

Appeal No. VA95/1/051

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

Premier Molasses Company Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices, Storage Tank, Stores and Yard (including pipeline on 15) at Map Ref: 28 Foynes Harbour, Townland: Corrig, ED. Shanagolden, RD. Rathkeale, Co. Limerick
Rateability of tanks

B E F O R E
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JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF FEBRUARY, 1997

By Notice of Appeal dated the 11th April, 1996 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £840 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

- "(1) The valuation is excessive and inequitable.
- (2) The valuation is bad in law."

The Property:

The hereditament comprises the Premier Molasses Company's molasses handling facility at the port of Foynes, approximately 21 miles from Limerick City. The facility is adjacent to the new East Jetty which can accommodate vessels up to 30,000 tons and is connected by pipe line to this jetty facilitating the unloading and on loading of ships. The facility itself consists of:-

administrative buildings, tanks with a total capacity of 25,000 tons approximately and ancillary stores. The issue before the Tribunal is the rateability only of 6 molasses tanks described in the following terms:-

- (1) 2 x 10,000 ton shore tanks (tanks 1 & 2)
- (2) 2 x 1,000 ton standardisation tanks (tanks 3 & 4)
- (3) 1 x 3,000 ton shore tank (tank 5)
- (4) 1 x 300 ton blending tank (tank 6)

Valuation History:

The valuation history dates from 1988 when by Notice of Appeal dated 10th August, 1988 the appellants appealed to the Valuation Tribunal against the Commissioner of Valuation's decision in assigning a rateable valuation to the subject hereditament. It was submitted by the appellant that the hereditament was non rateable plant and machinery. The Tribunal delivered its judgement on the 13th March, 1989 and determined that certain constructions, i.e. six molasses tanks were entitled to exemption (Valuation Appeal ref: VA88/123). The valuation was reduced from £865 to £105. The premises were listed in 1990 following the extension of the townland boundary of Corgrig to include the area know as the "Tideway of the River Shannon" in which the premises were previously located. The Lot No. was changed from Lot 16 to Lot 28, and the entry as to townland changed to Corgrig. The valuation was also amended to comply with the Tribunal's decision as outlined above.

The premises were listed for revision in 1993 by Limerick County Council and in November, 1994 the results of the revision were published. The valuation was increased to £840 (including molasses tanks previously held to be non rateable by the Tribunal). An appeal was lodged but no change was made by the Commissioner of Valuation at First Appeal. It is

against this determination of the Commissioner of Valuation that an appeal lies to the Tribunal.

Written Submissions:

In advance of the hearing written submissions were exchanged by the parties and submitted to the Tribunal. The written submissions comprised:-

A summary of evidence prepared by Mr. Desmond M. Killen, FRICS FSCS IRRV, a Fellow of the Society of Chartered Surveyors in the Republic of Ireland, and a Director of Donal O'Buachalla & Company Limited with 32 years experience as a Valuer on behalf of the appellant.

In the written submission, Mr. Killen set out a brief description of the tanks, the subject matter of the appeal, and submitted that the rateable valuation should be reduced to the agreed amount, rateable valuation £730 and that certain tanks described in the précis should be held to be non rateable.

Summary of evidence from Mr. Val Foley, B.Agr. Sc., Managing Director of the appellant company. Mr. Foley described the process in detail indicating that the raw molasses with varying analysis and consistency is imported from anywhere in the world and converted to a saleable product in an continuous integrated process. He said that after undering processing the product can be distributed to and handled by the customers. The product can also be upgraded to specialised molasses products using other special processing equipment. He said that the raw product has to be analysed and standardised and must be monitored and controlled all the way through using the installed equipment in the tanks. Once blended or mixed with water (standardised) the consistency of the mixture remains constant. He said that all the equipment is essential to handle the very viscose product. A copy of Mr. Foley's written submission is attached to this judgement.

Summary of Evidence from Mr. Eamonn Collins, (Chief Executive of the Engineering Division of the Irish Sugar Company from January to September, 1981). He was responsible for the construction of the Premier Molasses plant at Foynes, in accordance with

specifications and plans provided by United Molasses Limited. Mr. Collins described the purpose and scope of the plant and tanks thereon.

A number of photographs, maps and product descriptions were also supplied by way of written submission in advance of the hearing.

A book of authorities was submitted on the 7th January, 1997 from A. & L. Goodbody, Solicitors on behalf of the appellant. In the book of authorities the appellant quoted the following cases:-

- i) Beamish and Crawford Limited v. Commissioner of Valuation, 23rd July, 1980.
- ii) North Kerry Milk Products Limited v. Commissioner of Valuation, 20th January, 1989
- iii) Premier Molasses Company Limited v. Commissioner of Valuation, 13th March, 1989
- iv) Suicre Eireann Cpt v. Commissioner of Valuation, 7th April, 1992
- v) CaribMolasses Company Limited v. Commissioner of Valuation, 25th May, 1993
- vi) Pfizer Chemical Corporation v. Commissioner of Valuation, 28th July, 1994

A written submission was received on the 9th February, 1996 from Mr. Patrick Conroy, District Valuer in the Valuation Office with 23 years experience on behalf of the respondent. In his written submission, Mr. Conroy briefly described the subject premises and the hereditament at issue as set out above. He also gave details of the valuation history.

Oral Hearing:

At the oral hearing which took place in Dublin on the 10th January, 1997 the appellant company was represented by Mr. Donal O'Donnell, S.C. instructed by A & L. Goodbody, Solicitors.

Mr. Aindrias O'Caomh, S.C. instructed by the Chief State Solicitor appeared on behalf of the respondent.

Also present were Mr. Des Killen of Messrs. Donal O'Buachalla & Company Limited, Mr. Patrick Conroy of the Valuation Office, Ms. Carol Plunkett of Messrs. A. & L. Goodbody, Mr. Val Foley Managing Director of the appellant company and Mr. Frank Rowley of Greencore.

Mr. Foley gave evidence that the appellant company sold molasses against standard EU specifications. He referred to the CaribMolasses Company which had gone out of business in 1993 and explained that in his own company standardisation and mixing were carried out in the tanks whereas in CaribMolasses the mixing had clearly taken place in the pipes and not in the tanks.

Mr. Foley confirmed that all of the products produced by the company were totally guaranteed to customer specifications and all of them were produced in the tanks. He further stated that the plant is used only to produce what is specifically required by customers on contract.

Replying to Mr. O'Caoimh in the course of cross examination Mr. Foley stated that CMS which is a by-product of fermentation and introduces protein to and reduces viscosity in the molasses, is bought in and is normally held in tank 5.

The written précis of both Mr. Killen and Mr. Conroy were accepted and confirmed as their sworn evidence. Both valuers agreed that the valuation attributable to the disputed tanks is £730.

Submissions:

Mr. O'Caoimh submitted that the decision of the Valuation Tribunal in 1988 (VA88/123) had been influenced by the decision of O'Higgins C.J. in *Beamish v. Crawford* which, he said, was no longer appropriate since the Supreme Court decision in *CaribMolasses*.

He said that the time used to achieve standardisation of molasses is minimal and that the primary purpose of the tanks is one of containment rather than storage and not to effect change in the substance contained.

Referring to tank 5 Mr. O'Caoimh submitted that the CMS product contained therein is used to induce a process of change elsewhere and that the tank is obviously rateable.

Mr. O'Donnell noted that Mr. O'Caoimh appeared to have made a concession by suggesting that while a process of change may occur it is not the "primary purpose" of the tanks. He said that it had always been open to Mr. O'Caoimh to make this argument in relation to "primary purpose of containment" but that he had not done so before the hearing of this appeal.

Mr. O'Donnell submitted that in the CaribMolasses case it was accepted that there was some process of change but that it took place outside the tanks.

In the subject case the design of the tanks is clearly intended to induce change. The tanks would not have the same specifications if their only purpose were to be one of containment. While there must be some element of containment in any operation of this nature Mr. O'Donnell submitted that these tanks were designed or are used primarily to induce a process of change in the substance contained.

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.

Findings:

The Tribunal is to decide if the subject property is rateable in light of current law.

Statutory law remains as it was in 1988 when the Tribunal first made its decision in relation to this hereditament, a decision which was not the subject of an appeal.

It must be considered therefore:-

- (a) Is there any evidence of actual change in relation to the hereditament, and
- (b) Have there been any relevant decisions of superior courts since 1988.

The evidence is essentially as it was in 1988. In fact there has been evidence of a significant increase in business and less use of the tanks for containment.

The Tribunal having regard to the decision of the Supreme Court in *CaribMolasses* is of course bound to accept that what happens in the tanks cannot be considered as an integral part of the entire manufactory.

Each tank must therefore be viewed separately and the question asked as to whether each tank is designed or used primarily for inducing a change in the substance contained therein.

The Tribunal is satisfied that each tank including tank 5 which evidence has shown is currently used for the containment only of CMS, has been designed and fitted with sophisticated equipment primarily to effect change in raw molasses and convert it to customer specifications.

The Tribunal accordingly finds for the appellant and, noting the agreement in relation to quantum, determines that the correct rateable valuation of the subject hereditament is £110.

