REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

EN BANC

CEBU MABUHAY PAWNSHOP, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 20
(C.T.A. CASE NO. 6266)

Present:

ACOSTA, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
FEB 22 2005

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 99 of the National Internal Revenue Code of 1977, as amended by Republic Act No. 7716 (The Expanded VAT Law)*, and as further amended by *Republic Act No. 8241,* 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 and 108 of this Code.* Are pawnshops engaged in the sale or exchange of services, and thus liable to pay VAT thereon?

THE CASE

This issue is before Us in this Petition for Review filed by Cebu Pawnshop, Inc. (hereafter "petitioner") under *Section 11 of Republic Act No. 9282* (The Act Expanding the Jurisdiction of the Court of Tax Appeals), in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision of 25 March 2004 and the Resolution of 5 July 2004 issued by the Division of this Court in C.T.A. Case No. 6266, the respective dispositive portions of which read as follows:

> "**IN VIEW OF THE ABOVE FINDINGS**, the petition for review is hereby **DENIED** and petitioner is **ORDERED TO PAY** the deficiency value added tax and interest in the amount of P2,606,852.98, computed as follows:

Gross sales per return	P 2,058,187.50
Add: Revenue that should be subject to VAT:	

Interest income-pledge loan	P14,625,373.55	
Interest income-past due	3,230,954.00	
Service Charges	732,312.50	18,588,640.05
Total amount that should be subjected to VAT		P20,646,827.55
10% value added tax due		P 2,064,682.76
Less: VAT paid per return (BIR Records, pages 41, 44, 47 & 49)		205,818.73
Unpaid value added tax		P 1,858,864.03
Add: 20% Deficiency interest 1-26-98 to 2-20-2000		769,009.50
Total		P 2,627,873.53
Less: Partial payment of deficiency VAT (BIR Records, page 535)		21,020.55
Deficiency Value Added Tax Still Due		P 2,606,852.98

plus 20% delinquency interest from 2-21-2000 until fully paid pursuant to Section 249(c) [now Section 249(C), of the 1997 Tax Code] of the Tax Code, as amended.

SO ORDERED."

Xxx xxx xxx.

"WHEREFORE, petitioner's Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED."

THE FACTS

The facts of the case are undisputed:

On 26 July 2000, petitioner received a Preliminary Collection Letter from the Revenue District Office of Revenue District No. 81, Cebu City, North, demanding payment of the amount of P2,570,803.93, as deficiency VAT under Assessment Notice No. 81-VAT-13-97-2000-1-022. Petitioner, however, did not receive the corresponding assessment notice.

On 29 August 2000, petitioner filed a Motion For Reconsideration of the Preliminary Collection Letter questioning the legality and validity of the assessment.

On 4 April 2001, for failure of the Commissioner of Internal Revenue (hereafter "respondent") to act on petitioner's Motion For Reconsideration, petitioner filed a Petition for Review before this Court, docketed as C.T.A. Case No. 6266.

In his Answer, filed on 22 May 2001, respondent alleged the following special and affirmative defenses:

"6. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its services consist of lending money at interest on the security of personal property; and the interest is the fee, remuneration or consideration for such services. Hence, it is engaged in the sale of services subject to value-added tax (VAT) under Section 102(a) of the Tax Code, as amended by R.A. 7716.

7. Under Section 102(a) of the Tax Code, as amended by R.A. 7716, the VAT is equivalent to 10% of the gross receipts derived from the sale or exchange of services.

8. Interest on pledge loans and past due loans and liquidated damages are part of petitioner's gross receipts subject to VAT;

9. The assessment was issued in accordance with law and regulations;

10. All presumptions are in favor of the correctness of tax assessments."

After trial on the merits, the Division of this Court rendered the assailed decision on 25 March 2004, denying the Petition for Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the Division denied in a Resolution dated 5 July 2004.

THE ISSUES

Hence, this Petition For Review raising the following issues, to wit:

I

THE HONORABLE DIVISION OF THE COURT OF TAX APPEALS ERRED IN RULING THAT THE BUSINESS OF PAWNSHOP IS SUBJECT TO VAT ON SALE OF SERVICES BECAUSE ITS ACTIVITY OF LENDING MONEY AT AN INTEREST IS A SERVICE ACTIVITY AND THEREFORE SUBJECT TO VAT.

II

THE HONORABLE DIVISION OF THE COURT OF APPEALS ERRED IN ITS INTERPRETATION OF THE EXPRESS PROVISION OF SECTION 99 [NOW SECTION 102(a) (sic)] OF THE NIRC OF 1977, AS AMENDED.

On 17 November 2004, We required the respondent to file comment on the petition, and on 16 December 2004, the respondent complied with the resolution.

THE COURT EN BANC'S RULING

The petition is without merit.

The principal issue posed for resolution by this Court En Banc is whether the petitioner, a pawnshop operator, is subject to Value-Added Tax.

There is nothing novel in this case as the principal issue raised herein had, in a long line of cases, been previously ruled by this Court in the affirmative, and sustained by the Court of Appeals.

Petitioner claims that the express and explicit provision of *Section 108(A) of the National Internal Revenue Code of 1997, as amended*, does not categorically and explicitly include the class of pawnshop business under the enumerated list of entities expressly deemed by the law to be included in the definition of sale of services. It argues that the express and clear language of *Section 99 (now Section 105) of the NIRC of 1977* does not specifically state that the activity of lending money at an interest is considered as sale or exchange of services nor is it provided in the statute that the activity of lending investor is still defined as that of lending money at an interest.

Petitioner further points out that considering that the general term "all kinds of services" is followed by an enumeration of particular and specific names of entities of the same class, and the enumeration of particular and specific words are made to follow after a general term "similar services", applying the rule on *ejusdem generis*, the general words or phrases are to be construed akin to, resembling, or of the same kind or class as those particularly mentioned.

Petitioner further argues that the original Value-Added Tax Law (*Executive Order No. 273*), which already defined the term sale of services as "the performance of all kinds of services", failed to specifically include in the list the pawnshop business as one of the class of tax subjects/entities placed under the coverage of VAT.

Invoking the case of *Gomez vs. Ventura, 54 Phil. 726,* respondent maintains that the enumeration of persons performing services for others for a fee is not exclusive, which means that 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 businesses performing services for others that are subject to tax.

Respondent likewise asserts that *Section 109 of the Tax Code* enumerates the transactions that are exempt from VAT. The enumeration is exclusive, that is, those not mentioned therein are not exempt from VAT. Thus, correlating *Section 108(A) and Section 109,* unless the sale or exchange of services is expressly mentioned in *Section 103 (now 109)* as exempt from VAT, such sale or exchange of services is subject to VAT under *Section 108(A)*.

Lastly, respondent invokes the case of *Commissioner of Internal Revenue vs. Court of Appeals, 329 SCRA 246* where the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under *Section 109 of NIRC of 1997, as amended*, is subject to VAT.

Section 99 (now Section 105) of the National Internal Revenue Code of 1977, as amended, provides that:

> "SEC. 99. *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 100 to 102 of this Code.

xxx xxx xxx.

The phrase 'in the course of trade or business' means regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

Corollary thereto, *Section 102(A) [now Section 108(A)] of the same Code*, provides:

"SEC. 102. *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 cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafés 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."

The law is clear. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services (*Commissioner of Internal*

Revenue vs. Court of Appeals, 329 SCRA 237). *Section 102(A) of the National Internal Revenue Code of 1977* defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration".

Pursuant to Section 3 of P.D. No. 114 (*The Pawnshop Regulations Act)*, pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and maybe used interchangeably with, pawnbrokers or pawnbrokerage.

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 loans 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. Thus, the phrase "all kinds of services" as stated in the second paragraph of *Section 102(A) of the NIRC of 1977, 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.

Considering that pawnshops are engaged in the business of lending money at interest, the same constitutes the performance of a service for a fee, remuneration or consideration for such service. As such, pawnshops are liable to pay VAT for the sale of services. Pursuant to settled jurisprudence, as long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT (*Commissioner of Internal Revenue vs. Court of Appeals, supra*).

Invoking the rule in statutory construction that what is not included in those enumerated is deemed excluded, petitioner argues that pawnshops not being included in the enumeration, are, therefore, excluded from the coverage of the VAT.

We do not agree.

It is well-settled that resort to statutory construction is not appropriate where the law is clear and unambiguous. The law is clear in

ell

this case. As stated earlier, the coverage of the VAT includes pawnshops since they are engaged in the performance of service for fee.

The premise of petitioner's argument is that the enumeration in *Section 102(A) [now Section 108(A)] is exclusive.* It is not. 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. The principle of *inclusio unius est exclusio alterius* 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".

Furthermore, under *Section 15 of P.D. No. 114*, pawnshops also sell at public auction, personal properties pawned to them, in the event that the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation, the pawnbroker may sell or otherwise dispose of any article taken or received by him in pawn (*Section 14, P.D. No. 114*). Therefore, by selling properties, pawnshops shall be subject to VAT.

Furthermore, *Section 103 (now Section 109)* of the same Code enumerates the transactions that are exempt from VAT. Pawnshop transactions do not fall within the exemptions.

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*).

For all the foregoing, We see no reason to reverse the assailed Decision of the Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE** and, accordingly, **DISMISSED** for lack of merit.

No costs.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate 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.

ERNESTO D. ACOSTA
Presiding Justice