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FIRST DIVISION

[G.R. No. 179085. January 21, 2010]

TAMBUNTING PAWNSHOP, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX (VAT); AS LEVY, COLLECTION AND ASSESSMENT THEREOF WERE DEFERRED FOR THE TAX YEAR 1999, NO LIABILITY FOR VAT FOR THE TAX YEAR 1999; DISCUSSED.— On the issue of whether pawnshops are liable to pay VAT, the Court, in *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue,* held: x x x Coming now to the issue at hand — Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically **deferred by law**, then petitioner is not liable for VAT during these tax years. But **with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003**, petitioner is liable for 10% VAT for said tax year. And **beginning 2004 up to the present**, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is **subject to percentage tax on gross receipts from 0% to 5%, as the case may be**. In light of the foregoing ruling, since the imposition of VAT on pawnshops, which are non-bank financial intermediaries, was deferred for the tax years 1996 to 2002, petitioner is not liable for VAT for the tax year 1999.

2. ID.; ID.; SECTION 195 THEREOF CONSTRUED *VIS-A-VIS* PAWN TICKETS; A PAWN TICKET IS PROOF OF AN EXERCISE OF A TAXABLE PRIVILEGE CONCLUDING A CONTRACT OF PLEDGE.— In dodging liability for documentary stamp tax on its pawn tickets, petitioner argues that such tickets are neither securities nor printed evidence of indebtedness. The argument fails. Section 195 of the National Internal Revenue Code provides: Section 195. On every

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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 x x x. Construing this provision *vis-a-vis* pawn tickets, the Court held in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue:* x x x A D[ocumentary] S[tamp] T[ax] is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. x x x 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. 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. x x x 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.** 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.; ID.; ID.; ID.; GOOD FAITH AND HONEST BELIEF THAT ONE IS NOT SUBJECT TO TAX ON THE BASIS OF PREVIOUS INTERPRETATIONS OF GOVERNMENT AGENCIES TASKED TO IMPLEMENT THE TAX LAW ARE SUFFICIENT JUSTIFICATION TO DELETE THE IMPOSITION OF SURCHARGES AND INTEREST.— With respect to petitioner's argument against liability for surcharges

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and interest — that it was in good faith in not paying documentary stamp taxes, it having relied on the rulings of respondent CIR and the CTA that pawn tickets are not subject to documentary stamp taxes— the Court finds the same meritorious. It is settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The Commissioner of Internal Revenue (respondent) sent the Tambunting Pawnshop, Inc. (petitioner) an assessment notice dated January 15, 2003 for ₱3,055,564.34 deficiency value-added tax (VAT), ₱406,092.50 deficiency documentary stamp tax on pawn tickets, ₱67,201.55 deficiency withholding tax on compensation, and ₱21,723.75 deficiency expanded withholding tax, all inclusive of interests and surcharges for the taxable year 1999.[1]

Petitioner protested the assessment.[2] As the protest merited no response, it filed a Petition for Review[3] with the Court of Tax Appeals (CTA) pursuant to Section 228 of the National Internal Revenue Code,[4] raising the following arguments:

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[1] CIR records, pp. 293-303.

[2] *Id.* at 304-308.

[3] CTA First Division *rollo*, pp. 1-13.

[4] Section 228:

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If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely

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A. Pawnshops are not subject to Value Added Tax pursuant to Section 108 of the National Internal Revenue Code.[5]

B. Petitioner properly withheld and remitted to the respondent the correct amount of expanded withholding tax for taxable year 1999.[6]

C. Petitioner has already paid the assessed amount of ₱14,398.38 [*sic*], representing deficiency withholding tax on compensation, thus, assessment on withholding on compensation must be cancelled.[7]

D. Petitioner's pawn tickets are not subject to documentary stamp tax pursuant to existing laws and *jurisprudence*.[8]
(emphasis and underscoring in the original)

The First Division of the CTA ruled that petitioner is liable for VAT and documentary stamp tax but not for withholding tax on compensation and expanded withholding tax.[9] Thus it disposed:

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED.** Respondent's assessments for deficiency Expanded Withholding Tax and Withholding Tax on Compensation for the taxable year 1999, in the amounts of **Twenty One Thousand Seven Hundred Twenty Three and 75/100 Pesos** (₱21,723.75) and **Sixty Seven Thousand Two Hundred One and 55/100 Pesos** (₱67,201.55), respectively, are hereby **CANCELLED** and **SET ASIDE.** However, the assessments for deficiency Value-Added Tax and Documentary Stamp Tax are hereby **AFFIRMED.**

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affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory, and demandable.

[5] CTA First Division *rollo*, p. 3.

[6] *Id.* at 9.

[7] *Id.* at 10.

[8] *Ibid.*

[9] Decision of October 5, 2006, penned by CTA Associate Justice Lovell R. Bautista, with the concurrence of Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova. *Id.* at 143-156.

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Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of **Three Million Fifty Five Thousand Five Hundred Sixty Four and 34/100 Pesos** (₱3,055,564.34) and **Four Hundred Six Thousand Ninety Two and 500/100 Pesos** (₱406,092.50) representing deficiency Value-Added Tax and Documentary Stamp Tax, respectively, for the taxable year 1999, plus 20% delinquency interest from February 18, 2003 up to the time such amount is fully paid pursuant to Section 249 (c) of the 1997 NIRC.

SO ORDERED.[10] (emphasis in the original; underscoring supplied)

Petitioner's Motion for Partial Reconsideration[11] having been denied,[12] it filed a Petition for Review[13] before the CTA *En Banc* which dismissed[14] it as it did petitioner's Motion for Reconsideration.[15]

Hence, the present Petition for Review on *Certiorari*.[16]

To petitioner, a pawnshop is not enumerated as one of those engaged in "sale or exchange of services"[17] in Section 108 of the National Internal Revenue Code.[18] Citing *Commissioner of*

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[10] *Id.* at 155-156.

[11] *Id.* at 157-170.

[12] *Id.* at 174-175.

[13] CTA *En Banc rollo*, pp. 8-36.

[14] Decision of May 24, 2007, penned by CTA Associate Justice Olga Palanca-Enriquez, with the concurrence of Presiding Justice Ernesto D. Acosta and Associate Justice Juanito C. Castañeda, Jr., CTA *En Banc rollo*, pp. 64-83.

[15] *Id.* at 105-106.

[16] *Rollo*, pp. 8-30.

[17] *Id.* at 11-16.

[18] SECTION 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.

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The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; 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:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

(2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information;

(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(7) The lease of motion picture films, films, tapes and discs; and

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Internal Revenue v. Michel J. Lhuillier Pawnshops, Inc.,[19] it contends that the nature of the business of pawnshops does not fall under "service" as defined under the Legal Thesaurus of William C. Burton, *viz*:

accommodate, administer to, advance, afford, aid, assist, attend, be of use, care for, come to the aid of, commodere, comply, confer a benefit, contribute to, cooperate, deservire, discharge one's duty, do a service, do one's bidding, fill an office, forward, furnish aid, furnish assistance, give help, lend, aid, minister to, promote, render help, servire, submit, succor, supply aid, take care of, tend, wait on, work for.[20]

The petition is in part meritorious.

On the issue of whether pawnshops are liable to pay VAT, the Court, in *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*,[21] held:

In fine, prior to the [passage of the] EVAT Law [in 1994], 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 [which was passed in

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(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

The term "gross receipts" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

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[19] 453 Phil. 1043 (2003).

[20] Quoted in *rollo*, p. 14.

[21] G.R. No. 174134, July 30, 2008, 560 SCRA 606.

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2004] 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, 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, 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);

• 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;

• 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;

• 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 in 2004**, 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**.

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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 . . . ." Instead, due to the specific nature of its business, pawnshops were then subject to 10% VAT under the category of non-bank financial intermediaries[.]

Coming now to the issue at hand — Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically **deferred by law**, then petitioner is not liable for VAT during these tax years. But **with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003**, petitioner is liable for 10% VAT for said tax year. And **beginning 2004 up to the present**, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is **subject to percentage tax on gross receipts from 0% to 5%, as the case may be**. (emphasis and underscoring supplied)

In light of the foregoing ruling, since the imposition of VAT on pawnshops, which are non-bank financial intermediaries, was deferred for the tax years 1996 to 2002, petitioner is not liable for VAT for the tax year 1999.

In dodging liability for documentary stamp tax on its pawn tickets, petitioner argues that such tickets are neither securities nor printed evidence of indebtedness.[22] The argument fails.

Section 195 of the National Internal Revenue Code provides:

Section 195. 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

[22] *Rollo*, pp. 22-23.

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intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax x x x. (underscoring supplied)

Construing this provision *vis-a-vis* pawn tickets, the Court held in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue:*

> x x x A D[ocumentary] S[tamp] T[ax] is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. x x x
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> x x x x x x x x x
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> 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. 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.
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> x x x x x x x x x
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> 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.** 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.[23] (emphasis and underscoring supplied)

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[23] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner on Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147, 152-154.

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With respect to petitioner's argument against liability for surcharges and interest — that it was in good faith in not paying documentary stamp taxes, it having relied on the rulings of respondent CIR and the CTA that pawn tickets are not subject to documentary stamp taxes[24] — the Court finds the same meritorious.

It is settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.[25]

WHEREFORE, the petition is *IN PART GRANTED*. The May 24, 2007 Decision of the Court of Tax Appeals is *AFFIRMED* with the *MODIFICATION* that the assessment deficiency value-added taxes for the taxable year 1999 and for surcharges and delinquency interest on deficient Value-Added Tax and Documentary Income Tax are *SET ASIDE*.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[24] *Vide rollo*, pp. 23-24; CIR records, pp. 317-318.

[25] *Vide Michel J. Lhuillier Pawnshop, Inc. v. Commissioner on Internal Revenue*, G.R. No. 166786, September 11, 2006, 501 SCRA 450, 460.