



33TACD2017

NAME REDACTED

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price ('OMSP') in respect of the calculation of a repayment of vehicle registration tax ('VRT') in accordance with the export repayment scheme. 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 TVR Tuscan Coupe, 4.0, registration [REDACTED] (hereafter 'the vehicle').
3. In May 2016, the Appellant appealed the VRT repayment amount calculated by the Respondent in accordance with section 135D of the Finance Act 1992, as amended, with regard to the assigned OMSP of €25,160. On 15/8/2016, the Respondent assigned a revised OMSP of €27,500. The Appellant appeals on grounds that the OMSP of €27,500 is understated. The Appellant contends for an OMSP of €73,284.
4. In order to obtain 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 'A' vehicle, that VRT was paid in full at the time of registration and that the OMSP was not less than €2,000 at the time of examination of the vehicle. All of these



conditions have been met and the only matter in issue in this appeal is the matter of the OMSP assigned.

Legislation

Section 146 of the Finance Act 2001:

"A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law."

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.

(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].

(5) Any repayment of vehicle registration tax under this section shall be to the person named, at the time of the examination referred to in subsection (1)(d), [on the records maintained under section 60 of the Finance Act 1993].

Section 133 Finance Act, 1992, as amended:

(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.

(2)(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.

(2)(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.

Submissions and analysis

5. While the Respondent assigned an OMSP of €27,500 to the vehicle, the Appellant contended for an OMSP of €73,284.
6. The comparator vehicle valuations furnished on behalf of the Appellant did not support a valuation of €73,284 but cited valuations of Stg£37,995 in relation to two convertible models and Stg£45,500 in relation to a vehicle with significantly lower mileage than the Appellant's vehicle. The Appellant's estimate of €73,284 added on, as a specific item, the VRT of €26,382 paid on registration. This method of calculation is erroneous.
7. In the document titled '*VRT Export Appeals Worksheet*' furnished by the Respondent and dated 15/8/2016, the Respondent relied on two valuations, one in the sum of €30,000 and one in the sum of €25,000 and took an average of these valuations in order to assign an OMSP of €27,500.
8. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant. See *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC





49. While the Appellant contended that the OMSP of €27,500 was understated, the Appellant failed to adduce sufficient evidence in support of this contention and thus failed to discharge the burden of proof.

9. In the circumstances, I am satisfied that the OMSP of €27,500 shall stand and that it is a fair and reasonable OMSP in relation to the vehicle, the subject of this appeal.

Conclusion

10. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €27,500 to be a fair and reasonable OMSP in relation to the vehicle. The appeal is hereby determined in accordance with section 949AL TCA 1997.

APPEAL COMMISSIONER

December 2017

