**CHIEF VALUATION OFFICER v COPPERBELT POWER COMPANY LIMITED (1974) ZR 238 (HC)**

HIGH COURT

BRUCE - LYLE J  5

15th NOVEMBER 1974

(No. HN/CA/6/1973)

**Flynote**

**Valuation - Municipal Corporation Act, Cap. 470, s. 18 (2) - Relationship to sub-clause (i) - Machinery and plant - Whether assessable.**

**Headnote**

The appellant appealed under the provisions of s. 29 (1) of the 10 Municipal Corporation Act, Cap. 470, from a decision of the valuation court, Luanshya, presided over by the resident magistrate sitting with assessors.

The magistrate had held that plant and machinery in a building occupied by the respondent was assessable under sub-s. 2 *(a)* (1) of s. 18, 15 in that the plant and machinery was used for the primary transmission or main transmission of power. The magistrate had held further that the plant and machinery, being in the building for the purpose of trade processes, was exempted and therefore not "assessable machinery" under the Act.

*Held:*20

   The *proviso* clause in s. 18 (2) *(a)* of the Municipal Corporation Act, Cap. 470, is not related to sub-clause (i). Hence the machinery and plant in or on the hereditament in this case is assessable.

Legislation referred to: 25

General Rate Act, 1967 (England), Schedule 3.

Municipal Corporation Act, Cap. 470, s. 18 (2), s. 29 (1)

*D K  Chirwa, Senior* State Advocate, for the appellant.

*A  Green, Ellis & Company*, for the respondent.

**Judgment**

**Bruce - Lyle J:** This is an appeal under the provisions of section 30 29 (1) of the Municipal Corporation Act, Cap. 470, from the decision of the valuation court, Luanshya, presided over by the resident magistrate sitting with assessors.

In the valuation court the learned presiding magistrate held that plant and machinery in a building occupied by the Copperbelt Power 35 Company Limited of Luanshya (hereinafter referred to as the respondent) was assessable under subsection 2 *(a)* (1) of section 18, in that the plant and machinery was used for the primary transformation or main transmission of power. The learned magistrate further held that the plant and machinery, being in the building for the purpose of trade processes, was 40 exempted and therefore not "assessable machinery" under the Act.

Section 18 (2) of Act 470 states:

   "Assessable machinery and plant" means:

   *(a)*   machinery and plant (together with the shafting, pipes, cables, wires and other appliances and structures accessory

**1974 ZR p239**

BRUCE - LYLE J

   thereto) which is used or intended to be used, mainly or exclusively in connection with any of the following purposes that is to say:

      (i)   the generation, storage, primary transformation or main transmission of power in or on a hereditament; 5 or

      (ii)   the heating, cooling, ventilating, lighting, draining or supplying of water to the land or improvements of which the hereditament consists, or the protecting of the hereditament from fire. 10

   Provided that, in the case of machinery or plant which is in or on the hereditament mainly or exclusively for the purpose of manufacturing operations or trade processes, the fact that it is used in connection with those operations, lighting, supplying water, or protecting from fire shall not cause it to 15 be treated as falling within the definition of assessable machinery and plant.

It is the contention of learned Senior State Advocate for the appellant that the learned magistrate and his assessors erred in holding that the *proviso* after the sub-clause (ii) referred to both sub-clauses (i) and (ii). 20 There is no doubt whatsoever that the learned magistrate, having first held that the plant and machinery belonged to the category of machinery in sub-clause (i) and having held that such plant and machinery fell within the *proviso*, meant that the *proviso* related to both sub-clauses (i) and (ii) of section 18 (2) *(a)*. Mr Green, for the respondent, has supported the 25 finding of the valuation court and has further submitted that, if the court finds it difficult to resolve the issues or that the section is confusing the interpretation favourable to the subject, i.e. the respondent should be adopted.

Schedule 3 to the English General Rate Act of 1967 (*Ryde on Rating,* 30 12th *Edition,* page 1233) stipulates the classes of machinery and plant deemed to be part of the hereditament. Under Class I are the following:

   "1. Machinery and plant (together with the shafting, pipes, cables wires and other appliances and structures accessory thereto) which is used or intended to be used mainly or exclusively in 35 connection with any of the following purposes, that is to say -

      *(a)*   the generation, storage, primary transformation or main transmission of power in or on the hereditament; or

      *(b)*   the heating, cooling, ventilating, lighting, draining, or supplying of water to the land or buildings of which the 40 hereditament consists, or the protecting of the hereditament from fire;

   Provided that, in the case of machinery or plant which is in or on the hereditament for the purpose of manufacturing operations or trade processes, the fact that it is used in connection with those 45

**1974 ZR p240**

BRUCE - LYLE J

   operations or processes for the purpose of heating, cooling, ventilating, lighting, draining, or supplying of water, or protecting from fire shall not cause it to be treated as falling within the classes of machinery or plant specified in this 5 schedule."

The wording and punctuations in the English schedule are almost identical to the wording and punctuations in our section 18 (2) *(a)*. The slight difference is found in the concluding portions of the two *proviso*s. In ours it reads " . . . shall not cause it to be treated as falling within the definition of assessable machinery or plant", while the wording in the English one reads " . . . shall not cause it to be treated as falling within the classes of machinery or plant specified in this schedule". The effect of both wordings, in my view, is that such machinery or plant falling within the *proviso* are not assessable machinery or plant.

To resolve the issue as to whether the "proviso" refers exclusively to 15 sub-clause (ii) or to both sub-clauses (i) and (ii), I have examined the *proviso* and, applying the ordinary meaning of the words therein used, I hold the view that it was clearly the intention of the legislature that the *proviso* should exclusively relate to machinery or plant used for the purposes stated in sub-clause (ii), because it so states in the body of the 20 *proviso*. In other words, if machinery or plant is used for the purposes set out in sub-clause (i), once such machinery or plant is used for manufacturing operations or for trade processes, such machinery or plant shall be exempted from assessment.

*Ryde on Rating*, referred to above at page 183, explains class 1 *(b)*25 of the Schedule 3 to the English Act which, as stated earlier, is identical to our section (2) *(a)* (ii) of Act 470, as follows:

   "Class 1B comprises items of machinery and plant and specified accessories, subject to their being used, or intended to be used, mainly or exclusively in connection with the heating, cooling, 30 ventilating, lighting, draining or supplying of water to the land or buildings of which the hereditament consists, or the protecting of the hereditament (including rateable machinery and plant) from fire; but machinery and plant is not to be included in this class, merely because it is used for any of the above purposes in 35 connection with manufacturing operations or trade processes, if its presence in or on the hereditament is for the purpose of those operations or processes."

This is exactly my interpretation of the "proviso" in section 18 (2) *(a).* Ryde, in explaining which machinery and plant fell under class 1A 40 (which is our (2) *(a)* (i)) on pages 182 and 183, does not make any mention of the "proviso" applying to machinery and plant in that class.

In conclusion, I find that the *proviso* clause in the section 18 (2) *(a)* is not related to sub-clause (i) and, as such, the learned magistrate and his assessors misdirected themselves on the law when they held that the" 45 machinery and plant were not assessable property.

**1974 ZR p241**

BRUCE - LYLE J

I would therefore allow the appeal and hold in effect that the machinery and plant in or on the hereditament stand No. 1402, Luanshya, is assessable.

On the question of costs it is the contention of Mr Green that no costs was awarded in the valuation court and, as such, appellant would 5 be entitled to costs only in this court. I am unable to accept that contention. After the assessment by the valuer the respondent in this court took the case to the valuation court and the Chief Valuation Officer had to be in that court and to have his findings supported and he no doubt incurred expenses. Having succeeded in this court, I am of the 10 view that it is only fair that he should have his costs in both this court and in the valuation court below and I so order.

*Appeal allowed with costs*

**1974 ZR p241**