

Appeal No. VA88/0/160

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

CaribMolasses Company Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Storage Tanks and Yard Alexander Road County Borough of Dublin

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21 DAY OF APRIL, 1989

By notice of appeal dated 22nd August, 1988, the appellant appealed against the fixing of the valuation of the above described hereditaments by the respondent at £400.00.

The valuation history of the premises is as follows:-

The tanks were first valued as sulphur tanks in 1967 Revision at £400. This valuation was reduced by 50% to £200 at the 1977 1st Appeal stage when an across-the-board reduction was given to Gouldings Fertilisers of which it formed a part. The Valuation was restored to £400 in

the 1981 Revision when the tanks first became used as Molasses tanks. There was no change on 1st Appeal 1982.

A 1984 Circuit Court Appeal No. 233 has not yet been heard. The hereditament was again listed in 1988 to take account of 1986 Act. No change was made and the rateable valuation was appealed to the Commissioner of Valuation on 1st Appeal. Having considered a report of the Appeal Valuer the Commissioner fixed the valuation at £400 (Absolute).

In a written precis of evidence dated the 9th February, 1989, Mr. Frank Gregg B.Comm. H.Dip., a District Valuer with 20 years experience in the Valuation Office, set out the valuation history of the premises and indicated that the subject matter of dispute consisted of two tanks located in north dock on the old Goulding Fertiliser Site which were originally sulphur tanks. He said these two lagged tanks have heated steam coils on the floor inside; that the steam is produced by means of an oil fired boiler outside the tanks; that molasses is brought in from the ship at 40oC by pipeline and maintained at 40oC by means of steam heated coils. Mr. Gregg went on to say that the molasses is stored in the tanks and that there is no process. He said the molasses is preserved in a condition for redistribution and the same molasses that is piped into the tanks is drawn off eventually from the tanks again and distributed throughout the country. He said that there is a gravity feed to empty the tanks and steam is applied to the pipes outside the tanks to enable the molasses to flow to the distribution point for lorries to receive the same. He stressed that the entire process is to store molasses and to await distribution.

Quantum is not in dispute.

In a written submission dated the 15th March, 1989 the solicitors for the appellant, Messrs. John J. O'Hare and Company, indicate that the appellants would contend that the "storage tanks" are not in fact correctly described as storage tanks and that they do not fall within Category 1 of the

Schedule to the Annual Revisions of Rateable Property (Ireland) Amendment Act, 1860 as inserted by the Valuation Act 1986. They submitted, in particular, that the tanks are not used for the containment of a substance, that they are not designed or used primarily for storage, but are designed and used primarily to induce a process of change in the substance contained in each interchange between them to produce a product complying with the specification applied by purchasers of molasses from the appellant. They went on to indicate what evidence would be given at the hearing. The oral hearing took place in Dublin on the 31st March, 1989.

Mr. Richard N. Cooke Esq. S.C. instructed by the said solicitors appeared for the appellant and Mr. Aindrias O Caoimh, Barrister- at-Law instructed by the Chief State Solicitor appeared on behalf of the Respondent.

In opening, Mr. Cooke produced and explained a map which would be used in evidence. While he explained the appellants case in some detail it emerged therefrom that the essential case to be made on the appellants behalf was that what went into the plant was raw or crude molasses which came in several different forms from several different sources. A process of change took place in the plant ending in the production of molasses in a standardised form processed to the requirements of several individual customers of the appellant.

Mr. Michael J. O'Connor, a Consulting Engineer, gave evidence on behalf of the appellant. He explained the map and said that the molasses is pumped into the tanks from ships. He said that hot water was injected at the main pumps. He said the standardisation takes place continuously as the molasses is pumped in. He produced and explained a group of photographs.

Under cross examination, Mr. O'Connor said that the drawing was produced on a site plan which was produced in 1982. This was before the present plant went into operation. He said that the pipes were in place at that time (ie. 1982) but were not shown on the plan then produced.

Mr. Robert Nesbitt, a commercial consultant for the appellants parent company in Paris said that he was in charge of production and distribution in Ireland for the appellant. He said that the appellant company's customers were Compound Field Feed Meals Mills, the alcohol and yeast industries and large farmers amongst others. The latter is the product for direct feed to livestock. The appellant imported crude or heavy cane molasses. The viscosities of the molasses varied depending on the source of supply. Each consignment of molasses is unique; no two shipments thereof are the same. He said the appellant had to refine and blend to produce standardised molasses for a particular customer. The customer specifies what he is going to require, this is reduced to a contract and the contract provides for the period over which that customer will draw his requirement. He produced a weekly sheet and indicated that it appeared therefrom as was the case that there would be nine or ten different specifications given in any one week of production.

Under cross-examination Mr. Nesbitt indicated that customers take the product as they need it. He accepted that the primary change took place at the pumps by the injection of water as described above.

At the close of the appellants case the Tribunal referred the parties to its decision and the judgment given on the 13th March, 1989 in the appeal of Premier Molasses Company Ltd (Appeal 88/123).

When the hearing resumed Mr. O Caoimh indicated that he accepted the general proposition that what went into the plant was "crude" molasses and that what went out was "standardised" molasses. He made two basic submissions as follows, namely:-

(1)The change in the product does not take place in the two tanks which are the subject matter of this appeal. It takes place (as accepted by the appellant) before the product enters the two tanks.

(2)He submitted that, in view of the evidence of forward purchasing, there has to be an element of "containment". He said that the tanks were not originally designed for molasses. In regard to the contention that the substance may be transmitted from one tank to another for the purpose of mixing Mr. O Caoimh submitted that if anything takes place it was a natural process of mixing one molasses with another.

In relation to the Premier Molasses case (referred to above) Mr. O Caoimh submitted the same should be distinguished from this appeal in that in the Premier case the heating coils in the tanks were used as was hot air. He stressed that on the evidence there was no application of force to the product within the tanks in this case.

Mr.Cooke submitted that the two tanks used were an integral part of an industrial process. He accepted that the process in question differed from that in the Premier Molasses case in that, although the appellant in this case, has heating coils the same are not used. He submitted however that the same were there and available for use. He said that the change in the product was induced by means of the appellants pumping system. He submitted that mixing is a purely artificial process. The electrical pumps are used to force molasses from one tank to another. He went on to say that heating would be used if the pumps failed.

Counsel for both parties referred to the law. It is not, however, proposed to deal with the law in this judgment as the same is set out at pages 17 - 19 of the Tribunal's judgment in the Premier Molasses case.

In the Premier Molasses case the Tribunal found that taking the six tanks as one integrated operation that then that operation consisted of inducing a process of change in the substance contained or transmitted and that the tanks, taken as one integrated whole, were designed and used primarily for that purpose.

Applying the reasoning of the Premier Molasses case, the Tribunal is satisfied that the plant is, as a whole, used for the purpose of inducing a process of change. What is left for the Tribunal to decide is whether on the facts of this appeal the same should be distinguished from the Premier Molasses case in that on the evidence in the Premier Molasses case the process of change took place within the tanks and on the evidence in this case the main part of the process takes place at the pumps.

Taking all the evidence and submissions into consideration the Tribunal is satisfied that there is no essential difference between the process in this case and that in the Premier Molasses case in particular the tanks and whole plant are part of an integral operation used for the purpose of inducing a process of change.

The Tribunal allows the Appellants Appeal.