REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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KWIK LOANS PAWNSHOP, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 74
(C.T.A. CASE NO. 6571)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 05 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 105 of the National Internal Revenue Code* (hereafter "NIRC") *of 1997, as amended*, 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*.

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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 Kwik Loans 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 20 October 2004 and the Resolution of 17 February 2005 issued by the First Division of this Court in C.T.A. Case No. 6571, the respective dispositive portions of which read as follows:

> "**WHEREFORE**, the instant petition is hereby **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency value-added tax for the taxable year 2000 in the total amount of P2,484,769.71, plus 25% surcharge and 20% delinquency interest from November 20, 2002 until fully paid pursuant to Sections 248 and 249 of the 1997 Tax Code.
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> **SO ORDERED.**"
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> "Accordingly, petitioner's instant motion is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

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THE FACTS

The facts of the case are undisputed:

Petitioner is a corporation duly organized and existing under and by virtue of the Philippine laws, engaged in the pawnshop business, with principal place of business at Door 2, Lacson-Gorres Bldg., Colon Street, Sto. Nino, Cebu City (p. 2, *Petition for Review*).

On May 7, 2002, petitioner received a Preliminary Assessment Notice and Details of Discrepancy from the Regional Director of Revenue Region No. 13, Cebu City, demanding payment of the amount of P2,424,542.00 as deficiency value-added tax (VAT) for the taxable year 2000 (*p. 134, BIR Records*). Petitioner filed its letter protest against said notice on May 28, 2002, questioning the legality of the imposition of VAT to pawnshops (*p. 153, BIR Records*).

On August 27, 2002, petitioner received a Final Assessment Notice dated July 22, 2002 issued by respondent, including the Formal Letter of Demand and Details of Discrepancy demanding payment of the amount of P2,484,769.71 as deficiency VAT under Assessment Notice No. 81-vat-13-2000-2002-7-191 (*Annex A, Petition for Review*). Also, on the

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same date, petitioner received a letter of denial from the respondent (*p. 158, BIR Records*) reiterating therein that petitioner is liable for deficiency VAT and advising the latter to pay the assessed amount of P2,424,542.00.

On August 29, 2002, petitioner filed a Motion for Reconsideration of respondent's letter of denial and final amount notice questioning the legality and validity of the assessment (*Annex C, Petition for Review*). Petitioner received the final decision of respondent denying the said motion for reconsideration on October 21, 2002 (*Annex D, Petition for Review*).

Hence, on November 19, 2002, petitioner filed the instant petition by registered mail, seeking the reversal of the said decision of the respondent by alleging, among others, that Section 108(A) of the 1997 Tax Code does not include pawnshop businesses as being subject to VAT.

In his Answer, filed on 15 January 2003, respondent alleged the following special and affirmative defenses:

> "3. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration.

Its gross receipts derived from such services are subject to the 10% value-added tax (VAT) imposed under Section 108 (A) of the Tax Code.

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

5. The assessment was issued in accordance with law and regulations.

6. All presumption are in favor of the correctness of tax assessments."

After trial on the merits, the First Division of this Court rendered the assailed decision on 20 October 2004, denying the Petition for Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the First Division denied in a Resolution dated 17 February 2005.

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

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MONEY AT AN INTEREST IS A SERVICE ACTIVITY AND NOT MERE FORBEARANCE OF MONEY AND THEREFORE SUBJECT TO VAT.

II

THE HONORABLE DIVISION OF THE COURT OF TAX APPEALS ERRED IN ITS INTERPRETATION OF THE EXPRESS PROVISION OF SECTION 108 (A) OF THE NIRC OF 1977 AS AMENDED, AND IN HASTILY RULING THAT THE DOCTRINE LAID OUT IN THE CASE OF CIR VS. MICHEL J. HUILLIER PAWNSHOP, INC. HAS NO RELEVANCE IN THE ISSUES OF THE PRESENT CASE.

III

THE HONORABLE DIVISION OF THE COURT OF APPEALS ERRED IN IMPOSING VAT ON THE SALE OF REMATADOS AND IN IMPOSING 25% SURCHARGE.

On 27 April 2005, We required the respondent to file comment on the petition, and on 23 May 2005, the respondent complied with the resolution.

THE COURT EN BANC'S RULING

The petition is without merit.

The assigned errors boil down to the principal issue of 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 avers that the express and explicit provision of *Section 108 (A) of the National Internal Revenue Code of 1997, as amended*, 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. It argues that even if the business of lending investor is already subject to VAT under the amended definition of the term sale of services, the law under consideration albeit amended does not specifically state that the act of lending money at an interest is service.

Moreover, it contends that the categorization of lending activity under service is merely an interpretation by implication of the respondent and of the Honorable Division of this Tax Court premised on the argument that since lending investor is engaged in lending activity all other businesses engaged in lending activity are already subject to value-added tax on sale of services. Such interpretation, according to the petitioner, is clearly a case of taxation by implication, which finds no support from the plain and express language of the statute under consideration.

Invoking the case of *Gomez vs. Ventura, 54 Phil. 726,* respondent, on the other hand, 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.

We sustain the findings of the First Division.

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.
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> 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.
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> 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.-*
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> (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.
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> 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),

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> 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 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.

Moreover, *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)*.

Furthermore, the First Division of this Court correctly ruled that petitioner's reliance on the ruling in *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc. 406 SCRA 184-185* is misplaced, as the Supreme Court held therein that "while it is true that pawnshops are engaged in the business of lending money, they are not considered lending investors for the purpose of imposing 5% percentage taxes", which is not the issue in the case at bar.

Finally, as regards petitioner's contention that interest on pledge loans, on past due loans and liquidated damages, is not subject to value-added tax, *Section 108 of the NIRC of 1997, as amended*, in pertinent part, provides:

> "SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.-*
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> xxx xxx xxx.
>
> The term '*gross receipts*' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

It is clear from the aforequoted provision that interest income, liquidated damages and gains from the sale of the rematados form part of the gross receipts of pawnshop business which are subject to value-added tax.

As aptly ruled by the First Division:

> "Petitioner argued that interest on pledge loans and past due loans are not subject to VAT for the same are not income/receipt arising from sale or exchange of services but are compensation for forbearance of money. Likewise, liquidated damages are not income from sale or exchange of services but arise from breach of contract committed by its clients when the latter incur in delay in delivering or paying the amount they borrowed.
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> Considering that the premises insisted upon by petitioner is basically anchored on its proposition that a pawnshop business is a business of forbearance of money, we have no choice but to deny outright this petition on said ground as previously discussed by this court.
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> As correctly pointed out by the respondent in his memorandum filed on December 2, 2003, this court has already passed upon and finally settled said identical issue elevated in the case of **Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra**, enunciating:
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> > 'By the very nature of the pawnshop business, money is being lent secured on personal property. **The interest on pledge loans and past due loans are not compensation for forbearance of money. The same is true with liquidated damages in case**

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the pawner fails to pay the borrowed money on time. Said loan having been secured on personal property, the pawnshop operator does not suffer any damage if ever the pawner defaults in the payment of the borrowed money. This is because in the pawnshop business, the loaned money is always very much lower than the actual worth of the personal property pawned.

As regards the sale of the pawned items, what is being taxed by the respondent is the gain on auction sale and not the auction per se. But more importantly, gross receipts is defined in Section 108 as follows:

> 'The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.' (Emphasis and underscoring supplied)

Thus, all interest income, liquidated damages and gains from auction sale of pawned items actually or constructively received by petitioner, having been derived as an *intrinsic part of the pawnshop business,* form part of the gross receipts of pawnshops subject to VAT. (Emphasis supplied)

From the abovequoted ruling, this court has also clarified that the respondent's power to impose and charge

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value-added tax on the gains/proceeds of the auction sale of pawned item is recognized for being consistent with the discussion elaborated above."

For all the foregoing, We see no reason to reverse the assailed Decision of the First 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

C E R T I F I C A T I O N

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