



Between

157TACD2022

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**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a determination made by the Revenue Commissioners (“the Respondent”), in relation to a charge to Vehicle Registration Tax (“VRT”) on the importation of a vehicle into the State.
2. The Appellant maintains that the “open market selling price” (“OMSP”) is incorrectly calculated leading to an overpayment of VRT, on the basis that the Appellant has remanufactured the vehicle and carried out a list of repairs to the vehicle.
3. The Appellant lodged a first stage appeal with the VRT Appeals Unit of the Respondent on the grounds that, as the vehicle had been substantially remanufactured, the OMSP and thus the VRT amount was incorrect. The Respondent revised the OSMP in respect of the vehicle, which realised a refund of €938.00.
4. On 21 October 2021, the Appellant duly appealed to the Commission. The appeal proceeded by way of a hearing that took place on 8 September 2022. The Appellant

represented himself at the hearing of his appeal and the Respondent was represented by [REDACTED] of the Respondent.

## **Background**

5. The assessment to VRT concerns a [REDACTED] ("the vehicle"). In or around August 2021, the Appellant purchased the vehicle in the UK, which was damaged at the time of purchase. Subsequently, the Appellant carried out a number of repairs to the vehicle. The vehicle was declared as having first entered this jurisdiction on 31 August 2021, and was registered in Ireland in September 2021, when the Appellant presented the vehicle for registration at the National Car Testing Service ("NCTS") and where an unregistered vehicle inspection was carried out. The VRT for the vehicle was calculated as a percentage of the OMSP of the vehicle.
6. The vehicle was assessed as being in good condition and an OMSP of €18,053 was attributed to the vehicle, resulting in a VRT payment of €5,146, inclusive of late fees, being paid by the Appellant. The vehicle was assigned the registration number [REDACTED].
7. Thereafter, the Appellant lodged a first stage appeal with the VRT Appeals Unit on the basis that the vehicle was a "*Category 'S' Damaged Vehicle*" and substantial repairs had been carried out to the vehicle. On 15 October 2021, the Respondent wrote to the Appellant in relation to his appeal to state that the VRT Appeals unit had revised the OMSP downwards to €14,443, with the lower VRT amount of €3,755 being due. This was a 20% reduction in the OMSP originally determined in respect of the vehicle, which realised a repayment of €938.00 to the Appellant.
8. The Respondent states that the revised OMSP of €14,443 is reasonable and the Appellant has produced no further evidence to support his appeal, such that the OMSP should be revised further.
9. Following the hearing of the appeal, the Appellant was given an opportunity to furnish to the Respondent, further documentation in the form of receipts for payments made in relation to the remanufacture of the vehicle and he did so accordingly. The Respondent considered the various receipts furnished by the Appellant and responded stating that it had considered the receipts, but that it was not in a position to make any further revisions to the OMSP based on what was furnished by the Appellant.

## **Legislation and Guidelines**

10. The legislation relevant to this appeal is as follows:

11. Section 146(1A) of the Finance Act 2001 (as amended), Appeals to Appeals Commissioners, 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).*

12. Section 130 of the Finance Act 1992 (as amended), Interpretation, provides:-

*“mechanically propelled vehicle” means a vehicle that –*

*(d) is capable of achieving vehicle propulsion at the time of registration or at the time of examination by a competent person under section 135D(1)(d), to the satisfaction of the Commissioners.....*

*“Vehicle” – means a mechanically propelled vehicle*

*“Unregistered Vehicle” includes a vehicle –*

*(a) Built up from a chassis, or.....*

13. Section 131 of the Finance Act, 1992 (as amended), Registration of vehicles by Revenue Commissioners, provides:-

*(1) (a) The Commissioners shall establish and maintain a register of all vehicles in the State (in this Chapter referred to subsequently as “the register”).*

*(ba) In respect of a vehicle which is within any particular category of vehicle that is specified by the Commissioners for the purposes of this paragraph or is within any other class of vehicle that is specified by the Commissioners, the Commissioners may, as a condition of registration, require confirmation that such vehicle- (i) is a mechanically propelled vehicle, and..*

*(bb) Where in respect of a vehicle the Commissioners require confirmation for the purposes of paragraph (ba), they shall register the vehicle only on receipt by them of a declaration made by a competent person in such form as may be specified by the Commissioners that the vehicle –*

*(i) is a mechanically propelled vehicle, and*

*(ii) (ii) complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii).*

14. Section 132 of the Finance Act, 1992 (as amended), Charge of excise duty, provides:-

*(1) Subject to the provisions of this Chapter 19 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.....*

15. Section 133 of the Finance Act, 1992 (as amended), Chargeable value, provides:-

*(1) Where the rate of vehicle registration tax charged in relation to a category A vehicle or a category B vehicle is calculated by reference to the value of the vehicle, that value shall be taken to be the open market selling price of the vehicle at the time of the charging of the tax thereon.*

*(2) (a) For a new vehicle on sale in the State which is supplied by a manufacturer or sole wholesale distributor, such manufacturer or distributor shall declare to the*

*Commissioners in the prescribed manner the price, inclusive of vehicle registration tax, which, in his opinion, a vehicle of that model and specification, including any enhancements or accessories fitted or attached thereto or supplied therewith by such manufacturer or distributor, might reasonably be expected to fetch on a first arm's length sale thereof in the open market in the State by retail.*

*(b) A price standing declared for the time being to the Commissioners in accordance with this subsection in relation to a new vehicle shall be deemed to be the open market selling price of each new vehicle of that model and specification.*

*(c) Notwithstanding the provisions of paragraph (b), where a price is declared for a vehicle in accordance with this subsection which, in the opinion of the Commissioners, is higher or lower than the open market selling price at which a vehicle of a similar type and character is being offered for sale in the State at the time of such declaration, the open market selling price may be determined by the Commissioners for the purposes of this section.*

*(3) In this section—*

*“new vehicle” means a vehicle that has not previously been registered or recorded on a permanent basis—*

*(a) in the State under this Chapter or, before 1 January 1993, under any enactment repealed or revoked by section 144A or under any other provision to like effect as this Chapter or any such enactment, or*

*(b) under a corresponding system for maintaining a record for vehicles and their ownership in another state,*

*and where the vehicle has been acquired under general conditions of taxation in force in the domestic market*

*‘open market selling price’ means—*

*(a) in the case of a new vehicle referred to in subsection (2), the price as determined by that subsection,*

*(b) in the case of any other new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, would be determined under*

*subsection (2) in relation to that vehicle if it were on sale in the State following supply by a manufacturer or sole wholesale distributor in the State,*

*(c) in the case of a vehicle other than a new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail and, in arriving at such price—*

*(i) there shall be included in the price, having regard to the model and specification of the vehicle concerned, the value of any enhancements or accessories which at the time of registration are not fitted or attached to the vehicle or sold therewith but which would normally be expected to be fitted or attached thereto or sold therewith unless it is shown to the satisfaction of the Commissioners that, at that time, such enhancements or accessories have not been removed from the vehicle or not sold therewith for the purposes of reducing its open market selling price, and*

*(ii) the value of those enhancements or accessories which would not be taken into account in determining the open market selling price of the vehicle under the provisions of subsection (2) if the vehicle were a new vehicle to which that subsection applied shall be excluded from the price.*

## **Submissions**

### *Appellant*

16. The Appellant gave evidence in relation to his appeal as follows:-

- (i) The vehicle was purchased in the UK and was badly damaged. He mentioned that he carried out a number of repairs to the vehicle including replacing the seatbelts, airbags, dashboard, front doors, ball joints and other areas which had been damaged. He stated that he spent approximately €6,800 on repairs to the vehicle. He made reference to photographs which were submitted with his Notice of Appeal and which he said illustrated how badly damaged the vehicle was.
- (ii) He stated that he purchased the vehicle for £3,000 in the UK and thereafter imported the vehicle into the jurisdiction. He gave evidence that the repairs were carried out prior to presenting the vehicle to the NCTS and that he informed them that it was a crashed/damaged vehicle. He stated that the NCTS representative

informed him that he would have to pay the VRT assigned to the vehicle and then lodge an appeal.

- (iii) He stated that the revised OMSP remains far too high for the condition of the vehicle and that there is no possibility of that vehicle achieving a sale price akin to the OMSP assigned to the vehicle by the Respondent.
- (iv) He mentioned that he had a number of receipts for the repairs that had not been submitted to date, which show amounts that spent on repairing the vehicle. He agreed to furnish those receipts to the Respondent following the hearing of the appeal, in order that the Respondent can consider whether a further revision of the OMSP is appropriate.

#### *Respondent*

17. The Respondent made the following submissions:-

- (i) On presentation to the NCTS, the vehicle was initially assigned an OMSP of €18,053 and the VRT paid was in the sum of €5,146, inclusive of late registration fees.
- (ii) At the first stage appeal process, evidence was presented to show that the vehicle was a category 'S' damaged vehicle. As a result, the OMSP was revised downwards to €14,443, which was a 20% reduction of €3,610, and resulted in a refund of €938, plus the €178 late registration VRT, amounting to a total refund of €1,116.
- (iii) The revised OMSP of €14,443 is reasonable and the Appellant has produced no further evidence to support his case. There have been attempts made to engage with the Appellant to see if the OSMP could be reduced in some way. However, the Appellant did not engage in correspondence.

#### **Material Facts**

18. The Commissioner makes the following material findings of fact:-

- (i) The vehicle was imported into the jurisdiction in August 2021.
- (ii) The vehicle underwent substantial repairs prior to being presented for registration at the NCTS in September 2021.
- (iii) The vehicle was first registered in the jurisdiction in September 2021 and was assessed as being in good condition.

- (iv) The vehicle was initially assigned an OMSP of €18,053, with the VRT amount of €4,693 being due and owing.
- (v) Following an appeal, the Appellant was successful at reducing the OMSP of the vehicle to €14,443, with the lower VRT amount of €3,755 being due and owing, on the basis of the vehicle having undergone substantial repairs.

## Analysis

19. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example 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”.*

20. All vehicles are subject to VRT on first registration in the State. The OMSP of a vehicle is determined in accordance with section 133 of the Finance Act 1992, as amended i.e. “on the price, inclusive of all taxes and duties, which, in the opinion of the Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.” In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.

21. The issue and matter to be determined is the correct OMSP for this vehicle, namely how much would this vehicle likely sell for on the open market in the State.

22. The Appellant imported the vehicle into the State in August 2021 and a charge to VRT arises on the importation of the vehicle. The Appellant purchased the vehicle in the UK and the vehicle underwent substantial repairs prior to registration. A list of repairs that were carried out is submitted by the Appellant and in addition, he gave evidence as to the repairs to the vehicle.

23. The Appellant argues that the OMSP attributed to the vehicle, should have been valued having regard to the fact that it was a damaged vehicle. He gave evidence that he purchased the vehicle for £3,000 and spent in or around €6,800 carrying out repairs to the



vehicle. He argues that the OMSP is incorrect and that the vehicle could not achieve that selling price, having been crashed previously.

24. In accordance with section 133(1) of the Finance Act, 1992, as amended, an OMSP valuation is concerned with the value the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State, *at the time of the charging of the tax thereon* i.e. at the time of registration. The evidence suggests that at least some of the repairs to the vehicle were carried out prior to registering the vehicle, as the vehicle was considered to be in good condition by the NCTS. The OMSP of the vehicle for the purposes of calculating the VRT amount must be taken as the value of the vehicle on the day it was registered, which in this appeal was a date which post-dated the repairs carried out.
25. As set out above, the burden of proof that a charge to tax is not payable rests on the taxpayer. The Commissioner has considered the additional evidence furnished by the Appellant, namely various receipts and the Respondent's response such that the receipts do not bear any references to the vehicle registration number. Moreover, one of the receipts is dated 9 March 2021, some five months prior to the vehicle being purchased by the Appellant.
26. The Commissioner is satisfied that the Appellant has not furnished sufficient evidence to support his contention that the OMSP of the vehicle should be revised further. Accordingly for the reasons set out above, the Commissioner finds that the Appellant has not shown that the relevant tax is not payable. Consequently, the Commissioner has no grounds to overturn the valuation assigned by the Respondent. As such, the Commissioner confirms that the correct OMSP has been assigned by the Respondent and therefore the correct VRT has been paid.

### **Determination**

27. Based on a consideration of the evidence and submissions together with a review of the documentation, the Commissioner determines that the correct OMSP has been assigned by the Respondent.
28. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether his legal rights were correctly applied.
29. This appeal is hereby determined in accordance with Part 40A of the TCA 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason 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.

A handwritten signature in black ink, appearing to read 'Claire Millrine', with a stylized, cursive script.

Claire Millrine  
Appeal Commissioner  
22 September 2022