



157TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Appeal Commissioners pursuant to s.146 of the Finance Act, 2001 (as amended) against a determination made by the Revenue Commissioners. The appeal concerns the value of a vehicle for the purposes of a charge to vehicle registration tax (VRT), the value being measured as the open market selling price (OMSP) of the vehicle at the time of the charging of the tax.
2. This appeal is adjudicated without a hearing in accordance with s.949U of the Taxes Consolidation Act, 1997.

Facts



3. The vehicle, the subject matter of this appeal, is a 3-litre petrol powered Mercedes E400 AMG SPORT PLUS 2 DR AUTO with CO2 emissions of 176 per Km, first registered in the United Kingdom, now bearing registration number REDACTED. The Appellant registered the vehicle and paid VRT (at 30%) of €7,811 based on an open market selling price (OMSP) of €26,039 determined by the Revenue Commissioners.
4. The Appellant made a first stage appeal to the Revenue Commissioners under s.145 of the Finance Act, 2001 (as amended). On appeal the OMSP was not revised by the Revenue Commissioners and by letter dated 3 October 2019 the Appellant was advised of that decision. The Appellant was aggrieved by the determination of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 21 October 2019.

Legislation

5. Section 146 of the Finance Act, 2001 (as amended) provides:

“(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 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)."*

6. Section 133 of the Finance Act, 1992 (as amended) 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 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 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 enhancement or accessories have not been removed from the vehicle or not sold therewith for the purpose 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

7. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €26,039. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners was excessive.
8. The Appellant submitted that the OMSP of the vehicle, the subject matter of the appeal should be €19,876. The Appellant formed this view on the basis of data contained on the Revenue website for similar cars. The Appellant considered the statistical code 40188508 for the make and model of a car similar to her own car but with a slightly lower CO2 emissions rate. She then applied the CO2 emissions from her car to arrive at an estimated VRT for her car of €5,963.
9. The Appellant submitted the detailed VRT calculator page from the Respondent's website in support of this contention. The VRT calculator as provided describe a vehicle as a Mercedes-Benz 3.5 AMG Line Edition 2 Door Auto with CO2 emissions of 168. The calculator attributes an Irish OMSP of €92,192 depreciated by 78% giving rise to an OMSP of €19,876 and VRT liability of €5,366 determined by the Revenue's own system on 3 September 2019.
10. The Appellant further submitted the vehicle import receipt for the VRT paid on registration of her car from the Respondent's agent the National Car Testing Service (NCT). This document provided details of the actual vehicle registered as a Mercedes-Benz E400 Sport Plus 2 Door Auto and attributes a VRT liability of €7,811. When converted this VRT equates to VRT on an OMSP of €26,039.

11. The Appellant provided advertisements from an Irish website www.donedeal.ie showing Irish advertisements for four Mercedes Benz diesel powered versions of car models similar to hers ranging in price from €19,950 to €23,500. The cars in the advertisements were all 2.1 litre diesel powered versions of a Mercedes Benz similar to the Appellant's car in appearance but not the same model as the Appellant's car.
12. The Appellant submitted that the OMSP valuation process is arbitrary in nature where valuations of unusual cars is not possible as there are no reference points to use as a comparison. The Appellant submitted that her car; a 3-litre petrol version, with high running costs, is expensive to insure and with a high depreciation rate is a rarity on the Irish market because of the CO2 emissions-based road tax.
13. The Appellant further submitted that the valuation of her car should be no more than €20,000 and she expressed a doubt that her insurance company would actually pay the value imposed by the Respondent in the event of the car being written off in an accident.
14. The Respondent submitted the basis on which it calculated the OMSP of €26,039, based on the recommended retail price of the vehicle in the UK, relative to the recommended retail price of a similar lower specification vehicle in the UK which was available for sale in Ireland. This relativity was then applied to the OMSP of the lower specification vehicle for sale in Ireland to calculate the relative OMSP in Ireland. The Tax Appeals Commission (TAC) sought further clarity on this basis of the valuation imposed by the Respondent in the particular circumstances raised by the Appellant in relation to the specific car, the subject of the instant appeal.

15. The Respondent in correspondence with the TAC, explained the background to the OMSP valuation in this particular case but decided to review the valuation further in an effort to resolve the matter in advance of a formal hearing.

16. The Respondent submitted that in reviewing the case in preparation for the TAC appeal, specifically in response to questions raised by the Appeal Commissioner, it was considered appropriate to confirm its own OMSP valuation and employed a specialist valuation consultant to value the vehicle at time of import.

17. The Respondent submitted that the results of its consultant valuation enquiry in which the consultant provided a revised valuation of €23,400 and stated in the report:

“As requested our valuation is based on the vehicle’s date of registration in this state 28 August 1019. The valuation in this case is based on the vehicle detail set out above and our research of the vehicle. Similar vehicles were used when arriving at the OMSP. We note that the vehicle was described as being in good condition with 82,554 kms recorded”.

18. The Respondent submitted the Consultant’s research of the vehicle including confirmation of the vehicle’s UK history and advertisements for three similar vehicles in the UK market with £ sterling prices of £19,700, £14,985 and £18,819 respectively.

19. The Respondent submitted that the revised OMSP of €23,400 is not considered as excessive or other than correct as:

- This is the value that has been ascribed to the vehicle by an independent specialist valuation consultant

- The Appellant has not provided any evidence to suggest that the valuation is incorrect as all examples submitted by the Appellant relate to differing vehicles.

20. The Respondent submitted that it has accepted the revised OMSP placed on the car by the independent valuer and has in fact made a refund of €791 to reflect the lower VRT payable as a result of the reduced OMSP.

Analysis

21. 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 s.133 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.

22. The Appellant has drawn attention to her view that the valuation process for VRT is arbitrary in nature where valuations of unusual cars, is not possible, as there are no reference points to use as a comparison.

23. The determinations that can be made by an Appeal Commissioner are those delineated in s.949AK and s.949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters, which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal

Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.

24. Accordingly, I am satisfied that it would be ultra vires for me to embark upon a consideration of, or to make a finding or determination in relation to, the issue raised by the Appellant in relation to the valuation process. I must therefore decline to consider her view or to make any finding in relation thereto.
25. The circumstances of this case as pointed out by the Appellant, are unusual as the vehicle in question is a 3-litre petrol version of a Mercedes Benz, with high running costs, is expensive to insure, incurs a high depreciation and is a rarity on the Irish market because of the CO2 emissions-based road tax.
26. The car described in the Appellant's submission at 10 above is not an exact match of the car presented for inspection and outlined in the Appellant's submission at 11 above. The examples provided by the Appellant, of cars advertised in the Irish market, as set out in 12 above do not match the Appellant's car.
27. The Respondent initially sought to provide an OMSP, based on the recommended retail price of the vehicle in the UK, relative to the recommended retail price of a similar lower specification vehicle in the UK, which was available for sale in Ireland. This relativity was then applied to the OMSP of the lower specification vehicle for sale in Ireland, to calculate the relative OMSP in Ireland.
28. The independent valuer has researched the actual car and compared it with advertisements of cars that match that of the Appellant's car, in the UK market and

has arrived at an independent valuation of the OMSP of the Appellant's car for the Irish market at the time of registration of the vehicle.

29. In these circumstances, I am satisfied that the independent valuation provided by the Respondent is a fair and reasonable OMSP for the particular vehicle concerned.

30. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [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*".

Determination

31. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I determine €23,400 as the OMSP of the vehicle, the subject matter of the appeal. The Appellant is accordingly entitled to a refund of €791 if not already made to her.

32. This appeal is determined in accordance with s.949AL TCA 1997

CHARLIE PHELAN
APPEAL COMMISSIONER
12 AUGUST 2020