REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

REGIONAL PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6709

BUREAU OF INTERNAL REVENUE,
SOUTH SOLANO, NUEVA VISCAYA,
Respondent.

Promulgated:
AUG 09 2004

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DECISION

This is an appeal from the decision of the respondent holding petitioner liable for the amount of P878,922.95 as deficiency value-added tax (VAT) for taxable year 1999.

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

Petitioner Regional Pawnshop, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines and engaged in the pawnshop business.

For the services it has rendered to its customers, the respondent assessed it for value-added tax on April 14, 2003. Petitioner, however, requested its cancellation on May 2, 2003, by maintaining that it is not liable to pay VAT because pawnshops are not among those covered by the Tax Code provisions on VAT.

On May 14, 2003, respondent issued a "Final Decision on Disputed Assessment", reiterating the findings in the demand letter and final assessment notice dated April 14, 2003, that the petitioner is liable for deficiency value added tax and advising the latter to pay the said amount *(CTA Records, page 14).*

Hence, on June 25, 2003, petitioner filed the instant petition, seeking the reversal of the decision of the respondent by alleging that since pawnshops are not among those enumerated in Section 108 (A) of the 1997 Tax Code and Section 102 (a) of the old Tax Code as subject to VAT, *ergo*, it is not liable for the questioned deficiency VAT assessment.

In its Answer filed on July 21, 2003, respondent asserted the following Special and Affirmative Defenses, to wit:

> "4. The assessment for deficiency VAT in the amount of P878,922.95 for the year 1999 was issued against petitioner in accordance with law and regulations.
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> 5. Petitioner, as pawnshop operator, performs services for others for a fee, remuneration or consideration. Its gross receipts derived from the sale of 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**).
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> 6. All presumptions are in favor of the correctness of tax assessments."

During the hearing on April 2, 2004, the parties agreed in open court that the sole issue to be resolved is whether or not petitioner, as a pawnshop operator, is subject to VAT on sale of services under Section 108 (A) of the Tax Code.

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court upholds the validity of the subject Assessment.

Herein 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 (Section 102 (a) of the old Tax Code) and nowhere can it be found in the said provision that pawnshops are subject to VAT.

Sections 105 and 108 (A) and of the Tax Code which are the focal provisions are hereunder quoted for ready reference, to wit:

> "**SEC. 105. Persons Liable.** – Any person who, in the course of trade or business, sells, barters, exchanges, leases good 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"
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> "**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, lessor or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking of 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)*

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. The use of the word "including" in the statute is indicative of the intention to enlarge rather than to limit its coverage. And petitioner's attempt to restrict its application to those categorically mentioned clearly disagrees with the very import of the phrase "all kinds of services" as used in the above-quoted provisions.

The respondent correctly pointed out that there is a gamut of decisions where this court and the Court of Appeals consistently ruled that pawnshops are subject to VAT on sale of services under the aforequoted provisions of the 1997 Tax Code.

The Court of Appeals explained in the case of **Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.,** *CA-G.R. Sp No. 70319, May 13, 2003*, thus:

> **"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" 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)*

In the same way, this court in the recent case of **Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue**, *CTA Case No. 6266, promulgated March 25, 2004*, 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.**

xxx xxx xxx

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 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. It does not apply when the words are mentioned by way of example, or to remove doubts. (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". *(Emphasis supplied)*

The said decision further explained thus:

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)*

Petitioner's reliance on the Court of Appeals' ruling in **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr. et. al.**, *CA-G.R. Sp. No. 28824 promulgated on December 23, 1993*, where the Appellate Court categorically ruled that a pawnshop is not a lending investor, to bolster its claim is similarly misdirected.

It must be pointed out that said case is not on all fours with the case at bar. The aforementioned case involves the imposition of the 5% lending investor's tax under then Section 116 of the Tax Code. It has nothing to do with the imposition of the 10% VAT. Section 116 of the Tax Code had been repealed upon the effectivity of R.A. No. 7716 (the Expanded VAT Law) on January 1, 1996. Hence, petitioner's argument has no leg to stand on.

Finally, it is a rule of long standing that tax exemptions are strictly construed against the taxpayer (**Cyanamid Phils., Inc. vs. Court of Appeals**, *322 SCRA 639*). The Honorable Supreme Court 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, "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." And this court in the absence of any circumstance or evidence that will exempt the subject matter from the application of the aforementioned statutes and jurisprudence will not release the case from the same valid and legally sound principle.

WHEREFORE, the instant petition is **DENIED** for lack of merit. Accordingly, the petitioner is hereby **ORDERED** to **PAY** the amount of P878,922.95 as deficiency value-added tax for the taxable year 1999, plus 25% surcharge and 20% annual interest computed from May 15, 2003 until fully paid pursuant to Sections 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