

Appeal No. VA88/0/118 &
VA89/0/148

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

C.I.E.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Wharf (pt of) & compounds at Lot 4Bb, Townland of Ballygillane Little, St. Helen's Ward,
Wexford, Co. Wexford
Rateable Occupation

B E F O R E

Paul Butler

Barrister (Acting Chairman)

Padraig Connellan

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF MARCH, 1990

By notices of appeal dated the 6th day of August 1988 in respect of appeal number 88/118 and notice of appeal dated the 10th day of August, 1989 in respect of appeal number 89/148, the appellant appealed against the respondent's determination that the appellant is the correctly rated occupier of the above described hereditament.

Quantum is not in issue in this appeal. What falls to be determined is whether certain areas, namely the wharf and compounds within the Rosslare Harbour and Rail Terminal are properly rated to the appellant as the occupiers of the said area.

The subject hereditament is a private port situate in the south east of County Wexford. Both parties agree that the property can be divided into two areas.

- (1) The red area on the map attached at Appendix A, the rateability of which is not in issue.
- (2) The green area, which is the subject of the appeal and which comprises a bonded area divided into compounds marked A-F. (See Appendix "A")

Pre-hearing submissions

On behalf of the appellants, Mr Desmond Killen F.R.I.C.S., A.R.V.A., who is a Fellow of the Society of Chartered Surveyors and is a director of Donal O'Buachalla & Co Ltd., presented his written submission dated 25th February, 1990.

Mr Killen pointed out that the sole issue between the parties is in relation to the area shaded green on the map at Appendix B of his submission. He stated that the area shaded red, the minor part of the hereditament, consists of a public car and truck park at the entrance to the harbour area. This area is in the occupation of C.I.E. He further stated that the major part of the hereditament is the area coloured green on the map, and that this area is customs bonded and under the control of Customs & Excise. Mr Killen described the green area as comprising two compounds (A, D & E) surrounded by high security fencing, and entrance and exit gates, each of which is secured by two sets of padlocks. Customs and Excise hold the keys to one of the locks and C.I.E. the keys to the other.

Mr Killen contended that these compounds give Customs & Excise absolute control of all imported vehicles and merchandise entering the port. He stated that C.I.E. is a keyholder of this area because it has responsibility for the safety of the said vehicles and merchandise even whilst same are under the control of the Customs & Excise authorities.

Mr Killen submitted that the respondent had made no distinction between the areas, valuing them as a single hereditament in the occupation of C.I.E. He contended that this view is incorrect as Customs & Excise must have absolute control of the compounds in order to ensure collection of the duties payable; the beneficiary of this revenue is the State, which is thus in beneficial and therefore rateable occupation.

Mr Malachy Oakes, a valuer with sixteen years experience in the Valuation Office presented a written submission dated the 14th February, 1990 on behalf of the respondent.

Mr Oakes set forth the recent valuation history of the hereditament as follows:-

The property was first valued on 1983 Revision at £550 R.V. on buildings and £900 absolute - total £1,450. An appeal was made against this assessment and on appeal the Commissioner fixed the R.V. at £15 on buildings and £390 absolute - total £405.

A Circuit Court appeal was then lodged. In 1985 Revision the property was again listed for revision by Wexford County Council and no change was made, an appeal was lodged and no change was made.

A Circuit Court appeal was lodged by agent to "Validate continuity of 1983 Circuit Court Appeal".

In 1986 Revision the property was again listed by Wexford County Council and no change was made. An appeal was lodged and no change was made. A Circuit Court appeal was lodged to validate continuity of 1983 Circuit Court Appeal.

In 1987 Revision the property was again listed for revision by Wexford County Council and no change was made. An appeal was lodged and no change was made.

An appeal to the Valuation Tribunal was lodged on the grounds that the bulk of the hereditament (estimated R.V. £330) is in the exclusive occupation of the State (Revenue Commissioners Custom and Excise).

In 1988 Revision the property was again listed for revision by Wexford County Council and the R.V. on buildings was unchanged but the R.V. £390 absolute was reduced to £380 on account of new developments new total £395. An appeal was lodged and no change was made.

An appeal to the Valuation Tribunal was lodged on the grounds that "the bulk of the hereditament (estimated R.V. £330) is in the exclusive occupation of the State (Revenue Commissioners Custom and Excise) in consequence of which the R.V. £395 should be apportioned".

The 1983 Circuit Court appeal was heard at the Four Courts Dublin on 12 December 1988 at a special sitting of the Circuit Court before Judge Sheridan.

Judge Sheridan reserved his decision until 23 January 1989 when he found against the appellants.

In the course of his submission Mr Oakes asserted that the sole issue before the Tribunal was in relation to occupancy and contended that C.I.E. are assumed to be in permanent occupation and therefore correctly rated as occupiers.

Oral Hearing

At the oral hearing which was held in Wexford on the 28th February, 1990, Mr Felix McEnroy B.L. appeared on behalf of the appellants, instructed by Mr Michael Carroll, Solicitor for C.I.E..

Also present to give evidence on behalf of the appellant were:

Mr Desmond Killen F.R.I.C.S. A.R.V.A.

Capt G. Livingstone, Port Manager & Harbour Master

Mr M Sheedy B.E. Projects Manager C.I.E.

Mr Pat McCarthy B.L. appeared on behalf of the respondent, instructed by the Chief State Solicitor, and accompanied by Mr Godwin, Surveyor Customs & Excise.

A preliminary issue in relation to estoppel was raised by Mr McCarthy, who contended that the Tribunal was estopped from hearing the appeal on the basis that the issue had already formed the subject matter of a recent appeal to the Circuit Court, heard by Judge Sheridan and that the appellant is taking advantage of the setting up of the Tribunal to have the appeal re-heard on grounds that have not changed.

In reply Mr McEnroy argued that a plea of estoppel could not succeed as there were two separate rating years involved. The appeal before Judge Sheridan related to a year prior to that in which the appeal lies before the Tribunal. He said that a ratepayer has the right to appeal each separate years rateable valuation.

In his opening submissions, Mr McEnroy stated that the parties were agreed that the sole issue before the Tribunal related to occupancy. He said that Customs and Excise are in paramount occupancy of the property and that C.I.E. are in subsidiary occupancy only. In support of his argument Mr McEnroy referred the Tribunal to a passage in Mr Justice Keane's book entitled

"Law of Local Government In Ireland" at page 283-288 which enumerates four principles for determining occupancy:-

1. There must be actual occupation.
2. Occupation must be exclusive for the particular purposes of the occupier.
3. Occupation must be of value or benefit to the occupier.
4. Occupation must not be for a too transient a period.

He said that this case turns on the proper interpretation of principle number two enumerated by Mr Justice Keane, namely the question of exclusive occupation.

Mr McEnroy referred the Tribunal to a number of cases in support of his argument as follows:-

- Valuation Appeal No. 88/141, judgment of Valuation Tribunal. Aer Rianta Cpt V. Commissioner of Valuation delivered the 14th December, 1989 at p.17.
- Caroll V. Mayo County Council [1967] I.R. 364.
- Judgment of Judge Sheridan in Circuit Court Appeal.
- Q V. Morrish [1863] 32 Law Magistrates Cases at p. 235.
- Westminster City Council V. Southern Railway Co & Ors [1936] AC 511.
- Atlantic Steam Navigation Co Ltd V. Mondon [1983] Land Tribunal.
- Holywell Union V. Halkyn [1985] AC 117.

He said that Customs & Excise are in paramount occupation of the green areas delineated on the map because customs officers are in paramount control of the activities carried on in those areas and consequently are the properly rated occupiers. Vis a vis the customs officers, the appellant is merely in subsidiary occupation.

Mr Desmond Killen gave evidence in relation to the rateable valuation of the hereditament which is £405 (£15.00 is already correctly apportioned to C.I.E. in relation to buildings). He said that should the appellants succeed the "absolute" valuation of £390 should be apportioned thus:-

C.I.E. £60 and State £330.

Mr Killen described the various compounds which comprise the area in issue and the uses to which each is put by reference to a map submitted by the appellant and which both parties agreed to use throughout the hearing. It is attached to this judgment at Appendix "A".

A - a freight compound

C - an open area in which vehicles are inspected by Customs & Excise. It is also used to park the overflow of cars from compounds D & E. The route to the ship is through compound C.

D & E - imported car compound

B & F - an open area into which only authorised personnel may enter.

Compounds A, D & E are surrounded by fences and closed by gates of which the Customs & Excise authorities are key holders of one padlock and C.I.E. of the other.

Mr McCarthy cross-examined the witness as to whether C.I.E. derived any benefit from the presence of Customs & Excise at the port. Mr Killen agreed that C.I.E. provided a customs clearance facility at the port. Mr McCarthy said that C.I.E. derive approximately £35 for every truck which uses that customs clearance facility.

Capt. Livingstone said that he was Harbour Master and Port Manager at Rosslare Harbour and that he was in charge of the Harbour at all material times. He said that there are two sets of keys for every gate. Once C.I.E. and Customs & Excise personnel open these gates, C.I.E. staff guide freight coming from ships into that area and vehicles are detained there until duties are paid. Compound A is designed to hold traffic until such time as duty is paid. Customs & Excise search vehicles in this area and hold them until any duties are paid. If a vehicle leaves the compound without paying the correct duty, C.I.E. is held responsible.

He said that although C.I.E. post staff at the gates to the compounds, the Customs and Excise authorities can instruct all C.I.E. staff in relation to activities within the compounds. C.I.E. do not use the compounds for storage. He said that the only reason for the existence of the compound is that Customs & Excise need secure areas for holding invalid freight until such times as the proper duties are paid by importers.

In response to Mr McCarthy, Capt. Livingstone said that Customs & Excise have authority to charge a storage fee in relation to cars which remain on in the compound. He said, however, that this has never happened.

He said that marshalling of vehicles within the compound, where necessary, is carried out by C.I.E. staff. He said that C.I.E. provides a customs clearance service within the bonded area,

generating an income of £1.4m. C.I.E. must satisfy Customs that the facility is secure. He admitted that if trucks stayed on after payment of duties C.I.E. could ask them to leave. Drivers are guided into the compound by C.I.E. staff.

Mr Michael Carroll Solicitor for C.I.E. gave evidence that the bond is in a form required by the Revenue Commissioners.

Mr David Godwin, Surveyor, Customs & Excise said that the compounds at Rosslare Harbour are of necessity quite extensive as there are three shipping companies operating with up to eight ferries arriving at peak periods. He said that custom watchers take a tally of all goods coming off ships. This is compared with the ships report which is lodged by C.I.E. on behalf of the Shipping Company. It is then a matter for Customs to ensure that all goods reported and tallied are accounted for. He said that if a vehicle is removed and Customs have not got a customs entry for it his first action is to go to the Port Authority and both have to take steps to trace the vehicle. After clearance he said that C.I.E. take control of vehicles.

In reply to Mr McEnroy he said that the National Vehicle Distribution and the Renault compounds differ from the C.I.E. compound in that in both these compounds work is carried out on the vehicles. He said that C.I.E. are keyholders of the compounds in order to ensure that goods on which duties have not been paid are not removed. He admitted that if Customs wanted to leave the gates locked for whatever reason they could do so. He agreed with Mr McEnroy that the compounds are effectively modern day versions of transit sheds.

Legal submissions

Mr McEnroy drew analogies between this appeal and two English cases viz:-

Q V Morrish [1863] 32 Law Journal Magistrates cases at p. 325 and Atlantic Steam Navigation Co Ltd v. Mondon [1983] Land Tribunal.

He said that the Customs & Excise authorities seek to characterize their presence at Rosslare Harbour as a passive presence and that the primary business which is carried on at the port is the business of C.I.E. However Mr McEnroy contended that this is in fact not the case. The central issue relates to the use of the bonded area which is a Customs & Excise use, designed to facilitate the collection of import duties. Control of the bonded area is vested in Customs & Excise which has power, for sufficient statutory reasons to lock the gates and prevent entry or exit. C.I.E. personnel are used only to facilitate the movement of goods and do so at the direction of Customs & Excise.

Mr McEnroy contended that Customs & Excise are the primary users of the property and in full control of operations.

He stated that whilst C.I.E. held 40% of the customs clearance business, this is relatively little in comparison to the revenue derived by Customs & Excise.

In summary, Mr McCarthy said that he was relying on Judge Sheridan judgment in the earlier appeal and asked the Tribunal not to depart from it on the basis that no significant change of evidence was placed before the Tribunal. He said that Customs & Excise has power to close the gates to the compounds only for specific statutory reasons. Customs & Excise perform an administrative function at the port, namely the statutory obligation to collect duties imposed by the State. All mechanical operations are carried out by C.I.E. and there has been no withdrawal by C.I.E. from the compound to show exclusive occupation by Customs & Excise. He said that C.I.E. is free to impose a charge on all cars which remain in the compounds after inspection and this indicates that there has not been a withdrawal of occupation by C.I.E. The presence of Customs & Excise at the port gives C.I.E. an opportunity to generate business through the operation of a customs clearance facility. C.I.E. personnel are directed by Customs & Excise only for the purpose of inspecting a particular vehicle. Beneficial use of the property lies with

C.I.E. which derives a benefit from the throughput of traffic. The presence of Customs & Excise enables C.I.E. to generate income from the compounds, charge fees and marshall the yard.

The appellant withdrew its request for an inspection of the premises by the Tribunal.

Determination

The Tribunal has taken all of the evidence and submissions into consideration and finds as a matter of fact that the appellant is in exclusive occupation of the subject hereditament. The Custom & Excise authorities are upon the premises purely for the purpose of carrying out a statutory role. While the Tribunal is not bound by the decision of His Honour Judge Sheridan it naturally attaches substantial weight thereto. The learned Circuit Court Judge, on similar facts, found that "it cannot be said, in my view, that the Appellants do not derive benefit from the compound as they clearly do and the fact that the Customs and Excise charges far outweigh the amount of revenue derived by them is not a matter which I should take into consideration when dealing with this case. I have, therefore come to the conclusion that, in principle, the paramount occupation of the compound is vested in the Appellants and, therefore, they are not qualified for exemption from rates".

The Tribunal, therefore, upholds the decision of the Commissioner.