REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EXQUISITE PAWNSHOP JEWELRY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6755

JAIME B. SANTIAGO in his capacity as Revenue Regional Director, **REVENUE REGION No. 13 of the BUREAU OF INTERNAL REVENUE** and **THE COMMISSIONER OF INTERNAL REVENUE,**
Respondents.

Promulgated:
JUL 06 2004

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D E C I S I O N

This Petition for Review seeks for the cancellation of the alleged deficiency value-added and documentary stamp tax assessments in the amounts of P2,444,000.44 and 1,566,605.55, respectively, issued by respondent for the taxable year 2000.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is engaged in the pawnshop business with business address at A. del Rosario St. Mandaue City, Cebu.

On March 13, 2003, respondent issued Assessment Notice Nos.-80-vat-13-2000-2003-3-128 and 80-dst-13-2000-2003-3-129 against petitioner together with Formal Letters of Demand and Details of Discrepancy *(Annexes A-E, Petition for Review).* Petitioner was assessed of deficiency value-added tax (VAT) in the amount of P2,444,000.44 and deficiency documentary stamp tax (DST) in the amount of P1,566.605.55, inclusive of surcharge, interest and compromise penalty for the taxable year 2000.

On April 24, 2003, petitioner, through its counsel, filed a formal tax protest *(Annex F, Petition for Review)* with the Revenue Regional Director (Region 13) of Cebu. And on July 10, 2003, petitioner's counsel received a denial of its protest dated April 23, 2003, on the ground of lack of legal basis *(Annex G, Petition for Review).*

On August 11, 2003, petitioner, through registered mail, filed herein Petition with a Prayer for Preliminary Injunction. Thereafter, respondent filed his Answer on September 24, 2003, alleging as his Special and Affirmative Defenses the following:

3. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its gross receipts derived from such services are subject to value-added tax (VAT) imposed under Section 108(A) of the Tax Code (Commissioner of Internal Revenue v. Agencia Exquisite of Bohol, Inc., CA-GR Sp. No. 68180, February 12, 2003; Commissioner of Internal Revenue v. Exquisite Pawnshop & Jewelry, Inc., CA G.R. Sp. No. 70319, May 13, 2003).

4. Pawnshops lend money on the security of personal property, that is a pledge. The pledge is evidenced by a pawn ticket. Hence, the pawn ticket is the logical document subject to documentary stamp tax (DST) on pledges under Section 195 of the Tax Code.

5. The assessments were issued in accordance with law and regulations.

6. All presumptions are in favor of the correctness of tax assessments.

During the proceedings, the parties submitted in their Joint Stipulations of Admitted Facts and Issues filed on December 17, 2003, the following issues to be resolved by this court:

1. Whether or not a pawnshop is engaged in the sale of goods, property or services in the course of its trade or business as to be made liable for the payment of the 10% value-added tax (VAT)?;

2. Whether or not Revenue Memorandum 45-2001 is valid; and

3. Whether or not pawn tickets are subject to documentary stamp tax (DST).

The parties also agreed to submit the case for decision after the submission of their respective memorandum in view of the fact that there are no disputed facts and that the issues to be resolved are purely legal.

Petitioner contends that pawnshops are not among the entities subject to VAT as referred and enumerated under Section 108(A) of the NIRC, or even prior laws before the amendments thereto considering that pawnshops are not engaged in the sale or exchange of the services to qualify as a VAT taxpayer. Furthermore, petitioner argues that it is incumbent upon the taxing authority and not upon the taxpayer to show that the subject of the tax is clearly covered under the law, and the rule on statutory construction at this point bends in favor of the non-taxability of the subject, by virtue of strict interpretation on the imposition of taxes.

On the other hand, respondent, in his memorandum, simply enumerated the decisions of this court and the Court of Appeals ruling in favor of the imposition of VAT on pawnshops.

Indeed, the legal issue on whether a pawnshop is subject to VAT or not has been passed upon by this court in a litany of pawnshop cases and the recent of which is the case of *Agencia Exquisite of Dipolog, Inc. vs. Hadji Mama B. Marzoc, CESO V, in his official capacity as Revenue Regional Director, Revenue Region No. 15 of the Bureau of Internal Revenue and the Commissioner of Internal Revenue, CTA Case No. 6748, May 28, 2004*, all pointing to the inclusion of pawnshops as entities liable to VAT under Section 108(A) in relation to Section 105 of the NIRC.

Section 108(A) of the 1997 National Internal Revenue 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, 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; <u>and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties</u>. xxx. (Underscoring supplied.)*

From the foregoing provision, it is apparent that the sale or exchange of services is subject to value-added tax. The phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. The listing provided for in Section 108(A) is intended merely to give examples of persons or businesses performing services for a fee, remuneration or consideration. The enumeration is not exclusive, which means that other persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT. In the case of ***Gomez vs. Ventura, 54 Phil. 726,*** it was ruled that:

> *"xxx The maxim expressio unius est exclusio 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. <u>It does not apply when words are mentioned by way of example, or to remove doubts</u>. (See Cyc., 1122 xxx." (Underscoring ours.)*

Section 108(A) [formerly Section 102(a)] does not limit its application to those enumerated therein because the law speaks of "all kinds of services". To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services".

In addition, the phrase "including" should be construed merely as an enlargement and not of limitation.

> *"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 the 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 <u>'the word 'includes' is usually a term of enlargement, and not of limitation… It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated</u>…" [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); See United States v. Gertz, 249 F2d 662 (CA 9th, 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 US 95, 86 L Ed 65, 62 S Ct1 (1941)]. (Underscoring supplied.)*

Hence, the terms "includes" and "including" do not exclude items otherwise within the scope of the defined term.

> *The terms "includes" and "including" when used in the Code are not deemed to exclude items otherwise within the meaning of the term defined. Thus, where Section 1(e) applies to the taxable income of estates "including" and thereafter lists four types of income from trusts or estates that are taxable, other types of estates may also be subject to taxation under Section 1(e). To hold differently would, in effect, substitute the term "limited to" for "including". [Mertens, Law of Federal Income Taxation, 1995 Ed., Section 3.37, Chap. 3, pp. 55-56, citing In re Joplin, Jr., 882 F2d 1507 (CA10 1989), applying IRC & 7701(c)].*

Moreover, Section 105 of the Tax Code provides:

"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."

In the case of ***Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc., CA-G.R. Sp No. 70319, May 13, 2003***, the Court of Appeals in ruling that pawnshops are subject to 10% VAT held in this wise:

"Elementary is the rule in statutory construction, that when laws or rules are clear, application and not interpretation thereof is imperative.

In the instant case, the law is clear and leaves no room for its interpretation.

Section 105 of the National Internal Revenue Code (NIRC) subjects "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 to a value-added tax (VAT). While Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." It includes the services enumerated in the aforementioned section and similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental faculties. The wordings of the definition of the phrase "sale or exchange of services" is unambiguous. It encompasses the performance of all kinds of services for a fee, remuneration or consideration.

Thus, the sale or exchange of services is subject to 10% VAT. Indeed, for as long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

Section 3 of Presidential Decree No. 114 defines a pawnshop thus:

"Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans."

From the foregoing definition, the fact that, the principal activity of a pawnshop is lending money at interest on the security of personal property is *instantly recognizable. Needless to state, the act of lending money at interest constitutes a performance of a service for a fee, remuneration or consideration.*

The phrase "all kinds of services" as stated in the second paragraph of Section 108 (A) of Republic Act No. 8424 is broad enough to cover the kind of service which is provided by pawnshops to their borrowers, that, is lending money in consideration of personal property delivered as security. Hence, a pawnshop is engaged in the sale of services that is subject to VAT under Section 108 (A) of the Tax Code, although it is not specifically mentioned in the law.

Clearly then, pawnshops are subject to value-added tax." (Emphasis supplied)

Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on personal property delivered as security for the loan. 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 pawnshop operators to pay the VAT no longer depends on the classification of their business but on the services they render. As a consequence thereof, any allegation that pawnshops are not lending investors has lost its bearing. For as long as pawnshops are engaged in lending money on the security of personal property, they are still within the ambit of Section 102(a) [now Section 108(A)]**. Petitioner, being engaged in the pawnshop business, is undoubtedly engaged in the sale of services like lending money. Hence, it cannot escape liability to pay the VAT.

Well settled is the jurisprudence that tax exemptions are strictly construed against the taxpayer ***(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639).*** In the absence of any clear provision of law exempting pawnshops from VAT, it is our conclusion that pawnshops are subject to VAT on their gross receipts considering that they are clearly engaged in the performance of services for a fee, remuneration or consideration.

In the case of ***Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2000,*** the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 of the Tax Code, is subject to VAT. The High Tribunal held:

> *"Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." xxx*
>
> xxx xxx xxx
>
> *Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.*
>
> *At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT."* *(Underscoring supplied)*

As to the issue of whether Revenue Memorandum Circular 45-2001 dated October 12, 2001 is void or not, the petitioner asserts that RMC 45-2001 is void for being issued beyond the powers of the CIR. At the same time the said issuance is not just merely interpretative but also serves as an amendatory provision to the Tax Code. Petitioner further avers that said issuances are also contrary to established rulings issued by the CIR regarding VAT.

For easy reference, we quote hereunder RMC 45-2001, dated October 12, 2001:

REVENUE MEMORANDUM CIRCULAR NO. 45-01

SUBJECT : Taxability of Pawnshop Operators for VAT Purposes.

TO : All Internal Revenue Officers and Others Concerned.

The issue of whether a pawnshop operator may be taxed as a lending investor under the old lending investor's tax is presently pending adjudication before the Supreme Court. It arose from the issuance of Revenue Memorandum Order No. 15-91 dated March 11, 1991, which ruled that the "pawnshop business is akin to lending investor's business activity". Such being the case, pawnshop operators were subjected to lending investor's tax imposed by then Section 116 of the Tax Code of 1977, as amended by Executive Order No. 273.

While the issue has been the subject of litigation, Republic Act (R.A.) No. 7716 (R.A. 7716), otherwise known as the Expanded Value-Added Tax Law (EVAT), was passed. It repealed, among others, the old lending investor's tax in order to impose the ten percent (10%) value-added tax (VAT) on all businesses except those specifically declared as exempt from VAT. This amendment was implemented beginning January 1, 1996, pursuant to Revenue Regulations No. 7-95. The EVAT law was further amended by R.A. 8241 in order to subject all other lines of business to VAT, unless otherwise expressly provided therein.

The foregoing amendments 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 service" under Section 108 of the National Internal Revenue Code of 1997 (NIRC) 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 . . . ".

In view of the repeal of the old lending investor's tax, the issue pending in Court as to whether or not pawnshop operators may be legally levied with the lending investor's tax has become moot and academic. Pawnshop operators are therefore liable to the 10% VAT based on gross receipts beginning January 1, 1996, regardless of the final decision of the Supreme Court on the issue. For purposes of the VAT, gross receipts of pawnshop operators include interest charges, profit from the sale of pawned properties, and all other items of income derived from their business activity.

On the basis of the foregoing, all pawnshop operators should have filed their corresponding monthly/quarterly. VAT returns beginning the taxable year 1996 up to the present. Those who are not liable to VAT pursuant to Section 109(z) of the Tax Code of 1997 (where the gross annual receipts do not exceed P550,000) should have filed the appropriate percentage tax returns within the same period.

All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

(SGD.) EDMUNDO P. GUEVARA
Deputy Commissioner of Internal Revenue
Officer-in-Charge

From the very text of RMC No. 45-2001, the CIR merely elaborated on the provisions of R.A. 7716, otherwise known as the Expanded Value-Added Tax Law. The said revenue memorandum did not in any way amend the provisions of the law. At the very most, it reiterated what the law already provided for, as can be gleaned from certain paragraphs of the actual text, to wit:

"The foregoing amendments 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 service" under Section 108 (A) of the National Internal Revenue Code of 1997 (NIRC) is broad enough to cover other "xxx similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental

faculties xxx"

Finally, on the issue as to whether or not pawn tickets are subject to Documentary Stamp Tax, petitioner cites Section 195 of the NIRC, to wit:

> *"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 .... xxx there shall be collected a documentary stamp tax at the following rates: xxx"*

Thus, petitioner deduces from the said provision that a pawn ticket is not a security for the payment of any definite or certain sum of money. Petitioner claims that the possession of a pawn ticket is with the pawnee, and not with the pawnbroker thereby highlighting and negating it as an evidence or security for the payment of any indebtedness. Thus, petitioner concludes that a pawnshop ticket should not be subjected and assessed the DST imposed under Section 195 of the Tax Code.

Respondent counteracts on the said issue by stating that pawnshops lend money on the security of personal property, that is, a pledge. The pledge is evidenced by a pawn ticket. Hence, the pawn ticket is the logical document that is subject to the DST on pledges under Section 195 of the Tax Code. Respondent emphasizes that pawners present the pawn ticket to redeem the pawned or pledged item, therefore, the pawn ticket is the document evidencing the pledge.

The foregoing provision of NIRC, undeniably declares that a document evidencing a pledge of personal property which is made as a security for payment of a loan is subject to documentary stamp tax. Corollarily, Section 3 of P.D. No. 114 (Pawnshop Regulation Act) defines a pawn ticket as the pawnbroker's "receipt" for a pawn. It is neither a security nor a printed evidence of indebtedness. Inasmuch as the document taxable under Section 195 must be the document evidencing the indebtedness and considering that under that Pawnshop Regulation Act, a pawn ticket is not a printed evidence of indebtedness, such pawn ticket cannot be considered as a document subject to documentary stamp tax. ***(CIR vs. Hon. Andres B. Reyes, Jr., C.A. G.R. SP No. 28824, December 23, 1993).***

IN VIEW OF THE FOREGOING, the instant petition is **PARTIALLY GRANTED**. Assessment Notice No. 80-dst-13-2000-2003-3-129 dated March 13, 2003 assessing petitioner of deficiency documentary stamp tax in the amount of P1,566,605.55 is hereby **CANCELLED** and **SET ASIDE**. However, Assessment Notice No. 80-vat-13-2000-2003-3-128 is hereby **AFFIRMED** except the imposition of compromise penalty amounting to P25,000.00. In the case of ***Rightfield Property Ventures vs. Commissioner of Internal Revenue, CTA Case No. 5972, October 16, 2003***, this court struck down the compromise penalty of P25,000.00 since a compromise implied mutual agreement. In the absence of s showing that petitioner consented thereto, the compromise penalty cannot be validly imposed ***(UST vs. Collector, 104 Phil 1062)***.

Accordingly, petitioner is **ORDERED** to **PAY** the amount of P2,419,000.44, representing deficiency value-added tax, inclusive of surcharge and interest, for the year 2000. In addition, petitioner is **ORDERED** to **PAY** 20% delinquency interest *per annum* from April 14, 2003 until the amount is fully paid.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(w/ Concurring & Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice