Ref: 174TACD2020

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. By agreement of the parties this appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

3. The Appellant made an application for a refund of residual VRT in August 2018, on a vehicle, registration number REDACTED, which he exported from the State. It appears that he sold the vehicle as part of a trade-in to a cross border car dealer. At the time of doing so, it was his intention to claim the refund of residual VRT on the vehicle on the basis that it was being exported to Northern Ireland.

4. To validate the claim, the Respondent requested the UK registration certificate (V5) on 14 September 2018, as documentary evidence that the vehicle had been exported. The Appellant contacted the car dealer, to whom he sold the vehicle, and was advised that they had sold the vehicle to a third party but they would endeavour to obtain the V5 certificate.

5. The outline of relevant facts submitted by the Respondent states that the vehicle was transferred to a third party in the State on 3 September 2018 and that that entity subsequently made a successful claim for a refund under the Export Repayment scheme. It appears that the car dealer had sold it, after the trade-in by the Appellant, to a third party in the State but before the Appellant had completed his claim for recovery of residual VRT relief.

6. In January 2019, the Appellant was provided with a copy of a V5 (UK registration number REDACTED), which he was told was for his vehicle. He immediately submitted this to the Respondent on 23 January 2019. In February 2019 his refund claim was refused on the basis that an export refund had already been paid out by the Respondent to a third party on the vehicle listed on the V5. The Appellant submits that he was not advised by the Respondent at that time that there was *"anything out of line with this V5"*. He submits that it was only in March 2019, after making the first stage VRT appeal that he was advised by the Respondent that the V5 he submitted to the Respondent in January was in fact for a different vehicle.

7. Having made his first stage VRT appeal, on 2 March 2020 the Appellant, through his agent, was advised by the Respondent, that *"On 23 January your client sent a copy of a UK Registration Certificate (V5) to Revenue. The VIN number on the V5 (as presented) is not clear. The Registration number on the V5 is* REDACTED*. The make of the vehicle on the V5 shows* REDACTED*. However the DVLA (Driver Vehicle Licencing Authority – UK) records show the registration number* REDACTED *refers to a* REDACTED *vehicle first registered in 2008. Due to the inconsistencies pointed out above and the legibility of the VIN number on the V5 it is not clear if this V5 is in respect of the vehicle which was owned by your client (registration number* REDACTED*)."*

8. In the same correspondence on 2 March 2020 the Appellant was advised, through his agent, by the Respondent that *"After your client making the application for repayment on 11 August 2018 but before your client submitted the UK V5 bearing the registration number* REDACTED *on 23 January 2019, a second repayment claim was received by Revenue in respect of the vehicle bearing the registration number* REDACTED*. This claim was made by a different entity (than your client). A refund was made as a result of this claim. Therefore, there is no residual VRT on the vehicle* REDACTED*."*

9. The Appellant did not accept the findings of the first stage appeal and appealed, through his agent, to the Tax Appeals Commission on 27 March 2020 on the grounds that the problem with the V5 certificate that he presented in January 2019 *"was never brought to* REDACTED *attention and the first he heard of any issue with the V5 was by letter dated the 2nd March 2020. Had he been made aware at the time then he would have been in a position to rectify that and go back to the new owner in Northern Ireland. However he was never given this opportunity and payment was made to a third party without any reference to his claim."*

Legislation

Section 135D of the Finance Act 1992 **(See Appendix 1)**

Submissions

The Appellant, through his agent, in his Notice of Appeal, submitted the following:

"REDACTED appeal was refused on the grounds that there was no residual VRT remaining on vehicle REDACTED.

A copy of the letter confirming the appeal is attached hereto.

The V5 Certificate that was presented on the 23rd January 2019 appears to have inconsistencies however this V5 was furnished to REDACTED by a third party & the details of same are outside of his control.

Also and most notably this was never brought to REDACTED attention and the first he heard of any issue with the V5 was by your letter dated the 2nd March 2020. Had he been made aware at the time then he would have been in a position to rectify that and go back to the new owner in Northern Ireland. However he was never given this opportunity and payment was made to a third party without any reference to his claim."

In the Appellant's Statement of Case, the Appellant submitted:

"An Outline of the Relevant Facts

A VRT Claim for a car exported to the UK commenced in August 2018. All necessary steps were followed until the final step whereby a copy of the V5 was required to be obtained from the purchaser of the exported car, after they had imported it and registered it accordingly in the UK. The garage which I traded the car into, sold the car (as they do with all their trade-ins) to another garage, who then sold the car on to a separate individual, with whom I had no contact. I needed to wait until this person had re-registered the car in the UK and was reliant on them then sending me a copy of the V5. Despite chasing the garage I traded the car into, this took time and I was advised that I would get a copy of the V5, it was just delayed owing to complications with the DVLA. Eventually, some considerable time later (on 23rd January 2019) I was provided what I was told was a copy of the V5, which I passed to Revenue straight away. At this point, I had no reason to assume anything irregular had occurred or that there was anything out offline with the V5 I had been provided (and I could not check the validity of the V5 provided to me). On 18th February 2019, Revenue replied to reject my claim saying that a VRT refund on that car had already been paid to another entity. I was told nothing else at this point, so had no cause to question the V5 I had been given, nor was I advised at this stage that there was anything out of line with this V5.

It was only during the appeal process in March 2020, that the V5 document I had been provided was questioned? I had no way of knowing that the V5 I was provided was questionable, and passed it on in utmost good faith. Had I been advised that there was a problem with this document, I could have requested a correct version from the purchased of the car I exported. However, at this time, the VRT claim had already been paid to that person, so nothing I could have done would have avoided the above given that the claim had already been paid to the separate entity. It is clear to me that the separate entity was able to use the fact that I needed them to provide me with a copy of the V5 to their advantage, and was then able to delay providing this to me in order to complete their own claim, a claim which I believe should not have been paid. Even had the V5 document provided to me been a perfect match to the car, the refund had already been paid to this separate entity, which should not have occurred.

A copy of the letter confirming the appeal was refused is attached hereto."

The Respondent, in its Statement of Case submitted the following:

"Outline of relevant facts.

The appellant presented a vehicle, registration number REDACTED*, to The National Car Test Service (NCTS) centre for an Export Examination on 11 August 2018.*

REDACTED *made a claim for a repayment of residual VRT on the vehicle, under the VRT Export Scheme, on 13 August 2018. To validate the claim, Revenue requested the UK Registration Certificate (V5), as documentary evidence, on 14 September 2018.*
Records show that the vehicle was transferred to a third party in the State on 3 September 2018. This entity subsequently made a claim for a refund under the Export Repayment Scheme and this was successful.
On 23 January 2019 the appellant sent a copy of a UK Registration Certificate. However, the V5 referred to a different vehicle.
The appellant was informed that there was no refund due as there was already a refund made pertaining to the vehicle and thus no residual VRT on the vehicle.
In the Section 146 appeal the case is made that the appellant was not informed by Revenue that he had submitted a UK Registration Certificate that was incorrect, in January 2019 (The incorrect registration number was on it and the chassis number was ineligible). Revenue did not inform the appellant of this fact as there was no refund due to him at this stage, irrespective of the incorrect documentation, as a refund had been made to a third party.
They also say that a repayment was made to a third party without reference to his (the appellant's) claim. When the third party made the claim, Revenue did not have a valid claim on hands for the vehicle in question, as a valid claim requires proof that the vehicle was exported and that it had been registered in another State. This proof had not been provided by the appellant.
Revenue correctly refused the claim for repayment for reasons outlined above.

Analysis

10. S.135D (1) (d) Finance Act 1992 states that;

(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—

……

(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,

Conclusion

11. The Appellant has not satisfied condition 135D (3) FA 1992 (Appendix 1) necessary to qualify for a refund of the residual VRT.
12. In fact, based on the sequence of events that transpired after he first sold his vehicle, he could never have met those conditions. The Appellant appears to acknowledge this when he states: "*However, at this time, the VRT claim had already been paid to that person, so nothing I could have done would have avoided the above given that the claim had already been paid to the separate entity."*
13. The Appellant may well feel aggrieved by the post-sale sequence of events. However, any remedy, relating to those events, open to the Appellant does not fall within the jurisdiction of the Tax Appeals Commission.
14. I have determined, therefore, that the Respondent has acted correctly in refusing a repayment of the residual VRT amount following the export of the vehicle from the State by the Appellant.
15. This appeal is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

Designated Public Official

25 SEPTEMBER 2020

APPENDIX 1

Legislation

Section 135D – 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.

……..

(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.