

THIRD DIVISION

[G.R. No. 167962, September 19, 2008]

**ANTAM PAWNSHOP CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.
CHAMBER OF PAWNBROKERS OF THE PHILIPPINES, INC.,
PETITIONER-IN-INTERVENTION.**

DECISION

REYES, R.T., J.:

ARE pawn tickets subject to documentary stamp tax? We resolve the question in this petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) subjecting pawn tickets issued by petitioner Antam Pawnshop Corporation (Antam) to documentary stamp tax (DST).^[2]

Facts

Petitioner Antam is a duly organized corporation engaged in the pawnshop business. Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) whose principal duty is to assess and collect internal revenue taxes.

On October 27, 1999, respondent issued Letter of Authority No. 1998 00001631 authorizing BIR-Revenue District Office No. 32, Quiapo, Manila to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1 to December 31, 1998.^[3]

On October 2, 2001, respondent issued a pre-assessment notice for deficiency value added tax (VAT), DST, and minimum corporate income tax (MCIT) for taxable year 1998.

On November 23, 2001, respondent issued Assessment Notices, all bearing the number 32-1-98, with corresponding Demand Letters for petitioner's (a) deficiency VAT in a total amount of P382,445.01;^[4] (b) deficiency MCIT in the amount of P687.69;^[5] (c) deficiency DST in the amount of P78,590.00;^[6] and (d) compromise penalties in the total amount of P28,200, all for the taxable year 1998.

Meanwhile, on November 15, 2001, prior to the issuance of the above Assessment Notices, petitioner paid P451.24^[7] for MCIT due for taxable year 1998.

On December 21, 2001, petitioner filed its written protest with the BIR. On July 19, 2002, due to the inaction of the BIR, Antam went up, on petition for review, to the Court of Tax Appeals (CTA).

CTA Disposition

In a Decision dated May 14, 2003, the CTA ordered Antam to pay (1) deficiency VAT in the amount of P382, 445.01;^[8] (2) deficiency interest of P233.74 for late payment of MCIT;^[9] and (3) deficiency DST assessment on subscribed capital stock in the amount of P15,000. However, it cancelled the compromise penalty for late payment as there is no compromise to speak of in the case.

The CTA opined that Antam was liable to pay VAT pursuant to Section 102(a)^[10] (now renumbered as Section 108[A] of the National Internal Revenue Code [NIRC]). The phrase "sale or exchange of services" encompasses the performance of all kinds of services for a fee, remuneration or consideration. The enumeration of persons performing services for a fee is not exclusive. Other persons such as pawnshops which perform services for a fee and which are not expressly mentioned are also subject to VAT. The act of lending money at interest by the pawnshops and selling of pawned items constitute the performance of a service for a fee, remuneration or consideration. The word "including" referring to use or lease of properties should be construed merely as an enlargement and not a limitation.

Further, the CTA held that pawnshop transactions are not among those exempt from VAT under Section 103 (now Section 109) of the NIRC. Neither are there any express provisions of law exempting pawnshops from VAT.

Anent the assessment for deficiency MCIT, since petitioner already paid the basic deficiency MCIT of P451.24,^[11] it is liable only for the payment of deficiency interest for late payment in the amount of P233.74.^[12]

Apropos the assessment for DST on pawn tickets, the CTA ruled that pursuant to Section 3 of Presidential Decree (P.D.) No. 114,^[13] a pawn ticket is neither security nor a printed evidence of indebtedness. Consequently, it cannot be considered as a document subject to DST under Section 195 of the NIRC. However, for failure to present proof of payment of tax, Antam was held liable for DST on subscribed capital stock in the amount of P15,000.00.

Both parties filed their respective motions for reconsideration which were subsequently denied by the CTA.

On October 7, 2003, the CIR filed with the CA a petition for partial review to assail the cancellation by the CTA of deficiency DST on pawn tickets. On October 9, 2003, Antam also petitioned the CA for review of the CTA decision in so far as it orders Antam to pay VAT on its pawnshop business, DST on subscribed capital stock and deficiency interest for late payment of MCIT.

CA Decision

In its Decision dated January 21, 2005, the CA ruled that pawn tickets are subject to DST. The decretal portion of the decision provides:

WHEREFORE, the decision of the Court of Tax Appeals is **REVERSED** insofar as the cancellation of the deficiency documentary tax assessment on the pledge loans is concerned. Respondent is **ORDERED** to **PAY**

P31,810.00,^[14] inclusive of surcharge and interest thereon for the year 1998, plus 20% delinquency interest from December 28, 2001 until fully paid pursuant to Section 249(C) of the NIRC.^[15]

The CIR contended that a pawn ticket is an evidence of the contract of pledge and thus subject to DST pursuant to Section 195 of the NIRC. A pawn ticket is issued upon receipt of a pawn and should be presented upon redemption.

Antam, on the other hand, argued that for a document to be taxable under Section 195 of the NIRC, the document must show on its face the existence of a debt.

The CA agreed with the dissenting opinion of CTA Justice Juanito Castañeda, Jr. that the pawn ticket is the logical document evidencing a contract of pledge and thus subject to DST pursuant to Section 195 of the NIRC in relation to Section 173.

The CA explained that the DST provided under Section 173 of the NIRC is levied on the documents but in respect to the transaction so had or accomplished. 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 include entering into a contract of pledge.^[16]

The CA ratiocinated that although P.D. No. 114 defines a pawn ticket as neither a security nor printed evidence of indebtedness, the law also acknowledged that pawnshops enter into a contract of pledge.^[17]

Dissatisfied with the decision of the CA, Antam is now before Us with a petition under Rule 45.

On May 30, 2006, the Chamber of Pawnbrokers of the Philippines (CPPI) filed its motion to intervene and to admit its petition for review in intervention. In a resolution dated July 10, 2006, the Court granted CPPI's motion.

Issue

Submitted for Our resolution is the issue of whether the CA erred in finding the petitioner liable for DST on pawn tickets. If so, what of the surcharges and delinquency interest?

Our Ruling

Pawn tickets are subject to payment of documentary stamp tax.

It is petitioner's contention, shared by the intervenor, that a pawn ticket, being merely a receipt for a pawn as defined in P.D. No. 114, is not subject to DST under Section 195 of the NIRC. The pawn ticket is neither a security nor a printed evidence of indebtedness. The document to be taxed should be the pledge agreement, if any is issued, and not the pawn ticket. To be subject to DST, they posit that the document must be one of those enumerated under Sections 174 to 198 of the NIRC. In the alternative, should the Court rule otherwise, intervenor CPPI contends that Antam should not be held liable for deficiency interest on DST as it is akin to a

mistake in the application and interpretation of a difficult or doubtful question of law.

Respondent CIR, however, argue that a pawn ticket is proof of a contract of pledge. Thus, pawn tickets issued by Antam are subject to DST under Section 195 of the NIRC.

On the prime issue, We rule for respondent.

Focal to this ruling is the correct interpretation of Section 195 in relation to 173 of the NIRC.

Section 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: x x x.

Section 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 tax prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

Section 195 of the NIRC imposes, among others, a DST on pledge of personal property made as a security for the payment of a sum of money.

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 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 third person.^[18]

Section 3 of P.D. No. 114 defines a pawnshop as a person or entity engaged in the business of lending money on personal property delivered as security for loans. Thus, in essence, a pawnshop enters into a contract of pledge with the pawner or the borrower.

At the time of every loan or pledge, the pawnbroker or the pawnshop is required to

deliver to each person pawning or pledging a ticket signed by the pawnbroker containing, among others: (1) the amount of the loan; (2) the date the loan was granted; (3) rate of interest; and (4) the name and residence of the pawnee.^[19] Failure to do so shall subject the pawnshop to penalties under Section 18^[20] of said law.

Considering that the pawn ticket issued by the pawnshop should contain the foregoing, the pawn ticket is evidently a proof of a contract of pledge. We agree with petitioner that the law does not consider the pawn ticket as a security nor a printed evidence of indebtedness. However, what is subject to DST is not the ticket itself but the privilege of entering into a contract of pledge.

A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself.^[21]

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.^[22]

Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document and that no tax may be imposed on the pawn ticket.

In the 2006 case of *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*,^[23] the Court held that for purposes of taxation, a pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge and thus subject to DST under Section 195 in relation to Section 173 of the NIRC, viz.:

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.

Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations For Pawnshops issued by the Central Bank 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;