REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

EN BANC

TAMBUNTING PAWNSHOP, INC., *Petitioner,*	**C.T.A. E.B. NO. 245** **(C.T.A. CASE NO. 6776)**
	Present:
-versus-	ACOSTA, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 24 2007

x --- x

DECISION

PALANCA-ENRIQUEZ, J.:

Are pawnshops engaged in the sale or exchange of services, and thus liable to pay Value-Added Tax (hereafter "VAT") thereon under *Section 108* of the *National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), as amended? Are pawn tickets subject to Documentary Stamp Tax (hereafter "DST") under *Section 195* of the same Code?

THE CASE

These issues are before Us in this Petition for Review filed on January 5, 2007 by Tambunting Pawnshop, Inc. (hereafter "petitioner") under *Section 18* of *Republic Act No. 1125, as amended by Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, which seeks the reversal of the Decision dated October 5, 2006 and Resolution dated November 28, 2006 issued by the First Division of this Court in C.T.A. Case No. 6776, the respective dispositive portions of which read as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Respondent's assessments for deficiency Expanded Withholding Tax and Withholding Tax on Compensation for the taxable year 1999, in the amounts of **Twenty One Thousand Seven Hundred Twenty Three and 75/100 Pesos** (P21,723.75) and **Sixty Seven Thousand Two Hundred One and 55/100 Pesos** (P67,201.55), respectively, are hereby **CANCELLED** and **SET ASIDE**. However, the assessments for deficiency Value-Added Tax and Documentary Stamp Tax are hereby **AFFIRMED**.
>
> Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of **Three Million Fifty Five Thousand Five Hundred Sixty Four and 34/100 Pesos** (P3,055,564.34) and **Four Hundred Six Thousand Ninety Two and 50/100 Pesos** (P406,092.50) representing deficiency Value-Added Tax and Documentary Stamp Tax,

respectively, for the taxable year 1999, plus 20% delinquency interest from February 18, 2003 up to the time such amount is fully paid pursuant to Section 249 (C) of the 1997 NIRC.

SO ORDERED."

"**WHEREFORE**, there having no new matters or issues advanced by the petitioner in its present motion which may compel this Court to reverse, modify or amend the Decision of October 5, 2006, the same is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The facts of the case are undisputed.

Petitioner is a corporation engaged in the pawnshop business and existing under and by virtue of Philippine laws with principal place of business at 1008-A Pasay Road, San Lorenzo Village, Makati City.

Respondent, on the other hand, is the Commissioner of Internal Revenue in charge with 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.

On January 22, 2003, petitioner, through its counsel, received from respondent Assessment Notice No. 32011-99-03-165 dated January 15, 2003, demanding payment of alleged deficiency Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Deficiency Withholding Tax on Compensation (WC) and Documentary Stamp Tax (DST) for taxable year 1999 in the amounts of P3,055,564.34, P21,723.75, P67,201.55 and P406,092.50, respectively.

On February 21, 2003, petitioner administratively protested said assessment and requested for its cancellation on the ground that the same lacks legal and factual bases.

On May 26, 2003, petitioner paid the assessed amount of P14,398.38 for alleged deficiency withholding tax on compensation.

The protest not having been acted upon within the 180-day period, on September 19, 2003, petitioner filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6776.

In his Answer, respondent alleged by way of special and affirmative defenses that: for failure of petitioner to submit relevant supporting documents within sixty (60) days from filing of its protest, said assessments have become final and executory, hence, this Court has no jurisdiction over the case; petitioner was assessed for deficiency VAT for failure to file its VAT return and pay the corresponding VAT due thereon relative to its gross receipts derived from pawnshop operation imposed under Section 108 of the NIRC, as amended by Section 114 of the same Code; petitioner shall be liable for VAT, as under RMC 45-2001 it is not expressly or impliedly exempt thereto and that under the Tax Code, any person engaged in the sale of goods, property or services in the course of its trade or business shall be liable for VAT; petitioner was assessed for deficiency Expanded Withholding Tax in the amount of P21,723.75 for failure to withhold and remit the correct withholding tax due on its rental, professional fees, ads and promo and security services imposed under *Revenue Regulations No. 2-98*; petitioner was assessed for deficiency Withholding Tax on Compensation in the amount of P67,201.55 for failure to withhold and remit the correct withholding tax due on compensation income of its employees, as required under *Section 24 (A)(1)(c) and Section 80 of the NIRC*, as implemented under *Section 2.81 of Revenue Regulations No. 2-98*; and petitioner was assessed for deficiency Documentary Stamp Tax (DST) in the amount of P406,092.50 for failure to file and pay the corresponding DST due on pledge loan issued from its pawnshop business, as akin to lending investor's activity imposed under Section 195 of the NIRC.

After trial on the merits, the First Division of this Court rendered the assailed decision on October 5, 2006, partially granting the Petition for Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the First Division denied in a Resolution dated November 28, 2006.

Hence, this Petition For Review raising the sole issue for this Court's consideration, to wit:

ISSUE

> THE DECISION AND RESOLUTION OF THE FIRST DIVISION OF THE COURT OF TAX APPEALS ARE NOT IN ACCORDANCE WITH LAW AND SETTLED JURISPRUDENCE.

On February 9, 2007, We required the respondent to file his comment on the petition, within ten (10) days from notice. Oal

Despite notice, respondent has failed to file his comment. Hence, the petition is now deemed submitted for decision.

THE COURT EN BANC'S RULING

The petition is without merit.

The sole issue posed for resolution by this Court *En Banc* is whether the petitioner, a pawnshop operator, is subject to Value-Added Tax under *Section 108 of the NIRC*, and whether pawn tickets are subject to DST under *Section 195 of the same Code*.

Pawnshops are Subject to DST Under Section 195 Of the NIRC of 1997, As amended

In the recent case of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue, (489 SCRA 152-158*), the Supreme Court has finally laid to rest the issue on whether pawnshop transactions are subject to DST and ruled in the affirmative, as follows:

> "On September 28, 2005, the Court granted petitioner's partial withdrawal of the petition. Hence, the lone question to be resolved in the present petition is whether petitioner's pawnshop transactions are subject to DST.

70

The Court rules in the affirmative.

Sections 173 and 195 of the NIRC, state:

> SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments, and Papers.* - **Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto**, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes x x x." (Emphasis supplied)
>
> 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 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 and intended only as security, either by express stipulation or otherwise, **there shall be collected a documentary stamp tax** at the following rates:
>
> (a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20).
>
> (b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (10.00).
>
> x x x x. (Emphasis supplied)

71

It is clear from the foregoing provisions that the subject of a DST is not limited to the document embodying the enumerated transactions. A DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. In *Philippine Home Assurance Corporation v. Court of Appeals,* it was held that:

> In general, documentary stamp taxes are 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. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are **leases of lands, mortgages, pledges and trusts, and conveyances of real property**. (Emphasis added)

Pledge is among the privileges, the exercise of which is subject to DST. A pledge may be defined as an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon the fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person. This is essentially the business of pawnshops which are defined under Section 3 of Presidential Decree No. 114, or the Pawnshop Regulation Act, as persons or entities engaged in lending money on personal property delivered as security for loans.

Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations For Pawnshops issued by the Central Bank to implement the Act, require every pawnshop or pawnbroker to issue, at the time of every

72

such loan or pledge, a memorandum or ticket signed by the pawnbroker and containing the following details: (1) name and residence of the pawner; (2) date the loan is granted; (3) amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawnbroker or his authorized agent; (8) signature or thumb mark of pawner or his authorized agent; and (9) such other terms and conditions as may be agreed upon between the pawnbroker and the pawner. In addition, Central Bank Circular No. 445, prescribed a standard form of pawn tickets with entries for the required details on its face and the mandated terms and conditions of the pledge at the dorsal portion thereof.

Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:

> 'Pawn ticket" is the pawnbrokers' receipt for a pawn. It is neither a security nor a printed evidence of indebtedness.'

True, the law does not consider said ticket as an evidence of security or indebtedness. However, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket.

The settled rule is that tax laws must be construed in favor of the taxpayer and strictly against the government; and that a tax cannot be imposed without clear and express words for that purpose. Taking our bearing from the foregoing doctrines, we scrutinized Section 195 of the

73

NIRC, but there is no way that said provision may be interpreted in favor of petitioner. Section 195 **unqualifiedly subjects all pledges** to DST. It states that '[o]n every x x x pledge x x x there shall be collected a documentary stamp tax x x x'. It is clear, categorical, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application.

The *onus* of proving that pawnshops are not subject to DST is thus shifted to petitioner. In establishing tax exemptions, it should be borne in mind that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.

In the instant case, there is no law specifically and expressly exempting pledges entered into by pawnshops from the payment of DST. Section 199 of the NIRC enumerated certain documents which are not subject to stamp tax; but a pawnshop ticket is not one of them. Hence, petitioner's nebulous claim that it is not subject to DST is without merit. It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications.

The Court notes that BIR Ruling No. 305-87, and BIR Ruling No. 018-88 (February 1, 1988), which held that a pawn ticket is subject to DST because it is an evidence of a pledge transaction, had been revoked by BIR Ruling No. 325-88. In the latter ruling, the BIR held that DST is a tax

74

on the document; and since a pawn ticket is not an evidence of indebtedness, it cannot be subject to DST. Nevertheless, this interpretation is not consistent with the provisions of Section 195 of the NIRC which categorically taxes the privilege to enter into a contract of pledge. Indeed, administrative issuances must not override, supplant or modify the law but must be consistent with the law they intend to carry out."

Pursuant, therefore, to the aforequoted Supreme Court decision, petitioner's pawnshop transactions are subject to DST.

Pawnshops are subject to VAT under Sections 105 & 108 of the NIRC of 1997, as amended

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

"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 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 the 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

aul

75

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."

Corollary thereto, *Section 108 (A) of the same Code* 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, 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

76

> 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 108(A) of the NIRC of 1997, as amended,* defines the phrase "sale or exchange of services" as the "performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration xxx".

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

OPL

77

pawn brokerage. The same is similar also to "lending investors" specifically mentioned in *Section 108 of the NIRC.*

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. Based on the principle of "Ejusdem Generis", the phrase "all kinds of services" as stated in the second paragraph of *Section 108 (A) of the NIRC of 1997, as amended*, is broad enough to cover the kind of service similar to "lending investors", that is, lending money in consideration of personal property delivered as security, provided by pawnshops to their borrowers.

78

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

79

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. Commissioner 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 above settled rule 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".

Imposition of Surcharge
Under Section 248 (B)

80

Of the NIRC of 1997, as amended, is Mandatory

Petitioner's contention that assuming *arguendo* that its business is subject to VAT and DST, no surcharges and interest may be properly imposed as petitioner believed in good faith that it is not subject thereto is also devoid of merit.

Section 248 (B) of the NIRC of 1997, as amended, provides:

> "SEC. 248. Civil Penalties.-
>
> xxx xxx.
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: xxx."

The law is very clear. The imposition of surcharge is mandatory. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State. It is basic that "surcharge" is an overcharge or exaction imposed by law as an addition to the main tax required to be paid. It is not really a penalty as used in criminal law but a civil administrative sanction provided primarily as a safeguard for

avl

81

the protection of the State revenue and to reimburse the government for the expenses in investigating and the loss resulting from the taxpayer's fraud. In other words, the imposition of a surcharge is not penal but compensatory in nature — they are compensation to the State for the delay in the payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State *(Republic of the Phils. vs. Phil. Bank of Commerce, 34 SCRA 369).*

Furthermore, this issue regarding the imposition of the fifty percent (50%) surcharge has not been raised in the administrative level and even in the First Division of this Court, and petitioner is, therefore, estopped from raising the same for the first time in this appeal *(Aguinaldo Industries Corp. vs. Commissioner of Internal Revenue, 112 SCRA 136).* The settled rule is that an issue which was not raised during the trial in the court below cannot be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice and due process *(Victorias Milling Co., Inc. vs. Court of Appeals, 333 SCRA 663)*.

For all the foregoing, We see no reason to reverse the First Division of this Court.

82

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE** and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

83