



THE ADMINISTRATIVE REVIEW TRIBUNAL

**MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 6th March, 2012

Rikors Number. 62/2010

**Bengt Christer Jansson (holder of Swedish Passport
Number 34508876) and Inger Marta Margareta
Melkersson Jansson (holder of Swedish Passport
Number 52926862)**

Vs

**The Honourable Minister, Ministry for Finance,
Economy and Investment**

The Tribunal,

After having considered the Application submitted by Bengt Christer Jansson and Inger Marta Margareta Melkersson Jansson on the 29th December 2010, by means of which they request the Tribunal to revoke and annul the decision given by the Respondent wherein it was declared that Bengt Christer Jansson does not qualify for an exemption from payment of vehicle registration tax in terms of Section 19 of Chapter 368 of the Laws of

Malta, and consequently declare and order that the said Bengt Christer Jansson does qualify for an exemption from payment of vehicle registration tax on the Harley Davidson motor cycle bearing registration number UXE 996;

After having considered the documents submitted by the Applicants marked as documents Doc. "A" to Doc. "I" a folios 4 to 15 of the records of the case;

After having considered the Reply submitted by the Respondent by means of which he opposes the requests put forth by the Applicants and asks the Tribunal to reject the same, with costs against the Applicants, on the grounds that their requests are unfounded in fact and at law since from evidence submitted to the Respondent it results that Bengt Christer Jansson does not satisfy the conditions set out in Section 19 of Chapter 368 of the Laws of Malta and Regulation 4 of Subsidiary Legislation 368.01 in view of the fact that the motor cycle in question had not been in his possession for at least twenty four months prior to his transferring his residence to Malta;

After having heard and considered the testimony given by Inger Marta Margareta Melkersson Jansson during the sitting held on the 19th May 2011¹, by Brian Farrugia during the sitting held on the 26th September 2011² and by Herald Bonnici during the sitting held on the 28th November 2011;

After having heard oral submissions regarding the merits of the case;

After having considered the records of the proceedings;

Considers:

By means of these proceedings the Applicants are contesting a decision by the Ministry of Finance, the Economy and Investment dated 6th December 2010,

¹ Folio 30 to 31 of the records of the proceedings.

² Folio 35 of the records of the proceedings.

whereby the request submitted by Bengt Christer Jansson (herein after referred to as the applicant) to be granted an exemption from payment of vehicle registration tax on the Harley Davidson motor cycle bearing registration number UXE 996, was rejected on the grounds that he does not satisfy all conditions set out in the law, namely that the motor cycle in question had not been in his possession for a period of twenty four months prior to his transferring his residence to Malta (Regulation 4(1)(b) of Subsidiary Legislation 368.01) and is therefore not eligible for such an exemption.

The Applicants argue that they had effective possession and made use of the motor cycle in question ever since the same was leased under the name of their company, Beblin Svenska Aktiebolag, on the 31st August 2004. They argue that even though the motor cycle was registered under the company's name, of which they were sole shareholders and directors, the motor cycle was intended and effectively used for their personal private and recreational purposes. Therefore, contrary to that claimed by the Respondent, the applicant satisfies all the conditions set out in the law for him to be eligible to be granted an exemption from payment of vehicle registration tax on the Harley Davidson motor cycle having registration number UXE 996.

The conditions which the applicant had to satisfy at the time when he submitted his application on the 3rd November 2010, were those set out in Regulation 4 of Subsidiary Legislation 368.01. In fact, at the time Section 19(3) of the principal Act, Chapter 368 of the Laws of Malta, merely stated that *exemptions from the payment of registration tax and, in the case of vehicles supplied under sub-paragraphs (ii) to (vii) hereunder, also from the payment of circulation licence fees shall be applicable where the motor vehicle – (i) is the personal property of a private individual and is being brought permanently into Malta by that individual when he is transferring his residence from a place outside Malta to a place in Malta: Provided that a motor vehicle brought into Malta on or after the 1st July 2008 by a person who has taken up his*

residence in Malta on or after the 3rd November 2008, shall qualify for an exemption from the payment of registration tax. However, subarticle (5) of the above-mentioned section of the law provided further that the exemptions under subarticle (3) shall be granted under those conditions as the Minister may specify by regulations.

In terms of Regulation 4(1) of Subsidiary Legislation 368.01 the exemption under article 19(3)(i) of the Act shall be granted to a motor vehicle which is the personal property of a private individual and is being brought or imported permanently into Malta by the individual when he is transferring his residence from a place outside Malta to a place in Malta: Provided that – (a) that person has been residing outside Malta for a continuous period of more than twenty four months before his transfer of residence to Malta; (b) the motor vehicle has been in his possession and used by him outside Malta for at least twenty four months before the date on which he ceased to have his residence outside Malta; (c) the vehicle is registered in his name or in the name of his or her spouses where applicable; (d) that person holds a valid driving licence; (e) the vehicle shall be imported or brought into Malta within twelve months of the individual's transfer of residence; (f) the motor vehicle shall not be sold, given away, disposed of, hired out or lent following its importation or its bringing into Malta unless the vehicle registration tax to which the exemption aforesaid relates is paid thereon in accordance with the provisions of the First or Second Schedule of the Act.

It is very clear that the conditions set out in Regulation 4(1) of Subsidiary Legislation 368.01 are cumulative and not alternative in nature and therefore **all** conditions must be satisfied by an applicant for him/her to be eligible for an exemption from payment of vehicle tax registration.

From the Application submitted by the Applicants and supporting documentation attached thereto, particularly Doc. “F” to Doc. “G”³, the following facts result:

- The motor cycle in question was first registered on the 31st August 2004;
- The first registration was made under the name of the company Belbin Svenska Aktiebolag, which was registered as holding the said motor cycle in terms of a finance leasing agreement;
- The Applicants were the sole shareholders and directors of the company Belbin Svenska Aktiebolag;
- On the 29th September 2010 the company purchased the motor cycle in full ownership and was consequently accordingly registered with the Swedish transport authorities;
- The holder of the Swedish Registration Certificate pertinent to the motor cycle in question is Belbin Svenska Aktiebolag.

When these facts are considered within the context of Regulation 4(1) of Subsidiary Legislation 368.01 it is immediately evident that the Applicants’ appeal cannot be upheld because even if the Tribunal were to accept their submissions regarding the possession and use of the said motor cycle by the applicant for a period of twenty four months prior to his transferring his residence to Malta, it cannot overlook the fact that the motor cycle in question is not registered in the applicant’s personal name but in the name of the company Belbin Svenska Aktiebolag. Both the principal Act (Chapter 368 of the Laws of Malta) and Subsidiary Legislation 368.01 clearly provide that an exemption from payment of vehicle registration tax shall be granted to a **private individual** provided that he/she satisfies all the conditions set out at law. Even though the company Belbin Svenska Aktiebolag is/was owned and directed solely by the Applicants, it cannot be considered and does not qualify as a private individual but is a moral person, judicially distinct from its shareholders and directors and which at law is clearly not considered to be

³ Folios 10 to 14 of the records of the proceedings.

eligible to obtain an exemption from payment of vehicle registration tax.

In her testimony during the sitting held on the 19th May 2011, the Applicant Inger Marta Margareta Jansson declared that *the motor cycle was purchased under the name of a company owned by myself and by my husband. This is seen from document G folio number 11 of the file. My husband and my self are both shareholders and directors within this company. The motor cycle was purchased by means of financing obtained from the bank. In Sweden this is referred to as leasing, however in reality it is more a loan taken from the bank to buy a motor cycle. In August 2010, the said motorcycle was transferred from our company into my husband's personal name. This transfer came about for the reason that my husband and myself had decided to move over to Malta and we were going to close down the company which we had in Sweden*⁴.

In spite of that claimed by the Applicant regarding the alleged transfer of the motor cycle in question from the company into her husband's personal name, such transfer and the relative registration of the motor cycle in his name have not been satisfactorily proven. Contrary to that claimed by the Applicant, the documents she and her husband submitted together with their Application, particularly Doc. "F" and Doc. "G" at folio 10 and 11 of the records of the proceedings, show that as at the **29th September 2010** the vehicle was owned by and registered in the name of the company Belbin Svenska Aktiebolag and not in the name of the applicant Bengt Christer Jansson.

Further confirmation that the motor cycle in question was not registered in the applicant's name can be found in the application itself submitted by the applicant for the exemption from payment of vehicle registration tax⁵. In fact, when the applicant filled in the name of the owner of

⁴ Underlining by the Tribunal.

⁵ Dok. "D" a folio 7 of the records of the proceedings.

the motor cycle, apart from his name he also indicated the name of the company Belbin Svenska AB.

In the light of the above it is clear that the applicant Bengt Christer Jansson does not satisfy all the conditions set out at law for him to be eligible for an exemption from payment of vehicle registration tax on the Harley Davidson motor cycle having registration number UXE 996, and consequently the Applicants' appeal must be dismissed.

On the basis of the above-mentioned reasons the Tribunal dismisses the appeal submitted by the Applicants on the 29th December 2010.

Costs pertinent to these proceedings are to be borne by the Applicants.

< Final Judgement >

-----END-----