



164TACD2023

Between

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a determination made by the Revenue Commissioners (“the Respondent”), in relation to a charge to Vehicle Registration Tax (“VRT”) on the importation of a vehicle into the State.
2. The Appellant maintains that the “open market selling price” (“OMSP”) is incorrectly calculated leading to an overpayment of VRT, on the basis that the Appellant has carried out a list of repairs to the vehicle, having purchased the vehicle in the United Kingdom (“UK”) with damage to the rear of the vehicle.
3. The Appellant lodged a first stage appeal with the VRT Appeals Unit of the Respondent on the grounds that, as the vehicle had been substantially repaired, the OMSP and thus the VRT amount was incorrect. The Respondent revised the OSMP in respect of the vehicle, which realised a refund of €1,057.00.
4. The appeal proceeded by way of a remote hearing on 14 September 2023. The Appellant was present at the remote hearing of the appeal and represented himself. The Respondent was represented by the Respondent’s Case Officers.

Background

5. The assessment to VRT concerns a [REDACTED] (“the vehicle”). On 16 November 2022, the Appellant purchased the vehicle in the UK, which was damaged to the rear at the time of purchase. Subsequently, the Appellant carried out a number of repairs to the vehicle. The vehicle is a passenger vehicle with wheelchair access.
6. On 5 January 2023, the vehicle was registered in Ireland, when the Appellant presented the vehicle for registration at the National Car Testing Service (“NCTS”) and where an unregistered vehicle inspection was carried out. The VRT for the vehicle was calculated as a percentage of the OMSP of the vehicle.
7. The vehicle was assessed as being in good condition and an OMSP of €17,610 was attributed to the vehicle, resulting in a VRT payment of €5,283 inclusive of late fees, being paid by the Appellant. The vehicle was assigned the registration number [REDACTED].
8. Thereafter, the Appellant lodged a first stage appeal with the VRT Appeals Unit on the basis that the vehicle required substantial repairs. On 10 January 2023, the Respondent wrote to the Appellant in relation to his appeal to state that the VRT Appeals unit had revised the OMSP downwards to €14,088 (80% of €17,610), with the lower VRT amount

of €4,226 being due. This was a 20% reduction in the OMSP originally determined in respect of the vehicle, which realised a refund of €1,057.00 for VRT to the Appellant, in addition to a refund of a late fee in the sum of €213.00. The reduction was on the basis of the Respondent classifying the vehicle as a “*Category “S” Damaged Vehicle*”.

9. The Appellant maintains that the OMSP assigned to the vehicle is excessive. The Respondent states that the revised OMSP of €14,088 which is a 20% reduction is fair and that the Appellant has produced no further evidence to support his appeal, such that the OMSP should be revised further. The Respondent submits that the Appellant has not provided the OMSP which he believes should be assigned to the vehicle at the time of registration.

Legislation and Guidelines

10. The legislation relevant to this appeal is as follows:-

11. Section 146(1A) of the Finance Act 2001 (as amended), Appeals to Appeals Commissioners, provides:-

(1A) Any person aggrieved by any of the following matters may appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act, 1997 within the period specified in subsection (2)

(a) a determination of the Commissioners under section 145;

(b) a refusal to authorise a person as an authorised warehousekeeper, or to approve a premises as a tax warehouse, under section 109, or a revocation under that section of any such authorisation or approval;

(c) a refusal to authorise a person as a registered consignee under section 109IA or a revocation under that section of any such authorisation.

(d) a refusal to authorise a person as a registered consignor under section 109A or a revocation under that section of any such authorisation;

(e) a refusal to approve a person as a tax representative under section 109U(2) or a revocation under that section of any such approval;

(f) a refusal to grant a licence under section 101 of the Finance Act 1999 or a revocation under that section of any such licence that has been granted.

(2) The period specified for the purpose of making an appeal under this section is the period of 30 days after the date of –

(a) the payment of excise duty in the case of an appeal under subsection (1)(a),

(b) the notice of assessment or other notice calling for payment of the amount concerned in the case of an appeal under subsection (1)(b),

(c) the repayment or the notice of the refusal to repay in the case of an appeal under subsection (1)(c), or

(d) the notice of the determination, refusal or revocation concerned in the case of an appeal under subsection (1A).

12. Section 130 of the Finance Act 1992 (as amended), Interpretation, *inter alia* provides:-

“mechanically propelled vehicle” means a vehicle that –

(d) is capable of achieving vehicle propulsion at the time of registration or at the time of examination by a competent person under [section 135D\(1\)\(d\)](#), to the satisfaction of the Commissioners.....

“Vehicle” – means a mechanically propelled vehicle

“Unregistered Vehicle” includes a vehicle –

(a) Built up from a chassis, or.....

13. Section 131 of the Finance Act, 1992 (as amended), Registration of vehicles by Revenue Commissioners, *inter alia* provides:-

(1) (a) The Commissioners shall establish and maintain a register of all vehicles in the State (in this Chapter referred to subsequently as “the register”).

(ba) In respect of a vehicle which is within any particular category of vehicle that is specified by the Commissioners for the purposes of this paragraph or is within any other class of vehicle that is specified by the Commissioners, the Commissioners may, as a condition of registration, require confirmation that such vehicle- (i) is a mechanically propelled vehicle, and..

(bb) Where in respect of a vehicle the Commissioners require confirmation for the purposes of paragraph (ba), they shall register the vehicle only on receipt by them of a declaration made by a competent person in such form as may be specified by the Commissioners that the vehicle –

(i) is a mechanically propelled vehicle, and

(ii) (ii) complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii).

14. Section 132 of the Finance Act, 1992 (as amended), Charge of excise duty, *inter alia* provides:-

(1) Subject to the provisions of this Chapter 19 and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid at whichever of the rates specified in subsection (3) is appropriate on -

(a) the registration of a vehicle, and.....

15. Section 133 of the Finance Act, 1992 (as amended), Chargeable value, provides:-

(1) Where the rate of vehicle registration tax charged in relation to a category A vehicle or a category B vehicle is calculated by reference to the value of the vehicle, that value shall be taken to be the open market selling price of the vehicle at the time of the charging of the tax thereon.

(2) (a) For a new vehicle on sale in the State which is supplied by a manufacturer or sole wholesale distributor, such manufacturer or distributor shall declare to the Commissioners in the prescribed manner the price, inclusive of vehicle registration tax, which, in his opinion, a vehicle of that model and specification, including any enhancements or accessories fitted or attached thereto or supplied therewith by such manufacturer or distributor, might reasonably be expected to fetch on a first arm's length sale thereof in the open market in the State by retail.

(b) A price standing declared for the time being to the Commissioners in accordance with this subsection in relation to a new vehicle shall be deemed to be the open market selling price of each new vehicle of that model and specification.

(c) Notwithstanding the provisions of paragraph (b), where a price is declared for a vehicle in accordance with this subsection which, in the opinion of the Commissioners, is higher or lower than the open market selling price at which a vehicle of a similar type and character is being offered for sale in the State at the time of such declaration, the open market selling price may be determined by the Commissioners for the purposes of this section.

(3) In this section—

“new vehicle” means a vehicle that has not previously been registered or recorded on a permanent basis—

(a) in the State under this Chapter or, before 1 January 1993, under any enactment repealed or revoked by section 144A or under any other provision to like effect as this Chapter or any such enactment, or

(b) under a corresponding system for maintaining a record for vehicles and their ownership in another state,

and where the vehicle has been acquired under general conditions of taxation in force in the domestic market

'open market selling price' means—

(a) in the case of a new vehicle referred to in subsection (2), the price as determined by that subsection,

(b) in the case of any other new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, would be determined under subsection (2) in relation to that vehicle if it were on sale in the State following supply by a manufacturer or sole wholesale distributor in the State,

(c) in the case of a vehicle other than a new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail and, in arriving at such price—

(i) there shall be included in the price, having regard to the model and specification of the vehicle concerned, the value of any enhancements or accessories which at the time of registration are not fitted or attached to the vehicle or sold therewith but which would normally be expected to be fitted or attached thereto or sold therewith unless it is shown to the satisfaction of the Commissioners that, at that time, such enhancements or accessories have not been removed from the vehicle or not sold therewith for the purposes of reducing its open market selling price, and

(ii) the value of those enhancements or accessories which would not be taken into account in determining the open market selling price of the vehicle under the provisions of subsection (2) if the vehicle were a new vehicle to which that subsection applied shall be excluded from the price.

Evidence and Submissions

Appellant's evidence and submissions

16. The Commissioner sets out hereunder a summary of the evidence given by the Appellant:-

- 16.1. In November 2022, the Appellant purchased the vehicle in the UK, for the sum of £3,700. When purchased, the vehicle had damage to the rear which the Appellant repaired over a number of months. The Appellant made reference to various receipts submitted as documentary evidence of costs incurred.
- 16.2. On 5 January 2023, the Appellant presented the vehicle to the NCTS and paid VRT in full in the sum of €5,687.20, following assessment of the vehicle. The Appellant then appealed the OMSP assigned to the vehicle as he was of the view that it was not correct, having regard to the damage to the vehicle and the cost of repairs that he would have to incur in relation to the vehicle.
- 16.3. The appeal resulted in a 20% reduction and a refund in the sum of €1,057, plus a late registration fee of €213. The Appellant is of the view that the OMSP assigned to the vehicle remains in excess of what he believes the vehicle would sell for on the open market, having regard to the damage and costs incurred up to July 2023. Therefore, the Appellant appealed to the Commission.
- 16.4. The Appellant states that he understands from someone he met that they registered a similar vehicle, which was a 2018 vehicle, and the OMSP assigned was less. The Appellant queries how the OMSP is calculated if this is to occur. The Appellant listed the repairs carried out to the vehicle and the associated costs with reference to the documents submitted.
- 16.5. The Appellant gave evidence that he purchased the vehicle online and did not have sight of the vehicle prior to purchase. The Appellant states that he understood that the only damage to repair was to the rear door, but that in fact, there was considerably more repairs required once he took possession of the vehicle. The Appellant testified that it was both himself and his friend who purchased the parts for the vehicle and arranged the repairs with the various garages.

Respondent's submissions

17. The Commissioner sets out hereunder a summary of the submissions made by the Respondent:-

- 17.1. The OMSP is the price, inclusive of all taxes and duties, which in the opinion of the Respondent would fetch on a first arm's length, retail sale in the open market in the State. Reference was made to section 133(2)(a) of the Finance Act 1992.
- 17.2. This is an appeal against the valuation, known as the OSMP, applied by the Respondent, to a vehicle imported by the Appellant. At the time of registration on 5 January 2023, the Respondent valued the vehicle at €17,610.
- 17.3. Following a first stage appeal by the Appellant, the OSMP was reduced by 20% to €14,088, where proof was submitted confirming the vehicle was classed as a Category S write-off in the UK.
- 17.4. The reduction in the OMSP resulted in a refund of €1,057 for VRT being issued to the Appellant, in addition to a refund of a late fee of €213.
- 17.5. The Appellant is not satisfied with the reduced OMSP of €14,088 and states that the vehicle requires a lot of work and is not road worthy.
- 17.6. When the vehicle was presented to the NCTS, who carry out inspections on vehicles on behalf of Revenue, they marked the condition as "Good" with the handwritten caveat "Back Damage".
- 17.7. On 20 February 2023, the Respondent issued correspondence to the Appellant seeking clarification on the OMSP that he understood should have been placed on the vehicle at the time of registration. This query remains unanswered.
- 17.8. The correspondence also included a request for invoices with further detail to include dates, pricing and vehicle details for works carried out to the vehicle. The receipts submitted are vague and certain receipts were not capable of being identified by the Respondent from its records.
- 17.9. On 27 February 2023, the Appellant responded to the Respondent's query stating that the works are ongoing and the required information will be provided once all work has been completed.
- 17.10. In the absence of the requested information, the Respondent maintains that a 20% reduction, which reflects a Category S write-off, is fair.

Material Facts

18. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:-

- 18.1. The vehicle was imported into the State in November 2022.
- 18.2. The vehicle underwent repairs post being presented for registration at the NCTS on 5 January 2023.
- 18.3. The vehicle was first registered in the State on 5 January 2023 and was assessed as being in “good” condition. However, it was noted that there is “back damage”.
- 18.4. The vehicle was initially assigned an OMSP of €17,610, with the VRT amount of €5,283 being due.
- 18.5. Following a first stage appeal to the Respondent, the Appellant was successful at reducing the OMSP of the vehicle by 20% to €14,088, the lower VRT amount of €4,226 being due, on the basis of the vehicle is classified as a Category S write-off in the UK.

Analysis

19. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at paragraph 22, Charleton J. stated

“The burden of proof in this appeal 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”.

20. The Commissioner also considers it useful herein, to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute...”

21. The central issue to be determined is the correct OMSP for this vehicle, namely how much would this vehicle likely sell for on the open market in the State.
22. All vehicles are subject to VRT on first registration in the State. The OMSP of a vehicle is determined in accordance with section 133 of the Finance Act 1992, as amended i.e. “*on the price, inclusive of all taxes and duties, which, in the opinion of the Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length*

sale thereof in the State.” In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.

23. In November 2022, the Appellant imported the vehicle into the State from the UK and a charge to VRT arises on the importation of the vehicle. The Appellant purchased the vehicle in the UK and following importation, the vehicle underwent repairs in this jurisdiction. A list of repairs that were carried out to the vehicle and associated costs is submitted by the Appellant. In addition, the Appellant gave evidence as to the repairs to the vehicle and the cost associated with such repairs. The Appellant submitted a number of invoices and receipts as documentary evidence that considerable repairs were required to be carried out to the vehicle at a substantial cost to him. The Respondent challenged the substance of the receipts and the need for the totality of the expenditure submitted. For example, the Respondent queried the cost of reconditioning seatbelts and the non descriptive nature of other invoices submitted.

24. The Appellant argues that the OMSP attributed to the vehicle, should have been valued having regard to the fact that it was a damaged vehicle. The Appellant gave evidence that he purchased the vehicle for £3,700 and spent substantial sums carrying out repairs to the vehicle. The Appellant argues that the OMSP is incorrect and that the vehicle could not achieve that selling price, having been crashed previously. The Appellant gave evidence as to the repairs carried out and that had he have known that considerable repairs were required to be carried out, he would not have purchased the vehicle. For example, the Appellant states that when he purchased the vehicle, he understood that all that was required was repairs to the rear, but it transpired that there was additional repairs needed, such as repairs to the chassis, shocks and wheel bearings.

25. In accordance with section 133(1) of the Finance Act, 1992, as amended, an OMSP valuation is concerned with the value the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State, *at the time of the charging of the tax thereon* i.e. at the time of registration. The OMSP of the vehicle for the purposes of calculating the VRT amount must be taken as the value of the vehicle on the day it was registered, which in this appeal was a date which pre-dated the repairs carried out. The Commissioner notes that the vehicle was assessed as being in “good” condition when presented to the NCTS but with “rear damage”. This is consistent with the Appellant's evidence. Nevertheless, the Appellant has not submitted any evidence to displace the Respondent's assessment of the OMSP nor did the Appellant give evidence as to the value he would ascribe to the vehicle at the time of registration in the State on 5 January 2023. The OSMP of a vehicle

cannot be assessed with reference to the cost of works carried out to a vehicle, but rather is assessed having regard to the condition of the vehicle at the time of presentation for registration in the State, which herein was “good” condition with the caveat “back damage”.

26. As set out above, the burden of proof that a charge to tax is not payable rests on the taxpayer. The Commissioner has considered the additional evidence furnished by the Appellant, namely various receipts and the Respondent’s response to the receipts. The Commissioner is satisfied that the Appellant has not furnished sufficient evidence to support his contention that the OMSP of the vehicle should be revised further. As stated, no information was furnished to the Commissioner in relation to the selling price of comparable vehicles on the market at that time and/or what price was achieved in a sale of a comparable vehicle. The anecdotal evidence from the Appellant that a man told him he achieved an OMSP less than what was assigned to the Appellant, is not evidence that the Commissioner can attribute any evidential weight to in support of the Appellant’s appeal. There exists no evidence of any comparable vehicles to illustrate that the OSMP assigned to the vehicle by the Respondent is incorrect.

27. Accordingly for the reasons set out above, the Commissioner finds that the Appellant has not shown that the relevant tax is not payable. Consequently, the Commissioner has no grounds to overturn the valuation assigned by the Respondent. As such, the Commissioner confirms that the correct OMSP has been assigned by the Respondent and therefore the correct VRT has been paid.

Determination

28. Based on a consideration of the evidence and submissions together with a review of the documentation, the Commissioner determines that the correct OMSP has been assigned by the Respondent.

29. The Commissioner appreciates this decision will be disappointing for the Appellant. The Commissioner has every sympathy for the circumstances the Appellant finds himself in, having purchased a vehicle he understood to require limited repairs, which in fact resulted in him having to carry out more repairs to the vehicle than initially intended. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether his legal rights were correctly applied.

30. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

31. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ (5) and section 949AJ (6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ (6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

32. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.


Claire Millrine
Appeal Commissioner
10 October 2023