REPUBLIC OF THE PHILIPPINES

COURT OF TAX APPEALS

QUEZON CITY

EN BANC

H. TAMBUNTING PAWNSHOP, INC.,
Petitioner,

C.T.A. EB No. 108
(C.T.A. Case No. 6915)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 2 1 2006

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DECISION

BAUTISTA, J.:

Assailed via a Petition for Review are the Decision and Resolution of the Second Division of this Court promulgated on April 11, 2005 and July 14, 2005, respectively, finding petitioner subject to the value-added tax in the amount of P5,212,404.52 plus 25% surcharge and 20% delinquency interest thereon.

The facts as culled from the records are as follows:

78

Petitioner is a corporation organized and existing under and by virtue of Philippine laws with place of business at 822 M. De la Fuente St. Sampaloc, Manila. It is engaged in the pawnshop business.

On August 29, 2003, petitioner received from the respondent an Assessment Notice dated August 27, 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.

On September 15, 2003, petitioner filed its protest assailing the aforementioned assessment and arguing, among others, that a pawnshop business is not subject to value-added tax and compromise penalty.

On April 2, 2004, petitioner filed its Petition for Review with the Court's Division pursuant to Section 228 of the National Internal Revenue Code.

In a Decision promulgated on April 11, 2005, which was received by petitioner on April 15, 2005, the petition for review was denied by the Court's Second Division, dispositive portion reads as follows:

> "**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 Section 248 and 249 of the NIRC of 1997, as amended.
>
> The amount of P25,000 imposed by way of compromise penalty is hereby **DELETED**.
>
> **SO ORDERED**."

Thereafter, petitioner filed a Motion for Partial Reconsideration on April 29, 2005. A Manifestation was likewise filed by petitioner on May 26, 2005 attaching thereto a copy of BIR Tax Payment Deposit Slip, Payment Form (BIR Form No. 0605) and the corresponding Schedule evidencing payment by petitioner of the amount of P828,809.67 for the years 2000 to 2002 pursuant to a Settlement Agreement with the respondent, allowing petitioner to pay 25% of its VAT due.

The Second Division denied petitioner's Motion for Partial Reconsideration in a Resolution dated July 14, 2005 which was received by petitioner on July 21, 2005. Petitioner's Manifestation was noted in the same Resolution.

Hence, this appeal.

On August 5, 2005, petitioner filed with the Court *en banc* a "Motion for Extension of Time to File Petition for Review" praying for an extension of fifteen (15) days from August 5, 2005 or until August 20, 2005 within which to file its petition for review. The motion was granted and petitioner was given a final non-extendible period of fifteen (15) days or until August 22, 2005, within which to file its petition for review.

The instant Petition for Review was filed on August 22, 2005, since August 20 falls on a Saturday. Hence, the petition was timely filed.

The lone issue raised by petitioner states:

> "The 2nd Division's Decision of 11 April 2005 and Resolution dated 14 July 2005 are not in accordance with law and settled jurisprudence on the matter."

The Court *en banc* is thus faced with the following question: "Whether or not petitioner 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?

The petition for review must be denied.

Time and again, this Court, as shown in a number of cases discussed below, has held that pawnshops are subject to the value-added tax.

The pertinent provisions of the 1997 National Internal Revenue Code are quoted hereunder:

> *"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. x x x"*
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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; warehousing services; lessors or distributors of 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; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x" (Underscoring supplied)*

Clearly, from the foregoing provision, any sale of services for a fee, remuneration or consideration is subject to the 10% VAT. This provision indubitably bespeaks the intention of the legislature to cover all transactions involving the sale and exchange of services.

The phrase "sale or exchange of services" broadly embraces the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, by a person, regardless of whether the performance thereof calls for the exercise or use of the physical or mental faculties. It means any transaction undertaken in the course of business which does not constitute sales of goods[1] and which is not expressly exempt from VAT under the Code or special law[2].

In its petition for review, petitioner asserts that it is not subject to the VAT because there is no provision in the Tax Code which expressly subjects pawnshops to the VAT. The fact that these are not included in the enumeration of exempt transactions or services does not make them liable to the VAT. It is thus, incumbent upon respondent to establish that petitioner is in fact subject to VAT guided by the standard of *strictissimi juris* against the government

Furthermore, Section 108(A) of the Tax Code applies only to those transactions and activities enumerated therein, hence, exclusive. Respondent's argument that the enumeration in said section is not exclusive defeats the basic rule of strict interpretation of tax statutes in favor of the taxpayer.

Respondent, on the other hand, argues that under the law, all sellers of goods, properties and services whose aggregate gross annual sales of articles and/or services

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[1] *The Value Added Tax in the Philippines, Victor A. Deoferio, Jr. and Victorino C. Mamalateo, p. 90, citing Article 6(1) of the 6th Council Directive of the European Communities (77/388/EEC) which defines "supplies of services" as any transaction which does not constitute supply of goods within the meaning of Article 5.*

[2] The Value Added Tax in the Philippines, Victor Deoferio, Jr. and Victorino C. Mamalateo, p.90, See *Joint Congressional Conference Committee deliberations on R.A. 7716. Due to the difficulty of identifying and anticipating all conceivable types of services, the Congress intended to make the VAT as comprehensive as possible with very limited exception from the coverage of the tax.*

exceed P550,000.00 will be covered by VAT unless such sales are either zero-rated VAT under Section 108 (B) or exempt from VAT pursuant to Section 109, both of the 1997 NIRC. 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 performance of service for others for a fee, remuneration, or consideration subject to the payment of 10% VAT under Section 108 (A) of the 1997 NIRC. The said provision 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 vs. Court of Appeals and Commonwealth Management and Services Corporation*** [3], 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, petitioner is subject to 10% VAT.

Still further, respondent in his memorandum avers that the enumeration of persons subject to the 10% VAT under Section 108(A) of the 1997 NIRC 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 should be construed as an enlargement and not of limitation.

We agree with the arguments advanced by the respondent.

The value-added tax is a tax on transactions. It is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property and on the performance of services, even in the absence of profit attributable thereto. As long as

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[3] *329 SCRA 237 (2000)*

the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to the value added tax.[4]

Undoubtedly, the subject provision of the law provides that pawnshops are subject to VAT. Pawnshop has been defined as a person or entity engaged in the business of lending money on personal property delivered as security for loans.[5] In other words, the principal activity of a pawnshop is lending money at interest on the security of personal property. Indeed, the act of lending money at interest constitutes performance of service for a fee, remuneration or consideration.

Furthermore, the phrase "all kinds of services" is broad enough to cover the kind of service provided by pawnshops to their borrowers that is, lending money in consideration of personal property delivered as security. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value-added tax. The personal properties delivered by clients of pawnshops as security for the loans obtained by the former from the latter are in the form of remuneration or consideration, for without such personal properties, the pawnshops will not extend any loan to a borrower.[6]

Petitioner's claim that it is not subject to the VAT because it is not included in the enumeration of services under Section 108(A), following the principle in statutory construction, "*expressio unius est exclusio alterius*", cannot be given credence.

As held by the Court of Appeals[7] and We quote:

> "xxx However, We agree with the position taken by the CTA that the enumeration contained in Sec. 108(A) is not intended to be exclusive and

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[4] *Commissioner of Internal Revenue vs. Court of Appeals, supra*
[5] *Section 3 Presidential Decree No. 114*
[6] *Kwik Loans Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 74 (CTA Case No. 6571), July 5, 2005*
[7] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue, CA-GR S.P. No. 79363, February 18, 2004*

neither is the word "including" preceding the enumeration effect a limitation on the transactions expressly mentioned as subject to the VAT.

> "The rule of *expressio unius est exclusio alterius* is not a rule of law. It is a mere tool of statutory construction or a means of ascertaining the legislative intent. It is not of universal application. Like other rules of statutory construction, it cannot be used to defeat the plainly indicated purpose of the legislature. The rule, not being inflexible nor a mechanical or technical tool, must yield to what is clearly a legislative intent.
>
> "The maxim, *expressio unius est exclusio alterius*, is no more than an auxiliary rule of interpretation to be ignored where other circumstances indicate that the enumeration was not intended to be exclusive....
>
> "Nor does the maxim, *expressio unius est exclusio alterius*, apply where the enumeration is by way of example or to remove doubts only.... 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 plainly indicated purpose of the legislature. It does not apply when words are mentioned by way of example or to remove doubts....
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> xxx xxx xxx
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> "In the last analysis, the question as to whether the express enumeration of things, persons or consequences excludes all others not mentioned depends upon legislative intent. The maxim is resorted to as a guide in ascertaining the probable intention of the lawmaker. Where the legislative intent shows that the enumeration is not exclusive, the maxim does not apply."

Furthermore, petitioner's reliance in the case of ***Commissioner of Internal Revenue vs. Court of Appeals, The Court of Tax Appeals and Ateneo De Manila University***[8] is misplaced.

In the said case, the Supreme Court found no evidence that Ateneo's Institute of Philippine Culture ever sold its services for a fee to anyone or was ever engaged in a

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[8] G.R. No. 115349, April 18, 1997

85

business apart from and independently of the academic purposes of the university in order that it may be subjected to the 3% contractor's tax under Section 205 of the NIRC. Thus, it held and We quote:

> "Therefore, it is clear that the funds received by Ateneo's Institute of Philippine Culture are not given in the concept of a fee or price in exchange for the performance of a service or delivery of an object. Rather, the amounts are in the nature of an endowment or donation given by IPC's benefactors solely for the purpose of sponsoring or funding the research *with no strings attached*. As found by the two courts below, such sponsorships are subject to IPC's terms and conditions. No proprietary or commercial research is done, and IPC retains the ownership of the results of the research, including the absolute right to publish the same. The copyrights over the results of the research are owned by Ateneo and, consequently, no portion thereof may be reproduced without its permission.15(15) The amounts given to IPC, therefore, may not be deemed, it bears stressing, as fees or gross receipts that can be subjected to the three percent contractor's tax.
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> xxx xxx xxx
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> Furthermore, it is clear that the research activity of the Institute of Philippine Culture is done in pursuance of maintaining Ateneo's university status and not in the course of an independent business of selling such research with profit in mind.
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> xxx xxx xxx
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> xxx private respondent is not a contractor selling its services for a fee but an academic institution conducting these researches pursuant to its commitments to education and, ultimately, to public service. For the institute to have tenaciously continued operating for so long despite its accumulation of significant losses, we can only agree with both the Court of Tax Appeals and the Court of Appeals that "education and not profit is [IPC's] motive for undertaking the research projects. "

On the contrary, in upholding petitioner's deficiency VAT assessment, this Court's Second Division made a categorical interpretation of the covered transactions under Section 108(A) based on the legislative intent and nature of a pawnshop business, as well as the provision enumerating the transactions exempt from the VAT.

Petitioner further contends that the assailed assessment was issued by the respondent relying on the inclusion of lending investors as subject to VAT under Section 108(A) of the 1997 NIRC. However, based on previous rulings[9] issued by the respondent, pawnshops were not regarded as similar to lending investors and therefore, were not subjected to VAT and percentage tax.

This contention deserves scant consideration.

In view of the clear legislative intent, petitioner cannot invoke previous rulings or decisions holding that pawnshops cannot be considered lending investors and the consequent difference in their treatment as to the applicability of tax laws. Neither would its contentions as to the distinctive nature and operation of the pawnshop business, as expressed in earlier BIR rulings, convince this Court that it could not have been the intent of Congress to include pawnshops under the coverage of Section 108(A) of the Tax Code.[10] Furthermore, petitioner's reliance on previous BIR Rulings cannot be used to defeat the clear intention of the legislature to subject pawnshops to the value-added tax.

To further assert its stance, petitioner invokes the case of ***Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.***[11], where the Supreme Court declared, thus:

> "Under Section 157(u) of the NIRC of 1986, as amended, the term lending investor includes "all persons who make a practice of lending money for themselves or others at interest." A pawnshop, on the other hand, is defined under Section 3 of P.D. No. 114 as "a person or entity engaged in the business of lending money on personal property delivered

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[9] *BIR Ruling No. 001-83, January 3, 1983; VAT Ruling No. 022-90, January 23, 1989; BIR Ruling No. 006-90, January 23, 1990; VAT Ruling No. 067-90, March 9, 1990; VAT Ruling No. 226-90, December 18, 1990*

[10] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 79363, February 18, 2004*

[11] *G.R. No. 150947, July 15, 2003*

87

as security for loans and shall be synonymous, and may be used interchangeably, with pawnbroker or pawn brokerage.

While it is true that pawnshops are engaged in the business of lending money, they are not considered lending investors for the purpose of imposing the 5% lending investors taxes.

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We note that the definition of lending investors found in Section 157 (u) of the NIRC of 1986 is not found in the NIRC of 1977, as amended by E.O. No. 273, where Section 116 invoked by the CIR is found. However, as emphasized earlier, both the NIRC of 1986 and the NIRC of 1977 dealt with pawnshops and lending investors differently. Verily then, it was the intent of Congress to deal with both subjects differently. Hence, we must likewise interpret the statute to conform with such legislative intent.

Third. Section 116 of the NIRC of 1977, as amended by E.O. No. 273, subjects to percentage tax dealers in securities and lending investors only. There is no mention of pawnshops. Under the maxim *expresio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. Thus, if a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect." *(Emphasis supplied)*

The aforequoted case is not applicable. The issue in the said case involves the imposition of the 5% lending investor's tax under Section 116 of the Tax Code of 1977. On the other hand, the subject matter in the present case involves the imposition of the 10% value-added tax. The difference in treatment between a lending investor and a pawnshop was recognized for the purpose of imposing the 5% lending investor's tax. Nowhere in the said ruling did the High Tribunal refer to pawnshops as not liable to the 10% value-added tax. Hence, the distinction made in the abovementioned case cannot be applied in this case.

This Court held in one case[12] and We quote:

[12] *Kwik Loans Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6571, October 20, 2004*

"Recalling this court's decision in the case of Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra, we quoted the ruling of the Court of Appeals in the case of Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc. C.A-G.R. SP No. 68180, February 10, 2003), viz:

> "*Even assuming arguendo that we do not classify pawnshops as lending investors, still pawnshops are subject to the 10%* VAT imposed under Section 108(A) of R.A. 8424. 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, then the service rendered is subject to value added tax . . . .*
>
> *Besides, pawnshops do not merely engage in the service of lending money to pawners. Rather, pawnshops also sells, 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. *Thus, by selling properties, pawnshops shall be subject to VAT.* (Emphasis supplied)

As a matter of fact, the same contention has been raised in the case of RD Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case NO. 6531, April 15, 2004, wherein we elucidated, that:

> We concur with petitioner when it argued that pawnshops and lending investors are dealt with differently. However, as held in the most recent case of Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003, the Supreme Court ruled that pawnshops are not considered as "lending investors" only for the purpose of imposing the 5% percentage taxes....
>
> *Nowhere in the aforecited case did the Highest Tribunal rule that pawnshops are not liable to value-added tax pursuant to Section 108(A) of the 1997 Tax Code. The 5% percentage tax is definitely different from the value-added tax.* The issue raised and resolved by the Honorable Supreme Court dealt with the 5% lending investor's tax, and *thus, it would be incorrect to assume that the same resolution also applies to the issue of the*

> *value-added tax liability of pawnshops, under the provisions of Section 108(A) of the 1997 Tax Code.* (Emphasis supplied)

Petitioner insists that a pawnshop is not engaged in the sale of services. Rather, its activity is limited to forbearance of money.

This Court has denied in several cases the proposition of pawnshops that they are engaged in the business of forbearance of money and not engaged in the sale of services.

Thus, in the case of ***Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue***[13], this Court has already passed upon the issue in this wise, to wit:

> "By the very nature of the pawnshop business, money is being lent secured on personal property. *The interest on pledge loans and past due loans are not compensation for forbearance of money. The same is true with liquidated damages in case the pawner fails to pay the borrowed money on time.* Said loan having been secured on personal property, the pawnshop operator does not suffer any damage if ever the pawner defaults in the payment of the borrowed money. This is because in the pawnshop business, the loaned amount is always very much lower than the actual worth of the personal property pawned.
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> *As regards the sale of the pawned items, what is being taxed by the respondent is the gain on auction sale and not the auction per se.* But more importantly, gross receipts is defined in Section 108 as follows:
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> > "The term *'gross receipts'* means the *total amount of money or its equivalent* representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced *payments actually or constructively received* during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." (Emphasis supplied)
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> Thus, all interest income, liquidated damages and gains from auction sale of pawned items actually or constructively received by petitioner, *having been derived as an intrinsic part of the pawnshop*

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[13] *CTA Case No. 6424, promulgated on April 21, 2003*

90

> *business*, form part of the gross receipts of pawnshops subject to VAT. (Emphasis supplied)

In its further attempt to convince this Court that a pawnshop is not engaged in a business subject to VAT, it cited Revenue Regulations (RR) No. 10-04, amending RR No. 9-04, stating that pawnshops were included in the classification of "other non-bank financial intermediaries" that are subject to the Gross Receipts Tax instead of the VAT.

While the cited regulations implementing Republic Act (RA) No. 9238, "An Act Amending Certain Sections of the National Internal Revenue Code of 1997, as amended, by Excluding Several Services From the Coverage of the Value-Added Tax and Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004", particularly Section 3 of RR No. 10-04, provides for the imposition of the gross receipts tax instead of the VAT on pawnshops, to wit:

> "SECTION 3. Imposition of Gross Receipts Tax on Pawnshops-
>
> Pursuant to the provisions of Section 4 of R.A.9238 which restored and amended Section 122 of Tax Code and thereby imposing Gross Receipts Tax on Other Non-Bank Financial Intermediaries, the Commissioner is authorized to impose the same tax on persons performing similar financing activities particularly on those falling within the definition of the term "Non-bank Financial Intermediaries" under Sec. 2.3 of Rev. Regs. No. 9-2004. By virtue thereof, the Commissioner of Internal Revenue thus, classified the services rendered by pawnshops as those activities being performed by Non-bank Financial Intermediaries, hence subject to the 5% GRT.
>
> This effectively removed the services rendered by pawnshops from the VAT system unless otherwise a similar legislation is enacted to place under the VAT system."

the same cannot be applied in this case. The assessment involved in this case pertains to the taxable year 2000, however, the effectivity date of RA No. 9238, is January 1,

91

2004, which is way beyond the period covered by the subject deficiency VAT assessment.

Moreover, reliance of petitioner to the aforesaid revenue regulations contradict its contention that pawnshops were not deemed included in the enumeration of activities or transactions subject to VAT because the last paragraph of Section 3, RR No. 10-04, presupposes that pawnshops were deemed included in the enumeration of activities or transactions subject to the VAT system.

Well-settled is the rule that tax exemptions are strictly construed against the taxpayer.[14] 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.

WHEREFORE, the Court *en banc* finds no reversible error to warrant the reversal of the assailed Decision promulgated on April 11, 2005 and the Resolution dated July 14, 2005, respectively.

Accordingly, the instant Petition for Review is hereby **DENIED** and the assailed Decision and Resolution are **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[14] *Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639 (*

92

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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 this Court.

ERNESTO D. ACOSTA
Presiding Justice

93