

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 10

Tax Appeal No 7 of 2019

Between

- (1) Chief Assessor
- (2) Comptroller of Property Tax

... Appellants

And

Skyventure VWT Singapore Pte Ltd

... Respondent

JUDGMENT

[Revenue Law] — [Property tax] — [Annual value]

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**Chief Assessor and another
v
Skyventure VWT Singapore Pte Ltd**

[2020] SGHC 10

High Court — Tax Appeal No 7 of 2019
Choo Han Teck J
16 September 2019; 5 November 2019

16 January 2020

Judgment reserved.

Choo Han Teck J:

1 The respondent, Skyventure VWT Singapore Pte Ltd, owns and operates an attraction known as “iFly Singapore” at 43 Siloso Beach Walk (“the Property”). iFly Singapore provides a simulated skydiving experience through the operation of a vertical wind tunnel that produces a flow of high-speed and high-pressure air (“the Wind Tunnel”), allowing visitors to be suspended in mid-air.

2 The amount of property tax payable on real property is a percentage of its annual value, and is 10% in the present case. The Chief Assessor had included the value of the Wind Tunnel in assessing the annual value of the Property for the period from 19 April 2011 to 31 December 2013. This increased the annual value of the Property from \$808,000 to \$1,091,000 from 19 April 2011 to 31 December 2011; from \$946,000 to \$1,245,000 from 1 January 2012 to 31 December 2012; and from \$846,000 to \$991,000 from

1 January 2013 to 31 December 2013.

3 The respondent appealed the Chief Assessor’s decision to the Valuation Review Board (“VRB”), arguing that the value of the Wind Tunnel should not have been included as it was exempt under s 2(2) of the Property Tax Act (Cap 254, 2005 Rev Ed). The Chief Assessor was of the view that the Wind Tunnel did not fall within s 2(2) as it was not machinery and it was not used for industrial purposes.

4 A majority of the VRB found in favour of the respondent. They held that the Wind Tunnel falls within the definition of “machinery” as its predominant function is to generate the necessary aerodynamic conditions for skydiving. They also held that it falls within s 2(2)(b) and (c) as it alters and adapts the air within it “by increasing its velocity and pressure while reducing its temperature — such that the lifting effect of the cooled airflow could be sold.” In reaching its decision, the majority held that s 2(2) was not confined to industrial machinery on industrial premises.

5 On the other hand, the minority agreed that the Wind Tunnel was “machinery” but held that s 2(2) was confined to industrial purposes only, and could not include the leisure, sports or recreational industries. The Chief Assessor and the Comptroller of Property Tax appealed against the majority’s decision.

6 This appeal centres on the interpretation of s 2(2) of the Property Tax Act, which states:

(2) 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.

7 Both the majority and minority of the VRB were of the view that the Wind Tunnel is “machinery”. Ms Quek Hui Ling, counsel for the appellants, characterises the Wind Tunnel as a “setting” — a large, static receptacle of air in which the respondent carried out its business. However, the Wind Tunnel also includes a horizontal portion that contains four fans with a total capacity of 1,800 horsepower. Applying the dominant function test in *Pan-United Marine Ltd v Chief Assessor* [2008] 3 SLR(R) 569 at [69], I find that the VRB is correct to conclude that the primary purpose of the Wind Tunnel is to generate the necessary aerodynamic conditions for indoor skydiving, and not merely to function as the setting for business.

8 Ms Quek also submits that the Wind Tunnel is not “machinery” within the definition of s 2(2) because the section must be read in light of its legislative purpose, which she identifies as the promotion of investments in manufacturing machinery. She submits that the legislative purpose should limit the words “any machinery” and “any premises” to machinery and premises used for manufacturing and industrial purposes only. This purposive approach was used by the judge in *First DCS Pte Ltd v Chief Assessor* [2007] 3 SLR(R) 326 (“*First DCS (HC)*”), who found that the object behind s 2(2) “was to encourage investments in plant and machinery for manufacturing, processing and other industrial purposes” (at [28]). On appeal, the Court of Appeal agreed with the

judge below (*Chief Assessor v First DCS Pte Ltd* [2008] 2 SLR(R) 724 (“*First DCS (CA)*”) at [11]).

9 Mr Tan Hee Joek, counsel for the respondent, submits that the Court of Appeal’s words are “judicial gloss” on the statutory language. He also submits that the majority of the VRB is correct to focus on the function of the machinery rather than the legislative purpose of s 2(2).

10 In *First DCS (HC)* and *First DCS (CA)*, the district cooling machinery in question chilled water and supplied it to neighbouring buildings for air-conditioning by circulating the water through underground pipelines, and the water would be returned for re-chilling. The parties did not dispute that the district cooling machinery was “machinery” under s 2(2), and the issue was whether the water had been adapted for sale within the meaning of s 2(2)(c). The Court of Appeal relied on the purposive approach to interpret the phrase “adapting for sale” widely, stating (at [27]):

The phrase “adapting for sale” must thus be construed with such considerations in mind. In the present instance, it is true that the chilled water itself was not sold. In a literal sense, it is the chilling effect of the water which was sold; in other words, there was a provision of “district cooling service”. But, in our view, it would be undue carping to insist that the article itself be sold where it is clear that a vital and essential characteristic of the article (*ie*, the cooling effect of the water in the present case) is the real subject of sale. In a modern society, manufacturing processes and the manner in which industries exploit such processes have endless inventions and permutations completely out of the wit and ken of the drafters of legislation dating from 140 years ago. A restrictive interpretation is uncalled for in such an instance. Indeed, s 9A of the Interpretation Act [Cap 1, 2002 Rev Ed] now requires the court to adopt a purposive approach.

11 The purposive approach expanded the definitions in s 2(2), and did not

limit them. However, the Court of Appeal found that the legislative purpose was to promote investments in manufacturing machinery. I am bound by its decision. I should add that by itself, “machinery” is a general and vague term. It can sometimes be used synonymously with “equipment”; it can be simple or it can be complicated. Strictly speaking, the Wind Tunnel is undoubtedly machinery in the plain sense of the word but the provision we examine here must be considered in its entirety by taking “machinery” and industrial purposes into account. And “industrial” must be distinguished from “leisure” purposes. There is no dispute that the Wind Tunnel was used for social events, and not for any industrial purpose.

12 In *First DCS (HC)* and *First DCS (CA)*, the High Court and the Court of Appeal accepted that water is an “article” for the purpose of s 2(2), and so there is no reason why air cannot also be an “article”. The issue then is whether the air was made, altered or adapted for sale.

13 The Court of Appeal highlighted the difference between the concept of “making” on one hand and “altering” and “adapting” on another. One “makes” a new article out of raw material, while one “alters” or “adapts” an article where the end result is the same article, albeit changed in some respect (*First DCS (CA)* at [34]). The CA raised the example of an egg and a banana — a chicken is not an adapted egg, the Court of Appeal there held, because it is “utterly different” from an egg, but a ripe banana is altered from an unripe banana. But that raises more questions – one can make banana bread out of bananas, but can one “make” a chicken out of an egg, other than by letting it hatch? In any event, neither party here disputes that air was not made.

14 Mr Tan submits that the Wind Tunnel alters the air within the definition

of s 2(2)(b) by increasing its velocity and pressure intensity and decreasing its temperature to enable a person to float within the flight chamber. In *First DCS (HC)*, the judge held that “altering” does not apply only to solids and does not have a requirement of permanence (at [35]–[36]). The issue of alteration was not addressed in *First DCS (CA)*.

15 Ms Quek does not deny that the Wind Tunnel alters air, but submits that a wide interpretation would lead to an absurd result where any machinery that produces of the smallest alteration would qualify it as an exception. She gave the example of air-conditioning units that alter the temperature of air, which would then be exempt from property tax. Bearing in mind that the purpose of the provision is to promote investments in manufacturing, I agree that it would be unreasonable to find that any alteration would suffice.

16 Mr Tan submits, in the alternative, that air is adapted for sale under s 2(2)(c), as the effect of the air is sold to customers. In *First DCS (HC)*, the judge held that the sale of the cooling property of chilled water is a sale within the meaning of s 2(2)(c) and this was affirmed on appeal by the Court of Appeal. I have my reservations about the correctness of this decision. Where ownership of the article does not pass to someone else, the situation seems more akin to a hire agreement than a sale. In any event, the CA accepted that the sale of the chilling effect of the water fell within s 2(2)(c) because it was related to manufacturing processes, and such an interpretation would promote the legislative purpose (*First DCS (CA)* at [27]). In the present case, an interpretation of s 2(2)(c) to cover the sale of the effect of pressurised air would not further the legislative purpose of promoting manufacturing. I do not find that the air was adapted for sale within the meaning of s 2(2)(c).

17 In the circumstances, I allow the appeal and I will fix costs at a later date if the parties are unable to agree.

- Sgd -
Choo Han Teck
Judge

Quek Hui Ling, Pang Mei Yu and Shawn Joo Jian Hua (Inland
Revenue Authority of Singapore) for the appellants;
Tan Hee Joek (Tan See Swan & Co) for the respondent.
