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WHEREFORE, the Petition is ***DENIED*** and the assailed Amended Decision and Resolution ***AFFIRMED.*** Costs against petitioners.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

Chico-Nazario, J., on official leave.

FIRST DIVISION

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

MICHEL J. LHUILLIER PAWNSHOP, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAX (DST); ELUCIDATED. — It is clear from Sections 173 and 195 of the NIRC 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*, 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.* 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

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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.

2. **ID.; ID.; ID.; PLEDGE, WHICH IS ESSENTIALLY THE BUSINESS OF PAWNSHOPS, IS AMONG THE PRIVILEGES SUBJECT TO DST.** — True, the law does not consider the pawnshop 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.

3. **ID.; TAX LAWS; WHERE THE LAW IS CLEAR AND CATEGORICAL, NO FURTHER INTERPRETATION IS NEEDED.** — 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.

4. **ID.; ID.; TAX EXEMPTIONS; MUST BE SUFFICIENTLY ESTABLISHED.** — 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

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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.

APPEARANCES OF COUNSEL

Senining Belcina Atup & Entise Law Offices for petitioner.
Litigation Division (BIR) for 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) ₱19,961,636.09 as deficiency Value Added Tax (VAT); and (2) ₱3,142,986.02 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 ₱19,961,636.09 and

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[1] *Rollo*, pp. 56-62. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Elvi John S. Asuncion and Mariano C. Del Castillo.

[2] *Id.* at 65-74.

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deficiency DST in the amount of ₱13,142,986.02, 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) ₱19,961,636.09, as deficiency Value-Added Tax, inclusive of surcharge and interest; and (2) ₱3,142,986.02, as deficiency Documentary Stamp Tax, inclusive of surcharge and interest, for the year 1997. No pronouncement as to cost.
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> SO ORDERED.[4]

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[3] *Id.* at 73.

[4] *Id.* at 61.

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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) ₱3,142,986.02, 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.

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[5] *Id.* at 112.

[6] *Id.* at 172-175.

[7] *Id.* at 176-183.

[8] *Id.* at 186.

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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. (Italics 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 (₱5,000), Twenty pesos (₱20).

(b) On each Five thousand pesos (₱5,000), or fractional part thereof in excess of Five thousand pesos (₱5,000), an additional tax of Ten pesos (10.00).

x x x x x x x x x. (Italics 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

[9] 361 Phil. 368, 372-373 (1999).

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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*. (Italics 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

[10] See Articles 2085, 2087 and 2093 of the Civil Code.

[11] Central Bank Circular No. 374, dated July 13, 1973.

[12] Section 17 of the Pawnshop Regulation Act vests on the Central Bank the authority to issue rules regulating the business of pawnshops, to exercise visitorial powers and impose administrative sanctions whenever necessary.

[13] Dated January 20, 1975.

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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

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[14] *Commissioner of Internal Revenue v. Court of Appeals*, 338 Phil. 322, 330 (1997).

[15] *Commissioner of Internal Revenue v. Court of Appeals*, 310 Phil. 392, 397 (1995).

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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

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[16] *Commissioner of Internal Revenue v. Philippine Long Distance Company*, G.R. No. 140230, December 15, 2005; *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation*, G.R. Nos. 54908 & 80041, January 22, 1990, 181 SCRA 214, 223-224.

[17] Section 199. Documents and Papers not Subject to Stamp Tax. — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents, and papers shall be exempt from the documentary stamp tax:

(a) Policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association, or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit.

(b) Certificates of oaths administered to any government official in his official capacity or of acknowledgment by any government official in the performance of his official duties, written appearance in any court by any government official, in his official capacity; certificates of the administration of oaths to any person as to the authenticity of any paper required to be filed in court by any person or party thereto, whether the proceedings be civil or criminal; papers and documents filed in courts by or for the national, provincial, city or municipal governments; affidavits of poor persons for the purpose of proving poverty; statements and other compulsory information required of persons or corporations by the rules and regulations of the national, provincial, city or municipal governments exclusively for statistical purposes and which are wholly for the use of the bureau or office in which they are filed, and not at the instance or for the use or benefit of the person filing them; certified copies and other certificates placed upon documents, instruments, and papers for the national, provincial, city or municipal governments, made at the instance and for the sole use of some other branch of the national, provincial, city or municipal governments; and certificates of the assessed value

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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

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of lands, not exceeding Two hundred pesos (₱200) in value assessed, furnished by the provincial, city or municipal Treasurer to applicants for registration of title to land.

(c) Borrowing and lending of securities executed under the Securities Borrowing and Lending Program of a registered exchange, or in accordance with regulations prescribed by the appropriate regulatory authority: Provided, however, That any borrowing or lending of securities agreement as contemplated hereof shall be duly covered by a master securities borrowing and lending agreement acceptable to the appropriate regulatory authority, and which agreement is duly registered and approved by the Bureau of Internal Revenue (BIR).

(d) Loan agreements or promissory notes, the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000), or any such amount as may be determined by the Secretary of Finance, executed by an individual for his purchase on installment for his personal use or that of his family and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture: Provided, however, That the amount to be set by Secretary of Finance shall be in accordance with a relevant price index but not to exceed ten percent (10%) of the current amount and shall remain in force at least for three (3) years.

(e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange for a period of five (5) years from the effectivity of this act.

(f) Assignment or transfer of any mortgage, lease or policy of insurance, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness, if there is no change in the maturity date or remaining period of coverage from that of the original instrument.

(g) Fixed income and other securities traded in the secondary market or through an exchange.

(h) Derivatives: Provided, That for purpose of this exemption, repurchases agreements and reverse repurchase agreements shall be treated similarity as derivatives.

(i) Interbranch or interdepartmental advances within the same legal entity.

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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 categorically taxes the privilege to enter into a contract of pledge. Indeed, administrative issuances must not override, supplant or modify the law but must be consistent with the law they intend to carry out.[23]

(j) All forbearances arising from sales or service contracts including credit card and trade receivables: Provided, That the exemption be limited to those executed by the seller or service provider itself.

(k) Bank deposit accounts without a fixed term or maturity.

(l) All contracts, deeds, documents and transactions related to the conduct of business of the Bangko Sentral ng Pilipinas.

(m) Transfer of property pursuant to Section 40(c)(2) of the National Internal Revenue Code of 1997, as amended.

(n)Interbank call loans with maturity of not more than seven (7) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks. (As amended by Republic Act No. 9243)

[18] *Commissioner of Internal Revenue v. Philippine Long Distance Company*, *supra* note 16.

[19] *Insular Lumber Company v. Court of Tax Appeals*, 192 Phil. 221, 231 (1981).

[20] Dated September 24, 1987.

[21] Dated February 1, 1988.

[22] Dated July 13, 1988.

[23] *Commissioner of Internal Revenue v. Court of Appeals*, *supra* note 15.

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Finally, petitioner invokes the declaration of nullity of Revenue Memorandum Circular (RMC) No. 43-91 in *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*[24] Said case, however, is not applicable to the present controversy. RMC No. 43-91 is actually a clarification of Revenue Memorandum Order No. 15-91 which classified pawnshops as "lending investors" and imposed upon them a 5% lending investor's tax. While RMC No. 43-91 declared in addition that pawnshops are subject to DST, such was never an issue in *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, because nowhere was it mentioned therein that the pawnshop involved was directed to pay DST. Otherwise stated, the declaration of nullity of RMC No. 43-91 was the Court's finding, among others, that pawnshops cannot be classified as lending investors; and certainly not because pawnshops are not subject to DST. The invocation of said ruling is therefore misplaced.

WHEREFORE, the petition is *DENIED* and the June 29, 2004 Decision of the Court of Appeals, as modified on December 29, 2004, in CA-G.R. SP No. 67667, is *AFFIRMED.*

SO ORDERED.

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

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[24] 453 Phil. 1043 (2003).