



BETWEEN/

32TACD2018

NAME REDACTED

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim for repayment of vehicle registration tax ('VRT') in accordance with section 135D of the Finance Act 1992, as amended (hereafter 'FA 1992'), known as the export repayment scheme. On 24 April 2017, the Respondent refused the Appellant's VRT claim for repayment of €901 in accordance with s.135D FA 1992 and the Appellant duly appealed. This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

2. The vehicle the subject of this appeal, is a Peugeot 207, registration **[REDACTED]** (hereafter 'the vehicle').
3. In order to claim a repayment in accordance with section 135D of the Finance Act 1992, a number of conditions must be met including; that the vehicle is a VRT category M1 vehicle, that VRT was paid in full at the time of registration, that the vehicle was examined by a competent person 30 days prior to removal from the State and that the OMSP was not less than €2,000 at the time of examination of the vehicle. All of these conditions were met and complied with.
4. In addition, section 135D(3)(b) FA 1992 requires the claimant to furnish proof that the vehicle has subsequently been registered in another Member State or has been permanently exported

outside the European Union. The only matter in issue in this appeal is whether the claimant furnished proof as part of her repayment claim, that the vehicle was subsequently registered in another Member State in accordance with 135D(3)(b) FA 1992, following the export examination on 27 February 2017.

Legislation

Section 146 of the Finance Act 2001 as amended;

“(1) Except where section 145(3) applies, any person who—

(a) has paid an amount of excise duty,

(b) has received a notice of assessment under section 99A, or is otherwise called upon by the Commissioners to pay an amount of excise duty that, in their opinion, that person is liable to pay, or

(c) has received a repayment of excise duty or has made a claim for such repayment that has been refused,

and is aggrieved by any of the matters referred to in paragraphs (a) to (c), may, subject to subsection (3), in respect of the liability to excise duty concerned or the amount of that liability, or the amount of the repayment or the refusal to repay, appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection”

Section 135D, Finance Act, 1992, as amended - Repayment of amounts of vehicle registration tax on export of certain vehicles.

“(1) The Commissioners may repay to a person an amount calculated in accordance with this section of vehicle registration tax based on the open market selling price of a vehicle which has been removed from the State, where—

(a) the vehicle is a category M1 vehicle,

(b) the vehicle has been registered under section 131 and the vehicle registration tax has been paid,

(c) the vehicle was, immediately prior to being so removed, registered under section 131,



(d) within 30 days prior to being so removed–

(i) the vehicle and any documentation to which paragraph (b) or (c) relates, and

(ii) where applicable, a valid test certificate [within the meaning of the Road Traffic (National Car Test) Regulations 2014 (S.I. No. 322 of 2014)] in respect of the vehicle,

have been examined by a competent person and all relevant matters have been found by that person to be in order,

(e) at the time of examination to which paragraph (d) relates, the open market selling price of the vehicle (being the price to which subsection (2) relates) is not less than €2,000, and

(f) the requirements of subsection (3) have been complied with. s63 FA 20143

[(2) The amount of vehicle registration tax to be repaid shall–

(a) be calculated by reference to the open market selling price (being that price as determined by the Commissioners) of the vehicle at the time of the examination referred to in subsection (1)(d), and

(b) include an amount that is calculated by means of one or more than one formula or other means of calculation as may be prescribed by the Minister by regulations made by him or her under section 141.]

(3) A claim for repayment for an amount of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the Commissioners for that purpose and shall be accompanied by–

(a) documentation to prove to the satisfaction of the Commissioners that the vehicle was removed from the State within 30 days of its examination under this section, and

(b) proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union. [emphasis added]

.(4) The amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of–

(a) the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter, and



(b) an administration charge of [€100].”

Submissions and analysis

5. The relevant legislation, section 135(D)(3)(b) FA 1992, provides;

A claim for repayment for an amount of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the Commissioners for that purpose and shall be accompanied by–

(a) documentation to prove to the satisfaction of the Commissioners that the vehicle was removed from the State within 30 days of its examination under this section, and

(b) proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union. [emphasis added]

6. The Appellant has called into question the fitness for purpose of the export repayment scheme in the circumstances of the within appeal and has questioned the fairness of the legislation. The Appellant stated that, having sold her vehicle to a dealer in Northern Ireland, she anticipated that she would be eligible for a repayment of VRT under the export repayment scheme. However, she submitted that the vehicle was sold to a new owner in the Republic of Ireland and was not registered in another Member State.
7. In her letter dated June 2017 the Appellant stated, *“I am fully aware that I have not provided the registration details by way of proof of the vehicle being registered in another EU Member State”*. Thus the Appellant accepted that she did not satisfy the condition contained in Section 135(3)(b) FA 1992 as she was unable to furnish the relevant documentation. The Appellant submitted that she was unable to do so because of the circumstances of the within appeal.

Conclusion

8. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on a balance of probabilities that the assessments are incorrect, see *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that the taxpayer falls within the





relief or exemption, see *Revenue Commissioners v Doorley* (1933) 1 IR750 and *McGarry v Revenue Commissioners* (2009) ITR 131.

9. The Appellant in this appeal has not been able to demonstrate compliance with all conditions of the export repayment scheme contained in section 135D FA1992 as amended, in particular sub-section 135D(3)(b).
10. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine that the Appellant has failed to furnish proof that the motor vehicle the subject of this appeal, was registered in another Member State following the export examination. As a result, I determine that the Appellant cannot succeed in relation to her claim for repayment.
11. The appeal is hereby determined in accordance with section 949AL TCA 1997.

COMMISSIONER LORNA GALLAGHER

November 2018

