

## SECOND DIVISION

[ G.R. No. 171138, April 07, 2009 ]

**H. TAMBUNTING PAWNSHOP, INC., PETITIONER, VS.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### D E C I S I O N

**QUISUMBING, J.:**

This petition for review assails the Decision<sup>[1]</sup> dated June 30, 2005 of the Court of Appeals in CA-G.R.-SP No. 79116 and its Resolution<sup>[2]</sup> dated January 10, 2006, denying the motion for reconsideration. The appellate court had modified the Decision<sup>[3]</sup> dated March 18, 2003 of the Court of Tax Appeals (CTA) in C.T.A. Case No. 6366.

The case stemmed from a Pre-Assessment Notice<sup>[4]</sup> issued by the Commissioner of Internal Revenue (CIR) against H. Tambunting Pawnshop, Inc. (Tambunting) for, among others, deficiency documentary stamp tax (DST) of P50,910. Thereafter, the CIR issued an assessment notice<sup>[5]</sup> with the corresponding demand letters<sup>[6]</sup> for the payment of the DST and the corresponding compromise penalty for taxable year 1997.

Tambunting filed its written protest to the assessment notice alleging that it was not subject to documentary stamp tax under Section 195<sup>[7]</sup> of the National Internal Revenue Code (NIRC) because documentary stamp taxes were applicable only to pledge contracts, and the pawnshop business did not involve contracts of pledge.

When Tambunting's written protest was not acted upon by the CIR, the former filed a petition with the CTA appealing the assessments issued by the CIR. The CTA gave due course to Tambunting's petition for review and rendered a Decision, the dispositive portion of which reads:

**WHEREFORE**, in view of all the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to **PAY** deficiency VAT assessment.... However, finding that petitioner is not subject to the documentary stamp tax under Section 195 of the Tax Code, Assessment Notice No. 32-97 dated April 11, 2001 for deficiency documentary stamp tax is hereby **CANCELLED and SET ASIDE**.

**SO ORDERED.**<sup>[8]</sup>

The CIR's motion for reconsideration was denied by the CTA. Thus, the CIR elevated the case to the Court of Appeals. The appellate court ruled in favor of the CIR and decreed:

**WHEREFORE**, premises considered, Petition for Partial Review by the Commissioner of Internal Revenue is hereby **GRANTED** and the assailed March 18, 2003 Decision of the Court of Tax Appeals, ..., in so far as it cancelled the deficiency documentary stamp tax assessment of Php 50,910.00 against respondent TAMBUNTING, is hereby **MODIFIED** in that respondent TAMBUNTING is hereby ordered to pay petitioner Commissioner of Internal Revenue, the amount of Php50,910.00 as 1997 deficiency documentary stamp tax assessment, plus 25% surcharge, 20% deficiency interest, and 20% delinquency interest thereon from May 11, 2001 until fully paid pursuant to Section 248 and 249 (B) of the Tax Code.

**SO ORDERED.**<sup>[9]</sup>

Tambunting now before us raises the following issue:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING PETITIONER LIABLE FOR DST ON PAWN TICKETS.<sup>[10]</sup>

Stated simply, is Tambunting liable for documentary stamp taxes based on the pawn tickets that it issued?

Petitioner contends that it is the document evidencing a pledge of personal property which is subject to the DST. A pawn ticket is defined under Section 3 of Presidential Decree No. 114<sup>[11]</sup> as "the pawnbroker's receipt for a pawn [and] is neither a security nor a printed evidence of indebtedness." Petitioner argues that since the document taxable under Section 195 must show the existence of a debt, a pawn ticket which is merely a receipt for a pawn is not subject to DST.

Petitioner further contends that the DST is imposed on the documents issued, not the "transactions so had or accomplished." It insists that the document to be taxed under the transaction contemplated should be the pledge agreement, if any is issued, not the pawn ticket.

On the other hand, the CIR, through the Office of the Solicitor General, argues that Section 195 of the NIRC expressly provides that a documentary stamp tax shall be collected on every pledge of personal property as a security for the fulfillment of the contract of loan. Since the transactions in a pawnshop business partake of the nature of pledge transactions, then pawn transactions evidenced by pawn tickets, are subject to documentary stamp taxes.

The CIR further argues that the pawn ticket is the pledge contract itself and thus, it is subject to documentary stamp tax.

After considering the submission of the parties, we find that the instant petition lacks merit.

First, on the subject of pawn tickets, the Bangko Sentral ng Pilipinas Manual of Regulations for Non-Bank Financial Institutions<sup>[12]</sup> provides:

Sec. 4322P **Pawn Ticket.** Pawnshops shall at the time of the loan, deliver to each pawner a pawn ticket which shall contain the following:

- a. Name and residence of the pawner;
- b. Date the loan is granted;
- c. Amount of the principal loan;
- d. Interest rate in percent;
- e. Period of maturity;
- f. Description of the pawn;
- g. Expiry date of redemption period;
- h. Signature of the pawnshop's authorized representative;
- i. Signature or thumbmark of the pawner or his authorized representative; and
- j. Such other terms and conditions as may be agreed upon between the pawnshop and the pawner.

Notably, a pledge is 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 fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person.<sup>[13]</sup> The pawn ticket is required to contain the same essential information that would be found in a pledge agreement. Only the nomenclature of the requirements in the pawn ticket is changed to refer to the specific kind of pledge transactions undertaken by pawnshops. The property or thing pledged is referred to as the pawn, the creditor (pledgee) is referred to as the pawnee<sup>[14]</sup> and the debtor (pledgor) is referred to as the pawner.

Petitioner's explanations fail to dissuade us from recognizing the pawn ticket as the document that evidences the pledge. True, the pawn ticket is neither a security nor a printed evidence of indebtedness. But, precisely being a *receipt for a pawn*, it documents the pledge. A pledge is a real contract, hence, it is necessary in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement.<sup>[15]</sup> Consequently, the issuance of the pawn ticket by the pawnshop means that the thing pledged has already been placed in its possession and that the pledge has been constituted.

Second, on the subject of documentary stamp tax, the NIRC provides:

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 prescribed in the following Sections... (Emphasis supplied.)

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 a 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 (P20.00).

(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 (P10.00). (Emphasis supplied.)

x x x x

The law imposes DST on documents issued in respect of the specified transactions, such as pledge, and not only on papers evidencing indebtedness. Therefore, a pawn ticket, being issued in respect of a pledge transaction, is subject to documentary stamp tax.

Third, the issue in this case is not novel. The question of whether pawnshop transactions evidenced by pawn tickets are subject to documentary stamp taxes has been answered in the affirmative in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*.<sup>[16]</sup> There the Court held:

x x x x

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....

x x x x

... 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.<sup>[17]</sup>

Even so, we note that the present case was filed with the Supreme Court before September 11, 2006, when the Court resolved for the first time the matter of surcharges and interest for failure to pay documentary stamp taxes on pledge transactions in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*. Hence, as in the said case, we can still ascribe good faith to petitioner. Consequently, the imposition of surcharges and interest in the present case must also be deleted.<sup>[18]</sup>

**WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated June 30, 2005 of the Court of Appeals in CA-G.R.-SP No. 79116 is **AFFIRMED with the MODIFICATION** that surcharges and interest imposed on the deficiency documentary stamp tax assessment are **DELETED**.

**SO ORDERED.**

[1] *Rollo*, pp. 42-50. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr. concurring.

[2] *Id.* at 52-53.

[3] *Id.* at 54-70.

[4] *Id.* at 137.

[5] *Id.* at 141.

[6] *Id.* at 143-146.

[7] 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 a 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 (P20.00).

(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 (P10.00).

x x x x

[8] *Rollo*, p. 69.

[9] *Id.* at 50.

[10] *Id.* at 212.

[11] REGULATING THE ESTABLISHMENT AND OPERATION OF PAWNSHOPS, done on January 29, 1973.

[12] P REGULATIONS, updated as of December 2007.

[13] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147, 153.

[14] Presidential Decree No. 114 (1973),