



38TACD2021

BETWEEN/

[NAME REDACTED] LIMITED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim for repayment of Vehicle Registration Tax ('VRT') in relation to the imposition of VRT pursuant to section 132(3) of the Finance Act 1992, as amended ('FA 1992').

Background

2. The vehicle the subject of this appeal, is a Volkswagen Transporter, registration [redacted]. The vehicle was imported from the UK and was registered in the State on [date redacted] 2018. A declaration of conversion dated 11 December 2017 stamped by a suitably qualified individual was also submitted. The vehicle was manufactured with two seats originally. Three rear seats were subsequently added by way of conversion.
3. On the registration date, VRT at a rate of 13.3 per cent in the sum of €2,889 was charged to the Appellant on the basis that the vehicle was a category B vehicle in accordance with section 132(3)(c) of the Finance Act 1992, as amended ('FA 1992'). The Appellant discharged the VRT and appealed to the Respondent by letter dated [redacted] 2018.

4. The position of the Appellant company was that the company expected to pay VRT in the sum of €200 in accordance with section 132(3)(d)(ii) on the basis that the vehicle was at all stages of manufacture, classified as a category N1 vehicle with less than 4 seats. The declaration of conversion dated 11 December, 2017, provided that the vehicle, originally a category N1 vehicle with two seats, had been converted to a category N1 vehicle containing five seats post manufacture. It was not in dispute that the conversion of the vehicle took place outside the State.
5. In further submissions dated 1 May, 2018, furnished by the Respondent, the Respondent submitted that the UK vehicle registration certificate showed the vehicle as having six seats but that the declaration of conversion furnished by the Appellant accounted for the difference in the particulars and recorded the vehicle as having five seats.
6. The Respondent accepted, by letter dated 19 April 2018, that at all stages of manufacture, the vehicle was classified as a category N1 vehicle with less than four seats however, the Respondent stated that the conversion of the vehicle from a two seater vehicle to a five seater vehicle required a reclassification of the vehicle for VRT purposes to a category B vehicle which resulted in the imposition of VRT at a rate of 13.3 per cent in accordance with 132(3)(c) FA 1992.
7. The Appellant's initial appeal to the Respondent was unsuccessful the Appellant duly appealed.

Legislation

Section 130 of the Finance Act 1992, as amended - Interpretation

In this Chapter, save where the context otherwise requires –

'category B vehicle' means a category N1 vehicle or a motor caravan

'manufacture' means the making or assembling in the State of a vehicle and includes conversion and cognate words shall be construed accordingly

"conversion" means the modification of the vehicle, which, in relation to– (a) a registered vehicle, means the modification of the vehicle in such manner that any of the particulars



recorded for the purpose of its registration are altered, (b) an unregistered vehicle, means the modification of the vehicle in such manner that any of the particulars recorded for the purpose of its type-approval or, if it has been registered previously in another jurisdiction, for the purpose of the most recent such registration, are altered;

Section 132(3) of the Finance Act 1992, as amended – Charge of Excise Duty

(3) The duty of excise imposed by subsection (1) shall be charged, levied and paid –

(c) in case it is a category B vehicle, at the rate of an amount equal to 13.3 per cent, of the value of the vehicle or €125, whichever is the greater,

...

(d) in case it is –

(i) a category C vehicle, or

(ii) a vehicle that, at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats and has, at any stage of manufacture, a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order,

at the rate of €50, or in case such vehicle is registered on or after 1 May 2011, at the rate of €200

....

Submissions and Analysis

8. The vehicle the subject of this appeal was manufactured in Germany in or about 2014 and was manufactured with two seats. Post manufacture, three rear seats were added. This conversion took place outside the State and prior to registration of the vehicle within the State.
9. Section 132(3)(d)(ii) FA 1992, provides *inter alia*, that where a vehicle is registered on or after 1 May 2011, the duty of excise imposed by subsection (1) of that section shall be charged at the rate of €200 in the case of ‘*a vehicle that, at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats....*’.



10. Section 130 FA 1992, provides: *'In this Chapter, save where the context otherwise requires – 'manufacture' means the making or assembling in the State of a vehicle and includes conversion ...'*
11. The word *'conversion'* is defined in section 130 as: *'the modification of the vehicle, which, in relation to– (a) a registered vehicle, means the modification of the vehicle in such manner that any of the particulars recorded for the purpose of its registration are altered, (b) an unregistered vehicle, means the modification of the vehicle in such manner that any of the particulars recorded for the purpose of its type-approval or, if it has been registered previously in another jurisdiction, for the purpose of the most recent such registration, are altered'*
12. Although the definition of *'manufacture'* in section 130 FA 1992, refers to manufacture within the State, section 130 expressly provides that the definitions therein apply *'in this Chapter, save where the context otherwise requires'*. I am satisfied that section 132(3)(d)(ii) is a context which requires that the word *'manufacture'* be afforded its ordinary and natural meaning. Neither party to this appeal submitted that the word *'manufacture'* in section 132(3)(d)(ii) should be interpreted as relating to manufacture within the State only and the Respondent emphasised the fact that the manufacture of motor vehicles does not take place within the State. (The Respondent stated that some assembly processes are carried out though primarily in relation to motor cycles).
13. As regards section 132(3)(d)(ii), the Respondent did not dispute that at all stages of manufacture, the vehicle was classed as N1 with less than four seats. This is evident from the exchange of correspondence between the parties.
14. By letter dated 19 April 2018, the Respondent wrote to the Appellant, as follows;

'Dear Sirs,

The [location redacted] District has forwarded copies of your appeal submission.

I apologise for the delay in responding to you.

I have reviewed the papers and wish to comment as follows:



There are two aspects for consideration and reply.

(1) It is accepted that at all stages of manufacture, the vehicle was classed as N1 with less than four seats.

(2) The vehicle was converted and the manufactured version was altered from a two seater to a five seater and thereby its value increased.

You presented your vehicle for registration purposes as a five seater vehicle.

I am therefore unable to accept your argument that the vehicle qualified for the €200 flat rate of VRT.'

15. On 20 April 2018, the Appellant responded in the following terms:

'I refer to your letter of 19th April.

Firstly, thank you for confirming that "at all stages of manufacture, the vehicle was classed as N1 with less than four seats". We are perplexed by your follow up statement that you are unable to accept that the vehicle qualifies for the €200 flat rate. It is clear from the legislation that once the van leaves the factory with less than four seats, it qualifies as a Category C vehicle and the €200 flat rate. We therefore, wish to continue with the Appeal.

....

...

We are not aware of any provision in legislation which allows Revenue to apply a higher rate of VRT where a vehicle that has met the above condition is subsequently modified, by the addition of seats in this case. Therefore, in the absence of such a provision, VRT of €200 should apply to this vehicle.'

16. On 26 April 2018, the Respondent replied as follows:

'A vehicle, the subject of a declaration of conversion, requires to be re-classified for VRT for the purpose of applying the appropriate rate.



Thus a vehicle that qualified for the IR£50, €50, €200 VRT rate as a 2 seat vehicle, would attract the 13.3% rate upon a declaration of conversion to a 5 seater, provided Revenue classified the converted vehicle as N1/VRT category B.'

17. While the Respondent did not dispute that at all stages of manufacture the vehicle was classed as a category N1 vehicle with less than four seats and that post manufacture, three rear seats were added, the Respondent's position was that the conversion post manufacture required the Respondent to reclassify the vehicle to a category B vehicle and that this resulted in a charge to VRT of 13.3 per cent, in accordance with section 132(3)(c) FA 1992. At hearing and in its statement of case, the Respondent submitted that the three additional seats when added, changed the manufactured state of the vehicle.
18. Section 132(3)(d)(ii) FA 1992 expressly provides that where a vehicle is registered on or after 1 May 2011, the duty of excise imposed by subsection (1) of that section shall be €200 in the case of '*a vehicle that, at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats....*'.
19. The vehicle the subject of this appeal falls squarely within this provision. The charge to duty imposed in accordance with sub-sections 132(1) and 132(2) FA 1992 arises in relation to the registration of a vehicle or on the making of a declaration of conversion of a vehicle. The rates of charge are set out in subsection 132(3) by vehicle category.
20. Section 132(3)(d)(ii) levies VRT of €200 on vehicles that, at all stages of manufacture are classified as a category N1 vehicle with less than 4 seats. The Respondent accepted that the vehicle the subject of this appeal met the relevant section 132(3)(d)(ii) criteria however, the Respondent contended that the post-manufacture conversion prior to registration required the Respondent to assess the vehicle in its converted state on the registration date. The Respondent, in its submissions dated 1 May 2019, contended that the conversion of the vehicle constituted a stage of manufacture of the vehicle. I do not accept the Respondent's submission in this regard.
21. While the vehicle in this appeal was first presented for registration in its converted state, there is no statutory provision which allows for the re-classification of the vehicle as a category B vehicle as contended by the Respondent.





22. In relation to the vehicle the subject of this appeal, section 132(3)(d)(ii) confines the qualification criteria to a period of time described as '*at all stages of manufacture*'. As the Appellant has satisfied the statutory requirements of section 132(3)(d)(ii) FA 1992, the Appellant is entitled to avail of the lower VRT rate of €200.

Conclusion

23. It is not disputed that the vehicle the subject of this appeal meets the statutory requirements of section 132(3)(d)(ii) FA 1992. The Respondent submitted that the vehicle should be re-classified on the registration date however, the legislation does not provide for such an approach. As a result, I determine that the Appellant is liable to VRT in the sum of €200. It follows that the Appellant is entitled to a repayment of the VRT paid of €2,889, less the sum of €200.

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

COMMISSIONER LORNA GALLAGHER

4th day of January 2021

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination in pursuant to the provisions of Chapter 6 of Part 40A of the TCA 1997, as amended.

