AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

122TACD2021

BETWEEN/

THE APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal concerns the imposition of a Value Added Tax (hereinafter referred to as "VAT") charge of €1,371 on the importation of a vehicle from the UK to the State. The Respondent held that the vehicle was liable to VAT, as it had travelled less than 6,000 kilometres at the time it was imported and therefore considered a "new means of transport".

2. The Appellant paid the VAT at the time the vehicle was registered at the National Car Testing Service (hereinafter referred to as "NCTS"). The Appellant subsequently appealed the imposition of the VAT liability to the Tax Appeals Commission.

3. On agreement of the parties, this appeal is determined without an oral hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts

4. The Appellant purchased a BMW F800 R motorbike in the UK, imported it into the State and registered it at the NCTS on 13 November 2018. The vehicle had 3,723 miles on the clock at the time of registration.

5. The Appellant was charged Vehicle Registration Tax of €574 and VAT of €1,371, which he duly paid. The Vehicle Registration Tax charge is not in dispute.

6. The Appellant subsequently queried the VAT charge with the Respondent and was advised that as the vehicle had travelled less than 6,000 kilometres, it was considered a new vehicle, which brought

it within the charge to VAT. The Respondent further advised the Appellant that he may be entitled to obtain a refund of UK VAT charged on the vehicle.

7. The Appellant appealed this decision to the Tax Appeals Commission (hereinafter referred to as "the Commission") in accordance with section 119 of the Consolidated Value-Added Tax Acts 1972-2010 (hereinafter referred to as "VATCA 2010").

Legislation

Section 2 of the VATCA 2010 defines "new means of transport"

"*new means of transport*" *means motorised land vehicles with an engine cylinder capacity exceeding 48 cubic centimetres or a power exceeding 7.2 kilowatts, vessels exceeding 7.5 metres in length and aircraft with a take-off weight exceeding 1,550 kilogrammes—*

(a) which are intended for the transport of persons or goods, and

(b) (i)which in the case of vessels and aircraft were supplied 3 months or less after the date of first entry into service and in the case of land vehicles were supplied 6 months or less after the date of first entry into service, or

(ii)which have travelled 6,000 kilometres or less in the case of land vehicles,……..

……..

Section 3 VATCA 2010 levies a charge to VAT on intra-Community acquisitions

Except as expressly otherwise provided by this Act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions:

(e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State.

Section 24(1)(b) VATCA 2010 defines "intra-Community acquisition" as

new means of transport supplied by a person in a Member State to a person in another Member State and which has been dispatched or transported from the territory of a Member State to the territory of another Member State as a result of being so supplied.

Submissions

8. The Appellant submits that he was advised at the NCTS when the vehicle was first inspected that it was likely he would not have to pay VAT, as the vehicle would be considered a second hand vehicle. When the Appellant returned the next day to finalise the registration he received a bill for €1,371 in VAT.

9. The Appellant submits that the vehicle had 3,723 miles on the clock, which converts to 5,991.5 kilometres. The Appellant accepts that this falls short of the 6,000 kilometres required for the vehicle to be imported VAT free but that had he known that 6,000 kilometres were required on the clock, that he would have driven the extra kilometres prior to presenting the vehicle at the NCTS. He also submits that he sought a deferral of the registration but this was refused.

10. The Appellant states that he was treated poorly without any regard to his "layman's" knowledge of the tax system. He believes that he acted in good faith and is aggrieved at receiving a VAT bill, owing to a misunderstanding. He further states that he did not receive a 'fair and equitable' outcome.

11. The Respondent submits that the vehicle had travelled less than 6,000 kilometres when it was registered in the State and as such was considered a new means of transport and VAT was correctly applied. The Respondent further submits that the vehicle was first registered in the UK in 2015.

12. The Respondent submits that the 6,000 kilometre threshold is an 'absolute'. The Respondent further submits that the VAT charge arises at the time of the intra community acquisition i.e. the date it arrived in the State. The Respondent states that the Appellant purchased the vehicle from [redacted] in Northern Ireland on 15 October 2018 and at that time the vehicle had travelled 2,475 miles, which is 3,983 kilometres. The Respondent contends that a delay in registration of the vehicle would not have had any material effect on the VAT charge. The Respondent furnished a copy of the purchase invoice which shows the mileage on the vehicle was 2,475 miles at that time.

Analysis and findings

13. VAT is charged on the importation of a "new means of transport" into the State. A new means of transport is defined in section 2 of VATCA 2010 as a vehicle that is less than 6 months old *or* has travelled less than 6,000 kilometres.

14. There is no dispute between the parties that the vehicle is more than 6 months' old. The issue centres on the stipulation that the vehicle is considered a "new means of transport" if it has travelled less than 6,000 kilometres when it is imported into the State.

15. The Appellant accepts that the vehicle had travelled less than 6,000 kilometres at the time it was presented for registration. The Appellant seeks an exemption from paying the VAT on the basis that he acted in good faith and was misinformed by the representative at the NCTS who led him to believe there would be no VAT charge.

16. The Commissioner is satisfied that there is a clear requirement in the legislation that a vehicle which has travelled less than 6,000 kilometres at the time of its importation to the State be classified as a new means of transport and is accordingly subject to VAT on importation in this case.

17. The Commissioner notes that in applying section 2 of the VATCA 2010, which defines a new means of transport, the relevant number of kilometres travelled by the vehicle is the total number travelled at the time the vehicle is imported into the State and not the number at the time the vehicle is registered at the NCTS. Therefore, the shortfall is likely much higher than the 8.5 kilometre shortfall the Appellant has calculated in his submissions.

18. The Commissioner has significant sympathy with the Appellant with respect to the unexpected VAT charge incurred on registration of the vehicle. However, the function of the Commissioner is to assess whether there is a charge to tax properly applied in accordance with the relevant statutory provisions and, if so, the amount.

19. While the Appellant asserts that the vehicle fell just short of the required 6,000 kilometres, the fact is that the wording of the provision does not provide for extenuating circumstances whereby the 6,000 kilometre requirement may be overlooked. There is no discretion afforded to the Commissioner in this regard.

20. The Respondent has indicated that the Appellant may be entitled to a tax refund on the VAT paid in the UK.

21. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the tax charged is incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 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.'*

22. The Commissioner is satisfied that the Appellant has not met this burden of proof as he has acknowledged that his motor vehicle had travelled less than 6,000 kilometres at the time of registration and therefore had travelled less than 6,000 kilometres at the time it was imported into the State.

Determination

23. In the circumstances, and based on a review of the facts and a consideration of the submissions and material provided by both parties, the Commissioner determines that the vehicle is a new means of transport and as such VAT of €1,371 was properly imposed.

24. The appeal hereby is determined in accordance with section 949AL 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 Taxes Consolidation Act 1997.

Marie-Claire Maney
Chairperson
Appeal Commissioner
27th July 2021