REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA HOTEL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2991

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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2/10/88

D E C I S I O N

Petitioner is a corporation wholly owned by the Government Service Insurance System and operates the Manila Hotel and the service and banquet outlets, restaurants and bars established therein to serve its guests and other persons.

During the period from January 20, 1977 to April 20, 1978, the petitioner paid the total amount of P2,463,576.30 as caterer's tax for the sale of food in its restaurants as follows:

> (a) On January 20, 1977, petitioner remitted to the respondent the amount of P312,234.34 as caterer's tax for the sale of food during the fourth quarter of 1976, as shown by O.R. No. 2895738, Exh. "H".

(b) On April 19, 1977, petitioner remitted to the respondent the amount of P290,441.47 as caterer's tax for the sale of food during the first quarter of 1977 as shown by O.R. No. 07720300, Exh. "I".

(c) On July 20, 1977, petitioner remitted to the respondent the amount of P301,455.90 as caterer's tax for the sale of food during the second quarter of 1977, as shown by O.R. No. 11491443, Exh. "J".

(d) On October 20, 1977, petitioner remitted t. the respondent the amount of P337,577.30 as caterer's tax for the sale of food during the third quarter of 1977, as shown by O.R. No. 14060266, Exh. "K".

(e) On January 19, 1978, petitioner remitted to the respondent the amount of P565,658.05 as caterer's tax for the sale of food during the fourth quarter of 1977 as shown by O.R. No. 19897102, Exh. "L".

(f) On April 20, 1978, petitioner remitted to the respondent the amount of P656,209.24 as caterer's tax for the sale of food during the first quarter of 1978 as shown by O.R. No. 33322892, Exh. "M".

On December 18, 1978, petitioner filed with the Commissioner of Internal Revenue a claim for refund (Exh. A) praying that it be refunded the amount of P2,463,576.30 on the principal ground that Sec. 191-A of the National Internal Revenue Code pursuant to which the caterer's tax was assessed and collected never became a law and was non-existent.

Respondent Commissioner of Internal Revenue failed to act on petitioner's claim for refund. So to beat the prescriptive period which was about to lapse, petitioner filed the present petition on January 20, 1979.

On January 22, 1979, petitioner, thru counsel, received the letter of Acting Commissioner of Internal Revenue Bernardo D. Carpio dated January 11, 1979, denying petitioner's claim for refund. (Exh. B).

The principal issue in this case is whether the petitioner is liable to pay the caterer's tax during the period from January 20, 1977 to April 20, 1978.

Petitioner contends that the assessment and collection of the caterer's tax from January 20, 1977 to April 20, 1978 was arbitrary because Section 191-A pursuant to which they were made was completely, totally and unconditionally vetoed by then President Ferdinand E. Marcos and, therefore, has never became a law. In short, it was non-existent. On the other hand, respondent Commissioner of Internal Revenue is of the view that the President vetoed only portion of Section

42 of House Bill No. 17839 which seeks to impose a 20% tax on gross receipts of proprietors and operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of hotels, motels and resthouse.

During the session of the Sixth Congress of the Philippines, House Bill No. 17839 was filed. Among others, the said bill proposed to insert Section 191-A as a new section of the National Internal Revenue Code. Sec. 48 of House Bill No. 17839, states as follows:

> "Sec. 48. A new section is hereby inserted between sections one hundred and ninety-one and one hundred ninety-two, to be known as Section one hundred and ninety-one-A which shall read as follows:
>
> "Sec. 191-A. Caterer. - A caterer's tax is hereby imposed as follows:
>
> (1) On proprietors or operators of restaurants, refreshment parlors and other eating places, including clubs, and caterers, three per cent of their gross receipts.
>
> (2) On proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served, three per cent

> of their gross receipts from sale of food or refreshments and seven per cent of their gross receipts from sale of distilled spirit, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for sale of refreshments served, and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer.
>
> (3) On proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race track, jai-alai, cabaret, night or day club by means of a connecting door or passage twenty per cent of their gross receipts.
>
> Where the establishments are operated or maintained by clubs or any kind or nature (irrespective of the disposition of their net income and whether or not they cater exclusively to members of their guests) the keepers of the establishments shall pay the corresponding tax at the rate fixed above."

After going through the usual legislative mill, House Bill No. 17839 was, however, superseded by Consolidated Tax Bill bearing the same number. This Consolidated Tax Bill retained the aforequoted

Section 48 although re-numbered as Section 42. The said tax bill was approved by the Congress and was presented to the President for final approval.

On August 4, 1969, the President of the Philippines sent the following veto message (Exh. E, E-1), insofar as Sec. 42 is concerned, to the House of Representatives where the bill originated:

"MALACANANG
Manila

August 4, 1969

"Gentlemen of the House
of Representatives:

"I have the honor to inform you that I have this day signed H.B. No. 17839, entitled:

"AN ACT AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED".

"Pursuant to the provisions of Section 20(3), Article VI, of the Constitution, however, I have vetoed the following items in this bill:

"xxx xxx xxx

p. 44, SEC. 42. Inserting a new Section 191-A which imposes a caterer's tax of three percent of the gross receipts of proprietors or operators of restaurants, refreshment parlors and other eating places; three percent of gross receipts from sale of food or refreshment and seven percent on gross receipts from the sale of distilled spirits, fermented liquors or wines, on proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served; and twenty percent of gross receipts on proprietor, or operators of restaurants, refreshment parlors, bars, cafes and other eating places maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race track, jai-alai, cabaret, night or day club, or which are accessible to patrons of said establishments by means of a connecting door or passage.

"The burden of taxation will be shifted to the consuming public.

"The development of hotels, essential to our tourist industry, may be restrained considering that a big portion of hotel earnings comes from food sale.

"xxx xxx xxx

"This bill, H. No. 17839, has become Republic Act No. 6110.

Respectfully,

(SGD.) FERDINAND E. MARCOS

(Exh. E)

The President through the then Presidential Staff Assistant Ireneo T. Aguirre, Jr. even went farther by clarifying and confirming his veto of Section 42 of the Consolidated Tax Bill. In a letter dated July 28, 1972 (Exh. E-2), Presidential

Staff Assistant Irineo T. Aguirre, Jr., in his letter to Ante o M. Sison, Jr., dated July 28, 1972 categorically stated:

"Mr. Antero M. Sison, Jr.
San Martin Building, 1564
A. Mabini, P.O. Box 2288
Manila, Philippines

Dear Sir:

With reference to your letter dated July 14, 1972, we wish to inform you that Section 42 of House Bill No. 17839, now R.A. 6110 was one of the Sections vetoed by the President in his veto message dated August 4, 1969, vetoing certain section of the said revenue bill.

Very truly yours,

(SGD) IRINEO T. AGUIRRE, JR.
Presidential Staff Assistant

Manila, July 28, 1972."

Congressional records show that Congress, to which the veto message was sent and from which the Consolidated Tax Bill originated, has not taken any step to override the presidential veto of the proposed Section 191-A of the National Internal Revenue Code. Therefore, Section 191-A remained a House Bill. It has never became a law.

This case is not without a precedent. In the case of Manila Golf & Country Club, Inc. vs. Commissioner of Internal Revenue, CTA Case No.

2620, March 20, 1977, this Honorable Court held as follows:

> "4. Since, as stated above, the Office of the President has confirmed that Section 42 of House Bill No. 18739, now Republic Act No. 6110, inserting Section 191-A, was one of the Sections vetoed by the President in his veto message dated August 4, 1969, vetoing certain sections of the said bill (Exh. "N"), it has not been shown that the President's veto was overridden by the required number of votes for vetoed bills as provided in Section 20(1), Article VI, of the 1935 Constitution. The records of the case do not show that two-thirds of each House of Congress voting separately agreed to overcome the President's veto of Section 191-A. Respondent has not alleged or even intimidated that the President's veto of Section 42 of the Consolidated Tax Bill was overridden by the required numbers of votes of vetoed bills. Inasmuch as Congress did not override the presidential veto of Section 191-A, the proviso in question necessarily did not become a law. Consequently, Section 191-A should not form part of the National Internal Revenue Code.
>
> "5. Not escaping notice is the argument of respondent that "a resolution in favor of petitioner would mean the loss of millions of pesos to the government, and there would be' deluge of claims for refund, for nowhere in the Tax Code can you find a provision taxing eating places except in this section." While it is of utmost importance that the Government should not resort to a proposed provision of a revenue bill which did not become a law to enhance the collection of taxes. The financial exigencies of the Government afford no justification for sustaining the assessment of a tax levied under a

strained construction of a law, much less under a provision of a revenue bill which has been vetoed by the President.

"Having reached the conclusion that:

a. Section 42 of House Bill No. 18739, now Republic Act No. 6110, inserting Section 191-A between Sections 191 and 192 of the National Internal Revenue Code, was vetoed by the President in his veto message dated August 4, 1969;

b. Congress did not override the presidential veto; and

c. Section 191-A did not become a law and should not therefore form part of the National Internal Revenue Code:"

WHEREFORE respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Manila Hotel Corporation the caterer's tax paid in the total amount of P2,463,576.30 without interest.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 10, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals