

## FIRST DIVISION

[ G.R. NO. 166786, September 11, 2006 ]

**MICHEL J. LHUILLIER PAWNSHOP, INC., PETITIONER, VS.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### R E S O L U T I O N

**YNARES-SANTIAGO, J.:**

This resolves petitioner's motion for reconsideration of the May 3, 2006 Decision of the Court holding that contracts of pledge entered into by pawnshops are subject to Documentary Stamp Tax (DST). We ruled therein that DST is essentially an excise tax; it is not an imposition on the document itself but on the privilege to enter into a taxable transaction of pledge.

The gist of the motion for reconsideration is that before an exercise of a taxable privilege may be subject to DST, it is indispensable that the transaction must be embodied in and evidenced by a document. Since a pawn ticket as defined in Presidential Decree (P.D.) No. 114 or the Pawnshop Regulation Act is merely the pawnbrokers' receipt for a pawn and not a security nor a printed evidence of indebtedness, it cannot be considered as among the documents subject to DST. In the alternative, petitioner contends that should the Court rule otherwise, it cannot be made to pay surcharges and interest because it acted in good faith and the confusion as to whether it is liable to pay DST is partly attributable to the divergent rulings of the Bureau of Internal Revenue (BIR) on the matter.

The motion for reconsideration is partly meritorious.

Section 195 of the National Internal Revenue Code (NIRC) imposes a DST on **every** pledge regardless of whether the same is a conventional pledge governed by the Civil Code or one that is governed by the provisions of P.D. No. 114. All pledges are subject to DST, unless there is a law exempting them in clear and categorical language. This explains why the Legislature did not see the need to explicitly impose a DST on pledges entered into by pawnshops. These pledges are already covered by Section 195 and to create a separate provision especially for them would be superfluous.

Then too, it is the exercise of the privilege to enter into an accessory contract of pledge, as distinguished from a contract of loan, which gives rise to the obligation to pay DST. If the DST under Section 195 is levied on the loan or the exercise of the privilege to contract a loan, then there would be no use for Section 179 of the NIRC, to separately impose stamp tax on all debt instruments, like a simple loan agreement.<sup>[1]</sup> It is for this reason why the definition of pawnshop ticket, as not an evidence of indebtedness, is inconsequential to and has no bearing on the taxability of contracts of pledge entered into by pawnshops. For purposes of Section 195, pawnshop tickets need not be an evidence of indebtedness nor a debt instrument

because it taxes the same as a pledge instrument. Neither should the definition of pawnshop ticket, as not a security, exempt it from the imposition of DST. It was correctly defined as such because the ticket itself is not the security but the pawn or the personal property pledged to the pawnbroker.

The law is clear and needs no further interpretation. No law on legal hermeneutics could change the fact that the entries contained in a pawnshop ticket spell out a contract of pledge and that the exercise of the privilege to conclude such a contract is taxable under Section 195 of the NIRC. The rationale for the issuance of and the spirit that gave rise to the Pawnshop Regulation Act cannot justify an interpretation that obviously supplies an exemption which is simply and clearly not found in the law. Nothing in P.D. No. 114 exempts pawnshops or pawnshop tickets from DST. There is no ambiguity in the provisions thereof; any vagueness arises only from the circuitous construction invoked by petitioner. If then President Ferdinand E. Marcos intended to exempt pawnshops or pawnshop tickets from DST, he would have expressly so provided for said exemption in P.D. No. 114. Since no such exemption appear in the decree, the only logical conclusion is that no such exemption is intended and that pawnshops or pawnshop tickets are subject to DST.

Significantly, the Court notes that rural banks and their borrowers and mortgagors are exempt from documentary stamp tax on instruments relating to loans. Under P.D. No. 122,<sup>[2]</sup> the exemption is up to the amount of P5,000.00 loan and charges are collectible only on the amount in excess of

P5,000.00.<sup>[3]</sup> This provision was adopted by R.A. No. 7353, the Rural Banks Act of 1992 but the threshold amount was increased to P50,000.00, and documentary tax is levied only on any amount in excess of P50,000.00, if there is any. <sup>[4]</sup>

P.D. No. 122 was approved by then President Marcos on January 29, 1973, **the very same day** he approved the Pawnshop Regulation Act. Had there been an intention to give a tax exemption, partial or full to pawnshops or pawnshop tickets, it would have been categorically so provided in the law as what was done in the case of P.D. No. 122. The absence of an express grant thus preclude the Court from vesting petitioner an exemption which would certainly amount to judicial legislation.

Moreover, it should be pointed out that the provisions of the NIRC on DST has recently been amended by R.A. No. 9243. Among the highlights thereof were the amendments to Section 199,<sup>[5]</sup> which incorporated 12 more categories of documents in addition to the initial two categories exempted from DST. As stated in our May 3, 2006 Decision, pawnshop tickets is not one of them. *Expressio unious est exclusion alterius*. The omission of pawnshop tickets only means that it is not among the documents exempted from DST.

Nevertheless, all is not lost for petitioner. The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.<sup>[6]</sup> In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*,<sup>[7]</sup> it was held that:

We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing

the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.

WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.

This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*,<sup>[8]</sup> where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*,<sup>[9]</sup> where the same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST.

**WHEREFORE**, the motion for reconsideration is **PARTLY GRANTED**. The December 29, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 67667 ordering petitioner Michel J. Lhuillier Pawnshop, Inc. to pay deficiency documentary stamp tax is **AFFIRMED** with the **MODIFICATION** that surcharges and all the interests imposed thereon are **DELETED**.

**SO ORDERED.**

*Panganiban, C. J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ. concur.*

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<sup>[1]</sup> As amended by Republic Act (R.A.) No. 9243, (AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES. Approved on February 17, 2004). Section 179 of the NIRC, reads:

SEC. 179. Stamp Tax on All Debt Instruments. - On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or a fractional part thereof, of the issue price of any such debt instrument; Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: provided, further, That only one documentary stamp tax shall be imposed on either loan, agreement or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in