



15TACD2020

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to the imposition of a Value Added Tax (hereafter VAT) charge in the amount of €1,542 on the importation of a motorbike (make and model Honda CBR 600) from the UK to the State. As the vehicle had travelled less than 6,000 kilometres at the time of its importation to the State, it was held by the Respondent to be a “new means of transport” and as such liable to VAT.
2. The Appellant paid VAT of €1,542 and has appealed to the Tax Appeals Commission.

Background

3. The Appellant has confirmed that the motorbike in question was first registered in the UK on 14 August 2013.
4. On 11 April 2018 the Appellant purchased the vehicle from a dealer in the UK for a total of STG€5,799.

5. The Appellant states that he imported the motorbike to the State on 11 May 2018 and presented it for registration at the NCT centre.
6. The Appellant argues that as the vehicle “was so old”, he should not have been charged VAT in Ireland.

Legislation

Section 2 of the Consolidated Value-Added Tax Acts 2010 (hereafter S.2 VATCA 2010)

“new means of transport” means “motorised land vehicles with an engine cylinder capacity exceeding 48 cubic centimetres or a power exceeding 7.2 kilowatts, vessels exceeding 7.5 metres in length and aircraft with a take-off weight exceeding 1,500 kilogrammes—

(a) which are intended for the transport of persons or goods, and

(b) (i) which in the case of vessels and aircraft were supplied 3 months or less after the date of first entry into service and in the case of land vehicles were supplied 6 months or less after the date of first entry into service, or

(ii) which have travelled 6,000 kilometres or less in the case of land vehicles,”

.....

Section 3: Charge of value-added tax

[S.3 VATCA 2010]

Section 3 levies a charge to VAT on intra-Community acquisitions

“Except as expressly otherwise provided by this act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions:



(e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State.”

Section 24 (1)(b) VATCA 2010 defines “intra-Community acquisition” as

b) new means of transport supplied by a person in a Member State to a person in another Member State and which has been dispatched or transported from the territory of a Member State to the territory of another Member State as a result of being so supplied.

Section 32 (1) VATCA 2010 states

“The place where an intra-Community acquisition of goods occurs shall be deemed to be the place where the goods are when the dispatch or transportation ends.”

Submissions and Analysis

7. S.2 VATCA 2010 defines a “new means of transport” as a transport vehicle that has travelled less than 6,000 kilometres at the time of its importation to the State.
8. The Appellant concedes that his vehicle had travelled less than 6,000 kilometres at the time of its importation to the State.
9. The Appellant’s vehicle was declared as having travelled 4,774 kilometres at the date of its importation to the State and presentation at the NCT centre.
10. The Appellant contends that as the vehicle was 5 years old that it was not new at the time of importation to the State.
11. The quantum of the VAT charged on the vehicle is not in dispute.
12. It is clear, based on the evidence and the Appellant’s own admission that the motorbike in question had travelled less than 6,000 kilometres at the time of its importation to the State.

Findings



13. I am satisfied that there is no inherent ambiguity in the statutory wording in S.3 VATCA 2010 and thus the interpretative approach to be applied is a literal one taking into account the jurisprudence in respect of the taxation of statutes, based on a long line of authority including *inter alia*; *Revenue Commissioners v Doorley* (1933) IR750, *Inspector of Taxes v Kiernan* (1982) ILRM 13, *Cape Brandy v Inland Revenue Commissioners* (1921) 1 KB 64, *Texaco (Ireland) Ltd v Murphy* (1991) 2 IR 449.
14. I am satisfied that there is a clear requirement in legislation that a vehicle which has travelled less than 6,000 kilometres at the time of its importation to the State be classified as a new means of transport and is accordingly subject to VAT on importation in this case.
15. In the High Court case of *Menolly Homes v Appeal Commissioners and another* (2010) IEHC 49, at par.22 Charleton J. stated:

‘The burden of proof in this appeals process is, as in all taxation appeals on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable’.

16. I am satisfied that the Appellant has not met this burden of proof as he has acknowledged that his vehicle had travelled less than 6,000 kilometres at the time of its importation to the State.

Conclusion

17. Based on a consideration of the evidence and submissions together with a review of the documentation furnished, I determine that the vehicle is a new means to transport and such VAT was properly imposed at the time of importation to the State. I do not consider that I have discretion or jurisdiction to set aside the VAT charge on the grounds contended for by the Appellant. I uphold the VAT charge of €1,542. This appeal fails.
18. The appeal hereby is determined in accordance with section 949AL TCA 1997.





PAUL CUMMINS

APPEAL COMMISSIONER

9 January 2020

