REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS PRODUCTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2899

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

3/18/92

x - - - - - - - - - - - - - - - - x

D E C I S I O N

This appeal involves petitioner's claim for refund of erroneously paid caterer's tax and fixed tax for the period 1975 and 1977.

Petitioner is a domestic corporation engaged in the business of manufacturing, importing and selling fertilizers and agricultural chemicals. It operates a cafeteria in its main office in Makati, Metro Manila. (Admitted in respondent's answer, par. 1, p. 24, CTA rec.)

For the period beginning November 5, 1975 up to July 15, 1977, petitioner paid fixed and caterer's taxes, pursuant to Sections 182 and 191-A of the Old Tax Code, totalling P8,021.97 itemized as follows:

Date of Payment	Kind of Tax	O.R. No.	Amount	Exh.
Nov. 5, 1975	Fixed	F5249866	P 50.00	A
Oct. 12, 1976	Caterer's	3137951	1,982.46	B

Jan. 14, 1977	Fixed	0731955	50.00	C
Jan. 14, 1977	Caterer's	3222320	2,044.74	D
Apr. 13, 1977	Caterer's	08409984	1,908.11	E
July 15, 1977	Caterer's	10724184	P1,986.66	F
			P8,021.97	

Petitioner paid the 3% caterer's tax based on its gross receipts from the sale of food and beverages pursuant to Section 191-A.

Section 191-A provides for the imposition of a 3% caterer's tax on gross receipts of proprietors or operators of restaurants, refreshments parlors and other eating places including clubs and caterers.

In the case of ***Manila Golf & Country Club v. Commissioner of Internal Revenue***, C.T.A. Case No. 2630, March 30, 1977, the Court of Tax Appeals ruled in favor of petitioner stating that the provision imposing the 3% caterer's tax under Section 191-A has never been enacted into law. Section 42 of the Omnibus Tax Law (Republic Act No. 6110) which inserted Section 191-A was vetoed by the President in his speech to Congress on August 4, 1969. Congress did not override the veto. Hence, it did not form part of our tax laws as embodied in the Old Tax Code. Accordingly, the Court ruled in petitioner's favor.

Petitioner relying in the CTA decision of the Manila Golf case filed the instant petition for review claiming a right to the refund of P8,021.97, representing erroneously paid fixed and caterer's taxes from November 5, 1975 up to July 15, 1977.

After an answer has been filed and the issue has been joined the parties waived their right to present evidence. Instead they submitted the case for decision.

The law on this matter has finally been put to rest.

In the case of ***Commissioner of Internal Revenue v. Manila Hotel Corporation and the Court of Tax Appeals***, G.R. No. 83250, September 26, 1989, the Supreme Court, thru Justice Medialdea, stated thus:

> "The power of the State to impose the 3% caterer's tax is not debatable. The Court of Tax Appeals erred, however, in holding that the tax was abolished as a result of the presidential veto of August 4, 1969. It failed to examine the law then, and up to now, existing on the subject which has always imposed a 3% caterer's tax on operators of restaurants. Since the Manila Hotel operates restaurants in its premises, it is liable to pay the tax provided in paragraph (1) Section 206 of the Tax Code."

In ***Commissioner of Internal Revenue v. Hon. Court of Tax Appeals and Manila Golf & Country Club, Inc.***, G.R. No. L-47421, May 14, 1990, again the Supreme Court citing the Manila Golf case held:

"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.)

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].)"

Following the aforementioned rulings of the Supreme Court, our only function now is to apply as expected the law of the case on the matter. Without a leg to stand on, the claim for refund is hereby denied.

WHEREFORE, We find the petition for review without merit and the same is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 16, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

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

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals