



AC Ref: 24TACD2016

[NAME REDACTED]

Appellant

V

THE 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').
2. This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended.

Background

3. VRT is a duty of excise, charged at a percentage rate, according to the CO2 emissions, of the price, inclusive of all taxes and duties which, in the opinion of the Respondent, the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State at the time of registration, subject to specified minimum charges. The relevant legislation is set out below.
4. The vehicle, the subject matter of this appeal, is a [YEAR REDACTED] Mazda 62.0 TD S 138BHP 5 door, registration [REDACTED]. Mileage at the time of purchase was 74,143km. The Appellant registered the vehicle on [DATE REDACTED]. The OMSP was initially valued at €6,674 and VRT applied at a



rate of 23% resulting in a charge of €1,535 which was duly paid by the Appellant.

5. The Appellant appealed to the Central Vehicle Office and a reduced OMSP of €5,600 was assigned on [DATE REDACTED], resulting in a VRT repayment to the Appellant of €247. The Appellant appealed pursuant to section 146 of the Finance Act 2001, on grounds that the OMSP valuation was excessive.

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 130 Finance Act 1992 as amended:

mechanically propelled vehicle” means a vehicle that –

(a) has been designed and constructed for road use,

(b) is, at the time of declaration for registration, in compliance with any measures taken to give effect in the State to any act of the European Communities relating to the approximation of the laws of Member States in respect of type-approval for the type of vehicle concerned,

(c) is intended or adapted for propulsion by a mechanical means, or by an electrical means or by a partly mechanical and a partly electrical means, and

(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

Including a motor-cycle but not including a tramcar or other vehicle running on permanent rails [or a vehicle (including a cycle with an attachment for propelling it by mechanical power) not exceeding 400 kilogrammes in weight unladen adapted and used for invalids]



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.

(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

6. The Appellant contended for an OMSP valuation in the range of €3,500-€4,000 due to water damage to the vehicle prior to registration. The Appellant submitted that the vehicle had been sitting in a salvage yard for several months after incurring water damage in [YEAR REDACTED], causing further damage to the vehicle. The Appellant submitted that there was damage to the engine, the underbody and interior, the rear bumper and rear passenger door. The Appellant attached an invoice from [REDACTED] which described the labour involved in repairing the vehicle as '*rear bumper and rear pass. Doors repaired and re-sprayed underbody cleaned and rust protection aid strayed over/water damaged/ engine diagnostic and repair –injectors damaged/water damage/ interior upholstery replacement/water damage*'. The invoice was



dated [DATE REDACTED] and totalled €1,180. The vehicle was subsequently registered by the Appellant on the later date of [DATE REDACTED].

7. The Appellant contended that the three quotations presented by the Respondent from various car dealers were inflated and did not provide an accurate basis for considering the OMSP. The quotations detailed comparator vehicles for sale at €7,999 and €7,995 (in respect of [YEAR REDACTED] vehicles) and €6,950 (in respect of a [YEAR REDACTED] vehicle). The Appellant did not furnish alternative quotations in support of the proposed OMSP valuation of €3,500-€4,000.

Analysis

8. Every car is subject to VRT on first registration in the State. When a car is brought into the State, the car is valued on the year, its mileage, its condition and the CO2 emissions. The rate of VRT is judged solely on CO2 emissions. For VRT registration purposes, a vehicle must be *'...capable of achieving vehicle propulsion at the time of registration..'* to fall within the definition of a *'mechanically propelled vehicle'* per section 130 of the Finance Act 1992, as amended.
9. The OMSP assigned to the vehicle at the NCTS office was €6,674. On review this was reduced to €5,600 resulting in a refund of €247. While the Appellant contended for an OMSP in the region of €3,500-€4,000, the Appellant did not furnish any comparator vehicle valuations in support of these figures. The Appellant submitted that the repairs carried out on the vehicle prior to registration should reduce the OMSP assigned.
10. 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 registration. In this case, the repairs had been carried out prior to registration and the vehicle was valued in the condition in which it was presented at the time of registration. In my view, this valuation has not been shown to be unreasonable. I determine, based on the evidence and submissions, including valuations furnished, that the sum of €5,600 is a fair and reasonable OMSP valuation.



Conclusion

11. On consideration of the evidence and submissions, including valuations furnished, I determine €5,600 to be a fair and reasonable OMSP in relation to the vehicle.
12. Accordingly the appeal is determined in accordance section 949AL TCA 1997.

APPEAL COMMISSIONER

December 2016