

Appeal No. VA88/0/215

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

Irish Bulk Liquid Storage Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: 20 Foynes Harbour, Tideway of River Shannon Co. Limerick

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Paul Butler

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MARCH, 1989

By notice of appeal dated the 24th day of August, 1988, the appellants appealed against the respondents decision fixing the rateable valuation of the above entitled hereditament at the sum of £560.

The hereditament consists of an industrial site of about 4 acres situated at Foynes Harbour in the Shannon Estuary. The appellants hold the site under a 20 year lease and provide a facility for the importation and distribution of bulk liquids. The installation comprises tanks, pipelines, a weighbridge, boiler house and offices.

Following revision in 1987, the rateable valuation of the hereditament remained at £560. Of the £560 R.V., £45 R.V. was entered in the Buildings Column and £515 R.V. relating to tanks, pipelines, weighbridge and yard was entered in the Absolute Column of the Valuation Lists. The parties have agreed part of the total of £560 R.V. viz; £215.00 in respect of Buildings, Yard and Tanks Nos. 4,5,6,9,10 and 12.

What falls to be determined in this appeal is the rateability of Tanks Nos. 1,2,3,7,8,11 and 14, pipelines and weighbridge, currently rated overall at £345.00. Quantum is not an issue in the appeal brought by the appellants.

PRE-HEARING SUBMISSIONS

Mr. Frank O'Donnell, B.Agr.Sc., M.I.A.V.I. M.I.R.E.F. of Messrs. F. O'Donnell and Company presented his written submission dated the 23rd February, 1989.

In the course of his submission Mr. O'Donnell pointed out that the company's operation takes place in two Bunds or Tank-Yards. The various oils and chemicals are pumped directly off ships into either the tanks in Bund A or the tanks in Bund B.

Tanks 1,2,3 and 14 are in Bund A.

Tank No.1 is a vertical, cylindrical, steel tank with a fixed roof. It is set on a concrete plinth and has an operational capacity of about 236,000 gallons. Unmarked oil is pumped in at the base either directly ex ship or alternatively from nearby Tank No.2. A dye concentrate is introduced simultaneously also at the base of the tank, and the oil is thereby coloured to a concentration of about 1/1000. This is a controlled operation carried out under the supervision of Customs and Excise Officers. This tank is interconnected with Tanks 2,3, and 14 and together with these, it was designed, and is

used primarily to induce a physical change in the oil which is transmitted through it. The Rateable Valuation on this tank has been agreed at £43.00.

Tank No.2 is similar in construction to Tank No.1 and it has an operational capacity of about 465,000 gallons. Unmarked gas oil is piped here ex ship and held at a controlled temperature prior to its introduction into tank No.1 for marking, or Tank No. 14 for blending. To maintain the unmarked oil at an appropriate temperature, the tank is fitted with heating coils which are heated by steam produced in a Boiler House adjoining Bund A. Quantum here has been agreed at £84.00.

Tank No.3 is similar in construction to No.s 1 and 2 and it has operational capacity of about 805,000 gallons. Heavy fuel oil is pumped here ex ship and must be maintained at a temperature of 60 degrees celcius to facilitate blending or delivery. For this reason, this Tank is insulated as well as being fitted with steam-heated coils similar to those in Tank No. 2, but longer. Tank No.3 is interconnected with the other Tanks in Bund A. Blending of Heavy fuel oil with lighter oils is a controlled operation carried out under the Supervision of Customs and Excise Officers. Quantum here has been agreed at £145.00.

Tank No.14 is a small horizontal tank also located in Bund A. It is used for the blending of various combinations of light and heavy fuel oils to suit customer requirements. This tank is also fitted with heating coils and with an airpipe for the introduction of compressed air to ensure a good mix. Operational capacity is about 10,000 gallons and quantum has been agreed at £2.00.

Tanks 7,8 and 11 are in Bund B.

Industrial Methylated Spirit is the product of a mixture of Methanol and pure Alcohol in specific proportions. Mixing must take place under tightly controlled conditions and the resultant mixture is not a new chemical compound but is nonetheless a product quite distinct from either of its constituents.

Tank No.7 is a vertical cylindrical steel tank similar in construction to those in Bund A but with operational capacity of approximately 63,000 gallons. Methanol is introduced into the tank either ex ship or from road tankers. The tank is fitted with Silica Gel drying equipment to prevent contamination from moisture. The measured quantity of Methanol is pumped from here or from Tank No.8 into Tank No.11 under the supervision of a Customs and Excise Officer and the appropriate quantity of pure Alcohol is then pumped in ex ship also under Customs and Excise supervision. The Rateable Valuation on Tank 7 has been agreed at £11.00.

Tank No.8 is similar to No.7. Rateable Valuation here has also been agreed at £11.00.

Tank No.11 is similar in construction, but with an operational capacity of approximately 160,000 gallons. This is the mixing tank into which the pure Alcohol is pumped after the Methanol has already been introduced. The two constituents are readily mixable and the pumping action, together with the flowing in of Nitrogen, in the process of cleaning out the pipelines, is sufficient to ensure adequate blending. Quantum here has been agreed at £29.00.

(c) Pipelines.

These consist of approximately 500 metres of carbon steel and stainless steel pipelines from the jetty intake. Quantum has been agreed at £15.00.

(d) The Weighbridge.

This is not a standard industrial weighbridge with pit and bridge installations. It is instead, an electro-mechanical weighing system whereby the weight of the vehicle is measured by means of load-cells and a digital indicator. It is not a construction, but a machine for measuring weight. Quantum has been agreed at £5.00.

He submitted that the tanks in both Bund A and Bund B form an interdependent complex unit, the primary function of which is to effect a change in the imported raw material.

Alternatively Mr. O'Donnell's submission was that the entry in the Valuation List is invalid and should be struck out, by reason of the fact that the hereditament is therein described as lying in "Tideway in the River Shannon", whereas the hereditament in fact lies in the Townland of Corgrig.

With regard to the pipelines Mr. O'Donnell pointed out that they lie outside the boundary of Lot No.20, the subject of this appeal, and as such should not be included in the valuation.

Mr. O'Donnell also submitted that the weighbridge is machinery and should be exempt from valuation by reason of S.7(1)(a) of the 1986 Valuation Act.

Mr. John McEvoy, Managing Director of Irish Bulk Liquid Storage Company Limited, in the course of his written precis of evidence, described the operation of the company's installation.

The products moving through the installations are as follows:

- Tank No.1 - Marked Gas Oil
- Tank No.2 - Unmarked Gas Oil
- Tank No.3 - Heavy Fuel Oil

- Tank No.4 - Kerosene
- Tank No.5 - Motor Spirit
- Tank No.6 - Iso Propyl Alcohol
- Tank No.7 - Methanol
- Tank No.8 - Methanol
- Tank No.9 - Motor Spirit
- Tank No.10 - Acetone
- Tank No.11 - Industrial Methylated Spirits
- Tank No.12 - Motor Spirit
- Blend Tanks - Blends of Marked Gas Oil and Heavy Fuel Oil

Products are imported on coastal tankers which berth at the East Jetty, Foynes. On the arrival of a tanker, the product is inspected and the quantity assessed. On satisfactory completion of this operation, the material is pumped using the tanker's pumps to the designated tank at the installation. Flexible rubber hoses are connected to the vessel's manifold and the shore pipelines, appropriate valves are opened and instructions given to the Duty Officer to commence discharge. Communications are by radio between the Supervisor at the installation, the Duty Officer and the Company's operator at the jetty. On completion of discharge the vessels tanks are inspected to ensure that all the product is discharged and arrangements made to clear the shore pipeline to the designated tank. This operation is called "pigging". The type of "pig" used is a polyurethane foam cylinder 13 inches long by 8 inches diameter. This "pig" is introduced into the flexible hoses and is propelled through the pipeline using compressed air supplied by a compressor at the installation, or, in the case of low flash products, (i.e. products with the flash point below 22.8 degrees celsius) using nitrogen and compressed air. The "pig" is collected, on arrival, in a device known as a "pig trap" and any residual pressure in the pipeline is blown through to the tank to ensure that no product remains in the pipeline.

Customs and Excise

Customs and Excise exert considerable controls over the operation of the installation. The installation is a bonded warehouse and the movement of all materials of a dutiable nature is carried out under the supervision of the Customs and Excise Officer. In addition to the control of blending, transfer and marking of oils, Customs and Excise also supervise the importation of dutiable goods and the export of gas oil.

Dutiable materials now imported are as follows:-

1. Marked Gas Oil
2. Unmarked Gas Oil
3. Heavy Fuel
4. Kerosene
5. Motor Spirit
6. Ethanol or Ethyl Alcohol (including the methylating process)

The quantity of material liable for customs duty is assessed by officials from Customs and Excise on site every Friday morning and duty is paid on the amount of material delivered from the Terminal on a weekly basis. Mr. McEvoy claimed that the operation of the installation generates considerably more income for Customs and Excise than it does for the Company.

He explained that the tanks in Bund A were constructed to hold gas oil and heavy fuel oil and that the tanks in Bund B are for chemicals and low flash products i.e. highly flammable products. Tanks 1,2,3 and 14 are in Bund A, while Tanks 7,8 and 11 are in Bund B.

Mr. McEvoy described the contents of each of the tanks and the various activities carried out in same.

Gas Oil

Marked gas oil is produced by mixing a marker dye concentrate with unmarked gas oil. Prior to discharge of a shipment of Unmarked Gas Oil, the quantity of oil remaining in Tank No.1 is measured by the Company and the Customs Officer. The quantity of marker dye required to ensure that the concentration is one litre of dye to one thousand litres of unmarked gas oil is agreed and its quantity is pumped into the tank. The action of pumping the oil from the tanker at the jetty ensures that mixing is achieved. Samples are drawn periodically by the Customs and Excise and analysed by the State Chemist and a record of marker dye concentrate used is kept and quantities agreed periodically with the Customs and Excise Officer.

Marker dye is also produced by transfer of unmarked gas oil from Tank No.2 to Tank No.1. This is carried out under customs warrant. Tanks No. 1 and 2 are directly connected by pipeline for this purpose and the procedure is as already described above. Tank No.2 is fitted with heating coils which are heated by steam produced in boilers in a boiler house in Bund A. In this way the oil is maintained at the required temperature.

Heavy Fuel Oil

This is pumped from the ship at 57 degrees celsius into Tank No.3. In order to be able to blend the oil and to deliver it to the road tankers, it is necessary to increase the temperature of the oil to 60 degrees celsius and to maintain it at this temperature. This is effected by heating coils in the tank, and the tank is insulated. The heating coils are kept hot with steam which is produced by two boilers in a boiler house.

Viscosity of oil is measured in "seconds", which relates to its "pourability". Heavy fuel oil has a viscosity of 3,500 seconds. Where a blend of lower viscosity is required by customers, marked gas oil and heavy fuel oil are blended in proportion to produce the required viscosity. Marked

gas oil and heavy fuel oil are mixed and agitated by compressed air until blending is achieved. The blending takes place in Tank No.14. The introduction of compressed air and the maintenance of the temperature of the oil by the heating coils in the tank ensure a good mix is achieved.

Industrial Methylated Spirits

Tank No.11 contains industrial methylated spirits. This is a mixture of ethanol, i.e. pure alcohol and methanol in the proportion of 5% methanol to 95% ethanol. Prior to the importation of a shipment of ethanol we are advised of the quantity of material in the vessel. The quantity of industrial methylated spirits remaining in Tank No.11 is measured by the Company and the Customs and Excise Officer and the quantity of methanol required to produce industrial methylated spirits is agreed. Methanol is then transferred to Tank No.11 in the quantity required from either Tank No.7 and Tank No.8. Either of these tanks is connected by a flexible hose to Tank No.11 and the required quantity transferred. Ethanol is then pumped from the coastal tanker in the same manner as any other product. The action of the ship pumping and the line "pigging" procedure ensures that the materials in Tank No.11 are thoroughly blended and the new product industrial methylated spirits' results.

As in the case of all dutiable materials, the quantity imported is measured and agreed with the Customs and Excise Officer and a record of all deliveries ex-terminal is kept and periodically checked.

Mr. P.J. Murray is a District Valuer with 27 years experience in the Valuation Office. He presented a written submission dated the 1st December, 1988 setting out the valuation history of the hereditament.

The oral hearing took place on the 27th February, 1989.

Mr. Donal O'Donnell, Barrister (instructed by Messrs. McCann Fitzgerald Sutton Dudley, Solicitors) appeared for the appellants. Mr. Aindrias O Caoimh, Barrister (instructed by the Chief State Solicitor) appeared for the respondent.

In the course of the oral hearing, Mr. Donal O'Donnell made four main points, viz;

1. The description of the hereditament in the Revised Valuation List is incorrect by reason of the fact that since 1979 when the Ordnance Survey Map was amended and townland boundaries were extended. The hereditament now lies in the townland of Corgrig and not in Tideway in the River Shannon as appears in the list. Therefore the valuation of Lot 20 is invalid and should be struck out. He cited "inter alia" Article 37 (m) of the 1899 Local Government Adaptation of Irish Enactments Order to emphasise that the Commissioner of Valuation when valuing rural county districts must have reference to the appropriate townland and not any other area.
2. Mr. O'Donnell referred to the pipelines and pointed out that these run across lands not owned by the appellants, by virtue of a wayleave agreement. They do not form part of Lot 20 and cannot therefore be included in the valuation.
3. In relation to the weighbridge he pointed out that it is "machinery" within the terms of Section 7 of the Act of 1860. Reference was made to the judgment in Beamish and Crawford Case 1980 I.L.R. page 149 and to certain of the principles re machinery as stated by Finlay P. (as he then was) viz:
 - (a) In its popular sense machinery involves the concept of the use or adaptation of power.
 - (b) It is inappropriate in considering, to use a neutral term, any piece of equipment used in a manufactory to consider its component parts piecemeal for the purpose

of designating some parts as machinery and some as not. The weighbridge operates by means of electronic load cells or sensors which transfer the weight of an item to a digital indicator which stamps the weight on a weighbridge ticket. The system is mounted on a concrete plinth.

4. (a) Mr. O'Donnell argued that the tanks are machinery by virtue of Section 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act of 1860 and remain unaffected by the amendment to the Act of 1860, referred to in Sections 7 and 8 of the Valuation Act, 1986.

4. (b) If, however, the tanks are to be construed as plant, Mr. O'Donnell argued that they are "designed or used primarily to induce a process of change in the substance contained or transmitted" and as such are exempt from rateable valuation by virtue of the Schedule to Section 15 of the Act of 1860 as inserted by Section 8 of the 1986 Valuation Act. He referred the Tribunal to its own decision in the Mitchelstown Creamery Case - Judgment dated the 6th December, 1988. A process of change is induced i.e. caused or brought about, in all of the tanks under dispute and the tanks are designed and used primarily for that purpose.

Mr. Aindrias O Caoimh expressed disquiet that a new ground of appeal viz: the question of the incorrect description on the Valuation List should be introduced at the oral hearing, without prior notice to the respondent. He referred the Tribunal to Section 3 of the 1988 Act which clearly states at sub-section 5(a) and (b) that the written notice of appeal should contain a statement of the specific grounds for the appeal.

Mr. O Caoimh, while accepting that a clerical error had been made with regard to the description of the hereditament on the Valuation List, pointed out that the local authority, by virtue of

Section 6 of the Act of 1860, had the power to amend lists insofar as the amendment did not affect the value. Alternatively, he suggested that the Tribunal by virtue of the Valuation Act 1988 had similar powers to amend the listed descriptions.

With regard to the pipelines, Mr. O Caoimh stated that while they may not lie in Lot 20, the property of the appellants, they nevertheless pertain to the development under appeal and indeed enhance its value. They should therefore be included in the rateable valuation of the entire development.

He then turned to the question of the weighbridge and ascertained from Mr. P.J. Murray that only part of the weighbridge had been valued, viz: the concrete platform or plinth. The respondent accepted that the remaining parts of the weighbridge were exempt by virtue of Section 7 of the Act of 1860 as amended by Section 7 of the Valuation Act, 1986.

Mr. O Caoimh stated that the tanks were certainly plant and not machinery and referred to the Tribunal's decisions in the Mitchelstown Creamery case and the North Kerry Milk Products Limited case. He argued that the tanks in dispute are similar to those in the aforementioned cases and as such should be treated as plant.

With regard to Tank No.1 he pointed out that no change was effected by the addition of colour to gas oil. The colour was added merely to facilitate the Revenue Commissioners in their fiscal policies. In Tank No.2 the unmarked gas oil was simply stored. In Tank No. 3 the heavy fuel oil was stored and the heating applied was merely to enable the product to be handled more easily. In Tank No.14 where a blending of heavy oil and marked gas oil took place, he agreed that a chemical process may take place but that the primary purpose and design was for storage. Tanks Nos. 7 and 8 served only as storage tanks for methanol. Finally, Tank No.11 allowed a chemical process to take place, Viz: the combination of ethanol and methanol resulting in industrial

methylated spirits. Nonetheless, here again, the primary purpose and use of this tank was one of containment.

Mr. O'Caoimh referred to the use of the word "storage" in the name of the appellant company and felt that this in itself indicated the primary function of the tanks.

FINDINGS

The Tribunal in reaching its decision has dealt with the various points raised by the appellants as follows, viz;

1. With regard to the incorrect description of the hereditament on the Valuation List the Tribunal accepts that an error has been made. However, it seems clear from the references to the electoral division, the name of the occupier and the description of the tenement that the correct hereditament is indicated.
The entry in the Valuation List can be considered valid.
2. The Tribunal believes that the pipelines are wrongly included in the valuation of Lot 20. It seems clear that they form part of a separate lot, running as they do over land not owned by the appellants. When the property was listed for revision in 1987 it would have been appropriate to regularise the position pursuant to Section 3 of the 1986 Valuation Act amending Section 48 of the Act of 1852. It appears too that the wayleave which is of course a separate rateable hereditament, has not been valued by the Commissioner.
3. It seems clear that the reasoning applied by the High Court and Supreme Court in the Beamish and Crawford case as regards machinery should be applied here to the weighbridge. This weighbridge is operated by means of electrically powered sensors and

electro-cells. In the popular sense of the word it is undoubtedly machinery. Again following the reasoning in the Beamish and Crawford case the Tribunal finds that the weighbridge is one integrated whole and should not be divided into its component parts. It is therefore exempt from rateability.

4. Before the enactment of the 1986 Act the installations under appeal would no doubt have been construed as machinery by virtue of judicial decisions viz:

Beamish and Crawford (Finlay P. 8th May, 1978 and Supreme Court on 28th July, 1980 unreported).

Pfizer Chemical Corporation v Commissioner of Valuation
(Costello J. 31st July, 1984 unreported).

Cement Limited v Commissioner of Valuation (1960 I.R. 283)

If, the tanks are to be construed as "plant" then regard must be had to the 1986 Act which refers to the rateability of all constructions affixed to 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 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. (Section 8 of the Valuation Act, 1986).

Unlike other cases of this nature where the Tribunal has not isolated any particular construction but rather has viewed the plant as a whole, in this instance, by virtue of the varied nature of the

products handled by the appellant company, it seems appropriate to view each tank as a separate entity. It cannot be argued that the tanks form an integral part of a single process.

The question to be applied to each tank is: does it play an essential part in bringing about a process of change. If the answer is yes, then it is entitled to exemption.

As regard Tanks 1,2,3,7 and 8 the evidence has established that they are clearly holding or storage tanks. In Tanks 7 and 8 the methanol is stored and either extracted directly by its owners or transferred to Tank 11 as and when necessary. Similarly the storage element of Tanks 1,2 and 3 is their main function and the addition of colour to the contents of Tank 1 does not change the essential product contained therein. The dye concentrate which is added serves merely to facilitate the Revenue Commissioners in their control of certain dutiable fuels. Tanks 1,2,3,7 and 8 are rateable.

With regard to Tank No. 14 the Tribunal is of the opinion that its primary purpose is to induce change in the substance contained therein, viz; the blending and mixing of gas oil and heavy fuel oil to achieve a product of the viscosity required by various customers. The mixing and agitation by compressed air together with the maintenance of the temperature of the oil by the heating coils in the tank combine to produce a different product. The Tribunal holds that Tank 14 is exempt.

Applying similar reasoning to Tank No.11 it seems clear that this tank too is used primarily to change ethanol and methanol into industrial methylated spirits. What comes out of Tank 11 is not the same substance that went in. It is undoubtedly changed and the tank is used primarily for the purpose of that change. Tank No.11 is therefore also exempt.

The Tribunal has deducted from the rateable valuation of the total hereditament the valuation apportioned to the following items and agreed as to quantum by both parties to the appeal viz:

	£
Pipelines :	£15.00
Weighbridge :	£ 5.00
Tank 11 :	£29.00
Tank 14 :	<u>£ 2.00</u>
TOTAL	<u>£51.00</u>

In all the circumstances, therefore, the Tribunal is of the opinion that the correct rateable valuation for this hereditament is £509.00.