REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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METROPOLITAN RESOURCES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6953

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
OCT 03 2008 10:15 am

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DECISION

BAUTISTA, ***J.:***

The instant *Petition for Review* seeks the cancellation of the assessment of deficiency value-added tax (VAT) and documentary stamp tax (DST) in the amount of P5,960,441.88 for taxable year 2000.

Metropolitan Resources Corporation (petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 380 Libertad St., Pasay City. It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer's Identification No. 000-895-045.[1]

Respondent is the Commissioner of Internal Revenue, who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and

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[1] Par. 1, Joint Stipulation of Facts and Issues, *Rollo*, p. 87

approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Diliman, Quezon City.

On July 3, 2003, petitioner received a Preliminary Assessment Notice (PAN)[2] dated June 26, 2003 issued by respondent, assessing it of deficiency VAT and DST for taxable year 2000 in the amount of P5,643,440.60 and P62,824.89, respectively. The details of which are as follows:

I. Deficiency Value Added Tax		
Total Selling Price on Auction Sale	P	21,071,154.00
Total Interest Income		5,527,787.50
Other Liquidation Damages		1,470,127.00
Gross Receipts per Audit		28,069,068.50
VAT due thereon		2,806,906.85
Less: Payments		0.00
Basic Deficiency VAT		2,806,906.85
Add: 50% surcharge		1,403,453.42
Interest (1-26-01 to 7-15-03)		1,433,080.33
Total Deficiency VAT Due & Collectible	**P**	**5,643,440.60**
II. Deficiency Documentary Stamp Tax		
Pledge Loan	P	15,619,900.00
Tax due thereon		31,250.00
Add: 50% Surcharge		15,625.00
20% Interest (1-10-01 to 7-15-03)		15,949.89
Total Deficiency Doc. Stamp Due & Collectible	**P**	**62,824.89**

On January 28, 2004, petitioner received a Formal Assessment Notice (FAN)[3] dated January 8, 2004 from respondent, finding it liable for deficiency VAT and DST, with the following details:

Deficiency Value Added Tax		
Total Selling Price on Auction Sale	P	21,071,154.00
Total Interest Income		5,527,787.50
Other Liquidation Damages		1,470,127.00
Gross Receipts Per Audit		28,069,068.50
VAT Due thereon		2,806,906.85
Less: VAT Payments		0.00
Basic Deficiency VAT		2,806,906.85
Add: 50% surcharge		1,403,453.420
20% Interest 01/26/01 to 01/29/04		1,684,144.11
Total Deficiency Value Added Tax	**P**	**5,894,504.38**

[2] Annex "A", Petition for Review, *Rollo*, pp. 31-32
[3] Annex "B", Petition for Review, *Rollo*, p. 35.

Deficiency Documentary Stamp Tax		
Pledge Loan	P	15,619,900.00
Tax Due thereon		31,250.00
Add: 50% Surcharge		15,625.00
20% Interest 01/11/01 to 01/29/04		19,062.50
Total Deficiency Documentary Stamp Tax	**P**	**65,937.50**

As stated in the FAN, respondent contends that pawnshop operators should be subjected to VAT and DST as recently ruled by the Court of Appeals in the case **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.**[4] and by the Supreme Court in the case of **Cruz vs. Chua**[5]. Attached to the FAN is a letter to the president of petitioner captioned as "Details of Discrepancies"[6], indicating the bases of petitioner's alleged deficiency VAT and DST, summarized as follows:

"1. Deficiency Value Added Tax
Verification disclosed that you failed to pay Value Added Tax in violation of Section 106 (A) of the NIRC which states:

xxx xxx xxx

2. Deficiency Documentary Stamp Tax
Verification disclosed that you failed to file and pay your company's Documentary Stamp Tax on pledges on loans in violation of Sec. 195 of the NIRC which states:

xxx xxx xxx

3. Exception as to Period of Limitation of Assessment and Collection of Taxes

xxx xxx xxx

In case of failure to file a protest within 30 days from receipt hereof or pay the tax within the time prescribed in the notice of assessment, the assessment shall become final and therefore subject to 25% surcharge and interest on the unpaid amount until fully paid pursuant to RR 12-99 in relation to Section 228 (A)(3) and Section 249(C)(3) of the 1997 NIRC.

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[4] CA-GR SP No. 68180, February 10, 2003
[5] G.R. No. 31018, November 6, 1929
[6] Petition for Review, *Rollo*, pp. 36-37

The 50% surcharge has been imposed pursuant to the provision of Section 248(B) of the NIRC as amended by R.A. 8424, which took effect on January 1, 1998, in view of your willful neglect to file the return within the period prescribed by this Code.

The 20% interest per annum has been imposed pursuant to the provisions of **Section 249(B)** of the National Internal Revenue Code, as amended by **R.A. 8424**.

xxx xxx xxx"

Petitioner filed its protest[7] to the FAN dated January 8, 2004, covering its deficiency VAT and DST for taxable year 2000, on February 6, 2004. Respondent, on the other hand, denied petitioner's protest on March 19, 2004[8]. Respondent further stated that it is his final decision and if petitioner disagrees, the latter may appeal with the Court of Tax Appeals within thirty days from receipt thereof; otherwise the said deficiency tax assessment shall become final, executory, and demandable.

Hence, this *Petition* on April 21, 2004.

In his *Answer*[9], respondent interposed the following Special and Affirmative Defenses:

"3. The assessments in question were made and issued in accordance with law, rules and regulations.

4. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)**.

5. Under Section 108(A) of the Tax Code, as amended, the sale or exchange of services is subject to 10% value-added tax (VAT). The enumeration of persons under Section 108(A) performing services for others for a fee is not exclusive, which means that the other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. The enumeration is merely intended to give examples of business performing services that are subject to VAT. The Tax Code intent is not to limit the application of the law to those enumerated therein because Section 108(A) of the Tax Code speaks of *'all kinds of services'*. In the end, since pawnhops operators are engage in the business of lending money for a fee, pawnhops therefore are subject to VAT.

[7] Annex "E", Petition for Review, *Rollo*, pp. 40-46
[8] Annex "F", Petition for Review, *Rollo*, pp. 47-48
[9] *Rollo*, pp. 53-54.

6. Pawnshops do not merely engage in the service of lending money to pawners. Pawnshops also sells, at public auction, personal properties pawned to them, in the event, therefore, that the pawner fails to redeem the pawn within the maturity period, the pawnbroker may sell or otherwise dispose any article taken or received by him in pawn. Thus, by selling properties, pawnshops shall be subject to VAT.

7. In the case of **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., CA-G.R. SP No. 68180, February 10, 2003**, the Court of Appeals categorically ruled that pawnshops are liable to pay 10% VAT on their gross receipts derived from sale or exchange of services.

8. Pawn tickets are subject to documentary stamp tax (DST). As enunciated in the case of **Cruz vs. Chua, 54 Phil. 10**, the Supreme Court held in this wise:

   > 'In applying this provision to the situation before us it must be borne in mind that the ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket; and the contract of pledge is therefore, absolvable to bearer. It results that one who takes a pawn ticket in pledge acquires domination over the pledge; and it is the holder who must renew the pledge if it is to be kept alive.'

   Thus, the person accepting the pawn ticket, which is the evidence of the pledge, the pawnshop is liable for documentary stamp thereon.

9. In the case of false or fraudulent return with intent to evade tax or for failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission."

After trial on the merits, this case was submitted for decision on June 20, 2006. However, petitioner filed a *Manifestation and Motion to Hold in Abeyance Resolution of the Case* on December 18, 2006 due to petitioner's alleged payment of twenty five percent (25%) of its VAT liabilities to respondent, pursuant to its Settlement Agreement application. Petitioner contends that the approval of the said agreement will make petitioner eligible to avail of respondent's Abatement Program under Revenue Regulations No. 15-2006 and if approved by respondent, petitioner will withdraw the *Petition for Review*. At the time of filing of said *Manifestation and Motion*, the application for the Settlement Agreement remained unacted by respondent.

On January 15, 2007, the Court granted petitioner's *Manifestation and Motion* and the resolution of this case was held in abeyance until further notice.

On July 31, 2007, petitioner was ordered to show cause and explain his failure to appraise the Court of the status of its application for abatement. Petitioner, through its *Compliance* filed on August 17, 2007, prayed for an additional sixty days to enable respondent to consider its application for abatement. The Court granted the same. However, as of December 18, 2007, petitioner failed to inform the Court of the status of its application for abatement. And in order not to delay the proceedings further, the Court in the same *Resolution* submitted this case for decision, taking into account petitioner's *Memorandum* filed on June 15, 2006, *sans* respondent's *Memorandum*.

The issues for the Court's resolution as stipulated by the parties are as follows:

"1. Whether or not petitioner can be made liable to pay VAT at 10%?

2. Whether or not petitioner's business is considered sale of service as contemplated under Section 108(A) of the Tax Code?

3. Whether or not petitioner charges service fees which will make them liable for VAT under Section 108(A) of the Tax Code?

4. Whether or not petitioner's sale of rematados is considered sale of goods or properties under Section 106(A) of the Tax Code?

5. Whether or not pawn tickets are subject to documentary stamp tax under Section 195 of the Tax Code?

6. Whether or not petitioner's failure to file a return for VAT and DST due to clear question of law can be considered false or fraudulent?

7. Whether or not petitioner can be made liable to pay 50% surcharge by not filing VAT returns for the year 2000?

8. Whether or not Revenue Memorandum Circular No. 45-01 is valid?"

These issues may be summed up into one, *viz.*: "Whether or not petitioner is liable to pay the deficiency value-added tax in the amount of P5,894,504.38 and documentary stamp tax in the amount of P65,937.60, inclusive of penalties".

Petitioner argues that pawnshops are not liable to pay VAT because there is no express provision in the NIRC of 1997 which imposes VAT on pawnshops. It contends that the enumeration in Section 108 of the National Internal Revenue Code (NIRC) of 1997 is exclusive, as such, VAT applies only to the transactions and activities enumerated therein. Since pawnshop transactions are not expressly mentioned, petitioner concludes that it is not subject to VAT. Moreover, petitioner maintains that it is not engaged in the sale or exchange of services as defined in Section 108(A) of the NIRC of 1997; rather it merely enters into a contract of loan secured by pledge. It further stated that it is not the owner of the pawn subject of the auction sale; hence, it is not liable for VAT based on Section 106(A) of the same Code. Petitioner avers that there was no basis for the deficiency VAT assessment, inasmuch as there was no service rendered. And the interest income derived from the principal contract of pledge cannot and should not be subjected to VAT, since the same is not income or receipt arising from the sale of goods or services; rather it is a compensation for the forbearance of money.[10]

Petitioner's arguments are bereft of merit.

Pertinent to the resolution of the question of whether or not pawnshops are subject to value-added tax is Section 108(A) of the NIRC of 1997, which is quoted hereunder 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; warehousing services; lessors or distributors of

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[10] *Rollo*, page 10.

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

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

> "**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 Sections 108(A) and 105 of the NIRC, it is clear that the intention of the legislature is not to limit its application to those enumerated therein or 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 limit its coverage.

In fact 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 NIRC of 1997.

In **Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry Inc.**[11], the Court of Appeals held:

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[11] CA-G.R., SP No. 70319, May 13, 2003

"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, the Court of Tax Appeals *En Banc* in the case of **Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue**[12] explained that:

"Considering that pawnshops are engaged in the business of lending money at interest, the same constitutes the performance of a service for a

[12] CTA EB Case No. 245, May 24, 2007

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.

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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.

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 said 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'."

It must be emphasized that 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 which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshops will not extend any such loan. Furthermore, the payment of interest imposed on a borrower by a pawnshop is equivalent to a fee in exchange of the service provided by the pawnshop in lending money to such borrower. Thus, the phrase "all kinds of services" stated in the second paragraph of Section 108(A) of the NIRC 1997 is broad enough to cover such kind of service, that is, lending money in consideration of personal property delivered as security, which is provided by pawnshops to their borrowers.

The enumeration of sale or exchange of services under Section 108(A) of the NIRC does not limit or exclude other kinds of services performed for a fee, remuneration or consideration. In fact, such enumeration even expanded the meaning of the phrase "all kinds of services". Besides, pawnshops do not merely engage in the service of lending money to pawners; rather pawnshops also sell at public auction personal properties pawned to them, in the event that the pawner fails to redeem pawned articles within ninety days from the date of maturity of the obligation.

The principal activity of pawnshops is lending money at an interest on the security of personal property. The act of lending money at interest constitutes "performance of a service for a fee, remuneration or consideration". 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 rendered. Consequently, petitioner's allegation that pawnshops are not lending investors becomes irrelevant. For as long as pawnshops are engaged in lending money on the security of personal property, they are still within the ambit of Section 108(A) of the NIRC of 1997. Petitioner, being engaged in the pawnshop business, is clearly engaged in the sale of services like lending money. Hence, it is liable to pay VAT.

Anent the issue of whether or not pawn tickets are subject to documentary stamp tax under Section 195 of the NIRC, this Court rules in the affirmative. In fact, similar to the issue of liability of pawnshops to VAT, this Court had declared in a long line of cases that pawnshop transactions are liable for DST.

The Court *En Banc* in the case of **First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue**[13] explained its opinion on the liability of pawnshops to DST, in the following manner:

> "We likewise concur with the Court in Division's ruling that petitioner is liable for DST on its pawn transactions. In the very recent case of MICHEL J. LHUILLIER PAWNSHOP, INC. vs. COMMISSIONER OF INTERNAL REVENUE, the Supreme Court ruled that Section 195 of the NIRC unqualifiedly subjects all pledges to DST, hence, pawnshop, transactions are subject to DST. It ruled as follows:
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> 'Section 173 and 195 of the NIRC, state:
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> 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 . . . (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:
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> (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). . . (Emphasis supplied)
>
> 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

[13] CTA EB No. 130, June 7, 2006 (C.T.A. Case No. 6887)

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 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 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 . . . pledge . . . there shall be collected a documentary stamp tax* . . . ." 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.' (Citations omitted)
>
> The afore-quoted ruling confirmed this Court's long-standing position on the liability of pawnshop transactions to DST."

This Court will not exempt the present case from the application of the foregoing principle it has declared as legally sound, in the absence of circumstances or evidence that indicate otherwise.

As to the issue of whether petitioner can be excused from paying surcharges and interest despite its failure to file a return for VAT and DST on account of its honest belief that it is not subject thereto, this Court rules for the petitioner.

In a *Resolution* dated September 11, 2006, the Supreme Court in the case of **Michel J. Lhuillier Pawnshops, Inc. vs. Commissioner of Internal Revenue**[14] ruled that:

> "Nevertheless, all is not lost for petitioner. **The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, a re sufficient justification to delete the imposition of surcharges and interest**. In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
>
> > We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.
> >
> > WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appelled from is affirmed, without cost.
>
> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*, where the same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST." (*Emphasis supplied, citations omitted*)

In the instant case, petitioner did not file its VAT and DST Returns on the belief that it is not included in the entities enumerated in Section 108 of the NIRC and it filed instead Percentage Tax Returns. In effect, there was no intentional violation of the law. In the absence of willful neglect, this Court finds petitioner in good faith and respondent's imposition of surcharge and interests in Assessment Nos. VT-61101-00-04-567 and DS-61101-00-04-567, involving petitioner's deficiency VAT and DST not justifiable.

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[14] G.R. No. 166786

WHEREFORE, premises considered, the *Petition for Review* is hereby **PARTIALLY GRANTED**. Assessment Nos. VT-61101-00-04-567 and DS-61101-00-04-567, covering petitioner's deficiency VAT and DST assessments for taxable year 2000, are hereby **UPHELD** insofar as basic deficiency VAT and DST are concerned. All surcharges and interests are hereby **CANCELLED.**

Accordingly, petitioner is hereby **ORDERED to PAY** respondent the amount of **TWO MILLION EIGHT HUNDRED THIRTY EIGHT THOUSAND ONE HUNDRED FIFTY-SIX PESOS AND 85/100 (P2,838,156.85)**, representing its VAT and DST assessments, computed as follows:

Deficiency Value Added Tax	P 2,806,906.85
Deficiency Documentary Stamp Tax	31,250.00
Total Deficiency VAT & DST for 2000	**P 2,838,156.85**

In addition, petitioner is hereby **ORDERED TO PAY** respondent twenty percent (20%) delinquency interest *per annum* on the amount of **P2,838,156.85**, computed from April 25, 2004 until the amount is fully paid.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division