REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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VILLARICA PAWNSHOP, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7047

Members:

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

Promulgated:
OCT 3 0 2006, 2:20 PM

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DECISION

BAUTISTA, L., J.:

Before Us is a Petition for Review pursuant to Section 7 of Republic Act No. 1125 as amended by Republic Act No. 9282, praying for the (a) nullification of the assessment and final demand for payment of Value Added Tax ("VAT") and Documentary Stamp Tax ("DST") in the amounts of P6,950,066.85 and P545,220.00, respectively, and corresponding compromise penalties of P25,000.00 covering the taxable year 1997 and (b) issuance of an order directing the Bureau of Internal Revenue to issue the corresponding Authority to Cancel Assessment.

Villarica Pawnshop Inc. ("petitioner"), a corporation duly existing and organized under and by virtue of the laws of the Republic of the Philippines, is engaged in the pawnshop business with principal address at 876-N Aurora Blvd., Cubao, Quezon City.

The Commissioner of Internal Revenue ("respondent"), on the other hand, is the duly appointed officer authorized to assess internal revenue taxes, among others, with office address at the BIR Building, BIR Road, Quezon City and herein represented by Regional Director Teodorica R. Arcega, with office address at BIR Revenue Region No. 6, 4th Floor BIR Building, Anda Circle, Port Area, Manila.

On January 18, 2001, petitioner received from the Commissioner of Internal Revenue through Regional Director Teoderica R. Arcega Demand Letters with attached Assessment Notice No. 32-97, all dated January 16, 2001, apprising it of VAT and DST tax liabilities in the amounts of P6,950,066.85 and P545,220.00, respectively, and compromise penalties for the taxable year 1997,[1] computed as follows:

VALUE ADDED TAX

Taxable Sale/Receipt	P 37,649,332.93
10% tax due thereon	3,764,933.29
Less: Allowable tax credits/taxes already paid	-
Deficiency tax due	3,764,933.29
Add: 25% Surcharge Non-Filing (Sec.248)	941,233.32
20% Interest per annum from _____ to 1-19-01	2,243,900.24
TOTAL AMOUNT DUE & COLLECTIBLE	P 6,950,066.85

Compromise penalty for late payment/late Filing (Sec.254)	P 25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 25,000.00

DOCUMENTARY STAMP TAX

TAX DUE	P 436,172.00
Add: 25% surcharge	109,048.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 545,220.00

[1] Par. 1.3, Stipulation of Facts, Rollo, p. 163; BIR Records, pp. 164-169

Compromise penalty for late payment/late Filing (Sec.254)	P 25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 25,000.00

On February 2, 2001, petitioner protested the assessments[2] on the grounds, among others, that pawnshops are not liable to pay the VAT and a pawn ticket is not subject to DST. Petitioner likewise requested the respondent to hold in abeyance all actions on the matter since the issue of whether pawnshops are subject to VAT and DST is still pending with the Supreme Court in the case of Josefina Leal vs. Commissioner of Internal Revenue.[3]

On June 24, 2001, petitioner received from the respondent a Letter of Demand dated July 12, 2001 for it to pay the amounts of P6,975,006.85 and P570,220.00 representing deficiency VAT and DST, respectively, pursuant to the Memorandum dated May 31, 2001 issued by Atty. Mario A. Saldevar sustaining petitioner's liability for deficiency VAT and DST.[4]

In a letter dated August 14, 2001, petitioner reiterated its request for the respondent to hold in abeyance the collection of these assessments pending the resolution by the Supreme Court of the *Leal* case and similar cases involving the same issues.[5]

On August 14, 2003, received a 1st Notice dated April 23, 2002 issued by Chief Edna L. Tesorero of the Collection Section of the BIR Revenue Region No. 6, Revenue District Office No. 32.[6]

Subsequently, on June 4, 2004, the BIR through respondent Commissioner of Internal Revenue and the Chamber of Pawnbrokers of the Philippines, Inc. ("CPPI") entered into a Memorandum of Agreement ("MOA") for the settlement of all the VAT liabilities of pawnshops for the taxable period of 1996 to 2002. Under the MOA, for the taxable years 1996 to 2002, the members of the CPPI undertook to pay twenty-five percent (25%) of their assessed VAT liability, as assessed by the BIR or based on self-assessment by the members.

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[2] Exhibit "D"
[3] Docketed as G.R. No. 113459 and decided on November 18, 2002
[4] Par. 1.5, Stipulation of Facts, Rollo, pp. 163-164
[5] Par. 1.6, Stipulation of Facts, Rollo, p. 164
[6] Par. 1.7, Stipulation of Facts, Rollo, p. 164

For the years 2000 to 2002, the payment was to be made on or before July 15, 2004; for the years 1996 to 1999, the payment was to be made on or before December 15, 2004.[7]

In accordance with the terms of the MOA, petitioner settled its VAT liability for the years 2000 to 2002 on June 27, 2004[8] and for the VAT liability for the years 1996 to 1999, petitioner settled the same on December 15, 2004.[9]

In a letter dated July 19, 2004 and received by petitioner on August 3, 2004, Regional Director Teodorica R. Arcega denied with finality petitioner's protest.[10]

Hence, this petition filed on September 2, 2004.

The parties interposed the following issues for the Court's consideration:

> "1. Whether or not the letter dated 19 July 2004 denying Villarica's protest and the insistence of RD Arcega that Villarica pay deficiency VAT were authorized by the respondent Commissioner;
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> 2. Whether or not the questioned assessment for deficiency VAT has become moot with the execution by CPPI and the BIR of the Memorandum of Agreement dated 4 June 2004;
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> 3. Assuming arguendo that the Memorandum of Agreement was not executed by the CPPI and respondent Commissioner, whether the pawnshop business, in general and Villarica, in particular are subject to VAT under Section 105 in conjunction with Section 108 of the Tax Code;
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> 4. Whether Villarica is liable for deficiency VAT with amount of P6,950,066.85 and the compromise penalty in the amount of P25,000.00;
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> 5. Whether the pawn ticket may be subjected to DST under Section 195 of the Tax Code.
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> 6. Whether Villarica is liable for deficiency DST in the amount of P545,200.00 and the compromise penalty of P25,000.00."[11]

In essence, the above issues revolve on petitioner's liability to VAT and DST.

Petitioner alleges that Section 108 of the National Internal Revenue Code ("NIRC"), as amended, excludes from VAT the services rendered by pawnshops. A tax cannot be

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[7] Exhibit "A"
[8] Par. 1.11, Stipulation of Facts, Rollo, p. 165
[9] Par. 1.13, Stipulation of Facts, Rollo, p. 165
[10] Exhibit "F"
[11] Rollo, p. 166

imposed without clear and express words. Accordingly, the provisions of a taxing statute are not be extended by implication. In fact, Congress deliberately intended not to include pawnshops in the coverage of House Bill No. 11197, Senate Bill and the subsequent Bicameral Committee version which eventually became the Expanded VAT law.

To further bolster its stand that pawnshops are not liable to VAT, petitioner applied by analogy the case of Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.,[12] wherein the Supreme Court declared that dealers in securities and lending investors are the entities subject to percentage tax. Section 116 of the 1977 NIRC made no mention of pawnshops. Under the maxim *unius est exclusio alterius*, the mention of one thing implies the exclusion of another.

Petitioner moreover contends that the respondent did not sanction Regional Director Arcega's issuance of the letter dated July 19, 2004 denying its protest and ordering it to pay the assessed deficiency VAT. In accordance with the MOA and Agreement dated June 27, 2004, petitioner settled its VAT liability for the taxable years 2000 to 2002 on June 27, 2004 and for the taxable years 1996 to 1999 on December 15, 2004.

Respondent, however, counters that petitioner is subject to 10% VAT based on its gross receipts pursuant to Republic Act (R.A.) No. 7716 otherwise known as Expanded Value Added Tax (EVAT) Law, as amended by the 1997 Tax Code. Unless expressly exempt from VAT, any person engaged in the sale of goods, property or services in the course of trade or business shall be liable to the 10% VAT. Transactions which are exempt from VAT are enumerated under Section 103 (now Section 109) of the Tax Code, as amended by R.A. No. 7716. Pawnshop transactions are not among those enumerated as exempt transactions. Neither are there any express provisions of law exempting pawnshops from VAT. Since pawnshop transactions are not among those exempt transactions, the same are subject to VAT on their gross receipts since they are clearly engaged in the performance of services.

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[12] 406 SCRA 178 (July 15, 2003)

Respondent further argues that petitioner's contention to interpret as exclusive the enumeration set forth under Section 108 (A) of the 1997 Tax Code by applying the maxim *expression unius est expressio alterius* would create havoc instead of harmony in the present Philippine tax system and would only trigger unjustness, inequality and partiality in the enforcement of VAT laws, which means that those sale or exchange of services which are not included in the enumeration and those services which will be put up in the future shall not be subject to VAT.

Moreover, the Memorandum of Agreement between the Chamber of Pawnbrokers of the Philippines and the respondent does not invalidate the VAT and DST assessments issued by the BIR against the petitioner. Instead, it is a recognition of taxability on VAT on pawnshop transactions considering that the petitioner has already paid its VAT liabilities for taxable years 2000, 2001 and 2002. There is no reason why then it should not pay its 1997 VAT liability in the instant case. Considering that the petitioner has not yet availed of the compromise settlement as set forth in the MOA, then the VAT assessment issued by the BIR against the petitioner must prevail.

Section 99[13] of the 1993 NIRC, as amended, refers to the entities liable to pay VAT, to wit:

> SEC. 99. *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 100 to 102 of this Code.
>
> xxx xxx xxx
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

[13] Now Section 105 of the 1997 NIRC, as amended

Section 102(a)[14] of the same Code imposes VAT on the sale or exchange of services and use or lease of properties, to wit:

> SEC. 102. *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.
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> The phrase "sale or exchange of services" means 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, rest houses, pension houses, inns, resorts; proprietors or operators of restaurant, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; operators of taxicabs; utility cars for rent or hire driven by the lessees (rent-a-car companies), tourist buses; and other common carriers by land, air and sea 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 117 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 and mental faculties. xxx

The wording "sale" or "exchange of services" is not restrictive to the specific types of businesses enumerated under Section 102(a) above cited. The entities specified under the same provision are preceded by the word "including" which connotes an enlargement and not of a limitation. Otherwise, to limit the application of Section 102(a) to the entities specified therein would be antithetical to the meaning of the phrase of "all kinds of services".

Indubitably, the law should be taken to mean that other entities not specified under Section 102(a) of the 1993 NIRC, as amended, shall be subject to VAT as long as they render services for a fee or remuneration or consideration.

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[14] Now Section 108 of the 1997 NIRC, as amended

Under Presidential Decree (P.D.) No. 114, pawnshops refer to a person or entity engaged in the business of lending money on personal property delivered as security for the loan. Thus, the act of lending money at interest in exchange for the personal properties delivered as collateral for the obligation constitutes performance of a service for a fee, remuneration or consideration.[15]

It bears stressing that *Lhuillier* case relied upon by the petitioner presents different factual and legal circumstances which cannot be made to apply in the instant case. In that case, the highest tribunal made a distinction between lending investors and pawnshops to delineate that only the former is liable to 5% percentage tax. The issue of pawnshops liability to VAT was never raised and tackled in the *Lhuillier* case. Therefore, herein petitioner's conclusion that since pawnshops are not lending investors, the services rendered by them should not be construed to be within the purview of those "services subject to VAT" under Section 102(a) of the 1993 NIRC, as amended, is erroneous. In fact, the conclusion of the Supreme Court that pawnshops are not lending investors was made to determine the liability of pawnshops to percentage tax which was deleted from the provisions of the Tax Code after its amendment. The BIR interpreted that pawnshops, inspite its deletion, are covered by the term "lending investors" which was retained in the law as subject to percentage tax. Thus, although the two businesses are similar, they are not exactly identical, for while a pawnshop lends money on the strength of personal property pledged, a lending investor does not.

In sum, it is already settled that pawnshops are liable to VAT since they are engaged in the sale of services for others for a fee, remuneration or consideration.[16] Nevertheless, petitioner in this case is no longer liable to the assessed deficiency VAT for taxable year

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[15] Commissioner of Internal Revenue vs. First Express Pawnshop Company Inc. CTA EB Nos. 60 & 62, March 24, 2006

[16] First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 130, June 7, 2006; Westchester Corporation vs. Commissioner of Internal Revenue, CTA EB No. 127, May 17, 2006; Commissioner of Internal Revenue vs. First Express Pawnshop Co., Inc., CTA EB No. 60 and First Express Pawnshop Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 62, March 24, 2006; H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 108, March 21, 2006; Antam Pawnshop Corporation vs. Commissioner of Internal Revenue, CTA EB No. 131, February 10, 2006

1997 by virtue of the MOA executed on June 4, 2004[17] and Settlement Agreement executed on June 27, 2004.[18] Besides, in the hearing of February 28, 2006, counsel for the respondent manifested that the compromise settlement on the VAT issue was approved. Petitioner's payment of the subject deficiency VAT accruing from its services rendered for taxable year 1997 has likewise been acknowledged. To quote:

> ***"ATTY. CACATIAN:***
> ***Your Honors, with respect to respondent's concern, the respondent will no longer present a witness considering the issue involved here is a legal issue on documentary stamp tax. So, we intend to file a Memorandum within 30 days from today and with respect to the VAT issue, your Honors, the BIR Manila has already approved the compromise agreement after verifying the payment made by petitioner, your Honors.***
>
> ***JUSTICE ACOSTA::***
> ***With regards to what?***
>
> ***ATTY. CACATIAN:***
> ***With regards to the VAT payments, your Honors, as per compromise agreement between the Commissioner and petitioner.***
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> ***ATTY. TAMIN:***
>
> ***Your Honors, we would like to have a written confirmation of their statement.***
>
> ***ATTY. CACATIAN:***
>
> ***In open court, your Honors, with respect to VAT issue but with respect to Doc stamps, we will file our Memorandum, your Honors.*** "[19]

Further, in his memorandum, respondent again stated that "during the proceedings, it was settled that the Compromise Agreement between the petitioner and respondent was made in due course and that the agreed VAT paid was duly remitted to the BIR".[20]

Thus, in view of the above manifestations and documentary evidence on petitioner's payment on December 15, 2004 of the amount of P4,532,379.43 comprising 25% of its

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[17] Exhibit "A"
[18] Exhibit "C"
[19] TSN dated February 28, 2006, pp. 3-4
[20] Rollo, p. 369

basic VAT for the years 1996 to 1999,[21] renders moot and academic the deficiency VAT assessment for taxable 1997.

Anent the issue on DST, it is petitioner's posture that a pawn ticket is not a certificate of indebtedness evidencing a pledge, hence, not subject to DST. DST is a tax on the execution of a document evidencing a transaction or the execution of a transaction embodied in a document. According to the petitioner, Section 3 of Presidential Decree No. 114 defines a pawn ticket as a pawnbroker's receipt for the pawn. It is not a security for the payment of any sum of money or evidence of indebtedness. Unlike a promissory note, bond or debenture which is surrendered to the creditor, the pawner or borrower holds possession of the pawn ticket. If the pawn ticket is used as evidence of the amount loaned, the lender will necessarily hold on to the ticket as his evidence. But this is not the practice in the pawnshop industry. In the operation of pawnshops, no contract is actually issued to record the transaction but a receipt that cannot be subject to DST.

Even granting *arguendo* that DST is a tax on the transaction and not on the document, pawning is not included in any of the enumerated transactions subject to DST. Under Section 195 Tax Code, as amended, DST is confined to only three distinct real contracts of security, namely: mortgage, pledge and trust.

Respondent, for his part, maintains that pawnshops are engaged in the business of lending money secured by pledges under Article 2123 of the Civil Code. The provisions of Title XVI on Pledge, Mortgage and Antichresis of the Civil Code are suppletory to the Pawnshop Regulatory Act (PD No. 114) and other special laws and regulations on pawnshops. A pawner presents the pawn ticket to the pawnshop operator in order to redeem the pawned or pledged personal property. Thus, a pawn ticket is a document issued by a pawnshop operator to prove contract of pledge. It is the pawn transaction being indicative of a pledge transaction between the pawner and the pawnee which is

[21] Exhibits "B" and "C-1"

contemplated as taxable under Section 195 of the Tax Code, as amended, and the person accepting the pawn ticket, no other than the pawnshop operator, is liable for DST.

The Court rules in favor of the respondent. Sections 173 and 195 of the 1993 NIRC, as amended, provide:

> SEC. 173. *Stamp taxes upon documents, 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, 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 only one directly liable for the tax.
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> 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:
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> (a) When the amount secured does not exceed Five thousand pesos, Twenty pesos (P20.00);
>
> (b) On each Five Thousand pesos, or fractional part thereof in excess of Five thousand pesos, an additional tax of Ten pesos (P10.00).

From the foregoing, on every pledge of personal property made as a security for the payment of a certain sum of money, a documentary stamp tax is hereby imposed. Thus, the pawn tickets issued by the petitioner evidencing its exercise of the privilege to enter into a contract of pledge, are subject to DST. In fact, the Supreme Court, in the more recent case of ***Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue,***[22] finally put to rest the issue of why all pledges such as the security offered to the pawnee in

[22] G.R. No. 166786, May 3, 2006

satisfaction of the pawner's indebtedness are subject to DST under Sections 173 and 195.

We quote:

> "It is clear from the foregoing provisions 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 vs. Court of Appeals, it was held that:
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> > 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)*
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> Pledge is among the privileges, the exercise of which is subject tot 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.
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> 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) the amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawner 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 pawn broker and the pawner. In addition, Central Bank Circular No. 445, prescribed a standard form or 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.
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> Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:
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> "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 the 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. *(Underscoring Ours)*

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 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." *(Underlining supplied)*

With regard to the compromise penalties, the same should be cancelled in the absence of a mutual agreement between the parties.[23]

WHEREFORE, premises considered, the Petition for Review is ***PARTIALLY GRANTED***. The deficiency VAT assessment in the amount of P6,950,066.85 for taxable year 1997 is hereby

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[23] Collector of Internal Revenue vs. UST, Nos. L-11274 & 11280, 104 Phil 1062

CANCELLED and **SET ASIDE** and the respondent is **ORDERED** to issue the corresponding Authority to Cancel Assessment. The amount of P50,000.00 imposed by way of compromise penalties is likewise **CANCELLED**. However, the deficiency DST assessment for taxable year 1997 is hereby **AFFIRMED**.

Accordingly, petitioner is **ORDERED to PAY** respondent the amount of P545,220.00 representing deficiency DST for taxable year 1997, plus 20% delinquency interest from February 20, 2001 until fully paid pursuant to Section 249 of the 1993, NIRC, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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