



MALTA

**THE ADMINISTRATIVE REVIEW TRIBUNAL
MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 29 th January, 2015

Rikors Number. 13/2012

Raffaele Amodio

Vs

Minister of Finance

The Tribunal,

After having taking cognizance of the application submitted by Raffaele Amodio on the 16th February 2012 by means of which he requests that the Tribunal vary the decision taken by the Minister of Finance, Economy and Investment in the sense that it orders that the vehicle Mercedes A140 Classic SE bearing Registration No. KW53 YLR be registered exempt from the payment of vehicle registration tax since he is duly so exempted from payment of said tax in terms of law, with costs against the Respondent;

After having taken cognizance of the documents submitted by the Applicant together with his application marked as Dok. "RA1" to Dok. "RA3" at folio 5 to 8 of the records of the proceedings;

After having taken cognizance of the fact that the Respondent did not enter a reply to the appeal submitted by the Applicant;

After having heard testimony given by the Applicant during the sittings held on the 11th May 2012¹ and on the 7th March 2013² and after having taken cognizance of the documents submitted by the Applicant by means of a Note filed on the 17th September 2012 marked as Dok. "DB1" and Dok. "DB2" at folio 27 to 51 of the records of the proceedings and by means of a Note filed on the 4th December 2012 at folio 53 and 54 of the records of the proceedings;

¹ Folio 20 to 24 of the records of the proceedings.

² Folio 56 and 57 of the records of the proceedings.

After having heard oral submissions by the Applicant and taken cognizance of the written submissions submitted by the Respondent at folio 63 and 64 of the records of the proceedings;

Considers:

By means of these proceedings the Applicant is contesting the decision by the Ministry of Finance, Economy and Investment, served on him by letter dated 25th January 2012³, by virtue of which his request for an exemption from payment of vehicle registration tax upon the registration of the vehicle Mercedes A140 bearing Registration No. KW 53 YLR, in terms of Section 19 of the Motor Vehicle Registration and Licensing Act, Chapter 368 of the Laws of Malta, and of Rule 4 of the Exemption from Motor Vehicle Registration Tax Rules, Legal Notice 196 of 2009, was rejected on the grounds that *following assessment of your application, it is regretted that this Ministry cannot accede to your request in terms of Legal Notice 196 of 2009 4(1)(b). Following assessment of your application, it is regretted that this Ministry cannot accede to your request in terms of Legal Notice 196 of 2009 4(1)(e).*

The Applicant contests the said decision on the following grounds: (i) he and his wife established their residence in Malta on the 12th June 2010 and the vehicle in question was brought over to Malta on the 16th August 2010, he therefore satisfies the requirements set out in Section 19(3) of Chapter 368 of the Laws of Malta since the vehicle in question is his private property and was registered in his name outside of Malta, he is establishing his residence in Malta and he had been residing in a place outside Malta, namely England, for more than 24 months and the vehicle was not brought to Malta six months prior to his arrival in Malta; (ii) he could not register his vehicle before the time when he sought to register it because at first he himself was not aware of the fact that he would eventually transfer his residence to Malta since this decision was not up to him but to his employer. As soon as he was informed that he was going to be employed under an indefinite contract he decided to transfer his residence to Malta and since he would be using his vehicle he sought to register it; (iii) payment in Malta of a tax equivalent to the tax already paid by him in England when he purchased the vehicle amounts to a violation of the principles of the common market and the free movement of goods enshrined under European Law and this also in the light of the fact that the said tax is imposed solely on vehicles sought to be brought to Malta upon the transfer of residence and not on other kinds of objects also sought to be brought over to Malta upon the transfer of residence; and last but not least (iv) being an Italian citizen and therefore not familiar with Maltese legislation, he was not aware that the registration of his vehicle was to be made by him within a peremptory term for him to benefit from the exemption from vehicle registration tax.

The Respondent did not reply to the appeal submitted by the Applicant from the above decision and while taking this fact into account, especially from a procedural aspect where the Respondent cannot and in fact has not been allowed

³ Dok. "RA3" at folio 8 of the records of the proceedings.

to submit any evidence but was authorized to submit written submissions, the Tribunal cannot ignore the principle that the Applicant still has the onus to prove his case against the Ministry of Finance, Economy and Investment with respect to the decision given against him and that the Tribunal must be satisfied that the grounds on which the Applicant is founding his appeal from the above-mentioned decision are indeed justified.

These observations are confirmed by various judgements delivered by Maltese Courts, amongst which the judgement in the names **Helen sive Nellie Miceli et v. Carmelo sive Charles Pisani, Writ No. 1761/01** delivered by the Civil Court, First Hall on the 28th October 2004, where the Court observed that *kif gie deciz minn dawn il-Qrati ghadd ta' drabi il-kontumacija m'ghandhiex titqies bhala stqarrija jew ammissjoni min-naha ta' l-imharrek ghal dak li jkun qiegħed jintalab jew jigi allegat kontrih mill-parti attrici: għall-kuntrarju, il-kontumacija tqieset bhala kontestazzjoni, u l-bdil li sar fil-ligi procedurali fl-artikolu 158 bl-Att XXIV ta' l-1995 jidher li jtenni din il-fehma. Min-naha l-ohra, l-istitut tal-kontumacija huwa msejjes fuq il-presuppost li l-imharrek, bin-nuqqas tieghu li jwiegeb ghax-xilja u t-talba tal-parti attrici, ikun wera dispett lejn is-sejha tal-Qorti biex jidher quddiemha, liema dispett il-ligi thares lejħ bhala għamil li jisthoqqlu piena – dik li ma jkunx jista' jindahal fit-tressiq tal-provi – bhala element ta' disordni soċjali; the judgement in the names **Carmel Schembri et noe v. Dorianne Zerafa, Writ No. 2446/98** also delivered by the Civil Court, First Hall on the 12th July 2001, where the Court observed that *huwa principju bazilari fil-gurisprudenza nostrali li min jallega fatt għandu l-oneru tal-prova tieghu ... illi dan l-istess atturi għandhom l-oneru li jagħmluh nonostante li l-konvenuta baqgħet kontumaci, stante li l-kontumacija ma hijiex ammissjoni izda opposizzjoni u għalhekk xorta l-atturi jridu jippruwaw l-allegazzjonijiet minnhom vantati ... and the judgement in the names **Il-Kummissarju ta' l-Artijiet v. John Curmi, Writ No. 1627/96** delivered by the Civil Court, First Hall on the 31st January 2003, where the Court observed that *issa huwa minnu li l-konvenut li jibqa' kontumaci ma jfissirx li hu abbanduna kull eccezzjoni li seta' jagħti fil-kawza jew li ammetta id-domanda (Vol. XXIX P III p 35). Dan għaliex, kif pacifikament akkolt fil-gurisprudenza recensjuri, l-istitut tal-kontumacija hu intiz biss bhala fren biex irazzan l-atteggjament tal-kontumelja u disprezz da parti ta' min gie citat biex jersaq quddiem il-Qorti (Vivian Charmaine Mizzi v. Carmel Mizzi, Appell, 13 ta' Lulju 2001). Għalhekk sta għall-gudikant biex jeżamina jekk it-talba hijiex gustifikata u dan indipendentement mill-kontumacija tal-konvenut.***

From the records of the proceedings and from evidence submitted by the Applicant it results that he used to reside in England, namely London⁴, but with effect from the 14th June 2010 he started working in Malta on a definite contract for a period of one year⁵ and for this purpose he arrived in Malta on the **12th June 2010** and started living here. Since he was going to be here for a period of one year the Applicant brought over his vehicle, namely the vehicle Mercedes

⁴ Vide testimony given by the Applicant during the sitting held on the 11th May 2012, folio 20 to 24 of the records of the proceedings.

⁵ Dok. "DB1" at folio 28 to 39 of the proceedings.

A140 bearing Registration No. KW 53 YLR, which he had purchased in 2005, which vehicle entered Malta on the **16th August 2010**⁶. At that time the Applicant did not seek to register his vehicle in Malta since his transfer to Malta was temporary however, upon being employed by his employer on an indefinite basis, and this with effect from the **1st September 2011**⁷, the Applicant decided to transfer his residence to Malta permanently. As soon as he decided to transfer his residence permanently to Malta the Applicant sought to have his vehicle registered here and by means of an application submitted on the **12th November 2011**⁸, he applied for an exemption from payment of vehicle registration tax which request was however rejected on the grounds that he does not qualify for such an exemption under Rule 4(1)(b) and (e) of Legal Notice 196 of 2009.

The exemption from payment of vehicle registration tax is regulated by Section 19(3) of Chapter 368 of the Laws of Malta and Rule 4 of the Exemption from Motor Vehicles Registration Tax Rules, Subsidiary Legislation 368.01.

In 2010, the year when the Applicant came to live in Malta on account of the fact that he was going to work here under a contract of employment for a definite period of one year, Section 19(3) of Chapter 368 of the Laws of Malta provided 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**⁹ into Malta by that individual when he is **transferring his residence**¹⁰ 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 and Rule 4 of Legal Notice 169 of 2009 (the Exemption from Vehicle Registration Tax Rules applicable at the time) provided that the exemption under sub-article (3)(i) of article 19 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**¹¹ into Malta by the individual when he is **transferring his residence**¹² 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 spouse 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*

⁶ Vide testimony given by the Applicant during the sitting held on the 11th May 2012, folio 20 to 24 of the records of the proceedings and Dok. "RA2" at folio 7 of the records of the proceedings.

⁷ Dok. "DB2" at folio 40 to 51 of the records of the proceedings.

⁸ Dok. "RA1" at folio 5 and 6 of the records of the proceedings.

⁹ Emphasis by the Tribunal.

¹⁰ Emphasis by the Tribunal.

¹¹ Emphasis by the Tribunal.

¹² Emphasis by the Tribunal.

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. In terms of Rule 2 of the said Exemption transfer of residence means the actual transfer of a person's habitual residence to the new place indicated as being that of resettlement. The fact that a person comes to work in Malta on a specific task for a definite duration shall not imply that such a person has transferred his residence to Malta¹³.

From these provisions of the Law it is very clear that in 2010 the Applicant was not eligible to obtain an exemption from payment of vehicle registration tax since as admitted by him in his testimony given during the sitting held on the 11th May 2012¹⁴, his stay in Malta at the time was not for a permanent period. Apart from this fact, in terms of the Law when a person comes to Malta to work on a specific task for a definite duration his coming to live in Malta for that purpose is not considered to be a transfer of residence for the purposes of Section 19(3) of Chapter 368 of the Laws of Malta and therefore the relative provisions of the Law are not applicable in his regard. As a matter of fact the Applicant sought to register his vehicle and obtain an exemption from payment of vehicle registration tax only in 2011, namely in November 2011, once he was offered and accepted employment in Malta under an indefinite contract and consequently decided to transfer his residence to Malta.

In 2011, when the Applicant submitted his application for an exemption from payment of vehicle registration tax, the provisos to Section 19(3) of Chapter 368 of the Laws of Malta were amended by Act IV of 2011, which amendments came into force on the 1st January 2011, and the said exemption was, at the time, subject to the following conditions: *provided that the vehicle has been registered in the name of that person or in the name of his or her spouse for a least twenty-four consecutive months at the time of transfer of residence to Malta and that person has been residing outside Malta for a continuous period of at least twenty-four months at the time of transfer residence to Malta; Provided further that where a motor vehicle is brought or imported into Malta not more than six months before the time of transfer of residence by the person transferring his residence, that vehicle shall qualify for the exemption if both the said vehicle and the person transferring his residence meet the conditions prescribed in regulations made under this Act.* The Exemption from Vehicle Registration Rules as set out in Legal Notice 196 of 2009 which reflected the conditions set out in Section 19(3) of Chapter 368 of the Laws of Malta where at the time still applicable.

When the said provisions of the Law, that is Section 19(3) of Chapter 368 of the Laws of Malta, including the provisos thereto, and Rule 4 of the Exemption from Vehicle Registration Rules as applicable in 2011, are applied to the facts and circumstances of this case it results that when the Applicant submitted his request for an exemption from payment of vehicle registration tax he was not

¹³ Emphasis by the Tribunal.

¹⁴ Folio 20 to 24 of the records of the proceedings.

eligible for such an exemption since, as correctly determined by the Respondent, he failed to satisfy the conditions set out in Rule 4(1)(b) and (e) of the Exemption from Vehicle Registration Tax Rules.

Even though the Applicant owned the vehicle in question and the same was registered in his name, at the time of submission of his application he did not satisfy the condition regarding the use of the vehicle as set out in Rule 4(1)(b). The said Rule provided that the vehicle must have been in the applicant's **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. The Tribunal deems that the Applicant ceased to have his residence outside Malta only upon his transfer of residence to Malta which, in view of the definition of "transfer of residence" given in Rule 2 of the Exemption from Vehicle Registration Tax Rules cited above, occurred in 2011 when he effectively transferred his residence here upon being given employment under a contract for an indefinite term and not in 2010 when he came to live here due to an employment under a contract for a definite term of one year. Therefore since the Applicant was using the vehicle in Malta during the twelve months preceding his transfer of residence to Malta it cannot be said that he was using the said vehicle for at least twenty-four months outside Malta before the date when he ceased to have his residence outside Malta.

With regard to the Respondent's decision that the Applicant did not satisfy the condition set out under Rule 4(1)(e) of the Exemption from Vehicle Registration Rules, that is that *the vehicle shall be imported or brought into Malta within twelve months of the individual's transfer of residence*, it must be pointed out that the law did provide for those circumstances when the vehicle is brought into Malta **before** the time of transfer of residence to Malta of the person applying for an exemption from vehicle registration tax, however as per the second proviso to Section 19(3) of Chapter 368 it was only those vehicles which were brought or imported into Malta **not more than six months before the time of transfer of residence** which were considered. Since in the present case the Applicant brought his vehicle to Malta in August 2010, precisely on the 16th August 2010, and transferred his residence upon being given a contract of employment for an indefinite term with effect from the 1st September 2011, the vehicle was brought over to Malta more than 6 months before the time when the Applicant transferred his residence to Malta and therefore the Applicant cannot benefit from the said provision. Therefore as correctly determined by the Respondent, the Applicant did not satisfy the condition set out in Rule 4(1)(e) of the Exemption from Vehicle Registration Rules.

In his Application to the Tribunal the Applicant further argues that payment in Malta of a tax equivalent to the tax already paid by him in England when he purchased the vehicle is in violation of the principles of the common market and the free movement of goods enshrined under European Law and this also in the light of the fact that the said tax is imposed solely on vehicles sought to be brought to Malta upon the transfer of residence and not on other kinds of objects also sought to be brought over to Malta upon the transfer of residence.

With regard to this argument the Tribunal refers to the **Lindfors Case**¹⁵ decided by the European Court of Justice on the 15th July 2004, wherein the Court concluded that **Article 1 of Directive 83/183 must be interpreted as not precluding, in connection with a transfer of residence of the owner of a vehicle from one Member State to another, a tax such as that laid down by the Law on Car Tax from being charged before the registration or bringing into use of the vehicle in the Member State to which residence is transferred**¹⁶. However, having regard to the requirements deriving from Article 18 EC, **it is for the national court to ascertain whether the application of national law is capable of ensuring that, as regards that tax, that owner is not placed in a less favourable situation than that of citizens who have been permanently resident in the Member State in question and, if necessary, whether such a difference of treatment is justified by objective considerations independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law**¹⁷.

The legal implications of the said judgement are self evident and contrary to that argued by the Applicant, it results that the comparison that must be made for the purpose of determining whether the person so transferring his residence from a Member State to another is suffering any prejudice with the imposition of such vehicle registration tax, is with other citizens who have been permanently resident in the second Member State, naturally meaning whether they too would be subject to vehicle registration tax upon importing a vehicle into the second Member State – a tax to which permanent residents in Malta are effectively subject to under the Maltese Legal system – and not with other kinds of objects also sought to be brought over to Malta upon the transfer of residence.

In the light of all the above the Tribunal concludes that the grounds on which the Applicant founds his appeal from the decision given against him by the Respondent and served on him by letter dated 25th January 2012, are not justified and therefore cannot be upheld.

For the said reasons the Tribunal rejects the appeal lodged by the Applicant from the decision given against him by the Respondent and served on him by letter dated 25th January 2012, and instead confirms the said decision.

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

< Final Judgement >

¹⁵ C-365/02.

¹⁶ Emphasis by the Tribunal.

¹⁷ Emphasis by the Tribunal.

-----END-----