Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

FIRST PLANTERS PAWNSHOP INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6887

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAY 09 2005 [signature]

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DECISION

UY, *J*.:

This Petition for Review seeks the reversal of respondent's Final Decision on Disputed Assessment dated January 29, 2004 denying the protest of petitioner on the deficiency assessments for value-added tax and documentary stamp tax in the amounts of Five Hundred Sixty Four

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Thousand Two Hundred Twelve Pesos and 73/100 (P564,212.73) and Twenty Four Thousand Seven Hundred Forty Seven Pesos and 13/100 (P24,747.13), respectively, for taxable year 2000.

THE FACTS

The factual milieu of the case is as follows:

First Planters Pawnshop Inc. ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal place of business at No. 28, C.I. Rodriguez St., Taguig, Metro Manila. It is primarily engaged in the operation of pawnshop business.

On the other hand, Commissioner of Internal Revenue ("respondent") is the government official in charge of the administration and enforcement of the internal revenue laws of the Philippines with office at the BIR National Office Building, East Triangle, Diliman, Quezon City.

As per investigation conducted by the Bureau of Internal Revenue ("BIR"), it was discovered that petitioner incurred deficiency value-added tax ("VAT") and documentary stamp tax ("DST") for taxable year 2000. Thereafter, the BIR issued a Pre-assessment Notice dated July 7, 2003 which was received by petitioner on July 12, 2003, informing the latter of its VAT and DST liabilities in the amounts of Five Hundred Forty One Thousand One Hundred Two Pesos and 79/100 (P541,102.79) and Twenty Three Thousand Six Hundred Forty Six Pesos and 33/100 (P23,646.33), respectively.[1]

On July 22, 2003, petitioner submitted its position paper questioning the said Pre-assessment Notice for bereft of legal and factual bases.[2]

On December 29, 2003, petitioner received from the BIR Formal Assessment Notice Nos. VT-53281-00-03-510 and DS-53281-00-03-510[3] directing petitioner to pay deficiency VAT and DST in the increased

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[1] par. 2. Summary of Stipulated Facts
[2] par. 3 Summary of Stipulated Facts
[3] Annexes C-1 & C-2, Petition for Review

amounts of Five Hundred Sixty Four Thousand Two Hundred Twelve Pesos and 73/100 (P564,212.73) and Twenty Four Thousand Seven Hundred Forty Seven Pesos and 13/100 (P24,747.13), inclusive of surcharge and interest, computed as follows:

DEFICIENCY VALUE ADDED TAX

	Gross Receipts per F/S		P 2,680,345.50
	Output tax		P 268,034.55
	Less: Creditable input tax		-
	Basic VAT Deficiency		P 268,034.55
Add:	50% Surcharge	P134,017.28	
	20% Interest(1/26/01 to 1/30/04)	162,160.90	296,178.18
	Total amount due and collectible		P 564,212.73

DEFICIENCY DOCUMENTARY STAMP TAX

Pledge loan			P 5,847,850.00
Tax due			P 11,710.00
Add:	50%surcharge	P 5,855.00	
	20%Interest (1/11/01 to 1/30/04	7,182.13	13,037.13
Total amount due and collectible			P 24,747.13[4]

On January 4, 2004, petitioner filed a protest contesting the assessment. However, respondent, through Acting Regional Director Anselmo G. Adriano, issued a decision dated January 29, 2004 denying petitioner's protest, the pertinent excerpts of which read:

> *"In reply, Legal Division, this Region stands that Pawnshops operators should be subjected to Value added tax and Documentary stamp tax citing a very recent decision of Court Appeals dated February 10, 2003*

[4] par. 5, Summary of Stipulated Facts

> *issued in CA-GR SP No. 68180 entitled "Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol" and has ruled that pawnshops are liable to pay 10% of their gross receipts derived from the sale or exchange of services as value-added tax (VAT) and that you are still liable to pay documentary stamp tax citing the Ruling of the Supreme Court in the case of "Cruz vs. Chua".*
>
> *The record of this case disclosed that you have not introduced new legal basis to overthrow the validity of our said assessment."* [5]

Aggrieved, on March 11, 2004, petitioner filed a Petition for Review before this Court.

In Answer to the Petition, the respondent alleges, *inter alia,* that the enumeration of persons or businesses under Section 108 (A) of the 1997 National Internal Revenue Code ("NIRC") is not exclusive. Other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT.[6] Pawnshops are not confined in the service of lending money to pawners but are likewise engaged in disposing chattels pawned to them in a public auction. Thus, the liability of pawnshops to VAT attaches upon the sale of personal properties when the pawner fails to exercise his right of

[5] Annex E, Petition for Review
[6] Rollo, p. 48

redemption over the property pawned within maturity period.[7] In the case of Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.,[8] the Court of Appeals held that pawnshops are liable to pay 10% VAT on their gross receipts derived from sale or exchange of services.[9] Also, the Supreme Court in the case of Cruz vs. Chua,[10] considered the pawn ticket as evidence of the pledge subject to documentary stamp tax (DST).[11]

THE ISSUES

The parties interposed the following issues for the consideration of the Court:

1. Whether or not pawnshops are subject to value-added tax pursuant to Section 108 of the National Internal Revenue Code;

2. Whether or not petitioner is liable for documentary stamp tax.[12]

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[7] Rollo, p. 48
[8] C.A. G.R. SP No. 64117 (Feb. 6, 2003)
[9] Rollo, p. 48
[10] 54 Phil 10
[11] Rollo, p. 48
[12] Rollo, p. 70

THIS COURT'S RULING

Anent the first issue, the crux of the controversy is the correct interpretation of Section 108 (A) of the 1997 NIRC which provides:

> *"SEC. 108. Value Added Tax on Sale of Services and Use or Lease of Properties –*
>
> *(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.*
>
> *The phrase "sale or exchange of services"* ***means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration,*** *including those performed or rendered by construction and service contractors; stock, real, estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances),* **including** *surety, fidelity, indemnity and bonding companies;* **and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical and mental faculties.** *(Emphasis Ours)*

Petitioner contends that respondent erroneously deduced the phrase "sale or exchange of services" under Section 108 (A) of the 1997 NIRC as referring to the operation of pawnshop enterprises. Pawnshops are limited to the activity of forbearance of money which is not equated to service business. Petitioner further argues that as a last ditch effort to include pawnshops within the purview of the law, respondent declared pawnshops as synonymous with the term "lending investors". Pursuant to the case of Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.,[13] pawnshops are not among the enumerated persons or businesses subject to 10% VAT under the law since they are not lending investors.

Respondent, for his part, asserts that Section 108 (A) of the 1997 NIRC should not be limited to the persons or businesses specified therein. The enumeration is simply intended to give examples of business performing services that are subject to VAT.

We rule against the petitioner.

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[13] 406 SCRA 178

Under the tenet of ***ejusdem generis***, where general terms follow the designation of particular things or classes of persons or subjects, the general term will be construed to comprehend those things or persons of the same class or of the same nature as those specifically enumerated.[14] The purpose of the rule is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words.[15]

General words should be harmonized with specific words to broaden the coverage of the taxing statute. The wording "sale or exchange of services" is not merely restricted to the specific types of persons or businesses enumerated under Section 108 of the NIRC but should be read in conjunction with the general phrase "other service oriented entities".

Moreover, the term "including" should be defined as an enlargement and not of limitation.

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[14] National Power Corporation vs. Angas, 208 SCRA 542

[15] 2 Sutherland, Stat. Const., 3rd Ed., pp. 395, 400 cited in Ruperto Martin, Statutory Construction, 1984 Ed.

> *"The intention of an act will prevail over the literal sense of its terms. Thus, limited words in one part of an act may be expanded by general words in another part, if the general words more nearly express legislative intent.*
>
> *A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means'. Thus, it has been said that the word ' includes' is usually an enlargement, and not of limitation. . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated..."*[16]

Thus, to limit the application of the enumerated persons or businesses under Section 108 (A) of the 1997 NIRC would contradict the very clear meaning of the phrase of "all kinds of services".[17]

Relative thereto, Section 3 of Presidential Decree ("P.D.") No. 114, also known as the Pawnshop Regulatory Act, defines pawnshops as follows:

> *"Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably with, pawnbroker or pawnbrokerage."*

Section 14 of P.D. No. 114 further states the other services rendered by pawnshops, to wit:

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[16] Sutherland, Statutory Construction, 4th Ed., Vol., 2A, p. 82, Sec. 47.07 citing United States Argosy Ltd. v. Hennigan, 404 F2d 14 (CA 5th, 1968); Network Pawnshop Inc. vs. BIR, Tuguegarao City, CTA Case No. 6727 (September 23, 2004)

[17] First Express Pawnshop Co., Inc. vs. CIR, CTA Case No. 6529 (September 24, 2004)

> *"In the event the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation in accordance with the preceding section, the pawnbroker may sell or otherwise dispose any article taken or received by him in pawn: Provided, however, That the pawner shall be duly notified of such sale on or before the termination of the ninety day period, the notice particularly stating the date, hour and place of sale."*

Prescinding from the foregoing, the liability of pawnshop operators to pay the VAT no longer depends on the classification of their business but on the services they render.[18] The act of lending money at interest as well as selling the property pawned in a public auction upon the default of the debtor to pay the obligation during the ninety (90) day-redemption period clearly constitutes performance of a service for a fee, remuneration or consideration subject to VAT.

In a litany of cases, this Court ruled on the meaning of the phrase "sale or exchange of services":

> ***From the plain language of the law the sale or exchange of services is subject to VAT and the phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. The enumeration of persons performing services for a fee, remuneration or consideration, such as construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely to give examples of businesses performing services for a fee, remuneration or consideration that are subject to VAT. The enumeration is not exclusive, which means that other***

[18] Forum Pawnshop, Inc. vs. BIR, Tuguegarao City, CTA Case No. 6718 (September 6, 2004)

persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT.[19]

In addition, petitioner's reliance on the Lhuillier case to prove that pawnshops do not belong to the class mentioned under Section 108 (A) of the 1997 NIRC as they are not lending investors is misplaced. Contrary to petitioner's assertion, the highest tribunal made a distinction between a pawnshop and lending investor to delineate which entity is subject to percentage tax under Section 116 of the 1977 Tax Code, as amended. There was never any proscription on the imposition of VAT against pawnshops as it was not an issue therein but whether or not pawnshops are lending investors so as to be liable to 5% lending investor's tax, *viz*:

> *"While it is true that pawnshops are engaged in the business of lending money, they are not considered as "lending investors" for the purpose of imposing the 5% percentage tax."*

[19] First Express Pawnshop Co. Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6529, (September 24, 2004); Agencia Exquisite of Dipolog, Inc. vs. Hadji Mama Marzoc, CESO V, in his official capacity as Revenue Director, Revenue Region No. 15 of the Bureau of Internal Revenue and the Commissioner of Internal Revenue, CTA Case No. 6748 (May 28, 2004) and Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue; CTA Case No. 6266, (March 25, 2004)

Petitioner likewise asseverates that pursuant to R.A. Nos. 9010 and 9238, services rendered by "non-bank financial intermediaries" such as pawnshops are exempt from VAT.

We disagree.

R.A. Nos. 9010[20] and 9238[21] pertain to VAT exemption of banks, non-bank financial intermediaries performing quasi- banking functions, and other non-bank financial intermediaries. Said statutes do not apply to pawnshops. Moreover, nowhere is it stated under Section 109 of the 1997 NIRC that pawnshops are among the VAT exempt entities.

The 1997 NIRC treats non-bank financial intermediaries differently from pawnshops. Considering that the tax subjects are not similarly situated, they are not to be treated alike or put on equal footing, both in privileges and liabilities. Thus, petitioner cannot claim the defense of tax exemption in its pawnshop business, because the

[20] An Act to Further Defer the Imposition of the Value-Added Tax on Certain Services, Amending for the Purpose Section 5 of Republic Act No. 8424 [NIRC], As Amended by Republic Act No. 8761

[21] An Act Amending Certain Sections of the National Internal Revenue Code of 1997, As Amended by Excluding Several Services from the Coverage of the Value-Added Tax and Re-imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004

exemption can only be granted by clear and unequivocal provision of law on the basis of language, too plain to be mistaken. They cannot be extended by mere implication or inference.[22] The onus in proving tax exemptions rests upon the taxpayer which petitioner miserably failed to discharge in this case.

Petitioner further alleges that interest on pledge loans and past due loans do not form part of petitioner's gross receipts subject to VAT but are forbearance of money; and that liquidated damages are not income from sale or exchange of services.

Petitioner's arguments deserve scant consideration.

In the case of Kwik Loans Pawnshop, Inc. vs. Commissioner of Internal Revenue,[23] We made the following pronouncements:

> ***"By the very nature of the pawnshop business, money is being lent secured on personal property. The interest on pledge loans and past due loans are not compensation for forbearance of money. The same is true with liquidated damages in case the pawner fails to pay the borrowed money on time. Said loan having been secured on personal property, the pawnshop operator does not suffer any damage if ever the pawner defaults in the payment of the borrowed money. This is because in the pawnshop business, the loaned money is always***

[22] Philippine Long Distance Telephone Company, Inc. vs. City of Davao, 399 SCRA 442
[23] CTA Case No. 6424 (April 21, 2003)

> *very much lower than the actual worth of the personal property pawned.*
>
> *As regards the sale of the pawned items, what is being taxed by the respondent is the gain on auction sale and not the auction per se. But more importantly, gross receipts is defined in Section 108 as follows:*
>
> *"The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax"*
>
> *Thus, all interest income, liquidated damages and gains from auction sale of pawned items actually or constructively received by petitioner, having been derived as an intrinsic part of the pawnshop business, form part of the gross receipts of pawnshops subject to VAT.*

Indubitably, petitioner is liable to VAT on all interest income and liquidated damages as they form part of petitioner's gross receipts.

On the second issue of whether or not petitioner is liable for documentary stamp tax, petitioner maintains that a pawn ticket is not subject to DST under Section 195 of the 1997 NIRC which pertains to pledge; and stresses the case of H. Tambunting Pawnshop, Inc. vs. CIR,[24]

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[24] CTA Case No. 6366 (March 18, 2003)

which held that a pawn ticket is neither a security nor an evidence of indebtedness. Hence, it is exempt from DST under the law.

Respondent, however, counters that an ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket and the contract of pledge is, therefore, absolvable to bearer. Thus, as the person accepting the pawn ticket, which is the evidence of the pledge, the pawnshop is liable for documentary stamp tax thereon.

We agree with the respondent.

Section 195 of the 1997 NIRC provides:

> *SEC. 195 –Stamp Tax on Mortgages, Pledges and Deeds of Trust. - On every mortgage or pledge of lands, estate or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates xxx*

Pawn tickets *per se* are not subject to DST. The law imposes DST on the privilege to enter a pledge transaction. A documentary stamp tax as an excise tax is levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationships through the execution of specific instruments.[25] This means DST accrues when the privilege is exercised and not upon the document evidencing the transaction.

In the more recent Decision of the Court of Appeals in the case entitled "Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop Inc."[26], the appellate court discussed the rationale why the privilege to enter pledge transactions with pawnshops is subject to DST, to wit:

> *"Pawn tickets per se are not subject to Documentary Stamp Tax. Rather, it is the transaction involved that is being taxed. In the case of pawnshops, the property pawned or pledged, is transferred to the pawnshop as security for the payment of money lent. This is where the Documentary Stamp Tax is imposed. True, the pawn ticket is not an evidence of indebtedness as expressly provided under Presidential Decree No. 114. However, reliance on the pawn ticket to be subject to the Documentary Stamp tax is erroneous.*
>
> *The law is clear. On every pledge of personal property, "where the same shall be made as a security for the payment of any definite and certain sum of money lent," is a documentary stamp tax is imposed, based on the*

[25] Philippine Home Assurance Co., et. al. vs. C.A. and Commissioner of Internal Revenue, G.R. No. 119446, (January 21, 1999)
[26] C.A. G.R. SP No. 67667 (June 29, 2004)

> *amount involved. Again, adhering to the fundamental rule in construction regarding taxation, any claim for exemption must be shown and based on the express provision of the law. Pawnshops are not included in the exemption provided by the National Internal Revenue Code, as amended."* *(Underscoring supplied)*

A pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket.[27] Therefore, a pawn ticket substantiates the existence of a pledge transaction whereby personal property is offered as a collateral for the loan and the security given may be redeemed upon payment of the debt.

And under Section 195 afore-quoted, a documentary stamp tax is imposed on every pledge of personal property where the same shall be made as a security for the payment of any definite and certain sum of money lent.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Respondent's assessments in the amounts of Five Hundred Sixty Four Thousand Two Hundred Twelve Pesos and 73/100 (P564,212.73) and Twenty Four Thousand Seven

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[27] China Banking Corporation vs. Court of Appeals, 270 SCRA 503 citing the case of Cruz & Serrano vs. A.H. Lee, 54 Phil 15

Hundred Forty Seven Pesos and 13/100 (P24,747.13) representing deficiency VAT and DST, respectively, for taxable year 2000 are hereby **SUSTAINED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation among the members of this Division in accordance with Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman