First DCS Pte Ltd v Chief Assessor and Another
[2007] SGHC 82

Case Number : OS 820/2006

Decision Date : 25 May 2007

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Leung Yew Kwong, Tan Kay Kheng and Teo Lay Khoon (WongPartnership) for the appellant; Liu Hern Kuan and Ong Ken Loon (Inland Revenue Authority of Singapore) for the respondents

Parties : First DCS Pte Ltd — Chief Assessor; Comptroller of Property Tax

Revenue Law – Property tax – Appeal against valuation and assessment – Whether machinery located in subject property falling within one or more exclusions provided by s 2(2) Property Tax Act (Cap 254, 2005 Rev Ed) – Whether pipelines extending beyond boundaries of subject property ought to be included in property tax assessment – Whether contractor's test method correct method of assessment

Statutory Interpretation – Construction of statute – Purposive approach – Whether water as article had been made or altered or adapted for sale under s 2(2) Property Tax Act (Cap 254, 2005 Rev Ed)

25 May 2007 Judgment reserved.

Andrew Ang J

1 This is an appeal of First DCS Pte Ltd, a company incorporated in Singapore ("the Appellant"), from the decision of the Valuation Review Board ("the VRB") dismissing its appeal against the valuation and assessment to property tax of the Appellant's property at No 48 Changi Business Park Central 2 ("the subject property").

2 The subject property comprises a building that houses a district cooling plant which serves the Changi Business Park. It has a floor area of 3,750.58 square metres.

3 The Appellant is the lessee of Lot A18727, within which the subject property is located. The appellant had leased Lot A18727 from the Jurong Town Corporation ("JTC") for 30 years, commencing on 1 March 1999, with an option to renew for a further term of 30 years.

4 The principal activity of the Appellant is the production of chilled water for the air-conditioning needs of other buildings in Changi Business Park (hereinafter referred to as the "customers"). The Appellant provides chilled water to its customers pursuant to contractual arrangements under which the Appellant charges for the chilled water.

5 The Appellant produces the chilled water using district cooling machinery on the subject property (hereinafter referred to as "the machinery"). The machinery consists of many mechanical parts such as generators, transformers, chillers, switchgears, switchboard, pumps, a cooling tower system, heat exchangers and a 4km underground pipeline system that extends beyond the boundaries of the subject property (hereinafter referred to as "the pipelines"). The pipelines consist of one 2km length conveying chilled water to the customers and another 2km length conveying the same water which has been warmed after use back to the centrifugal chillers for re-chilling.

6 The function of the machinery is to chill water to a temperature of 4°C, at which water reaches its maximum density. The chilled water is then channelled to the bottom of a concrete storage tank for storage. The chilled water, which is at its maximum density, will remain at the bottom of the storage. The warmer water in the upper parts of the storage tank comprises –

(a) water which has been returned to the tank after it has been used to cool the customers' buildings (and it is typically at 14°C); and

(b) water at room temperature supplied from the mains to replace water which has been lost through evaporation.

7 There is therefore stratification in the storage tank with water at 4°C, being the densest, at the bottom and the warmer water in the upper parts of the storage tank. This stratification of water at various temperatures is needed for the efficient and proper operation of the district cooling plant, and to ensure that chilled water is supplied to the customers at the requisite temperature of 7°C. It is conveyed to customers with the use of the reticulation pumps and pipeline system for their air-conditioning needs.

Assessment to property tax

8 By a notice dated 20 October 2004, the Chief Assessor informed the Appellant that the annual value of the subject property was proposed at $3,197,000 with effect from 1 January 2004 and at $3,509,000 with effect from 8 March 2004. In addition, property tax was to be recovered from 7 June 2000, the date the Temporary Occupation Permit for the building was obtained.

9 The Chief Assessor had assessed the subject property using the "contractor's test" method. In arriving at the annual value, the Chief Assessor had included in his assessment the machinery that is located in the subject property as well as the pipelines that extend beyond the boundaries of the subject property.

10 As the Appellant was of the view that the Chief Assessor ought neither to have used the contractor's test method, nor to include the machinery and pipelines in his assessment, it filed a Notice of Objection pursuant to s 20A(1) of the Property Tax Act (Cap 254, now in its 2005 Rev Ed) ("the Act") on 2 November 2004. The Chief Assessor partially allowed the Appellant's objection by revising the annual value figures to $3,104,000 with effect from 7 June 2000 and $3,416,000 with effect from 8 March 2004.

11 However, being dissatisfied with the decision of the Chief Assessor, the Appellant filed an appeal to the VRB pursuant to s 29(1) of the Act on 13 July 2005.

12 The VRB heard the appeal over three days and dismissed the Appellant's appeal on 13 April 2006. The Grounds of Decision ("GD") followed on 30 August 2006.

The issues before the VRB

13 There were three main issues before the VRB, namely:

(a) whether the "contractor's test" method as applied by the Chief Assessor was the correct method of assessment;

(b) whether the machinery in the subject property fell within one or more of the exclusions

provided by s 2(2) of the Act; and

(c) whether the pipelines were correctly included as part of the subject property for the purposes of property tax assessment.

The "contractor's test" method

14 Before the VRB, the Appellant submitted that the correct method of assessing the annual value of the subject property was the "elemental approach" which requires elements of the rental method to be combined with elements of the contractor's test method.

15 The rental method is based on comparable rentals derived from market evidence, whereas the contractor's test method involves taking a percentage annual return to arrive at the annual value.

16 With regard to the first issue, the VRB was of the view that the comparable rental evidence, led by the Appellant, of its other district cooling plant at Biopolis was not relevant, reliable or competitive. As such, the VRB decided that the elemental approach was not appropriate in the present case for want of comparable rental evidence.

Exclusions under s 2(2)

17 Section 2(2) of the Act reads as follows:

> In assessing the annual value of any premises in or upon which there is any machinery used for any of the following purposes:
>
> (a) the making of any article or part thereof;
>
> (b) the altering, repairing, ornamenting or finishing of any article; or
>
> (c) the adapting for sale of any article,
>
> the enhanced value given to the premises by the presence of such machinery shall not be taken into consideration, and for this purpose "machinery" includes the steam engines, boilers and other motive power belonging to that machinery.

The fact that the machinery in the instant case falls within the meaning of "machinery" in s 2(2) was not disputed by the Respondents before the VRB.

18 As regards whether water is an "article" within the meaning of s 2(2) of the Act, the VRB was of the view that water can be and in fact, *is* an "article" within the meaning of s 2(2) of the Act as the word "article", in its ordinary usage, is capable of a wide and comprehensive meaning.

19 The VRB went on to add that the pertinent question in the instant case was whether water, as an article, had been made, altered or adapted for sale within the meaning of paragraphs (a), (b) or (c) of s 2(2). In that regard, the VRB decided that water had not been "made" or "altered", and that, although it could be considered "adapted", the Appellant's arrangement with the customers in the instant case did not amount to a "sale" of water as an article.

20 The VRB also considered the District Cooling Act (Cap 84A, 2002 Rev Ed) ("the DCA") and decided that the specific definition of a "district cooling service" as a "*sale* of coolant" in s 2 of the DCA only applied to plants gazetted under the DCA.

The pipelines

21 The appellant submitted before the VRB that as the pipelines were an integral part of the entire machinery, they ought similarly to be excluded from assessment by reason of s 2(2) of the Act. However, as the VRB decided that the machinery did not qualify for exclusion, it did not address this issue directly. Nevertheless, while considering another issue, the VRB stated unequivocally at paragraph 33 of its GD:

> In doing so, the cost of the pipelines must be considered as part of the computation, as *the district cooling plant cannot function without the pipelines*. In the present case, the appellants were being taxed as the owners of the district cooling facility. *The pipeline was integral to the property*, and ought to be taken into account in that assessment. [emphasis added]

22 As the appeal before me is against the whole of the VRB's decision, all three issues remain live and I shall deal with them seriatim.

Exclusion under s 2(2) of the Act

23 The relevant question in the context of the facts of the case is whether water, as an "article", has been made or altered or adapted for sale so that the "machinery" used for so doing may qualify for exclusion under s 2(2) of the Act. It is not disputed that water is an "article" and that the district cooling machinery is "machinery" within the meaning of s 2(2) of the Act, subject to its being used for any of the purposes therein stated.

24 Where, as in this case, there is dispute over the meaning of words in a statute, a court should seek to discover what the intention of the legislature was when the statutory provision was enacted. The correct approach in determining whether the machinery ought to be excluded is to seek to ascertain the purpose of s 2(2) and be guided thereby.

Purpose

25 The property tax in Singapore is a derivative of the British rating system. The long title of the Property Tax Ordinance, No 72 of 1960, read:

> An Ordinance to provide for the levy of a tax on immovable properties in lieu of the rates previously leviable by local authorities and to regulate the collection thereof.

26 As pointed out by both counsel, although our s 2(2) is similar to s 175 of the UK Factories Act 1961, it bears noting that ss 3 and 4 of the UK Rating and Valuation (Apportionment) Act 1928 (the "De-rating Act") also rode on the provisions in the Factories Act. As such, where the premises were a "factory" within the meaning of the Factories Act, the premises (*ie*, an industrial hereditament) would be entitled to the benefit of the "de-rating" provisions of the De-rating Act. The object of the De-rating Act was to benefit manufacturers and industrial producers by granting them relief in respect of a portion of the rates. Hence, where the primary use and purpose of the hereditament was non-factory (*eg*, as a dwelling-house or retail shop or for a distributive wholesale business), one did not de-rate, for the hereditament was not industrial.

27 In contrast, under s 2(2) of the Act, only machinery used for the purposes of making, altering or adapting for sale of articles is excluded from assessment. In general, as property tax is a tax on immovable property, machinery on such property is not assessable unless such machinery is affixed so

as to become part of the immovable property. If machinery is so affixed, the annual value of such immovable property will be enhanced owing to such machinery. Section 2(2) of the Act provides relief in that the enhancement in value due to qualifying machinery used for the purposes stated therein is not to be taken into account.

28 The question then arises: what was the legislature's intention in excluding only certain kinds of machinery? Although no express statement in this regard may be found, it seems to be likely that the object behind s 2(2) was to encourage investments in plant and machinery for manufacturing, processing and other industrial purposes. As such, a distinction may be made between two separate classes of machinery:

(a) Machines affixed to the land for manufacturing/processing/industrial purposes (*ie*, machinery used for the purposes of making, altering, repairing, or ornamenting, finishing or adapting for sale of articles); and

(b) Machines affixed to the land for non-manufacturing/processing/industrial purposes (*ie*, machinery used for the purpose of storage or for the enhancement of the enjoyment of property).

The latter class would include escalators which become fixtures by virtue of their resting on their weight in the parts of the building specially constructed for them: *People's Park Chinatown Development Pte Ltd (in liquidation) v Schindler Lifts (S) Pte Ltd* [1993] 1 SLR 591. The value of the property is enhanced owing to the presence of the escalators which make the property more accessible. Other examples of machinery that fall under the second class include lifts and air-conditioning units. With these prefatory remarks, we now examine whether the machinery in the present case qualifies under any of the limbs in s 2(2) of the Act.

Section 2(2)(a) – whether water has been made

29 The Appellant contends that chilled water is made by the machinery. With respect, this contention cannot have been put forth with much conviction and can easily be disposed of. Water has merely been cooled by the machinery.

Section 2(2)(b) – whether water has been altered

30 The only question that needs to be considered under this paragraph is whether the machinery is used for "altering" the water, the remaining words "repairing, ornamenting or finishing" being clearly inappropriate to describe the process undertaken by the machinery. The Shorter Oxford English Dictionary (Oxford University Press, 5th_ Ed) defines "alter" to mean:

Make otherwise or different in some respect; change in characteristics, position, etc; modify.

The plain meaning of the word is clearly very wide.

31 Despite this, the VRB held that in order for an article to be altered, there must be a permanent change: GD at [21]. They further reasoned that "altering" must be something more than "adapting" on the basis that:

Section 2(2) sets out a continuum of the various changes that could be made to articles, from "making" at the top of the spectrum, to mere adaptation …

and that "altering" was juxtaposed between "making" and "adapting".

32 There is some logic to that reasoning but it is, in my view, far from compelling. The two words are not mutually exclusive and indeed, in certain circumstances, adaptation may involve greater change than alteration. For example, altering the length of an article of clothing may be a lesser change than adapting that article for a different use. The word "adapting" is also of wide import. Indeed, the Respondents themselves cite *Bancroft v Manchester Assessment Committee and Union Cold Storage Co* [1931] All ER 242 at 261 where Lord Dunedin said (at 264):

> The phrase was probably introduced to secure somewhat more flexibility than is to be found in the immediately preceding terms, namely "the altering, repairing, ornamenting or finishing of any article," …

and conceded that "adapting" is a more flexible word *and can* include "altering". Such concession puts paid to the construction adopted by the VRB based on the juxtaposition of the word "altering". With respect to the VRB, in my view, it is unwarranted to further impose a requirement of permanence to the plain meaning of the word "altering" on the slender argument based on the juxtaposition of the word.

33 The Respondents' attempt so to limit the meaning of the word using the rubric *noscitur a sociis* is equally unpersuasive. As Lord Diplock said in *Letang v Cooper* [1965] 1 QB 232 at 247:

> The maxim *noscitur a sociis* is always a treacherous one unless you know the societas to which the socii belong.

This was elaborated upon by Bennion in *Statutory Interpretation* (4th Ed, Butterworths 2002) at p 1050 as follows:

> The Latin word societas means 'society' and the nature of the intended society (if any) can only be gathered from the words used. There may not be any precise intention, but the 'colour' of the members of the society (socii) is nevertheless an approximate indication of meaning.

34 What then is the societas (if any) suggested by the words "altering, repairing, ornamenting or finishing of any article" in s 2(2)(b)? The Respondents submit in effect that the words "repairing, ornamenting or finishing" suggest physical processes on a solid object and that "altering" therefore, likewise, refers to permanent physical change and is not applicable to a liquid. The Appellant disputes this and points out that water can certainly be ornamented, for example, by the addition of colour or the suspension of ornamental objects therein. The Appellant further points out that contrary to the Respondents' submission, a liquid may also be finished. It refers to the case of *Sedgwick v Camberwell Assessment Committee and Watney, Combe, Reid & Co* [1931] All ER 242 at 245, where in construing the provisions of the De-rating Act, the court held that beer which was carbonated and bottled was "finished". In that regard, Lord Dunedin said at 250:

> But the point is whether the treatment that the beer undergoes in these premises is a mere prelude to distribution. I am clearly of opinion that it is not. The finished article that is being prepared for distribution is bottled beer. The beer does not enter the premises as bottled beer. It undergoes treatment, a treatment which changes its quality and makes it from an unpotable and unmarketable article into a potable and marketable one. It is true that the treatment requires the use of a bottle, and that, when the treatment is finished, the bottle and its contents are ready for distribution. But what is really done on the premises is the turning of what I may call an unfinished liquid into a finished one.

The *Sedgwick* case was followed by the Scottish case of *James Buchanan & Co Ltd v Assessor for Glasgow* (1932) SC 358 where the blending of whisky was, likewise, held to be a finishing process.

35 The foregoing therefore effectively rebuts the Respondents' contention that s 2(2)(b) applies only to solids. As for the Respondents' contention that there has to be permanence, I need only point out that ornamentation of an article, whether solid or liquid does not necessarily have to be permanent. Ornaments can often be removed with no damage or change to the article.

36 In summary, I find that the Respondents have failed to demonstrate the existence of a societas fitting their description. Reading the words in s 2(2)(b) plainly, it seems to me the chilling of water to 4°C is an alteration notwithstanding such change is not permanent and that there has not been a change from its liquid state to any other . The plain language of s 2(2)(b) simply does not require that degree of change suggested by the Respondents.

Section 2(2)(c) – whether water has been adapted for sale

37 The VRB held that the chilling of the water qualified as "adapting". I am in complete agreement with the GD of the VRB where it is stated at [24]:

> On the present facts, the Board was prepared to accept that a broad interpretation of the word "adapting" could cover the chilling of water to the specific temperature of 4°C. In ordinary usage, when we talk of adapting, this would cover an adjustment to conditions such as environment and temperature. For example, it would be common parlance to discuss "adapting to cooler climates".

Unfortunately, the VRB went on to hold that, as no sale of the water was involved, the provisions of s 2(2)(c) were not satisfied. On a strict interpretation, that is undoubtedly correct. However, such interpretation would give rise to an anomaly. Let me elaborate.

38 Section 2 of the DCA defines "district cooling service" as

> … *the sale of coolant for space* cooling in a service area by a licensee operating a central plant capable of supplying coolant via pipe to more than one building in the service area.

The word "coolant" is in turn defined in s 2 of the DCA to include chilled water. It is immediately observed that the provision of district cooling service is considered a sale notwithstanding that property in the chilled water does not pass.

39 If a district cooling service is provided for a service area covered by the DCA, would the Chief Assessor be able to maintain that no sale is involved in the face of the definition in s 2 of the DCA? I think not. Parliament has made clear its view pertaining to a district cooling service that such service involves a "sale" of a coolant. If that is so, what is the justification for denying similar treatment for the Appellant? A distinction based purely on the circumstance that the former is covered under the DCA would be lacking in reason. Like cases ought to be treated alike.

40 Besides, given my view of the legislature's intention behind s 2(2) of the Act, to hold that the sale of the cooling property of the chilled water is a sale within the meaning of s 2(2)(c) would be in furtherance of such intention. Parliament's sanction of such an approach to the construction of statutory provisions is to be found in s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed).

The pipelines

41 It is common ground that if the machinery qualifies under s 2(2) of the Act, the pipelines will similarly not be subject to assessment on the basis that they are an integral part of the machinery. On the view I have taken of the applicability of both ss 2(2)(b) and 2(2)(c) of the Act, the pipelines are therefore not assessable.

42 The Appellant has further argued that even if the machinery fails to qualify under s 2(2) of the Act, the pipelines extending beyond the boundary of the Appellant's leasehold property at Lot A18727 should not be assessed. This is on the basis that the pipelines pass through JTC property over which the Appellant has a way-leave and as the Appellant is not the owner of such JTC property it is similarly not the owner of the pipelines. This may seem to be a curious argument. It is almost as if in one and the same breath, the Appellant maintains that the pipelines are an integral part of the machinery (if the machinery qualifies for the exclusion under s 2(2) of the Act) but that if the machinery fails to qualify the pipelines must be treated as separate.

43 But perhaps the Appellant's position is not truly inconsistent if one considers that in the first case (where the machinery qualifies for exclusion) it would not matter whether the pipelines outside the boundary are an integral part of the machinery. If they are they will qualify for exclusion. But even if they were not, they would still not be assessable as they would be fixtures on the neighbouring land and not part of the subject property.

44 The general rule at common law is that everything substantially attached to land is part of the land: "*quicquid plantatur solo, solo cedit*". However, the rule is subject to two exceptions. Megarry & Wade, *The Law of Real Property* (6th Ed by Charles Harpum, London, Sweet & Maxwell, 2000) at para 14-314, describes them as follows:

> First, certain kinds of chattels were held to remain chattels even after annexation, if the purpose of the annexation was for the better enjoyment of the object as a chattel rather than to improve the land permanently. Secondly, even though an object was clearly a fixture, and therefore part of the land, a tenant for years or for life was allowed to sever and remove it if he had annexed it to the land for certain purposes.

45 On the present facts, neither exception applies. The pipelines traverse the neighbouring JTC property not only to facilitate their use or enjoyment as such. They also improve the neighbouring property in that the value of the neighbouring property would be enhanced by the availability of the district cooling service. Accordingly, the first exception does not apply. The second exception is, of course, inapplicable on the facts.

46 It might be thought that what I have stated is opposed to the views of Chao Hick Tin J (as he then was) in *Chief Assessor & Comptroller of Property Tax v Van Ommeren Terminal (S) Pte Ltd* [1993] 3 SLR 489 where he held that pipelines connecting storage tanks but not affixed to the land could not be considered as separate from the tanks (which were assessable for property tax purposes). However, in that case, the pipelines and storage tanks were all within the boundaries of the subject property.

47 I am aware that in *Pan United Marine Ltd v Chief Assessor* [2007] SGHC 21, Lee Seiu Kin J held that certain floating dry docks afloat above the seabed adjoining the taxpayer's property and connected to the latter by a ramp were properly included by the Chief Assessor in his assessment of the annual value of the subject property. However, the case is distinguishable. The dry docks float above the seabed and therefore are not fixtures attached to the seabed, unlike the pipelines here which are affixed to the neighbouring property. The floating docks could easily be moved elsewhere at any time that the taxpayer's temporary occupation licence over the seabed terminated. I should

imagine the same could not be said of the pipelines.

48 In conclusion, I am of the view that even if I were to decide (which I do not) that the machinery does not qualify for exclusion under s 2(2) of the Act, the pipelines outside the boundaries of the Appellant's property remain not assessable for property tax purposes.

The contractor's test method

49 The Respondents applied the contractor's test method to assess the annual value of the subject property. Before the VRB, the Appellant did not challenge the amount the Respondents obtained using that method. However, they proposed the "elemental approach" made up of

(a) a rental value for the premises based on that of a comparable property (*ie*, its district cooling plant at Biopolis); and

(b) a value based on the contractor's test method for the tank structure on the land.

50 After hearing the evidence, the VRB found that the Biopolis cooling plant was not comparable as it was housed in the basement of a building retrofitted to accommodate the cooling plant, unlike the subject property which was purpose-built with a concrete tank built into the ground and exaggerated ceiling heights to accommodate the equipment. Moreover, the VRB found that the rental charged at Biopolis was not a good indication of comparable rental, the original rental having been reduced after losses had been suffered by the lessee.

51 It is a question of fact what are comparable properties. An appellate judge should be slow to intervene in findings of fact made by a lower court. In *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43, Lord Diplock stated:

> Finally, their Lordships would observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence *an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong*. [emphasis added]

52 In the absence of rental evidence of comparable properties, the first element of the elemental approach cannot be ascertained. The elemental approach therefore cannot be used. Accordingly, the Chief Assessor's adoption of the contractor's test method was appropriate.

53 In the result, the appeal against the VRB's decision upholding the inclusion of the machinery and pipelines in the assessment of the subject property is allowed but the appeal against the use of the contractor's test method is dismissed.

54 I will hear the parties on costs.