



160TACD2020

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 refusal to make a repayment of vehicle registration tax (VRT) connected with a deletion of an entry in the register of all vehicles maintained by the Revenue Commissioners, in accordance with s.131 of the Finance Act 1992 as amended.
2. The amount of tax involved is €2,160.
3. This appeal is adjudicated with a hearing in accordance with s.949Y of the Taxes Consolidation Act, 1997.



4. The hearing took place on 20 August 2020. With the consent of the parties, the form of the hearing was by remote communication and the Tax Appeals Commission video platform was used. A face to face hearing was not held because of the measures required by the Covid-19 pandemic.

Facts

5. The vehicle, the subject matter of this appeal, was a Hyundai I40 1.7 CRDI Style 5 DR first registered in the United Kingdom, and subsequently registered in Ireland bearing registration number REDACTED. The Appellant registered the vehicle and paid VRT of €2,160 based on an open market selling price (OMSP) determined by the National Car Testing Service (NCT) on behalf of the Revenue Commissioners.
6. The Vehicle was first registered in Ireland on 5 December 2017.
7. The vehicle was destroyed on 16 August 2018 on request and a certificates of destruction and end of life were provided to the Tax Appeal Commission (TAC).
8. The Appellant first sought a repayment of the VRT paid on registration from the Revenue Commissioner on 6 June 2018.
9. The Appellant made a first stage appeal to the Revenue Commissioners under s.145 of the Finance Act, 2001 (as amended). On appeal the decision not to allow a repayment of the VRT paid was not revised by the Revenue Commissioners and by letter dated 11 September 2018, the Appellant was advised of that decision.
10. The Appellant was aggrieved by the determination of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commission against the determination. A Notice of Appeal was received by the Tax Appeals Commission on 10 October 2018.



11. These facts are not in dispute in this appeal.

Legislation

12. 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)."*

13. Section 134(6) of the Finance Act, 1992 (as amended) provides:

"When an entry in the register is deleted and the Commissioners are satisfied that the deletion is warranted by exceptional circumstances which arose within 7 working days after the registration of the vehicle concerned and the vehicle



had not been the subject of a licence under the Act of 1952, they may, subject to such conditions as they may impose, repay the whole or part of the vehicle registration tax paid on the vehicle concerned.”

Submissions

14. The Appellant submitted that he presented the vehicle for inspection and paid the relevant VRT on 5 December 2017.
15. The Appellant submitted that his vehicle broke down on 6 January 2018 and was off the road until its ultimate destruction and end of life in August 2018. In these circumstances he submitted that he should be entitled to a repayment of the initial VRT paid on registration of the vehicle.
16. The Appellant submitted that the vehicle was unlicensed at the time of the break down.
17. The Appellant further submitted in mitigation of the delays in his application for repayment that
 - There was no information provided with his receipt for the payment of the VRT in relation to his right to seek a repayment of VRT in certain circumstances.
 - The time limit of 7 days for an event occurring in exceptional circumstances, giving rise to an entitlement to a repayment of VRT on deletion of a vehicle from the register is unrealistic.
 - The time limit of 21 days imposed for seeking a repayment arising from an exceptional event is also unrealistic.
 - That he had to travel overseas to visit his mother during the early part of 2018 and was consequently unable to make an application in time.



- That he was awaiting an outcome from his mechanic on whether or not the car could be repaired economically.
- That he was awaiting a response from the vendor of the vehicle in the UK concerning the vehicle.
- He further stated that an application for a repayment of the VRT didn't occur to him during the time limit period as he was concerned about getting the vehicle repaired to enable him to get to work.

18. The Respondent submitted that there is no dispute on the facts presented by the Appellant.

19. The Respondent submitted that the application for repayment was unsuccessful as the Appellant did not satisfy the following criteria:

- The exceptional event must have arisen within 7 working days after the registration
- The Application under s.134 Finance Act 1992 as amended, must have been made within 21 days of the registration.
- The vehicle must not have been licenced at the time of the application.

20. The Respondent submitted that the Revenue records show that the vehicle was registered on 5 December 2017 and the application for deletion from the register was received on 21 August 2018.

21. The Respondent acknowledged the mitigating and personal circumstances in the matter but submitted that the legislation governing the eligibility for a repayment of VRT in circumstances where a vehicle is deleted from the register prescribes particular time limits which have not been satisfied by the Appellant.



Analysis

22. The legislation in the matter of making a repayment in the circumstances in this appeal is clear and unambiguous and s.134 (6) of the Finance Act 1992 as amended states:

“When an entry in the register is deleted and the Commissioners are satisfied that the deletion is warranted by exceptional circumstances which arose within 7 days after the registration of the vehicle concerned and the vehicle had not been the subject of a licence under the Act of 1952, they may, subject to such conditions as they may impose, repay the whole or part of the vehicle registration tax paid on the vehicle concerned.”

23. The Revenue Commissioners imposed a time limit of 21 days in which to make an application for repayment under the above legislation.

24. The Appellant must accordingly meet three conditions to attain a repayment in the instant appeal:

- a) The exceptional circumstances must arise within 7 working days of the registration of the vehicle.
- b) The vehicle must not be licenced under the Act of 1952
- c) The applicant for a repayment must make an application for repayment within 21 days.

25. The Appellant has not met all of these conditions and I find that he is not entitled to a repayment of VRT in the amount of €2,160.

26. 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.

27. 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 information provided on the VRT receipt provided on payment of the VRT. I must therefore decline to consider his view or to make any finding in relation thereto.

28. 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

29. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I determine that the Appellant is not





entitled to a refund of €2,160 in relation to the deletion of his vehicle from the register of motor vehicles maintained by Revenue.

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

CHARLIE PHELAN
APPEAL COMMISSIONER
21 AUGUST 2020

