Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

WESTCHESTER CORPORATION, Petitioner,	**C.T.A. CASE NO. 6969**
	Members:
- versus -	**Castañeda, Jr.**, *Chairman* **Uy**, and **Palanca-Enriquez**, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 20 2005

x - x

DECISION

CASTAÑEDA, JR., *J.:*

The Case

This is a Petition for Review filed on April 26, 2004 seeking to cancel Formal Assessment Notices dated January 22, 2004 issued by respondent against petitioner for alleged value-added tax and documentary stamp tax deficiencies during the taxable year 2000.

The Facts

The pertinent facts as borne by the records are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal business address at 8th Floor Builder's Center Building, Salcedo Street, Legaspi Village, Makati City. It is engaged in pawnshop business under the name and style of "Tambunting Pawnshop".

On January 22, 2004, petitioner received from respondent Formal Assessment Notice (FAN) Nos. WE-53476-00-04-643, VT-53476-00-04-643 and DS-53476-00-04-643, for deficiency withholding tax (EWT), value-added tax (VAT) and documentary stamp tax (DST) for the year 2000 in the amounts of PhP2,448.03, PhP586,718.65 and PhP25,768.64, respectively, inclusive of penalties, computed as follows:

Deficiency EWT

EWT Still Due	Php1,515.27
Add: Interest (20% p.a.)	932.76
EWT Still Due	**Php2,448.03**

Deficiency VAT

Gross Receipts per FS		Php2,773.335.00
Output Tax		277,333.50
Less: Input VAT		-
VAT Due		277,333.50
Add:	Surcharge (50%)	138,666.75
	Interest (20% p.a.)	170,718.40
VAT Still Due		**Php586,718.65**

Deficiency DST

Pledge Loan Receivable per FS		Php6,060,100.00
DST Due		12,130.20
Less: DST Paid		-
Deficiency DST		12, 130.20
Add:	Surcharge (50%)	6,065.10
	Interest (20%p.a.)	7,573.34
DST Still Due		**Php25,768.64**

On February 3, 2004, petitioner filed a written protest questioning the deficiency VAT and DST assessments and requesting for the cancellation and withdrawal thereof. However, petitioner settled its EWT deficiency in the amount of PhP2,448.03.

Thus, on March 22, 2004, the Bureau of Internal Revenue issued its final decision on the disputed assessments, copy of which was received by petitioner on March 29, 2004. The said decision cancelled the assessment for deficiency EWT by reason of payment but denied the protest with respect to deficiency VAT and DST. Aggrieved, petitioner filed the instant petition on April 26, 2004.

On June 8, 2004, respondent posted its Answer raising the following Special and Affirmative Defenses:

> "3. The assessments in question were made and issued in accordance with law, rules and regulations.
>
> 4. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).**
>
> 5. Under Section 108(A) of the Tax Code, as amended, the sale or exchange of services is subject to 10% value-added tax (VAT). The enumeration of persons under Section 108 (A) 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 business performing services that are subject to VAT. The Tax Code intent is not to limit the application of the law to those enumerated therein because Section 108 (A) of the Tax Code speaks of *"all kinds of services"*. In the end, since pawnshops *[sic]* operators are engage *[sic]* in the business of lending money for a fee, pawnshops therefore are subject to VAT.
>
> 6. Pawnshops do not merely engage in the service of lending money to pawners. Pawnshops also sells, at public auction, personal properties pawned to them, in the event, therefore, that the pawner fails to redeem the pawn within the maturity period, the pawnbroker may sell or otherwise dispose any article taken or received by him in pawn. Thus, by selling properties, pawnshops shall be subject to VAT.
>
> 7. In the case of **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc."** *[sic]* **CA-G.R. SP No. 68180, February 10, 2003,** the Court of Appeals categorically ruled that pawnshops are liable to pay 10% VAT on their gross receipts derived from sale or exchange of services.
>
> 8. Pawn tickets are subject to documentary stamp tax (DST). As enunciated in the case of **Cruz vs. Chua, 54 Phil. 10,** the Supreme Court held in this wise:
>
>> 'In applying this provision to the situation before us it must be borne in mind that the ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the

> ticket; and the contract of pledge is, therefore, absolvable to bearer. It results that one who takes a pawn ticket in pledge acquires domination over the pledge; and it is the holder who must renew the pledge if it is to be kept alive.'
>
> Thus, as the person accepting the pawn ticket, which is the evidence of the pledge, the pawnshop is liable for documentary stamp tax thereon."

Upon the filing of the Joint Stipulation of Facts and Issues on January 31, 2005, the parties likewise moved to submit the case for decision after filing of memorandum considering that the issues left for resolution are purely legal. The Court granted the same on February 7, 2005 and the case was submitted for decision on April 20, 2005 sans memorandum of respondent.

The Issues

The determination of this case hinges on two questions: Is the pawnshop business liable for value-added tax under Section 108 of the National Internal Revenue Code? And; Are pawn tickets subject to documentary stamp tax under Section 195 of the National Internal Revenue Code?

This Court's Ruling

Well-entrenched in our jurisprudence is the doctrine that a tax cannot be imposed unless it is supported by clear and express language of a statute. On the other hand, once the tax is unquestionably imposed, a claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.[1] Therefore, a reading and re-reading of the applicable NIRC provisions is proper to settle the issues at hand.

Sec. 108 (A) of the National Internal Revenue Code of 1997 provides:

> **Value-added Tax on Sale of Services and Use or Lease of Properties.- (A) Rate and Base of Tax.-** There shall be levied,

---

[1] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 295 SCRA 721 [1998])*

> 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, 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. The phrase 'sale or exchange of services' shall likewise include: xxx *(Emphasis Supplied)*

Petitioner contends that there is no basis for the imposition of VAT against it because there is no provision in the National Internal Revenue Code of 1997 ("Tax Code" for brevity), subjecting pawnshops to VAT. Petitioner cites *Cebu Rosver Pawnshop, Inc. vs. Commissioner of Internal Revenue*[2] holding that since pawnshops are not classified as lending investors and that the deficiency VAT assessment is hinged on respondent's conclusion that the former is a lending investor, then, the VAT assessment is null and void for lack of basis. Petitioner also argues that tax laws are to be construed in favor of the taxpayers who cannot be burdened with taxes beyond what is expressly and clearly provided for by law. Since the power of the Bureau of Internal Revenue is confined to issuing rules and regulations to implement or carry into effect the provisions of the Tax Code, such authority does not include authority to create new and additional measures

---

[2] *CTA Case No. 6154, August 16, 2001*

citing *Commissioner of Internal Revenue vs. Trustworthy Pawnshop*[3]. Thus, petitioner concludes that the VAT deficiency assessment against it should be cancelled and set aside.

We rule against the petitioner.

Based on the above provision of law, value-added tax is to be imposed on all kinds of transactions, involving the "sale and exchange of services" otherwise, the law would not have defined it as the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration if the same was not its intention.[4] Judicial notice can be taken of the fact that the principal activity of pawnshops is lending money at interest on the security of personal property. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or consideration for such service. In other words, *the liability of pawnshop operators to pay the VAT no longer depends on the classification of their business but on the services they rendered. As a consequence thereof, rulings or decisions declaring that pawnshops are not lending investors have lost their bearing for as long as pawnshops are engaged in the sale of services.*[5]

Further, in *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.*[6], the Court of Appeals held that pawnshops are engaged in the sale of services for a fee, hence, subject to the value-added tax. To quote:

> "xxx, 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. It is clear from 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

---

[3] *CA-G.R. S.P. 59250, August 29, 2001*

[4] *Commissioner of Internal Revenue vs. Prime Asia Pawn & Jewelry Shop, Inc. C.A. G.R. SP No. 70318 November 6, 2003*

[5] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue CA-G.R. SP No. 79363, February 18, 2004*

[6] *CA-G.R. SP No. 67667, June 29, 2004*

> not the performance thereof calls for the exercise or use of the physical or mental faculties,' that the coverage of the Value-Added Tax includes pawnshops since it engaged in the performance of a service for a fee. The enumeration in the provision was merely to provide examples of 'all kinds of services.' It was not meant to exclude services that were not mentioned in the enumeration. The maxim *inclusio unius est exclusio alterius* is not a rule of law. It cannot be applied when the enumeration was merely by way of example,[7] or when the statute does not explain why those not mentioned should be excluded.[8] To rule otherwise would create an absurdity where the law intends to subject 'all kinds of services' to the Value-Added Tax, yet limits the scope of the tax to only those enumerated."

To emphasize, the word "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. Therefore, 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. 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 includible, though not specifically enumerated. Hence, the terms 'includes' and 'including' does not exclude items otherwise within the scope of the defined term.[9]

Also in *Commissioner of Internal Revenue vs. Agencia Exquisite of Bogo, Inc.,*[10] it was held:

> *"Succinctly, value-added tax 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, even in the absence of profit attributable thereto. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value-added tax.*[11]

---

[7] *Binay vs. Sandiganbayan 316 SCRA 64 [1999]*
[8] *Manabat vs. De Aquino, et. al., 92 Phil 1025 [1953]*
[9] *Sutherland, Statutory Construction, 4th Ed., Vol. 2A, p. 82, Sec. 47.07, citing United States Argosy Ltd. Hennigan, 404 F2d 14 (CA 5th, 1968); see United States vs. Gertz, 249 F2d 662 (CA 9th, 1957)*
[10] *CA G.R. SP No. 69590, January 26, 2004*
[11] *Commissioner of Internal Revenue v. Court of Appeals, 329 SCRA 237 [2000]*

By and large, the respondent, being in the service of lending money to the general public with interest and security, is subject to value-added tax. **Contrary to its contention that the classification of pawnshops as one of the business entities subject to value-added tax is derived merely by implication, the law which directs the levy, assessment and collection of the said tax on all kinds of services for others for a fee, remuneration or consideration was enacted to comprehensively include all kinds of transactions involving the sale or exchange of services, unless otherwise stated.** A *fortiori,* with the admission of the respondent that it is engaged in the business of rendering service to others for a fee, by way of interest payments, it cannot be gainsaid that its conduct of business is covered by the provisions of law on value-added tax.

A reading of the enumeration in the aforesaid section of the law bespeaks of the intention of the legislature to cover all transactions involving the sale and exchange of services. The nomenclature of the said provision is explicit, especially so since it minced no words in depicting the extent of its coverage. The use of the phrase 'all kinds of services' clearly denotes that all transactions, as long as there is the rendering of services, regardless of its classification and profitability, should be subject to value-added tax. In the same vein, the insertion in the enumeration of the phrase 'similar services' indicates the intention to include all transactions and services not categorically listed but all the same contemplated by law.

xxx xxx xxx"

Well-entrenched is the legal precept that tax-exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power[12] and must be expressed in the statute in clear language.[13] Any claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. It cannot be merely implied therefrom.[14] For this reason, there being no provision, express or implied, under the Tax Code, as amended, exempting pawnshops from the imposition and payment of value-added tax, respondent shall be liable for the payment of the same." *(Emphasis Supplied)*

Simply put, the evident import of the law is to impose VAT on "all kinds of services." As correctly pointed out by respondent, the enumeration under Section 108 (A) is merely intended to give examples of business performing services that are subject to VAT. The enumeration does not exclude all other services, like that of a pawnshop

---

[12] *Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 441 [2001]*
[13] *Philippine Long Distance Telephone Company, Inc. vs. City of Davao, 522 SCRA 840 [2001]*
[14] *Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue, 293 SCRA 76 [1998]*

business. Therefore, it is petitioner's duty to show, that by express intent of the law it is exempted from the imposition of VAT. Failing in this regard, it should be held liable for the payment thereof.

Anent its alleged deficiency documentary stamp tax, petitioner claims that such assessment also has no basis. Petitioner asserts that it is the document evidencing a pledge of personal property, which is made as security for payment of a loan, that is subject to the DST. A pawn ticket is defined under the Pawnshop Regulation Act[15] as a pawnbroker's *receipt* for a pawn. It is neither a security nor a printed evidence of indebtedness. Accordingly, petitioner avers, that since the document taxable under Section 195 must show the existence of a debt, a pawn ticket which is merely a receipt for a pawn, is not subject to DST.

We do not agree. Pawn tickets are subject to documentary stamp tax.

Pertinent provisions of the National Internal Revenue Code are quoted hereunder for easy reference:

> **Section 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 prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.
>
> **Section 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

---

[15] *PD 114, Section 3*

> 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

At this juncture, it is appropriate to stress that tax statutes are to receive a reasonable construction with a view of carrying out their purposes and intent. They should not be construed as to permit the taxpayer to easily avoid the payment of the tax.[16]

A pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket.[17] Therefore, a pawn ticket substantiates the existence of a pledge transaction whereby personal property is offered as a collateral for the loan and the security given may be redeemed upon payment of the debt.[18] And pursuant to Section 195 of the National Internal Revenue Code, it is subject to documentary stamp tax.

As early as the case of *Cruz vs. Chua,*[19] the Supreme Court already pronounced that a pawn ticket is a contract of pledge. Thus:

> "In applying this provision to the situation before us it must be borne in mind that the ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket; and the contract of pledge is, therefore, absolvable to bearer. It results that one who takes a pawn ticket in pledge acquires domination over the pledge; and it is the holder who must renew the pledge if it is to be kept alive."

As the person issuing the pawn ticket, which is the evidence of the pledge, the pawnshop is liable for documentary stamp tax thereon. Even though a pawn ticket is a

---

[16] *Commissioner of Internal Revenue vs. Court of Appeals 242 SCRA 289 [1995]*
[17] *China Banking Corporation vs. Court of Appeals, 270 SCRA 503 citing the case of Cruz & Serrano vs. A.H. Lee, 54 Phil 15*
[18] *First Planters Pawnshop Inc., vs. Commissioner of Internal Revenue, C.T.A. Case No. 6887, May 9, 2005*
[19] *54 Phil. 10 [1929]*

mere receipt for the pawn and not an evidence of indebtedness as expressly provided by Presidential Decree No. 114, it is still subject to documentary stamp tax.

Pawn tickets *per se* are not being subject to documentary stamp tax. Rather, it is the transaction involved that is being taxed. In the case of pawnshop, the property pawned, or pledged, is transferred to the pawnshop as security for the payment of money lent. This is where the documentary stamp tax is imposed.[20] The law provides that on every pledge of personal property, 'where the same shall be made as a security for the payment of any definite and certain sum of money lent,' a documentary stamp tax is imposed, based on the amount involved. Again, adhering to the fundamental rule on construction regarding taxation, any claim for exemption must be shown and based on the express provision of law. Pawnshops are not included in the exemption provided in the National Internal Revenue Code, as amended.

"Even granting that P.D. 114 defines a pawn ticket neither as a security nor a printed evidence of indebtedness but as a 'pawnbroker's receipt for a pawn' it nevertheless defines a 'pawn' as the personal property delivered by the pawner to the pawnee as security for a loan, hence, the Pawnshop Regulation Act itself acknowledges that pawnshops enter into contracts of pledge."[21] A pawn ticket is the logical document evidencing a pledge contract that is subject to DST.

It is a settled principle that equity and law always exalt substance over form. It is the nature of the instrument which will determine whether it will be subjected to documentary stamp tax or not. Thus, it does not matter that the pawn ticket is called a receipt. This does not alter the fact that such receipt is also the document evidencing the pledge. It is therefore both a receipt and a pledge at the same time.

---

[20] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., CA-G.R. SP No. 67667, June 29, 2004

[21] Commissioner of Internal Revenue vs. Antam Pawnshop Corp., CA-G.R. SP No. 79117, January 21, 2005.

In *Philippine Home Assurance Corporation vs. Commissioner of Internal Revenue*,[22] the Supreme Court said:

> "In general, documentary stamp taxes are levied on the exercise by certain 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.
>
> Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, xxx. The documentary stamp taxes must be paid upon the issuance of the said instruments, xxx."

The documentary tax is therefore imposable on the transaction whatever form or name the instrument of pledge may have. It accrues upon the exercise of the privilege to enter into certain transactions, in this case, a pledge.

Petitioner furthermore maintains that it is not subject to 50% surcharge and interest.

We agree with the petitioner insofar as the imposition of the 50% surcharge is concerned. The surcharge of fifty percent (50%) is imposed by Sec. 248 (B) only in two instances. First, in case of willful neglect to file the return within the period prescribed and second, in case a false or fraudulent return is willfully made. Thus, it is not enough that the taxpayer failed to file the required tax return or that the return is false to justify the imposition of the 50% for fraud. In the case at bar, respondent failed to adduce evidence that petitioner had an intention to evade the payment of tax. Petitioner did not pay the required tax because of its belief that it is not liable therefor. It follows that it is liable to a surcharge of only twenty five percent (25%) pursuant to Sec. 248 (A) (1) of the 1997 NIRC. However, We find the imposition of the 20% deficiency interest in order pursuant to Section 249 (B) of the 1997 NIRC.

---

[22] *301 SCRA 443 [1999]*

In fine, petitioner is liable for deficiency VAT and DST recomputed as follows:

Deficiency VAT

Gross Receipts per FS		Php 2,773,335.00
Output Tax		Php 277,333.50
Less:	Input VAT	-
VAT Due		Php 277,333.50
Add:	Surcharge (25%)	69,333.38
	Interest (20%)	170,718.40
VAT Still Due		Php 517,385.28

Deficiency DST

Pledge Loan Receivable per FS		Php 6,060,100.00
DST Due		Php 12,130.20
Less:	DST Paid	-
Deficiency DST		Php 12,130.20
Add:	Surcharge (25%)	3,032.55
	Interest (20%)	7,573.34
DST Still Due		Php 22,736.09

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Petitioner is hereby **ORDERED TO PAY** the respondent the amounts of P517,385.28 and P22,736.09 as deficiency value-added tax and documentary stamp tax, respectively, for the year 2000, plus 20% delinquency interest from February 25, 2004, until full payment thereof pursuant to Sections 249 (C) of the 1997 National Internal Revenue Code.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman