REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FIRST PLANTERS PAWNSHOP, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 130
(C.T.A. Case No. 6887)

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

Promulgated:

JUN 07 2006 *[signature]*

x- -x

DECISION

CASTAÑEDA, JR., *J.:*

This is an appeal, under Section 11 of Republic Act 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals), from the May 9, 2005 Decision of the 2nd Division of this Court (the Court in Division) sustaining the deficiency Value-Added Tax (VAT) and deficiency Documentary Stamp Tax (DST) assessments against the petitioner for the year 2000, as well as, the Resolution of the Court in Division dated

October 7, 2005 which denied petitioner's Motion for Reconsideration. The respective dispositive portions of the afore-mentioned Decision and Resolution are hereunder quoted:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby DENIED for lack of merit. Respondent's assessments in the amounts of Five Hundred Sixty Four Thousand Two Hundred Twelve Pesos and 73/100 (P564,212.73) and Twenty Four Thousand Seven Hundred Forty Seven Pesos and 13/100 (P24,747.13) representing deficiency VAT and DST, respectively, for taxable year 2000 are hereby **SUSTAINED**.
>
> **SO ORDERED**." and
>
> "**WHEREFORE**, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED**."

The facts of the case as found by the Court in Division are as follows:

> "First Planters Pawnshop Inc. ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal place of business at No. 28, C.I. Rodriguez St., Taguig, Metro Manila. It is primarily engaged in the operation of pawnshop business.
>
> On the other hand, Commissioner of Internal Revenue ("respondent") is the government official in charge of the administration and enforcement of the internal revenue laws of the Philippines with office at the BIR National Office Building, East Triangle, Diliman, Quezon City.
>
> As per investigation conducted by the Bureau of Internal Revenue ("BIR"), it was discovered that petitioner incurred deficiency value-added tax ("VAT") and documentary stamp tax ("DST) for taxable year 2000. Thereafter, the BIR issued a Pre-assessment Notice dated July 7, 2003 which was received by petitioner on July 12, 2003, informing the latter of its VAT and DST liabilities in the amounts of Five Hundred Forty One Thousand One Hundred Two Pesos and 79/100 (P541,102.79) and Twenty Three Thousand Six Hundred Forty Six Pesos and 33/100 (P23,646.33), respectively.

On July 22, 2003, petitioner submitted its position paper questioning the said Pre-assessment Notice for [being] bereft of legal and factual bases.

On December 29, 2003, petitioner received from the BIR Formal Assessment Notice Nos. VT-53281-00-03-510 and DS-53281-00-03-510 directing petitioner to pay deficiency VAT and DST in the increased amounts of Five Hundred Sixty Four Thousand Two Hundred Twelve Pesos and 73/100 (P564,212.73) and Twenty Four Thousand Seven Hundred Forty Seven Pesos and 13/100 (P24,747.13), inclusive of surcharge and interest, xxx xxx xxx.

On January 4, 2004, petitioner filed a protest contesting the assessment. However, respondent, through Acting Regional Director Anselmo G. Adriano, issued a decision dated January 29, 2004 denying petitioner's protest, the pertinent excerpts of which read:

> "In reply, Legal Division, this Region stands that Pawnshops operators should be subjected to Value added tax and Documentary stamp tax citing a very recent decision of Court [of] Appeals dated February 10, 2003 issued in CA-G.R. SP No. 68180 entitled "Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol" and has ruled that pawnshops are liable to pay 10% of their gross receipts derived from the sale or exchange of services as value-added tax (VAT) and that you are still liable to pay documentary stamp tax citing the Ruling of the Supreme Court in the case of "Cruz vs. Chua".
>
> The record of this case disclosed that you have not introduced new legal basis to overthrow the validity of our said assessment."

Aggrieved, on March 11, 2004, petitioner filed a Petition for Review before this Court.

In Answer to the Petition, the respondent alleges, inter alia, that the enumeration of persons or businesses under Section 108 (A) of the 1997 National Internal Revenue Code ("NIRC") is not exclusive. Other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. Pawnshops are not confined in the service of lending money to pawners but are likewise engaged in disposing chattels pawned to them in a public auction. Thus, the liability of pawnshops to VAT attaches upon the sale of personal properties when the pawner fails to exercise his right of redemption over the property pawned within maturity period. In the case of Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., the Court of Appeals held that pawnshops are liable to pay 10% VAT on their gross receipts derived from sale or exchange of services. Also, the Supreme Court in the case of Cruz vs. Chua, considered the pawn ticket as evidence of the pledge subject to documentary stamp tax (DST).

The parties interposed the following issues for the consideration of the Court:

1. Whether or not pawnshops are subject to value-added tax pursuant to Section 108 of the National Internal Revenue Code;

2. Whether or not petitioner is liable for documentary stamp tax."

On May 9, 2005, the Court in Division rendered its Decision sustaining the assessment for deficiency VAT and deficiency DST. With respect to the deficiency VAT assessment, the Court in Division ruled that "the act of lending money at interest as well as selling the property pawned in a public auction upon the default of the debtor to pay the obligation during the ninety (90) day-redemption period clearly constitutes performance of a service for a fee, remuneration or consideration subject to VAT" relying on Section 108 (A) of the 1997 National Internal Revenue Code (1997 NIRC); and on Section 109 of the same Code holding that "nowhere is it stated in Section 109 of the NIRC that pawnshops are among the VAT exempt entities". On the issue of whether or not petitioner is liable for documentary stamp tax, the Court in Division upheld the deficiency DST assessment based on Section 195 of the 1997 NIRC which imposes the DST "on every pledge of personal property where the same shall be made as security for the payment of any definite and certain sum of money lent".

On June 1, 2005, the petitioner filed its Motion for Reconsideration. On October 7, 2005, the Court in Division denied petitioner's Motion for Reconsideration. Hence, this appeal.

The present appeal is anchored on the following grounds:

I

THE DECISION AND RESOLUTION OF THE 2ND DIVISION OF THE HONORABLE COURT DECLARING THAT PAWNSHOPS ARE COVERED BY THE PHRASE "PERFORMANCE OF ALL KINDS OF SERVICES FOR OTHERS FOR A FEE, REMUNERATION OR CONSIDERATION" AND THEREFORE SUBJECT TO VALUE ADDED TAX PURSUANT TO SECTION 108 OF THE NATIONAL INTERNAL REVENUE CODE ARE NOT IN ACCORDANCE WITH LAW AND SETTLED JURISPRUDENCE.

II

THE 2ND DIVISION'S DECISION AND RESOLUTION ON THE MATTER OF DST IS DIAMETRICALLY OPPOSED TO ITS VERY OWN DECISION IN THE CASE OF EXQUISITE PAWNSHOP JEWELRY, INC. VS. CIR AND OTHER SIMILAR CASES.

ARGUMENTS

Petitioner argues that pawnshops are not liable to VAT because there is no express provision in the 1997 NIRC which imposes the VAT on pawnshops. Petitioner contends that the enumeration in Section 108 of the 1997 NIRC is exclusive, as such, VAT applies only to the transactions and activities enumerated therein. Since pawnshop transactions are not expressly mentioned therein, petitioner concludes that it is not subject to VAT. Moreover, petitioner argues that it is not engaged in the sale or exchange of services as defined in Section 108

(A) considering that its business is "primarily and essentially a forbearance of money which is not within the generic or basic definition of service". Petitioner argues that pawnshops are not included in the enumeration of entities or transactions subject to VAT under Section 108 of the tax code. Neither does the fact that pawnshops are not listed as exempted from VAT confer on respondent the authority to hold them liable. To hold otherwise is diametrically opposed to the basic tenet in taxation which proscribes taxation by implication. Thus, it avers that "it is erroneous on the part of the Second Division of the Honorable Court to expand the coverage of Section 108 as this defeats the basic rule of strict interpretation of tax statutes in favor of the taxpayer".

Anent petitioner's liability to the DST, it argues that "[t]he enactment of R.A. No. 9243 'An Act Rationalizing the Provisions on Documentary Stamp Tax of the NIRC of 1997, As Amended And For Other Purposes', incorporates various significant amendments not only on the rates of DST imposed but also on the scope of particular provisions, e.g. DST on debt instruments. Despite the long standing issue on the taxability of pawn tickets involving substantial amounts, nowhere, however, in the new act does it expressly provide that pawn tickets are indeed subject to DST. This simply indicates that the legislature never intended nor does it now intend to impose DST on pawn tickets."

THIS COURT'S RULING

The Petition for Review has no merit.

The issues involved in this case are not novel. This Court had already ruled in recent cases[1] that pawnshop transactions are subject to the Value-Added Tax (VAT) and that since pawnshop transactions are essentially pledge transactions, the same are subject to the Documentary Stamp Tax (DST).

Section 105 of the 1997 NIRC, as amended, declares who are liable to pay the VAT. It provides, in part, as follows:

> 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 xxx xxx

Moreover, Section 108 deals particularly with the imposition of VAT on sale of services and use or lease of properties, it provides:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of

---

[1] *COMMISSIONER OF INTERNAL REVENUE vs. FIRST EXPRESS PAWNSHOP COMPANY, INC.*, C.T.A. EB No. 60 and *FIRST EXPRESS PAWNSHOP COMPANY, INC., vs. COMMISSIONER OF INTERNAL REVENUE*, C.T.A. EB No. 62, March 24, 2006; *WESTCHESTER CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE*, C.T.A. EB No. 127, May 17, 2006.

> gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, 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 and mental faculties.

The law is clear, it has defined what constitutes a sale or exchange of services, that is, *the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration.* It includes all kinds of services so long as the performance thereof is in exchange for a fee, remuneration or consideration. The enumeration found in Section 108 (A) is preceded by the word "including" which does not in any way connote a limitation. We, therefore, concur with the interpretation by the Court in Division that it shall be taken as an enlargement, rather than a limitation, adopting Sutherland's exposition, as follows:

> "A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction that where the definition declares what a term 'means'. Thus, it has been said that the word 'includes' is usually an enlargement, and not of limitation. . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated."

There is therefore no merit in petitioner's argument that the enumeration in Section 108 (A) is exclusive. Corollary thereto, petitioner's argument that it is not subject to VAT because pawnshop transactions are not included in the enumeration in Section 108 (A) is likewise bereft of merit.

This Court sees no cogent reason to disturb the ruling of the Court in Division that "the act of lending money at interest as well as selling the property pawned in a public auction upon default of the debtor to pay the obligation during the ninety-day period clearly constitutes performance of a service for a fee, remuneration or consideration subject to VAT" supported as they are by the provisions of P.D. 114, *The Pawnshop Regulatory Act*, itself. Thus, the phrase all kinds of services as stated in the second paragraph of Section 102 (A) of the NIRC of 1997, as amended, is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, provided by pawnshops to their borrowers.[2] Moreover, Section 109 of the 1997 NIRC specifies the transactions that

---

[2] *WESTCHESTER CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, supra.*

are exempt from VAT. Considering that pawnshop transactions are not among the exempt transactions and that petitioner failed to show that it is exempt from the payment of VAT by express provision of law, We concur with the ruling of the Court in Division that the deficiency VAT assessment shall be sustained.

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*,[3] 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:

> "Sec 173 and 195 of the NIRC, state:
>
> 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 x x x. (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:

---

[3] G.R. No. 166786, May 3, 2006.

(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).

x x x x. (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 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 x x x pledge x x x there shall be collected a documentary stamp tax x x x*." 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.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated May 9, 2005 and Resolution dated October 7, 2005 are hereby **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
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