



162TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the refusal by the Respondent to make a refund of residual Vehicle Registration Tax (VRT) arising from the export of a vehicle by the Appellant.
2. 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

3. The vehicle, a Mercedes-Benz S350 bearing registration number **REDACTED**, the subject matter of the appeal, was exported from the State by the Appellant in January 2018.
4. The Appellant presented the vehicle for inspection by the Respondent's agent who concluded that the open market selling price (OMSP) of the vehicle was €2,043 with a residual VRT amount of €735.
5. The vehicle had previously been the subject of a remission or repayment of VRT of €5,430 to a previous owner of the vehicle. That repayment was made in 2004 in accordance with

section 134 of the Finance Act 1992, which provides for a repayment of VRT used in certain circumstances.

6. The Respondent in a letter dated 28 March 2018 refused the Appellant's claim for a refund. The Respondent explained that the legislation governing the VRT Export Scheme provided that the amount of vehicle registration tax calculated for repayment under the scheme shall be reduced to take account of the net amount of any remission or repayment of that tax previously allowed on the vehicle under any other scheme.
7. The Appellant made an unsuccessful first stage appeal to the Respondent who by letter dated 14 May 2018, refused to make the refund. The Appellant did not accept the findings in the matter and appealed to the Tax Appeals Commission on 21 May 2018.

Legislation

8. Section 135D of the Finance Act 1992:

Repayment of amounts of vehicle registration tax on export of certain vehicles.

"135D. (1) The Commissioners may repay to a person an amount calculated in accordance with this section of vehicle registration tax based on the open market selling price of a vehicle which has been removed from the State, where—

- (a) the vehicle is a category M1 vehicle,*
- (b) the vehicle has been registered under section 131 and the vehicle registration tax has been paid,*
- (c) the vehicle was, immediately prior to being so removed, registered under section 131,*
- (d) within 30 days prior to being so removed—*
 - (i) the vehicle and any documentation to which paragraph (b) or (c) relates, and*
 - (ii) where applicable, a valid test certificate ([within the meaning of the Road Traffic (National Car Test) Regulations 2014 (S.I. No. 322 of 2014)]) in respect of the vehicle,*



have been examined by a competent person and all relevant matters have been found by that person to be in order,

(e) at the time of examination to which paragraph (d) relates, the open market selling price of the vehicle (being the price to which subsection (2) relates) is not less than €2,000, and

(f) the requirements of subsection (3) have been complied with.

[(2) The amount of vehicle registration tax to be repaid shall—

(a) be calculated by reference to the open market selling price (being that price as determined by the Commissioners) of the vehicle at the time of the examination referred to in subsection (1)(d), [...]

(b) include an amount that is calculated by means of one or more than one formula or other means of calculation as may be prescribed by the Minister by regulations made by him or her under [section 141, and]]

[(c) notwithstanding paragraph (a), not exceed the amount of vehicle registration tax paid on the registration of the vehicle under section 131.]

(3) A claim for repayment for an amount of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the Commissioners for that purpose and shall be accompanied by—

(a) documentation to prove to the satisfaction of the Commissioners that the vehicle was removed from the State within 30 days of its examination under this section, and

(b) proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union.

(4) The amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of—

(a) the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter, and

(b) an administration charge of [€100].



(5) Any repayment of vehicle registration tax under this section shall be to the person named, at the time of the examination referred to in subsection (1)(d), [on the records maintained under section 60 of the Finance Act 1993].] “

Submissions

Appellant

9. The Appellant submitted that it was unfair to penalise him as he was unaware that the vehicle was the subject of an earlier remission or repayment of VRT under another scheme administered by the Respondent.
10. The Appellant also submitted that the legislation as quoted to him was unfair, unjust, without logic and contrary to EU law.
11. The Appellant submitted that his vehicle was discounted by 98% for the purposes of ascertaining the OMSP and consequently the amount of any VRT refund that would arise on its export.
12. The Appellant further submitted that the original VRT paid on the vehicle in 2004 should have been discounted similarly to arrive at a proportionate amount of the VRT previously remitted or repaid. He concluded that applying a 98% discount to the original VRT paid would permit Revenue to refund him an amount of €526.40 after a proportionate adjustment for the remission or repayment and for an administration fee.

Respondent

13. The Respondent submitted that there is no residual VRT refund due because of the provisions of Section 135D (4) (a) Finance Act 1992 which states that

“the amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of—



the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter”

14. The Respondent further submitted that Vehicle Registration Tax is a national tax and does not contravene Article 28 of the EU treaty. The Respondent elaborated by stating that Article 90- of the EU Treaty allows Member States to charge national taxes provided that there is no discrimination against imported goods in favour of indigenous goods.

Analysis

15. The legislation in the matter is clear and unambiguous in Section 135D (4) (a) Finance Act 1992:

“- the amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of—

the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter”

16. In the instant circumstances where the VRT repayable on export is less than the amount previously remitted or repaid no further repayment can be permitted. The previous owner of the vehicle had obtained a remission or repayment of VRT in the amount of €5,430 in accordance with the primary and secondary legislative provisions of the Finance Act 1992, section 134 (Permanent Reliefs) as amended and Regulation 8 of the Vehicle Registration and Taxation (No. 2) Regulations, 1992 (S.I. No. 437 of 1992).
17. The Appellant did not qualify for a refund of the residual VRT because there is no residual VRT available for repayment after deducting the amount of €5,430.

Conclusion

18. The Appellant, despite the extenuating circumstances outlined, has not satisfied the conditions necessary to qualify for a refund of the residual VRT. I have determined that the Respondent has acted correctly in refusing a repayment of the residual VRT amount following the export of the vehicle from the State.





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

CHARLIE PHELAN

APPEAL COMMISSIONER

12 AUGUST 2020

