Appeal No. VA96/6/008

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Showerings (Ireland) Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Factory at Map Reference 10ab, 11ab, 12ab, 13, 14, 15, 16 Dowds Lane (incl. 6a Abbey and 11b Nelson), UD: Clonmel East Urban, Clonmel, Co. Tipperary.

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
Barry Smyth - FRICS.FSCS	**Deputy Chairman**
Con Guiney - Barrister at Law	**Deputy Chairman**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF SEPTEMBER, 2000

1. By Notice of appeal dated the 9th December 1996 the appellant company appealed against the determination of the Commissioner of Valuation, in fixing a rateable valuation of £1,725 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice thereof are that; "the valuation is bad in law in accordance with the provisions of the Valuation Acts in particular the rating of fermentation vessels is invalid as they constitute machinery and non-rateable plant. The valuation is excessive and inequitable having regard to the provisions of the Valuation Acts".

Mr. Owen Hickey B.L. instructed by McCann Fitzgerald Solicitors appeared on behalf of the appellant company. Mr. Mark Sanfey B.L. instructed by the Chief State Solicitor appeared on behalf of the Commissioner of Valuation. Mr. Denis Maher was the appeal valuer and Mr. Tom Davenport from Lisney was the rating consultant retained on behalf of Showerings (Ireland) Ltd. In accordance with practice, the parties, prior to the commencement of the hearing, had exchanged their précis of evidence. Having taken the oath both valuers adopted their said respective précis as being and as constituting their evidence in chief. In addition, evidence in relation to the production process was given by Mr. Michael Herlihy, Microbiological Control Manager of the appellant company. All were cross-examined. Submissions were made and judgment was reserved.

3. The hereditament above described can be sub-divided into two sections. The first consists of buildings and ancillary stores including a crushing plant, a boiler room, a filtration area and the physical housing for the timber vats hereinafter mentioned. With regard to this part of the subject property there is no dispute between the parties. All matters have been agreed including what the appropriate rateable valuation should be. The second section of the property comprises in all about 56 tanks or vats, which are used by the appellant company at its cider production plant situated at Clonmel in Co. Tipperary. In respect of each of these tanks/vats there is an issue as to rateability and if so rateable what the appropriate N.A.V. should be. This judgement therefore is concerned only with the items hereinbefore last mentioned.

4. (a) The appellant company, in its business the biggest in Ireland, specialises in the production of cider for both the home and domestic markets. It has as above stated its production plant at Clonmel, both East and West of Dowd's Lane. This lane on the northern side adjoins Mitchell Street and the Quay on the southern side. It is narrow in all directions but more so at its northern extremity.

(b) The hereditament, the subject matter of this appeal commenced operation in its original form in 1938 and has developed segmentally since then. The property comprises an old warehouse building, which houses the original timber vats used

in the production process, together with a filtration area and boiler room. This building is constructed with brick and rubble masonry walls, concrete floor and a combination of roof coverings including slates, corrugated asbestos and metal decking. Eaves height is c.25 ft. Immediately, adjoining the building are concrete tanks which were installed during the mid 1950s. These vessels are constructed of mass concrete walls, bitumen lined internally, with asphalt covered concrete roof and vary in height from 20 ft. to 35 ft. Opposite the original building on the eastern side of Dowd's Lane is the crushing plant and apple yard, together with a three storey recently constructed building accommodating staff, canteen and toilet facilities. The crushing plant is constructed with concrete walls with steel decking, concrete floor and barrel type corrugated iron roof. The new three storey building immediately fronting the crushing plant is constructed with concrete block walls, concrete floors and asbestos slated roof.

(c) In 1992, on two different occasions, in order to help satisfy the companies stated policy of having a two year stock of cider available, the appellants applied for and subsequently were granted planning permission to erect 20 stainless steel tanks. These tanks are cylindrical in shape with heights varying from 25 to 40 feet. 11 have an outer steel cladding.

(d) In all there are 22 timber vats, 14 concrete tanks and as stated 20 stainless steel tanks. For these said tanks/vats the parties have given slightly different capacity figures. The numbers as between the appellant company and the respondent respectfully are as to the stainless steel tanks 1.037 million/1.044 million, as to the timber vats 382,800 gallons/385,600 gallons and as to the concrete tanks, 789,200 gallons/791,486 gallons. In addition the appeal valuer has also valued some wooden vats, described as disused, with a stated capacity of 32,000 gallons.

(e) All of the vessels on site including these tanks are connected by a series of stainless pipework of various diameters which are on both the inside and outside of the buildings and across Dowd's Lane. The finished product is transported by

road in bulk containers to the main Showerings Bottling Plant, located on the outskirts of Clonmel, on the main Clonmel/Kilkenny Road.

5. Cider is made from apple juice. The production and supply of apples is seasonal and therefore the vast majority of production has to take place during a short period of time. Essentially, the production process, as given in evidence before us, can be described briefly as follows:

(a) Following the delivery of apples on site and following the extraction of the juices therefrom the same is pumped into a vat and there remains for about 24 hours. Therefrom the juice is pumped to fermentating vats or tanks. The juice is then allowed to ferment naturally for about six to eight weeks. Yeast is not added but natural preservatives are. As is sugaring from time to time. This results in the production of alcohol and carbon dioxide. This dioxide, in the internal timber vats, is removed by mobile electrically operated extractor fans fitted on the vat manways on top of each vessel. After this six to eight week period the primary fermentation is over.

(b) In January of each year, after this fermentation process is complete, a second process called “racking” takes place. This involves cider being pumped from one vat to another which has the effect of leaving some residue behind, which is then disposed of as waste. Secondary fermentation, or more accurately as it is called a "Malo Lactic Fermentation”, then continues in the maturing ciders for several months. This before blending in vats takes place. The proportions of such blending depends on the results of various analysis and on whether the cider is intended for bottling, canning or kegging. Scientific analysis and other testing on this maturing cider is carried out on an ongoing basis.

(c) Before being transferred to the bottling factory all ciders are filtered by micro-filtration from one vat to another. This process removes residual yeast and bacteria, which of course for flavour, taste and health reasons must be achieved.

(d) All of the various steps involved, including fermentation, maturation, blending and filtration, are achieved by pumping the contents from one vessel through pipes into another vessel. All of these being an integral part of an interconnected and single system operation. Ultimately, this cider is piped to stainless steel tanks awaiting collection by bulk carrier to the bottling stores. The various tanks/vats are used for different purposes but with a bias towards the timber vats for fermenting and the timber/stainless steel vats for racking and all three types for storing.

6. On behalf of the appellant company Mr. Hickey firstly submits that the tanks/vats in question constitute "machinery" within the meaning of Section 7 and therefore should be exempt. In his submission he relies upon case law most of which is hereafter referred to. Secondly he claims that the items fall within the proviso of Ref No. I in the inserted Schedule to the 1860 Act with a similar or like result. Mr. Sanfey, on behalf of the Commissioner, suggests that to treat these tanks/vats, as machinery would be wholly unreal and contrary to law. In his view these items constitute plant as well as being rateable constructions within Ref No.1 and should thus be valued. Depending on our determination on this issue the question of quantum may also arise as between the parties.

7. Under the original Sec 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act 1860, non-motive power machinery was exempt from valuation. This exemption, at least initially, did not interfere with the valuation of "plant", which was always thought to be rateable. As time passed however, items, formally described as plant, were increasingly embraced within the judicial meaning of "machinery", under Section 7 and thus exemption was allowed. A great deal of technical and indeed diverse case law emerged from this exercise, which, at least in part, can be explained by the absence of a statutory definition of "machinery". In Cement Ltd. –v- Commissioner of Valuation 1960 I.R. 283, the then President of the High Court, Davitt P., at p302 of the report, did however provide a definition of this word "machine", as it should be understood in applying Section 7 of the 1860 Act. He said "a dictionary defines

'machine' as meaning an apparatus for the application or modification of force to a specific purpose. In its technical sense it includes such simple appliances as the lever, pulley, and inclined plane. In its popular sense it clearly embraces a vast range of appliances amongst which sewing machines, typewriters, bicycles, printing presses, power-looms, spinning machines, and steel rolling mills readily come to mind. The word "machinery" has to be interpreted accordingly. The ordinary concrete mixer, which one frequently sees at work in connection with road-making or building operations, seems to me typically to come within the term 'machine' as defined. It includes a metal chamber in which cement, sand, and water are placed and thoroughly mixed to become mortar by means of a rotary motion of the chamber applied through suitable gear by power produced by an internal combustion engine. It is a simple example of the application of force to a specific purpose for example mixing mortar. On the other hand, an ordinary kiln in which lime is burnt or bricks are baked is clearly not a machine".

8. This definition, as enlarged and elaborated upon by Henchy J. in Thomson and Sons Limited –v- Commissioner of Valuation 1970 I.R. 264, was endorsed by the Supreme Court in Beamish & Crawford –v- Commissioner of Valuation 1980 ILRM p149. In addition, O'Higgins C.J., at p151 of the report said "…. and in determining whether the apparatus so qualifies as a machine or machinery, the components should not merely be regarded separately or piecemeal but as integral parts of the process in which they are used". As can therefore be seen the word "machine", and accordingly the word "machinery" were for the purposes of Section 7 of the 1860 Act given a wide and general meaning and in addition when considering a claim for exemption thereunder, one was mandated by the judgment of O'Higgins C.J. not to treat the components of the process in a piecemeal way but rather as an integral part of that overall process.

9. The judicial thinking at this time is further demonstrated by a short passage which appears in the judgment of Gannon J. in Caribmolasses Company Ltd. –v- Commissioner of Valuation 1991 I I.R. p379 where, at p386 the learned trial judge said "it is significant that in those cases what was claimed was exemption under Section 7 in respect of 'machinery'. It is also significant that in the several cases cited with reference to the

application of Section 7, the decisions as to whether the apparatus was or was not 'machinery', always took account not only of the actual physical nature and construction of the structure or apparatus but also its functional purpose and relationship to the business of the rated occupier. For so long as the legislation left the courts without a definition of the word 'plant', the courts appear to have favoured a meaning most likely to be understood according to the business circumstances of the lay litigant; see for example the speeches in the House of Lords in two appeals heard in 1982, I.R.C. –v- Scottish and Newcastle Breweries 1982 1 WLR 322 and Cole Brothers Limited –v- Philips 1982 1 WLR 1450".

10. Being concerned with the ever increasing artificiality emerging from and being used in defining the words "machine", and "machinery", the courts, at least to some extent, reappraised what items, equipment and activity might properly come within the meaning of these words. In 1989, Costello J., in Pfizer Chemical Corporation –v- Commissioner of Valuation, H.C., U/R, at pps13 and 14 of the transcript, when dealing with 5 molasses tanks, said "what falls for consideration is whether the special features of the tanks to which I have referred mean that the tanks should be regarded as 'machinery'. I think so to hold would do violence at once to the English language and common sense. These receptacles are tanks and not machines. The fact that items of equipment are installed in them to allow the molasses to be agitated, to permit it to be heated and to permit the molasses to be moved from one tank to another and subsequently to the manufacturing plant does not have the effect of altering their character". That passage was endorsed by the Supreme Court in Siucre Eireann –v- Commissioner of Valuation 1992 ILRM p682 and to our knowledge has not been resiled from since.

11. There are two further cases which, when dealing with the pre 1986 situation, should be mentioned. The first is Irish Refining Plc. –v- Commissioner of Valuation, a decision of Geoghegan J. reported at 1995 2 ILRM p223. The learned trial judge having agreed with Costello J. in the Pfizer case and with McCarthy J. in the Siucre Eireann case, emphasised that tanks were not converted into machines simply because some equipment attached thereto permitted some activity to take place therein. Having said that if a vessel

is predominantly one for storage purposes, it is a tank and not a machine, he continued "as to whether the predominant purpose is storage or not depends, in my view, on whether the activity within the tank is itself a proximate part of the manufacturing process or is merely a process for retaining or maintaining the contents of the tank in a particular condition in preparation for the core manufacturing process".

12. The last case in this sequence, which has been mentioned, is Denis Coakley and Company Limited –v- Commissioner of Valuation 1996 2 ILRM p90. The issues in that case were firstly whether parts of the grain handling plant of the appellant company constituting "a manufactory", within the original Section 7 and secondly whether silos came within the meaning of "machinery" also under this said Section. At page 93 of the report one can see the submission made on behalf of the Commissioner. When dealing with, obviously, the "manufactory point", the Supreme Court referred to and followed the decision of Murphy J. in Cronin (Inspector of Taxes) –v- Strand Dairy Limited, an unreported decision given in 1985. In that case the meaning of the words "goods manufactured" was considered. Murphy J. said "having heard the facts and arguments I was of the opinion that the matter had to be considered from the commercial aspect; it could not be determined without taking economic realities into account. I was satisfied that the company does enough to the raw material to make it, in the final analysis, a commercially different product". Egan J. in the Supreme Court accepted and applied this passage and concluded that what was done at Kennedy Quay in Cork was "just about sufficient to make the grain, in the final analysis, a 'commercially different product', which was sold for agricultural purposes". In a separate passage the learned Supreme Court Judge dealt with the silos and applied Beamish and Crawford supra.

In broad terms, the above in our view, represents a general recital of the case law as it dealt with the original section 7 in the pre-1986 context. In addition to these cases there are of course several judgments of this Tribunal which reflect the principles therein enunciated.

13. In order to reverse the affect of some of these decisions and to restore a diminishing economic return to rating authorities the legislature in 1986 passed the Valuation Act of that year.

This view as to the purpose and intention of the Act last mentioned is supported by several contributors in this area of law as well as both the Tribunal itself and the High Court. In the Irish Oil Refining Case, Appeal No's 88/11, 88/263, judgment delivered on 10th November 1989, at page 46, this Tribunal said that "it was 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 from machinery…..". In the Pfizer Chemical Corporation case, supra H.C., U/R 9th May 1989, Mr. Justice Costello, when dealing with a submission that 5 tanks containing molasses were and should be regarded as "machinery", for the purposes of Section 7, at page 15 of the transcript said, "I should add for the sake of completeness that the problems posed by these appeals have been tackled and hopefully settled in relation to future cases by the Valuation Act 1986, which declared certain categories of fixed property (including the type of installations in this case) to be rateable hereditaments".

Accordingly, there is no doubt but that in our view this piece of legislation was enacted for the purposes of restoring to the rateability field items which by judicial decision had previously been exempted therefrom.

14. The Act of 1986 *inter alia* made provision in the following way:

(a) It defined the word "plant"/See Section 1(2).

(b) It expressly increased the range of items which thereafter were to be valued. It did this, in a specific way, firstly by creating a new Schedule to the Act of 1852 and deeming the "Categories of Fixed Property", therein specified, to be rateable hereditaments. See Section 2 of the 1986 Act.

(c) This Schedule has five Ref No's. opposite each of which are listed items deemed rateable. Ref No. 5 reads "Plant falling within any of the categories of plant specified in the Schedule to the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 …..".

(d) The second specific way as is evident from the Reference No. last quoted was to add another new Schedule, this time to the 1860 Act, where items were also deemed rateable under the amended Section 7 (2) of the said 1860 Act.

(e) Section 8 of the 1986 Act formally added this new Schedule. Headed "Categories of Plant", Ref No.1 reads "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 of 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".

15. Accordingly, subject to the caveat hereinafter mentioned all items within Ref. No.1 are *prima facie* rateable, (this under a combination of Section 2 of the 1986 Act and Section 7(2) of the 1860 Act, unless such plant comes within the *proviso* as contained in this Ref No. in which event it is exempt from rateability.

The reservation above mentioned arises out of the interplay between the new Section 7(1)(a) of the 1860 and the aforesaid Ref. No.1. The relationship between these provisions is interesting and could arise *via* a submission that, tanks and vats, such as those within this appeal, and not being machinery if so found, should be valued solely under Section 7(1)(a) as being part of a manufactory, there being no necessity to even consider Ref. No.1. In view of the manner in which the issues in this appeal were

presented for our consideration it is unnecessary to further consider this fairly complex matter and accordingly we express no view thereof.

16. The transition between the pre and post 1986 situation in trying to identify what principles of law should be carried over has not been altogether that clear. Difficulties arise in attempting to identify whether principles which by case law, would clearly be applicable to a pre 1986 situation, would also be applicable to a claim for exemption under either the new section 7 or the Schedule to the1860 Act. For example, when exemption was claimed under the original Section 7 of the 1860 Act, the Courts adopted a particular view based on a certain approach. See at Paragraph 9 above what Gannon J. said in the Caribmolasses case. Would that approach still be applicable today? This is but one example of many which must await a future definitive view, either from the Tribunal or the Courts themselves.

17. There are some principles however that we feel are fairly well established. These are outlined by this Tribunal in previous decisions, see for example *Carbery Milk Products – v- Commissioner of Valuation, VA95/4/026,* judgment delivered on the 14th March 1997. It is unnecessary in our opinion to repeat in this judgment any of the passages, which appear therein. We would however like to say in the specific context of this appeal that when considering Reference No.1 in the schedule mentioned in Section 8 of the 1986 Act, we consider that the following additional matters are of relevance in addressing the rateability issue namely:

(a) Recepticles, using a neutral term, with equipment for agitation, for increasing temperature or permitting movement from one tank to another do not, by reason of such activity have their nature or character changed or altered, see Costello J., Pfizer Chemical Corporation case,

(b) Receptacles which have equipment designed or used for the purposes of maintaining the consistency of their content in a particular condition do not purely

as a result have their essence altered - See Irish Refining –v- Commissioner of Valuation, 1995 2 ILRM p223,

(c) Receptacles, which permit blending by the reception into them of essentially the same product do not have a change of character: Blayney J said in the Caribmolasses appeal "the molasses remains molasses. What happens is that the different types of molasses, instead of forming a mass of irregular composition, are mixed so as to form a homogeneous whole and finally:

(d) In determining whether a vessel predominantly is one for storage or containment the activity within and what integral or proximate part this plays in the manufacturing process is a matter of relevant consideration.

18. As above stated the crucial question, which is one of mixed fact and law, is whether such vessels are designed or used primarily for storage or containment or are so designed or used primarily to induce a process of change in the substance contained therein.

19. A number of points need to be noted about those parts of the relevant reference No.1 which are material to the issue before us. Firstly, one must look at the design or use of the plant in question. If indisputably it should have been designed or used for a sole purpose then that design or use should provide the answer as to whether it is rateable or not. If however it was designed or used for more than one purpose than a judgment must be made as to what its primary design or use should be. The word "primarily", which obviously excludes secondary or subsidiary or peripheral, could be equated with dominant or predominate. And so where more than one purpose has been intended or more than one use available, a decision must be arrived at.

20. Secondly, the reference uses the words disjunctively, storage or containment. Obviously these were intended to have different meanings. In the present context storage might be thought to mean that a commodity, in a state finished with the process immediately at hand, was being preserved in that condition for (or indeed not for as the case may be)

future use whether on or off site. Thirdly and in our view a point not previously highlighted sufficiently, is that the reference clearly states that even a vessel, which allows a natural or a chemical process to take place can be rateable. So a receptacle, in which either type of process takes place, if otherwise predominantly used or designed for storage or containment can be rated. If the reference did not permit this as for example if the words in brackets were deleted, the rateability/non rateability of this category of plant could be significantly different. But it does and it obviously envisages the attachment of rateability even where such a process occurs.

21. Fourthly, the proviso also uses the words "designed", "used" and "primarily". To escape rateability it must be shown that the vessel in question does not come within the first part of the reference, as if it did, and was therefore rateable, it could hardly also be exempted under that proviso. In addition it must be proved that not only does a process of change in the substance occur, but also that such a process happens within such vessel and that the structure was primarily designed or used "to induce" that kind of process of change. The meaning of the verb to "to induce", in this context, has on several previous occasions been set forth in judgments of this Tribunal.

22. Dealing with the first submission made on behalf of the appellant company namely that these items constitute machinery, we are of the view that given:

(a) The definition of machinery as contained in the Cement Ltd. Case and as approved in the Beamish and Crawford case,

(b) The words of Costello J. in the Pfizer case, of McCarthy J. in Siucre Eireann, of Blayney J. in the Caribmolasses case and those of Geogehan J., in the Irish Oil Refining case and,

(c) This Tribunal's analysis of the various cases mentioned above, we are satisfied beyond question that it would be impossible to describe these tanks and vats as machinery using any understandable meaning or definition, no matter how wide and how broad, of the words "machine/machinery". Accordingly, we have no hesitation in rejecting this

submission and in determining that these items are plant and are thereby prima facie rateable unless otherwise excluded by the proviso as contained in Ref No.1.

23. There has been no evidence adduced before us which suggests that any of these categories of vessels have been, as such, designed in a manner or way that is specific to their use within this process and no other. There has been no suggestion that there is any internal equipment, fitting or other appliances situated in or operating within these vessels. A distinction must be drawn between other items of plant, the interconnecting pipes and the vat manways on top of each vessel. What is in issue is not these items or indeed other items howsoever so interlinked or integral these might be to the overall process; it is the tanks/vats that we are solely concerned with.

24. There is no dispute between the parties but that fermentation takes place naturally. This over a six to eight week period. This results in the production of alcohol and carbon dioxide, which is extracted. Sugar is from time to time pumped into the vats. But apart from the extraction of the carbon dioxide and the infill of sugar nothing else is involved in converting apple juice into what is called green cider. To achieve this, it is of course essential to have a structure or vessel or a series of structures/vessels within which the juice is contained. It would appear that the timber vats are more suitable for this than the other vessels. Whatever, can it be said in these circumstances that the process or the process of change which undoubtedly takes place is dependent upon or caused by the vessel being designed or being used primarily to induce that process or is it more accurate to advance the proposition that once containment of the apple juice is achieved then what follows, whether it be a natural or a chemical process, is essentially, as a consequence of that containment with little else. In our opinion if this is an acceptable manner of setting up the question, the facts, if accurately outlined, fall far short of satisfying the legal criteria of applying to this fermentation process the proviso contained within reference No.1.

25. This view even more strongly applies to the racking process, that section of which results in the creation of residue for waste disposal being partly dependent on the pumping mechanism applied. The fact that residual yeast and bacteria is removed cannot change the character of these vessels nor can the fact that maturing and blending occurs, which incidentally is effected by the passage of time and by the pumping through pipes of essentially the same product namely cider into cider. Sampling and analysis, though critical for production and sale of cider, and for the safety of consumers are largely if not entirely irrelevant to the rateability issue.

26. In support of the aforesaid view we also note that during the course of this appeal no real distinction was suggested between the design, construction, use and purpose of any of the tanks above mentioned. In other words all were referred to as being multi-purpose and being capable of being freely interchanged in the production process. That being so it is difficult for us to come to a conclusion, say in relation to the stainless steel tanks which were erected only in the past half a dozen years, that these were designed or were used primarily to induce a process of change in the apple juice contained therein. Given the critical necessity of containing the apple juice, of holding cider until dispatch and of storing a sufficient quantity to accord with the company's policy of having a two year stock available, it seems to us, almost inescapable, that these vessels are used or designed primarily for storage or containment and not to induce a process of change. If it were otherwise not only would a process of change take place but there would be some means or method, inherent in the structure itself, which would induce that process. What occurs within the pipes from one tank to the other being irrelevant. We recall once again the words of Mr. Justice Blayney in Caribmolasses when he said "firstly no process of change is induced. The molasses remain molasses. What happens is that different types of molasses, instead of forming a mass of irregular composition, are mixed so as to form an homogeneous whole. Secondly, if there were a process of changed induced in the molasses it is not induced by the tanks. They are simply used to contain the molasses while the blending is effected by the molasses being pumped from one tank to another".

27. In the circumstances and having considered the totality of the facts as proved we are of the opinion that the appellant company has not adduced sufficient evidence to come within the proviso as contained in Ref No. 1 to the Schedule of the 1860 Act as inserted by Section 8 of the 1986 Act. Accordingly as the items are plant and not machinery we determine that all are rateable.

28. What remains therefore is the question of net annual value. In view of the fact that we have determined that these items are rateable the parties have agreed an R.V. of £100 on what has been described as the building valuation. That leaves an N.A.V. for the tanks and the vats.

29. Mr. Maher on behalf of the Commissioner places a price per 1,000 gallons as an R.V. on these tanks and vats. This methodology was rejected by this Tribunal in the case of *Irish Shell - VA97/4/001* and in subsequent decisions also. Accordingly, we do not propose to follow that method in attempting to place an N.A.V. on these tanks/vats. Mr. Davenport on behalf of the appellant company adopts a slightly different approach. Dealing with the stainless steel tanks his approach would appear to indicate a preference for the contractor's method. In relation to the timber vats and the concrete vats, however his suggested method is less clear. It could be either an amalgam of the contractor's method and the old price per 1,000 gallons R.V. method or it could be solely an application of that rejected old method.

30. In the aforesaid Irish Shell Case as an alternative to the Commissioner's method, this Tribunal determined on the evidence given in that case that it would apply the contractor's basis. It also made it quite clear that in so accepting that method it was not laying down any precedent or general application for the future. It stated that if in any further appeal before it there was better evidence indicating a more acceptable method of placing an N.A.V. on the subject property then that would be given serious consideration. However, given that the only evidence was on the contractor's basis, that basis for that reason in that case was accepted.

31. An essential element in the contractor's basis however is the site and the necessity to value the site. It is unclear to us from the evidence given by Mr. Davenport that the site value has been included in his suggested N.A.V. when dealing with the stainless steel tanks. It may be implicitly but expressly it is certainly not. Most definitely it has been included in the rate which he has applied to either the timber vats or to the concrete vats. In these circumstances we feel that an important constituent is missing from the application of the contractor's basis by Mr. Davenport so accordingly we could not with safety adopt his figures for the purposes of calculating an N.A.V. We are therefore in a position of having rejected the Commissioner's basis but of having no alternative basis to proceed upon. In such circumstances we propose to adjourn the question of quantum in so far as this relates to the tanks/vats. In the absence of agreement there will be liberty to apply.

We so determine.