

Appeal No. VA95/6/010

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

Macardle Moore & Company Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Brewery Yard and Land at Map Ref: 12B, Townland: Fairhill, Urban District of Dundalk
No. 3, Co. Louth
Rateability of tanks

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Con Guiney

Barrister

Marie Connellan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF SEPTEMBER, 1996

By Notice of Appeal dated the 6th day of November, 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £2,000 on the above described hereditament.

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

- "(1) The valuation is bad in law, in accordance with the provisions of the Valuation Acts, in particular the rating of Bright Beer Vessels (agreed assessment RV£225), is invalid as they constitute machinery and are not rateable.
- (2) The valuation is excessive and inequitable having regard to the provisions of the Valuation Acts."

The Property:

The property comprises a state-of-the-art canning plant with adjoining warehouse. The ancillary buildings consist of a new filter room and two older buildings used as a beer recovery room and a yeast room. There is also a tank loading bay with fourteen Bright Beer Tanks adjoining. A very large concrete storage yard completes the accommodation.

The subject premises is part of the Macardle Moore Brewery complex in Dundalk. Macardle's is a small regional brewery and forms part of the Guinness Group.

Valuation History:

The valuation on the buildings and yard is not at issue. The rateability of the B.B.T's is the sole issue to be decided by the Tribunal. The quantum of the B.B.T's has been agreed at a rateable valuation of £225, that is, £225,000 gallons at £1.00 per 1,000 gallons.

Written Submissions:

A written submission was received on the 25th June, 1996 from Mr. Raymond Ward, Chartered Surveyor with Lisney on behalf of the appellant. In his written submission, Mr. Ward described the property, its valuation history and outlined in detail the brewing process and Bright Beer vessels in question.

Commenting on the above, Mr. Ward said that the brewing process was done in initial stages, that is, a liquid known as Wort is produced by mashing malted barley with hops and adding hot water. This mixture, he said, is then boiled in a specialised vessel, known as a Kettle, and on completion solids are drawn off and the liquid is transferred to a large fermentation vessel and yeast added. In the fermentation vessels the primary fermentation occurs under controlled conditions. After a number of days the liquor is transferred to a further series of vessels known as Maturation or Conditioning Vessels. Clarification and stabilisation are adjusted in primary fashion in the Conditioning Vessels and the liquor may be blended with other brews and the temperature generally adjusted before passing it through a filtration process.

It is at this stage that the beer is introduced into the final series of tanks, known as Bright Beer Vessels which are the subject of this appeal. These vessels are insulated and temperature control is achieved through coolant filled coils around each vessel inside the insulation. Important processes take place within these Bright Beer Vessels, these processes include:-

- (1) Stabilisation of the beer with DVPP to remove polyphenols or tannins from the beer.
- (2) Gas stripping to remove CO₂.
- (3) Adjustment of gravity and bitterness using de-aerated/carbonated liquor and isomerised hop extract.
- (4) Scrubbing of oxygen.
- (5) Temperature adjustment.
- (6) Adjustment of brew to exact alcohol content level.
- (7) Blending together of various different brews in order to achieve the final desired product.

Mr. Ward also referred the Tribunal to *Beamish & Crawford v. Commissioner of Valuation* Supreme Court decision.

A written submission was received from Mr. Noel Rooney, Dip. E.Econ., a District Valuer with over 24 years experience in the Valuation Office on behalf of the respondent. In his written submission, Mr. Rooney described the property and its valuation history as summarised above.

Mr. Rooney referred the Tribunal to the following:-

- (1) *CaribMolasses Company Limited v. Commissioner of Valuation* Supreme Court decision of May, 1993. The argument of "one integrated process" was not accepted by the Court.

- (2) *VA88/122, VA88/286 and VA89/093 - Siuicre Eireann Cpt and Cork County Council v. Commissioner of Valuation.* The Tribunal held sugar silos to be rateable.

The Tribunal found that while there was a process of change in the sugar contained within the silos, the process was not the primary use or designed purpose of the sugar silo.

- (3) *VA89/178 and VA90/2/050 - Midland Malting Company Limited v. Commissioner of Valuation.* The Tribunal held in accordance with *Section 7 of the Valuation Act, 1986* that grain bins were not machines and that while a natural or chemical process was allowed the primary purpose was storage.

Oral Hearing:

At the oral hearing which took place in Dublin on the 8th day of July, 1996 Mr. Hugh O'Neill S.C. instructed by Mr. Donal O'Hagan of Messrs. Donal O'Hagan & Company, Solicitors appeared on behalf of the appellant. Also present were Mr. Raymond Ward of Lisney, Mr. Brian Byrne, Chief Engineer of the appellant company and Mr. Frank Manning, Secretary of the appellant company.

Mr. Eamonn Marray BL represented the respondent. Also present was Mr. Noel Rooney of the Valuation Office.

The written précis prepared by Mr. Raymond Ward, Mr. Frank Crowley, Chief Brewer of the company and Mr. Brian Byrne, together with that of Mr. Noel Rooney were admitted to evidence.

Mr. Byrne gave evidence that the subject bottling facility is unique in this country and that it bottles and cans all Guinness products in the state. He explained that 80% of the product which is introduced into the bright beer vessels which are the sole disputed portion of the rateable hereditament, is received from other breweries in the group, with the balance being brewed in the adjoining brewery.

Mr. Byrne said in evidence that the imported beer arrives in various conditions but confirmed that it would all have gone through a similar brewing process in what he described as "mother breweries".

He said that what occurs in the B.B.T's is a system of holding, checking and adjusting prior to packaging. He described in detail the various procedures as set out in his written précis and conceded, in reply to questions from Mr. Marray that the stabilisation process in fact takes place before the beer is introduced to the B.B.T's.

Mr. Byrne gave evidence that all of the other breweries, namely, Harp, Guinness and Smithwicks have B.B.T's and that their products are either put into kegs directly from those B.B.T's or are sent to the subject bottling and canning plant.

In reply to further questions from Mr. Marray, Mr. Byrne confirmed that generally the beer could not be said to be in a marketable condition on arrival at the plant and particularly that this is so in the case of naturally conditioned beers to which yeast had been added before arrival at the subject plant and which had to be kept in suspension in the B.B.T's.

Replying again to Mr. Marray, Mr. Byrne stated that certain quality checks were carried out in the tanker bay as each tanker arrived in order to decide on the acceptability of the product prior to its introduction into the B.B.T's.

He did not agree that the beer was already at the final stage on arrival and referred in particular to the gravity i.e. alcohol content which had to be adjusted by the addition of water and to the gas stripping to remove CO₂, both of which processes are carried out in the B.B.T's.

Mr. Rooney gave evidence that the subject hereditament is essentially a canning and packaging facility and that the adjacent brewery is not essential to its function. He said that

while the B.B.T's in other breweries are non rateable, those in the subject property are for storage only and hence are rateable.

Replying to Mr. O'Neill, Mr. Rooney agreed that the subject B.B.T's are identical to those in the other breweries and that these vessels were specifically designed for a particular purpose. He also agreed that additional ingredients are introduced into the beer in the B.B.T's.

Submissions:

It was submitted by Counsel for the appellant that the tanks or vessels in question constitute machinery as defined in *Section 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860* and as meeting exactly the judicial definition of machinery in the decision of O'Higgins C.J. in *Beamish & Crawford Limited v. Commissioner of Valuation [1980] ILRM149* in which a certain amount of the tanks in question were in fact B.B.T's although not so specifically described.

Mr. O'Neill submitted that if the tanks were not found to be machinery, they are undoubtedly non-rateable plant as defined in the schedule at *Section 8 of the Valuation Act, 1986*, by virtue of the fact that they were designed and are used primarily to induce a process of change, in that they are identical to those B.B.T's in breweries where they have been deemed to be non-rateable.

Counsel submitted that the subject case could be distinguished from the decision of the Supreme Court in *Caribmolasses Company Limited v. Commissioner of Valuation [1994] 3IR189*. In the latter it was found that in so far as any change took place in the molasses i.e. by the injection of hot water, this took place after the molasses had left the tanks. In the instant case the addition of water, "*inter alia*" takes place while the beer is in the tanks.

Mr. O'Neill referred to the decision of Barron J. in *Denis Coakley & Company Limited v. Commissioner of Valuation [1991] IR402* and submitted that the treatment of the subject

B.B.T's as rateable would be inconsistent and would be "failing to treat like plants in a like manner".

Finally, Mr. O'Neill submitted that there had been uncontested evidence that the B.B.T. was a final stage of a process and that as in so many processes there must always be some element of containment.

Counsel for the respondent submitted that the tanks did not constitute machinery and referring to the decision of Costello J. in the *Pfizer Chemical Corporation 9th May 1989* submitted that one should not stretch the use of language.

Mr. Marray submitted that it should be noted that the Beamish & Crawford decision predated the *Valuation Act, 1986* and that one should look to the 1986 Act for the definition of plant.

Referring to the case of *Denis Coakley & Company Limited v. Commissioner of Valuation [1991] IR402* which was cited by Counsel for the appellant, Mr. Marray submitted that one must look to the commercial reality of the subject hereditament. What occurs in the tanks is not the final stage of a brewing process but rather the beginning of a canning process.

Mr. Marray further submitted that the fundamental objective of the tanks in question is to recover the integrity of the beer which has been transported to the plant.

While accepting that there may well be some technical aspect to the containment, nonetheless the primary purpose of the tanks is one of containment and to facilitate independent sources of change.

Mr. Marray submitted that if a true process of change were effected in the tanks, the product could not be left there after that change had been completed and further that there was no commercial difference in the product going into the B.B.T's and that coming out.

Finally, Mr. Marray submitted that these tanks are linked directly and physically to the bottling plant and their main purpose is to facilitate the throughput of the bottling process as evidenced by the fact that on average the product remains in these tanks for only one day.

The Law:

Valuation Act, 1986

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 production of motive power.

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

(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."

Section 8 of the Valuation Act, 1986 Schedule to Act of 1860:

"(1) The Act of 1860 is hereby amended by the insertion after Section 15 of the following Schedule:

(1)	(2)
Reference Number	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

(2) The Minister may by order amend the Schedule to the Act of 1860 (inserted by this Act), and may by such an order add to that Schedule a category of plant specified in the order, or vary the description of any such category.

(3) The Minister may by order amend or revoke an order under this section.

(4) Whenever an order is proposed to be made under this section, a draft of the order shall not be made until a resolution approving of the draft has been passed by each such House."

Findings:

The Tribunal is satisfied that the disputed tanks do not meet the statutory or judicial criteria for machinery, but finds that they do fall within the definition of plant as set out in *Section 7 of the 1860 Act* as amended by the *Schedule at Section 8 of the Valuation Act, 1986*.

What therefore, must be decided by the Tribunal is whether these tanks fall within the exempted category of plant as set out in the said schedule, in other words, "are they designed or used primarily to induce a process of change in the substance contained or transmitted".

Evidence has been given and accepted that these B.B.T's are identical to those in other breweries where they, in the words of Mr. Rooney, "have been conceded as being non-rateable items of plant as they are part of the overall brewing process".

While accepting that the Commissioners decision is not a judicial decision or statutory definition nonetheless it is an acknowledgement which must be taken into account and considered by the Tribunal.

If, as Mr. Marray has submitted, what happens in these tanks is a procedure whereby the integrity of the product is recovered this would suggest that the procedure is a repeat of a procedure already carried on presumably in the B.B.T's which are non-rateable.

The 20% of the product which is home brewed must also presumably acquire its integrity in the subject B.B.T's.

The Tribunal notes and accepts the particular circumstances attaching to what have been described as naturally conditioned beers whereby they must be kept in suspension in the B.B.T's before bottling or canning.

Evidence has been given that whatever beer is not sent to the subject bottling plant is put into kegs from the B.B.T's in other breweries. The location of the subject tanks in a bottling plant

does not in the Tribunal's view materially differentiate them from those in breweries. Neither does their location dilute or diminish their primary purpose.

In the circumstances and in light of all of the evidence adduced the Tribunal, noting that the assessment of the tanks has been agreed at £225 determines that the correct rateable valuation of the subject hereditament is £1,775.