



161TACD2020

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 by the Respondent to permit a remission from, or to make a repayment of Vehicle Registration Tax (VRT) pursuant to S.I. No. 353/1994 - Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994, as amended, on the Appellant's purchase of a Fiat Doblo Dynamic for the use of his late father.
2. This matter comes before the Tax Appeals Commission by way of appeal against a decision of the Respondent's Appeal Officer made on the 29th of May 2018 refusing the Appellant's application for the remission of Vehicle Registration Tax.
3. The amount of tax involved is €690.00
4. On agreement of the parties this appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').



Facts

5. The vehicle, the subject matter of this appeal, is a Fiat Doblo Dynamic first registered in the United Kingdom, and subsequently registered in Ireland bearing registration number REDACTED. The Appellant registered the vehicle and paid VRT of €690 including €90 for late payment based on an open market selling price (OMSP) determined by the National Car Testing Service (NCT) on behalf of the Revenue Commissioners.
6. The Appellant initially sought and failed to receive a remission of the VRT without payment as the vehicle was to be used by his late father who may have been entitled to a remission (or repayment) of the VRT in accordance with the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994, as amended. The Vehicle was subsequently registered in Ireland on 10 August 2018 on payment of the appropriate VRT.
7. The Appellant made a first stage appeal to the Revenue Commissioners in the matter. The Revenue officer nominated to hear such appeals advised the Appellant on 29th May 2018 as follows:

'As your family member passed away before he/she obtained a medical assessment with the Health Service Executive (HSE), no primary medical certificate was obtained, and therefore he/she has not fulfilled the criteria for entrance into the scheme.' [Disabled Drivers and Disabled Passengers Scheme]
8. 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 5 June 2018. The Tax Appeals Commission (TAC) accepted the Appeal as valid on 22 November 2019 following prolonged correspondence between the TAC, Respondent and Appellant.
9. These facts are not in dispute in this appeal.

Legislation





10. S.I. No. 353/1994 [relevant extract]- Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994, as amended.

"4. Without prejudice to Regulation 5, a claim for repayment or remission under these Regulations shall be allowed only where the person who makes the claim, or in connection with whom the claim is made, is in possession of either—

(a) a primary medical certificate duly completed in the form prescribed in the First Schedule as evidence of qualifying disablement, signed, dated and endorsed with the official stamp by the appropriate Director of Community Care and Medical Officer of Health, or

(b) a Board medical certificate duly completed in the form prescribed in the Second Schedule as evidence of qualifying disablement, signed and dated by a member of the Disabled Drivers Medical Board of Appeal:

Provided that compliance with this Regulation may be waived by the Revenue Commissioners in the case of a claim made by a qualifying organisation

5. Any person who is deemed, by virtue of section 92 (3) (b) of the Finance Act, 1989 , to be a person who possesses a primary medical certificate shall be deemed to have satisfied the Revenue Commissioners and the licensing authority concerned that that person is a disabled driver or a disabled passenger as the case may be.

...

8. (1) Where a person satisfies the Revenue Commissioners that that person is a disabled driver and has borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which—

(a) is specially constructed or adapted to take account of that person's disablement,

(b) is purchased by that person,

(c) is registered in the name of that person, and

(d) is fitted with an engine whose capacity is not greater than 2,000 cubic centimetres,



that person shall be entitled to be repaid the said amounts of tax and residual vehicle registration tax, subject to the limit specified in Regulation 9 for the purposes of this Regulation:

Provided that the Revenue Commissioners shall repay residual vehicle registration tax only where the person concerned has purchased the vehicle in question from an authorised person.

(2) Where at the time of registration of a vehicle in the name of a person who satisfies the Revenue Commissioners that that person is a disabled driver and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (d) of paragraph (1), the Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 9 for the purposes of this Regulation.”

Submissions

11. The Appellant submitted that the vehicle was parked outside his property and unused without benefit to him.
12. The Appellant submitted that he wished to transfer the unregistered vehicle to another person who could get the VRT exemption previously applied for by his late father before his death.
13. The Appellant submitted that he purchased the vehicle on the understanding that an exemption to VRT would be available in respect of his father’s use of the vehicle.
14. The Appellant submitted that the extenuating circumstances should not be ignored in permitting the transfer of the vehicle to another person.
15. The Respondent submitted that Relief in accordance with S.I. 353 of 1994 for a disabled passenger may be claimed in one of two ways. It can be claimed by either the disabled passenger in respect of a vehicle purchased by him or her for his or her private transport and to be driven by a third party, or it can be claimed by a family member of the disabled passenger who resides with the passenger, is responsible for their transportation and has purchased the vehicle for that purpose.



16. The Respondent submitted that in addition, in order to qualify for relief, the following criteria apply:

- The passenger with the disability must hold a Primary Medical Certificate or Board Medical Certificate;
- The vehicle may be a new or a used vehicle;
- The vehicle must be purchased by the applicant or by the family member
- The engine capacity of the vehicle must not exceed 6,000 cc;
- The vehicle must be specially constructed or adapted for use by the passenger with the disability. Adaptations must be fixed, permanent and relevant to the person's disability.

17. The Respondent submitted that the VRT was paid by the Appellant on 10 August 2018 and the vehicle has since been sold by him.

18. The Respondent submitted that S.I. 353 of 1994 states:

'Any person who is deemed, by virtue of section 92 (3) (b) of the Finance Act, 1989, to be a person who possesses a primary medical certificate shall be deemed to have satisfied the Revenue Commissioners and the licensing authority concerned that that person is a disabled driver or a disabled passenger as the case may be.'

19. The Respondent submitted that neither the Appellant nor his father had obtained a Primary Medical certificate prior to applying for inclusion in the Disabled Drivers and Disabled Passengers (Tax Concessions) scheme as required under S.I. 353 of 1994.

20. The Respondent submitted that any vehicle in the scheme is required to have a certain level of adaption (this to be certified by a suitably qualified individual), and the Appellant did not proffer this certificate until 1 Aug 2018.

21. The Respondent submitted that it is the Revenue case that as the Appellant did not fulfil either or both of these criteria at the time of his application on 22 May 2018, Revenue determined that he was not eligible for inclusion in the above scheme, and therefore was not entitled to register the vehicle exempt from the payment of VRT.



Analysis

22. The legislation in the matter of reliefs for disabled drivers, with an entitlement to register a vehicle without payment of VRT is clear and unambiguous and is outlined clearly in paragraph (5) of S.I. No 353 of 1994 as follows:

'Any person who is deemed, by virtue of section 92 (3) (b) of the Finance Act, 1989, to be a person who possesses a primary medical certificate shall be deemed to have satisfied the Revenue Commissioners and the licensing authority concerned that that person is a disabled driver or a disabled passenger as the case may be.'

23. Neither the Appellant nor his father had obtained a Primary Medical certificate that might have presented the Appellant with an entitlement to register a vehicle without payment of VRT.

24. Sadly the Appellant's father passed away shortly after the Appellant had purchased the vehicle which he had hoped would provide transport for his father as a disabled passenger and before he had the opportunity to obtain the necessary medical certificate and apply for a remission of the VRT.

25. 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.

26. 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 extenuating circumstances outlined by





him. I must therefore decline to consider his view or to make any finding in relation thereto.

27. 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

28. 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 was not entitled to register the vehicle exempt from the payment of VRT and is accordingly not entitled to a repayment of the VRT paid on the subsequent registration of the vehicle.

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

CHARLIE PHELAN
APPEAL COMMISSIONER
25 AUGUST 2020

