



**16TACD2022**

**BETWEEN/**



**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondents**

**DETERMINATION**

**Introduction**

1. This is an appeal against the Respondents' refusal to process a repayment of customs duties and import VAT in relation to the purchase and importation of a motor cycle on 24 March, 2021. The amount charged and paid totalled €8,801.50. On 7 April, 2021, the Appellant appealed to the Respondents seeking a repayment of the said sum. The Respondents refused the appeal in correspondence dated 28 April, 2021. The Appellant appealed to the Tax Appeals Commission by notice of appeal dated 4 May, 2021.

**Background**

2. In early 2021, the Appellant decided to purchase a Harley Davidson motor bike. He stated that he could not locate his preferred model in Ireland nor in the EU and as a result, on 24 March, 2021, he purchased and imported a [REDACTED] Harley Davidson motor cycle from the United States.
3. The Appellant stated that prior to purchasing the vehicle, he checked the Revenue website and made his decision to purchase the motor cycle based on information

provided on the website. He stated that he also checked the European Commission TARIC database but that he was unable to find confirmation that second hand motorcycles were subject to additional duty.

4. The Appellant stated that the motor cycle cost €13,500 and that the duties charged (totalling €8,801.50) amounted to approximately 65% of the cost of the vehicle. He submitted that the addition of these charges was not clear to him from the Revenue website. The Appellant's position was that although he was aware that he would be required to pay customs duties and VAT, he did not realise, nor was he adequately notified of the extent of the additional charges and taxes. He stated that the duties and taxes were cost prohibitive and that they far exceeded the amount he had budgeted to spend on the motor vehicle.
5. The Appellant paid the duties and VAT on importation of the vehicle and he appealed to the Respondents. On 28 April, 2021, the Respondents refused the appeal, as follows;

*'Dear Mr. [REDACTED]*

*I refer to your e-mail dated 7<sup>th</sup> April 2021 in connection with the above.*

*....*

*'For customs purposes the EU as a block is regarded as a customs union. Importation therefore means bringing goods into the EU from any country outside of this block for commercial or personal reasons.*

*The act of lodging a customs declaration is the formal process of clearing any such goods and paying the necessary monies that may be due. All goods imported into the EU must be classified with a commodity code. In this case the commodity code declared on your import declaration is 8711500000 with a country of origin declared as US. For Customs Duty and Additional Duties (if relevant) the commodity codes dictate the rates applicable. The country of origin may also have an affect on the rate of duty due.*



*The duty rates are set by the EU in a Regulation known as the Combined Nomenclature. These duty rates which include additional duties are applicable across all 27 Member States. Customs duty rates which include additional duties are applicable across all 27 Member States. Customs duty rates on specific goods being imported into the EU can be checked on TARIC, the integrated tariff of the EU. TARIC provides the exact customs duty rates including all measures affecting the import.*

*.....*

*The relevant section of TARIC under Community Code 8711500000 shows that customs duty of 6% and Additional Duty of 25% are due on goods classified under this code imported from the United States. See Appendix which is the extract from TARIC.*

*The Additional Duty aspect of 25% was introduced on foot of an EU Implementing Regulation 2018/886 dated 20<sup>th</sup> June 2018.*

*In relation to VAT, goods which enter the State from a territory outside the European Union .... are subject to Import VAT. Import VAT is collected with the Customs and Additional duty based on the details contained on the import declaration. In this case the rate of 23% was applicable for VAT.*

*....*

*Based on the information provided to me by you and on the data available on Revenue's website and the EU's TARIC database, I have to conclude that the Customs Duty and Additional Duty levied on your importation was correct.*

*The Customs Duty and Additional Duty rates are EU legislated rates. Therefore, there is no scope for Ireland as an individual Member State to digress from EU legislation.*

*It is also my view that the VAT rate of 23% which is legally due on the importation of goods from outside the EU into the State was also correctly applied in the customs clearance process.*



*Accordingly, for the reasons outline above there are insufficient grounds for me to uphold your appeal.'*

6. The Appellant stated that as an Irish citizen and a PAYE worker of limited means, he requested the charge to customs duty and import VAT be set aside in the interests of fairness.

### **Legislation**

- EU Commission Regulation No. R0886/18 and commodity code 8711500000, European Commission TARIC database,
- Section 46(1)(a) of the VATCA 2010

### **Submissions**

7. The Appellant's position was that he checked the Revenue website and made his decision based on the information provided. He stated that he subsequently checked TARIC, the European Commission database, but that he was unable to find confirmation that second hand motorcycles were subject to additional duty.
8. In his statement of case he stated: *'When I decided to purchase a Harley Davidson bike from the States as I couldn't get the model I wanted here I checked the revenue website and I know the bike was subject to the relevant taxes/duties/VAT and I checked the link to TARIC but nowhere did it mention that ■ year old vehicles was subject to the additional A20 duty and the associated VAT on top of this. The A20 plus VAT added .... onto a €13,500 bike bringing the total overall to €24,000 for a ■ year old bike in my opinion is not justified and I am looking for this to be repaid to me. ....I do not think that this A20 duty was intended to financially hurt a private citizen who bought a ■ year old motorcycle for personal use. Yet I was charged a further €4,427 even though this is not made clear on any website.'*
9. The Respondents' position was that the Respondents' statutory duties and obligations required them to act in accordance with legislation and to impose a charge



to tax. The Respondents submitted that it was not possible for the Respondents to process a repayment otherwise than in accordance with legislation. The Respondents submitted that customs duties and import VAT arose in relation to the importation of the motor cycle and that there were no grounds, legislative or otherwise, for a repayment of taxes and duties arising in the circumstances of this appeal.

10. The Respondents stated that the additional customs duty of 25% on goods imported from the United States and the related additional VAT charges were set out on the Respondents' website and under commodity code 8711500000 on the European Commission TARIC database, viewable online. The Respondents did not accept that the charges to customs duties and VAT were not adequately notified to the Appellant on the Respondents' website.

### **Analysis**

11. The Respondents' position was that under commodity code 8711500000, customs duty of 6% together with additional duty of 25% (pursuant to Commission Implementing Regulation 2018/886) arose on the importation of the vehicle from the United States. In addition, as the vehicle was imported from outside of the European Union, import VAT of 23% arose based on the details contained on the import declaration in accordance with section 46(1)(a) VATCA 2010. The Appellant stated that as an Irish citizen and a PAYE worker of limited means, he requested the charge to customs duty and import VAT be set aside in the interests of fairness.
12. The scope of the jurisdiction of an Appeal Commissioner as discussed in a number of Irish cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners III* ITR 577 is confined to the determination of the amount of tax owing by a taxpayer in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Tax Appeals Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of the repayment claim based on grounds of hardship or unfairness caused by the



imposition of the charge to tax itself, such grounds do not fall within the statutory remit of the TAC and do not fall to be determined as part of this appeal.

13. 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 assessments to tax are 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.'*
14. The onus in this appeal rests on the Appellant and the Appellant in this appeal has not shown that the relevant tax is not payable.

### **Determination**

15. The legislation in this case imposes and a clear and unambiguous charge to tax in accordance with Commission Implementing Regulation 2018/886 and section 46(1)(a) VATCA 2010. I determine that the duties and taxes charged to the Appellant were correct and that the Appellant has not succeeded in establishing a basis for repayment of the relevant taxes and duties. Accordingly, I determine that the Respondents' refusal to process a repayment of customs duty and import VAT in relation to the purchase and importation of the Appellant's motor vehicle, shall stand.
16. This appeal is hereby determined in accordance with s.949AL TCA 1997.



**COMMISSIONER LORNA GALLAGHER**

**14<sup>th</sup> day of December 2021**

**This determination has not been appealed**

