REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ANTAM PAWNSHOP CORPORATION,
Petitioner,

-versus-

COMMISSONER OF INTERNAL REVENUE,
Respondent.

EB No. 131
(C.T.A. CASE NO. 7069)
Members:
ACOSTA, PJ.
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ:
Promulgated:
FEB 10 2006

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DECISION

CASANOVA, J:

This is a Petition for Review before the Court of Tax Appeals En Banc filed under Republic Act No. 9282, seeking to review the Decision of the Second Division of the Court of Tax Appeals promulgated on June 21, 2005, and the Resolution dated October 7, 2005, partially granting Petitioner's Petition for Review and denying Petitioner's Motion for Reconsideration for lack of merit, respectively.

The undisputed facts as culled from the records of the case are briefly narrated as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines engaged in the pawnshop business, with principal business address at 1658 España Street, Sampaloc, Manila.

Respondent, on the other hand, is the public official charged with the enforcement and administration of the internal revenue laws of the Philippines holding office at the Bureau of Internal Revenue Building, Diliman, Quezon City.

On December 19, 2003, respondent, through Regional Director Teodorica R. Arcega of Revenue Region 6, Manila, issued Assessment Notice No. 32-3000 against Petitioner for deficiency Value-Added Tax (VAT) and compromise penalty for taxable year 2000 in the amounts of P276,864.15 and P16,000.00, respectively. Petitioner filed its written protest thereto on January 27, 2004 allegedly for lack of legal and factual basis.

Respondent, through Regional Director Arcega, in a Letter dated August 27, 2004, and received by Petitioner on September 13, 2004, denied Petitioner's protest and reiterated the assessment pursuant to Revenue Memorandum Circular No. 45-2001.

Subsequently, petitioner filed its Petition for Review with the Court of Tax Appeals on December 19, 2004. After trial on the merits, this Court partially granted petitioner's Petition for Review in a Decision dated June 21, 2005. Consequently, petitioner was ordered to pay the respondent the deficiency Value-Added Tax in the amount of P276,864.15 for taxable year 2000, plus 20% delinquency interest from January 23, 2004 until fully paid. Petitioner filed a "Motion for Reconsideration" on the assailed Decision on July 19, 2005, which was denied for lack of merit by the Second Division of this Court in a Resolution promulgated on October 7, 2005.

Hence, this instant Petition for Review, wherein petitioner raised the following issue:

> *The 2nd Division's Decision of June 21, 2005 and of Resolution of October 7, 2005 are not in accordance with law and settled jurisprudence.*

Upon a careful re-evaluation of the arguments adduced in the instant Petition for Review, the Court *En Banc* neither finds new arguments nor material facts which have not been considered and passed upon by the Court in the assailed Decision and Resolution.

Important in the resolution of whether or not petitioner is liable for deficiency Value-Added Tax (VAT) are Sections 105 and 108(A) of the 1997 National Internal Revenue Code which reads 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."
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> "The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of effectivity of Republic Act No. 7166."
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> "The phrase 'in the course of trade or business means the 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 non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sell exclusively to members or their guests), or government entity."
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> Xxxx
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> "**SEC. 108. *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'*** <u>means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration</u>, 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, 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 or mental faculties. xxx." (Underscoring supplied.)

From the foregoing provisions, any person who, in the course of trade or business, renders service, shall be subject to the value-added tax (VAT) imposed in Section 108 (A) of the 1997 Tax Code.

It is likewise significant to note that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation Act", defines a pawnshop as follows:

"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 may be used interchangeably with, pawnbroker or pawnbrokerage."

The principal activity of a pawnshop is lending money at interest on personal property delivered as security for the loan. The "act of lending money at interest" constitutes the performance of a service for a fee, remuneration or consideration for such service. The liability of pawnshop operators to pay the VAT does not depend on the classification of their business, but on the services they render. The phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration.

The listing provided for in Section 108 (A) is intended merely to give examples of persons or businesses performing services for a fee, remuneration or consideration. The enumeration is not exclusive, which means that other persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT. To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services".

In addition, the phrase "including" should be construed merely as an enlargement and not of limitation.

> "The intention of an act will prevail over the literal sense of its terms. Thus, limited words in one part of an act may be expanded by general words in another part, if the general words more nearly express the legislative intent.
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> A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means'. Thus, it has been said that 'the word 'includes' is usually a term of enlargement, and not of limitation... It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated..." [*Sutherland, Statutory Construction, 4th Ed., Vol. 2A, p. 82, Sec. 47.07 citing United States Argosy Ltd. v. Hennigan, 404 F2d 14 (CA 5th, 1968); See United States v. Gertz, 249 F2d 662 (CA 9th, 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 US 95, 86 L Ed 65, 62 S Ct1 (1941)*]. (Emphasis supplied.)

Hence, the terms "includes" and "including" do not exclude items otherwise within the scope of the defined term.

> "The terms "includes" and "including" when used in the Code are not deemed to exclude items otherwise within the meaning of the term defined. Thus, where Section 1(e) applies to the taxable income of estates "including" and thereafter lists four types of income from trusts or estates that are taxable, other types of estates may also be subject to taxation under Section 1(e). To hold differently would, in effect, substitute the term "limited to" for "including". [*Mertens, Law of Federal Income Taxation, 1995 Ed., Section 3.37, Chap. 3, pp. 55-56, citing In re Joplin, Jr., 882 F2d 1507 (CA10 1989), applying IRC & 7701(c)*]."

Well settled is the jurisprudence that tax exemptions are strictly construed against the taxpayer (*Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639*). In the absence of any clear provision of law exempting pawnshops from VAT, then, pawnshops are subject to VAT on their gross receipts considering that they are clearly engaged in the performance of services for a fee, remuneration or consideration.

In sum, the Court *En Banc* finds no cogent justification to disturb the previous conclusion as spelled out in the Decision promulgated on June 21, 2005 and the Resolution dated October 27, 2005. What the instant petition asks is for the Court *En Banc* to view and appreciate the evidences in their perspective of things, which unfortunately, has already been considered and passed upon.

WHEREFORE, the instant Petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
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

OLGA PALANCA-ENRIQUEZ
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