REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MICHEL J. LHUILLIER PAWNSHOPS, INC.,
Petitioner,

C.T.A. CASE NO. 7312

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 23 2006, 10:00 AM

x - x

DECISION

BAUTISTA, L., J.:

This Petition for Review seeks the cancellation of deficiency documentary stamp tax assessment inclusive of interest, surcharge and compromise penalty in the total amount of P9,739,535.95 issued by the Commissioner of Internal Revenue for taxable year 1999.

Petitioner Michel J. Lhuillier Pawnshops, Inc. is a domestic corporation with place of business at M. Lhuillier Bldg., Benedicto Street, North Reclamation Area, Cebu City while respondent Commissioner of Internal Revenue is the duly appointed government official tasked, among others, in the collection of taxes including documentary stamp taxes (DST), with office address at the BIR Building, East Triangle, Diliman, Quezon City.[1]

Petitioner received a Preliminary Assessment Notice (PAN) dated December 8, 2003 from respondent assessing it of deficiency DST in the amount P9,553,658.09 computed as follows:[2]

DOCUMENTARY STAMP TAX DELINQUENCY

Documentary Stamps Tax Due	P 4,416,200.00
Add: Surcharge	1,104,050.00
Interest (until 01-15-04)	4,008,408.09
Compromise	25,000.00
TOTAL	P 9,553,658.09

Petitioner filed a protest to the PAN on January 20, 2004.[3]

On April 3, 2004, petitioner received a letter dated February 27, 2004 from respondent denying its protest.[4] On even date, petitioner received a Formal Letter of Demand with Details of Discrepancy from respondent demanding, among others, the payment of P9,739,535.95 for deficiency DST, computed as follows:[5]

Assessment No. 81-dst-13-1999-2004-3-063

Documentary stamps tax due	P 4,416,200.00
Add: 25% surcharge for late payment	1,104,050.00
20% interest (up to 3/31/04)	4,194,285.95
Compromise	25,000.00
Total amount due	**P 9,739,535.95**

On April 26, 2004, petitioner filed a Motion for Reconsideration of the decision issued by the respondent and to recall the questionable assessment.[6]

---

[1] Petition for Review, Records, p. 1
[2] Exhibit "A"
[3] Exhibit "B"
[4] Page 2, Petition for Review, Exhibit "C-1"
[5] Exhibit "C"
[6] Exhibit "E"

On July 2, 2004, petitioner received a Preliminary Collection Letter from respondent demanding the payment of the alleged deficiency DST, among others, in the amount of P9,739,535.95 inclusive of interest, surcharge, compromise penalty.[7]

Hence, the instant Petition for Review by registered mail on July 22, 2005.

In his Answer filed on November 2, 2005, respondent alleged the following Special and Affirmative Defenses:

> "3. The instant petition is definitely filed out of time. Petitioner categorically admits before this Honorable Court that it took the Preliminary Collection Letter, received on July 2, 2005, as the Commissioner's denial of the Motion for Reconsideration filed by petitioner as protest to the Final Assessment. Thus, under Section 228 of RA 8242, petitioner only has 30 days within which to file the instant petition or until 2 August 2005. The records readily show that the instant petition was filed only on 23 August 2005, or 21 days after the reglementary period.
>
> 4. Assuming *in gratia arguenti* that the Preliminary Collection Letter cannot be taken as the decision of the Commissioner on the protest, still, the instant petition has been filed out of time. Petitioner represents before this Honorable Court that it filed its protest to the assessment on 26 April 2004. Under Section 228 of the Tax Code, petitioner has 60 days within which to submit documents supporting its protest, and 180 days from the lapse of the said 60 days to wait for the decision of the Commissioner. After said periods, the protest is deemed denied, and the taxpayer must bring a case before this Court within 30 days. As can be plainly seen, the instant petition is filed way beyond the prescriptive period set by law. The instant petition is filed more than 450 days after the petitioner filed its protest/motion for reconsideration.
>
> 5. This Honorable Court does not have jurisdiction to entertain the instant petition as the instant assessment being disputed by petitioner herein has already become final, executory and unappealable.
>
> 6. In any case, the issue raised by petitioner regarding the taxability of pawn tickets under Section 195 of the Tax Code has already been passed upon by the Court of Appeals in the case of Commissioner of Internal Revenue vs. Michel J. Lhuillier C.A. G.R. SP No. 67667. In said case, the Honorable Court of Appeals emphatically stated that 'pawn tickets *per se* are not subject to Documentary Stamp Tax (DST). Rather, it is the transaction involved that is being taxed. In the case of pawnshops, the property pawned, or pledged, is transferred to the pawnshop as security for the payment of the money lent. This is where the Documentary Stamp Tax is imposed.'
>
> 7. This clarification of the Honorable Court of Appeals that the DST is being imposed on the transaction of pledge, and not on the document,

[7] Exhibit "F"

> shatters petitioner's objection to the assessment founded on Presidential Decree 114.
>
> 8. Suffice it to state that the assessment on petitioner is founded on clear provisions of the law, any allusion to invalidity of implementing circulars must surely fail."

Considering that the parties had agreed on petitioner's documentary evidence and that the only issue to be resolved is purely legal,[8] the case was submitted for decision without respondent's memorandum on August 23, 2006.

The issues, as jointly stipulated by the parties, are the following:

1. Whether or not the petitioner is liable for documentary stamp tax on its pawn transactions; and

2. Whether or not the appeal had already prescribed.

This Court deems it appropriate to delve on the issue of prescription first. Section 228 of the National Internal Revenue Code (NIRC) provides in part:

> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In the instant case, petitioner received the Preliminary Collection Letter, which is deemed a decision denying its protest (Motion for Reconsideration), on July 2, 2005. Applying the above-cited provision, petitioner had thirty (30) days from receipt of the decision, or until August 1, 2005, to file the petition. Contrary to the allegation of respondent that the petition was filed only on August 23, 2005 and beyond the thirty (30)-day period allowed by law, records reveal that the petition was sent by registered mail on July 22, 2005, well within the thirty (30)-day period. Moreover, Section 3, Rule 13 of the Revised Rules of Court provides:

---

[8] Records, p. 85

"**SEC. 3.** ***Manner of filing.*** – The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or **by sending them by registered mail**. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. **In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court.** The envelope shall be attached to the records of the case." *(Emphasis supplied)*

Anent the second issue, petitioner asseverates that documentary stamp tax imposed in Section 195 of the NIRC applies to the documents evidencing mortgage, pledges and Deed of Trust. Thus, DST is not imposable against pawnshops since there is no such pledge loan contract between the pawnshop and its customers. Further, as provided under Section 3 of PD 114,[9] a pawn ticket is neither a security nor a printed evidence of indebtedness.

We rule against the petitioner. Sections 173 and 195 of the NIRC of 1997 read:

"**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."

"**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 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:

(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (10.00).

xxx xxx xxx *(Emphasis supplied)*"

[9] Otherwise known as the Pawnshop Regulation Act

More importantly, the issue of whether or not pawn transactions are subject to DST had already been resolved by the Supreme Court in the recent case of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*[10] wherein the Supreme Court explained the reason for a pawn transaction's taxability in this wise:

> "It is clear from the foregoing provisions [Sections 173 and 195] 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 v. Court of Appeals*, it was held that:
>
> > 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**. *(Emphasis added)*
>
> 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.
>
> 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) amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawnbroker 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.

---
[10] G.R. No. 166786, May 3, 2006

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

> "Pawn ticket" is the pawnbrokers' 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 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 an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.

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 over-emphasized 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."

Clearly from the foregoing jurisprudence, pawnshops, such as the petitioner, are liable for DST on their pawnshop transactions.

The Court notes, however, that the compromise penalty of P25,000.00 should not have been imposed by respondent. The Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying it or not paying it distinctly belongs to the taxpayer.[11] Absent any showing that petitioner consented to the compromise penalty, the same should be cancelled. The imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[12] Thus, the amount of deficiency DST is recomputed as follows:

Documentary stamps tax due	P 4,416,200.00
Add: 25% surcharge for late payment	1,104,050.00
20% interest (up to 3/31/04)	4,194,285.95
Total amount due	**P 9,714,535.95**

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DISMISSED** for lack of merit. The assessment against petitioner for deficiency documentary stamp tax is hereby ***AFFIRMED*** except for the compromise penalty in the amount of P25,000.00. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of P9,714,535.95 representing deficiency documentary stamp tax for the taxable year 1999, plus 20% deficiency interest accruing thereon until July 12, 2005,[13] and 20% delinquency interest per annum from July 13, 2005 until the amount is fully paid pursuant to Section 249 (C)(3) of the NIRC of 1997.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

---

[11] *Philippine International Fair, Inc. vs. The Collector of Internal Revenue*, Nos. L-12928 and L-12932 (1962)
[12] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.*, G.R. No. 35266 (1999)
[13] Petitioner was given 10 days from receipt of the Preliminary Collection Letter to pay the deficiency DST

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division