

THIRD DIVISION

[G.R. No. 174134, July 30, 2008]

FIRST PLANTERS PAWNSHOP, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

First Planters Pawnshop, Inc. (petitioner) contests the deficiency value-added and documentary stamp taxes imposed upon it by the Bureau of Internal Revenue (BIR) for the year 2000. The core of petitioner's argument is that it is not a lending investor within the purview of Section 108(A) of the National Internal Revenue Code (NIRC), as amended, and therefore not subject to value-added tax (VAT). Petitioner also contends that a pawn ticket is not subject to documentary stamp tax (DST) because it is not proof of the pledge transaction, and even assuming that it is so, still, it is not subject to tax since a documentary stamp tax is levied on the document issued and not on the transaction.

The facts:

In a Pre-Assessment Notice dated July 7, 2003, petitioner was informed by the BIR that it has an existing tax deficiency on its VAT and DST liabilities for the year 2000. The deficiency assessment was at P541,102.79 for VAT and P23,646.33 for DST.^[1] Petitioner protested the assessment for lack of legal and factual bases.^[2]

Petitioner subsequently received a Formal Assessment Notice on December 29, 2003, directing payment of VAT deficiency in the amount of P541,102.79 and DST deficiency in the amount of P24,747.13, inclusive of surcharge and interest.^[3] Petitioner filed a protest,^[4] which was denied by Acting Regional Director Anselmo G. Adriano per Final Decision on Disputed Assessment dated January 29, 2004.^[5]

Petitioner then filed a petition for review with the Court of Tax Appeals (CTA).^[6] In a Decision dated May 9, 2005, the 2nd Division of the CTA upheld the deficiency assessment.^[7] Petitioner filed a motion for reconsideration^[8] which was denied in a Resolution dated October 7, 2005.^[9]

Petitioner appealed to the CTA *En Banc* which rendered a Decision dated June 7, 2006, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Petition for Review is hereby DENIED for lack of merit. The assailed Decision dated May 9, 2005 and Resolution dated October 7, 2005 are hereby AFFIRMED.

SO ORDERED.^[10]

Petitioner sought reconsideration but this was denied by the CTA *En Banc* per Resolution dated August 14, 2006.^[11]

Hence, the present petition for review under Rule 45 of the Rules of Court based on the following grounds:

I

THE HONORABLE COURT OF TAX APPEALS *EN BANC* GRAVELY ERRED IN FINDING PETITIONER LIABLE FOR VAT.

II

THE HONORABLE COURT OF TAX APPEALS *EN BANC* GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DST ON PAWN TICKETS.^[12]

The determination of petitioner's tax liability depends on the tax treatment of a pawnshop business. Oddly, there has not been any definitive declaration in this regard despite the fact that pawnshops have long been in existence. All that has been stated is what pawnshops are not, but not what pawnshops are.

The BIR itself has maintained an ambivalent stance on this issue. Initially, in *Revenue Memorandum Order No. 15-91* issued on March 11, 1991, a pawnshop business was considered as "akin to lending investor's business activity" and subject to 5% percentage tax beginning January 1, 1991, under Section 116 of the Tax Code of 1977, as amended by E.O. No. 273.^[13]

With the passage of Republic Act (R.A.) No. 7716 or the EVAT Law in 1994,^[14] the BIR abandoned its earlier position and maintained that pawnshops are subject to 10% VAT, as implemented by Revenue Regulations No. 7-95. This was complemented by *Revenue Memorandum Circular No. 45-01* dated October 12, 2001, which provided that pawnshop operators are liable to the 10% VAT based on gross receipts beginning January 1, 1996, while pawnshops whose gross annual receipts do not exceed P550,000.00 are liable for percentage tax, pursuant to Section 109(z) of the Tax Code of 1997.

CTA decisions affirmed the BIR's position that pawnshops are subject to VAT. In *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*,^[15] the CTA ruled that the petitioner therein was subject to 10% VAT under Section 108 of the Tax Code of 1997. *Antam Pawnshop Corporation v. Commissioner of Internal Revenue*^[16] reiterates said ruling. It was the CTA's view that the services rendered by pawnshops fall under the general definition of "sale or exchange of services" under Section 108(A) of the Tax Code of 1997.

On July 15, 2003, the Court rendered *Commissioner of Internal Revenue v. Michel J.*

Lhuillier Pawnshop, Inc.^[17] in which it was categorically ruled that while pawnshops are engaged in the business of lending money, they are not considered "lending investors" for the purpose of imposing percentage taxes.^[18] The Court gave the following reasons: first, under the 1997 Tax Code, pawnshops and lending investors were subjected to different tax treatments; second, Congress never intended pawnshops to be treated in the same way as lending investors; third, Section 116 of the NIRC of 1977 subjects to percentage tax dealers in securities and lending investors only; and lastly, the BIR had ruled several times prior to the issuance of RMO No. 15-91 and RMC 43-91 that pawnshops were not subject to the 5% percentage tax on lending investors imposed by Section 116 of the NIRC of 1977, as amended by Executive Order No. 273.

In view of said ruling, the BIR issued *Revenue Memorandum Circular No. 36-2004* dated June 16, 2004, canceling the previous lending investor's tax assessments on pawnshops. Said Circular stated, *inter alia*:

In view of the said Supreme Court decision, all assessments on pawnshops for percentage taxes as lending investors are hereby cancelled. This Circular is being issued for the sole purpose of resolving the tax liability of pawnshops to the 5% lending investors tax provided under the then Section 116 of the NIRC of 1977, as amended, and shall not cover issues relating to their other tax liabilities. All internal revenue officials are enjoined from issuing assessments on pawnshops for percentage taxes on lending investors, under the then Section 116 of the NIRC of 1977, as amended.

For purposes of the gross receipt tax provided for under Republic Act No. 9294, the pawnshops are now subject thereof. This shall however, be covered by another issuance.^[19]

Revenue Memorandum Circular No. 37-2004 was issued on the same date whereby pawnshop businesses were allowed to settle their VAT liabilities for the tax years 1996-2002 pursuant to a memorandum of agreement entered into by the Commissioner of Internal Revenue and the Chambers of Pawnbrokers of the Philippines, Inc. The Circular likewise instructed all revenue officers to ensure that "all VAT due from pawnshops beginning January 1, 2003, including increments thereto, if any, are assessed and collected from pawnshops under its jurisdiction."

In the interim, however, Congress passed Republic Act (R.A.) No. 9238 on February 5, 2004 entitled, "An Act Amending Certain Sections of the National Internal Revenue Code of 1997, as amended, by Excluding Several Services from the Coverage of the Value-added Tax and Re-imposing the Gross Receipts Tax on Banks and Non-bank Financial Intermediaries Performing Quasi-banking Functions and Other Non-bank Financial Intermediaries beginning January 01, 2004."^[20]

Pending publication of R.A. No. 9238, the BIR issued Bank Bulletin No. 2004-01 on February 10, 2004 advising all banks and non-bank financial intermediaries that they shall remain liable under the VAT system.

When R.A. No. 9238 took effect on February 16, 2004, the Department of Finance

issued *Revenue Regulations No. 10-2004* dated October 18, 2004, classifying pawnshops as Other Non-bank Financial Intermediaries. The BIR then issued *Revenue Memorandum Circular No. 73-2004* on November 25, 2004, prescribing the guidelines and policies on the assessment and collection of 10% VAT for gross annual sales/receipts exceeding P550,000.00 or 3% percentage tax for gross annual sales/receipts not exceeding P550,000.00 of pawnshops prior to January 1, 2005.

In fine, prior to the EVAT Law, pawnshops were treated as lending investors subject to lending investor's tax. Subsequently, with the Court's ruling in *Lhuillier*, pawnshops were then treated as VAT-able enterprises under the general classification of "*sale or exchange of services*" under Section 108(A) of the Tax Code of 1997, as amended. R.A. No. 9238 finally classified pawnshops as Other Non-bank Financial Intermediaries.

The Court finds that pawnshops should have been treated as non-bank financial intermediaries from the very beginning, subject to the appropriate taxes provided by law, thus -

- Under the National Internal Revenue Code of 1977,^[21] pawnshops should have been levied the 5% percentage tax on gross receipts imposed on bank and non-bank financial intermediaries under Section 119 (now Section 121 of the Tax Code of 1997);
- With the imposition of the VAT under R.A. No. 7716 or the EVAT Law,^[22] pawnshops should have been subjected to the 10% VAT imposed on banks and non-bank financial intermediaries and financial institutions under Section 102 of the Tax Code of 1977 (now Section 108 of the Tax Code of 1997);^[23]
- This was restated by R.A. No. 8241,^[24] which amended R.A. No. 7716, although the levy, collection and assessment of the 10% VAT on services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions, were made effective January 1, 1998;^[25]
- R.A. No. 8424 or the Tax Reform Act of 1997^[26] likewise imposed a 10% VAT under Section 108 but the levy, collection and assessment thereof were again deferred until December 31, 1999;^[27]
- The levy, collection and assessment of the 10% VAT was further deferred by R.A. No. 8761 until December 31, 2000, and by R.A. No. 9010, until December 31, 2002;
- With no further deferments given by law, the levy, collection and assessment of the 10% VAT on banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions were finally

made effective beginning January 1, 2003;

- Finally, with the enactment of R.A. No. 9238, the services of banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions were specifically exempted from VAT,^[28] and the 0% to 5% percentage tax on gross receipts on other non-bank financial intermediaries was reimposed under Section 122 of the Tax Code of 1997.^[29]

At the time of the disputed assessment, that is, for the year 2000, pawnshops were not subject to 10% VAT under the general provision on "sale or exchange of services" as defined under Section 108(A) of the Tax Code of 1997, which states: "*sale or exchange of services*" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration x x x." Instead, due to the specific nature of its business, pawnshops were then subject to 10% VAT under the category of non-bank financial intermediaries, as provided in the same Section 108(A), which reads:

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 or services in the Philippines for others for a fee, remuneration or consideration, including x x x **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. The phrase 'sale or exchange of services' shall likewise include: x x x (Emphasis and underscoring supplied)

The tax treatment of pawnshops as non-bank financial intermediaries is not without basis.

R.A. No. 337, as amended, or the General Banking Act characterizes the terms *banking institution* and *bank* as synonymous and interchangeable and specifically include commercial banks, savings bank, mortgage banks, development banks, rural banks, stock savings and loan associations, and branches and agencies in the Philippines of foreign banks.^[30] R.A. No. 8791 or the General Banking Law of 2000, meanwhile, provided that *banks* shall refer to entities engaged in the lending of funds obtained in the form of deposits.^[31] R.A. No. 8791 also included cooperative banks, Islamic banks and other banks as determined by the Monetary Board of the *Bangko Sentral ng Pilipinas* in the classification of banks.^[32]