REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SURIGAO - JUPITER PAWNSHOP, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 6690**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 27 2004

x - x

DECISION

The Petition for Review seeks to declare null and void ab initio respondent's Final Assessment Notice dated October 21, 2002, assessing petitioner for deficiency value-added tax (VAT) in the amount of P790,792.18, inclusive of interest and other charges.

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

Petitioner Surigao-Jupiter Pawnshop, Inc., is a corporation organized and existing under and by virtue of the laws of the Philippines, engaged in the pawnshop business, with principal office at 3495 Borromeo St., Surigao City.

On October 21, 2002, respondent issued Final Assessment Notice No. 105-44-00-000066 for deficiency value-added tax (VAT) for the year 2000 on petitioner's pawnshop business in the amount of P790,792.18 (Petitioner's Exhibit "A").

Thereafter, the petitioner protested the aforesaid assessment notice in a letter dated November 18, 2002 (Petitioner's Exhibit "C").

The petitioner's arguments against the disputed VAT assessment relied on the contention that sales or exchanges of services subject to VAT are only those categorically enumerated in Section 108(A) of the 1997 Tax Code and nowhere can it be found in the said provision that pawnshops are subject to VAT. Petitioner further asserted that the clear congressional intent is to exempt pawnshop business from VAT, when the legislature made the enumeration of the particular services covered. Accordingly, anything not identified therein is deemed to have been deliberately excluded.

On March 19, 2003, respondent denied petitioner's protest with finality and demanded payment of the assessment for VAT (Petitioner's Exhibits "D" and "E").

Hence, on May 8, 2003, herein petition was filed before this court.

In his Answer filed on June 10, 2003, respondent asserted the following Special and Affirmative Defenses, to wit:

> "7. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its gross receipts derived from such services are subject to the 10% value-added tax (VAT) imposed under Section 108 (A) of the Tax Code **(Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.**, CA-G.R. Sp No. 68180, February 12, 2003; **Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.**, CA-G.R. Sp No. 70319, May 13, 2003)."
>
> 8. The assessment was issued in accordance with law and regulations.
>
> 9. All presumptions are in favor of the correctness of tax assessments."

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court finds for the respondent.

Basically, the issue here is, "Whether or not the petitioner, as a pawnshop operator, is subject to VAT on sale of services under Section 108 (A) of the Tax Code?"

At this juncture, considering the fact that the focal point of the controversy relies on the proper interpretation of **Section 108 (A) of the Tax Code**, the same is hereunder quoted, thus:

> "**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; persons engaged in milling, lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshments 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" (*Emphasis supplied*)

The pertinent portions of **Section 105** of the same Code, which compliments the above-mentioned Section 108 (A) are likewise hereby quoted:

> "**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. xxx"

From the foregoing provision which used the phrase "all kinds of services", it is clear that the legislative intention is not to limit the application of the law to those enumerated therein, nor, exclude other kinds of services performed for a fee, remuneration or consideration. In fact the use of the word "including" in the statute is indicative of the objective to enlarge rather than to limit its coverage.

The respondent correctly noted that there is a gamut of cases sustaining the finding that pawnshops are subject to VAT on sale of services under the aforequoted provisions of the 1997 Tax Code. The foremost jurisprudential support is the case entitled **Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.,** *CA-G.R. Sp No. 70319, May 13, 2003.* Here, the Honorable Court of Appeals held that:

> **"Section 105 of the National Internal Revenue Code (NIRC) subjects "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 to a value-added tax (VAT). While Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." It includes the services enumerated in the aforementioned section and similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental faculties. The wordings of the definition of the phrase "sale or exchange of services" is unambiguous. It encompasses the performance of all kinds of services for a fee, remuneration or consideration.**

Thus, the sale or exchange of services is subject to 10% VAT. Indeed, for as long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

Section 3 of Presidential Decree No. 114 defines a pawnshop thus:

"Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans."

From the foregoing definition, the fact that, the principal activity of a pawnshop is lending money at interest on the security of personal property is instantly recognizable. Needless to state, the act of lending money at interest constitutes a performance of a service for a fee, remuneration or consideration.

The phrase "all kinds of services" as stated in the second paragraph of Section 108 (A) of Republic Act No. 8424 is broad enough to cover the kind of service which is provided by pawnshops to their borrowers, that is lending money in consideration of personal property delivered as security. Hence, a pawnshop is engaged in the sale of services that is subject to VAT under Section 108 (A) of the Tax Code, although it is not specifically mentioned in the law." *(Emphasis supplied)*

Likewise, in the case of ***Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue****, CTA Case No. 6266, promulgated March 25, 2004,* this court has explained that "the phrase 'sale or exchange of 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."

The court further elucidated thus:

"From the plain language of the law the sale or exchange of services is subject to VAT and the phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. 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. In the case of **Gomez vs. Ventura, 54 Phil. 726**, it was ruled that:

> "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 xxx.)". (Underscoring ours)

Section 108 (A) of the 1997 Tax Code 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. xxx

> "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 Ct 1 (1941)]. *(Emphasis supplied)*

xxx xxx xxx

Furthermore, Section 109 [formerly Section 103] of the Tax Code, as amended, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions under the said section. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of

> pawnshops are not among those enumerated in Section 109 or any other express provision of law as VAT-exempt, it follows that the same are subject to VAT under Section 108(A)." *(Emphasis supplied)*

Long standing is the principle that tax exemptions are strictly construed against the taxpayer ***(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639)***. The High Tribunal in the case of ***Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation,*** *G.R. No. 125355, March 30, 2000,* reiterated that:

> "xxx it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, **any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom."** *(Emphasis supplied)*

Noteworthy is the fact that this court in the absence of any circumstances or evidence excusing the subject matter from the ambit of the aforecited statutes and jurisprudence will not exempt the case from the application of the said legally sound principles.

WHEREFORE, Assessment Notice No. 105-44-00-000066 for deficiency value-added tax issued against the petitioner is hereby upheld. Accordingly, the petitioner is hereby **ORDERED** to **PAY** the amount of P790,792.18 as deficiency VAT for the taxable year 2000 plus 25% surcharge for late payment and 20% annual interest for late payment from December 12, 2002 until fully paid pursuant to Section 248 and 249 of the Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

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

LOVELL R. BAUTISTA
Associate Justice

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 Justice