



**121TACD2020**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

This is an appeal in relation to the refusal by the Respondent of a refund of VAT in relation to the importation of a vessel.

**Background**

In July 2016, the Appellant purchased a cruiser stern sail away craft (hereafter 'the boat' or, where referred 'the vessel') from a supplier in the UK. The Appellant's boat is approximately 18 metres in length and is equipped with a 52hp engine. The Appellant paid VAT of €13,967 at the rate of 23% on the importation of the vessel.

On 18 November 2016, the Appellant made a claim pursuant to statutory instrument no. 262/1980 titled *Value Added Tax (Refund of Tax (No. 12) Order) 1980* (S.I. 262/1980) which provides for a refund of VAT in excess of the reduced rate of 13.5% in certain circumstances and in particular, in relation to caravans, mobile homes or any similar structure designed primarily for residential purposes. The refund claim totalled €5,770. On 9 January 2017, the Respondent refused the claim for refund and the Appellant duly appealed.

In addition to the claim under S.I. 262/1980, the Appellant submitted that the vessel did not

constitute a new means of transport in accordance with section 2 VATCA2010.

On 9 January 2017, the Respondent refused the claim for refund and the Appellant duly appealed.

## Legislation

### Section 2 of the VATCA2010 - Interpretation - general

*“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 1,550 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, sailed for 100 hours or less in the case of vessels or flown for 40 hours or less in the case of aircraft,*

*other than vessels and aircraft of the kind referred to in paragraph 4(2) of Schedule 2;*

### Value Added Tax (Refund of Tax (No. 12) Order) 1980 (SI No. 262 of 1980)

2. (1) In this Order **“the Act”** means the Value Added Tax Act, 1972 (No 22 of 1972).

(2) A reference in this Order to a caravan includes a reference to a mobile home or any similar structure designed primarily for residential purposes.

3. A person who establishes to the satisfaction of the Revenue Commissioners that he has borne or paid tax in relation to the supply to or importation by him of a caravan and who fulfils to the satisfaction of the said Commissioners the conditions which are specified in paragraph 4 of this Order shall be entitled to be repaid so much of such tax as is specified in paragraph 5 of this Order.



## **Submissions in brief**

### *Mobile home or any similar structure*

The Appellant claimed a repayment on the basis that the boat was her home and permanent residence. The Appellant submitted that the boat was a '*similar structure*' to a caravan or mobile home for the purposes of the Value Added Tax (Refund of Tax (No. 12) Order) 1980.

The Respondent did not accept that the Appellant's boat was a '*similar structure*' to a mobile home or a caravan as submitted. The Respondent contended that a seaworthy vessel equipped with a 52hp engine capable of the transportation of persons was incomparable to a caravan or mobile home and could not be regarded as a '*similar structure*' for the purposes of the statutory instrument.

### *New means of transport*

The Appellant contended that her boat was not '*intended for the transport of persons or goods*' and was not therefore a '*new means of transport*' pursuant to s.2 VATCA2010.

The Respondent submitted that the Appellant's boat was a self-propelled, seaworthy vessel equipped with a 52hp engine capable of the transportation of persons. The Respondent submitted that the vessel qualified as a new means of transport notwithstanding the residential use to which the vessel was put.

## **EVIDENCE**

Documentation furnished in evidence included *inter alia*;

Diagrams and photographs of the vessel, form VAT 62 claim form, invoice, letter from supplier confirming purchase, declaration of value-added tax on the intracommunity acquisition of a new boat and a declaration of conformity pursuant to the Recreational Craft Directive 94/25/EC.



## ANALYSIS

### Mobile home or any similar structure

On 18 November 2016, the Appellant made a claim for a refund of VAT in the sum of €5,770 under statutory instrument no. 262/1980 titled *Value Added Tax (Refund of Tax (No. 12) Order) 1980* (S.I. 262/1980). The Order provides a right to a refund of VAT paid in excess of the reduced rate of 13.5% on the purchase of a caravan. The terms of S.I. 262/1980 provide that the reference to ‘caravan’ therein ‘includes a reference to a mobile home or any similar structure designed primarily for residential purposes’.

[emphasis added]

The parties accepted that the vessel was a self-propelled seaworthy vessel equipped with a 52hp engine capable of the transportation of persons.

The Appellant submitted that the vessel came within the terms of S.I. 262/1980 on the basis that it constituted a ‘*similar structure*’ to a mobile home or caravan.

The Appellant accepted that her vessel was water based while mobile homes and caravans are situated on land however, the Appellant drew a parallel on the ground that her boat was used as her principal residence and that caravans and mobile homes are also used for residential purposes.

In relation to the fact that the boat was capable of self-propulsion while caravans are not, the Appellant stated that the boat’s engine was used to run electricity for appliances and to deliver the boat to outstations for waste disposal purposes. The Appellant stated that the existence of an engine in her boat was no different to the use of a generator in a mobile home.

The Appellant submitted that she complied with legislative criteria and was entitled to a VAT refund.

### *Statutory interpretation*

The words contained in S.I. 262/1980 are clear and unambiguous and as is well established, the interpretative approach to be applied in such instances is a literal one based on the established authorities including *inter alia*, *Revenue Commissioners v Doorley* [1933] IR 750,



*Inspector of Taxes v Kiernan* [1982] ILRM 13, *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 and *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449.

In particular, in relation to exemption legislation, Kennedy C.J. in the Supreme Court in *Revenue Commissioners v Doorley* [1933] IR 50, stated;

*'I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.'*

Thus, for the Appellant to succeed in her claim for a refund, the Appellant must establish a clear entitlement to relief pursuant to the relevant legislation.

### *Ejusdem generis*

The proper approach to interpretation in relation to the statutory words '*..mobile home or any similar structure...*' requires the application of the *ejusdem generis* rule.

In *Cronin (Inspector of Taxes) v Lunham Brothers III* ITR 363, Carroll J. in the High Court described the rule as follows;

*'The ejusdem generis rule as applied to the interpretation of statutes means that where a general word follows particular and specific words of the same nature as itself, it takes its meaning from them and is presumed to be restricted to the same genus as those words. The rule applies to general words following words which are less general.'*

In *Irish Fertiliser Industries Ltd. v Commissioner of Valuation*, unreported HC, 31 July 2002, the statement of Cross on *Statutory Interpretation* was quoted with approval as follows;



*'Where words are found, following an enumeration of persons or things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof, their construction should be constricted to things of that class or category, unless it is reasonably clear from the context or the general scope and purview of the Act that Parliament intended that they should be given a broader signification.'*

In effect, if a statutory provision includes a broad term such as *'any similar structure'* and is preceded by more restrictive terms i.e. *'mobile home'* and *'caravan'*, it should be interpreted in terms of those preceding examples.

The Appellant contended that the words *'..any similar structure...'* should be interpreted to include her boat on the basis that neither the Appellant's boat nor caravans nor mobile homes are permanently fixed to a specific location, that they are each used for residential purposes and that they are each capable of use for recreational purposes. The Appellant also submitted that similar materials can be used in the construction of boats, caravans and mobile homes.

In terms of differences, the Respondent noted the following;

- The Appellant's boat is seaworthy, it is moored, it is situated on water. A caravan or mobile home is situated on land
- The Appellant's boat, being equipped with a 52hp engine, is capable of self-propulsion. A caravan is not capable of self-propulsion and is in general towed by a motor vehicle.

The differences which arise are fundamental in nature and character.

Mobile homes can be prefabricated structures or large caravans situated in a particular place and used as living accommodation.

A motor home, as opposed to a caravan or a mobile home, is a large motor vehicle which is designed for residential use while travelling. In the UK case of *Oak Tree Motor Homes Limited v HMRC* [2017] UKUT 0027 the Upper Tier Tribunal considered whether a motor home was a caravan for the purposes of the UK VAT Act 1994. Both First Tier and Upper Tier Tribunals concluded that a motor home was not a caravan as caravans were not vehicles. The case turned principally on the issue of self-propulsion.



I am satisfied that the nature and character of a boat or a vessel which is capable of self-propulsion is wholly distinct from a land-based residence, even where the land-based residence is mobile in nature.

On application of the *ejusdem generis* rule, I am satisfied that the proper interpretation of the words ‘..any similar structure...’ dictates that the words be interpreted in terms of the preceding examples contained in the statute and that the expression ‘..any similar structure...’ refers to a structure similar in nature to a caravan and/or mobile home and does not encompass a self-propelled vessel or boat.

### **Burden of Proof**

The Appellant called upon the Respondent to identify where in the S.I. 262/1980 the definition of ‘similar structure’ is set out and to articulate why her boat does not satisfy the requirements of the legislation. However, in appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 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.*’

### **New means of transport**

Section 2 VATCA2010 defines ‘new means of transport’ to mean ‘ ....., vessels exceeding 7.5 metres in length ..... —

*(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, sailed for 100 hours or less in the case of vessels or flown for 40 hours or less in the case of aircraft,*

*other than vessels and aircraft of the kind referred to in paragraph 4(2) of Schedule 2;*



The matter at issue between the parties was whether the vessel was '*intended for the transport of persons or goods*'.

In the European case of *X v Skatteverket* C-84/09, the Court concluded that in the specific case of the acquisition of a new means of transport within the meaning of Article 2(1)(b)(ii) of Council Directive 2006/112/EC, the determination of the intra-Community nature of the transaction must be made through an overall assessment of all the objective circumstances and the purchaser's intentions provided it is supported by objective evidence, which makes it possible to identify the Member State in which final use of the goods concerned is envisaged.

The parties accepted that the vessel was a self-propelled seaworthy vessel equipped with a 52hp engine capable of the transportation of persons. The Appellant submitted that her intention in relation to the vessel was to reside in it and that the vessel was the Appellant's home and permanent residence. The Appellant submitted that the boat was not intended for the transportation of persons or goods. The Appellant stated that while the boat was equipped with an engine, the engine was used to run electricity for appliances and to deliver the boat to outstations for waste disposal purposes.

Notwithstanding the use of the vessel as the Appellant's permanent residence which is accepted as a matter of fact, the vessel was capable of self-propulsion, being equipped with a 52hp engine and was capable of the transportation of persons. The use of the vessel as a residence in circumstances where it is capable of self-propulsion and thus capable of the transportation of persons means that I cannot conclude that it was not '*intended for the transport of persons or goods*'.

The Appellant stated that there was no specific provision in the VATCA2010 supporting vessels or crafts used solely for residential purposes. The Respondent submitted that enactment of legislation was a matter for the Oireachtas.

## **Determination**

This is an appeal against the refusal of a refund of VAT in the sum of €5,770. On consideration of the evidence, submissions and documentation I determine that the refusal shall stand for the reasons set out above and in particular;





- I am satisfied that the nature and character of a boat or a vessel which is capable of self-propulsion is wholly distinct from a land-based residence, even where the land-based residence is mobile in nature.
- On application of the *ejusdem generis* rule, I am satisfied that the proper interpretation of the words ‘*..any similar structure...*’ dictates that the words be interpreted in terms of the preceding examples contained in the statute and that the expression ‘*..any similar structure...*’ refers to a structure similar in nature to a caravan and/or mobile home and does not encompass a self-propelled vessel or boat.
- Notwithstanding the use of the vessel as the Appellant’s permanent residence which is accepted as a matter of fact, the vessel was capable of self-propulsion, being equipped with a 52hp engine and was capable of the transportation of persons. The use of the vessel as a residence in circumstances where it is capable of self-propulsion and thus capable of the transportation of persons means that I cannot conclude that it was not ‘*intended for the transport of persons or goods*’.

This appeal is hereby determined in accordance with section 949AL TCA 1997

**COMMISSIONER LORNA GALLAGHER**

**12<sup>th</sup> day of March 2020**

**This determination was not appealed pursuant to Part 40A, Chapter 6 of the Taxes Consolidation Act 1997, as amended.**

