



55TACD2021

BETWEEN/



Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeals Commission as an appeal against the Respondent's decision of the 23rd of November 2017 to refuse to repay Vehicle Registration Tax ("VRT") paid by the Appellant in the amount of €2,966.00.

B. Facts relevant to the Appeal



2. The relevant facts in this appeal were not in dispute and are described hereunder. In the conduct of the hearing, I had the benefit of written Statements of Case provided by both parties, as well as legal submissions made orally.
3. On the 21st of April 2017, the Appellant purchased a [REDACTED] pick-up truck (hereinafter "**the vehicle**") from a motor dealer in the United Kingdom. VRT was duly paid following the importation of the vehicle and it was registered in the State on the 26th of April 2017.
4. It was the Appellant's belief when purchasing the vehicle that it had a mileage of 16,977 miles. This was based on a reading of the vehicle's milometer at the time of purchase. No service record was provided by the vendor despite the Appellant requesting same. The explanation provided by the vendor for the absence of this documentation was that, because of its low mileage, the vehicle had not yet reached its first service.
5. Upon its importation, the vehicle underwent a minor service carried out by the Appellant's local Mitsubishi garage, which uncovered no significant faults. It passed its Commercial Vehicle Roadworthiness Test on the 10th of May 2017 and the car was licensed on or about the 16th of May 2017.
6. On the 13th of September 2017, the Appellant brought the vehicle back to his local garage for a further service. In so doing, he told the garage that there was a problem with the gear change and asked that they check the warranty. After consulting with Mitsubishi Ireland, the garage took a reading from the





vehicle's ECU in order to verify the mileage indicated by the milometer. The ECU reading disclosed that the true mileage at this stage was 53,991 miles. In contrast, the milometer was at this time reading only 30,083 miles.

7. The discovery of the true mileage prompted the Appellant to contact the vendor from whom he had purchased the vehicle. The vendor refunded the Appellant the price he paid on or about the 3rd of November 2017 and the vehicle was returned to the vendor in the United Kingdom.
8. On the 5th of November 2017, the Appellant notified the Respondent of the return and made a claim for a refund of the VRT paid in respect of the registration of the vehicle on the 26th of April 2017.

C. Relevant Legislation

9. Section 131 of the Finance Act 1992, as amended ("**the Act of 1992**") requires the Respondent to establish and maintain a register of all vehicles in the State. In accordance with this function, the Respondent is empowered to delete an entry on the register.

10. Section 132(1) of the Act of 1992 is headed "Charge of Excise Duty" and provides that:-

"Subject to the provisions of this Chapter and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be





called vehicle registration tax, shall be charged, levied and paid at whichever of the rates specified in subsection (3) is appropriate on –

- a.the registration of a vehicle, and*
- b.a declaration under section 131(3).”*

11. Section 134 of the Act of 1992 is headed “Permanent Reliefs” and subsection (6) thereof provides that:-

“When an entry in the register is deleted and the Commissioners are satisfied that the deletion is warranted by exceptional circumstances which arose within 7 working days after the registration of the vehicle concerned and the vehicle had not been the subject of a licence under the Act of 1952, they may, subject to such conditions as they may impose, repay the whole or part of the vehicle registration tax paid on the vehicle concerned.”

12. The Vehicle Registration and Taxation (No. 2) Regulations, 1992 (SI 437/1992) were made by the Respondent on the 31st of December 1992, pursuant to the power conferred upon them by section 141 of the Act of 1992.

13. Regulation 7 thereof prescribes the conditions for the repayment of VRT pursuant to section 134(6) of the Act of 1992 and provides that:-

“A person who seeks the repayment under section 134 (6) of the Act of the tax paid on the registration of a vehicle shall make an application in writing to the Commissioners within 21 days of such registration for the repayment, shall set out in the application the exceptional circumstances





claimed to warrant the repayment and shall furnish to the Commissioners, if so requested by them, proof to the satisfaction of the Commissioners of those circumstances.”

D. Submissions of the Appellant

14. The Appellant submitted that it was the victim of fraud, perpetrated by the person or persons who altered the mileage displayed on the vehicle. It submitted that this constituted exceptional circumstances which warranted a determination by the Tax Appeal Commission that the Respondent erred in refusing to repay the sum of €2,966.00 paid in VRT on 26th April 2017.

E. Submissions of the Respondent

15. The Respondent accepted that it was empowered by section 134(6) of the Act of 1992 to repay VRT. It submitted, however, that its power to do so was expressly limited by the subsection to exceptional circumstances arising “...within 7 days after the registration of the vehicle concerned...”.

16. The Respondent submitted that the fraud perpetrated on the Appellant was the relevant exceptional circumstance for the purposes of section 134(6) in the instant appeal, and this fraud occurred prior to, rather than after, the registration of the vehicle. Moreover, the discovery of the fraud, if that could be characterised as an exceptional circumstance, occurred long after the expiry of the seven-day period.



- 17.** The Respondent also relied on the conditions for repayment of VRT imposed by Regulation 7 of S.I. 437/1992 as a further bar to repayment. By this Regulation, it is a condition for repayment that applications be made within 21 days of registration. As the Appellant did not make its application for repayment until the 5th of November 2017, the Respondent submitted that it fell outside this time-limit.
- 18.** Finally, the Respondent argued that s.134(6) of the Act of 1992 limits repayment to vehicles that have not been licenced under the Finance (Excise Duties) (Vehicles) Act 1952 – *i.e.* where motor tax has not been paid in respect of the vehicle. It was common case between the parties that motor tax had been paid in respect of the vehicle subsequent to its registration in the State.

F. Analysis and Findings

- 19.** The Appellant had the misfortune to purchase a vehicle that had been “clocked”. When it discovered its true history, it demanded and was given a refund by the vendor from whom it made the purchase in the United Kingdom. The vehicle was returned to the United Kingdom thereafter.



20. This appeal concerns the question of whether the Appellant, as a consequence of the clocking, is entitled to the repayment of the VRT that he paid upon its importation to the State. It is well-established that the burden of proof lies on the Appellant to establish that the Respondent erred in its decision refusing repayment.

The exceptional circumstances

21. Section 134(6) of the Act of 1992 gives a broad discretion to the Respondent as to what constitutes exceptional circumstances warranting repayment. However, this discretion is limited to circumstances “...which arose within 7 working days after [emphasis added] the registration of the vehicle concerned...”.

22. I am satisfied that the Respondent’s refusal, in so far as it was based on the clocking having occurred prior to registration, was in accordance with the law and should stand.

23. Moreover, even if the Respondent, in exercising the discretion conferred on it by s.134(6) of the Act of 1992, had formed the view that the discovery of the clocking by the Appellant in or about September 2017 (as distinct from the clocking itself) was an exceptional circumstance that could potentially warrant repayment, this again occurred long after the expiry of the prescribed 7-day period.





The licensing of the vehicle

24. Section 134(6) of the Act of 1992 also requires that a vehicle must not have been the subject of a licence under the Finance (Excise Duties)(Vehicles) Act, 1952. In this instance, the vehicle was so licenced on 16 May 2017. I find this to be a further reason why the decision by the Respondent to refuse repayment was correct and should be upheld.

The time limit under Regulation 7 of SI 437/92

25. Finally, while the above findings are sufficient in themselves to determine the question in this appeal, I find also that the Appellant's application for repayment fell outside the 21 day time-limit specified in Regulation 7 of S.I. 437/92. The use of the words "*shall make*" in Regulation 7 makes it clear that compliance with this time limit is mandatory in nature. The Regulations do not confer any discretion on the Respondent to extend the time limit. This is a further ground for refusal of the Appellant's appeal of the decision of 23rd November 2017.

G. Conclusion

26. While I have considerable sympathy for the Appellant, which found itself the unwitting victim of a vehicle clocking fraud, I am satisfied that the decision of the Respondent of the 23rd of November 2017 refusing the Appellant





repayment of VRT in the amount of €2,966.00 was correct and made in accordance with the law.

27. I therefore determine pursuant to section 949AL(1) of the Taxes Consolidation Act, 1997 as amended that the decision of the Respondent to refuse the Appellant's claim for repayment of VRT shall stand.

MARK O'MAHONY
APPEAL COMMISSIONER
27 January 2021

