Neutral Citation [2016] IEHC 708

THE HIGH COURT

REVENUE

[2015 No. 268 R]

BETWEEN

EMIL PRODANOV

APPELLANT

AND

THE REVENUE COMMISSIONERS

RESPONDENT

JUDGMENT of Mr. Justice Keane delivered on the 9th day of December 2016

Introduction

1. This is an appeal by way of case stated for the opinion of the High Court pursuant to s. 941 of the Taxes Consolidation Act 1997 ('TCA'). Ronan F. Kelly ('the Appeal Commissioner') has stated the case. It arises from an appeal brought before the Appeal Commissioner by the appellant taxpayer, Dr Emil Prodanov ('Dr Prodanov'). On that appeal, the Appeal Commissioner found for the Revenue Commissioners ('the Commissioners'). Dr Prodanov requested that the Appeal Commissioner state a case for the opinion of the High Court.

2. The central question that Dr Prodanov, a litigant in person, raises is whether, in May 2014, the Commissioners were correct as a matter of law in refusing to classify a vehicle that he owns as a 'motor caravan', and whether, in a decision communicated to Dr. Prodanov on the 10th April 2015, the Appeal Commissioner was correct to uphold that decision.

Background

3. Dr Prodanov purchased a U.S. manufactured 1992 Ford E-150 Econoline passenger van in the United Kingdom on the 21st March 2014 and brought it into the State the next day. He carried out modifications to the vehicle to make it suitable for use as a motor caravan, before presenting it to the National Car Testing Service ('NCTS') for inspection and entry onto the register of vehicles maintained by the Commissioners under s. 131 of the Finance Act 1992 ('the 1992 Act'), as amended. As its name suggests, vehicle registration tax ('VRT') is the tax payable on the registration of a motor vehicle in the State, under s. 132 of the 1992 Act.

4. S. 132 of the 1992 Act operates by dividing vehicles into four categories: A, B, C and D for the purpose of the charge of excise duty. The categories that we are concerned with here are Categories A and B. The various categories are defined in the interpretation provisions of s. 130 of the 1992 Act. Thus, we learn that 'category A vehicle' means 'a category M1 vehicle', and 'category B vehicle' means, amongst other things, 'a motor caravan.'

5. At this point, EU law intervenes because, as s. 130 of the 1992 Act also provides, 'category M1 vehicle' has the same meaning as in Annex II of Directive 2007/46/EC, and 'motor caravan' has the same meaning as in paragraph 5.1 of Annex II of the same Directive. S. 130 explains, perhaps superfluously, that 'Directive 2007/46/EC' means Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 (as amended) establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles.

6. Before turning to consider the relevant provisions of Directive 2007/46/EC, I pause to reflect on the significance of the correct categorisation of Dr Prodanov's vehicle. Under s. 132 of the 1992 Act, a Category A vehicle attracts a VRT excise duty of up to 36% of the value of the vehicle, whereas a Category B vehicle (which, as we have seen, includes a 'motor caravan') attracts a duty of only 13.3% of that value. It follows that the relevant provisions concern the imposition of a tax.

Relevant provisions of EU law

7. The relevant provisions of EU law are to be found in Commission Regulation (EU) No 678/2011 of 14 July 2012 replacing Annex II and amending Annexes IV, IX and XI to Directive 2007/46/EC. We are concerned with the replacement 'Annex II.'

8. Section 1 of Part A of Annex II, as replaced, provides in relevant part as follows:

> '1.1. Category M Motor vehicles designed and constructed primarily for the
>
> carriage of persons and their luggage.
>
> 1.1.1. Category M1 Vehicles of category M, comprising not more than eight
>
> seating positions in addition to the driver's seating position.
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> Vehicles belonging to category M1 shall have no space for standing passengers.
> The number of seating positions may be restricted to one (*i.e.* the driver's seating position).'

9. Under the heading 'Vehicle subcategories', Section 2 of Part A of Annex II provides in relevant part as follows:

> '2.2 Special purpose vehicles
>
> 2.2.1. "*Special purpose vehicle (SPV)"* means a vehicle of category M…having specific technical features in order to perform a function which requires special arrangements and/or equipment..

…

The various types of special purpose vehicle are defined and listed in Section 5.'

10. Section 5 of Part A of Annex II comprises a table under the heading 'Special purpose vehicles.' The entry at point 5.1. in that table is for 'motor caravan.' The following text appears opposite that entry in the column headed 'Definition':

> 'A vehicle of category M with living accommodation space which contains the following equipment as a minimum:
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> (a) seats and table;
>
> (b) sleeping accommodation which may be converted from the seats;
>
> (c) cooking facilities;
>
> (d) storage facilities.
>
> This equipment shall be rigidly fixed to the living compartment.
>
> However, the table may be designed to be easily removable.'

Additional domestic law requirements

11. Under s. 131, sub-s. 1 (b) of the 1992 Act, the Commissioners may enter in the register of vehicles such particulars in relation to a vehicle's ownership and connected matters as they consider appropriate.

12. S. 131, sub-s. 2 (a) of the 1992 Act provides that, for each vehicle that is not a registered vehicle on or after the 1st January 1993, prescribed particulars shall be declared to the Commissioners for the purpose of registration. Since a registered vehicle is plainly one for which there is an entry on the register of vehicles in the State, and since the vehicle we are dealing with appears to have been purchased in the United Kingdom and never previously registered in the State, one would have thought that this would be the applicable provision in Dr Prodanov's case.

13. The Commissioners rely instead upon s. 131, sub-s. 3 (a) of the 1992 Act. It provides that, 'where a registered vehicle is converted, the prescribed particulars shall be declared to the Commissioners for the purpose of entry in the register of particulars in relation to the conversion and the Commissioners may enter in the register such particulars in relation to the conversion as they consider appropriate.' The Commissioners invoke this provision, which appears to me to refer to vehicles previously registered in the State and then converted, in order to rely on s. 131, sub-s. 3 (b) of the 1992 Act, which states that '[t]he owner of a vehicle which has been converted shall deliver to the Commissioners with the declaration under paragraph (a) in relation to the conversion the certificate in relation to the vehicle and the Commisssioners shall enter on the certificate such particulars in relation to the vehicle as they consider appropriate.' As s. 130 of the 1992 Act makes clear, a 'certificate' is a certificate of registration issued under s. 131, sub-s. 5 of the 1992 Act. This would tend to confirm that s. 131, sub-s. (3) is of no application in the present case, since Dr Prodanov could hardly have been expected to deliver a certificate of registration to the Commissioners as part of his efforts to obtain the same certificate from the Minister for the Environment and Local Government under s. 131, sub-s. 5 (a) of the 1992 Act.

14. The Commissioners go on to rely upon the terms of Regulation 7 (2) of the Vehicle Registration and Taxation Regulations 1992 ('the 1992 Regulations'), as amended, whereby, 'where a registered vehicle is converted', certain specified particulars must be provided to the Commissioners, together with 'such other particulars, if any, as the Commissioners may specify.'

15. Once again, this does not seem to me to be a case of the subsequent conversion of a vehicle previously registered but, rather, one of the registration of a vehicle previously converted. Little may turn on the point since, Regulation 7 (1) of the 1992 Regulations, as amended, provides that a declaration under s. 132, sub-s. 2 (a) of the 1992 Act shall be in such form as the Commissioners may specify and shall include certain specified particulars in respect of the vehicle concerned, including 'such other particulars, if any, relating to vehicles as the Commissioners consider necessary for the proper administration of the tax.' One of the specified particulars at Regulation 7 (1) (a) (v) of the 1992 Regulations is:

> 'the vehicle category by reference to the relevant EC type-approval certificate or EC certificate of conformity, or any other documentation specified by the Commissioners for the purpose of confirming the categorisation of vehicles for the purposes of Chapter IV of Part II of the Finance Act 1992.'

16. Chapter IV of Part II of the 1992 Act, as amended, deals with the registration and taxation of vehicles, and is the part of that Act that we are concerned with here.

17. The provisions just described are relevant to the registration of Dr Prodanov's vehicle because, in exercise of the powers conferred on them under the 1992 Regulations, the Commissioners have established specific additional requirements for the registration of converted vehicles previously registered in another jurisdiction. Those requirements are as follows:

> 'In order to have a previously registered, converted vehicle registered in Ireland, the vehicle owner must present [a] **Declaration of Conversion** and related **Suitably Qualified Individual** declaration to the NCTS when declaring a vehicle of this type for registration. This form should be used in cases where the following vehicle characteristics have changed:
>
> • the EU vehicle category,
>
> • the number of seats,

• the number of seatbelt fittings,

• the EU Body Work code,

• the mass in service,

• the number of doors, and/or

• the number of windows.

The owner declaration on the **Declaration of Conversion** form, stamped by the SQI and an accompanying declaration by the SQI on headed paper must accompany the vehicle (in addition to the normal paperwork – original registration certificate etc.) when presented for a pre-registration examination.

…

• In the case of a Motor Caravan, on the day of presenting to NCTS, please email photos showing the full interior and exterior condition of the vehicle…quoting the make, model, VIN and foreign registration number….'

18. The Appeal Commissioner has appended to the case stated a document entitled 'Vehicle Conversions', in the form in which that document appeared on the Commissioners' website in January 2015, setting out those requirements as just described. No doubt, this is in accordance with Regulation 7 (1A) of the 1992 Regulations, as amended, which states that, where the Commissioners specify further particulars under, amongst other provisions, Regulation 7 (1) (a) (vi), they shall publish those required particulars on their website or in such other form as they consider appropriate.

19. SQI is an acronym coined by the Commissioners. It denotes a 'suitably qualified individual.' The Commissioners define an SQI as a person who has:

•an engineering/technical qualification (Level 7 or higher course accredited by Engineers Ireland), or appropriate accreditation with Engineers Ireland as a chartered or associate engineer, or membership or incorporated membership of the Institute of Automotive Engineer Assessors.

• a minimum of 5 years experience of working in a suitable technical environment (preferably, an automotive or engineering environment)

• access to adequate facilities and equipment to carry out a thorough vehicle examination, and

• appropriate professional indemnity insurance.'

20. As the case stated records, Dr Prodanov presented the required vehicle owner's declaration of conversion, dated the 2nd May 2014, and the declaration by an SQI of the same date, to the NCTS. The Appeal Commissioner has also appended to the case stated a series of photographs of the vehicle that Dr Prodanov submitted to the Commissioners in the manner required. There is, thus, no issue but that Dr Prodanov complied with all of the administrative requirements imposed upon him in connection with the registration of his vehicle.

21. Dr Prodanov's declaration of conversion, which the Appeal Commissioner has appended to the case stated, describes the EU category of his vehicle as M1 in both its original and converted configuration. It also states that the vehicle had seven seats in its original configuration and that it retains seven seats after conversion. Under the heading 'General Description', Dr Prodanov has written: 'A home conversion with kitchen and storage to the rear, with a combination hob and sink unit, [and] a full width dinette seat that converts to a large double bed.' In the accompanying SQI declaration, also appended to the case stated, the qualified person concerned has stated, amongst other things, that 'the converted vehicle meets all relevant criteria in Commission Regulation (EU) NO. 678/2011.'

22. It has never been disputed that, as the case stated records, the kitchen and storage facilities at the rear of the converted vehicle can only be accessed by opening the rear doors of the vehicle and are, thus, partitioned within the vehicle from the sleeping and seating area.

23. Equally, it is not in dispute that Dr Prodanov's vehicle contains the seats and table; sleeping accommodation; cooking facilities and storage facilities that are specified as the minimum equipment required to meet the definition of a 'motor caravan' under point 5.1. of Section 5 of Part A of Annex II to Directive 2007/46/EC as substituted by Article 1 of Commission Regulation (EU) No 678/2011. All of that equipment is rigidly fixed to the living compartment, with the exception of the table, which is designed to be easily removable.

The decision of the Appeal Commissioner

24. For reasons that will shortly become evident, not all of the determination of the Appeal Commissioner is relevant for the purposes of the present judgment. The material part of the determination, as recorded in the case stated, is the following:

'11. The definition of Motor Caravan in the Regulation itemizes specific equipment which must be included as a minimum in "*living accommodation space*." I accept that [Dr Prodanov's] converted vehicle has seats and table, sleeping accommodation, cooking facilities, and storage facilities albeit that the cooking and storage facilities can be used only from outside the vehicle. However, I agree with the submission of the [Commissioners] that the inability to use the storage facilities and more particularly the kitchen facilities from within the vehicle leads to a conclusion that the vehicle's living accommodation space does not contain such items as required by the definition; my understanding is that living accommodation space should enable a person or persons to live in that space with the ability to use the equipment specified within the living space to which it is rigidly fixed.

12. [Dr Prodanov's] converted vehicle is not much different to its pre-converted state. It has three rows of seats, all front facing, the rearmost row being capable of use for sleeping by lowering its backrest. It has storage space and kitchen equipment which can only be accessed and used from outside the vehicle. It is not designed to accommodate the movement of a person

or persons in what [Dr Prodanov] claims is its living accommodation space and it has limited headroom such as one finds in, say, a people carrier or larger car. I have concluded that the vehicle being little changed form its pre-conversion state remains a Category A vehicle within the meaning of section 130 Finance Act 1992.'

The question raised

25. As the Appeal Commissioner acknowledges, immediately after his determination of the appeal, Dr Prodanov declared his dissatisfaction with the outcome, as being erroneous in point of law.

26. What followed is a little unusual. Dr Prodanov and the Commissioners could not agree the text of the case stated. That is not surprising in view of Dr Prodanov's position as a litigant in person, doing his best to grapple with the technical requirements of s. 941 of the TCA. As a result, the Appeal Commissioner was obliged to play a more active part in the preparation of the text of the case stated than would normally be the position. That has given rise to an unusual consequence in that, of the four questions that the Appeal Commissioner has raised on Dr Prodanov's behalf to facilitate his appeal, Dr Prodanov – a little indignantly - repudiates the first three. I have no doubt that, in framing the case stated as it stands, the Appeal Commisioner was acting with Dr Prodanov's best interests at heart by attempting to ensure that he was not shut out from raising any of the issues touched upon in his own, more discursive, draft of that document.

27. The consequence is that, by agreement between the parties at the hearing of the appeal, the issues were reduced to a single question, namely, the fourth question identified by the Appeal Commissioner. That question is:

'Did I err in law by concluding on the evidence adduced that the vehicle was not a motor caravan as defined in the Regulation?'

Applicable principles

28. In the revenue case of *Proes v Revenue Commissioners* [1998] 4 I.R. 174, Costello P. set out the following principles that the High Court should apply in considering a case stated (at 182):

'(1) Findings of primary fact by the [Appeal Commissioner] should not be disturbed unless there is no evidence to support them.

(2) Inferences from primary facts are mixed questions of fact and law.

(3) If the [Appeal Commissioner's] conclusions show that he has adopted a wrong view of the law, they should be set aside.

(4) If the [Appeal Commissioner's] conclusions are not based on a mistaken view of the law, they should not be set aside, unless the inferences which he drew were ones which no reasonable judge could draw.

(5) Whilst some evidence will point to one conclusion and other evidence to the opposite, these are essentially matters of degree and the [Appeal Commissioner's] conclusions should not be disturbed, even if the court does not agree with them, unless they are such that a reasonable [Appeal Commissioner] could not have arrived at them or they are based on a mistaken view of the law (see *Ó Cúlacháin v McMullan Brothers Ltd.* [1995] 2 I.R. 271 and *Mara (Insp. of Taxes) v Hummingbird Ltd.* [1982] I.L.R.M. 421).'

The reasons for the determination

29. The Appeal Commissioner's determination that Dr Prodanov's vehicle is not a 'motor caravan' within the meaning of that term under point 5.1. of Section 5 of Part A of Annex II to Directive 2007/46/EC and, by extension, within the meaning of that term under s. 130 of the 1992 Act, was entirely based upon the Appeal Commissioner's construction of that provision and, in particular, the words 'living accommodation space' that the provision contains.

30. Remember, s. 130 of the 1992 Act is clear and unequivocal in stating that 'motor caravan' has the same meaning as in paragraph 5.1 of Annex II of Directive 2007/46/EC (which, no one seriously disputes, is a reference to point 5.1. of Section 5 of Part A of that Annex, as inserted by Commission Regulation (EU) No 678/2011).

31. Unless one posits the novel proposition that the definition in the Directive can have one meaning for the purpose of EU law and a quite separate meaning for the purpose of domestic law when incorporated by express reference into a provision of a domestic law statute, then it is at once plain that the proper interpretation of the term 'motor caravan' is a matter of EU law.

32. What, then, is the basis for the very particular interpretation adopted by the Appeal Commissioner of the definition of 'motor caravan' and, in particular, of the words 'living accommodation space' as part of that definition?

33. The Appeal Commissioner uses the words 'living accommodation space' four times in the two paragraphs of his determination that I have already quoted. It seems to me that he does so in support of three separate propositions. First, he expresses his 'understanding' that living accommodation space should enable a person or persons to live in that space with the ability to use the equipment specified within the living space to which it is rigidly fixed. Here, as Dr Prodanov points out, the Appeal Commissioner is either suggesting a requirement that persons must be able to use the relevant equipment in the vehicle while themselves in the vehicle if the interior of the vehicle is to be considered 'living accommodation space', or he is suggesting a requirement that all persons and relevant equipment have to occupy a single unitary or unpartioned space within the vehicle, if that space is to be considered 'living accommodation space' or a 'living compartment'. It is not clear which. Either way, the relevant proposition would have to result from the proper interpretation of the words 'living accommodation space' as a matter of EU law.

34. Second, the Appeal Commissioner appears to be making a finding of fact that Dr Prodanov's vehicle is not designed to accommodate the movement of persons in its 'living accommodation space' and, hence, cannot be said to contain such space, thereby falling outside the definition of a 'motor caravan.' As Dr Prodanov points out, even the smallest vehicle is designed to

accommodate the movement of persons in its interior, leaving aside the quite separate issue of 'ease of movement.' In its previous incarnation as a category M1 vehicle with seven seats constructed primarily for the carriage of persons and their luggage, persons had to be able to move freely to and from every seat in Dr Prodanov's vehicle. The Appeal Commissioner acknowledges that the only evidence before him comprised the photographs and documentation submitted by Dr. Prodanov. That evidence is equally available to this Court. Accordingly, were it necessary to do so, I would have no hesitation in concluding that there is no evidence to support any finding of primary fact, if such there is, that Dr Prodanov's vehicle is not designed to accommodate the movement of a person or persons within it or within its living accommodation space.

35. Insofar as it may be suggested that, in the relevant part of his determination, the Appeal Commissioner has instead found that the words 'living accommodation space', properly interpreted as a matter of EU law, imply, say, a minimum surface area of unencumbered floor space or a minimum floor to ceiling height in the space concerned, I will return to that proposition later.

36. But before doing so, it is apposite to recall, as Dr Prodanov has done, the old definition of 'motor caravan' as inserted in s. 130 of the 1992 Act, by s. 72 of the Finance Act 1996, as it stood before it was repealed and replaced with the present definition by s. 102 of the Finance Act 2010:

> '"motor caravan" means a vehicle which is shown to the satisfaction of the Commissioners to be designed, constructed or adapted to provide temporary living accommodation which has an interior height of not less than 1.8 metres when measured in such manner as may be approved by the Commissioners and, in respect of which vehicle, such design, construction or adaptation incorporates the following permanently fitted equipment-
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> (a) a sink unit,
>
> (b) cooking equipment of not less than a hob with 2 rings or such other cooking equipment as may be prescribed, and
>
> (c) any other equipment or fittings as may be prescribed.'

37. Comparing the old definition with the present one, it is immediately apparent that the Commissioners previously had a broad discretion to determine that a vehicle was a motor caravan (since it had to be shown to their satisfaction that that was so), subject to threshold requirements including a minimum interior height. Not only is the minimum interior height requirement now gone, but so is the Commissioners' discretion to make the necessary determination as they see fit, along with the application of any domestic law canons of construction to what is now a definition governed by the principles of EU law.

38. Returning to the Appeal Commissioner's determination, the third proposition upon which it appears to rest, in its interpretation and application of the definition of 'motor caravan' and the words 'living accommodation space' in particular, is that Dr Prodanov's vehicle is somehow not sufficiently changed from, or different to, its pre-converted state to come within that definition, as a matter of EU law. Of course, it is beyond dispute but that Dr Prodanov's vehicle is changed – it now has sleeping accommodation, cooking facilities and storage facilities rigidly fixed to it, and a table that is designed to be easily removable. And yet it seems to be suggested that the degree of change involved is not sufficient to come within the definition of 'motor caravan', properly interpreted, whether because the seats remain forward facing; or because the cooking and storage facilities are separately accessible from the rear; or because there is insufficient headroom; or perhaps on some other, more ineffable, basis.

The interpretation of EU law

39. Can any of the foregoing propositions be accepted as informing the definition of 'motor caravan' or the use of the words 'living accommodation space' in that definition, properly interpreted as a matter of EU law? I do not think so. The Appeal Commissioner does not explain the basis for his decision in that regard.

40. Three broad approaches to interpretation can be found in the jurisprudence of what is now the Court of Justice of the European Union ('CJEU'). The first is the literal or textual approach, in respect of which both the principle of 'linguistic equality' and the need for uniform interpretation of EU measures require the Court to have regard to the pluralinguality of EU legislation.

41. The second is the schematic approach, whereby care is taken to ensure that the interpretation of any given provision of EU law makes sense in the overall context of the measure in which it appears – logical schemes are to be preferred over interpretations that are anomalous. I pause here to reflect on how strange it would be, if a technical measure designed to bring clarity, uniformity and predictability to the categorisation and approval of vehicle types in the European Union was as vague around the edges (or, indeed, close to the centre) of its application as the various propositions relied upon by the Appeal Commissioner would suggest.

42. The third approach to interpretation is the teleological or purposive approach. Again, it is difficult to see how that approach, or the particular application of the closely associated principle of effectiveness, or *effet utile*, could result in the interpretation of the definition of 'motor caravan' adopted, without explanation, by the Appeal Commissioner.

43. There are other principles of EU law that strongly militate against the interpretation of the definition of 'motor caravan' accepted by the Appeal Commissioner. The most obvious is the principle of legal certainty. That principle requires that rules imposing financial consequences or obligations on persons must be clear and precise so that those persons may know without ambiguity precisely what their rights and obligations are and may take steps accordingly. In *Traum EOOD*, Case C-492/12, the Court of Justice stated (at para.s 28 and 29):

> 'The principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those subject to them (application in *Plantanol*, C-201/08, EU:C:2009:539, paragraph 46 and the case-law cited).
>
> It must be pointed out that the principle is to be observed all the more strictly in the case of rules liable to entail financial concsequences, in order that those concerned may know precisely the obligations which such rules impose on them. It follows that it is necessary that taxable persons be aware, before concluding a transaction, of their tax obligations (see judgment in *Teleos and Others* EU:C:2007:548, paragraph 48 and the case-law cited).'

44. If it were apparent that the decision of the Appeal Commissioner was based upon the suggestion that there is some principle of EU law that supports, much less requires, the particular interpretation of the definition of 'motor caravan' that he has adopted, serious consideration would have to be given to making a reference for a preliminary ruling on the point under Article 234 of the EC Treaty. However, it seems to me that the error of law in this case is more obviously that the relevant principles of EU law are being disregarded than that they are being misinterpreted or misapplied.

The Commissioners' arguments

45. I have struggled to follow the Commissioners' arguments in opposition to the specific point raised by Dr Prodanov.

46. The first argument they advance is that there is no ambiguity in the definition of 'motor caravan' as provided for in 'Article 5 of Regulation (EU) 678/2011'. I take this to be a reference to point 5.1. of Section 5 of Part A of Annex II of Directive 2007/46/EC, as inserted by Commission Regulation (EU) No 678/2011. In advancing that argument, the Commissioners call in aid the canon of construction under the domestic law of the State known as the literal approach, as that approach applies to the interpretation of a statute of the Oireachtas. In doing so, they cite as authority the decision of Finlay C.J. in *McGrath v McDermott* [1988] IR 258 at 275.

47. While that argument would seem to make more sense if applied to a provision of domestic law, such as s. 130 of the 1992 Act, it is hard to see how it can avail the Commissioners in any event.

48. What is the ordinary and natural meaning of the words used in Directive 2007/46/EC to define a 'motor caravan' and, in particular, of the words 'living accommodation space'? The Commissioners, and the Appeal Commissioner who accepted their argument in that regard, say that those three words are heavily freighted with a very particular meaning. The ordinary and natural meaning of the words 'living accommodation space', they say, is 'a space that should enable a person or persons to live in that space with the ability to use the [specified sleeping, cooking and storage] equipment [rigidly fixed to it] within the living space to which it is rigidly fixed.' For no apparent reason that I can see, they would reject any more simple or obvious meaning of those three words, such as 'a space in which are found the specified sleeping, cooking and storage facilities to enable a person or persons to live.' For my part, I would accept the latter over the former as the natural and ordinary meaning of those words.

49. And even if I had some doubt in that regard, it would be dispelled, oddly, by the very next authority upon which the Commissioners seek to rely, namely, the judgment of Kennedy C.J. in *Revenue Commissioners v Doorley* [1933] 1 IR 750. The Commissioners rely on the passage in the judgment that cites, with evident approval, the following dictum of Lord Russell C.J. (the venerable Lord Russell of Killowen in the County of Down) in *Attorney-General v. Carlton Bank* [1899] 2 Q.B. 158 (at 164):

> 'In the course of argument reference was made on both sides to supposed special canons of construction applicable to Revenue Acts. For my part I do not accept that suggestion. I see no reason why special canons of construction should be applied to any Act of Parliament and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely to give effect to the intention of the Legislature as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed.'

50. The Commissioners do not cite the following passage from later in the same judgment of Kennedy C.J. (at 765), which – to my mind – settles the issue:

> 'The duty of the Court, as it appears to me, is to reject an *a priori* line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, *i.e.*, within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.'

51. Bear in mind that the Commissioners' argument in this case, accepted by the Appeal Commissioner, is that the words 'living accommodation space' amount to words of restriction, preventing Dr Prodanov's vehicle from coming within the definition of 'category B vehicle' for the purpose of s. 130 of the 1992 Act, and thus exposing him to the significantly higher rate of vehicle registration tax applicable to 'category A vehicles' under s. 132 of that Act. Thus, even if I am wrong in my view that Dr Prodanov's vehicle is not excluded from category B by operation of the ordinary and natural meaning of the words of s. 130 of the 1992 Act, properly construed, it cannot avail the Commissioners, since I also take the view that the relegation of that vehicle to Category A has certainly not been effected – and Dr Prodanov's purported liability to pay the higher rate of vehicle registration tax concerned has certainly not been established - in clear and unambiguous terms. Either way, the result is the same.

52. The Commissioners' reliance upon the entry for 'caravan' in the *Collins English Dictionary*, Sixth Edition, adds nothing to the argument they advance. '[A] large enclosed vehicle capable of being pulled by a car and equipped to be lived in' seems to me to support the meaning I have accepted just as much, if not more, than the more nuanced or elaborate meaning contended for by the Commissioners.

53. The Commissioners next invoke EU law or, more specifically, just one of the three established approaches to the interpretation of EU law, namely the literal approach, as articulated by Advocate General Mischo, and endorsed by the ECJ (at para 33), in Case C-136/96 *Scotch Whisky Association v Compagnie Financiere Europeene de Prises de Participation*. They also rely on the principles of legal certainty and legitimate expectation which underlie the rationale of the literal approach, as explained by the ECJ in Case C-209/96 *United Kingdom v. Commission* [1988] ECR 5655, para 35. I have already dealt with those principles earlier in this judgment and I have already expressed the view that a literal approach to the definition of 'motor caravan' in Directive 2007/46/EC produces a result contrary to that contended for by the Commissioners and adopted by the Appeal Commissioner.

54. I must address one final point for the sake of completeness. The Appeal Commissioner appended to the case stated a document entitled 'Vehicle Conversions', in the form in which that document appeared on the Commissioners' website in January 2015, setting out vehicle registration requirements in respect of, amongst other matters, the pre-registration conversion of vehicles previously registered in other jurisdictions. Under the heading 'Additional Information,' that document also includes a section on 'Motor Caravans'.

That section contains the following paragraph under the heading 'Living Accommodation':

> 'The primary purpose of a Motor Caravan is to provide mobile living accommodation. The living accommodation space should be of a size and area to allow a comfortable living environment for a person or person for an extended period of time. This would generally require the whole of the rear compartment of a vehicle, behind the driver's compartment, to be utilised for that purpose, such that the occupant/s have ready access to storage, preparation, cooking, eating, sleeping and related facilities from within the living accommodation space. (It would be expected that the living accommodation space in the rear compartment would have either side windows and/or a skylight and, where cooking is by means of gas, a Gas Installer Certificate is available). Comfortable living accommodation should comprise an area where a person (of average height) could move around in a standing position.'

55. Very properly, in light of the strong suggestion that this text was not available on the Commissioners' website, or anywhere else, when Dr Prodanov sought to register his vehicle in May 2014, no attempt was made to suggest that the Commissioners were entitled to rely on its contents for the purpose of the present appeal. For that reason, it would not be appropriate to comment on those 'guidelines', beyond observing that, it seems to me, their validity must depend on the extent to which they correctly reflect the EU law definition of 'motor caravan' in Directive 2007/46/EC and cannot derive from any imagined general discretion on the part of the Commissioners to impose their own requirements, since any such discretion was extinguished when the old definition of 'motor caravan' under s. 130 of the 1992 Act, as inserted by s. 72 (d) of the Finance Act 1996, was repealed and the new definition under that section, as inserted by s. 102 (1) (k) of the Finance Act 2010, came into operation on the 1st January 2011.

Conclusion

56. For the reasons I have outlined, I would reverse the determination of the Appeal Commissioner and would find, on the facts presented or, insofar as may be necessary, on the facts as I have found them to be, that Dr Prodanov's vehicle, the subject of the present appeal, is a motor caravan as that term is defined under s. 130 of the 1992 Act.