

Appeal No. VA88/0/031

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Tedcastle McCormick & Company Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Oil Terminal, Offices, Stores and Yard at Lot No. 3, Tolka Quay, North Dock B Ward,
County Borough of Dublin

B E F O R E

Solicitor (Acting Chairman)

Padraig Connellan

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF APRIL, 1990

By notice of appeal dated the 9th day of August 1988, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,560 (Buildings £260, Absolute £1,300) on the above mentioned hereditament.

The grounds of appeal are that:-

1. The revised valuation is excessive, inequitable and bad in law;
2. The said revised valuation has been made without and/or in excess of jurisdiction;
3. The hereditaments the subject matter of this appeal on which the valuation has been fixed comprise land not within the jurisdiction of Dublin Corporation to list for revision of valuation or for the Commissioner of Valuation to value;

4. The Commissioner of Valuation has erred in law in purporting pursuant to section 4 of the Valuation (Ireland) Amendment Act 1854 17 VIC., CAP 8 to value, the hereditaments and premises the subject matter of this appeal, which said hereditaments and premises are not within the ambit and scope of the said section.
5. The revised valuation is bad in law in that valuations have allotted to or attributed to items which are not rateable hereditaments or alternatively, in arriving at the net annual value, the Commissioner of Valuation has erred in law in including thereon the value or values or items which are not rateable hereditaments.
6. That the Commissioner of Valuation has erred in law in including in the valuation or assigning an annual value or rateable valuation to non rateable plant and machinery.
7. And the Appellant relies on such other grounds unknown to the Appellant at the date of filing hereof as may appear upon discovery of documents or at the hearing of this appeal.

Written submissions

A written submission was received on behalf of the appellants from Mr Desmond M Killen F.R.I.C.S., A.R.V.A. of Donal O'Buachalla & Co Ltd on the 21st February, 1990. Mr Killen said that the only matter at issue for the determination of the Tribunal is confined to the rateability of certain constructions which have been identified between the parties. He said the amount of valuation attributed to the said tanks has been apportioned by agreement between the parties. He said that the four items are Tank Nos. 4, 5, 6 and 8 with a total valuation of £930. He said that the subject premises is registered under the Factories Acts and is inspected annually by personnel of the Department of Labour. He said it is an industrial undertaking and "manufactory" as defined in section 7 of The Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 as amended by section 7 of the Valuation Act, 1986 and that it is to be noted that the appellants have accepted that the remainder of the constructions in this hereditament, with a total rateable valuation of £370 and all of the constructions in Lot 6 with a rateable valuation of £1,660, are rateable as designed and used for containment only. Mr Killen said that the purpose of the relevant constructions, in which each forms an essential and integral part, is to induce a process of change in raw materials, which is only possible by the use of heat and force, being the

specific purpose for which they were designed, erected and used, viz. the production and manufacture of fuel oils for sale by retail.

A written submission was received on the 19th February, 1990 from Mr Frank Gregg B.Comm who is a District Valuer with 21 years experience in the Valuation Office.

Mr Gregg said that the property is located inside the harbour area of North Docks and is used as an oil terminal by the appellants. The hereditament comprises offices and oil tanks, loading area, workshops and stores. He said that the quantum valuation is agreed. Mr Gregg then outlined the valuation history of the property and said that the only issue before the Tribunal is whether the four tanks, No. 4, 5, 6 and 8 are to be rated under the 1986 Valuation Act. He said that these tanks are heated by means of steam coils and two of the tanks, No. 5 and 6, are lagged also. He said that tanks 5, 6 and 8 have inside agitators with motors affixed outside. He said that two blending pumps are located outside the tanks and there is a gravity feed to these pumps from the tanks themselves which activates the pumps. He said that oil is pumped in hot from the ship through the pipeline system to the terminal itself. Mr Gregg said that the essential point here is that it is oil going into the tanks and oil coming out. He said the function of the tanks is primarily as storage and irrespective of whether or not a blending process takes place the character of the oil is not altered. He said that the Commissioner contends that under section 12 of the Valuation (Ireland) Act, 1852 that these are buildings in the everyday sense of the word. He said they meet the following criteria for buildings:

- (1) Solid, permanent structure affixed to realty.
- (2) Floor, walls and roof.
- (3) Provision for internal access.
- (4) Large in relation to a man.

Mr Gregg said that the Commissioner contends that the tanks fail the following test for machinery:

- (1) They are not machinery in the popular sense - it would not occur to a passerby that these tanks are machines.
- (2) If haulage contractors were engaged to transfer all machinery in the depot it could not occur to them to move tanks.
- (3) If leased at the end of the lease the tanks would have to be left behind.
- (4) The tanks would not be depreciated as machinery in the accounts of the firm.

He referred to the Valuation Act, 1986 s.s. 2 and 3 and said that these tanks are permanent structures integrated with the oil depot premises, used for oil storage. He then referred to the Valuation Act, 1986, s.s. 7 and 8 and said that it is hardly likely that that Act would regard as rateable, furnaces, boilers, ovens and kilns, while leaving these tanks as non-rateable.

Oral Hearing

At the oral hearing which took place on the 23rd February, 1990 Mr Daniel Herbert, Barrister-at-Law, instructed by Messrs Kennedy & McGonagle, Solicitors represented the appellants. Mr Aindrias O'Caoimh, Barrister-at-Law, instructed by the Chief State Solicitor, represented the respondent.

Mr Aidan Gibney, Director, Tedcastles gave evidence as follows:-

He said that he was the Director responsible for the design and construction of this terminal in 1972. The terminal was designed as a fuel oil processing plant. He said that oil is graded by its

ability to burn under pressure, for example, kerosene will burn at 28 seconds in a pressure jet, diesel at 38 seconds. What is called light oil burns at 200 seconds, medium oil at 950 seconds and heavy fuel oil at 3,500 seconds. He said that the Russian source from which Tedcastles got their supplies could produce oils within the range of 200 to 1,000 seconds viscosity. In 1965 Tedcastles secured a contract to supply the E.S.B. with fuel oil to the generating stations. The E.S.B. was interested in having a diverse source of supply and Tedcastles realised that while the Russian oil was variable in each batch they could come up with a better blend of oil at 500 seconds viscosity. They designed a system which would yield this viscosity. In order to handle oils in excess of 3,500 seconds viscosity paddles were required. There are 11 constructions in the overall facility and he described the other tanks not concerned in this appeal. He said that the system is designed to produce oil at 200 seconds as well as 500 seconds viscosity and that there is an upper tolerance of 5%. While the system is capable of dealing with oil up to 6,000 seconds, in reality it ranges from 200 to 1,000 seconds. Mr Gibney then outlined how the system produces oil. Oil is heated to 54°C in the ship, and is piped from the ship through a common owned pipeline to the terminal. It is possible, by means of a chart, to estimate the quantity from tank No. 5, which contains the heavy fuel oil, which needs to be mixed with a specific quantity from tank No. 4, containing the gas oil, to give the required 500 seconds viscosity. The tanks are heated by steam from two boilers and by using the residual heat of the cargo. There is a corrugated strapping surrounding lagging similar to that in a hot water cylinder. He said that the capacity of the tanks is as follows:-

Tank No. 4 - 9,000 tonnes

Tank No. 5 - 4,000 tonnes

The content of these tanks is pumped under pressure into a blender system and from there it is filtered into the batch tanks. He said that there are mixers in three tanks, Nos. 5, 6 and 8. The blenders are on the inside of the tank and are like impellers, simply causing the liquid in the tank to flow and making sure that there is no stratification in the product. He said that tanks No. 4

and 5 are connected to the blender by steel pipes which are clad to conserve the heat. Tank No. 4 is not insulated and has no impeller or mixer, it connects with the blending system but it is not engineered to by-pass the system. It has a heating coil. Tank No. 5 is clad and has heating coils and a mixer. He said the end product from the blender goes into the batch tanks, the light oil going into the unclad tank (No. 6) and the medium oil going into the clad tank (No. 8). Both tanks have paddles. He said the product is then delivered to the clients by road tankers. Mr Gibney said that it is an integrated system and that one could not remove any part of it. He said that it is a processing system and it has been used as that since its inception.

Submissions

Mr Herbert submitted that all of the tanks were part of one integrated process to produce a product and induce a process of change and that all its components were essential to the process. He submitted that the tanks in question are therefore excluded under the Schedule to section 8 of the Valuation Act, 1986. He cited the Premier Molasses case in which there was inter-tank blending to induce a process of change and contended that the same reasoning should be followed in this case and the same conclusion reached.

Mr O'Caoimh's answer was that the tank numbers 4 and 5 were for holding only and that no process of change in the substance contained therein took place. He quoted the North Kerry Milk Products Ltd v. Commissioner of Valuation (Appeal No. 88/205) and Irish Refining Plc v. Commissioner of Valuation (Appeal No. 88/11) cases on the issue of "integration" contending that the reasoning and finding should be followed.

He further submitted that the change takes place in the blending plant and that after the blending process the oil is then transmitted to tank numbers 6 and 8 for containment only and that a process of change does not take place in these tanks but merely a process of maintenance. He also submitted that the heating provided is for maintenance and not to induce a change.

In relation to the Caribmolasses Company Ltd v. Commissioner of Valuation (Appeal No. 88/160) when Gannon J. held as follows "it seems to me that if the containment assists or is an integral part of the process of change, even though merely as ancillary to some other catalytic agency, it comes within the ambit of being used to induce a process of change.", Mr O'Caoimh submitted that the case concerned two tanks where there was inter-tank blending. He pointed out that Gannon J.'s findings in relation to containment was in the context of inter-tank blending. The containment in that case assisted and was an integral part of the process of change, unlike the situation in this case, where the containment merely assists the "system" but is not an integral part of the actual process of change.

Mr Herbert made final submissions as follows:-

1. That the system was designed specifically for a purpose and that it is used for that purpose.
2. That the tanks are part of the system
3. That the oils in the tanks must be maintained at temperature and mixed to prevent separation.
4. That tanks 6 and 8 are not end product containers as mixing must continue to finish off the product.

The Law

The law is set out at pages 17 and 18 of the Tribunal's judgment in the Premier Molasses appeal (Appeal No. 88/123) and it is not proposed to re-state the same in this judgment.

Findings

The question to which the Tribunal must address itself is whether it should regard the operation as an integrated whole in relation to the four tanks, the subject matter of the appeal. The Tribunal finds that there is no element of "storage" to be found except perhaps a minimum requirement that the product has to be taken from the ship at temperature, and kept some place for a time. The transfer from the ship to the tanks 4 and 5 is essential to the operation of the process. The Tribunal finds that the four tanks taken as an integrated operation induce a process of change in the substance contained or transmitted and that the tanks taken as one integrated whole, were designed and are used primarily for that purpose. The Tribunal, therefore, allows the appeal.