

Court of Appeal
(Inferior Jurisdiction - Gozo)
Judge Dr. Anthony Ellul
Appeal No: 1/2014AE

Sitting of Friday, 3rd March 2017

Nigel Donovan (respondent)
vs
Ministry of Finance (appellant)

- 1. This case deals with whether or not plaintiff's vehicle, imported from England, qualifies for an exemption from payment of registration tax.**
2. The Ministry of Finance (*Transfer of Residence Exemption Board*), by means of a letter dated 15th of January 2014¹, informed Nigel Donovan that his application for the exemption of the payment of registration tax² with regards to his vehicle Toyota Hilux (Reg. No. LW51ABK) was being refused. The Ministry explained that it could not accede to his request in terms of Legal Notice 6 of 2012 under Rule 4(2).
3. On the 4th of February 2014 Donovan appealed before the Administrative Review Tribunal whereby he requested the revocation of the decision of the Ministry of Finance (*Transfer of Residence Exemption Board*) and the grant of the tax exemption.

¹ Doc A1, page 5.

² under Article 19(3)(f) of the Motor Vehicle Registration and Licensing Act (Chapter 368) and Rule 4 of the Exemption from Motor Vehicle Registration Tax Rules (S.L.368.01).

4. On the 15th of October 2015 the Administrative Review Tribunal upheld the plaintiff's request and revoked the decision of the Ministry of Finance (*Transfer of Residence Exemption Board*). The Tribunal ordered the Board to issue the respective exemption from payment of the registration tax.
5. On the 4th of November 2015 the Ministry of Finance lodged an appeal before this Court, requesting the confirmation of that part of the decision where the Tribunal pronounced itself incompetent to grant plaintiff the tax exemption, and to revoke the rest of the judgment and confirm the Board's decision to refuse the plaintiff's application for exemption from the payment of registration tax.

6. The complaints of appellant (defendant Ministry of Finance) are the following:

- (i) *The specification (or otherwise) of the Board's reason for refusing the plaintiff's application :*

The Tribunal, before delving into the merits of the case, observed that the Board's decision did not specify the grounds on which the application was being rejected and commented that the Board should be more specific when rejecting an application so that the applicant concerned would be in a better position to evaluate his legal position.

Appellant points out, however, that the Board, in its letter of the 15th January 2014, had informed Donovan that the Ministry could not accede to his request in terms of Legal Notice 6 of 2012 under Rule 4(2), and had furthermore quoted such rule which imposes the requisites that need to be satisfied in order for an exemption to be granted:

"The exemption under article 19(3)(f) shall be granted in respect of an M1 motor vehicle or a cycle which is the personal property of an individual and which is being brought or imported into Malta by that individual when he is transferring his normal residence from a place outside Malta to a place in Malta."

Appellant also argues that upon reading such provision it should have been easy for the plaintiff to identify the requisite which was not satisfied in his case, namely that his vehicle is not classified as an "M1" vehicle. He also makes reference to the evidence given by plaintiff on the 25th of March 2014, wherein he had actually explained that prior to applying for the tax exemption he had done some research on the internet and had noted that vehicles classified as "M1" are exempt from payment of registration tax, and had even looked up the definition of "M1" vehicles.

(ii) *The reason for refusal*

The Tribunal considered that notwithstanding the fact that plaintiff's vehicle is officially classified as "N1" and not "M1", it satisfies the requirements to be classified as "M1", and therefore concluded that the Board was incorrect in refusing to grant plaintiff the exemption from payment of registration tax and consequently revoked the Board's decision, and because it declared itself incompetent to grant the exemption itself, ordered the said Board to grant such exemption.

Appellant argues that the Board cannot add to or interpret widely the provision of the law, and that it certainly cannot regard vehicles classified as "N1" as though they are classified as "M1": not only because it does not have competence to decide upon the classification of vehicles, but also because by doing so it would be going against national as well as European Union laws. Appellant highlights the fact that the classification of vehicles is regulated by international criteria.

Appellant explains that the Board does not have the competence to carry out technical inspections on the vehicles, and relies completely on the documents produced by the person applying for the exemption, and hence, since the documents produced in this case indicated that the vehicle is classified as "N1", the Board had no other option but to refuse the application on such ground.

7. On the 23rd of November 2015 respondent (plaintiff Donovan) presented his reply to the appeal application and submitted the reasons why, according to him, the judgment pronounced by the Administrative Review Tribunal is correct and should be upheld by this court.

8. Considerations by this Court:

This court, after having seen the appeal application of the defendant and the relative reply of the plaintiff, after having examined the evidence produced by the parties, observes:

(1) Motor Vehicle categories:

- The Motor Vehicles Registration and Licencing Act (Chapter 368 of the Laws of Malta) classifies vehicles under different categories depending on various criteria, in line with Directive 2007/46/EC of the European Parliament and of the Council.
- Category "N1" motor vehicles are defined as those "***used for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes.***"
- Category "M1" vehicles are defined as those "***used for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat.***"

(2) The Toyota Hilux in question:

- Respondent Nigel Donovan, a retired British National, currently residing in Malta (Gozo), and registered as "*economically self-sufficient*", is the owner of vehicle in question Toyota Hilux (reg. no. LW51ABK)³;
- According to the UK Registration Certificate⁴, the vehicle, a six-seater, which was acquired by respondent on the 7th of March 2003, is a "*light goods vehicle*" and is classified as a category "N1" vehicle.
- In his testimony, respondent explained that when he purchased the vehicle it was an open vehicle, the kind that is used by farmers. Since he wanted it as a family vehicle he had the top fitted in so that whenever he and his family would go on holiday they could put their suitcases, bicycle, dogs and all their possessions in it. (Witnesses brought forth by respondent confirmed that his vehicle was always used for domestic purposes).
- On the 9th of January 2014, the vehicle was inspected by a representative of Transport Malta⁵, who compiled the "Vehicle Inspection Form" and declared that the vehicle was a category "N1"⁶.

(3) Vehicles which are exempt from the payment of registration tax.

- Article 19(3) of the Motor Vehicle Registration and Licensing Act (Chapter 368) provides that:

"The following motor vehicles, shall, upon registration with the Authority⁷, be exempt from the payment of registration tax:

*.....
(f) any M1 motor vehicle or a cycle which is the personal property of an individual and is being brought permanently to Malta by the individual when he is transferring his normal residence from a place outside Malta to a place in Malta, provided that the vehicle qualifies for such exemption. The said exemption shall be given under those conditions,*

³ Photos of said vehicle Doc S, S1 , S2 and S5, Pages 22, 23, 24 and 27.

⁴ Doc A, fol 6.

⁵ "Transport Malta" is the Authority for Transport in Malta set up by Act XV of 2009

⁶ Doc D, fol 9

⁷ "Authority" means the Authority for Transport in Malta set up under the provisions of the Authority for Transport in Malta Act.

restrictions or limitations prescribed by the Minister responsible for Finance."

- Rule 4(2) of the Exemption from Motor vehicle Registration Tax Rules (S.L.368.01) provides that:

"The exemption under article 19(3)(f) of the Act shall be granted in respect of an M1 motor vehicle or a cycle which is the personal property of an individual and which is being brought or imported into Malta by that individual when he is transferring his normal residence from a place outside Malta to a place in Malta.

- Therefore, three (3) requisites have to be satisfied in order for a motor vehicle to be exempt from the payment of registration tax:
 - (i) the vehicle has to fall under category "M1";
 - (ii) it has to be the personal property of an individual; and
 - (iii) it has to be brought to Malta by that individual when he/she is transferring his residence to Malta.

(4) *Appellant's first complaint: (that the reason for refusal by the Board was identifiable by the respondent)*

- Although appellant argues that respondent could have easily concluded that the reason for which his application for tax exemption was refused was the fact that his vehicle was not classified as an "M1" vehicle, this Court agrees with the Tribunal that when the Board rejects an application, it should expressly state the reasons for such a decision. The letter dated 15th January, 2014 states that the respondent was informed that his application for an exemption could not be upheld in terms of Legal Notice 6 of 2012 under regulation 4(2), and quotes the regulation. This is not enough.
- Having said that, this Court is of the opinion that by failing to do so, the respondent was not prejudiced in any way. Even if the Board's reason for refusal (namely that the vehicle in question is not classified as an "M1"

vehicle) was declared to be based on the category of the vehicle as declared in two documents, after proceedings before the Tribunal had begun, respondent had ample opportunity to object and present his case, which he actually did.

(5) Appellant's second complaint: (that the Board's reason for refusing to grant the exemption because the vehicle is not classified as an M1 vehicle, was justified) the reason for refusal)

- According to the vehicle's UK Registration Certificate the vehicle is an "N1" category vehicle.
- Respondent testified that after purchasing his vehicle he had it modified by having a top fitted in, such that from being an open vehicle it was transformed into a typical family car. Following such modification, the vehicle could *possibly* have been eligible for a reclassification from "N1" to "M1", however it does not transpire that respondent at any time requested the transport authorities in the UK to affect such reclassification.
- On arrival in Malta the vehicle in question was inspected by representatives of Transport Malta and on the "*Vehicle Inspection Form*" was declared as an "N1" vehicle. It is evident that the author of that form reproduced the information printed on the UK Registration Certificate.
- Based on the information that was before the Board, it could have reached the conclusion that the vehicle is an N1 category vehicle. It is evident that since the Board had the UK Registration Certificate and the Vehicle Inspection Form, it did not request the respondent to produce any further proof with regards to the vehicle's category. Notwithstanding, the evidence produced confirms that prior to the car's importation into Malta the vehicle was already used as a vehicle for the transportation of passengers. The Court fully endorses the Tribunal's reasoning that from the evidence

produced by the respondent, when the vehicle was imported into Malta, it had all the qualities of an M1 vehicle. This notwithstanding what is stated in the Certificate of Registration. As previously noted, according to the Motor Vehicle Registration and Licensing Act (Chapter 368) an M1 motor vehicle means, "(...) a vehicle **used** for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat". The emphasis is on the word **used** (in the Maltese version, "*vettura użata għall-ġarr ta' passiġġieri...*"). Therefore, for the purposes of article 4(2) of S.L. 368.01, to establish whether the vehicle is a Category M1, the Board has to base its decision on what use is made of the vehicle and not on whether the motor vehicle was **designed and constructed** for the carriage of passengers (vide Annex II of EU Directive 46 of 2007).

For these reasons the court rejects the appellant's request for the revocation of the judgment delivered on the 15th October 2015 and confirms the same. All costs are at the charge of the appellant.

Judge Dr. Anthony Ellul