REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CEBU ROSVER PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6425

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 17 2003

x - x

DECISION

This is a petition for review, with prayer for the issuance of writ of preliminary injunction, seeking for the annulment and setting aside of Assessment Notice No. 81-vat-13-97-2001-1-101 and Formal Letter of Demand for deficiency value-added tax (VAT) in the amount of P723,018.84 as well as the ruling issued by the respondent, through the Acting Assistant Commissioner for Legal Service, which denied petitioner's request for a recall of the Warrant of Distraint and Levy to enforce collection of the alleged deficiency VAT.

As borne out of the records of the case, the antecedents are as follows:

Petitioner, a corporation organized and existing under Philippine laws is a taxpayer duly registered with the Bureau of Internal Revenue with Tax Identification No. 000-552-114-000. Its principal business address is located at Door No. 4 Gorres Lacson Bldg., Colon Street, Cebu City. Petitioner corporation operates Ros-Ver Pawnshops *(Joint Stipulation of Facts, par. 1 & 3, CTA docket, p.81).*

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On June 7, 1999, respondent through Regional Director Crispino Vallejo, Jr. (RDO #81, Cebu City North) issued Letter of Authority (LOA) No. 1998 00004943, authorizing Revenue Officers Melendrina Malate and Francisca Lim to conduct an examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes covering taxable year 1997*(Annex A of the Petition for Review)*.

On September 2, 1999, petitioner paid its income tax for the year 1997 in the amount of P10,012.00 *(Annex B of the Petition for Review)*. However, on February 11, 2000, petitioner was served a Preliminary Assessment Notice dated February 3, 2000 *(Annexes C and C-1 of the Petition for Review)* for deficiency value added tax in the total amount of P745,794.85, inclusive of penalties and interest, for calendar year 1997. On February 15, 2000 petitioner filed its letter-protest to the aforementioned February 3, 2000 Preliminary Assessment Notice, contending that pawnshops are not subject to the 10% VAT per decision of the Court of Appeals in the case of Commissioner of Internal Revenue vs. Hon. Andres Reyes, et al., CA-G.R. SP No. 28824, December 23, 1993 *(Joint Stipulation of Facts, par. 7, CTA docket, p. 82)*.

Through a letter dated January 23, 2001, respondent reiterated his earlier demand for alleged deficiency value added tax attaching therewith an Assessment Notice, Details of Discrepancy and Formal Letter of Demand assessing petitioner of alleged deficiency value added taxes for the year 1997 in the total amount of P723,018.84, inclusive of surcharge, interest and penalty. In the said Assessment Notice and Formal Letter of Demand, the Tax Identification Number (TIN) of the supposed taxpayer is 001-397-788 *(Joint Stipulation of Facts, par. 8, CTA docket, p. 82)*.

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On June 15, 2001, respondent reiterated the earlier demand for alleged deficiency value added tax through a Preliminary Collection Letter dated June 15, 2001 *(Annex I of the Petition for Review)*, which was received by petitioner on June 20, 2001 *(Joint Stipulation of Facts, par. 9, CTA docket, p. 82).*

In a letter dated June 20, 2001 *(Annex J of the Petition for Review),* petitioner manifested to respondent the pendency of the petition it filed before this court (CTA Case No. 6154) questioning the Value-Added Tax assessment for the year 1996. The letter was received by respondent on June 22, 2001. In said letter, petitioner prayed that the June 15, 2001 Preliminary Collection letter be nullified or recalled *(Joint Stipulation of Facts, par. 10, CTA docket, p. 83).*

On August 16, 2001, petitioner received a copy of Warrant of Distraint and/or Levy No. 081-017-01 dated August 16, 2001 *(Annex K of the Petition for Review)* in order to collect from the petitioner the amount of P638,518.84 as deficiency VAT for 1997.

On September 14, 2001, petitioner filed its September 12, 2001 letter *(Annex L of the Petition for Review)* citing the August 16, 2001 decision of this court in the case of *Cebu Rosver Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6154,* declaring Revenue Memorandum Circular No. 43-91 and Revenue Memorandum Order No. 15-91 null and void and further canceling and setting aside the 1996 VAT assessment notice against petitioner. Petitioner prayed for the recall of the August 16, 2001 Warrant of Distraint and/or Levy *(Joint Stipulation of Facts, pars. 12 & 15, CTA docket, p. 83).*

On March 12, 2002, petitioner received the February 26, 2002 letter of respondent *(Annexes N & N-1 of the Petition for Review)* denying the prayer for the recall of the August 16, 2001 Warrant of Distraint and/or Levy per ruling of the Office of the Acting Assistant Commissioner for Legal Service, dated January 4, 2002 *(Joint Stipulation of Facts, par. 13, CTA docket, p. 83).*

. Because of the unfavorable ruling issued by herein respondent, petitioner, through registered mail, filed a petition for review with this court on March 20, 2002 praying for the cancellation and annulment of the deficiency VAT assessment issued by herein respondent.

In answer to the instant petition, respondent specifically denied some material averments in the petition and forthwith raised the following Special and Affirmative Defenses, thus:

1. Petitioner did not protest the assessment within thirty (30) days from receipt thereof. Hence, the assessment has become final, executory and demandable (Section 228, Tax Code) and, therefore, this Honorable court has no jurisdiction to act on the petition;

2. 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 imposed under Section 102 (a) [now 108 (A)] of the Tax Code, as amended by RA No. 7716;

3. The assessment was issued in accordance with law and regulations;

4. All presumptions are in favor of the correctness of tax assessments;

5. Petitioner has not shown that the collection of the tax may jeopardize its interest and/or the interest of the government, as

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provided in Section 11 of RA No. 1125, so as to justify the suspension of said collection.

On September 19, 2002, petitioner filed a Manifestation (With Motion) with this court praying that the presentation of evidence be dispensed with and the scheduled hearing be cancelled. Petitioner averred that with the approval of the Joint Stipulation of Facts, there is no more factual matter it intends to prove. Respondent likewise admitted that the documents attached to the petition as Annexes "A to N-1" are faithful reproduction of the original and authentic records. Hence, petitioner requested that the parties be allowed to submit their respective memorandum.

In a resolution dated September 25, 2002, the court granted petitioner's Manifestation (With Motion). On December 9, 2002, the case was considered submitted for decision.

This court is confronted with the task of resolving the two issues presented by the parties in their joint stipulation, to wit:

1. Whether or not the questioned Value-Added Tax assessment for taxable year 1997 issued against petitioner is final and executory;

2. Whether or not petitioner as a pawnshop operator is liable to pay ten percent (10%) value added tax on gross receipts under Section 108 (A) of the National Internal Revenue Code, as amended.

In order to dispose of the first issue, reference must be had to the pertinent provision of the 1997 Tax Code, which provides:

> ***"Section 228. Protesting of Assessment.-*** When the Commissioner or his duly authorized representative finds that proper

> taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> x x x x x x
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final".

As provided in the afore-quoted provision, if the taxpayer fails to file an administrative protest within the reglementary thirty-day period from receipt of the assessment notice, the assessment becomes final. In other words, after the lapse of the thirty day period, the assessment can no longer be disputed, either administratively or judicially, as the assessment has already become final. It bears stressing that the thirty-day period granted to the taxpayer within which to contest the assessment is jurisdictional and non-extendible ***(Pangasinan Transportation Co., Inc. vs. Silverio Blasquera, G.R.No.L-13101, April 29, 1960).*** "The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals" *(p. 836, The National Internal Revenue Code Annotated, De Leon, Seventh Edition, 2000).*

The facts as presented to us are clear and undisputed. Petitioner received the preliminary assessment notice (PAN) on February 11, 2000. Four days after, petitioner sent a letter to the respondent, citing the Court of Appeals decision in the case of Commissioner of Internal Revenue vs. Hon. Andres Reyes, et al., CA-G.R. SP No.

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28824, December 23, 1993, ruling that pawnshops are not subject to the 10% VAT. In reply to petitioner's February 15-letter, respondent sent a letter to petitioner on January 23, 2001, reiterating its demand for the payment of VAT liabilities. Attached therewith are the Assessment Notice, details of discrepancy and Formal Letter of Demand. It appears, however, that petitioner did not make any positive act to object to the invalidity of the said Assessment Notice and Formal Letter of Demand. It was only on June 22, 2002 when respondent again heard from petitioner, this time, however, it was a letter in response to the collection letter sent by respondent on June 20, 2001. On August 16, 2001 petitioner received a copy of the Warrant of Distraint and Levy issued by the respondent. Again, petitioner sent a letter praying for the recall of the said warrant, citing as ground, the favorable decision of the CTA on its pending case. Finally, on February 26, 2002, respondent issued a letter addressed to petitioner denying its prayer for the recall of the warrant.

Considering the circumstances obtaining in the case at bar, it is clear that petitioner has failed to file a valid and proper protest within the thirty (30)-day period, as required by Section 228 of the 1997 Tax Code. Consequently, the assessment became final, executory and unappealable. In the case of ***Protector's Services, Inc. vs. Court of Appeals**, 330 SCRA 404, promulgated on April 12, 2000*, the Supreme Court upheld this court's ruling that the assessments became final after thirty days from receipt of demand letters by the petitioner, without the latter interposing a reconsideration, thus:

> "We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1998, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. From December 10, 1987 to January 12, 1988, thirty-three days had lapsed.

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> Thereafter petitioner may no longer dispute the correctness of the assessments. Hence, in our view, the Court of Tax Appeals correctly dismissed the appeal for lack of jurisdiction."

Moreover, in the case of ***Marcos II vs. Court of Appeals***, *273 SCRA 47, June 5, 1997*, the Supreme Court passed upon a similar issue, and we quote:

> "Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 *(now 228)* of the NIRC on protests on assessments of internal revenue taxes."

In its memorandum, petitioner contends that respondent cannot deny the presence of a protest letter where in fact, it is clear from the tenor of the latter's January 23, 2001 letter that he considered the 1997 VAT assessment as a protested assessment. The pertinent portion of the said January 23-letter reads:

> "This has the reference to your protested deficiency value-added tax (VAT) for the taxable year 1997 in the amount of P 745,794.85 (increments included), as a result of our investigation under Letter of Authority No. 4943 dated June 7, 1999.
>
> Your protest letter dated February 15, 2000 to our assessment notice was received in our office on the same date.
>
> x x x x x x".

According to petitioner, respondent cannot possibly take a position different from its admission.

We do not agree.

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Petitioner, in adhering to its stand that it has duly protested the assessment, takes refuge to the alleged protest-letter *(Annex D of the Petition for Review)* it sent to respondent to contest the preliminary assessment notice (PAN). However, a cursory reading of the said letter would reveal that it is not the protest referred to under Section 228 of the 1997 Tax Code. The said letter is merely a letter in response to the preliminary assessment notice which, if not filed, will consider the taxpayer in default, and accordingly, the formal demand letter and assessment notice will henceforth be issued. Thus, Section 3.1.2 of Revenue Regulations No. 12-99, dated September 6, 1999, ***(Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes)*** provides:

> *"3.1.2* ***Preliminary Assessment Notice (PAN).-*** If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail a Preliminary Assessment Notice (PAN) for the proposed assessment xxx. <u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default</u>, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties"*(underscoring ours)*.

The required protest contemplated by Section 228 is the one assailing the Assessment Notice and the Formal Letter of demand and not the Preliminary Assessment Notice. This is also clear from the provisions of Section 3.1.5 of Revenue Regulations No. 12-99, which states:

> ***"3.1.5 Disputed Assessment*** – The taxpayer or his duly authorized representative may protest administratively against the

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> aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. x x x.
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable" *(underscoring ours)*

In ***FMF Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6403, CTA resolution dated June 20, 2002,*** this court ruled that the protest letter must be a protest on the assessment notice, thus:

> "In the instant case, while the assessment notice was received by petitioner on July 27, 2000, it only filed its protest letter on December 11, 2001, or after the lapse of more than one and a half years. Besides, the protest letter referred to the Final Notice Before Seizure which was not the Assessment Notice adverted to in Section 228 of the 1997 NIRC. What was referred to in the Code which must have been protested administratively by petitioner was the assessment notice issued on July 19, 2000 or BIR Form 1708 *(underscoring ours).*"

In the same manner, the subsequent letters of petitioner assailing respondent's letter of collection and the letter requesting for the recall of petitioner's Warrant of Distraint and Levy did not cure the absence of the required protest letter. In fact, when petitioner finally sent those letters, the assessment notice had long become final, executory and demandable. But even assuming that said letters cited valid grounds for the annulment and cancellation of the assessment notice, the same can no longer exude an effect as the assessment letter had already attained finality.

Prescinding from the foregoing, we find it unnecessary to delve into the merits of the case at bar.

WHEREFORE, in view of the foregoing, the instant petition for review is **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED** to **PAY** the amount of P723,018.84 as deficiency value-added tax for the year 1997, plus 20% delinquency interest from February 23, 2001 until fully paid pursuant to Section 249 of the Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate 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

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