REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGENCIA EXQUISITE OF DIPOLOG, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6352

JOSE N. TAN, in his official capacity as Revenue Regional Director, Revenue Region No. 15 of the BUREAU OF INTERNAL REVENUE, and THE COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:
APR 0 1 2003

x - x

DECISION

This case involves an assessment for deficiency value-added tax for the year 1999 in the amount of Two Hundred Eighty Thousand Eight Hundred Twenty Seven Pesos and Twenty Nine Centavos (P280,827.29), inclusive of surcharge, interest and compromise penalty.

Petitioner is a corporation duly existing and organized under the laws of the Republic of the Philippines located at Gen. Luna St., Dipolog City. It is owned and operated by Exquisite Pawnshop & Jewelry, Inc. with address at A. del Rosario St., Mandaue City, Cebu *(Joint Stipulation of Facts, par. 1)*.

On June 5, 2001, petitioner received a Formal Letter of Demand and Assessment Notice bearing No. 091-0105-99/2001 from the Bureau of Internal Revenue, both dated

May 11, 2001, assessing and demanding payment from it in the amount of P280,827.29, inclusive of surcharge, interest and compromise penalty, representing value-added tax (VAT) deficiency for the year 1999 *(ibid., par. 3)*.

A Formal Administrative Protest questioning the validity and propriety of the assessment was lodged by petitioner with the respondent Revenue Regional Director on July 3, 2001 *(ibid., par. 7)*.

The respondent Revenue Regional Director, in a Reply-Decision dated August 29, 2001 and received by petitioner on September 6, 2001, denied the tax protest and reiterated his demand for the payment of the subject VAT *(ibid., par. 8)*. Hence, this petition filed through registered mail on October 4, 2001.

In his answer, respondent raised the following Special and Affirmative Defenses, to wit:

1) Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its services consist of lending money at interest on 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 under Section 108(A) of the Tax Code;

2) The assessment was issued in accordance with law and regulations;

3) All presumptions are in favor of the correctness of tax assessments; and

4) Petitioner has not shown that the collection of the tax may jeopardize the interest of the Government and/or its interest, as required under Section 11 of R.A. No. 1125, which would justify the suspension of said collection.

The parties submitted that the only issue to be resolved in this case is whether or not a pawnshop is engaged in the sale of services in the course of trade or business so as to be made liable for the payment of 10% value added tax.

At the outset, petitioner emphasizes that it is not claiming for exemption but exclusion from the coverage of VAT. It is the assertion of petitioner that a pawnshop is expressly excluded as a "vatable" entity under Republic Act No. 8424, the Tax Reform Act of 1997.

We do not agree.

Under Section 108(A) [formerly Section 102(a)] of the Tax Code, as amended, it is provided that:

> **SEC. 108.** ***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, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of 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; <u>and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties</u>. xxx. (Underscoring supplied.)

Prescinding from the above law, any sale of services for others for a fee, remuneration or consideration is subject to 10% VAT. However, petitioner maintains that it is not engaged in the sale or exchange of services but rather it is engaged in a transaction that partakes the nature of a contract of pledge. No service is being rendered to its clients.

We disagree.

The phrase "sale or exchange or services" encompasses the performance of **all kinds of services** in the Philippines for others for a fee, remuneration or consideration. It includes the services enumerated therein and similar services regardless of whether or not the performance thereof calls for the exercise of physical or mental faculties.

Petitioner likewise contends that a careful reading of the "vatable" entities will reveal that the enumeration of services under Section 108, earlier cited, are specific, though written to appear as an open list. It is an enumeration of the taxable activities or entities and the omission of pawnshop from the list is clearly a sign of the legislative intent not to subject pawnshops to the value-added tax.

We do not subscribe to the view of the petitioner.

From the plain language of the law, the enumeration of persons performing services is not exclusive. The enumeration of persons performing services for a fee, remuneration or consideration, such as, construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely to give examples of businesses performing services for a fee, remuneration or consideration that are subject to VAT. 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. As held in the case of ***Gomez vs. Ventura, 54 Phil. 726:***

> "xxx The maxim *expressio unius est exclusio 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. (See Cyc., 1122) x x x." (Underscoring ours.)

Section 108(A) [formerly Section 102(a)] does not limit its application to those enumerated therein because the law speaks of "all kinds of services". 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.
>
> 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).

In the cases of ***Genato Commercial Corporation vs. The Court of Tax Appeals, et al., 104 Phil. 615*** **and** ***Philippine-American Drug Co. vs. Collector of Internal Revenue and Court of Tax Appeals, 106 Phil. 161*****,** general words were harmonized with specific words found in the statute in question so as not to limit the coverage of the taxing statute. In determining that the bank charge in question formed part of the charges enumerated in Art. 183-(B) of the then Tax Code, the Supreme Court held:

> As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which

includes freight, postage, insurance, commission and customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of Php 0.15 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment all charges, whether specified or otherwise, which an importer has to pay to complete his importation.

Invoking the rule of *ejusdem generis* which provides that "where, in a statute, general words follow a designation of a particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated," petitioner contends that the difference of Php 0.15 which it paid to a local bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.

With this we disagree, for it cannot be denied that the intention of the law is to include all charges, that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of *ejusdem generis* is but a rule of construction adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (*State vs. Prather*, 21 L.R.A. 23, 25).

In the case at bar, the law is not only definite in its intent but also in its wording that "all kinds of services" should be subject to VAT. Indubitably, pawnshop services are subject to VAT.

Furthermore, Section 105 of the Tax Code provides:

"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."

Inasmuch as pawnshops are engaged in the sale of services for a fee, remuneration or consideration, they are subject to VAT under Section 108(A) of the Tax Code, as amended. This conclusion finds support in recent decisions laid down by the Court of Appeals ***(Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., C.A. G.R. SP No.59282, March 23, 2001 and Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc., C.A. G.R. SP No. 59401, September 30, 2002),*** the latest of which is the case of ***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., C.A. G.R. SP No. 68180, promulgated on February 10, 2003,*** where the Court of Appeals categorically ruled that pawnshops are subject to the 10% VAT imposed under Section 108 (A) of R.A. 8424, thus:

"A 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.

In the case at bar, it has been the contention of respondent Agencia Exquisite of Bohol, Inc. that the business of a pawnshop is not similar to that of a lending investor. A pawnshop, according to respondent is principally engaged in the business of delivering money to another, secured by personal property, upon the condition that the latter shall pay the former, otherwise, the thing pawned shall be sold for the payment of the principal obligation. Hence, a pawnshop operator engages in a pledge transaction.

We are not convinced. The business of pawnshops are akin to that of lending investors. Respondent itself admitted that a lending investor is a person who makes a practice of lending money for themselves or others at interest. It seems that respondent forgotten that the business of a pawnshop is also to lend money for others at interest. The difference between lending investors and pawnshops lies only on the security given, that is, a lending investor may require both real and personal property as security for the loan; whereas a pawnshop can require only personal property as security for the loan. But in the end, a lending investor and a pawnshop both engage in the business of lending money for others at interest. Accordingly, a lending investor and a pawnshop are both subject to VAT, pursuant to the provision of the National Internal Revenue Code of 1997 which provides that "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 x x x lending investors x x x."

Even assuming *arguendo* that we do not classify pawnshops as lending investors, still pawnshops are subject to the 10% VAT imposed under Section 108(A) of R.A. 8424. Pawnshops refer to persons or entities engaged in the business of lending money on personal property delivered as security for loans. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value added tax. 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, pawnshops will not extend any loan to a borrower. Furthermore, the payment of interest imposed on a borrower by a pawnshop is equivalent to a fee in exchange of the service provided by the pawnshop in lending money to such borrower. Thus, the phrase "***all kinds of services***" as stated in the second paragraph of Section 108(A) of R.A. 8424 is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, which is provided by pawnshops to their borrowers. And the enumeration of sale or exchange of services under Section 108(A) of R.A. 8424 does not limit nor exclude other kinds of services performed for a fee, remuneration or consideration. Rather, such enumeration even expanded the meaning of the phrase "***all kinds of services***".

Besides, pawnshops do not merely engage in the service of lending money to pawners. Rather, pawnshops also sells, 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. Thus, by selling properties, pawnshops shall be subject to VAT.
>
> Finally, respondent Agencia Exquisite of Bohol, Inc. reiterates that it is claiming exclusion from the coverage of the value-added tax law and it is not claiming exemption from payment thereof. We are not persuaded. When a taxpayer claims exclusion from payment of the VAT, he is thereby claiming exemption from payment thereof. For what is the effect of exclusion from the VAT other than exemption from payment thereof? They have the same effect. That is, when a taxpayer claims exclusion or exemption from payment of the VAT, he is in effect claiming that he is not liable to pay a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services.
>
> It is settled that tax exemptions should be strictly construed against those claiming to be qualified thereto. Any exemption from the payment of a tax must be clearly stated in the language of the law. Pawnshops are not clearly stated in the National Internal Revenue Code of 1997 to be exempted from payment of the VAT. Hence, pawnshops shall be liable to pay ten percent (10%) of their gross receipts derived from sale or exchange of services as value-added tax."

Moreover, it bears stressing that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulatory 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."

Judicial notice may 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, any allegation that pawnshops are not lending investors has lost its bearing. For as long as pawnshops are engaged in lending money on the security of personal property, they are still within the ambit of Section 108(A). Petitioner, being engaged in the pawnshop business, is undoubtedly engaged in the sale of services like lending money. Hence, it cannot escape liability to pay the 10% VAT under Section 108(A) of the Tax Code, as amended.

IN VIEW OF THE FOREGOING, the instant petition is hereby **DENIED**. Petitioner is **ORDERED** to **PAY** the respondent COMMISSIONER OF INTERNAL REVENUE the amount of P280,827.29 representing deficiency VAT for the year 1999, plus 25% surcharge and 20% interest for late payment from June 11, 2001 until fully paid pursuant to Sections 248 and 249 of the Tax Code, as amended.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge