REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**DELGADO BROTHERS HOTEL CORPORATION** doing business under the name and style of **THE MANILA HILTON,**
Petitioner,

- versus -

C.T.A. CASES NOS. 2890, 2907 & 2929

**THE COMMISSIONER OF INTERNAL REVENUE.**
Respondent.

6/29/90

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

# D E C I S I O N

Delgado Brothers Hotel Corporation doing business under the name and style of The Manila Hilton, petitioner in these three cases, seeks the refund of the caterer's taxes it paid in the total amount of P3,319,462.01, under Section 191-A of the then applicable National Internal Revenue Code as amended by Republic Act. No. 6110.

Petitioner owned and operated The Manila Hilton located at United Nations Avenue, Metro Manila, wherein it operated restaurants, bars, cafes, and nightclubs where food, refreshment, distilled spirits, liquor and wines were served.

Conformably with Section 191-A, which took effect on September 1, 1969, petitioner paid caterer's taxes for the period April 1, 1975 to

March 31, 1977 in the total amount of P3,539,182.19 representing 3% of its gross receipts on the sale of food and refreshments under paragraph (1) of said section, 7% of its gross receipts on the sale of distilled spirits, liquors and wines under paragraph (2) thereof and 20% of its total gross receipts from the sale of both under paragraph (3) thereof.

On March 30, 1977, this Court promulgated its decision in CTA. Case No. 2630, Manila Golf and Country Club, Inc. vs. Commissioner of Internal Revenue, wherein it held that Section 42 of House Bill No. 18739 (now Republic Act No. 6110), inserting Section 191-A between Sections 191 and 192 of the then in force National Internal Revenue Code, was vetoed by the President in his veto message dated August 4, 1969, which veto was not overidden by Congress, therefore, Section 191-A did not become a law.

As a consequence, petitioner filed with respondent on July 6, 1977 its claims for the refund of caterer's taxes in the amounts of P343,402.37, P429,262.90, P492,215.83 and P2,277,314.78 it paid for the periods April to June 1975, July to September 1975, October to December 1975 and January 1, 1976 to March 31, 1977, respectively. (Exhs. K, L, M & N, Petitioner's Envelope.)

In a letter dated September 6, 1977, respondent informed petitioner that action will be taken on its claims only when a final decision has been reached by the Supreme Court in the Manila Golf and Country Club case which is the legal basis of petitioner's claim. (Exh. O)

Hence, petitioner's recourse to the present Cases Nos. 2890, 2907 and 2929 for the recovery of caterer's taxes it paid in the amounts of P340,398.68, P429,262.90 and P2,769,520.61 for the periods April 1, 1975 to June 30, 1977, July 1, 1975 to September 30, 1975 and October 1, 1975 to April 20, 1977, respectively. Due to the two-year prescriptive period, however, the claim for refund in the amount of P340,398.68 in CTA Case No. 2890 was later reduced by petitioner to P120,678.50 to cover only the period June 1 to 30, 1975 thereby excluding the caterer's taxes it paid prior to July 2, 1975. (See Exh. J & petitioner's memorandum, p. 110, CTA records.) Thus, petitioner's claim for the refund of caterer's taxes it paid for the period June 1, 1975 to March 31, 1977 totalling P3,319,462.01 is broken down as follows: (Exh. J)

Payments of Caterers Tax
June 1975 to March 31, 1977
(Claim for Refund to be Filed In View of the Court of Tax Appeals Decision
on the Manila Golf and Country Club Case)

| Year | Period Covered | Date Paid | Official Receipts Numbers | Total Amount Paid | 3% Tax on Food Sales | 7% Tax on Beverage Sales | 10% Tax on NightClub Sales | Add'l 10% tax on Night Club Sec. 191-A |
|---|---|---|---|---|---|---|---|---|
| 1975 | June 1-30 | 7-31-75 | 2277034 | P1,120.678.50 | P 37,689.09 | P 30,752.46 | P 26,118.48 | P 26,118.47 |
| | July1-Sept.30 | 10-21-75 | 2277136 | 429,262.90 | 130,424.39 | 109,570.42 | 94,634.05 | 94,634.04 |
| | Oct.1-Dec.31 | 1-20-76 | 2277248 | 492,215.83 | 147,468.51 | 109,759.54 | 117,493.89 | 117,493.89 |
| 1976 | Jan.1-Mar.31 | 4-20-76 | 2603980 | 478,217.24 | 155,376.39 | 117,463.65 | 102,688.60 | 102,688.60 |
| | Apr.1-June30 | 7-20-76 | 2928786 | 434,093.52 | 140,936.36 | 109,513.03 | 91,822.06 | 91,822.07 |
| | July1-Sept.30 | 10-20-76 | 2928886 | 542,132.21 | 143,393.38 | 115,115.48 | 141,811.68 | 141,811.67 |
| | Oct.1-Dec.31 | 1-20-76 | 2928970 | 448,288.92 | 145,248.97 | 115,271.81 | 93,884.07 | 93,884.07 |
| 1977 | Jan.1-Mar.31 | 4-20-77 | 09499641 | 374,572.89 | 113,196.86 | 86,687.07 | 87,344.48 | 87,344.48 |
| | Total | | | P3,319,462.01 | P1,013,733.95 | P794,133.46 | P755,797.31 | P755,797.29 |

The principal issue here is whether petitioner is entitled to the refund of the caterer's taxes it paid under Section 191-A of the applicable National Internal Revenue Code, during the period June 1, 1975 to March 31, 1977. In brief, the controversy centers on whether Section 191-A became a law.

Petitioner contends that it erroneously paid the disputed caterer's taxes under Section 191-A since that section turned out to have been vetoed by the President as determined by this Court in CTA Case No. 2630, Manila Golf And Country Club, Inc. vs. Commissioner of Internal Revenue as follows:

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;

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

The decision of respondent Commissioner of Internal Revenue dated March 2, 1973 assessing petitioner Manila Golf and Country Club, Inc., fixed taxes as operator of golf links and restaurant's and caterer's tax imposed in Section 182 and 191-A of the Revenue Code in the total amount of P32,804.96, inclusive of surcharge and compromise penalty, cannot be sustained.

Notwithstanding this Court's decision in that case, however, respondent maintains that Section 191-A of the National Internal Revenue Code is in full force and effect and that what was vetoed was the proposed increase to 20% of the tax on hotels, motels, and resthouses so that such establishments would still be liable as ordinary eateries for the caterer's taxes of 3% and 7% as the case may be. (Answer, p. 16 & 17, CTA records.) Having appealed the abovecited decision to the Supreme Court in G.R. No. L-47421, entitled Commissioner of Internal Revenue vs. Manila Golf and Country Club Inc. and the Court of Tax Appeals, respondent prays that the decision in the instant cases be held in abeyance pending the final decision by the Supreme Court in the said case, which involves the same issue as that in the cases at bar.

Petitioner insists that the final resolution of the issues in the Manila Golf and Country Club Inc. case is not really indispensable to the adjudication of the instant petitions for even following respondent's defense that the veto of Section 42 was limited to that part thereof imposing a 20% caterer's tax on hotels, motels and resthouses, petitioner would still be entitled to the refund of the caterer's taxes claimed since these were paid by a hotel enterprise and therefore was not liable for caterer's tax.

We find that petitioner's cause must fail in the light of the recently promulgated decisions of the Supreme Court in two cases where the main issue raised is identical to that in the present cases.

In Commissioner of Internal Revenue vs. Manila Hotel Corporation and Court of Tax Appeals, G.R. No. 83250 dated September 26, 1989, the Supreme Court held:

> 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.

The issue of whether Section 191-A became a law was not squarely settled in the above case, but it was finally laid to rest in the aforementioned case of Commissioner of Internal Revenue vs. Court of Tax Appeals and Manila Golf and Country Club, G.R. No. 47421 dated May 14, 1990, wherein the High Court ruled that "Section 191-A of RA No. 6110 is valid and enforceable."

The pertinent provisions of Section 191-A are as follows:

> Sec. 191-A. Caterers.---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 spirits, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for each sale of food or refreshment 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 cockpit, race track, jai-alai, cabaret, night or day club or which are accessible to patrons of such 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.

There is no question that from June 1, 1975 to March 31, 1977, the period involved, petitioner herein, operated restaurants, bars, cafes and nightclubs in its premises where food, refreshments, distilled spirits, liquors and wines were served. (See Petition for Review, p. 1, CTA Cases Nos. 2890, 2907 & 2929.) The applicable law then was Section 191-A above as amended by Republic Act. No. 6110 which took effect on September 1, 1969. Evidently, under the provisions of paragraphs (1) and (2) of Section 191-A, petitioner, as an operator of restaurants, bars and cafes, is liable for the 3% caterer's tax on its gross receipts from sales of food and refreshments and the 7% caterer's tax on its gross receipts from sales of distilled spirits, liquors and wines in said eating places.

There is no merit in petitioner's contention in the alternative, that being a hotel enterprise it is not liable for the 20% caterer's tax. Since petitioner operated nightclubs in its premises, it is subject to the 20% caterer's tax on the gross receipts it derived from its nightclub sales (See Exh. J), under paragraph (3) of said Section 191-A which imposes a 20% caterer's tax on the gross receipts of operators of restaurants, refreshment parlors, bars, cafes, and other eating places maintained within a night or day club. Clearly, petitioner is not entitled to its claim for refund of the caterer's taxes it paid in the amount of P3,319,462.01 for the period June 1, 1975 to March 31, 1977 because these have been collected in accordance with law.

**WHEREFORE, finding the petitions for review without merit, the same are dismissed and the refund sought is hereby denied, at petitioner's costs.**

**SO ORDERED.**

Quezon City, Metro Manila, June 29, 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