REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGENCIA EXQUISITE OF DIPOLOG, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6748

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,**
Respondent.

Promulgated:
MAY 28 2004

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DECISION

The instant Petition for Review is an appeal from the decision of the respondent holding the petitioner liable for the amount of P314,066.29 as deficiency Value-Added Tax (VAT) for the taxable year 2000.

The facts of the case as culled from the records are as follows:

Petitioner Agencia Exquisite of Dipolog, Inc., is a corporation duly organized and existing under the laws of the Republic of the Philippines, engaged in the pawnshop business, with principal office at Gen. Luna St., Dipolog City.

On April 29, 2003, petitioner received from the respondent Regional Director a Formal Letter of Demand dated April 8, 2003 to which an Assessment Notice numbered 091-0207-00/203 and Details of Discrepancy are attached. The same directed petitioner to pay deficiency VAT in the amount of P314,066.29 *(Annexes "A" and "A-1", Petition for Review).*

On May 28, 2003, petitioner filed a formal protest with the Revenue Regional Director questioning the validity of the said assessment *(Par. 2.2, Joint Stipulation of Facts and Issues)*.

Afterwards, the Revenue Regional Director, in his letter-reply dated June 24, 2003, denied petitioner's Administrative Protest and upheld the validity of the assessment, reiterating BIR's demand for payment of the VAT liability *(Annex "C", Petition for Review)*.

Hence, on August 4, 2003, the petitioner filed herein Petition for Review, alleging that pawnshops are not among the entities subject to value-added tax as referred to and enumerated under the National Internal Revenue Code, nor it is engaged in the sale or exchange of goods and services in the course of trade or business.

In his Answer filed on October 2, 2003, respondent asserted the following Special and Affirmative Defenses, to wit:

> "5. The assessment for Deficiency VAT in the amount of P314,066.29 for the taxable year 2000 was issued in accordance with law and regulations.
>
> 6. 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 VAT under Section 108 (A) of the Tax Code (Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., CA-G.R. Sp No. 68180, February 12, 2003; Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc., CA-G.R. Sp No. 70319, May 13, 2003)."

7. Finally, it is a well-settled rule in taxation that assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed"

During the course of the trial, the parties decided to stipulate the issues to be resolved by the court, namely:

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 Circular 45-2001 is valid?

(*Joint Stipulation of Facts and Issues, page 92, CTA Records*)

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court finds for the respondent.

The main issue despite the other matter raised by the parties is simply "Whether or not a pawnshop is engaged in the sale of goods, property, or services in the course of its trade or business and therefore liable for the payment of the 10% VAT?"

Here, petitioner argued that the disputed VAT assessment has no legal basis. Sales or exchanges of services subject to VAT mean the performance of services enumerated in Section 108(A) of the 1997 Tax Code and nowhere can it be found in the said provision that pawnshops are included as subject to VAT. Petitioner claimed further that the legislature in making the enumeration of the particular services covered by a taxing regulation is deemed to have excluded those not identified therein.

Inasmuch as **Section 108 (A) of the Tax Code** is the crux of contention, the same is hereby quoted for easy reference, to wit:

> "**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; persons engaged in milling, 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, refreshments 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 or mental faculties**. xxx" (*Emphasis supplied*)

Related to this is **Section 105** of the same Code, the significant portions of which are hereunder quoted:

> "**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. xxx"

From the wordings of Section 108 (A) of the NIRC, it is clear that the intention of the legislature is not to limit its application to those enumerated therein, nor, exclude other kinds of services performed for a fee, remuneration or consideration, inasmuch as the law speaks of "all kinds of services".

Petitioner's attempt to limit its application to the enumeration would disagree with the very meaning of the phrase "all kinds of services". The use of the word "including" in the statute is indicative of the intention to enlarge rather than to limits its coverage.

As correctly pointed out by the respondent, this court and the Court of Appeals have already ruled that pawnshops are subject to VAT on sale of services under the aforequoted provisions of the 1997 Tax Code.

In **Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.,** *CA-G.R. Sp No. 70319, May 13, 2003*, the Court of Appeals held:

> "**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. *(Emphasis supplied)*

Similarly, in the more recent case of ***Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue***, *CTA Case No. 6266, promulgated March 25, 2004* this court has explained thus:

"Prescinding from the above law, any sale of services for others for a fee, remuneration or consideration is subject to 10% VAT. The phrase "sale or exchange of services" encompasses the performance of **all kinds of services** in the Philippines for others for a fee, remuneration or consideration. It includes the services enumerated therein and similar services regardless of whether or not the performance thereof calls for the exercise of physical or mental faculties.

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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 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 exclusion 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) of the 1997 Tax Code 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. xxx

> "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'. <u>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 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 Ct 1 (1941)]. *(Emphasis supplied)*

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Furthermore, Section 109 [formerly Section 103] of the Tax Code, as amended, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions under the said section. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 109 or any other express provision of law as VAT-exempt, it follows that the same are subject to VAT under Section 108(A)." *(Emphasis supplied)*

Well settled is the rule that tax exemptions are strictly construed against the taxpayer ***(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639)***. The High Tribunal 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,* declared that the taxpayer, not falling within the exemptions mentioned under Section 109 of the Tax Code, is subject to VAT. The honorable Supreme Court reiterated that:

> "xxx 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."** *(Emphasis supplied)*

This court in the absence of any circumstances or evidence that will release the subject matter from the application of the aforementioned statutes and jurisprudence will not exempt the case from the same principle it has long enshrined as legally sound.

WHEREFORE, Assessment Notice No. 091-0207-00/203 for deficiency value-added tax issued against the petitioner is hereby upheld. Accordingly, the petitioner is hereby **ORDERED** to **PAY** the amount of P314,066.29 as deficiency VAT for the taxable year 2000 plus 25% surcharge and 20% annual interest for late payment from May 8, 2003 until fully paid pursuant to Section 248 and 249 of the Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
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