REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GERMAN CLUB, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3606

THE ACTING COMMISSIONER
OF INTERNAL REVENUE,
Respondent.

10/14/88

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D E C I S I O N

This involves a claim for refund instituted in this Court by petitioner in the total amount of P52,937.39 for caterer's tax paid, representing 3% gross receipts from sale of food or refreshment as well as the 7% gross receipt from sale of distilled spirits wines or liquors, for the years from 1974 to 1978 inclusive.

Petitioner is a domestic non-stock and non-profit recreational corporation organized and existing under and by virtue of the laws of the

Philippines, with principal office at Fifth Floor, Eurovilla Bldg., Herrera St., Legaspi Village, Makati, Metro Manila (Par. 1, Petition, admitted in paragraph 1, Answer, pp. 1 and 18, CTA rec.); while respondent is the Acting Commissioner of Internal Revenue who holds office at the National Office Building of the Bureau of Internal Revenue at Diliman, Quezon City. (par. 2, Petition, admitted in par. 2, Answer, pp. 1 and 18, CTA rec.)

Sometime in the year 1981, respondent Acting Commissioner of Internal Revenue, through its Regional Revenue District Officer of South Manila, assessed petitioner for caterer's tax, representing 3% gross receipts from sale of food and other refreshments and 7% on gross receipts from sale of distilled spirits, fermented liquors or wines pursuant to Section 191-A of the Tax Code, covering the years from 1974 to 1978 inclusive, in the total amount of P52,937.39. (Pars. 3 & 4, Petition, admitted in par. 2, Answer, pp. 1 to 2 and 18, CTA rec.) As a consequence of said assessment, petitioner on August 31, 1981 paid the said assessment under protest in the total amount of

P52,937.39. (Exhs. C, C-1, D, D-1, D-2, E, E-1, E-2, F, F-1, F-2, G, G-1, G-2, G-3, H, H-1 and H-3, pp. 51-61, CTA rec.) On July 10, 1981, petitioner filed with the respondent office a claim for refund in the said total amount of P52,937.39. (Par. 10, Petition, admitted in par. 6, Answer, pp. 2 and 19, CTA rec.; see also Exh. A, pp. 44-49, CTA rec.) However, respondent not having acted on the said petitioner's claim for refund, the latter on March 25, 1983 interposed its appeal to this Court.

Posed before us for resolution is whether or not petitioner is entitled to its claim for refund in the amount of P52,937.39 paid by petitioner to the respondent by way of caterer's tax pursuant to Section 191-A of the Tax Code.

The issue is not one of first impression. In the case of **Manila Hotel Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 2991, February 10, 1988, citing **Manila Golf & Country Club, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 2620, March 20, 1977, this Court held:

his 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:

> *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.*
>
> *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 t 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:"

IN VIEW OF THE FOREGOING, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner, German Club, Inc., the caterer's tax paid in the total amount of P52,937.39, without interest.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 14, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding 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