REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDMUNDO T. ONGSIAKO, JR. and H. Tambunting Pawnshop, Inc., 822 M. Dela Fuente St., Sampaloc, Manila [now 1721 V. Fugoso St., Brgy. 315, Zone 032, Sta. Cruz, Manila], Petitioners,	**CTA EB Crim. No.031** (CTA Crim. Case No. O-196)
	Members:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** MAY 26 2015 3:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review assailing the Amended Decision dated July 22, 2014 issued by the Court of Tax Appeals Special First Division in CTA Criminal Case No. O-196.

THE FACTS

In the Letter of Authority No. 199900019227 dated September 2000, the Bureau of Internal Revenue ("BIR") authorized Revenue Officer Cristeta Banihit and Group Supervisor Herminia Castillo to examine the books of accounts and other accounting records of H. Tambunting Pawnshop, Inc. ("HTPI") concerning revenue taxes for taxable year 1999.[1]

[1] Exhibit "C".

The Commissioner of Internal Revenue through Regional Director Ruperto P. Somera issued a Pre-Assessment Notice ("PAN") dated October 21, 2002 finding HTPI liable for 1999 deficiency documentary stamp tax ("DST") and value added tax ("VAT") in the amounts of P2,577,462.45 and P2,737,369.60, respectively, exclusive of compromise penalty.[2] HTPI through its previous counsel Siguion, Reyna, Montecillo and Ongsiako replied to the PAN in the letter dated November 18, 2002.[3]

Unconvinced with HTPI's explanation, through Final Assessment Notice ("FAN") No. 32-99 dated January 24, 2003 with attached final letter of demand, Regional Director Somera ordered the payment of 1999 deficiency DST and VAT in the amounts of P2,610,478.21 and P2,786,862.57, respectively, exclusive of compromise penalties.[4]

On July 10, 2003, Chief for Collection Section, Edna L. Tesorero issued a Final Before Seizure reminding HTPI to settle the assessment.[5]

HTPI's failure to pay the taxes due prompted Revenue District Officer Benito B. Wong to issue a Warrant of Distraint and/or Levy dated October 13, 2005 showing the total amount of P5,459,340.78 comprising of the 1999 deficiency DST, VAT and compromise penalties.[6]

In the letter dated January 24, 2006 addressed to Edmundo T. Ongsiako, Jr., Chief Mario A. Zaldevar informed the former of the referral of the case to the Legal Division to enforce collection of HTPI's tax liabilities. Chief Zaldevar also insisted that its authorized officer settle HTPI's tax due.[7]

On February 9, 2006, Regional Director Alfredo V. Misajon forwarded the case to the Manila City Prosecutor.[8]

The information dated July 6, 2009 filed by Third Assistant City Prosecutor Leo G. Lee before the Court of Tax Appeals Special First Division ("Court in Division") charged Edmundo T. Ongsiako, Jr. ("accused") in his capacity as President of HTPI, of the crime in violation of the 1997 National Internal Revenue Code ("NIRC"), as amended, committed as follows:

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[2] Exhibit "L".
[3] Exhibit "M".
[4] See Exhibits "O", "P", "Q", "R", "S", "T" and "U".
[5] Exhibit "HH".
[6] Exhibit "II".
[7] Exhibit "KK".
[8] Exhibit "LL".

That on or about February 24, 2003, in the City of Manila, Philippines, the said accused, being then the President of H. Tambunting Pawnshop, Inc. located at No. 822 M. Dela Fuente St., Sampaloc, this City, having filed their Internal Revenue Tax for the year 1999 and after an examination and audit of the same, it has been found that there is due and collectible from said H. Tambunting Pawnshop, Inc., the following amounts, to wit:

AMOUNT	KIND OF TAX
P2,786,862.57	Deficiency VAT
P2,610,478.21	Deficiency DST

for the said year, did then and there wilfully and unlawfully fail, refuse or neglect to pay said taxes and without formally protesting against or appealing the same, despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of P5,397,340.88, Philippine Currency.

Contrary to law. [9]

The Court in Division found existence of probable cause of the crime charged, and directed the issuance of warrant of arrest against accused. However, due to his voluntary appearance and posting of cash bail bond of P40,000, the warrant of arrest was lifted and recalled.[10]

In the Resolution dated July 14, 2011, the Court in Division denied accused's motion for reinvestigation.[11]

After arraignment where accused entered his plea of "not guilty" to the offense charged[12], and subsequent to the Preliminary Conference, trial ensued with the presentation of evidence for the prosecution.

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[9] Docket, CTA Criminal Case No. 0-196, pp. 1-2.
[10] See Docket, pp. 34-36 & 44-45.
[11] Docket, pp. 125-132.
[12] Docket, pp. 147-148.

Acting upon accused's Demurrer to Evidence, the Court partly granted the same in the Resolution dated July 31, 2012 which provides:

> **WHEREFORE**, the criminal case against accused for violation of Section 255 in relation to Sections 253 (d) and 256 of the Tax Code, as amended, <u>pertaining only to the alleged non-payment of value-added tax (VAT) for the year 1999</u> is hereby **DISMISSED**.
>
> On the other hand, the case for violation of Section 255 in relation to Sections 253(d) and 256 of the Tax Code pertaining to alleged non-payment of deficiency documentary stamp tax (DST) for the year 1999 subsists. As previously scheduled, set this case for the initial presentation of evidence for the defense on August 8, 2012, at 9:00 a.m.
>
> **SO ORDERED.**[13]

Accused on the other hand, presented evidence.

The Court in Division issued a Decision dated February 26, 2014, finding accused criminally liable under Section 255 in relation to Sections 253 (d) and 256 of the 1997 NIRC, as amended, and with HTPI civilly liable for 1999 deficiency DST in the amount of P2,610,478.21, inclusive of surcharge and interest, plus delinquency interest among others. The dispositive portion of the Ruling dated February 26, 2014 reads:

> **WHEREFORE**, accused **EDMUNDO T. ONGSIAKO, JR**. is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255, in relation to Section 253 (d) and 256 of the National Internal Revenue Code of 1997, and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and is **ORDERED** to pay fine in the amount of P10,000, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997.
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> With regard to civil liability, **H. TAMBUNTING PAWNSHOP, INC.** is hereby **ORDERED TO PAY** the

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[13] Docket, pp. 386-387.

> amount of **TWO MILLION SIX HUNDRED TEN THOUSAND FOUR HUNDRED SEVENTY EIGHT PESOS AND TWENTY ONE CENTAVOS (P2,610,478.21)**, representing the deficiency documentary stamp tax for the taxable year 1999, inclusive of surcharge and interest, plus 20% delinquency interest per annum from the total amount of P2,610,478.21, counted from February 24, 2003 until fully paid, pursuant to Section 249 (C)(3) of the NIRC of 1997.
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> In addition, **H. TAMBUNTING PAWNSHOP, INC.** is further **ORDERED TO PAY** a fine of FIFTY THOUSAND PESOS (P50,000.00), pursuant to Section 256 of the NIRC of 1997.
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> **SO ORDERED.**[14]

The Court in Division explained that HTPI, has failed to pay within the period mandated by law or upon demand by the CIR or any of her authorized representatives the DST on pledges/mortgages of pawned articles as provided under Sections 173 and 195 of the 1997 NIRC, as amended, and that the failure to pay DST is wilful. Thus, the accused, in his capacity as President of HTPI, violated Section 255, in relation to Sections 253 (d) and 256 of the 1997 NIRC, as amended.

Dissatisfied, the prosecution moved for partial reconsideration and accused his motion for reconsideration on the Decision dated February 26, 2014.

Acting on the Motions, the Court in Division issued an Amended Decision dated July 22, 2014, the decretal portion worded as follows:

> **WHEREFORE**, premises considered, plaintiff's Motion for Partial Reconsideration (Re: Decision promulgated on 26 February 2014) is **PARTLY GRANTED**. The Decision dated February 26, 2014 of the Special First Division of this Court is hereby **AFFIRMED** with **MODIFICATION** as regards the civil liability of accused Edmundo T. Ongsiako, Jr.

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[14] Rollo, pp. 160-161. Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Esperanza Fabon-Victorino.

Accused **EDMUNDO T. ONGSIAKO, JR**. is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255, in relation to Section 253 (d) and 256 of the National Internal Revenue Code of 1997, and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and is **ORDERED TO PAY** a fine in the amount of P10,000, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997.

With regard to the civil liability, **H. TAMBUNTING PAWNSHOP, INC.** **and accused EDMUNDO T. ONGSIAKO, JR., are hereby held JOINTLY and SEVERALLY LIABLE** **TO PAY** the amount of **TWO MILLION SIX HUNDRED TEN THOUSAND FOUR HUNDRED SEVENTY EIGHT PESOS AND TWENTY ONE CENTAVOS (P2,610,478.21)**, representing the deficiency documentary stamp tax for the taxable year 1999, inclusive of surcharge and interest, plus 20% delinquency interest per annum from the total amount of P2,610,478.21, counted from February 24, 2003 until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997.

In addition, **H. TAMBUNTING PAWNSHOP, INC. is further ORDERED TO PAY** a fine of **FIFTY THOUSAND PESOS (P50,000.00)**, pursuant to Section 256 of the NIRC of 1997.

As for accused's Motion for Reconsideration, the same is hereby **DENIED** for lack of merit.

SO ORDERED.[15]

The Court in Division pointed out that since the accused wilfully and knowingly assented to the non-payment of the 1999 deficiency DST of HTPI, and without formally protesting against or appealing the same, despite due assessment, he and the corporate taxpayer should be held solidarily liable for the civil liability of the remaining tax due. ju

[15] Rollo, pp. 44-45. Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Esperanza Fabon-Victorino.

THE ISSUES

Unfazed, accused and HTPI as petitioners sought recourse by way of a Petition for Review before the Court *en banc* against People of the Philippines as respondent on the following grounds:

I.

> The CTA Special 1st Division erred in holding that the supposed liability of petitioner for DST had become final and therefore due and demandable, when in truth and in fact said DST assessment never became due for the reason that the DST assessment was void because it included surcharge and interest, which should not have been imposed as categorically held in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*[16], thereby affecting the entire assessment, rendering it invalid, and, therefore, void. Since there was no tax liability, there was no refusal to pay; there was no tax evasion.

II.

> THE CTA Special 1st Division erred in not affording the same treatment to the supposed liability of petitioner for DST similar to its cancellation of the liability of petitioner for Value Added Tax (VAT), when the latter, as in the former, was invalid for being a void assessment. Hence, just as the VAT assessment was cancelled, so must the DST assessment be cancelled and his criminal liability relative thereto be dismissed.[17]

The prosecution filed its Comment to the Petition for Review.

After the parties submitted their Memoranda, the case was deemed submitted for Decision.

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[16] G.R. No. 166786, September 11, 2006.
[17] Rollo, pp. 15 & 23.

THE COURT'S RULING

The Petition is unmeritorious.

Proof beyond reasonable doubt is defined as the degree of proof that, after investigation of the whole record, produces moral certainty in an unprejudiced mind of the accused's culpability.[18]

This Court sustains the findings of the Court in Division. The prosecution has duly established beyond reasonable doubt that accused, is criminally liable in his capacity as President of HTPI in violating Section 255, in relation to Sections 253(d) and 256 of the 1997 NIRC as amended, committed as follows: HTPI is required to pay deficiency DST for the taxable year 1999; HTPI repeatedly failed to pay the tax at the time mandated by law or rules and regulations or upon demand by the CIR or any of the authorized representatives; and the failure to pay is wilful.

Although HTPI is the corporate taxpayer, the accused has assented to patently unlawful acts under Section 31 of the Corporation Code of the Philippines by admitting that he deliberately refused to pay the DST due of HTPI for taxable year 1999 despite assessment. This acknowledgment on the part of the accused validates the piercing the veil of corporate fiction resulting to his solidary liability with HTPI on the DST due.

THERE IS WILFUL FAILURE TO PAY A FINAL AND EXECUTORY ASSESSMENT ON THE DEFICIENCY DST DUE FOR TAXABLE YEAR 1999.

Petitioners claim that the accused acted in good faith in relying with counsel not to pay the alleged deficiency DST, surcharge and interest. Since the element of wilful failure to pay is wanting in this case, there is justifiable basis to acquit him.

Respondent on the other hand, maintains that the Court in Division has sufficiently proven that despite the law or rules/regulations requiring

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[18] *Ricardo L. Atienza and Alfredo A. Castro v. People of the Philippines*, G.R. No. 188694, February 12, 2014, 716 SCRA 84, 102 citing *People v. Bacus*, G.R. No. 60388, November 21, 1991, 204 SCRA 81, 93.

HTPI to pay DST, accused as an officer of the corporation failed to comply with the obligation; and the failure to pay DST is wilful.

Petitioners' argument deserves scant consideration.

The term "wilful in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[19]

The failure of the accused to pay deficiency DST for HTPI is clearly shown during the hearing conducted on October 24, 2012 as follows:

> H. Tambunting Pawnshop, Inc. again failed to pay the required DST, at the second instance, when accused, as President of the Corporation deliberately refused to pay the DST assessment against H. Tambuting Pawnshop, Inc. This is, in fact, admitted by accused himself during the hearing held on October 24, 2012.
>
> "ATTY. EUGENIO
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> Q. By the way, to the other point, Mr. Witness, as a President of H. Tambunting, Inc. for taxable year 2009 (sic), am I correct that you are responsible in the management of the company and in setting policies and guidelines in the company. Am I correct?
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> MR. ONGSIAKO
>
> A. Yes.
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> ATTY. EUGENIO
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> Q. Am I also correct that you were aware at that time of the assessment of the company particularly on the DST assessment of the company for taxable year 1999 Mr. Witness? Jr

[19] Mertens (Law of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13 cited in *People of the Philippines v. Estelita Delos Angeles*, CTA Crim. Case No. 0-027, November 25, 2009.

MR. ONGSIAKO

A. Yes, we were given a Letter of Authority, they went to the process, yes.

ATTY. EUGENIO

Q. **And am I also correct that despite knowledge of that assessment, you deliberately refuse to pay the said assessment because of your position of the BIR Ruling issued by the BIR, am I correct?**

MR. ONGSIAKO

A. Yes because I relied on that ruling of the BIR.

Correspondingly, it cannot be doubted that H. Tambunting Pawnshop, Inc. failed to pay the DST at the time or times required by law or rules and regulations.[20] (Emphasis supplied)

Accused heavily relies on BIR Ruling 325-88 which is why he refused to pay the alleged deficiency DST for taxable year 1999.

Notwithstanding the issuance of BIR Ruling 325-88 in 1998, exempting pawnshops from payment of DST, the Commissioner of Internal Revenue subsequently issued BIR Ruling No. 221-91 in 1991 specifically addressed to the Chamber of Pawnbrokers of the Philippines clarifying that DST is imposed on pawnshop tickets as evidence of the pledge. BIR Ruling No. 221-91 applies to the case at bar pertaining to the taxable year 1999.

The Supreme Court earlier struck down the validity of BIR Ruling No. 325-88 in the *Michel J. Lhuillier Pawnshop*[21] case which emphasized the following: *[initials]*

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[20] Rollo, pp. 152-153.
[21] G.R. No. 166786, May 3, 2006, 489 SCRA 147,158.

> The Court notes that BIR Ruling No. 305-87 and BIR Ruling No. 018-88 which held that a pawn ticket is subject to DST because it is an evidence of a pledge transaction, had been revoked by **BIR Ruling No. 325-88. In the latter ruling, the BIR held that DST is a tax on the document; and since a pawn ticket is not an evidence of indebtedness, it cannot be subject to DST. Nevertheless, this interpretation is <u>not</u> consistent with the provisions of Section 195 of the NIRC which categorically taxes the privilege to enter into a contract of pledge. Indeed, administrative issuances must not override, supplant or modify the law but must be consistent with the law they intend to carry out.** (Emphasis supplied)

The Supreme Court made the same pronouncements in *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*[22] as follows:

> Significantly, the Court notes that **BIR Ruling No. 325-88 which held that a pawn ticket is not a printed evidence of indebtedness and thus not subject to DST imposed by Section 195 of the NIRC was revoked by BIR Ruling No. 221-91**. (Emphasis supplied)

Moreover, the **Court in Division correctly concluded the absence of corroborating evidence that the accused was advised by lawyer to simply refuse to pay the subject assessment .**[23]

Petitioners cannot at their own convenience choose a BIR issuance beneficial to their cause even when such issuance has long been revoked by the Supreme Court, and superseded by BIR Ruling 221-91.

If petitioners deem that they are not liable for 1999 deficiency DST, they should have at least availed of the remedies specified in Section 228 of the 1997 NIRC, as amended, stating:

> SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that

[22] G.R. No. 167962, September 19, 2008, 566 SCRA 57, 74.
[23] Rollo, p. 44.

> proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
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> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.** (Emphasis supplied)

In the event there is a finding by the respondent or any of her authorized representatives of any deficiency or delinquent internal revenue taxes due against the taxpayer, a PAN shall be issued. Should the taxpayer fail to respond to the PAN, a FAN shall be issued and the aggrieved taxpayer is given thirty (30) days from receipt of the assessment notice to file a protest. Within sixty (60) days from filing of the protest, all relevant supporting documents should be submitted. The denial of the protest or the inaction on the protest within 180 days from submission of documents allows the taxpayer thirty (30) days from receipt of the adverse ruling or upon the lapse of the 180-day period within which to appeal to the Court of Tax Appeals.

Revenue Regulations ("RR") 12-99 implementing the 1997 NIRC, stresses, "if the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable".

In the instant case, petitioners refused to avail of the proper remedies allowed by law in contesting an assessment.

Petitioners' obstinacy in complying with the procedures mandated by law resulted in the assessment becoming final and collectible. The Court in Division correctly observed the following:

> For despite receipt and knowledge of the Pre-Assessment Notice, Assessment Notice No. 32-99 with accompanying Demand Letters for deficiency DST, including increments, and compromise penalty in the amounts of P2,610,478.21 and P25,000.00, respectively, Assessment Notices, Demand Letter, and the Warrant of Distraint and/or Levy, the accused, in his capacity as the President of the corporate taxpayer charged, deliberately refused to pay the subject assessment. xxx
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> xxx xxx xxx
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> Because of this failure to negate the corporation's liability for the subject DST assessment, within the period allowed by law, the assessment can no longer be questioned as it has already become final, executory, and demandable.[24]

Considering that the 1999 deficiency DST due became final and collectible, the taxpayer is now precluded from disputing the correctness of the assessment at this stage.[25]

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[24] Rollo, pp. 38-39.

[25] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010, 635 SCRA 162. See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007, 521 SCRA 373 and *Republic of the Philippines v. Salud Hizon*, G.R. No. 130430, December 13, 1999, 320 SCRA 574.

Accused further alleges that in ascribing good faith on the part of the taxpayer, the Supreme Court has recognized the fact that prior to September 11, 2006, the BIR has issued divergent rulings on the taxability of pawn tickets.

Accused should not be faulted for he merely relied on the advice given by counsel.

We disagree with the accused's posture.

In the case of *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*[28], the Supreme Court interpreted Section 195 of the 1997 NIRC to cover pawnshops liable to DST. The pertinent excerpts of the *Lhuillier* case read as follows:

> 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 (P5,000), an additional tax of Ten pesos (10.00)
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> xxx xxx xxx
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> 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

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[28] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, *supra* at note 21.

We quote the Court in Division's rationale why petitioners' reliance on a BIR issuance which was eventually revoked cannot be equated to good faith as follows:

> Accused cannot take the law into his own hands by outrightly refusing to recognize the subject DST assessment based on the sole ground that it was his strong belief that the corporation was not liable to pay the same. Under our tax laws, a taxpayer who believes that a tax had been erroneously or illegally assessed is mandated to take appropriate administrative and judicial measures to assail or seek the nullification of the same, otherwise, the assessment remains valid.[26]

THE *MICHEL J. LHUILLIER* CASE AFFIRMS THE LIABILITY OF PAWNSHOPS TO PAY DST ON PLEDGE TRANSACTIONS.

THE IMPOSITION OF SURCHARGE AND INTEREST IS JUSTIFIED DUE TO THE ABSENCE OF GOOD FAITH ON THE PART OF THE PETITIONERS.

According to the accused, the DST assessment never became due because such assessment is void. The accused and HTPI are not liable for interest and surcharge pursuant to the case of *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*[27]. For an assessment to be valid, the entire amount which comprises the basic tax, surcharge and interest must be correct. Thus, in the case at bar, the Court in Division mistakenly ordered the payment of the entire amount of P2,610,478.21 instead of excluding interest and surcharge.

The inclusion of interest and surcharge affected the entire assessment involving the wrong amount, therefore, a void assessment.

It was only on September 11, 2006 that the Supreme Court made a definitive ruling that good faith can be ascribed to the taxpayer to justify the deletion of surcharge and interest relative to the imposition of DST on pawn tickets.

[26] Rollo, p. 157.
[27] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R No. 166786, *supra* at note 21.

exercise of a right or privilege to transfer obligations, rights or properties incident thereto.

xxx xxx xxx

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 fulfilment 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.**

xxx xxx xxx

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.** (Emphasis supplied)

Even if the surcharge and interest were deleted on the ground of the taxpayer's good faith in the *Lhuillier* case, the pawnshop's liability to pay DST deficiency stands. We echo the Supreme Court's pronouncements, *viz*:

The law is clear and needs no further interpretation. **No law on legal hermeneutics could change the fact that the entries contained in a pawnshop ticket spell out a contract of pledge and that the exercise of the privilege to conclude such a contract is taxable under Section 195 of the NIRC.** xxx xxx xxx

> xxx xxx xxx Nothing in P.D.114 exempts pawnshops or pawnshop tickets from DST. There is no ambiguity in the provisions thereof; any vagueness arises only from the circuitous construction invoked by petitioner. If then President Ferdinand E. Marcos intended to exempt pawnshops or pawnshop tickets from DST, he would have expressly so provided for said exemption in P.D. 114. Since no such exemption appears in the decree, the only logical conclusion is that no such exemption is intended and that pawnshops or pawnshop tickets are subject to DST.
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> Moreover, it should be pointed out that the provisions of the NIRC on DST has recently been amended by R.A. No. 9243. Among the highlights thereof were the amendments to Section 199, which incorporated 12 more categories of documents in addition to the initial two categories exempted from DST. As stated in our May 3, 2006 Decision, pawnshop tickets is not one of them. Expressio unious est exclusion alterius. **The omission of pawnshop tickets only means that it is not among the documents exempted from DST.**
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> xxx xxx xxx
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> WHEREFORE, the motion for reconsideration is partly GRANTED. THE December 29, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 67667 ordering petitioner **Michel J. Lhuillier Pawnshop, Inc. to pay deficiency documentary stamp tax is AFFIRMED** with the **MODIFICATION** that **surcharges and all the interests** imposed thereon are **DELETED.**[29] (Emphasis supplied)

Here, petitioners misapplied the *Lhuillier* case as a ground to invalidate the assessment on DST.

In the *Lhuillier* case, a civil case, the deletion of surcharge and interest did not affect the basic tax due; while in the instant case, petitioners as engaged in the pawnshop business, are liable for 1999 deficiency DST including surcharge and interest. The BIR properly imposed surcharge and interest due to the absence of petitioners' good

[29] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, September 11, 2006, 501 SCRA 450. See *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171138, April 7, 2009, 584 SCRA 445.

faith by selectively complying with BIR Ruling 325-88 favorable to their cause instead of BIR Ruling No. 221-91 which imposes DST on pledge transactions evidenced by pawnshop ticket. BIR Ruling 325-88 has long been revoked by BIR Ruling No. 221-91 as early as 1991, and accused has been aware of such revocation as held in the *Lhuillier* [30] and *Antam*[31] cases.

CANCELLATION OF VAT LIABILITY DOES NOT COVER PETITIONERS' 1999 DEFICIENCY DST.

Accused asserts that the Court in Division's Ruling dated July 31, 2012 exonerating him from VAT liability should also be applied in the assessment of DST, and in eventually absolving him from such criminal liability.

Respondent contends that petitioners' DST liability has become final and executory for failure to timely contest the assessment.

We are not persuaded with accused's stance.

In deference to the Supreme Court's verdict in *Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*[32] and *TFS Incorporated v. Commissioner of Internal Revenue*[33], the Highest Tribunal absolved pawnshops classified as "non-bank financial intermediaries" from payment of VAT only for specified periods, the enforcement of which was deferred by law. The Court in Division relied on the aforementioned jurisprudence as among the reasons in granting petitioners' Motion for Demurrer to Evidence as shown in the Resolution dated July 31, 2012 only as to the issue on VAT.

VAT and DST are totally different taxes imposed by the BIR. VAT is an indirect tax imposed on 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[34]; while DST is levied on the exercise by persons of certain privileges conferred by law for the

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[30] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue, supra* at note 21.
[31] *Antam Pawnshop Corporation v. Commissioner of Internal Revenue, supra* at note 22.
[32] G.R. No. 179085, January 21, 2010, 610 SCRA 514.
[33] G.R. No. 166829, April 19, 2010, 618 SCRA 346
[34] Section 105 of the 1997 NIRC, as amended.

creation, revision, or termination of specific legal relationships through the execution of specific instruments.[35]

Clearly, in this case, the cancellation of VAT assessment for taxable year 1999 cannot be applied to petitioners' deficiency DST for the same period.

To recapitulate, accused, as the duly authorized officer of HTPI, repeatedly failed to pay 1999 deficiency DST at the time required by law or rules and regulations or upon demand by the Commissioner of Internal Revenue or any of the authorized representatives; and the failure to pay a final and executory assessment, is wilful.

Clearly, the prosecution has duly established that accused in his capacity as President of HTPI, is guilty beyond reasonable doubt for violating Section 255 in relation to Sections 253 (d) and 256 of the 1997 NIRC, as amended. The accused and HTPI are jointly and severally liable to pay the amount of P2,610,478.21 representing 1999 deficiency DST, inclusive of surcharge and interest, plus delinquency interest among others.

WHEREFORE, premises considered, the Amended Decision dated July 22, 2014, is **AFFIRMED**. The Petition for Review is hereby **DISMISSED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[35] *Philippine Home Assurance Corporation et al. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 119446, January 21, 1999, 301 SCRA 443.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court *en banc* before the case was assigned to the writer for the opinion of the Court *en banc*.

ROMAN G. DEL ROSARIO
Presiding Justice