REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE CHARITY SWEEPSTAKES OFFICE,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE and THE ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue,
Respondents.

CTA EB No. 807
(CTA Case No. 8036)

Present:
Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
OCT 01 2012 Apolinario 2:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Philippine Charity Sweepstakes Office (PCSO) before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] dated April 15, 2011 and the Resolution[2] dated July 8, 2011 promulgated by the CTA Third Division ordering petitioner to pay respondent Commissioner of Internal Revenue (CIR) the amount of Seven Hundred Seventy Seven Million Nine Hundred Fifty One Thousand Four Hundred Twenty Five and 72/100 pesos (P777,951,425.72) representing deficiency Documentary Stamp Taxes (DST), surcharge and interest, on sale of lotto tickets for taxable year 2008.

THE FACTS

The facts of the case as found by the CTA Third Division are as follows: [3]

> Petitioner operates by virtue of its charter, *RA 1169, as amended.* Pursuant to *Section 1* of said law, PCSO shall be the principal government agency to raise and provide funds for health programs, medical assistance and services, and charities of national character, and as such, shall have the general power and authority conferred in *Section 13 of Act No. 1459, as amended*, among others, to wit:
>
> > "a. To hold and conduct charity sweepstakes races, lotteries, and other similar activities, in such frequency and manner as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors xxx."
>
> On February 24, 2009, a Letter of Authority 2007 00038095 was issued by the Large Taxpayers Service, Large Taxpayers Audit & Investigation Division I, signed by the Head, Revenue Executive Assistant Romulo L. Aguila, Jr., informing petitioner that the revenue officers therein are authorized to examine petitioner's books of accounts and other accounting records for DST for period January 1, 2008 to December 31, 2008.
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> On September 10, 2009, petitioner received a Preliminary Assessment Notice (PAN) from the OIC-Assistant Commissioner Large Taxpayer Service, Zenaida G. Garcia, dated August 24, 2009, informing petitioner of its alleged deficiency DST for calendar 2008.

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[1] *Rollo*, pp. 26-40. Penned by Associate Justice Olga Palanca-Enriquez with Associate Justice Lovell R. Bautista and Associate Justice Amelia Cotangco-Manalastas, concurring.
[2] *Rollo*, pp. 41-44.
[3] *Rollo*, pp. 28-31.

On September 28, 2009, petitioner received a Formal Letter of Demand, with details of Discrepancies and Audit Results/Final Assessment Notices (FAN), all dated September 28, 2009.

Pursuant to the FAN, petitioner was assessed deficiency DST in the amount of P777,976,425.72, broken down, as follows:

Summary of Net Sales		
Luzon	P11,519,522,495.52	
Visayas/Mindanao	5,256,424,627.72	
Net Sales	P16,775,947,123.24	
Add:		
5% Commission	P986,820,419.01	
10% Direct cost	1,973,640,838.03	
Gross Sales	P19,736,408,380.28	
DST rate	10%	
DST due, Sec. 190		P 1,973,640,838.03
Less: DST paid		1,677,594,712.31
Basic DST deficiency		P 296,046,125.72
Add: penalties		
Surcharge on late filing/payment		P 419,398,678.07
Interest on late payment		13,841,505.37
Interest on Deficiency DST		P 48,665,116.56
Compromise		25,000.00
Total Deficiency DST		P 777,976,425.72

On October 12, 2009, petitioner filed its protest letter to the FAN, challenging the legal bases of the assessments made by the Large Taxpayer Service Division.

On February 5, 2010, petitioner received from the BIR its undated Final Decision on Disputed Assessment, together with the attachments.

On March 8, 2010, petitioner appealed the BIR's Final Decision to this Court by way of the instant Petition for Review.

In his answer, respondent raised the following special and affirmative defenses:

> "10. It is the duty of petitioner to comply with the provisions of Section 190 of the NIRC of 1997 regarding payment of DST in relation to Section 4 of RA No. 1169.
>
> 11. Assuming *por arguendo* that petitioner has a point that it should not pay DST, it is estopped from raising any argument to that effect through voluntary compliance when it paid DST on its lottery tickets albeit through an erroneous basis of the rate thereon.

> 12. Through its own actions, petitioner acknowledged that it is liable for DST under Section 190 of the NIRC of 1997 when it paid DST on the lottery tickets but audit findings conducted by respondent's revenue examiners reveal that petitioner is liable for deficiency DST for taxable year 2008.
>
> 13. Petitioner is liable for penalties due to its failure to satisfy its DST liabilities for taxable year 2008 in accordance with Section 4 of RA No. 1169, in relation to Section 5 of Revenue Regulation No. 06-01, amending paragraph 19 of Revenue Memorandum Circular No. 1-98.
>
> 14. Petitioner has been duly apprised of its deficiency DST liabilities for taxable year 2008."

On July 28, 2010, petitioner filed a "Manifestation with Motion" praying that the case be deemed submitted for decision based on the pleadings considering that the issues raised are purely legal.

On September 3, 2010, the Court granted petitioner's motion and ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having filed their respective memorandum, the case was deemed submitted for decision on December 20, 2010.

On April 15, 2011, the CTA Third Division rendered a Decision partly granting the Petition for Review. The dispositive portion of the assailed Decision reads as follows:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue the amount of SEVEN HUNDRED SEVENTY SEVEN MILLION NINE HUNDRED FIFTY ONE THOUSAND FOUR HUNDRED TWENTY FIVE and 72/100 PESOS (P777,951,425.72), representing deficiency DST, including surcharge and interest, for taxable year 2008.
>
> In addition, petitioner is hereby ORDERED to pay respondent 20% delinquency interest per annum on the total amount of P777,951,425.72, reckoned from November 1, 2009 until full payment thereof, pursuant to *Section 249 (C) of the NIRC of 1997, as amended.*
>
> **SO ORDERED.**[4]

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[4] *Rollo*, pp. 38-39.

Aggrieved, petitioner PCSO filed a Motion for Reconsideration on May 11, 2011. The CTA Third Division issued a Resolution on July 8, 2011, the dispositive portion reads as follows:

> **WHEREFORE**, premises considered, petitioner Philippine Charity Sweepstakes Office's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[5]

Hence, this Petition for Review *En Banc.*

THE ISSUE

Whether or not the CTA's Third Division erred when it ruled that PCSO is liable for the payment of DST on the sale of lotto tickets and other tickets for other games for taxable year 2008 based on the NIRC's Section 190.

THIS COURT'S RULING

The CTA Third Division did not err in finding petitioner PCSO liable for deficiency DST on sale of lotto tickets for taxable year 2008.

Petitioner PCSO contends that the "sale of lotto tickets" should be exempted from all taxes just like the exemption granted to "horse races tickets and sale of sweepstakes" considering that there is no substantial distinction between the two transactions. It further argues that Section 4 of Republic Act (RA) No. 1169 which grants tax exemption to "horse races tickets and sale of sweepstakes" is inconsistent with Section 190 of the National Internal Revenue Code (NIRC) of 1997 which imposes tax on lotto. In addition, petitioner PCSO

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[5] *Rollo*, page 43.

maintains that even if found liable for DST, the tax base should be the net receipts and not the gross sales.

On the other hand, respondent CIR is of the view that it is the duty of petitioner to comply with the provision of Section 190 of the NIRC of 1997 as it clearly imposes DST on lotto. Respondent further argues that petitioner is barred by estoppel when the latter voluntarily paid DST on its lottery tickets albeit through an erroneous basis of the rate, i.e. using net of commission and direct cost instead of the actual cost of the lotto ticket at gross.

We rule for the respondent CIR.

Lotto tickets are subject to DST under Section 190 of the NIRC of 1997.

A documentary stamp tax (DST) shall be collected on each lotto ticket as provided for under Section 190 of the NIRC of 1997, as amended:

> SEC. 190. *Stamp Tax on Jai-Alai, Horse Racing Tickets, Lotto or Other Authorized Numbers Games.* — **On each** jai-alai, horse race ticket, **lotto**, or other authorized numbers games, **there shall be collected a documentary stamp tax of Ten centavos (P0.10)**: *Provided*, That if the cost of the ticket exceeds One peso (P1.00), an additional tax of Ten centavos (P0.10) on every One peso (P1.00), or fractional part thereof, shall be collected. (emphasis ours)

The above cited provision is not at all inconsistent when compared to petitioner PCSO's Charter specifically Section 4 of RA 1169, as amended. The charter exempts from taxes except from a twelve-centavo internal revenue stamp the horse races and sale of tickets in the sweepstakes, to wit:

> **SECTION 4.** Holding of sweepstakes. — The Office shall hold charity horse race sweepstakes under such regulations as shall be promulgated by the Board in accordance with Republic Act No. 309: Provided, however, That when the holding of a sweepstakes race to determine prizes is impossible due to war, public calamity, or other unforeseen or fortuitous event, or when there is no sufficient number of horses to determine the major prizes, the Board of Directors may determine the procedure to be followed in the distribution of prizes in the most just, equitable, and expeditious manner. **The horse races and the sale of tickets in the said sweepstakes shall be exempted from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp** and that from the total prize fund as provided herein from the proceeds of the sale of tickets there shall be deducted an amount equivalent to five per centum of such total prize fund, which shall be paid to the Bureau of Internal Revenue not later than ten days after each sweepstakes in lieu of the income tax heretofore collected from sweepstakes prize winners: Provided, however, That any prizes that may be paid out from the resulting prize fund, after said five per centum has been deducted, shall be exempted from income tax. The tickets shall be printed by the Government and shall be considered government securities for the purposes of penalizing forgery or alteration. (emphasis ours)

Section 190 of the NIRC of 1997, as amended, is clear and unequivocal in imposing DST on each jai-alai, horse race ticket, **lotto** or other authorized number games, while Section 4 of RA 1169, as amended, expressly exempts from all taxes only horse races and sale of sweepstakes tickets except that each ticket shall bear a twelve-centavo internal revenue stamp. We cannot give credence to petitioner's claim that it is the intention of the legislature to exempt the sale of lotto tickets from DST. In fact, even petitioner's Charter subjects the horse races and sale of sweepstakes tickets to a twelve-centavo internal revenue stamp.

The court has always decreed that exemption cannot be made to rest on vague, uncertain or indefinite inference but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.[6] Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[7]

We also agree with the Court *a quo* in ruling that the above cited provisions are consistent with each other, it explained:

> Furthermore, while this Court agrees with the principle that if there is an inconsistency between a special law and general law, the special law will prevail; however, this principle is not applicable in the instant case. In the first place, there is no inconsistency to speak of. Section 4 of RA 1169 expressly provides that horse races and sale of tickets in the said sweepstakes shall be exempt from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp. It is clear that petitioner's charter only exempts from taxes sweepstakes and horse race tickets; thus, the sale of lotto tickets is subject to tax as early as the enactment of RA 1169. On the other hand, Section 190 of the NIRC of 1997, as amended, imposes a DST of ten centavos (P0.10) for every One peso (P1.00) on the sale of lotto tickets. Thus, it is clear that there is no inconsistency between Section 190 of the NIRC of 1997, as amended, and RA 1169.

Moreover, Section 4 of RA 1169 pertains only to <u>horse races and sale of sweepstakes tickets</u> and not lotto tickets. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly

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[6] *KEPCO Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010, 166 SCRA 636.

[7] *Philippine Amusement and Gaming Corporation (PAGCOR) vs. Bureau of Internal Revenue*, G.R. No. 172087, March 15, 2011, 338 SCRA 645.

mentioned.[8] The Court is not permitted to read into the law what obviously was not expressly exempted by Congress, otherwise, there will be judicial legislation.

DST is computed based on the cost of the lotto ticket.

Under Section 190 of the NIRC of 1997, it clearly pointed out the cost of the ticket as the basis for the computation of DST. The cost of the ticket is equivalent to gross sales without deducting the commission and rent due the third parties. We cannot in any way sustain petitioner's contention that it would be unfair if the tax base upon which the DST is to be computed should be the net receipts. *Dura lex sed lex*.

Besides, the words of the law are clear, plain, and free from ambiguity, thus, it must be given its literal meaning and applied without any interpretation, [9] the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance.[10] All that has to be done is to apply it in every case that falls within its terms.[11]

WHEREFORE, premises considered, the Petition for Review *En Banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated April 15, 2011 and Resolution dated July 8, 2011 are **AFFIRMED.** Jr

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[8] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R.Nos. L-48886-88, July 21, 1993, 665 SCRA 224.
[9] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159610, June 12, 2008, 554 SCRA 398.
[10] *Carmelino F. Pansacola vs. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006, 507 SCRA 81 citing the case of *Allied Brokerage Corporation vs. Commissioner of Customs*, No. L-27641, August 31, 1971, 40 SCRA 555, 559, 560.
[11] *Ibid.*

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice