

FIRST DIVISION

[G.R. NO. 166786, May 03, 2006]

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

DECISION

YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the June 29, 2004 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 67667, which reversed the October 24, 2001 Decision^[2] of the Court Tax Appeals and ordered petitioner Michel J. Lhuillier Pawnshop, Inc., to pay (1) P19,961,636.09 as deficiency Value Added Tax (VAT); and (2) P3,142,986.02 as deficiency Documentary Stamp Tax (DST), for the year 1997.

The facts show that petitioner, a corporation engaged in the pawnshop business, received Assessment Notice Nos. 81-VAT-13-97-99-12-118 and 81-DST-13-97-99-12-119, issued by the Chief Assessment Division, Revenue Region No. 13, Cebu City, for deficiency VAT in the amount of P19,961,636.09 and deficiency DST in the amount of P13,142,986.02, for the year 1997. Petitioner filed a motion for reconsideration of said assessment notices but was denied by respondent Commissioner of Internal Revenue (CIR).

On petition for review with the Court of Tax Appeals, the latter rendered decision in favor of petitioner setting aside the assessment notices issued by the CIR. It ruled, *inter alia*, that the subject of a DST under Section 195 of the National Internal Revenue Code (NIRC) is the document evidencing the covered transaction. Holding that a pawn ticket is neither a security nor a printed evidence of indebtedness, the tax court concluded that such pawn ticket cannot be the subject of a DST. The dispositive portion thereof, states:

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby GRANTED. Accordingly, Assessment Notices Nos. 81-VAT-13-97-99-12-118 and 81-DST-13-97-99-11-119 are hereby CANCELLED and SET ASIDE.

SO ORDERED.^[3]

Respondent filed a petition for review with the Court of Appeals which reversed the CTA decision and sustained the assessments against petitioner. It ratiocinated, among others, that a pawn ticket, *per se*, is not subject to DST; rather, it is the transaction involved, which in this case is pledge, that is being taxed. Hence, petitioner was properly assessed to pay DST. The decretal portion thereof, provides:

WHEREFORE, the instant petition is hereby GRANTED. The decision of the Court of Tax Appeals dated October 24, 2001 is REVERSED and SET

ASIDE. In lieu thereof, respondent Michel J. Lhuillier Pawnshop, Inc., is ORDERED TO PAY: (1) P19,961,636.09, as deficiency Value-Added Tax, inclusive of surcharge and interest; and (2) P3,142,986.02, as deficiency Documentary Stamp Tax, inclusive of surcharge and interest, for the year 1997. No pronouncement as to cost.

SO ORDERED.^[4]

Respondent filed a motion for partial reconsideration praying that petitioner be ordered to pay deficiency interest of 20% per annum for failure to pay the same on January 2, 2000, as indicated in the notices. On December 29, 2004, the Court of Appeals granted the motion and modified the June 29, 2004 decision as follows:

WHEREFORE, the instant petition is hereby GRANTED. The decision of the Court of Tax Appeals dated October 24, 2001 is REVERSED and SET ASIDE. In lieu thereof, respondent Michel J. Lhuillier Pawnshop, Inc., is ORDERED TO PAY: (1) 19,961,636.09, as deficiency Value-Added Tax, inclusive of surcharge and interest; (2) P3,142,986.02, as deficiency Documentary Stamp Tax, inclusive of surcharge and interest, for the year 1997; and (3) Delinquency Interest at the rate of 20% *per annum* from January 2, 2000, until the deficiency assessment are fully paid, pursuant to Section 249 of the National Internal Revenue Code. No pronouncement as to costs.

SO ORDERED.^[5]

On January 25, 2005, petitioner elevated the case to this Court. Subsequently, it filed a motion to withdraw the petition with respect to the issue of VAT.^[6] Petitioner manifested that the Chamber of Pawnbrokers of the Philippines, where it is a member, entered into a Memorandum of Agreement^[7] with the Bureau of Internal Revenue (BIR) allowing the pawnshop industry to compromise the issue of VAT on pawnshops. Considering that petitioner already paid the agreed amount of settlement, it prayed that the case be decided solely on the issue of DST.

On September 28, 2005, the Court granted petitioner's partial withdrawal of the petition.^[8] Hence, the lone question to be resolved in the present petition is whether petitioner's pawnshop transactions are subject to DST.

The Court rules in the affirmative.

Sections 173 and 195 of the NIRC, state:

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 x x x. (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 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).

(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 (10.00).

x x x x. (Emphasis supplied)

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 v. Court of Appeals*,^[9] it was held that:

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)

Pledge is among the privileges, the exercise of which is subject to 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.^[10] 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.

Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations For Pawnshops^[11] issued by the Central Bank^[12] 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) amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawnbroker 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 pawnbroker and the

pawner. In addition, Central Bank Circular No. 445,^[13] prescribed a standard form of 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.

Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:

"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 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.

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.^[14] 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.^[15]

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 an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.^[16]

In the instant case, there is no law specifically and expressly exempting pledges entered into by pawnshops from the payment of DST. Section 199^[17] 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.^[18] 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.^[19]

The Court notes that BIR Ruling No. 305-87,^[20] and BIR Ruling No. 018-88,^[21] which held that a pawn ticket is subject to DST because it is an evidence of a pledge transaction, had been revoked by BIR Ruling No. 325-88.^[22] In the latter ruling, the BIR held that DST is a tax on the document; and since a pawn ticket is not an evidence of indebtedness, it cannot be subject to DST. Nevertheless, this interpretation is not consistent with the provisions of Section 195 of the NIRC which