H. TAMBUNTING PAWNSHOP, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 172394. October 13, 2010

Ponente: BERSAMIN, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-172394/

BERSAMIN, J.:

The issue herein is whether the petitioner, a pawnshop operator, was liable for VAT and the compromise penalty for taxable year 2000.

On August 29, 2003, petitioner H. Tambunting Pawnshop, Inc. (Tambunting), a domestic corporation duly licensed to engage in the pawnshop business, received an assessment notice dated August 27, 2003 from the Bureau of Internal Revenue (BIR), demanding the payment of deficiency Value-Added Tax (VAT) and compromise penalty for taxable year 2000 in the amounts of P5,212,404.52 and P25,000, respectively.

On September 15, 2003, Tambunting, disclaiming its liability, protested the assessment with the respondent Commissioner of Internal Revenue (CIR), arguing that a pawnshop business was not subject to VAT and the compromise penalty.[1]

Due to the inaction of the CIR on the protest, Tambunting filed on April 2, 2004 its petition for review with the Court of Tax Appeals (CTA) pursuant to Section 228 of Republic Act No. 8424 (National Internal Revenue Code or Tax Reform Act of 1997).[2]

In a decision dated April 11, 2005,[3] the CTA Second Division denied the petition for review, to wit:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the deficiency VAT for taxable year 2000 in the amount of PhP 5,212,404.52, plus 25% surcharge and 20% delinquency interest per annum from September 29, 2003 until fully paid, pursuant to Section 248 and 249 of the NIRC of 1997, as amended.
>
> The amount of PhP25,000 imposed by way of compromise penalty is hereby DELETED.
>
> SO ORDERED.

On April 29, 2005, Tambunting filed a motion for partial reconsideration.[4] Later on, on May 26, 2005, Tambunting submitted a written manifestation, attaching a copy of Bureau of Internal Revenue (BIR) tax payment deposit slip (BIR Form No. 0605) and the corresponding schedule evidencing its payment of P828,809.67 for the years from 2000 to 2002 pursuant to a settlement agreement with BIR allowing Tambunting to pay 25% of its VAT due.[5]

On July 14, 2005, however, the CTA Second Division denied Tambunting's motion for partial reconsideration in a resolution dated July 14, 2005.[6]

On August 22, 2005, Tambunting appealed by petition for review to the CTA en banc.[7]

On March 21, 2006, the CTA en banc rendered its assailed decision,[8] disposing thus:

> WHEREFORE, the Court en banc finds no reversible error to warrant the reversal of the assailed Decision promulgated on April 11, 2005 and the Resolution dated July 14, 2005, respectively.
>
> Accordingly, the instant Petition for Review is hereby DENIED and the assailed Decision and Resolution are AFFIRMED in toto.
>
> SO ORDERED.

The CTA en banc denied Tambunting's motion for reconsideration on April 18, 2006.[9]

Hence, Tambunting has appealed, insisting that:

> THE CTA EN BANC'S DECISION OF 21 MARCH 2006 AND RESOLUTION DATED 18 APRIL 2006 ARE NOT IN ACCORDANCE WITH LAW AND SETTLED JURISPRUDENCE ON THE MATTER.

Tambunting's main argument is that pawnshops are not within the concept of "all services" and "similar services" as provided in Section 108 (A) of the National Internal Revenue Code.[10] Tambunting also argues that the enumeration under Section 108(A) of the National Internal Revenue Code of services subject to VAT is exclusive.

The petition has merit.

It is now settled that for purposes of determining their tax liability, pawnshops are treated as non-bank financial intermediaries.[11]

The VAT on non-bank financial intermediaries was first levied under R.A. No. 7716 (Expanded Value-Added Tax Law), where Sections 3 and 17 thereof provide:

> Section 3. Section 102 of the National Internal Revenue, as amended is hereby further amended to read as follows:
>
> Section 102. Value-added tax on sale of services and use or lease of properties.- There shall be levied, assessed and collected, a value-added tax equivalent to 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 of services in the Philippines for others for a fee, remuneration or consideration x x x
>
> x x x services of banks, non-bank financial intermediaries and finance companies; x x x
>
> Section 17. Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.- The value-added tax shall be levied assessed and collected on the following transactions, two (2) years after the effectivity of this Act:
>
> x x x
>
> (b) Services rendered by banks, nonbank financial intermediaries, finance companies and other financial companies and other financial intermediaries not performing quasi-banking functions; x x x

However, Section 11 of R.A. No. 8241 amended Section 17 of R.A. No. 7716 to move the effectivity of the VAT on non-bank financial intermediaries to January 1, 1998, viz:

> Section 11. Section 17 of Republic Act No. 7716 is hereby amended to read as follows:
>
> Section 17. Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.- The value-added tax shall be levied assessed and collected on the following transactions starting January 1, 1998:

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> x x x
>
> (b) Services rendered by banks, nonbank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions; x x x

Later, R.A. No. 8424 (National Internal Revenue Code or Tax Reform Act of 1997) again moved the effectivity of the imposition of the VAT to December 31, 1999, to wit:

> Section 5. Transitory Provisions- Deferment of the Effectivity of the Imposition of VAT on Certain Services.- The effectivity of the imposition of the value-added tax on services as prescribed in Section 17(a) and (b) of Republic Act No. 7716, as amended by Republic Act No. 8241, is hereby further deferred until December 31, 1999, unless Congress deems otherwise: Provided, That the said services shall continue to pay the applicable tax prescribed under the present provisions of the National Internal Revenue Code, as amended.

Still later, R.A. No. 8761 retarded the effectivity of the VAT on non-bank financial intermediaries to January 1, 2001, thus:

> Section 1. Section 5 of Republic Act No. 8424 is hereby amended to read as follows:
>
> Section 5. Transitory Provisions- Effectivity of the Imposition of VAT on Certain Services.- The imposition of the value-added tax on the following services shall take effect on January 1, 2001:
>
> x x x
>
> (b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x

Lastly, R.A. No. 9010 revised the effectivity of the VAT on non-bank financial intermediaries by making it start on January 1, 2003:

> Section 1. Section 5 of Republic Act No. 8424 as amended by Republic Act No. 8761 is hereby further amended to read as follows:
>
> Section 5. Transitory Provisions- Effectivity of the Imposition of VAT on Certain Services.- The imposition of the value-added tax on the following services shall take effect on January 1, 2003:
>
> x x x
>
> (b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x

Accordingly, the consecutive deferments of the effectivity date of the application of VAT on non-bank financial intermediaries like pawnshops resulted in their non-liability for VAT during the affected taxable years. Specifically, in First Planters Pawnshop, supra, the Court ruled on the VAT liability of pawnshops for taxable years from 1996 to 2002, holding:

> xxx 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.

The aforequoted pronouncement in First Planters Pawnshop has been reiterated in Tambunting Pawnshop, Inc. v.

Commissioner of Internal Revenue[12] and in TFS, Incorporated v. Commissioner of Internal Revenue,[13] thereby affirming the non- liability for VAT of pawnshops in taxable years 1996-2002 by virtue of the deferment of its imposition. Consequently, the VAT deficiency assessment and the surcharge served on Tambunting by the BIR lacked legal basis and must be canceled.

As earlier mentioned, however, Tambunting paid to the BIR 25% of its VAT liability for the years 2000 to 2002 pursuant to a settlement agreement. The tax liability in question herein includes taxable year 2000 only. To align with the result herein, therefore, Tambunting is entitled to a refund of any amount paid pursuant to the settlement agreement corresponding to taxable year 2000 only.

WHEREFORE, we grant the petition for review on certiorari, and reverse and set aside the decision dated March 21, 2006 and the resolution dated April 18, 2006 of the Court of Tax Appeals en banc. We declare that the petitioner was not liable for the Value-Added Tax in taxable year 2000; and order the Commissioner of Internal Revenue to refund to H. Tambunting Pawnshop, Inc. any amount paid pursuant to the settlement agreement corresponding to taxable year 2000 only.

No pronouncement on cost of suit.

SO ORDERED.

Corona[*], C.J., Carpio Morales, (Chairperson), Villarama, Jr., and Sereno, JJ., concur.

---

[*] Designated as additional member per Raffle dated October 11, 2010 in lieu of Justice Arturo D. Brion.

[1] Rollo, p. 29.

[2] Section 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[3] Rollo, pp. 46-64.

[4] Id., pp. 65-80.

[5] Id., pp. 29-30.

[6] Id., pp. 79-80.

[7] Id., pp. 81-140.

[8] Id., pp. 28-43.

[9] Id., pp. 44-45.

[10] 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.

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 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 another 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 of 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

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

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

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.

xxx

[11] First Planters Pawnshop v. Commissioner of Internal Revenue, G.R. No. 174134, July 30, 2008, 560 SCRA 621.

[12] G.R. No. 179085, January 21, 2010, 610 SCRA 514.

[13] G.R. No. 166829, April 19, 2010.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.