Appeal No. VA88/0/123

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Premier Molasses Company Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Tanks at Lot No. 16, Foynes Co. Limerick

B E F O R E

Hugh J O'Flaherty	**S.C. Chairman**
Mary Devins	**Solicitor**
Paul Butler	**Barrister**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF MARCH, 1989

By notice of appeal dated 10th day of August 1988, the appellants appealed, insofar as is now material to the matters in issue, against the Commissioner assigning a rateable valuation to what are alleged to be non-rateable plant and machinery. Quantum is not in issue.

In the course of his written submission dated 24th January, 1989, Mr Desmond M Killen F.R.I.C.S., A.R.V.A., who is a Fellow of the Society of Chartered Surveyors in Ireland and a

Director of Donal O'Buachalla & Co. Ltd., set out that the appellant company has an industrial undertaking situated at the Port of Foynes, some 21 miles from Limerick.

The undertaking is subject to the provisions of the Factories Act 1955, and is inspected annually by personnel from the Inspectorate of the Department of Labour.

The purpose of the Company is to import, process, standardise, blend and distribute molasses.

The matter at issue is confined to the rateability of certain installations, namely, molasses tanks.

Mr Killen set out the valuation history of the premises and referance was made to the order of Judge Desmond on 20th December, 1984.

Prior to the hearing there was made available to the Tribunal a precis of the evidence that would be submitted by Mr Eamonn Collins, B.E., M.Sc., M.I.E.I., C.Eng., M.I.C.E. together with a plan of the installations in question and an album of photographs. By consent of the parties these were submitted at the hearing and are attached as Appendix A to this judgment.

Mr Val Foley, B.Agr.Sc., also submitted a precis of evidence in advance of the hearing and he also gave oral evidence at the hearing.

In his written submission dated the 9th November, 1988, Mr P Murray who is a district valuer with 27 years experience in the Valuation Office gave a description of the hereditaments in question and the valuation history of the place.

The oral hearing

The oral hearing took place on the 30th January, 1989.

Mr Marcus Daly S.C. (instructed by A & L Goodbody Solicitors) appeared on behalf of the appellants. Mr Aindrias O'Caoimh (instructed by the Chief State Solicitor) appeared on behalf of the respondent.

This appeal is concerned with certain installations at Foynes,
2 x 10,000 tonnes shore tanks (tanks Nos. 1 & 2)
2 x 1,000 tonnes standardization tanks (tanks Nos. 3 & 4)
1 x 3,000 tonne shore tank (tank No. 5)
1 x 300 tonne blending tank (tank No. 6).

All 6 tanks are equipped with heating coils; compressed air inlets; fresh water inlets; temperature gauges and pheumercator (tonnage gauge). It appears that tank No. 5 has not got a water connection on the roof but this is of no importance. It was established in evidence that all the tanks are interchangeable, that is to say that all are capable of performing the same function. The essential evidence in the case was provided by Mr Val Foley and the Tribunal now sets forth what was established by Mr Foley in the course of his evidence.

Mr Foley is an agricultural graduate by profession and worked in different sections of Irish Sugar Company in a management capacity. He was manager of the molasses division of the Irish Sugar Company and was appointed general manager of the appellant company at its inception in September 1981.

He is in charge of the operation at Harbour Road, Foynes.

The appellant company is a jointly owned company by Irish Sugar Company Ltd. and United Molasses of London.

The company started operations at the new terminal in Foynes in September 1981.

The business of the company is to purchase, import, process, standardize, and blend molasses and other products, thus adapting it for sale on the Irish market.

Prior to the building of this specialised terminal in 1981, Irish Sugar plc imported standardized molasses from East Coast Molasses terminals in Britain.

The molasses was processed at these terminals and imported by coaster to New Ross, Cork and Galway. It was then taken by road tanker to storage tanks at the sugar factories and re-distributed to customers, without further processing.

The appellant company was established at Foynes to do the processing that was previously done outside the country.

Molasses is a by product produced from the process of sugar manufacture. It may be defined as the residual syrup from the process of manufacture or refining of sugar, from which no more sugar can be crystallized by conventional means.

Because it is a by product it contains both non crystalline sugar and all the non sugar ingredients. The non sugar ingredients will decide the taste and texture of the molasses. As the non sugar elements are comprised mainly of various minerals taken from the soil, source of origin of the molasses is very important.
Molasses is produced from both the processing of sugar beet, and sugar cane. Both products are quite similar.

The material itself is a dark brown, sticky substance.

Its consistency and flowability depends on three factors, viz.

(a) Source of origin of sugar beet or sugar cane;

(b) The temperature of the material and

(c) The solids content of the material.

While molasses remains as a liquid, even at very low temperatures, it cannot be handled by conventional means, unless it is heated, diluted and agitated, to reduce the viscosity. Molasses is produced wherever sugar is produced, whether beet or cane.

The marketing of raw molasses is normally done on a six month sales period. Most of the sales are done on a fixed price contract for the period.

Molasses is therefore purchased up to six months in advance of shipment. It is purchased by competitive tender from international molasses traders. In order to buy the produce at the cheapest price, it is shipped direct from the country of origin.

It is purchased by a contract on a minimum solids and sugar basis. Molasses is purchased on a similar basis from the Irish Sugar Company, if there is a surplus, and delivered by road to Foynes.

The minimum shipment is generally 10,000 tonnes.

Facilities, must therefore, be available to off load and handle this quantity in a period of 36-80 hours, depending on ships ability to pump the cargo.

These ocean going vessels have special heating equipment and pumps to transport and discharge the molasses.

Molasses is very difficult to handle but does respond to the following physical changes, viz.

(a) a rise of 5.5°C in temperature will approximately halve the viscosity of molasses.

(b) a reduction in solids from 77% to 73% will also halve the viscosity.

However, the temperature of molasses must be strictly controlled. Too high a temperature will destroy the sugar present and cause caramelization. This will give a reduction in the feed value. While heating is essential for shipping, handling, and distribution the maximum temperature that molasses can safely be raised to is 40.5°C.

Temperature increase not only reduces the viscosity but, also reduces the variation between molasses from different sources. In all cases of heating, molasses must be agitated and mixed to prevent localised over-heating.

The molasses arrives as a thick viscous liquid of varying consistence from anywhere in the World and has to be converted to a saleable product that customers can handle.

When an ocean going raw molasses tanker arrives at berth it will contain molasses in several holds. Molasses will have been loaded in one or more ports, any of which will have molasses loaded from sugar factories in different adjacent regions. Raw molasses from every region will be different in terms of its consistency.

A sample is drawn from each hold and checked for:-

(i) Taste

(ii) Refractometer Brix

(iii) Temperature

(iv) Any sign of contamination.

If any hold on the ship is not deemed up to specification, it will not be accepted, or it may be accepted after clarification with the sellers.

A composite sample is assembled from all the holds and sent to Research & Development in the Irish Sugar Company, Carlow, for the following analysis.

(1) Refractometer Brix

(2) Total solids

(3) Total sugar

(4) Total ash.

Control composite samples taken from the shore sampling point during discharge are sent to the international analysts, Huson & Hardwick in Liverpool, for analysis, to provide independent evidence of the constituents and quality of the raw molasses, to ensure it complies with the contract specification.

During the discharge the following are checked and recorded at the shore sampling point on an hourly basis.

(1) Refractometer reading for dry matter indication

(2) Temperature

(3) Tonnes per hour discharge

(4) Pressure at the shoreline.

Discharge will vary from 80-400 tonnes per hour on a continuous round the clock discharge.

When a ship starts discharging, the processing of molasses begins. The process control of molasses can be divided into five separate functions.

(a) Standardizing raw molasses

Each cargo of raw molasses will vary in its consistency and analysis. The first step is to standardize the cargo itself from different holds.

As it is never possible to have a shore tank completely empty when a ship commences discharge, it is necessary to blend the old and the new to get one uniform product in the tank. This is done by means of compressed air and is done continuously while the ship is discharging.

Agitation of molasses by air in the shore tank is also necessary during discharge, to prevent foaming, and therefore overflow of molasses.

As the analysis of sugar and solids content will vary with each cargo, it may be necessary to transfer molasses from one shore tank to another to give a uniform blend of raw molasses in a tank, with minimum solids and sugars. It may sometimes be necessary to add a certain amount of water to the shore tank to facilitate further handling.

Continuous mixing and blending produces a standard uniform product which is known in the trade as "Pure molasses" and which will be sold as standard raw molasses or sent for further processing.

A further sample is drawn from the tank at this stage and the analysis checked.

(b) Transfer and heating of molasses and molasses blends

All molasses transfers are done by one of two 75 Kw. pumps through a network of pipes and valves.

The temperature and the viscosity of the raw molasses in the shore tank has a large bearing on the pumping and transfer rate. It, therefore, has to be heated and agitated, so that a reasonable transfer rate can be achieved.

(c) Standardization of molasses

The main product for sale to the compound feed and farmer trade is "Standard Molasses" which is sold against specification.

As the raw molasses varies in solids and sugar content varying amounts of water must be added depending on analysis.

This involves the transfer of standard raw molasses from the shore tanks to the standardization tanks (3 & 4). The calculated amount of water is added through the water meter. All the contents must then be mixed and the temperature raised to 30°C. This process must be carried out quickly, and there are two sets of heating coils in these tanks for this purpose.

This process of molasses standardization and blending takes approximately 2 days from transfer from the shore tank, to adding water, mixing and heating, to produce a uniform standardized product known as "Standard Molasses".

These tanks are lagged and the temperature is maintained at a constant level, for ease of distribution, and handling by hauliers and customers.

(d) Blending molasses

In addition to raw molasses, Premier also imports C.M.S. (condensed molasses solubles), a by-product of the fermentation industry. It also comes by ship from the industrialised nations.

This is placed in tank 5 and blended, mixed and heated with raw molasses in tank 5 or 6 on a formula basis, according to customer requirement. Tank 5 and occasionally tanks 1 & 2 are used to blend and mix C.M.S. and raw molasses.

Water may be added as required, and the final blend must be thoroughly mixed to produce a uniform product. This product is known as "Pre-Mol 802".

(e) Filtering of molasses

All feed mills have sophisticated metering and mixing equipment that are protected by filters. Molasses generally contains small amounts of extraneous material. All products are therefore filtered through a 1.5mm filter system at the out loading point at time of dispatch. Molasses is again sampled at this point, to ensure its consistency.

In all cases of applying heat to molasses, the molasses must be stirred continuously as the temperature at the surface of the steam coil will be sufficiently high to cause caramelization and destruction of sugar. The stirring action is carried out by means of compressed air introduced at the bottom of all tanks.

The Tribunal was given a full description of the use of molasses products by Mr Foley, and in addition, some descriptive literature was handed in and is contained in Appendix B to this judgment. In short molasses are of use in the fermentation industry; in the compound feed industry and for direct use on the farm.

Sales of all molasses products by the company were about 85,000 tonnes in 1988. The appellant company sells three types of molasses products at present

(a) "Pure Molasses" this molasses is sold to the customers and generally consists of:-

1. Raw undiluted molasses

2. Molasses undiluted with a minimum sugar content

3. Special purchase of raw molasses for a customer, viz. the Irish Sugar Company.

All this molasses is dispatched directly from shore tanks through a special outloading point.

The same pipeline is used if there is a re-shipment of a consignment of molasses abroad.

The temperature in dispatching "Pure Molasses" is critical. It must be kept at a minimum temperature of 35-40°C to enable it to be pumped and handled.

This is achieved by heating and agitation in the shore tanks. It could not be achieved without this apparatus and process.

Pure molasses is an extremely difficult product to handle. It is essential therefore to have the proper processing equipment in terms of pumps, agitation, heating, and filtration. The process has to be done on a continuous integrated basis from reception at the plant to the final finished product suitable for the customers needs.

(b) "Standard Molasses" - this is standardized molasses with a minimum solids content of 73%.

(c) "Molasses Blends" - (Pre-Mol)

At present this consists of a mixture of molasses and imported C.M.S. (condensed molasses solubles).

The addition of C.M.S.

(1) Reduces the overall cost of the final product.

(2) Reduces the viscosity of the final product.

(3) Increases the protein content of the final mix.

These products are sold to the animal feed millers, merchants and farmers.

In addition, the appellant company is carrying out a development programme, assisted by a S.F.A.D. Co. grant, to upgrade molasses to a complete feed. This involves adding protein, minerals and oil to the molasses C.M.S. blend, and suspending these products in the molasses blend. Thus the company is using the same mixing technology with some ancillary equipment to change the constituents to other saleable products.

Mr Foley said that the raw molasses with varying analysis and consistency is imported from anywhere in the world and converted to a saleable product in a continuous integrated process. This product can be distributed to and handled by their customers.

The raw product has to be analyzed and standardized. The process has to be monitored and controlled all the way through using the installed equipment. Once blended, or mixed with water (standardized) the consistency of the mixture remains constant.

In answer to questions by Mr O'Caoimh, Mr Foley said that the annual production of 80,000 to 95,000 tonnes was the product of 6 to 7 shiploads of molasses per year - each of about 10,000 tonnes -the balance being made up by added water. Ships were at the jetty from 2 to 6 days. When Mr O'Caoimh put it to Mr Foley that if there are only 6 or 7 shiploads per year then the purpose of tanks 1 and 2 is for storage Mr Foley said that there was not an even distribution throughout the year. Due to the nature of the product more shiploads arrived during the winter months.

The molasses on the ships is maintained at 40° centigrade. Heating is activated in tanks 1 and 2 if the temperature drops below 20° centigrade and is held at 30° centigrade in tanks 3 and 4. The purpose of heating in tanks 1 and 2 is to ensure a flow of molasses.

Mr Foley said that the sampling on the ships was to do with unloading and to ensure that no impurities had become mixed with the molasses. The composite sample was the product of samples from each hold in the ship combined in one container. The newly arrived molasses can be put in on top of existing molasses in tanks 1 and 2 and mixed with it.

A small proportion, about 2,000 tons or 1% to 2% of the total of molasses in tanks 1 and 2 is sold directly each year. He added that the purpose of the agitators in tanks 1 and 2 was to maintain a homogeneous product.

It was put to Mr Foley that what went into tanks 1 & 2 was molasses and what came out was molasses. Mr Foley did not agree with this. He said that raw molasses is a very rough, ignorant material. It is variable in its feeds, quality and consistency depending on the source of origin. The treatment the product got in the tanks was of the essence; it meant the customers got something they could handle whereas the original product coming from the ship if left alone would "end up in a ball". He would prefer to say that the molasses was conditioned rather than treated in the tanks because treatment would involve the concept of the addition of something. In an apt simile he said that raw molasses before being transformed was what pig iron would be to malleable steel.

The Tribunal accepts Mr Foley's evidence in its entirety and thinks that he has given a very thorough and forthright description of what is involved.

The Law

What are rateable hereditaments are described in section 12 of the Valuation (Ireland) Act, 1852, as extended by section 2 of the Valuation Act, 1986 and, therefore, the categories of rateable valuation are those set out therein.

The original section 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 was as follows:

> In making the Valuation of any Mill or Manufactory, or Building erected or used for any such Purpose, the Commissioner of Valuation shall in each Case value the Water or other Motive Power thereof, but shall not take into account the Value of any Machinery therein, save only such as shall be erected and used for the Production of Motive Power.

The amendments made to that section by section 7 & 8 of the Valuation Act, 1986, are as follows:-

7. The following section is hereby substituted for section 7 of the Act of 1860:

"7. (1) (a) In making the valuation of any mill or manufactory, or building erected or used for any such purpose, the Commissioner of Valuation shall in each case value the water or other motive power thereof, but shall not take into account the value of any machinery therein, save only such as shall be erected and used for the production of motive power.

(b) For the purposes of this subsection, machinery erected and used for the production of motive power includes electrical power connections.

(2) The Commissioner of Valuation shall value plant falling within any of the categories of plant specified in the Schedule to this Act (inserted by the Valuation Act, 1986).

(3) In valuing plant referred to in subsection (2) of this section, the Commissioner of Valuation shall not take into consideration a part of any plant which moves (or is moved) mechanically or electrically, other than a telescopic container."

8. (1) The Act of 1860 is hereby amended by the insertion after section 15 of the following Schedule:

"SCHEDULE

(1) Reference Number	(2) Categories of Plant
1.	All constructions affixed to the premises comprising a mill, manufactory or building (whether on or below the ground) and used for the containment of a substance or for the transmission of a substance or electric current, including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or a chemical process to take place), but excluding any such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted.
2.	All fixed furnaces, boilers, ovens and kilns.
3.	All ponds and reservoirs.

"

Prior to the enactment of the 1986 Act there were a number of cases which set out to define what was meant by "machinery". The Tribunal finds of particular assistance (and has found in the past) the judgment of Finlay P. (as he then was) in the Beamish & Crawford Case (8th May, 1978 (unreported) and approved by the Supreme Court on the 23rd July; (1980) ILRM 149. In particular the learned judge held that it was inappropriate in considering, to use a neutral term, any piece of equipment used in a manufactory to consider its component parts piecemeal for the purpose of designating some parts as machinery and some as not.

Submissions

Mr Daly's first submission was that all these tanks were "machinery" and were unaffected by the amendment introduced by the 1986 Act; even if they were "plant" within that definition they

remained essentially "machinery" in the re-enacted section 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860. He relied on a decision of His Honour Judge Murphy given in the case of Suicre Eireann Cuideachta Phoibli Teoranta v. The Commissioner of Valuation (7th December, 1988; unreported) wherein Judge Murphy appears to have held that a kiln despite its express inclusion at reference number 1 of the schedule added on to section 15 of the 1860 Act by virtue of the 1986 Act was, nonetheless, "machinery". Mr Daly's alternative submission was that if it were to be held that these tanks were plant and not "machinery" then they were not simply tanks used for the containment of a substance or for the transmission of a substance but should be treated as being excluded by virtue of the fact that they were designed or used primarily to induce a process of change in the substance contained or transmitted in them.

Mr O Caoimh's answer in relation to the first submission was to say that Judge Murphy's decision should not be followed by the Tribunal and in relation to the second submission he argued that these constructions were prima facie used for the transmission or containment of a substance and that the onus of proof rested on anyone who asserted that they should be excluded because they were designed or used primarily to induce a process of change. The Tribunal would glean that Mr O Caoimh concentrated more on tanks Nos. 1 & 2 and his argument was more faintly presented in respect of the remaining tanks.

Findings

The Tribunal is in no doubt that the purpose of the amendment brought about the Valuation Act, 1986, was to provide that certain industrial plant should be deemed rateable while, at the same time, preserving the age old exemption for machinery (save such as shall be erected and used for production of motive power) and it was made clear that the Commissioner should not take into consideration a part of any plant which moves (or is moved) mechanically or electrically, other than a telescopic container.

The Tribunal, in the first place, has come to the conclusion that it must reject Mr Daly's submission that these tanks are all "machinery".

As regards the decision in the Suicre Eireann Case the dilemma that faces the Tribunal is that if that were a decision of the High Court or the Supreme Court it would, of course, be bound to follow it whatever findings the Tribunal might have made in the past in relation to its understanding of the effect of the 1986 legislation. However, the Tribunal's position is that it has reached a particular conclusion in the past in relation to the effect of the 1986 legislation (cf. Mitchelstown Creameries Appeals Nos 94, 95, 96, 97, 98 and 99; judgment delivered 6th December, 1988; and North Kerry Milk Products Ltd. (Appeal No 88/205; judgment delivered 20th January, 1989). Nothing that has been urged in this case has persuaded the Tribunal to depart from its previous interpretation.

The next question is whether the Tribunal should regard the operation at Foynes as an integrated whole as regards these tanks; the Tribunal would not be influenced by the fact that on occasion one of the main shore tanks (tanks 1 & 2) might be used for a blending process. Isolated instances cannot establish binding precedents. The Tribunal would not decide the case on that basis but finds that there is much merit in thinking that there is really no element of "storage" involved herein except the minimum requirement that the product has to be taken from the ship and kept somewhere for some length of time. From the moment the product is discharged from the ship the process of conditioning, to adopt Mr Foley's phrase, takes place without any doubt in regard to the standardization tanks and the tanks used for the C.M.S. product but the Tribunal is also convinced that in this process tanks 1 & 2 play a part. The Tribunal finds that taking the six tanks as one integrated operation that then this operation consists of inducing a process of change in the substance contained or transmitted and that the tanks, taken as one integrated whole, are designed and used primarily for that purpose.

The Tribunal, therefore, is applying to plant the same reasoning that was applied by the High Court and the Supreme Court in the Beamish & Crawford Case as regards "machinery".

If, however, the Tribunal is wrong in this approach and should take each construction on its own then it reaches the same conclusion that in each of these tanks there is induced a process of change which means to cause or bring about a change in the substance. To repeat Mr Foley's vivid phrase, the change is as real as the change of pig iron into malleable steel. If that is correct then, without any doubt, a change is brought about and the only remaining question is: is each tank designed or used primarily for that purpose and the Tribunal reaches the conclusion that it undoubtedly is.

The Tribunal would repeat what was said in the North Kerry Milk Products Ltd. Case that prima facia all constructions used for containment of a substance or for transmission of a substance are rateable and that the dichotomy between storage and inducing a process of change only comes about at the next stage in attempting to resolve whether the construction is exempt or not but, applying that test, the Tribunal is left in no doubt that these constructions are entitled to exemption.