisfy the test that "**if the damages are paid there is a reasonable prospect that the appellant would not recover them in the event the appeal succeeded**".

**<u>Analysis & Determination</u>**

18. It is not disputed by the Applicant and the Respondent that the Court's jurisdiction to grant a stay is discretionary. Section 16(3) of the Supreme Court Act provides:

> **"(3) Nothing in this Act, shall affect the power of the Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person whether or not a party to the proceedings."**

19. The Applicant also highlighted Part 26.1 of the Supreme Court Civil Procedure Rules 2022, which states:

> **"(2) Except where these rules provide otherwise the Court may –**
> **(q) stay the whole or part of any proceedings generally or until a specific date or event."**

20. Justice of Appeal Charles (as she then was) in **Miller Enterprise Limited & Anr. v. Shunda Strachan and The Treasure of The Bahamas SCCivApp No. 79 of 2025** succinctly set out the test for a stay pending appeal. I set out below paragraph 29 of the decision of the Court of Appeal.

**29. A stay pending appeal is a discretionary remedy and is not granted as of right. The general principle is that a successful party is entitled to the fruits of its judgment, and a stay will only be granted only where the justice of the case so requires: Linotype-Hell Finance Ltd v Baker [1992] 4 All ER 887 (CA) and Hammond Suddards Solicitors v Agrichem International Holdings Ltd [2001] EWCA Civ 2065. An applicant must demonstrate that the appeal is arguable and not frivolous. Where leave to appeal has been refused on the basis that no realistic prospect of success exists, that factor weighs heavily against the grant of a stay. The applicant must further show that, absent a stay, the appeal would be rendered nugatory, in the sense that irreparable prejudice would be suffered which could not be adequately remedied if the appeal ultimately succeeds: Wilson v Church (No 2) (1879) 12 Ch D 454.**

21. The appropriate test to be applied is often formulated by the Bahamian Court and there appears to be no material variance in the positions of the parties pertaining to that test on the instant application. For my part, I find judicial comfort in the following statements made by Madam Justice of Appeal Crane-Scott (as she then was) in **Esley Hanna v Brady Hanna SCCivApp No. 182 of 2017** (although in the context of section 12 of the Court of Appeal Act):

**11. Section 12 of the Court of Appeal Act mirrors the provisions of O 59. r. 13 of the former English Rules of the Supreme Court 1965. It is therefore useful to advert to the following portions of Practice Note 59/13/1 found at pages 1076- 1077 of Volume 1 of The 1999 Edition of The English Supreme Court Practice:**

**"Stay of execution or of proceedings pending appeal**

**...Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not "make a practice of depriving a successful litigant of the fruits of his litigation, and locking up funds to which prima facie he is entitled," pending an appeal (The Annot Lyle (1886) 11 P.D. 114, p.116, C.A.; Monk v. Bartram [1891] 1 Q. B. 346); and this applies not merely to execution but to the prosecution of proceedings under the judgment or order appealed from - for example, inquiries (Shaw v. Holland [1900] 2 Ch. 305) or an account of profits in a passing-off action (Coleman & Co. v. Smith & Co. Ltd. [1911] 2 Ch. 572) or the trial of issues of fact under a judgment on a preliminary question of law (Re Palmer's**

**Trade Mark (1883) 22 Ch. D. 88). But the court is likely to grant a stay where the appeal would otherwise be rendered nugatory (Wilson v. Church (No.2) (1879) 12 Ch. D. 454, pp. 458, 459, C.A.), or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the court. (Becker v. Earl's Court Ltd. (1911) 56 S.J. 206; The Retata [1897] P. 118, p. 132; Att.-Gen. v. Emerson (1889) 24 Q.B.D. 56, pp. 58, 59) and the Court will grant it where the special circumstances of the case so require......**

**"Where the appeal is against an award of damages, the long established practice is that a stay will normally be granted only where the appellant satisfies the court that, if the damages are paid, then there will be no reasonable prospect of his recovering them in the event of the appeal succeeding (Atkins v. G.W. Ry. (1886) 2 T.L.R. 400, following Barker v. Lavery (1885) 14 Q.B.D. 769 C.A.;......Nowadays the court may be prepared (provided that the appeal has sufficient merit) to grant a stay, even where that test is not satisfied, if enforcement of the money judgment under appeal would result in the appellant's house being sold or his business being closed down. But if such a stay is granted the court should impose terms which (so far as possible) ensure that the respondent is paid without delay, if the appeal fails, and that appellant is prevented from depleting his assets in the meantime, except for any and necessary expenditure. This approach was endorsed in Linotype-Hell Finance Ltd v. Baker [1992] 4 All E.R. 87 (Straughton L.J., sitting as a single Lord Justice). It was also endorsed in Winchester Cigarette Machinery Ltd v. Payne (No. 2) (1993) The Times, December 15, but the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour. The Court also emphasized that indications in past cases do not fetter the scope of the Court's discretion."**

22. I deem the issue for me in determining the stay application is to consider the evidence and to assess whether there exist any reasons to justify the grant of a stay, guided by the principles I set out above. On the evidence presented in support of the stay application, and in my judgment, the Applicant has not satisfied the condition precedent for the grant of a stay.

23. I note that the Letter of Guarantee expires on 31 December 2026. It must follow that the Applicant determined that seeking an enlarged period or for that matter, a

guarantee of indefinite duration, was not feasible or commercially reasonable. It does appear to me that a guarantee of limited duration provides no material comfort to the Respondent, who has the obligation to recoup the tax liability. The period of the guarantee was raised by the Respondent, and I agree with its observations.

24. I also note that the Applicant while suggesting financial ruin if the tax liability is paid, elected not to disclose any financial statements or financial records to support its contention. The Respondent challenged the Applicant's bald statement of financial ruin and advanced the view that the 2025 profits for the Applicant were in the region of $7,384.450.00, making it possible for the tax liability to be paid, and showing some financial 'muscle' in the Applicant's resources. This proposition advanced by the Respondent went unanswered by the Applicant.

25. In my mind, the Respondent's suggestion of the probability of the Applicant achieving a profit in the region of $7,384.450.00 looks appealing on the basis of the tax returns filed with the Department by the Applicant as set out in the James Rhodes Affidavit. While I am unable to irrefutably conclude that the Applicant's profitability was as suggested by the Respondent, I am however unable to agree with the Applicant's argument that without a stay it will suffer serious and irreparable financial prejudice.

26. There is no suggestion in the Applicant's evidence that its cash position will be severely depleted if the tax liability is paid. Its ability to obtain the Letter of Guarantee suggests that it has funding and can meet the tax liability. The evidence therefore seems to be contradictory that if the tax liability is paid pending the appeal the Applicant will be ruined.

27. The Applicant's decision to place no financial information before the Court to support its position of financial hardship or ruin and to show that it lacks the resources to pay the tax liability gave me no basis to assess and determine the substance of their submissions. I echo the words from Sir Michael Barnett P. (as he then was) in **Finlayson v Caterpillar Financial Services Corporation SCCivApp No. 99 of 2022** in dismissing an application for stay of execution of a monetary judgment pending appeal:

> **15. Unhappily, the applicants have provided no information as to their financial resources. They simply said they would be "potentially ruined" and face "grave commercial harm". There is no basis for the Court to determine the gravity of this complaint. In a sense, enforcing a monetary judgment may cause harm. The seriousness of the harm is contingent on the amount of the judgment and the resources of the judgment debtor. Whether the enforcement of the monetary judgment would "ruin" the judgment debtor is also contingent on**

**the resources of the judgment debtor. As I said earlier, the applicants have provided no information as to their resources. This affidavit evidence is insufficient to discharge the burden on the applicants to establish this harm.**
**16. As Evans, J. said in City Services City Services Limited v. AES Ocean Cay Limited [2012] 1 BHS J. No. 85:**

**"16 The authorities are also clear that a party claiming that the appeal if successful may be nugatory, must give evidence as to why. It has been held at "as a general rule the only ground for a stay of execution is an affidavit showing that if the damages and costs were paid there is no reasonable probability of getting them back if the appeal succeeds. (Atkins v G. W. Railway (1886) 2 T.L.R. 400)."**

**17. On the evidence provided, we are unable to make a proper determination that if the judgment is enforced it will ruin the applicants. The applicants have not demonstrated that if the stay is not granted it will suffer grave commercial harm.**

28. I also took into consideration the ability of the Applicant to enter into a structured payment or payment plan with the Department. The suggestion in the James Rhodes Affidavit that such a plan will allow the Applicant to meet its cash flow and its commercial obligations is contrary to any possibility of financial ruin as advanced by the Applicant. This too, in my mind, would be an acceptable answer to any complaint that the Applicant's business dealings may cease if the tax liability is paid.

29. As to the matter of the "delay in the government payment process", I have no evidence before me to arrive at a conclusion on this issue. Even if it has merit, I am unable to conclude that any such delay should justify the grant of a stay.

30. Should I find that the Applicant has some prospects of success on the appeal, that alone is not sufficient to grant a stay. The law shows that "**the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour"** is an important element of the test to be applied.

31. In refusing the application, I also took fully into account the Applicant's arguments on section 17 of the Tax Appeal Commission Act relative to the burden of proof. Section 17 states that the "**appellant shall have the burden of proving on the balance of probabilities — (a) if a decision is concerned with an assessment, that the assessment is excessive or otherwise incorrect; or (b) in any other case, that the decision should not have been made or should have been**

**made differently**". The arguments of the Respondent as to the interpretation to be applied to this section appears to me to be more appealing.

32. I do not consider it necessary or warranted to engage in a comprehensive analysis of the remaining grounds of appeal. It seems to me however in the round that even if the appeal has some chance of success the Applicant has not shown that if the stay is not granted it will suffer serious or irremediable damage as a consequence.

**Conclusion & Disposition**

33. For the reasons which I set out above, I refuse the stay application. I am satisfied, based on the evidence before me, that there are no special circumstances to justify a stay of execution pending the appeal.

34. I order the Applicant to pay the Respondent's cost of the application to be agreed and in default assessed by the Registrar of the Supreme Court.

**DATED** the 13 day of July 2026

RSRigby J. Actg.

Raynard S Rigby KC
Acting Justice