Appeal No. VA88/0/247

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Irish Shell Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Container tanks at Lot No: 17h1 at Alexandra Road, Ward: North Dock B, County Borough of Dublin
Rateability of tanks

B E F O R E
Mary Devins **Solicitor (Acting Chairman)**

Brian O'Farrell **Valuer**

Padraig Connellan **Solicitor**

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

By notice of appeal dated 17th August, 1988, the appellants appealed insofar as is now material to the matters in issue against the Commissioner of Valuation assigning a Rateable Valuation to what are alleged to be non-rateable plant and/or machinery. Quantum is not in issue.

In the course of his written submission dated 18th February 1990, Mr. Des Killen F.R.I.C.S., A.R.V.A. of Messrs. O'Buachalla & Co. Ltd., described the property as an undertaking of Irish Shell, comprising two Oil Terminals, of which one, viz., Terminal 2 is the subject matter of this appeal.

Mr. Killen set out the valuation history of the premises.

The items at issue are Bitumen Blending Tanks Nos. 2A, 4A, 6A, 7A, 8A, 9A, 10A, 23A and 31A: and Fuel Oil Tanks Nos. 16A, 18A, all of which are shown on the map attached hereto as Appendix A. The parties have agreed the valuation to be attributed to each of the above as follows:

BITUMEN TANKS		**FUEL OIL TANKS**	
2A	- £148.00	16A	- £195.00
4A	- £43.00	18A	- £20.00
6A,7A,8A,9A,10A	- £30.00 (£6 each)		
23A	- £42.00		
31A	- £275.00		
Total	- £535.00	Total	- £215.00

- Total Valuation in dispute: £750.00

Prior to the oral hearing Mr. Michael Cavanagh, B.Sc.Eng., EurIng,C. Eng., M.I.F.I. A.M.I. Mech. Eng., Chief Engineer with Irish Shell, made available a written submission received on 15th February 1990 together with a plan of Terminal 2. By consent of the parties these were submitted at the hearing and are appended to this judgment as Appendix A.

ORAL HEARING

The oral hearing took place in Dublin on 5th March 1990.

Mr. Marcus Daly S.C. and Mr. Marcus F. Daly B.L., instructed by Messrs. McKeever & Son, Solicitors, appeared on behalf of the appellants. Mr. Aindrias O'Caoimh (instructed by the Chief State Solicitor) appeared on behalf of the respondent.

Mr. Marcus Daly made reference to the Circuit Court decision dated 29th January 1988 when His Honour Judge Martin held that the tanks in question were exempt from rateability by virtue of being non-motive power machinery, as referred to in Section 7 Valuation Act 1860.

He went on to describe the overall operations carried out by the appellant company.

Two products, viz. fuel oils and Bitumen are imported into the terminal in question.

Bitumen, as described in Mr. Cavanagh's written submission, is a refined petroleum product which is generally handled at elevated temperature where it is in its liquid state. Three grades of Bitumen, viz: 50 PEN, 200 PEN and 450 PEN are imported by Irish Shell from various sources in the U.K. and the continent. The 50 PEN Bitumen is pumped from the ship into Tank 2A which is fitted with heating coils, hot oil flow and return manifolds and a suction heater with a temperature control system. The 200 PEN Bitumen is pumped from the ship into Tank 31A and 450 PEN Bitumen into Tank 4A. The construction and equipment in Tanks 4A and 31A are the same as for Tank 2A. The bitumen contained in the tanks is drawn through the outflow heater within the tank where its viscosity is changed to within the required range by the application of heat. The bitumen is then piped from the shore tanks to the day tanks from which it is loaded into road and rail tankers or pumped to the manufacturing area where it is blended and either pumped to the cut-back blender or to the road tankers or day tanks for collection. In the cut-back blending area Kerosene and B.W.A additive are mixed with the bitumen to create a specific cut-back bitumen grade. This cut-back bitumen is pumped to one of the day tanks viz; 6A,7A or 8A where it is agitated and heated. Tanks 6A,7A and 8A are fitted with a 'spider' system of pipes which allows further addition of kerosene and other additives as necessary.

Two grades of fuel oil are imported by Irish Shell, viz. gas oil and heavy fuel oil. Gas oil is held in Tank 15A which is not part of its appeal and the fuel oil is pumped into Tank 16A. Tank 16A is equipped with pipes, valves, dipping and sampling points and steam heating coils. In Tank 18A which has the same fittings as Tank 16A together with a 'spider' system of pipes at the bottom, heavy fuel oil and gas oil are blended to produce fuel oil.

Mr. Daly referred the Tribunal to section 8 sub section 1 of the Valuation Act 1986 and in particular to that part of the Schedule Ref 1 which refers to "all constructions affixed to land or tenements, other than buildings referred to in Section 14 of this Act." He argued that in view of the use of the plural term in the section this concern should be viewed as one integrated whole.

Mr. Cavanagh referred to the unusual heat transfer system which operates throughout the bitumen tanks. Thermal oil is transferred throughout the entire system and is drawn down by each tank as required and then returned to the system where it is re-heated. Two other heating systems are in operation for other areas of the plant, viz. a sub-loop system and a conventional steam boiler. Mr. Cavanagh pointed out that there are two separate systems which the bitumen operates viz. bitumen blending and the production of cut-back bitumens. He pointed out that the shore tanks, 2A,4A and 3A are never empty. The heating coils at the bottom of the tanks must always be kept covered. When bitumen is pumped into the tanks from the ships, blending is essential to achieve homogeneity. The viscosity of the bitumen must be exactly correct to comply with customers' requirements. If bitumen is overheated for example, it would solidify and would clog up the entire system.

Mr. Cavanagh explained that bitumen could not be taken off the shore tanks directly for retail use or for blending for manufacture. It must first be pumped to the day tanks.
In relation to Tank 16A, Mr. Cavanagh agreed, on cross-examination, that quantities of heavy fuel oil are sold directly from this tank.

SUBMISSIONS

Mr. O'Caoimh stated that if one were to consider all the tanks herein as part of one integrated whole, it would be carrying the doctrine of 'integral process' too far.

Dealing firstly with the fuel oil tanks, viz. Tanks 16A & 18A, Mr. O'Caoimh made the point that the heating coils in Tank 16A would be a normal feature of any tank containing heavy fuel oil and that they served only to ensure that oil could be easily pumped. He said that it was heavy fuel oil which went into Tank 16A and heavy fuel oil which came out.
He stated that while it is accepted that heavy fuel oil is one of the essential ingredients in the production of medium fuel oil, the tank containing gas oil which is the other essential ingredient, had been conceded by the appellants as being rateable.

With regard to Tank 18A, Mr. O'Caoimh conceded that this tank is used to induce a process of change, viz. the blending of heavy fuel oil and gas oil to produce medium fuel oil. He pointed out, however, that the blending process is carried out over a 2-3 hour period only, approximately once a week. The tanks cannot therefore be said to be used "primarily" to induce a process of change in the substance contained therein. For the greater part of the time the tank is used merely for storage.

Mr. O'Caoimh next referred to the bitumen tanks viz: Tanks 2A, 4A, 6A, 7A, 8A, 10A,23A & 31A. He stated that there is no change other than in the viscosity of the bitumen which goes into the three shore tanks, viz. Tanks 2A,4A and 31A and that which comes out. He pointed out that while the bitumen is held in the day tanks 9A and 10A and 23A at elevated temperature, these tanks are not used primarily to induce a process of change in the bitumen.

With regard to Tanks 6A,7A & 8A he stated that these tanks merely hold cut-back bitumen and that the change in this substance has taken place outside the tanks.
He referred the Tribunal to its own decision in Irish Bulk Liquid Storage Ltd., Irish Refining PLC and North Kerry Milk Products, and pointed out that the subject matter of the appeal was similar to these in that it could not be considered as one integrated process.

Mr. Daly referred to the judgment of Gannon J dated 24th January 1990 in relation to Carribmolasses Company Limited and in particular to the following words thereof:
"There are two types of structure therein described. The one is primarily designed or used for storage or containment. If it is so used it is a rateable hereditament even though during the period of storage some natural or chemical process takes place. The other is primarily designed or used to induce a process of change in the substance contained. If it is so used it is not a rateable hereditament even though the process requires containment for a determined or indeterminate period. The use of the qualifying word "primarily" indicates some degree of latitude in relation to factual circumstances of purpose. It also conveys to my mind that it is not intended that the mere containment should be the only means of inducing change of substance. 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."
In reply to Mr. O'Caoimh's first submission in relation to Fuel Oil Tank 16A, Mr. Daly stated that the heavy fuel oil had to be homogenised and brought to the correct temperature in this tank as part of its overall process on the way to Tank 18A where medium fuel oil is produced.

With regard to Tank 15A containing gas oil he explained that it had been conceded by the appellants because gas oil does not need processing, unlike heavy fuel oil. Heavy fuel oil is in the nature of a raw material which has to be prepared before it can be used, and Tank 16A and Tank 18A together form one integrated process.

Mr. Daly then referred to the bitumen plant and stated that the bitumen which is imported cannot be brought directly to customers. The purpose of the plant is to change the imported bitumen into products which can be sold and used. Everything that is done in this process is part of the integrated whole.

He pointed out that kerosene and additives are added to the contents of Tank 6A,7A,8A while they are in the tanks and not only outside the tanks, as Mr. O'Caoimh had seemed to suggest.

He stated that the "Beamish & Crawford" principle, i.e. the overall view should be applied in this case, rather than the "piecemeal" method whereby each component part is viewed separately.

THE LAW

(a) As to what is rateable:

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 purchase 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".

These culminated in the judgment of Finlay P. (as he then was) in the Beamish and Crawford case (8th May, 1978; unreported) and approved by the Supreme Court and reported in 1980 ILRM 149. Since then there has been a further judgment viz; that of Costello J. in Pfizer Chemical Corporation - V - Commissioner of Valuation (9th May, 1989; unreported).

FINDINGS AND DETERMINATION:

The Tribunal is in no doubt that the purpose of the amendment brought about by 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).

In the first place the Tribunal is satisfied that these tanks cannot be regarded as machinery.

The Tribunal intends dealing with these hereditaments in the way both parties have done, viz. (a) Fuel Oil Tanks 16A,18A and (b) Bitumen Tanks, 2A,4A,6A,7A,8A,9A,10A,23A and 31A.

FUEL OIL TANKS

Tank 16A is essentially a holding tank. It is used for the containment of a substance viz. heavy fuel oil. The main purpose of this tank is one of storage. What goes into the tank is the same as that which comes out of it. While some of the heavy fuel oil from the tank does go towards the production of medium fuel oil, it cannot be said to form part of an integral process. It has been shown that heavy fuel oil can be drawn directly from this tank for customer usage. There is no question that this construction has been designed or used primarily to induce a process of change in the substance contained or transmitted.

With regard to Tank 18A the Tribunal is of the opinion that its primary purpose is to induce change in the substance contained therein, viz., the blending of gas oil and heavy fuel oil to produce medium fuel oil. The Tribunal, while accepting Mr. O'Caoimh's point that the blending operation which brings about change in the substance, lasts only a comparatively short period each week, nonetheless considers that the tank is used primarily for the purpose of that change. It finds that this tank is entitled to exemption.

BITUMEN TANKS

The question for the Tribunal to decide is whether all of the bitumen tanks should be regarded as an integrated whole. It has been made clear by Mr. Cavanagh that the bitumen which is pumped from the ships to shore tanks 2A, 31A and 4A cannot be taken off and used directly either by customers as straight penetrate bitumen or for further manufacture in the blending area into Manufactured Penetrate Bitumen or Cut-Back Bitumen. From the time the product is discharged from the ships it is 'processed' (to use Mr. Cavanagh's description) firstly in the shore tanks and later in the day tanks. While some of the bitumen is loaded into road and rail tankers from day tanks the remainder will go to the blending area where it is either taken off in the form of Manufactured Penetrate Bitumen or pumped to the cut-back blender where kerosene and other additives are added to it to create a specific cut-back bitumen grade. The Tribunal finds that while there is an element of storage herein, the nine bitumen tanks, viz. 2A, 4A, 6A, 7A, 8A,9A, 10A, 23A & 31A should be taken as one integrated operation and that this operation consists of inducing a change in the substance contained or transmitted. The element of containment is an integral part of the entire process of change. The Tribunal finds that these tanks are entitled to exemption. Accordingly, the Tribunal fixes the Rateable Valuation of this hereditament at £2,675 the breakdown of which is:

R.V.	£3,230
less Tank 18A	£ 20
less Tank 2A	£ 145
less Tank 4A	£ 43
less Tanks 6A, 8A, 9A, 10A.	£ 30
Less Tank 23A	£ 42
less Tank 31A	£ 275
Total	£ 555
Total R.V.	£2,675