



Ref: 100TACD2020

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 Vehicle Registration Tax ('VRT'). On agreement of the parties 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 matter of this appeal, is a Skoda Octavia 1U, registration REDACTED. An OMSP of €5,133 was originally assigned at the time of registration resulting in a VRT charge of €975. Mileage at the time of importation was 219,045 miles.

3. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was revised downwards to €4,200 by the Revenue Commissioners. This was notified to the Appellant by letter dated 6 November 2017. The reduced OMSP gave rise to a refund to the Appellant of €177. The Appellant was aggrieved by the determination of the Revenue Commissioners and further

appealed to the Appeal Commissioners. A notice of appeal was received by the Tax Appeals Commission on 9 November 2017.

Legislation

Section 145 of the Finance Act 2001:

(3) Any person who is the subject of a decision of the Commissioners in relation to any of the following matters [and who is aggrieved by the decision] may appeal to the Commissioners against that decision:

(a) the registration of a vehicle, or the amendment of an entry in the register referred to in section 131 of the Finance Act 1992;

(b) the determination of the open market selling price of a vehicle under [section 133] of the Finance Act 1992;

(c) the granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under [that section];

(d) the liability to vehicle registration tax or the repayment of vehicle registration tax.]

(4) An appeal under this section shall be made in writing and shall set out in detail the grounds of the appeal.

(5) An appeal under this section shall be lodged by the person concerned with the Commissioners within 2 months from the date of the notification by the Commissioners of the decision concerned, or within such longer period as they may, in exceptional cases, allow.]

(6) An appeal shall, subject to subsection (12), be determined by the Commissioners within a period of 30 days from its lodgement with the Commissioners.

(7) The Commissioners may appoint one or more of their officers for the purposes of carrying out their functions under this section but no such officer shall determine an appeal under this section in respect of a decision he or she has made.



(8) The Commissioners shall notify in writing an appellant concerned of their determination of an appeal and the reasons for their determination.

(9) Where the Commissioners determine on appeal that the amount due is less than the amount paid, they shall repay the amount overpaid to the appellant concerned.

(10) Where the Commissioners determine on appeal that the amount due is greater than the amount paid, the appellant concerned shall pay the amount underpaid.

(11) For the purpose of determination of an appeal any goods or vehicles to which the appeal relates are to be produced to the Commissioners for inspection, if so required.

(12) Where an appeal has been lodged but not determined in accordance with subsection (6) there shall be deemed to have been a determination by the Commissioners on the last day of the period of 30 days from the date the appeal was lodged that the appeal was not upheld but such deeming shall cease to have effect if a determination is subsequently made by the Commissioners before a determination is made by the Appeal Commissioners under section 146 in respect of the matter concerned.

(12A) Where a person is required to furnish a return or to pay an amount of vehicle registration tax for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of vehicle registration tax.]

Section 146 of the Finance Act 2001:

(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 (2)

(1A) Any person aggrieved by any of the following matters may appeal the matter 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).



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 all taxes and duties, 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 stands 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 that model and specification or a vehicle of a similar type and character is being offered for sale in the State while such price stands declared, the open market selling price may be determined from time to time by the Commissioners for the purposes of this section.

(d) Where a manufacturer or sole wholesale distributor fails to make a declaration under paragraph (a) or to make it in the prescribed manner, the open market selling price of the vehicle concerned may be determined [from time to time]⁴⁷ 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

4. The Appellant contends that the OMSP placed on the vehicle of €4,200 was overstated. The Appellant submits that due to the very high mileage on the vehicle, the fact that it was previously used as a taxi and additionally considering the poor condition of the vehicle, that the vehicle could not reasonably obtain €4,200 in a sale on the open market. The Appellant contends that the correct OMSP of the vehicle is in the region of €2,000.

5. The Appellant submits that the vehicle the subject of the appeal is a Skoda Octavia 1U. The Appellant further submits that it is his belief that the Respondent has used the Skoda Octavia 1Z model as a comparator vehicle in arriving at their valuation for the vehicle. The Appellant contends that the 1Z is a newer model of the Skoda Octavia which is likely to command a higher sale price. In support of this submission the Appellant has furnished photographs which illustrate the physical differences between the two different models.

6. In support of his appeal the Appellant also provided copies of advertisements of similar vehicles for sale, showing the asking price.

7. In all of the advertisements provided the asking price is less than the OMSP assigned by the Respondent. Three of the advertisements provided are for vehicles which were registered in 2009, the same year of manufacture of the vehicle the subject of the appeal. These three advertisements are for the Octavia 1Z model and all three state that the advertised vehicle has high mileage. One of these advertisements is for a vehicle which was previously used as a taxi, similar to the vehicle the subject of the appeal. The Appellant submitted that advertisements for a 2009 IU Octavia were unavailable.



8. In further support of his appeal the Appellant has submitted photographs of the vehicle which demonstrates that the body and interior of the vehicle had sustained some damage.

9. The Appellant also submitted that a car dealership would not retail an ex taxi with such high mileage to the general public, and the vehicle therefore could not have a retail value of €4,200.

10. In correspondence dated 31 January 2018, the Respondent provided a breakdown in relation to how the OMSP of €4,200 was reached. The calculation was based on two comparator vehicle valuations from car dealership websites advertising vehicles for sale and one comparator vehicle valuation obtained from a publicly available car guide. The average amount of the valuations furnished by the Respondent was €5,868, a figure €1,668 in excess of the OMSP assigned. The Respondent reduced the average valuation by 28.5% to account for the condition of the vehicle, arriving at a reduced OMSP figure of €4,200. The Respondent did not provide copies of the advertisements on which their valuation was based.

Analysis

11. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO₂ emissions. The OMSP of a vehicle is determined in accordance with section 133 Finance Act 1992, as amended i.e. on 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.



12. The OMSP assigned in relation to the vehicle the subject matter of this appeal was €4,200. The Appellant's ground of appeal in relation to the OMSP assigned, is that it is excessive.

13. The average of the three valuations provided by the Appellant for similar vehicles which were registered in 2009 is €1,980.

14. I accept the Appellants point that there are clearly differences between the IU Octavia and the 1Z Octavia. It is not clear to me however to what extent the differences in the models have on the open market selling price of the vehicle.

15. In further support of his appeal the Appellant has provided photographs which demonstrate the condition of the vehicle. I accept that the damage to the vehicle would impact the valuation of the vehicle however it is not clear to me to what extent.

16. The Respondent submits that having received a notice of appeal from the Appellant, the original OMSP of €5,133 was reduced to €4,200 resulting in a refund of €177. To arrive at this value, the Respondent relied on an average valuation of similar vehicles obtained from advertisements and trade guides. The average valuation was €5,868. A reduction of €1,668 was then applied to this value to allow for the condition of the vehicle resulting in the reduced OMSP of €4,200. The Respondent has not provided evidence of the advertisements used in arriving at the reduced OMSP of €4,200.



Conclusion

17. Based on a careful consideration of the submissions and having regard to all of the foregoing I am satisfied that the Appellant has discharged the burden of proof in this appeal and I determine €1,980 to be fair and reasonable OMSP in relation to the vehicle.

18. Accordingly, the appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
2 APRIL 2020

