



112TACD2021

**BETWEEN**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by the Appellant relating to a refusal of VRT registration (TAN authorisation) pursuant to section 136 Finance Act 1992 as amended. The Appellant appealed to the Commission on 15<sup>th</sup> April 2020.
2. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.
3. The facts are not in dispute in this appeal. The Appellant accepts that he does not have the requisite correct planning permission in writing for the business of selling cars on his premises. The Appellant sought clarification from the requisite County Council but none has been forthcoming. The Commission has written to the Appellant seeking this clarification but no confirmation that the planning matter had been resolved has ensued.

**Facts**

4. The Appellant applied to the Revenue Commissioners (“the Respondent”) for a VRT registration (TAN authorisation) under section 136 Finance Act 1992, as amended in respect the sale of cars at this business premises. The application was refused.
5. The Appellant appealed this refusal to the Respondent in accordance with section 145 Finance Act 2001 (as amended). The Respondent refused this appeal. The refusal was notified to the Appellant by the Respondent by letter dated 20th March 2020. The Appellant consequently appealed against the decision of the Respondent to refuse his appeal to the

Respondent by Notice of Appeal dated 15th April 2020.

6. The Appellant was refused on the basis that there was no planning permission on the premises of his business to undertake car sales. As such, as the Appellant was not legally permitted to use the premises as a car sales area and storage yard, then it was not possible to issue the Appellant with a VRT authorisation, as the legislation requires that the business can be legally carried on at the premises.

### **Legislation**

7. Section 145 (3) of the Finance 2001 provides that:

*“Any person who is the subject of a decision of the Commissioner in relation to any of the following matter[ and who is aggrieved by the decision] may appeal to the Commissioners against that decision:*

- (a) *The registration of a vehicle, or the amendment of an entry in the register referred to in section 131 Finance Act 1992;*
- (b) *The determination of the open market selling price of a vehicle under [section 133] of the Finance Act 1992;*
- (c) *The granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under [that section];*

*....”*

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

*“(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).”*

9. Section 136 Finance Act 1992 - Authorisation of manufacturers, distributors and dealers and periodic payment of duty.

Section 136 states as follows:

*“(1)Notwithstanding the provisions of section 131, a person may be authorised by the Commissioners to manufacture, distribute, deal in, deliver, store, repair or modify unregistered vehicles and to convert registered vehicles.*

*(2)A person shall not be authorised under this section unless he appears to the Commissioners to satisfy such requirements as they may think fit to impose.*

*(3)The Commissioners may, at any time for reasonable cause (which shall be stated to the authorised person) and following such notice as is reasonable in the circumstances, revoke an authorisation made under this section or vary its terms.*

*(4)An authorised person shall not deliver, send out or otherwise make available for use an unregistered vehicle other than to another authorised person.*

*(5)An authorised person shall not deliver, send out or otherwise make available for use a vehicle which, but for compliance with this subsection, would be unregistered, to a person who is not an authorised person without first –*

*(a)declaring the prescribed details of the vehicle to the Commissioners in accordance with section 131, and*

*[(aa) ensuring that the identification mark assigned to it under section 131(5) is displayed on the vehicle in the prescribed manner, and*

*(b)paying vehicle registration tax in respect of the registration of the vehicle.*

*[(6)For the purposes of subsection (5) the Commissioners may, subject to compliance with such conditions for securing payment as they may think fit to impose, permit payment of vehicle registration tax to be deferred to a day not later than the 15th day of the month following that in which the tax is charged.]*

*(7)Notwithstanding the provisions of subsections (4) and (5), the Commissioners may, subject to compliance with such conditions as they may think fit to impose, allow an unregistered vehicle to be delivered by an authorised person for temporary display or exhibition.*

*(8) An unregistered vehicle may not be used in a public place by an authorised person except in the course of the business to which the authorisation under section 136 relates and in accordance with such conditions, restrictions or limitations as may be prescribed].”*

10. Section 14 of the Vehicle Registration and Taxation Regulations 1992 states as follows;

*“(1)An application for an authorisation under section 136 of the Act shall be made in writing to the Commissioners and the applicant shall furnish to the Commissioners, for the purposes of the said section, such information as they may reasonably require in such form (if any) as they may specify.*

*(2)Where a person becomes aware that information furnished by him under paragraph (1) of this Regulation has ceased to be correct or accurate, whether before or after an authorisation under the said section 136 has been granted, the person shall, not later than 7 days thereafter, inform the Commissioners in writing of the cesser.*

*[(3) The Commissioners shall grant an authorisation under section 136 of the Act only to a person who—*

*(a)intends to be actively engaged in a business referred to in subsection (1) of that section at premises occupied by the person and at which such business may legally be carried on,*

*(b)is registered [under section 65 of the Value-Added Tax Consolidation Act 2010] for the purpose of carrying on a business referred to in subsection (1) of that section, and*

*(c)is, at the time of application for the authorisation, the holder of a current tax clearance certificate issued in accordance with section 1095 of the Taxes Consolidation Act 1997.]*

*...).”*

## **Submissions**

11. The Respondent submitted that in order to qualify for a VRT registration a trader must satisfy the conditions specified by the Respondent. One of the conditions to be satisfied to qualify for a VRT registration is that the traders intends to be actively engaged in a relevant business at a premises occupied by the trader and at which such business may be legally accrued on.

12. The Respondent submitted that planning permission had been refused by ██████ County Council for the sale of vehicles at the premises of the Appellant (reference: ██████). The Respondent stated that the Appellant was not legally permitted to use his premises as a "Car Sales area/Storage yard".
13. Hence, the Respondent refused the VRT registration on the basis that the business of selling vehicles could not be legally carried out at the premises of the Appellant.
14. The Appellant submitted that ██████ County Council indicated that they had no objection to the sale of cars at his premises and that the reference to the sale of cars was omitted from the planning application.
15. The Applicant stated that he had previously been issued with a TAN number. He confirmed that he had worked very hard to build up his business and due to its success had been able to employ people. He said a failure to acquire TAN authorisation would jeopardise his business and could lead to him losing his employees.
16. The Appellant submitted that he contributed a good percentage of his business income to the Respondent and the economy in the form of VRT payments which was beneficial to his business and also to the Irish Revenue and the economy. The Appellant was requested to provide information as to the resolution of the planning matter. No information has been provided to the Commission. The Commission must determine matters based on the information available to them within a reasonable time. Following over a year of the submission of his appeal, no information relating to the resolution of the planning permission at the premises has been forthcoming. Therefore, a determination is made based on the information that pertains to this matter at the present time. If the Appellant receives the rectification of the planning permission, no doubt he can apply to the Respondent under a new application for VRT authorisation.

### **Analysis and findings**

17. Section 136 of Finance 1992 provides that an authorised registration may only be granted where the conditions that the Respondents seek to impose are met.
18. Section 14 of the Vehicle Registration and Taxation Regulations 1992 (S.I. No. 318 of 1992) stipulates that one of the conditions to be met to qualify for an authorisation under section 136(1) Finance Act 1992 is that the applicant must intend actively carrying on a business specified at a premises occupied by the person and at which such business may legally be carried on.
19. It is apparent that the Appellant does not meet the criterion to legally carry on the business of selling cars and does not meet the condition specified in section 136(1) Finance Act 1992. The Appellant does not currently have the requisite planning permission to conduct that business at the premises in question.

### **Determination**

20. This Appeal is hereby determined in accordance with section 949 TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



**Marie-Claire Maney**  
**Chairperson**  
**Appeal Commissioner**  
**30<sup>th</sup> June 2021**