Neutral Citation Number: [2010] IEHC 434

THE HIGH COURT

2010 264 & 267 SS

IN THE MATTER OF THE VALUATION ACT, 2001, AND IN THE MATTER OF A VALUATION OF THE FOLLOWING PREMISES:

Property No. 451450, Quarry at Ballinascorney Upper, Brittas, County Dublin; Appeal No: VA08/5/188

Property No. 464562, Concrete Works at Tallaght By-Pass, Oldbawn, Tallaght, County Dublin; Appeal No: VA08/5/188

BETWEEN

KILSARAN CONCRETE

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

Judgment of Mr. Justice Hedigan delivered on the 7th day of December, 2010

Property No. 451450, Quarry at Ballinascorney Upper, Brittas, County Dublin

1. This is a case stated, by the Valuation Tribunal pursuant to the provisions of Section 39 of the Valuation Act, 2001, upon a request in writing addressed to the Chairperson of the Valuation Tribunal and dated the 29th September, 2009 by the above-named appellant, it being dissatisfied with the determination of the Tribunal herein in point of law and having expressed dissatisfaction to the Tribunal in writing after the determination of the above appeal by the Tribunal on the 2nd September, 2009 in accordance with the provisions of section 39 (1) of the Valuation Act, 2001, and having required the Tribunal to state and sign a case for the opinion of the High Court in accordance with the provisions of section 39 (2) of the Act of 2001.

The Facts

2. The agreed facts as between the parties are as follows:-

The Appellant owns and operates a large stone quarry at the subject premises Property No. 451 450, Quarry at Ballinascorney Upper, Brittas, County Dublin (hereinafter referred to as "the Premises").

3. In 2005, the Valuation Office determined the NAV of the Premises at €450,000, which was reduced to €436, 000 by the Commissioner of Valuation on appeal pursuant to Section 30 of the Valuation Act (hereinafter referred to as "the Act").

4. The appellant appealed the latter valuation to the Valuation Tribunal pursuant to Section 34 of the Act, and following the hearing, which was held on 5 days between December, 2008, and February, 2009, the Valuation Tribunal delivered its Judgment on the 2nd day of September, 2009, and determined that the rateable valuation for the Premises is €332,500, of which €63,000 was the agreed net annual valuation in respect of the asphalt plant, the subject of the within case.

5. Pursuant to Section 39(1) of the Act, the appellant stated its dissatisfaction with the Valuation Tribunal's Judgment, and sought a case stated for the opinion of the Court, which case was signed on the 4th day of February, 2010, and sought the Court's Opinion as follows:-

> Was the Tribunal correct in law in finding that the asphalt manufacturing plant was not exempt from rateability by virtue of the exclusion contained in paragraph 1 of Schedule 5 to the Valuation Act, 2001?

6. The relevant evidence upon which the Valuation Tribunal relied in relation to the Premises and the process of asphalt manufacturing was given by Mr Chris Lycett, Technical Manager of Irish Tar and Bitumen Suppliers retained by the appellant; and Mr John J Lauder, Consulting Engineer retained by the respondent, who provided a written report only.

7. The appellant produces asphalt using four distinct ingredients. These are; bitumen, coarse aggregates (crushed stone and gravel), fine aggregate (sand) and filler (fine calcium carbonate or cement).

8. The ingredients are heated and when mixed, the hot bitumen coats the mineral matter to produce a hot mixture, during which process the bitumen undergoes an irreversible change, oxidises and hardens. The process of change once initiated, is irreversible and continues for some time after the bitumen, in its still molten state, is laid in its final position in the roadway. The product, while still in its hot liquid state, can then be spread for use mainly in road construction.

9. The aggregates are heated to the required temperature without which, coating of all the sand and aggregate particles cannot occur. Likewise the heating of the bitumen facilitates this coating process. Bitumen storage silos have to be heat controlled to the required temperature.

10. Once the ingredients are mixed, this product is either directly transferred to waiting trucks for rapid dispatch to destination, or is carried by track mounted skip to hot storage bins for later collection by truck.

11. The actual combining of the ingredients takes place in a "mixing pan". Before arrival at the mixing pan the ingredients are dealt with as follows:

a) Aggregates are stored on site and, as needed, are fed by front-end loaders into intake hoppers, where the required quantities are weighed and then dispatched by conveyor to a rotary dryer. The aggregates are heated and water driven off as steam. The dried stone is lifted by bucket elevator to the top of the mixing tower.

b) Hot bitumen is stored on site in insulated silos, and, when required for asphalt manufacture, is pumped from the silos to the bitumen weigh vessel, from where the required quantity is discharged into the mixing pan.

12. The ingredients are combined in the mixing pan and the liquid asphalt is then loaded directly onto waiting trucks or carried by track mounted skip to hot storage bins for later load out.

13. The operation of the silos and the mixing pan is effected by various mechanical, electrical, hydraulic and pneumatic systems, including *inter alia*: electric motors; gear boxes; pulleys; feed belts; head drums; tail drums; head bearings; tail bearings; scrapper crossing rollers; troughing return rollers; conveyor belts; electric monitoring devices; filters; weighing devices; electrically powered screw mechanisms; aeration pads; vibrators; pumps; feeds; pneumatic doors; hydraulic discharge doors; electric paddles and gravity chutes.

14. The appellant contends that the silos, mixing pan and associated systems comprise one installation of plant which is excluded from being rateable by virtue of paragraph 1 of Schedule 5 of the Act, on the grounds of being "designed or used primarily to induce a process of change in the substance contained or transmitted."

15. The respondent contended that no process of change was induced; and that even if a process of change was induced, the exemption applied only to that particular element of plant in which the process of change was induced.

Findings and Determination of the Valuation Tribunal
16. Having heard and considered the legal submissions of the parties the findings and determination of the Valuation Tribunal in relation to the rateability of the asphalt plant is set out in their written judgment as follows:-

> "10. The Tribunal finds on the facts and on interpretation and evaluation of the authorities opened to it in the course of the hearing that there is no case for blanket exemption in respect of the installations under appeal. It is clear from the evidence of Mr Lycett and Mr Lauder that no physical or chemical change in the constituent elements that make up bitumen occurs until they are brought together in the mixing pan. The process of change, once initiated, is irreversible and continues for some time after the bitumen, in its still molten state, is laid in its final position in the roadway.
>
> On the other hand the Tribunal is of the view that the said installation must be seen as the totality of individual items of plant, which they can notionally deconstruct of which some may qualify for exemption from rateability, and others will not, dependent on whether a process of change is induced in the substance contained therein. In the circumstances, the Tribunal finds that the rateable element of the asphalt plant is that agreed by the parties on a without prejudice basis i.e. a net value of €63,000."

Question of Law Arising on the Case
17. The question stated by the Valuation Tribunal for the opinion of the High Court is as follows:-

> Was the Tribunal correct in law in finding that the asphalt manufacturing plant was not exempt from rateability by virtue of the exclusion contained in paragraph 1 of Schedule 5 to the Valuation Act, 2001?

Property No. 464562, Concrete Works at Tallaght By-Pass, Oldbawn, Tallaght, County Dublin

18. This is a case stated by the Valuation Tribunal pursuant to the provisions of Section 39 of the Valuation Act, 2001, in respect of the determination of the Valuation Tribunal-the written judgment as to which was issued by the Tribunal on 2nd September 2009-as to the rateability of the concrete manufacturing plant situated at the above relevant property upon a request in writing addressed to the Chairman of the Valuation Tribunal and dated 29th September 2009 by the above named appellant, it being dissatisfied with the determination of the Tribunal herein as being erroneous in point of law and having declared in writing its dissatisfaction to the Tribunal in respect of the said determination in accordance with the provisions of subsection 39(1) of the Valuation Act, 2001.

The Facts
19. The agreed facts as between the parties are as follows:-

The appellant owns and operates a "Readymix Concrete" manufacturing facility at the premises Property No. 464562, Concrete Works at Tallaght By-Pass, Oldbawn, Tallaght, County Dublin (hereinafter referred to as "the Premises").

20. In 2005, the Valuation Office determined the NAV of the Premises at €164,000, which was reduced to €150,000 by the Commissioner of Valuation on appeal pursuant to Section 30 of the Valuation Act (hereinafter referred to as "the Act").

21. The appellant appealed the latter valuation to the Valuation Tribunal pursuant to Section 34 of the Act, and following the hearing, which was held on 5 days between December, 2008, and February, 2009, the Valuation Tribunal delivered its Judgment on the 2nd day of September, 2009, and determined that the rateable valuation for the Premises is €100,000.

22. Pursuant to Section 39(1) of the Act, the appellant stated its dissatisfaction with the Valuation Tribunal's Judgment, and sought a case stated for the opinion of the Court, which case was signed on the 4th day of February, 2010, and sought the Court's Opinion as follows:-

> Was the Tribunal correct in law in finding that the concrete manufacturing plant was not exempt from rateability by virtue of the exclusion contained in paragraph 1 of Schedule 5 to the Valuation Act, 2001?

23. The relevant evidence upon which the Valuation Tribunal relied in relation to the Premises and the process of concrete manufacturing was given by Mr Nick Davis, Group Technical Manager of the appellant; Mr Gerard Fogarty, Consulting Engineer retained by the appellant; and Mr John J Lauder, Consulting Engineer retained by the respondent, who provided a written report only.

24. The appellant produces concrete using four distinct ingredients-cement, aggregates (sand and gravel), water and admixtures. The admixtures are not essential for the production of concrete itself, but allow for the consistency to be regulated as required.

> When mixed, the cement and water chemically react (a process known as "hydration") and together with the admixtures form a binding, which makes the aggregate adhere, and concrete is the result.

25. Once the ingredients are mixed, the product is immediately transferred to waiting trucks for rapid despatch to destination, as hardening commences on mixing. The concrete in the trucks continues to be turned, to retain its liquid properties, until unloaded at destination. Because hardening commences so rapidly on production, concrete is made to order.

26. Concrete is produced on the combining of the component ingredients which takes place in a "mixing pan". Before being conveyed or fed into the mixing pan, each of the ingredients requires to be held in a silo or bin:

> a) Aggregates are held in 12 bins, mounted on a grid and fitted with a vibrator to ensure that all the required material is discharged onto a conveyor feeder. Aggregates pass through two further bins, being transported by conveyors, until finally released to the conveyor which transports the aggregates to the mixing pan.
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> b) Cement is delivered to site, and fed into storage silos via pipe. When required, a quantity of cement is released from the silo to a weigh hopper, from where it is mechanically released in specific quantities to the mixing pan.
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> c) Water is stored pending use in a holding tank, and when required is pumped from the tank to a hopper, where it is weighed prior to gravity discharge into the mixing pan and mixed with the cement and aggregates.
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> d) Admixtures are decided upon, fed into a hopper and released into the mixing pan at the same time as the water.

27. When the concrete has been produced in the mixing pan, the liquid concrete is released into "load out" hoppers for discharge into waiting trucks.

28. The operation of the silos and the mixing pan is effected by various mechanical, electrical, hydraulic and pneumatic systems, including *inter alia*: electric motors; gear boxes; pulleys; feed belts; head drums; tail drums; head bearings; tail bearings; scrapper crossing rollers; troughing return rollers; conveyor belts; electric monitoring devices; filters; weighing devices; electrically powered screw mechanisms; aeration pads; vibrators; pumps; feeds; pneumatic doors; hydraulic discharge doors; electric paddles and gravity chutes.

29. The appellant contends that the silos, mixing pan and associated systems comprise one installation of plant which is excluded from being rateable by virtue of paragraph 1 of Schedule 5 of the Act, on the grounds of being "designed or used primarily to induce a process of change in the substance contained or transmitted."

30. The respondent contended that no process of change was induced; and that even if a process of change was induced, the exemption applied only to that particular element of plant in which the process of change was induced.

Findings and Determination of the Valuation Tribunal

31. Having heard and considered the legal submissions of the parties the findings and determination of the Valuation Tribunal in relation to the rateability of the concrete manufacturing plant is set out in their written judgment as follows:-

> "The Tribunal finds on the facts and on interpretation and evaluation of the authorities opened to it in the course of the hearing that there is no case for blanket exemption in respect of the installations under appeal. It is clear from the expert evidence that no physical or chemical change occurs in any of the constituent elements which together make up concrete until such time as they are delivered to the mixing pan where they are mixed in accordance with the appropriate recipe to meet individual customer demands for concrete of specific type and use.
>
> On the other hand the Tribunal is of the view that the said installation must be seen as the totality of individual items of plant, of which some may qualify for exemption from rateability, and others will not, dependent on whether a process of change is induced in the substance contained therein or are used to transport material from one section of the plant to the other in order to facilitate the concrete manufacturing process which takes place in the mixing pan."

Question of Law Arising on the Case

32. The question stated by the Valuation Tribunal for the opinion of the High Court is as follows:-

> Was the Tribunal correct in law in finding that the concrete manufacturing plant was not exempt from rateability by virtue of the exclusion contained in paragraph 1 of Schedule 5 to the Valuation Act, 2001?

Legislative Provisions

33. Section 51 of the Valuation Act, 2001 states;

> —(1) In determining, under any provision of this Act, the value of a relevant property, the following shall be valued and taken account of in such determination—
>
> (a) any plant in or on the property, being plant specified in Schedule 5,
>
> (b) the water or other motive power (if any) of the property, and
>
> (c) all cables, pipelines and conduits (whether underground, on the surface or overhead and including all pylons, supports and other constructions which pertain to them) that form part of the property.

(2) The value of any matter referred to in paragraph (a), (b) or (c) of subsection (1) shall be determined in the same manner as the value of the property to which it relates is determined under the provision concerned of this Act.

Schedule 5 reads as follows:

1) All constructions affixed to a relevant property (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.

Submissions of the Parties

34. The appellant submits that the evidence adduced to the Valuation Tribunal on behalf of the appellant in these cases demonstrated clearly that in each case the subject installation is a **construction** designed or used **primarily** to induce a process of change in the substances contained in it or transmitted through it, that it comes squarely within the exclusion from Schedule 5 to the Act, and is accordingly not rateable, and that the Tribunal erred in law in holding to the contrary.

35. The appellant submits that for the Tribunal to hold that the exclusion was applicable to the mixing pans only was plainly an error of law. The appellant argues that the word 'construction' in its plain and ordinary meaning contains a connotation of something substantial and made of several parts and that the contention of the Valuation Tribunal that the exemption from rateability applies only to the mixing pan in each case is wholly inconsistent with the plain and ordinary meaning of the word 'constructions' in the excluding provision, and in conflict with the clear intention of the legislature to exempt from rateability certain items of plant which are constructions.

36. The appellant further submits that the finding of the Tribunal that if the exemption from rateability applies at all it applies only to the mixing pan, is to erroneously apply a test of *exclusivity* to the use of the installation effecting the requisite process of change, where the statutory test requires that use to be *primarily* to induce that process. The appellant argues that it is the whole of the construction including all its parts which are necessary to induce the requisite process of change which the legislature intended should be exempt from rateability by virtue of these statutory provisions.

37. The appellant submits that the Tribunal's use of the phrases 'the totality of individual items of plant' and 'from one section of the plant to the other' in its judgments acknowledges that the concrete manufacturing plant is a single construction. Thus the appellant submits that each construction comes within the exclusion from Schedule 5 to the Valuation Act 2001 and is accordingly not rateable.

38. The appellant submits that the Valuation Tribunal wholly misinterpreted the submissions of the appellant in relation to the case of *Caribmolasses Company Limited v Commissioner of Valuation* [1994] 3 I.R. 189, misunderstood the judgment of Blayney J in that case, and erroneously accepted submissions made on behalf of the respondent which misstated the extent of the appellant's reliance on that case. The appellant submits that the *Caribmolasses* case is not authority for the proposition that only the mixing pan in the present case should be deemed exempt from rateability.

39. The appellant submits that the crucial factor in determining rateability based on the issue of whether a process of change occurs is whether what goes in to the item of plant in question is the same as what comes out and, if not, that item is deemed to be non-rateable plant. They submit that the installations in these cases would irrefutably pass this test and as a matter of plain fact constitute non-rateable plant. In this regard the appellant further relies on *Caribmolasses Company Limited v Commissioner of Valuation* and *Carbery Milk Products v Commissioner of Valuation*.

40. The respondent submits that the Tribunal did not make any identifiable errors of law or unsustainable findings of fact, which require correction by this Court. The respondent submits that the following propositions emerge from the authorities.

(a) The process of change relied upon must take place in the container for which exemption is sought. In this regard the respondent relies on *Caribmolasses v Commissioner of Valuation.*

(b) Blending does not of itself constitute a process of change. Again the respondent relies on *Caribmolasses v Commissioner of Valuation*.

(c) Each individual element must be considered- the Tribunal cannot look at the installation as a single unit engaged in a continuous process. In relation to this point, the respondent relies on the cases of *Caribmolasses v Commissioner of Valuation* and *Pfizer v Commissioner of Valuation* (Unreported, High Court, 28th July, 1994).

(d) The onus of proof was on the appellant to show that the constructions came within the exceptions. *Caribmolasses v Commissioner of Valuation* and *Pfizer v Commissioner of Valuation.*

The Law

41. In *Caribmolasses v Commissioner of Valuation*, Blayney J observed on p 197

"…even if there were a process of change 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 the other.Finally, it appears from sub-paras. 8 and 10 of the findings in the case stated that in so far as any change takes place in the molasses, this occurs after the molasses has left the tanks."

42. In *Caribmolasses v Commissioner of Valuation*, the Supreme Court identified the findings of the Tribunal as follows:

"(4) Crude molasses is pumped in by ship at 40 degrees Celsius by means of a pipeline.

(5) The crude molasses is held and contained in the tanks which are used for holding and containment and also for blending.

(6) Crude molasses coming from different sources may be of different consistency. Crude molasses is normally cane molasses. The viscosities of the molasses varied according to the source of supply. Each consignment of molasses is unique and no two shipments of crude molasses are the same. Accordingly the crude molasses is mixed to form a uniform blend by being pumped from one of the two tanks to the other to form a homogeneous blend."

43. The Supreme Court went on to hold at p 197 that "The only finding there on which the respondents can rely is that the tanks, in addition to being used for holding and containment, as found expressly in sub-para. 5, are also used for blending, but in my opinion it is clear from the nature of the blending, and the manner in which it is effected, that the tanks are not being used primarily to induce a process of change in the molasses. Firstly, no process of change is induced. The molasses remain 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. Secondly, even if there were a process of change 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 the other."

44. The judgment continued at p 197 –

"Mr. Cooke's principal submission was that the facts in this case were analogous to those in *Beamish and Crawford v. The Commissioner of Valuation* [1980] I.L.R.M. 149, and that the Court should accordingly look at the respondent's installation as a single unit engaged in a continuous process and that if that approach were adopted, the Court must find that the tanks were non-rateable plant. I am unable to agree. The present case is wholly distinguishable from the *Beamish and Crawford* case where the issue was whether tanks used in the process of brewing beer constituted machinery. Here the issue is not whether the tanks constitute machinery. The sole issue is whether they come within the exception in the schedule and that has to be determined by construing and applying the wording used in the schedule. The decision in the *Beamish and Crawford case* is of no assistance in doing this."

45. In *Pfizer v Commissioner of Valuation*, Costello J held " Nor were the Tribunal correct in concluding that the operation of the bulk pharmaceutical plant must be viewed as an entire integrated process. This follows from the decision in *Caribmolasses Company Limited* where Blayney J held that the *Beamish and Crawford v The Commissioner of Valuation* formulation of the 'integrated parts of the process' test in the context of 'machinery' was irrelevant in the context of the interpretation of the term 'plant'."

46. The onus of proof was on the appellant. In *Caribmolasses* Blayney J stated "It was common case that the tanks were plant and came within the schedule in s. 8 unless they could be brought within the exclusion clause, that is to say, unless they were "designed or used primarily to induce a process of change in the substance contained". So the sole issue is whether on the facts the respondents established that they came within the exception, and quite clearly the onus of proof was on them to do this. This involved showing that it followed from the facts found in the case stated, or at least as an inference from those facts, that the tanks came within the exception."

Jurisdiction of the High Court on a case stated from the Valuation Tribunal

47. In *Mara v Hummingbird Limited* [1982] ILRM 421 Kenny J., in dealing with the jurisdiction of the High Court on a Case Stated, said:-

'The case stated consists in part of findings on questions of primary fact, e.g. with what intention did the taxpayers purchase the Baggot Street premises. These findings on primary facts should not be set aside by the courts unless there was no evidence whatever to support them. The commissioner then goes on in the case stated to give his conclusions or inferences from these primary facts. These are mixed questions of fact and law and the court should approach these in a different way. If they are based on the interpretation of documents, the court should reverse them if they are incorrect for it is in as good a position to determine the meaning of documents as is the commissioner. If the conclusions from the primary facts are ones which no reasonable commissioner could draw, the court should set aside his findings on the ground that he must be assumed to have misdirected himself as to the law or made a mistake in reasoning. Finally, if his conclusions show that he has adopted a wrong view of the law, they should be set aside. If however they are not based on a mistaken view of the law or a wrong interpretation of documents, they should not be set aside unless the inferences which he made from the primary facts were ones that no reasonable commissioner could draw.'

48. Kenny J further commented on the fact that the Appeal Commissioners often have evidence, some of which points in one direction and other evidence in the opposite direction. Concerning how that evidence is dealt with, he said;-

'These are essentially matters of degree and his conclusions should not be disturbed (even if the court does not agree with them, for we are not retrying the case) unless they are such that a reasonable commissioner could not draw them or they are based on a mistaken view of the law.'

49. In *Henry Denny and Sons (Ireland) v The Minister for Social Welfare* [1998] 1 I.R. 34 Hamilton C.J. held: " They (the courts) should be slow to interfere with the decisions of expert administrative tribunals. Where conclusions are based on an identifiable error of law or an unsustainable finding of fact by a Tribunal such conclusions must be corrected. Otherwise it should be recognised that Tribunals which have been given a statutory task to perform or exercise their functions as is now usually the case with a higher degree of expertise and provide coherent and balanced judgments on the evidence and arguments heard by them it should not be necessary for the court to review the decision by way of appeal or judicial review."

50. In *Premier Periclase Limited v Commissioner of Valuation* (Unreported, 24th June, 1999), Kelly J in the High Court stated " There is no doubt but that the Valuation Tribunal is the type of body which Hamilton C.J. had in mind when expressing the views which I have just quoted from his judgment in the Denny case… the court should be slow to interfere with its decisions and should do so only on the basis of an identifiable error of law or an unsustainable finding of fact."

Interpreting the Statute

51. In *Nangles Nurseries Limited v Commissioner of Valuation* [2008] IEHC 73, (Unreported, MacMenamin J., 14th March 2008) set out the following principles as applicable in the interpretation of the Valuation Act 2001:

(1) While the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles

are applicable;

(2) The Act is to be strictly interpreted;

(3) Impositions are to be construed strictly in favour of the rate payer;

(4) Exemptions or relieving provisions are to be interpreted strictly against the rate payer;

(5) Ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;

(6) If however there is a new imposition of liability, looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;

(7) In the case of ambiguity the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it.

Decision of the Court

52. The findings of the valuation tribunal is first that the installation involved consists of individual items of plant which constitute a totality. It finds secondly that save for the mixing pan, no other physical or chemical change occurs in any of the items until they reach the mixing pan where such change does occur by virtue of the mixing therein. It finds no case for what it refers to as 'blanket exemption', by this it means that only that item of plant where the change actually occurs may qualify as unrateable. It has therefore regarded the different items of plant as being something to treat as separate and not as forming one item of plant. It has come to this conclusion notwithstanding that it seems to consider the installation as a unit viz 'the said installation' for the purpose of producing concrete and asphalt respectively.

53. Is this conclusion correct and if it is not is it a finding that the court can review. It seems to me that the valuation tribunal has essentially deconstructed a plant which is by its very nature a unit. The tribunal considers the whole plant to be a totality of individual items and refuses to consider some of the items as being used to transport material from one section of the plant to another. So it is at the one time both considering the plant as a unit and as a totality of different parts. If this is an inference to be drawn from the agreed facts then it seems an unreasonable one to me. However, I consider it is a mixture of fact and law and in my view the tribunal has misdirected itself in law in its interpretation of Schedule 5(1) to the Valuation Act 2001.

54. The exclusion into which the applicant seeks to bring itself refers to 'such constructions'. It argues that by the use of this wording and in the context of this case, the legislature intended to refer to constructions affixed to the property, used for the containment or transmission of a substance including constructions designed or used primarily to induce a process of change in the substance contained or transmitted.

55. Is this installation such a construction. The question of inducing change is not in issue in terms of the totality of the plant. It is accepted by the valuation tribunal that a change does occur i.e. what comes out is different to what goes in. The only question is whether the exemption covers just that one part of the installation i.e. the mixing pan where the mixing of materials is done and the actual change occurs or whether it includes those parts of the installation which are directly and immediately involved in the process ultimately induced i.e. storage for the purpose of transmitting to the mixing pan, heating and transmission to and from the mixing pan (including maintaining heat in relation to bitumen and liquidity in relation to concrete).

56. It seems to me to come down to the meaning of 'inducing a process of change'. As this phrase is not defined in the Act it must be given its ordinary meaning. The Oxford English Dictionary defines 'induce' as 'bring about, produce, gives rise to'. It further defines 'process' most closely to the context herein as 'a systematic series of actions or operations directed to some end, as in manufacturing…' The meaning of the phrase seems, therefore, to comprehend a series of actions leading to and from the mixing pan in order to produce or manufacture asphalt or concrete. To deconstruct the installation so as to focus solely on the one part of it where the change actually occurs seems to me to misinterpret the provision because it does not include the series of actions leading to that point. It seems to me that the logical interpretation of the Schedule is that the constructions excluded from rateability includes all those parts of the plant immediately involved in the process leading to the change that occurs in the mixing pan. This means from the silos into which the ingredients are placed at the outset of the process through to the transmission from the mixing pan into containers ready to take off site the manufactured asphalt or concrete ready and fit for use. In short, it seems to me that the use of the phrase 'process of change' means the legislature intended to include in exemption from rateability all parts of the plant directly and immediately involved in that process.

57. The answer to the question posed therefore is no. The tribunal was not correct in law in finding that both the asphalt and the concrete manufacturing plants were not exempt from rateability by virtue of the exclusion contained in paragraph 1 of Schedule 5 to the Valuation Act 2001.