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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOTEL MINDANAO,
Petitioner,

- versus - C.T.A. CASE NO. 2974

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

11/15/91

D E C I S I O N

This is a judicial action for the refund of the sum of P121,609.93 representing the amount of caterer's tax which was allegedly illegally and erroneously collected from petitioner for the third quarter of 1976 to the fourth quarter of 1977.

As borne out by the pleadings, petitioner is a domestic corporation duly organized and engaged in the business of hotel, and maintains within its premises a restaurant and a bar selling foods and beverages with principal place of business in Cagayan de Oro City.

The case at bar was submitted for decision based on the pleadings of the case, sans memoranda being submitted by the parties.

For the third quarter of 1976 to the fourth quarter of 1977, petitioner claimed to have paid to respondent the total amount of P121,609.93 representing caterer's tax.

On October 4, 1978, petitioner filed with respondent a claim for refund (Annex "A", Petition For Review, p. 3, CTA records). Without waiting for respondent's action on the claim for refund, petitioner filed the instant petition for review on October 4, 1978.

The sole issue in this case is whether or not petitioner is entitled to the refund of the alleged illegally and erroneously collected caterer's tax in the amount of P121,609.93.

The hearing of the case was submitted for decision by both parties on the basis of the pleadings. There was no record of the Bureau of Internal Revenue forwarded to this court. Both parties were granted ample time to submit their respective memorandum, but no memorandum was filed by either parties. Both parties agreed to hold in abeyance the hearing of this case to await final outcome of a similar case in the Supreme Court which involved an identical issue.

Petitioner based its claim for refund of caterer's tax paid on the basis of the court's favorable findings in ***Manila Golf & Country Club v. Commissioner of Internal Revenue, CTA Case No. 2630*** promulgated on March 30, 1977. But upon appeal, the decision in the said case was reversed in the *Commissioner of Internal Revenue v. Hon. Court of Tax Apppeals and Manila Golf & Country Club, Inc., in G. R. No. L-47421,* promulgated by the Supreme Court on May 14, 1990.

In the light of the Supreme Court's decision in the said case of Commissioner of Internal Revenue v. Hon. Court of Tax Appeals and Manila Golf and Country Club, Inc. *(G.R. No. L-47421, May 14, 1990)* we hold that petitioner is not entitled to the refund of the sum of P121,609.93, wherein it was held that:

> "**ACCORDINGLY**, the petition is GRANTED and the decision of the Court of Tax Appeals in CTA Case No. 2630 is set aside. Section 191-A of RA No. 6110 is valid and enforceable and hence, the Manila Golf & Country Club Inc. is liable for the amount assessed against it."

WHEREFORE, finding the judicial claim for refund without merit, the same is dismissed and the refund sought is hereby denied at petitioner's cost.

SO ORDERED

Quezon City, Metro Manila, November 15, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
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.

ALEX Z. REYES
Presiding Judge