REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
MANILA

SECOND DIVISION

H. TAMBUNTING PAWNSHOP, INC.,	**C.T.A. CASE NO. 6915**
Petitioner,	Members:
	CASTAÑEDA, JR., Chairman UY, and
-versus-	PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE,	APR 11 2005
Respondent.	GAApolinario

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 105 of the National Internal Revenue Code* (hereafter "NIRC") *of 1997, as amended*, any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in *Sections 106 to 108 of this Code*.

Are pawnshops engaged in the sale or exchange of services, and thus liable to pay Value-Added Tax (hereafter "VAT") thereon?

THE CASE

This issue is again before Us in this Petition for Review filed by H. Tambunting Pawnshop, Inc. (hereafter "petitioner") against the Commissioner of Internal Revenue (hereafter "respondent"). Petitioner seeks to nullify the Assessment Notice No. 32-2000 dated August 27, 2003, demanding petitioner to pay deficiency Value-Added Tax (VAT) and Compromise Penalty for taxable year 2000 in the amounts of P5,212,404.52 and P25,000.00, respectively.

THE FACTS

In their Joint Stipulation of Facts, the parties submitted a summary of stipulated facts:

> "1. Petitioner is a corporation organized and existing under and by virtue of Philippine laws with principal place of business at 822 M. Dela Fuente St., Sampaloc, Manila.
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> 2. Respondent Commissioner of Internal Revenue 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.

3. On 29 August 2003, petitioner received from the respondent Assessment Notice No. 32-2000 dated 27 August 2003, demanding payment of alleged deficiency Value Added Tax (VAT) and Compromise Penalty for taxable year 2000 in the amounts of P5,212,404.52 and P25,000.00, respectively.

4. On 15 September 2003, petitioner filed its administrative protest to the said VAT assessment.

5. Petitioner seasonably elevated its appeal to the Court of Tax Appeals on 2 April 2004 pursuant to Section 228 of the National Internal Revenue Code."

In his Answer, respondent alleged by way of special and affirmative defenses:

"12. The subject assessments are valid and correct and the petitioner has the burden of proof to impugn their validity (*Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647*). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671*); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villegas, 8 SCRA 547*).

13. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Tansportation, Co., 107 Phil 967 [1960]*).

14. Petitioner is subject to 10% VAT based on its gross receipts pursuant to RA 7716 otherwise known as Expanded Value-Added Tax (E-VAT) law, as amended by the 1997 Tax Code. The foregoing amendment to the VAT law leave no room for interpretation. Thus, unless expressly exempt from VAT, any person engaged in the sale of goods, property or services in the course of his trade or business shall be liable to the 10% VAT. The definition of the phrase '*sale or exchange of services*' under Section 108 of the 1997 Tax Code is broad enough to cover other similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental faculties (*Revenue Memorandum Circular No. 45-2001, October 12, 2001*).

15. The VAT law is not only clear in its intents but also clear in its wordings that ' *all kind of services*' (Section 108 [A]) with gross receipts exceeding P550,000.00 should be subject to VAT except those VAT exempt (Section 109) services. Since pawnshops business are not among those services that are exempt from VAT under Section 109 of the 1997 Tax Code, hence, petitioner shall be subject to the 10% VAT under Section 108 of the 1997 Tax Code.

16. Petitioner's contention to interpret the enumeration set forth under Section 108(A) of the 1997 Tax Code by applying the maxim '*expresio unius est expresio alterus*' would create havoc instead of harmony in the present Philippine tax system and would only trigger unjustness, inequality and partiality in the enforcement of VAT laws, which means that those sale or exchange of services which are not included in the enumeration and those services which will be put up in the future which are not VAT exempt services shall not be subject to 10% VAT. Certainly, this is not the legislative intent of the legislature, thus as held in *Gomez vs. Ventura* (54 Phil 726):

> 'xxx The maxim *expresio unius est expresio alterius* should be applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the legislature. It does not apply when the words are mentioned by way of example, or to remove doubts. xxx.'

17. Respondent maintains that the word '*including*' found in Section 108(A) of the 1997 Tax Code should be construed *as an enlargement* and not of limitation, thus:

> 'The intention of an act will prevail over 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 nearly express the legislative intent.
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> 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 a term of enlargement, and not of limitation. It, therefore, conveys the conclusion that there are other items includible though not specifically enumerated.' (*Sutherland, Statutory Construction, 4th ed., Volume 24, p. 82, Sec 47.08 citing United States, Argosy Ltd. v. Hannigan, 404 F2d 14 (CA5th, 1968); See United Sates v. Gertz, 249 F2d662 (CA9th, 1957); Federal Land Bank of St. Paul vs. Bismarch Lumber Co., 314 US 95, 86L Ed, 62 SCt 1[1941]*).

18. Pawnshops refer to persons or entities engaged in the business of lending money on personal property delivered as security for loans. As long as the entity provides service for a fee, remuneration or consideration,

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> then the service rendered is subject to VAT. The personal properties delivered by clients of pawnshops as security for the loans which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshops will not extend any loan to a borrower. Furthermore, the payment of interest imposed on a borrower by a pawnshop is equivalent to a fee in exchange of the service provided by the pawnshop in lending money to such borrower. Thus, the phrase '*all kinds of services*' as stated in the second paragraph of Section 108(A) of the 1997 Tax Code does not exclude other kinds of services performed for a fee, remuneration or consideration, hence, pawnshop business is subject to 10% VAT.
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> 19. Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on the security of personal property. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or consideration for such service. In other words, the liability of pawnshops operators to pay VAT no longer depends on the classification of their business but on the services they rendered. As a consequence thereof, rulings or decision declaring that pawnshops are not lending investors have lost their bearing insofar as VAT issue is concerned for as long as pawnshops are engaged in the sale of services like lending money on the security of personal property. Hence, petitioner cannot escape liability to pay 10% VAT under Section 102 (A) (now Section 108 [A] of the 1997 Tax Code)."

At the pre-trial conference held on September 3, 2004, the parties manifested that they will no longer present testimonial and documentary evidence because the sole issue involved in this case is a pure question of law. They moved that the case be deemed submitted for decision based

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on the pleadings and that they be given thirty (30) days therefrom within which to file their simultaneous memoranda, which Manifestations were granted by the Court.

Both parties having complied thereto, the case was deemed submitted for decision.

THE ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PAWNSHOPS ARE SUBJECT TO VALUE-ADDED TAX PURSUANT TO SECTION 108 OF THE NATIONAL INTERNAL REVENUE CODE.

II

WHETHER OR NOT PETITIONER IS LIABLE TO COMPROMISE PENALTY.

The principal issue posed for resolution by this Court is whether the service performed or rendered by petitioner, a pawnshop operator, is subject to VAT.

There is nothing novel in this case as the principal issue raised herein had, in a long line of cases, been previously ruled by this Court in the affirmative, and sustained by the Court of Appeals.

Petitioner claims that the service it performed as lending investor is not subject to VAT there being no express provision in the NIRC to that effect. The absence of a law or statute expressly exempting pawnshops from VAT will not suffice to subject them to VAT. There has to be a clear and prior determination of what the law covers, using the rule of strict interpretation in favor of taxpayers, before the question of exemption could be taken into account.

Petitioner points out that the enumeration of entities or transactions subject to VAT under *Section 108 of the NIRC* is exclusive. Accordingly, inasmuch as the service performed by pawnshops is not included in the enumeration, pawnshops are not subject to VAT. Respondent's argument for non-exclusivity of the enumeration under *Section 108 (A) of the NIRC* would defeat the basic rule of strict interpretation of tax statutes in favor of the taxpayer.

In issuing the Assessment Notice, the BIR heavily relied on the inclusion of lending investors in the enumeration. Citing the following

BIR rulings, petitioner maintains that pawnshops are not lending investors whose services can be subject to VAT, thus:

> "A. On January 3, 1983, the respondent Commissioner of Internal Revenue issued Ruling No. 001 which held that the Internal Revenue Law does not consider a pawnshop a lending investor as defined in Section 187 (u) of the Tax Code. This ruling also categorically held that pawnshops are subject only to the fixed annual tax of P1,000.00 and are not liable to the 5% tax on their gross income.
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> B. On January 23, 1989, the respondent Commissioner of Internal Revenue issued Ruling No. 022-90 which held that the operations of pawnshop are regulated and supervised by the Central Bank under PD 114 (Pawnshop Regulation Act); partake the nature of a contract of pledge where no service is rendered to its clients. Such being the case, a pawnshop is not subject to the Value-added Tax because the activity does not fall under Section 99 of the Tax Code, as amended.
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> C. On January 23, 1990, in reply to a letter of Ms. Elma S. Bacho of Dipolog City, the respondent Commissioner of Internal Revenue issued ruling No. 006-90 where it was held- 'Moreover, while lending investors, then as now, are subject to the percentage tax of 5% on the gross income under Section 116 (formerly Sec. 175) of the Tax Code, pawnshops never become subject to the percentage tax.'
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> D. On March 9, 1990, in reply to a letter of Arturo P. Rimpos of Baguio City, the respondent issued Ruling No. 99-022-90, 067-90, which among other things held- 'the operation of a pawnshop partakes the nature

> of a contract of pledge; thus, no service is rendered by such business to its clients. Such being the case, a pawnshop is not subject to the Value-Added Tax because its activity does not fall within those perform by persons liable.
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> E. Finally, on December 18, 1990, in reply to a letter of Benjamin C. Perez, Revenue District Officer of Baguio City, the respondent issued VAT ruling no. 226-90 which among other things held that (a) Pawnbrokers otherwise known as pawnshops operators are not subject to the Value-Added Tax Law, Title IV, NIRC as amended by Executive Order No. 273 (VAT Ruling No. 022-90, January 23, 1990; VAT Ruling No. 067-90, March 9, 1990)."

On the other hand, respondent maintains that under the law, all sellers of goods, properties and services whose aggregate gross annual sales of articles and/or services exceed P550,000.00 will be covered by VAT unless such sales are either zero-rated VAT (*Section 108[B]*) or exempt from VAT (*Section 109*). Pawnshops are undoubtedly engaged in the sale of services, that is, lending money at interest, to the general public, with personal property put on pawn as security for the payment of a loan or debt. The act of lending money constitutes a performance of a service for others for a fee, remuneration, or consideration subject to the payment of 10% VAT under *Section 108 (A) of the 1997 NIRC, as amended.* The said provision expressly states that all kinds of services shall be subject to VAT except those VAT exempt and zero-rated VAT services.

Invoking the case of *Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation, 329 SCRA 243-245,* respondent maintains that since petitioner's gross receipts for taxable year 2000 is P11,501,673.40, which is far beyond the P550,000.00 threshold limit, petitioner is subject to 10% VAT under *Section 108(B) of the 1997 NIRC, as amended.*

Respondent likewise asserts that the enumeration of persons subject to 10% VAT under *Section 108 (A) of the 1997 NIRC, as amended*, is not exclusive. Other persons performing services for a fee who are not expressly mentioned in the enumeration are also subject to VAT. The phrase "including" in *paragraph 2 of Section 108 (A) of the 1997 NIRC, as amended,* should be construed as an enlargement and not as a limitation.

We agree with the respondent.

Section 105 of the NIRC of 1997, as amended, provides that:

> "SEC. 105. *Persons Liable.*- Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who

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imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase '*in the course of trade or business*' means regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

Corollarily thereto, *Section 108 (A) of the same Code* provides:

"Section 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, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafés 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 or mental faculties. xxx."

The law is clear. VAT is a percentage tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services (*Commissioner of Internal Revenue vs. Court of Appeals, 329 SCRA 237*). *Section 102(A) of the National Internal Revenue Code of 1977* defines the phrase "sale of

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services" as the "performance of all kinds of services for others for a fee, remuneration or consideration".

Section 3 of P.D. No. 114 (*The Pawnshop Regulations Act*) defines pawnshop as a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and maybe used interchangeably with, pawnbrokers or pawnbrokerage.

Considering that pawnshops are engaged in the business of lending money at interest, the same constitutes the performance of a service for a fee, remuneration or consideration for such service. As such, pawnshops are liable to pay VAT for the sale of services.

As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value-added tax (*Commissioner of Internal Revenue vs. Court of Appeals, supra*). The personal properties delivered by clients of pawnshops as security for the loan which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshop will not extend any loan to a borrower. Thus, the phrase "all kinds of services" as stated in the second paragraph of *Section 102(A) of the NIRC of 1977, as* *amended*, is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, provided by pawnshops to their borrowers.

Furthermore, under *Section 15 of P.D. No. 114*, pawnshops also sell at public auction, personal properties pawned to them, in the event that the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation. The pawnbroker may sell or otherwise dispose of any article taken or received by him in pawn (*Section 14, P.D. No. 114*). Therefore, by selling properties, pawnshops shall be subject to VAT.

Finally, *Section 103 (now Section 109)* of the same Code enumerates the transactions that are exempt from VAT. Pawnshop transactions do not fall within the exemptions.

Petitioner's argument for the exclusivity of the enumeration in *Section 108(A) of the 1997 NIRC, as amended*, is misplaced. The phrases "the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration", "including those performed or rendered by", and "similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental

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faculties" necessarily convey the very idea of non-exclusivity of the enumeration.

Reliance on the principle of *inclusio unius est exclusio alterius* is likewise erroneous where the law is clear and unambiguous. The law on VAT clearly includes pawnshops since they are engaged in the performance of service for fee. Thus, adhering to the well-settled rule in statutory construction, where the language of the statute imposing a tax is plain and there is no room for construction, any claim for exemption must be clearly shown and based on the express intent of the law (*Davao Gulf Lumber Corporation vs. Commission of Internal Revenue, 293 SCRA 76, 88*). Otherwise stated, "taxation is the rule, exemption therefrom is the exception" (*Mactan Cebu International Airport Authority vs. Hon. Ferdinand J. Marcos, 261 SCRA 667, 680*).

Moreover, the said settled rule in statutory construction does not apply where other circumstances indicate that the enumeration was not intended to be exclusive (*Escribano vs. Avila, 85 SCRA 245*), or where the enumeration is by way of example only (*Gomez vs. Ventura, 54 Phil 726; Binay vs. Sandiganbayan, 316 SCRA 86*). Rather, such enumeration even expanded the meaning of the phrase "all kinds of services".

Finally, no compromise penalty should be assessed and collected against petitioner as there was no compromise agreement between petitioner and respondent with respect to the value-added tax deficiency.

Compromise penalties are amounts collected by the BIR in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on a compromise agreement validly entered into between the taxpayer and the Commissioner of Internal Revenue (*Coll. Of Internal Revenue vs. UST, 104 Phil. 1062*).

Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or collected without the conformity of the taxpayer in which case the BIR should file a criminal action to enforce the penalty for the violation (*The National Internal Revenue Code Annotated, Vol. 2, 8th Ed. 2003, by Hector S. de Leon, p. 566*).

The present case is not a criminal action instituted against petitioner for non-payment of value-added tax deficiency, but a tax assessment or demand made by the Bureau of Internal Revenue against petitioner, from which the latter contested to the Commissioner of Internal Revenue and ultimately to this Court. Clearly, petitioner resisted the assessment. Thus, the result of the proceeding cannot be considered as a "compromise" as the proceedings in this case constitute an adjudication of the issue arising from the assessment made by the BIR, on one hand, and the refusal of petitioner to pay the tax deficiency, on the other.

It is well settled that this Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying or not paying its distinctly belongs to the taxpayer (*Phil. International Fair, Inc. vs. The Coll. Of Internal Revenue, 4 SCRA 781*).

Finding petitioner's contention against the assessment and collection of compromise penalty tenable, the amount of P25, 000.00 imposed by way of compromise penalty is hereby deleted.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue the deficiency VAT for taxable year 2000 in the amount of P5, 212,404.52, plus 25% surcharge and 20% delinquency interest per annum from September 29, 2003 until fully paid, pursuant to *Sections 248 and 249 of the NIRC of 1997, as amended.*

The amount of P25,000.00 imposed by way of compromise penalty is hereby **DELETED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division