REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STELLAR INDUSTRIAL SERVICES INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2911

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

5/28

D E C I S I O N

This is a claim for refund of the amount of P114,756.93 representing caterer's tax paid pursuant to Section 191-A of the then applicable Tax Code, covering the period from 1975 to 1977.

The facts of the case are not in dispute. As summarized by respondent Commissioner of Internal Revenue:

Petitioner Stellar Industrial Services, Inc., is a domestic corporation engaged in restaurant business and janitorial services.

During the period from October 20, 1975 to July 20, 1977 petitioner paid a total amount of P287,827.89 representing contractor's tax on gross receipts from its janitorial services and caterer's tax on gross receipts from sales of food and liquor in its restaurant business.

In a letter dated October 12, 1977, petitioner filed a claim for refund of the amount of P114,756.93 representing caterer's tax on food sold in its restaurant business, the sales tax for which were not charged to customers. Petitioner contends as ground therefor that Section 191-A of the applicable Tax Code pursuant to which the caterer's tax was paid never became a law as it was vetoed by the President on August 4, 1969.

In a letter dated October 24, 1977, respondent denied petitioner's claim for refund, hence, the instant petition for review filed on November 29, 1977.

The issue is whether Section 191-A of the Tax Code become a law and formed part of the same code in view of the presidential veto made on August 4, 1969.

A similar issue has already been settled recently by the Supreme Court in ***Commissioner of Internal Revenue vs. Hon. Court of Tax Appeals and Manila Golf & Country Club, Inc.***, *G.R. No. L-47421, May 14, 1990*, wherein the High Tribunal unequivocally ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket but not to the whole Section 191-A of the then applicable National Internal Revenue Code. In arriving at this ruling, the Supreme Court made observations, among others, as follows:

> As mentioned earlier, We have already ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket but not to the whole section. But, as mentioned earlier also, the CTA opined that the President could not veto words or phrases in a bill but only an entire item. Obviously, what the CTA meant by "item" was an entire section. We do not agree. But even assuming it to be so, it would also be to petitioner's favor. The ineffectual veto by the President rendered the whole Section 191-A as not having been vetoed at all and it, therefore, became law as an unconstitutional veto has no effect whatsoever. *(See **Bolinao Electronics Corp. v. Valeria**, No. L-20740, June 30, 1964, 11 SCRA 486).*
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> However, We agree with then Solicitor General Estelito Mendoza and his associates that inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket are "items" in themselves within the meaning of Sec. 20(3), Art. VI of the 1935 Constitution which, therefore, the President has the power to veto. An "item" in a revenue bill does not refer to an entire section imposing a particular kind of tax, but rather to the subject of the tax and the tax rate. In the portion of a revenue bill which actually imposes a tax, a section identifies the tax and enumerates the persons liable therefor with the corresponding tax rate. To construe the word "item" as referring to the whole section would tie the President's hand in choosing either to approve the whole section at the expense of also approving a provision therein which he deems unacceptable or veto the entire section

> at the expense of foregoing the collection of the kind of tax altogether. The evil which was sought to be prevented in giving the President the power to disapprove items in a revenue bill would be perpetrated rendering that power inutile *(See **Commonwealth ex rel. Elkin v. Barnett,** 199 Pa. 161, 55 LRA 882 [1901]).*

ACCORDINGLY, the petition for review in the above-entitled case is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, May 28, 1990.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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