Appeal No. VA04/3/012

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Dairygold Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Factory and Grounds at Lot No. 1Ca.3Bab.I.N.O.S.3B/2, Mitchelstown, Mitchelstown 1, County Cork

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI	**Deputy Chairperson**
Joseph Murray - B.L.	**Member**
Michael McWey - Valuer	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF JANUARY, 2005

By Notice of Appeal dated the 13th July 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €3,914.00 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"The valuation is excessive and inequitable as tanks should be valued as non-rateable plant under Schedule 5, Valuation Act, 2001."

At issue

Rateability of a number of tanks or vessels being forty-six in number at the appellant's Mitchelstown Plant.

The appeal proceeded by way of an oral hearing, which took place in the Offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin, on 21st October, 2004 and 18th November, 2004. The appellant was represented Mr. Owen Hickey, BL., instructed by Matthew Nagle of Matthew J. Nagle & Co Solicitors and by Ms. Sheelagh O Buachalla, BA., ASCS., and Director of GVA Donal O Buachalla. Mr. William Cronin, BSc., Food Business, and Site Manufacturing Manager at the Mitchelstown Plant, located at Castlefarm, Mitchelstown, Co. Cork, appeared as an Expert Witness for the appellant. The respondent was represented Mr. Colm MacEochaidh, BL., instructed by the Chief State Solicitor and by Mr. Brian O'Flynn, a District Valuer with the Valuation Office. Having first taken the oath, Mr. Cronin confirmed the contents of the précis of evidence submitted on behalf of the appellant as sworn facts. Mr. Cronin proceeded to give evidence in respect of the design, function and use of each of a large number of tanks until it became evident to and was agreed by both Counsels that the evidence in respect of all subject tanks would be materially similar to that already given by Mr. Cronin. Mr. Cronin's evidence confirmed the written evidence already contained in Appendix 1 of the appellant's précis of evidence and contained in Appendix 2 to this Judgment.

At the initial hearing on 21st October, and as subsequently confirmed, both parties agreed that the sole relevant issue was the rateability of the tanks as scheduled, and noted in Appendix 1 attached hereto and identified in said Appendix 1 as Block 1 - No's 1, 2, 18 and 26; Block 2 – No's 2, 4, 5, 6 and 7; Block 3 – No's 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 15, 16-20 and 23; Block 4 – No's 1, 3, 4, 5, 6, 7, 8, 9, 12, 16, 17, 23, 26, 31, 32, 34, 35, 36 and 37 and Block 5 - No 5. At the request of the Tribunal in the course of the initial hearing Counsel for each side prepared and submitted written legal submissions and the hearing then recommenced on 18th November, 2004. At the outset of the reconvened Hearing, Counsel for each party advised that they would not need to recall their respective Valuers or Expert Witnesses. Both Counsels also confirmed and agreed the following:-

a) The RV already established or calculated by the Valuation Office on all of the other (agreed) tanks would not be of concern or subject to challenge in either rateability terms or valuation terms.
b) All of the tanks at issue, though reviewed initially on an individual basis at the Hearing of October 21st 2004, with detailed explanations provided by Mr. Cronin in evidence and under cross-examination, in terms of purpose and/or functionality of each tank, should be collectively considered as one item of plant for the purpose of seeking a resolution or reaching a determination of the RV, if applicable to them.

In summary, Mr. MacEochaidh, in support of his client's argument, relied exclusively on the Supreme Court decision of Blayney J. in **Caribmolasses v Commissioner of Valuation [1994] 3 IR 189**, which he contended was judged on three tests, as follows:

1) The product "in" was molasses and the product "out" was molasses, though the latter had been subjected to homogenisation.
2) The heating element of the tank was located exterior to the tank and was not in practical use.
3) The product "in" was transferred to yet another container or vessel.

Mr. MacEochaidh advised the Tribunal that Blayney J. concluded that there had not been *a process of change induced by the tank* and accordingly that plant was Rated. Mr. MacEochaidh also contended that the onus rests with the appellant in this case to establish that the subject plant or tanks come within the exemption provisions set out in Schedule 5 of the Valuation Act, 2001 and that such onus of proof had not been discharged.

Mr. Hickey argued that the **Caribmolasses** case must be considered with reference to the facts established and primarily those cited, which appeared to confirm that there was no actual process of change induced by the tanks in that case or indeed by any means, or even within those subject tanks. He sought to persuade the Tribunal that the argument and issue to be resolved in the present Hearing should focus on the wording of Section 51 and Schedule 5 paragraph 1 of the Valuation Act, 2001, and

specifically to that latter subsection, the final sentence of which, in his view, sets out the only grounds under which an exemption from rates may be claimed on relevant properties within the category being the subject of the current Appeal. Mr. MacEochaidh accepted the pertinence and application of the said Section 51 and Schedule 5 paragraph 1 of the Act and both Counsels acknowledged the use of the term "constructions" in the 2001 Act to denote the vessels and to ascribe a verbal description, for the purpose of the Hearing, of "tanks", thereto.

Both parties argued opposing views and opinions with regard to the actual meaning of the word "construction". Mr. MacEochaidh contended that "construction", in this particular circumstance, should be read and understood to mean vessels of containment being the tanks as described, but, without having regard to fixtures, fittings, appurtenances or finishes within or affixed thereto, and excluding items such as paddles, sealants to the interior surfaces of the vessels, agitators attached or within, and such like. Mr. MacEochaidh however affirmed his opinion to the Tribunal that the shape, design and/or materials making up the tanks or vessels may be relevant in the context of their potential influence, which might satisfy the requirement of the Act, which he stated requires a change to be induced in the contents by the "constructions". By contrast, Mr. Hickey stated his view that there were no grounds to support such limited definitions in terms of description of the constructions, which in his opinion, should be considered in totality and so to include fixtures, fittings and all appurtenances integrated with and forming part of the subject tanks or constructions. He expanded his argument by asserting that his forenoted view was consistent with the provisions of Section 51 and Schedule 5 of the Act, which, he said, contemplate and introduce the term "constructions which are designed or used primarily" which he believed may be interpreted in either a disjunctive or conjunctive manner. Whether or which , he claimed, would defeat the contention of the respondent's Counsel that a narrow and limiting interpretation of the term "constructions" be employed.

Mr. Hickey's outline legal submission requested by the Tribunal sought to establish that, in his view, the limited jurisdiction of this body does not permit interpretation of the Act beyond that which is reasonably foreseeable by the citizen, merely because of an ambiguity in the judgement of the Supreme Court. He contended that the *true ratio* of the Supreme Court judgement in the **Caribmolasses** case excluded the

impugned second ground for the refusal of the exemption seeking to assert the alternative, in his view, that the said second ground, which referred to a process of change claimed not induced in that case by the tanks was wider than that argued by the Commissioner of Valuation. Accordingly, Mr. Hickey felt that the interpretation of the Act now being pursued by the respondent would be a contradiction of decisions of the Valuation Tribunal and Higher Courts in the past and such interpretation would not be open to the Valuation Tribunal.

Mr. MacEochaidh in his written submission on behalf of the respondent relied exclusively on the Supreme Court decision in the **Caribmolasses** case. In addition to his earlier noted view that the onus of proof that the subject tanks might qualify for exemption under Schedule 5 of the 2001 Act, had not been discharged by the appellant, he cited the **Caribmolasses** case further by indicating his understanding that the appellant must clearly establish that a process of change in the substance contained within the constructions is effected by the constructions themselves.

Findings & Conclusion

The Tribunal holds the view that the judgement of Blayney J. in the **Caribmolasses** case was correct. The facts in the **Caribmolasses** case with regard to the design or function of the tanks are different from those relating to the tanks in issue in the subject property. First of all in **Caribmolasses** it was established with regard to the tanks that

- No process of change was induced . The molasses remained molasses.
- Even if there were a process of change induced in the molasses, it was not induced by the tanks **(page 197, Irish Reports 1994 , volume 3).**

The Law and Test

The law sets a purposive test if the tanks are to come within the exemption. The test is that the tanks must be designed or used primarily to induce a process of change in the

substance contained. The relevant words in Schedule 5 of the 2001 Act are identical to the words in the relevant schedule of the Valuation Act 1986. As far as the Tribunal is concerned there is no change in the law. The words are "it is not induced by the tanks" which implied some interaction between the tank and the substance. If we are restricted by the use of the word "by" it would put a very constrained interpretation on the test cited above. Moreover, if there was a restricted interpretation Judge Blayney would have stated so in his ratio decidendi in the **Caribmolasses** case. This he did not do. Accordingly the Tribunal gives the broader interpretation to the law which makes common sense. It is a literal interpretation in line with the Supreme Court ruling. Furthermore, the Tribunal acknowledges that the 2001 Act does not provide the reader expressly or impliedly with an interpretation of or a description for the said constructions in terms of possible limitations of their uses, designs or features. It is the Tribunal's view that if such a restrictive interpretation were to apply, the words of the Act would have stated so.

Further it was established in the **Caribmolasses** case that the "coils" fixed to the bottom of the tanks were in practice not used and the molasses was taken out of the tanks by force of gravity and water added outside. In other words the tanks were in fact used for all practical purposes as container tanks and therefore not entitled to exemption.

We apply the same law as Judge Blayney applied, but the facts relating to the tanks in the subject are different. The tanks in the subject property are different **both** as regards the design and/or use. Unlike the **Caribmolasses** case the expert evidence established beyond doubt that the tanks were designed or used primarily to induce a process of change in the substance contained therein and accordingly pass the test within the meaning of Schedule 5, paragraph 1, Valuation Act 2001.

Each tank must be assessed independently which is in line with the Supreme Court in the **Caribmolasses** case.

The Tribunal is satisfied on the balance of probabilities that the appellants have discharged the burden of proof that they come within the exemption rule in Schedule 5 of the Valuation Act 2001.

Determination

The Tribunal is of the opinion that the subject relevant properties referred to as tanks in the Appeal documentation and during the course of the initial and reconvened Hearings and identified in Appendix 1 to this judgment as Block 1 - No's 1, 2, 18 and 26; Block 2 – No's 2, 4, 5, 6 and 7; Block 3 – No's 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 15, 16-20 and 23; Block 4 – No's 1, 3, 4, 5, 6, 7, 8, 9, 12, 16, 17, 23, 26, 31, 32, 34, 35, 36 and 37 and Block 5 - No 5, are capable and intended by their design and/or use of adopting the broader definition as outlined above, and are primarily inducing processes of change to their contents, and thus qualify for exemption from Rates.

And the Tribunal so determines.