



22TACD2018

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price ('OMSP') in respect of the calculation of Vehicle Registration Tax ('VRT').

Background

2. The vehicle, the subject matter of the appeal, is a Suzuki Swift SZ4, 5 door, automatic transmission, registration **[redacted]**. The Appellant purchased the vehicle in the UK. At the time of purchase the vehicle was approximately 6 months old. The vehicle was registered with the National Car Testing Service (NCTS) in October 2017.
3. An OMSP of €15,298 was assigned, resulting in a VRT charge of €2,758. On appeal by the Appellant to the Central VRT office, the OMSP was revised to €12,100 resulting in a repayment in favour of the Appellant in the sum of €557 which was notified to the Appellant by letter dated 29 November 2017. The Appellant disputed the revised OMSP and appealed to the Tax Appeals Commission on 2 January 2018.

Legislation

Section 146 of the Finance Act 2001:

“A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.”

Section 133 Finance Act, 1992, as amended:

(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.

(2)(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.

(2)(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.

(d) ...

(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

4. The Appellant contended that the reduced OMSP assigned, of €12,100, was excessive and that the OMSP should be reduced to approximately €6,000. The Appellant stated that the vehicle was in need of substantial repair when he purchased it. He furnished an estimate of repairs from a reputable dealer which estimated the repairs at €7,923. However, as he carried out most of the repairs himself, he was unable to furnish a receipt in respect of the repairs.
5. In open correspondence dated 24 January 2018, the Respondent, as a means of resolving the dispute, proposed a further reduction in OMSP, to €10,576. The Respondent provided a detailed breakdown in relation to the calculation of the OMSP of €10,576 which was based on six comparator vehicle valuations from Irish car dealership websites, advertising vehicles for sale. The average amount of the valuations furnished by the Respondent, less 10%, totaled €10,576.

Analysis

6. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO₂ emissions. The OMSP of a vehicle is determined in accordance with section 133 Finance Act 1992, as amended i.e. on 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.
7. The Appellant did not dispute the valuations furnished by the Respondent but submitted that the vehicle he purchased was in poor condition. He contended that the value of the repairs he carried out should be taken into account reducing the proposed OMSP of 10,576 to an OMSP in the region of €6,000.

Conclusion

8. 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 relevant tax is not payable.
9. 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.'

10. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal and I determine €10,576 to be a fair and reasonable OMSP in relation to the vehicle. This appeal is determined in accordance with section 949AL TCA 1997.

APPEAL COMMISSIONER

August 2018

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, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.

