REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

VILLARICA PAWNSHOP, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6988

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUL 3 1 2007

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DECISION

CASTAÑEDA, JR., *J*.:

This is a Petition for Review praying for the (a) nullification of the assessment and final demand for payment of Value Added Tax ("VAT") and Documentary Stamp Tax ("DST") for 2000; and, (b) issuance of an order directing the Bureau of Internal Revenue ("BIR") to issue the corresponding Authority to Cancel Assessment.

On November 26, 2003, respondent issued petitioner a Preliminary Assessment Notice ("PAN"), with Details of Discrepancies/Assessments, for deficiency VAT in the total amount of ₱11,932,036.57 and DST in the amount of ₱273,956.80 for 2000.[1]

[1] Annex A of Petition for Review; docket, pp.29-30.

On December 16, 2003, petitioner filed its protest against the PAN.[2]

On January 25, 2005, respondent issued to petitioner an Assessment Notice and Final Demand for the payment of deficiency value-added and documentary stamp taxes for 2000.[3]

On February 27, 2004, petitioner filed a letter-protest against the assessment.[4]

On April 21, 2004, petitioner received respondent's March 30, 2004 Final Decision denying the letter-protest with finality.[5]

Hence, on May 20, 2004, petitioner filed before this Court the Petition for Review.

Subsequently, or on June 4, 2004, the BIR, through respondent, and the Chamber of Pawnbrokers of the Philippines, Inc. ("CPPI") entered into a Memorandum of Agreement ("MOA") for the settlement of all the VAT liabilities of the members of the CPPI for the taxable periods 1996 to 2002.[6] In accordance with the terms of the MOA, petitioner paid its VAT liability for 2000 to 2002 on June 27, 2004. Thus, the issue on petitioner's liability for deficiency VAT has become moot.[7]

On August 4, 2004, respondent filed his Answer and raised the following affirmative and special defenses:[8]

> "6. Petitioner is covered by provisions of the Tax Code, specifically Section 105 which enumerates the persons liable to VAT dealing in the service business, and Section

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[2] Annex B of Petition for Review; docket, pp. 31-42.
[3] Par. 1.2 of the Stipulation of Facts; docket, p. 184.
[4] Par. 1.4 of the Stipulation of Facts; docket, p. 184. See also Exhibit B.
[5] Par. 1.5 of the Stipulation of Facts; docket, p. 184.
[6] Par. 1.6 of the Stipulation of Facts; docket, pp. 184-185.
[7] Pars. 1.7 and 1.8 of the Stipulation of Facts; docket, p. 185. See also Exhibit C.
[8] Docket, pp. 117-119.

108 which enumerates the kinds of businesses subject to VAT;

7. Petitioner is engaged in the sale of service for a fee, remuneration or consideration, therefore, subject to VAT under Section 108(A) of the Tax Code, as amended;
8. The phrase "all kinds of services" stated in the second paragraph of Section 108(A) of the Tax Code is broad enough to cover such kind of service, that is, lending money in consideration of personal property delivered as security, which is provided by pawnshops to their borrowers;
9. The maxim expression unius est exclusion alterius should be applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the legislature. It does not apply when words are mentioned by way of example, or to remove doubts;
10. The assessment is in accordance with law;
11. The assessment is prima facie correct and made in good faith;
12. The burden of proof is upon the petitioner to prove that the assessment issued was null and void; [and]
13. Well settled is the rule that tax exemptions are strictly construed against the taxpayer."

On August 18, 2004, petitioner filed its Reply.[9] It alleged, among others, that the assessment for VAT has become moot in view of the MOA dated June 4, 2004; that the assessment for DST failed to satisfy the mandate of Section 228 of the NIRC; that the respondent himself has earlier ruled (BIR Ruling No. 325-88) that "a pawn transaction is evidenced only by a mere receipt[;]" that the provisions of a taxing statute are not to be extended by implication; and in case of doubt, tax statutes are construed most strongly against the Government and in favor of the citizen because burdens are not to be imposed beyond what the statutes expressly and clearly import.

[9] Docket, pp. 120-123.

On December 18, 2006, the case was deemed submitted for decision after petitioner filed its memorandum and considering that respondent failed to file his memorandum within the prescribed period.[10]

The parties stipulated on the following issues for the Court's resolution:

> 1. "Whether or not the questioned assessment for deficiency VAT has become moot with the execution by the CPPI and the respondent Commissioner of the MOA dated 4 June 2004 and the payment by Villarica of its alleged VAT liability on 27 June 2004 pursuant thereto[; and]
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> 2. Whether or not the pawn ticket may be subjected to DST under Section 174 of the Tax Code."[11]

As regards the first issue, this Court rules in the affirmative.

First, both parties stipulated that "the assessment for deficiency VAT subject of this Petition has been settled and the issue on the alleged VAT liability of Villarica has become moot."[12] In *Bayas and Matuday v. The Sandiganbayan,*[13] the Supreme Court ruled that stipulations freely and voluntarily made are valid and binding and will not be set aside unless for good cause; and, "[o]nce the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally; it must assume the consequences of the disadvantage."

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[10] Docket. p. 510.
[11] Stipulation of Issues, Docket. p. 186.
[12] Par. 1.8 of the Stipulation of Facts; docket, p. 185.
[13] G.R. Nos. 143689-91, November 12, 2002.

Second, the CPPI and the respondent mutually agreed to the "settlement of all of the VAT liabilities of pawnbrokers for tax year 1996 to 2002, inclusive xxx" and "the provisions of the Settlement Agreement shall be valid and binding only as between the BIR and such pawnbrokers executing and delivering said Settlement Agreement for their own respective VAT liabilities."[14]

Third, both parties executed a Settlement Agreement on June 27, 2004.[15] Petitioner offered to compromise its tax liabilities; and, respondent accepted by virtue of his authority to compromise the payment of any internal revenue tax under Section 204 of the Tax Code.

The second issue is the determination of petitioner's liability for deficiency DST.

Sections 173 and 195 of the Tax Code state:

> "SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments, and Papers.* – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes xxx."
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> "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 a 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: xxx."

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[14] Exhibit C.
[15] Exhibit E; docket, pp. 345-348.

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In the recent case of ***Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue,***[16] the Supreme Court finally put to rest the issue raised. Thus:

> "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 exercise of a right or privilege to transfer obligations, rights or properties incident thereto.** *In Philippine Home Assurance Corporation vs. Court of Appeals*, it was held that:
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> > **In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments**. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges and trusts, and conveyances of real property. xxx
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> **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 fulfillment 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.
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> Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations for Pawnshops issued by the Central Bank to implement the Act, require every pawnshop or pawnbroker to issue, at the time of every such loan or pledge, a memorandum or ticket signed by the pawnbroker and containing the following details: (1) name and residence of the pawner; (2) date the loan is granted; (3) the amount of principal loan; (4)

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[16] G.R. No. 166786, May 3, 2006.

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interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawner or his authorized agent; (8) signature or thumb mark of pawner or his authorized agent; and (9) such other terms and conditions as may be agreed upon between the pawnbroker and the pawner. In addition, Central Bank Circular No. 445, prescribed a standard form of pawn tickets with entries for the required details on its face and the mandated terms and conditions of the pledge at the dorsal portion thereof.

Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:

> "Pawn ticket" is the pawnbroker's receipt for a pawn. It is neither a security nor a printed evidence of indebtedness."

True, the law does not consider said ticket as an evidence of security or indebtedness. However, for the purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket.

The settled rule is that tax laws must be construed in favor of the taxpayer and strictly against the government; and that a tax cannot be imposed without clear and express words for that purpose. Taking our bearing from the foregoing doctrines, we scrutinized Section 195 of the NIRC, but there is no way that said provision may be interpreted in favor of petitioner. **Section 195 unqualifiedly subjects all pledges to DST.** It states that "[o]*n every x x x pledge x x x there shall be collected a documentary stamp tax x x x.*" It is clear, categorical, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application.

The onus of proving that pawnshops are not subject to DST is thus shifted to petitioner. In establishing tax exemptions, it should be borne in mind that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims exemption from tax payments rests the burden of justifying the

> exemption by words too plain to be mistaken and too categorical to be misinterpreted.
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> 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. It cannot be overemphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications." (Emphasis supplied.)

Lastly, the Court notes petitioner's reliance on BIR Ruling No. 325-88, dated July 13, 1988, wherein the respondent 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. However, such reliance on BIR Ruling No. 325-88, dated July 13, 1988 is misplaced. As decided by the Supreme Court in *M. J. Lhuillier* case, this interpretation is not 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.[17]

With regard to the compromise penalties of ₱25,000.00 for VAT and ₱16,000.00 for DST, or a total of ₱41,000.00, the same should be cancelled in the absence of a mutual agreement between the parties.[18]

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[17] See also *Commissioner of Internal Revenue vs. Court of Appeals,* G.R. No. 108358, January 20, 1995.

[18] *Rightfield Property Ventures, Inc. (now known as Universal Rightfield Property Holdings, Inc.) v. Commisioner of Internal Revenue*, CTA Case No. 5972, October 16, 2003.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Respondent's assessment for deficiency Value Added Tax, including the amount of ₱41,000.00 as compromise penalty, is hereby **CANCELLED** and **SET ASIDE** and the respondent is **ORDERED** to issue the corresponding Authority to Cancel Assessment on deficiency Value-Added Tax and compromise penalty. However, the assessment for deficiency Documentary Stamp Tax is hereby **AFFIRMED**.

Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of **Two Hundred Sixty Four Thousand Five Hundred Thirty Four Pesos and Ninety Three Centavos** representing deficiency Documentary Stamp Tax for the taxable year 2000, plus 20% delinquency interest from February 14, 2004 up to the time such amount is fully paid pursuant to Section 249(C) of the 1997 NIRC.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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