REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

AVON PRODUCTS MANUFACTURING INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 894
(CTA CASE NO. 8021)

Present:

DEL ROSARIO, *P.J,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 16 2013

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Avon Products Manufacturing Inc. on May 11, 2012 pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, and Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) seeking to reverse and set aside the Decision[1] (assailed Decision) promulgated on January 10, 2012 by the former Second Division of the Court of Tax Appeals ("CTA-Second Division") and its Resolution[2] (assailed Resolution) dated March 30, 2012 in CTA Case No. 8021, entitled *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, which denied petitioner's claim for refund representing erroneously paid excise taxes for the period January 2, 2008 to December 29, 2008 in the total amount of Thirty Five Million Eight

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[1] *Rollo*, pp. 6-22.
[2] *Rollo*, pp. 23-26.

Hundred Seventy One Thousand Six Hundred Forty Three Pesos and Eighty Four Centavos (Php35,871,643.84).

FACTS OF THE CASE

The antecedent facts, as found by the CTA-Second Division, are as follows:

> "Petitioner Avon Products Manufacturing, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the Calamba Premiere Industrial Park, Barangay Batino, Calamba Laguna. It is engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet waters, splash colognes, and body sprays.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Diliman, Quezon City.
>
> In 1984, Revenue Regulations (RR) No. 8-84, otherwise known as the "Cosmetic Products Regulations" was issued.
>
> Under Section 2(e) of said Revenue Regulations (RR) No. 8-84, "toilet waters" was defined as follows:
>
>> "(e) Toilet waters are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils i.e. more than 3% by weight. Examples: Lavander water, Eau de Cologne, Eau de Toilette."
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> Also, under the said issuance, the sale of perfumes and toilet waters was subject to a fifty percent (50%) sales tax as a sale of non-essential articles. The sales tax was collected once on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles based on the gross value in money of the articles so sold, bartered, exchanged or transferred and was to be paid by the manufacturer or producer.
>
> On January 1, 1988, the sales tax was replaced by the value-added tax (VAT) and the excise tax. The sale of perfumes and toilet waters became subject to a twenty percent (20%) excise tax on non-essential goods imposed under Section 150 (b) of the Tax Code upon their removal from the place of production.
>
> Despite a shift from the sales tax to the VAT and excise tax, the definition of "toilet waters" in the Cosmetic Products Regulations was not modified by either statute or regulations. The VAT and excise tax provisions of the Tax Code underwent several amendments since 1986 but the definition of "toilet waters" remained untouched.

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On January 4, 2010, petitioner filed a written claim for refund of erroneously paid excise taxes with respondent's Large Taxpayers Service through a letter dated December 29, 2009.

Likewise, on the same date, January 4, 2010, petitioner filed before this Court the instant Petition for Review, praying for the refund of the amount of P35,871,643.84 as erroneously paid excise tax.

In her Answer filed on February 9, 2010, respondent interposed the following Special and Affirmative Defenses:

> '4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner's claim for refund has no legal basis. As manufacturer of perfume and toilet waters, petitioner is subject to excise tax pursuant to Section 150 (b) of the National Internal Revenue Code of 1997 which provides thus:
>
> > 'SEC. 150. Non-Essential Goods. — There shall be levied, assessed and collected a tax equivalent to twenty percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value added tax, of the following goods:
> >
> > (a) x x x
> >
> > (b) Perfumes and toilet waters;'
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 7. The amount of P35,871,643.84 being claimed by petitioner as alleged erroneously paid excise tax for the period January 2, 2008 to December 29, 2008 is not properly documented.
>
> 8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670).
>
> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma 31 SCRA 95).

> and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).'
>
> Xxx xxx xxx."

During trial, petitioner presented testimonial and documentary evidence to prove its entitlement to the claim for refund. On the other hand, respondent did not present any witness.

As aforestated, the CTA-Second Division issued the assailed Decision on June 10, 2012, denying the petition for review for lack of merit.[3]

On January 27, 2012, petitioner filed a Motion for Reconsideration of the assailed Decision. In the assailed Resolution, the CTA-Second Division denied petitioner's Motion for Reconsideration for lack of merit.[4]

On April 20, 2012, petitioner filed a Motion for Additional Time to File Petition for Review[5] with the Court *En Banc*. On April 23, 2012, the Court *En Banc* issued a Resolution[6] granting petitioner a final and non-extendible period of fifteen (15) days from April 26, 2012 or until May 11, 2012, within which to file its Petition for Review.

On May 11, 2012, petitioner filed the instant Petition for Review[7].

In a Resolution[8] dated June 18, 2012, the Court ordered respondent to file her comment within ten (10) days from receipt of the Resolution. On June 29, 2012, respondent filed her Comment.[9]

On July 12, 2012, the Court issued a Resolution[10] giving due course to the petition and ordering the parties to file their respective memoranda within thirty (30) days from receipt of the said Resolution.

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[3] *Rollo*, pp. 63-86.
[4] *Rollo,* pp. 88–96.
[5] *Rollo*, pp. 1-4.
[6] *Rollo*, p. 6.
[7] *Rollo*, pp. 7-61.
[8] *Rollo*, pp. 117-118.
[9] *Rollo*, pp. 119-127.
[10] *Rollo*, pp. 129-130.

On July 17, 2012, petitioner filed a Motion to Admit Attached Reply[11] to respondent's Comment. On August 14, 2012, the Court granted petitioner's motion and admitted petitioner's reply.[12]

On July 20, 2012, respondent manifested[13] that she is adopting the arguments in her Comment filed on June 29, 2012 as her memorandum. On July 23, 2012, the Court noted respondent's manifestation.

With the filing of petitioner's Memorandum[14] on August 16, 2012 and respondent's Manifestation on July 20, 2012, the Court issued a Resolution[15] on September 26, 2012 stating that the instant case has been submitted for decision.

ASSIGNMENT OF ERRORS

Petitioner assigned the following errors allegedly committed by the CTA-Second Division, to wit:

> "I.
>
> The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the definition of toilet waters under RR 8-84 was repealed by Executive Order No. 273 ("EO 273")
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> II.
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> The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that amendments to the Tax Code abandoned the definition of toilet waters under RR 8-84 and that RR 8-84 is not applicable to excise tax.
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> III.
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> The Honorable 2nd Division of the Court of Tax Appeals erred in ruling on the issue of whether or not RR 8-84 was repealed by EO 273 as the same was not an issue in this case.
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> IV.
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> The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the Respondent can supplant the definition of toilet waters found in RR 8-84 through a mere Bureau of Internal Revenue ("BIR") ruling.

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[11] *Rollo*, pp. 131-143.
[12] *Rollo*, pp. 150-151.
[13] *Rollo*, pp. 145-147.
[14] *Rollo*, pp. 152-205.
[15] *Rollo*, pp. 210-211.

V.

The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the Respondent is not estopped from denying the continued applicability of the definition of toilet waters under RR 8-84.

VI.

The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the present implementation of Section 150(b) of the NIRC is not a violation of Petitioner's right to equal protection.

VII.

The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the issue of whether or not the excise tax is imposed on other manufacturers is beyond the subject matter of the case.

VIII.

The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that Petitioner failed to provide a basis for its claim that its splash colognes and body sprays are exempt from the imposition of excise tax under Section 150(b) of the Tax Code."[16]

PETITIONER'S ARGUMENTS

Petitioner contends that Executive Order (EO) No. 273 did not repeal Section 163 of the National Internal Revenue Code of 1977 ("1977 NIRC") and consequently, Revenue Regulations (RR) No. 8-84. EO No. 273 merely amended Section 163 of the 1977 NIRC, and as such, the definition of "toilet waters" under RR No. 8-84 is deemed to have been carried over to the use of the phrase "toilet waters" as found in Section 150 (b) of the National Internal Revenue Code of 1997 ("1997 NIRC").

Allegedly, Revenue Memorandum Circular (RMC) No. 17-02 which publishes BIR Ruling No. 043-2000 is invalid as the power to provide details on what "toilet waters" means rests on the Secretary of Finance. Petitioner avers that the CTA-Second Division has no jurisdiction to rule on the issue of whether RR No. 8-84 was repealed by EO No. 273 as it was not raised by the parties.

Petitioner insists that while the continued collection of excise tax violates its constitutional right to equal protection of laws, respondent's persistent collection of excise tax on petitioner's colognes and body sprays

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[16] *Rollo*, pp. 22-23.

created an "arbitrary or confiscatory" or "unreasonable and oppressive environment" as the other members of the industry, with similar products, are not being subjected to the same tax and are being allowed to withdraw their goods from the place of production even without paying excise taxes thereon.

Lastly, petitioner argues that the actions of the Bureau of Internal Revenue (BIR) show that it still adheres to the definition of "toilet waters" under RR No. 8-84 and is therefore estopped from denying the continued enforceability of the definition of toilet waters under RR No. 8-84.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent contends that toilet waters are subject to excise tax and that Section 163 of the 1977 NIRC has been repealed by Section 150 of the 1997 NIRC and EO No. 273. BIR Ruling No. 043-2000 merely implemented the provisions of Section 150 of the 1997 NIRC with respect to the definition of "toilet waters". It is widely accepted that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by courts. Thus, unless and until the Secretary of Finance reverses or modifies the ruling of the Commissioner of Internal Revenue (CIR), BIR Rulings shall be considered valid and with full force and effect.

Respondent also avers that tax refunds are construed strictly against taxpayers. The burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit.

In addition, respondent posits that the CIR is not estopped from collecting excise taxes as it is a well-settled rule that the Government is not estopped by the mistakes or errors of its agents; erroneous application and enforcement of law by public officers does not prevent the subsequent correct application of statutes.

Finally, respondent countermands that there is no violation of the equal protection clause as the opinion of petitioner's witness that "other manufacturers do not pay the excise tax" is merely speculative. Petitioner's witness did not present any documentary evidence to prove his allegations.

RULING OF THE CTA-SECOND DIVISION

The CTA-Second Division ruled that the definition of "toilet waters" provided under RR No. 8-84 is only applicable to the percentage tax imposed under Section 194 of the 1977 NIRC. The definition of "toilet waters" under RR No. 8-84 does not apply to Section 150(b) of the 1997 NIRC as it refers to excise tax. It held that the term "toilet waters" under Section 150(b) of the 1997 NIRC is defined under BIR Ruling No. 043-2000 dated September 15, 2000, which was subsequently published in Revenue Memorandum Circular (RMC) No. 17-02 dated May 24, 2002.[17]

Thus, applying the definition of "toilet waters" under BIR Ruling No. 043-2000, the CTA-Second Division denied petitioner's claim for refund and ruled that petitioner's splash colognes and body spray products are subject to the 20% excise tax on "toilet waters" imposed under Section 150 (b) of the 1997 NIRC.

Pertinent pronouncements in the assailed Decision of the CTA-Second Division are quoted as follows:

> "Section 194 of the 1977 Tax Code was renumbered and amended to read as Section 163 by virtue of Section 23 of Presidential Decree (PD) No. 1994, dated November 5, 1985. Subsequently, on July 25, 1987, Executive Order (EO) No. 273 also renumbered and amended Section 163 to read as Section 150 of the present Tax Code.
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> Section 29 of EO No. 273 states:
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> > 'SECTION 29. The provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof which are inconsistent with this Order are hereby repealed, amended or modified accordingly.'
>
> As a rule, an amended act should be given a construction different from that of the law prior to its amendment, for it is presumed that the legislature would not have amended it had it not wanted to change its meaning.
>
> Section 194 (renumbered and amended to read as Section 163) imposes percentage tax on non-essential products/articles; while the present Section 150 of the NIRC of 1997 imposes excise tax on non-essential goods.
>
> Evidently, there was intent on the part of the legislature to repeal regulations inconsistent with EO No. 273, such as RR No. 8-84. Hence, the definition of "toilet waters" provided by RR No. 8-84 is only applicable to the percentage tax imposed under Section 194 of the 1977 Tax Code. The said definition does not apply to the present Section 150 (b) of the NIRC of 1997, which refers to excise tax.

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[17] In BIR Ruling No. 043-2000, the BIR ruled that all other colognes are classified as toilet waters.

Section 150 (b) of the NIRC of 1997 is quoted hereunder for ready reference:

> 'SEC. 150. Non-Essential Goods. — There shall be levied, assessed and collected a tax equivalent to twenty percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:
>
> xxx xxx xxx
>
> (b) Perfumes and toilet waters;'

The afore-quoted provision does not provide a definition for the term "toilet waters". However, BIR Ruling No. 043-2000 dated September 15, 2000, which was subsequently published in Revenue Memorandum Circular No. 17-02 dated May 24, 2002, defined the term "toilet waters" to include "colognes". The applicable portions of the said BIR Ruling read:

> 'In reply, please be informed that the term 'cologne' which is an alcohol-based preparation is defined as follows:
>
> 'Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant.' (Hawley's Condensed Chemical Dictionary, 11th ed.)
>
> xxx xxx xxx
>
> Accordingly, all other colognes are, likewise, classified as toilet waters subject to excise tax under the same section . . .'

As the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, absent any showing that it is plainly wrong, is entitled to great weight. In the instant case, the ruling was made by the Commissioner of Internal Revenue in the exercise of her power under Section 245 of the NIRC to "make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales tax and similar purposes".

Based on the above-mentioned definition, petitioner's splash colognes and body sprays come within the purview of the term "toilet waters". This is due to the fact that alcohol is the principal ingredient used by petitioner in the manufacture of its splash colognes and body spray products. Thus, it is subject to the 20% excise tax on toilet waters imposed under Section 150 (b) of the NIRC of 1997. Accordingly, the claim for refund must be denied.

Well-settled is the legal principle that a claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption therefrom is the exception."[18]

RULING OF THE COURT *EN BANC*

The crux of the controversy revolves around the definition of the term "toilet waters". Under Section 194 of the 1977 NIRC, "toilet waters" are subject to percentage tax, to wit:

> "Section 194. ***Percentage tax*** *on sales of jewelry, toilet preparations and others*- There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated a **tax equivalent to seventy per centum of the gross value in money of the articles sold, bartered, exchanged or transferred such tax to be paid by the manufacturer or producer**: **Provided**, That, where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles: xxx
>
> xxx xxx xxx;
>
> (b) Perfumes, essences, extracts, **toilet waters**, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparations, by whatsoever name known or distinguished; and any of the above which are used or applied or intended to be used or applied for toilet purposes; except tooth and mouth washes, dentifrices, tooth paste, and talcum or medicated toilet powders." (*Emphases supplied*)

The 1977 NIRC did not provide for the definition of the term "toilet waters". It was first defined under RR No. 8-84, otherwise known as the *"Cosmetic Products Regulations"*, which was issued by the BIR to implement the percentage tax on cosmetic products imposed under Sections 194(b) of the 1977 NIRC. Section 2 (e) of RR No. 8-84 is quoted hereunder:

> "SECTION 2. *Articles Taxable as Cosmetic Products.* — The articles defined as follows shall be taxable as cosmetic products:
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> xxx xxx xxx.
>
> **(e) Toilet waters are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential**

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[18] *Rollo*, pp. 82-85.

> **oils i.e. more than 3% by weight. Examples: Lavander water, Eau de Cologne, Eau de Toilette.**" (*Emphasis supplied*)

Subsequently, Section 194 of the 1977 NIRC was amended by Section 23 of Presidential Decree (PD) No. 1994 dated November 5, 1985 and renumbered as Section 163, which reads:

> "SECTION 23. Section 194 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:
>
> '**Sec. 163**. Percentage tax on sale of non-essential articles. — There shall be levied, assessed and collected, once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated **a tax equivalent to 50% of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer**:
>
> (a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mounting for spectacles or eyeglasses, and dental gold or gold alloys and other precious metal used in filling, mounting or fitting of the teeth); opera glasses, and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The term 'imitations thereof' shall include platings and alloys of such metals.
>
> (b) Perfumes, essences, extracts, **toilet waters**, cosmetics, hair dressings, hair dyes, hair restorations, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrice, toothpaste, talcum and medicated toilet powders, hair oils and pomades." (*Emphases supplied*)

Eventually, Section 163 of the 1977 NIRC, as amended by PD No. 1994 was amended and renumbered as Section 150 (b) by EO No. 273 dated July 25, 1987, which states:

> "SECTION 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby renumbered and amended to read as follows:
>
> **SEC. 150.** Non-essential goods. — **There shall be levied, assessed and collected a tax equivalent to 20% based on the**

> **wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties; net of excise tax and value-added tax, of the following goods:**
>
> (a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filing, mounting or fitting of the teeth); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The terms 'imitations thereof' shall include platings and alloys of such metals;
>
> (b) **Perfumes and toilet waters**;
>
> (c) Yachts and other vessels intended for pleasure or sports." (*Emphases supplied*)

Under the aforequoted provision of EO No. 273, instead of imposing percentage tax, an excise tax of 20% based on the wholesale price or value of the "toilet waters" was imposed.

With the advent of the **1997 NIRC**, otherwise known as the *"Tax Reform Act of 1997"*, the imposition of excise tax on "toilet waters" remains. Notably, the 1997 NIRC adopted Section 16 of EO No. 273.

In BIR Ruling No. 043-2000 dated September 15, 2000, which was published by the BIR in RMC No. 17-02, the term "toilet waters" was interpreted and defined by the CIR as **"a scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant"**. The CIR also categorically ruled that colognes are classified as "toilet waters" subject to excise tax under Section 150 (b) of the 1997 NIRC, without qualification as to the percentage (by weight) of their essential oil content. Pertinent portions of BIR Ruling No. 043-2000 are quoted hereunder:

> "In reply, please be informed that the term 'cologne' which is an alcohol-based preparation is defined as follows:
>
> 'Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant.' (Hawley's Condensed Chemical Dictionary, 11th ed.)

> xxx xxx xxx
>
> Accordingly, **all other colognes are, likewise, classified as toilet waters *subject to* excise tax under the same section**, xxx." (*Emphasis supplied*)

Well-settled is the rule that rulings of administrative agencies which interprets the law are persuasive and deserves great weight[19] provided that they are in harmony with the Constitution and the laws they aim to implement. In relation thereto, under Section 4 of the 1997 NIRC, the CIR is vested with the exclusive and original power to interpret tax laws, viz:

> "Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." (*Emphasis supplied*)

The aforequoted provision of the 1997 NIRC is clear and unequivocal. The CIR has the power to interpret the provisions of the NIRC and other national tax laws, subject to review by the Secretary of Finance. In issuing BIR Ruling No. 043-2000, the CIR was merely exercising its power of interpreting a provision of the NIRC. It is worthy to note that the Secretary of Finance, who is vested with the power to review rulings issued by the CIR, has not modified or reversed BIR Ruling No. 043-2000.

The CIR's interpretation of the term "toilet waters" in BIR Ruling No. 043-2000 should be given great weight. The term "toilet waters" as interpreted by the CIR in BIR Ruling No. 043-2000 did not actually give a new meaning or definition to the term "toilet waters" as found in Section 150(b) of the 1997 NIRC. The CIR merely did what it was mandated to do, that is, to interpret the law. The CIR correctly followed the tenets of his authority by not unduly qualifying or expanding the meaning of the law. Since Section 150(B) of the 1997 NIRC is silent on the definition of "toilet

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[19] Chamber of Real Estate And Builders' Associations, Inc., vs. The Hon. Executive Secretary Alberto Romulo, G.R. No. 160756, March 9, 2010 citing Compania General De Tabacos De Filipinas v. Court of Appeals, G.R. No. 147361, March 23, 2004, 426 SCRA 203, 210, citing Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372.

waters", the legal maxim *Ubi lex non distinguit, nec nos distinguire debemos*, or if the law does not distinguish, we should not distinguish, should be followed. [20] Thus, without a statutory distinction, the aforementioned BIR Ruling should govern as regards the term "toilet waters" and it should be applicable to all kinds of toilet waters, which include petitioner's colognes and body sprays.

The Court *En Banc* finds unmeritorious petitioner's argument that respondent's continued collection of excise tax against petitioner violates petitioner's right to equal protection of the laws because other manufacturers in the same industry are not paying excise taxes on similar products.

The BIR's collection of excise tax on petitioner's cologne and body sprays is pursuant to Section 150(B) of the 1997 NIRC. The failure of the BIR to collect excise tax from other manufacturers of similar products is not in itself a violation of petitioner's right to equal protection of the laws. The Supreme Court already ruled that "[W]here the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not *without more* a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional* or *purposeful* discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory *design* over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination.**"[21] In this case, petitioner failed to establish that there is a clear and intentional discrimination on the part of the BIR when it collected excise taxes on petitioner's colognes and body spray products when other manufacturers allegedly do not pay excise tax on similar products.

Finally, petitioner also insists that the BIR's actions both expressly and impliedly show that the BIR continues to adhere to the definition of "toilet waters" under RR No. 8-84. The BIR is therefore estopped from denying the continued enforceability of the definition of toilet waters under RR No. 8-84. Moreover, the principle that the Government is never estopped from collecting taxes because of the mistakes or errors on the part of its

[20] Colgate-Palmolive Philippine, Inc., vs. Gimenez, G.R. No. L-14787, January 28, 1961; Philippine National Bank vs. Amores, G.R. No. L-54551, November 9, 1987; Amores vs. House of Representatives Electoral Tribunal, G.R. No. 189600, June 29, 2010.
[21] People of the Philippines vs. Carol M. Dela Piedra, G.R. No. 121777, January 24, 2001, citing Snowden *v.* Hughes, 321 US 1, 88 L Ed 497, 64 S Ct 397 (1943).

agents is subject to exceptions, citing the cases of *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals and The Commissioner of Internal Revenue*[22] and *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.*[23].

A review of the cases invoked by petitioner reveals that the issue involved therein is the retroactive application of the revocation of a BIR ruling and a BIR circular. In said cases, the Supreme Court reiterated the well-entrenched rule that rulings and circulars, rules and regulations promulgated by the CIR would have no retroactive application if to so apply them would be prejudicial to the taxpayers.

Here, BIR Ruling No. 043-2000 is not being applied retroactively. The Court *En Banc* notes that BIR Ruling No. 043-2000 dated September 15, 2000 was first published in RMC No. 17-02 dated May 24, 2002. Petitioner's claim for refund in the amount of P35,871,643.84 covers the period January 2, 2008 to December 29, 2008. There can be no doubt that petitioner's claim is covered by the definition of "toilet waters" as enunciated in aforestated BIR Ruling and RMC.

In view of the foregoing, there is no basis to grant petitioner's claim for refund of the excise taxes paid on removals of splash colognes and body spray products, for the period January 2, 2008 to December 29, 2008. The Court *En Banc* finds no cogent reason to reverse the assailed Decision dated January 10, 2012 and the assailed Resolution dated March 30, 2012 of the CTA-Second Division, respectively denying the petition for review and the motion for reconsideration filed by petitioner, for lack of merit.

WHEREFORE, in light of the foregoing principles, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated January 10, 2012 and the assailed Resolution dated March 30, 2012 of the CTA-Second Division in CTA Case No. 8021, entitled "*Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[22] G.R. No. L-52306 October 12, 1981.
[23] G.R. No. 117982, February 6, 1997.

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I concur with the Dissenting Opinion penned by Associate Justice Amelia R. Cotangco-Manalastas)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(with Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVON PRODUCTS MANUFACTURING, INC., *Petitioner,*	**CTA EB CASE NO. 894** (CTA Case No. 8021)
	Present:
-versus-	Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated**: SEP 16 2013 ccApolinario 9:10 a.m.

x- x

DISSENTING OPINION

COTANGCO-MANALASTAS, *J.*:

With due respect, I dissent from the opinion of the majority and hold that the definition of toilet waters under Revenue Regulations No. 8-84 (RR 8-84) is still applicable.

The issues call for the determination of the definition of toilet waters under RR 8-84 and its applicability to Section 150 of the 1997 NIRC with respect to the toilet waters subject to the excise tax.

The 20% excise tax on non-essential goods is imposed under Section 150 of the 1997 NIRC, which provides:

> "**Sec. 150. Non-essential Goods**. – There shall be levied, assessed and collected a tax equivalent to twenty-percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining

tariff and customs duties, net of excise tax and value-added tax, of the following goods:

xxx

(b) Perfumes and toilet waters;

xxx"

While the current law has no supporting revenue regulations which provide for the definition of perfumes and toilet waters, it must be pointed out that RR 8-84 was previously issued dealing specifically with cosmetic products. I believe that the definition under RR 8-84 is still applicable to the case at bar.

Under RR 8-84, "toilet waters" is defined as:

> "Section 2. Articles taxable as cosmetic products. – The articles defined as follows shall be taxable as cosmetic products:
>
> xxx
>
> (e) *Toilet waters* are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils i.e. more than 3% by weight. Examples: Lavander water, Eau de Cologne, Eau de Toilette."

RR 8-84 was issued in relation to the then Section 194 of the 1977 Tax Code, which enumerated the cosmetic products as "<u>perfumes</u>, essences, extracts, <u>toilet waters</u>, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders."[1]

The Tax Code underwent several amendments and its provisions were also renumbered. But throughout these changes, the essential wording of the provision dealing with these cosmetic products has remained the same. It was only from the issuance of Executive Order No. 273 (EO 273) wherein the products were limited to two, which are "perfumes and toilet waters", and now classified as non-essential goods subject to excise tax.

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[1] 1977 Tax Code, Section 194(b).

An examination of the 1977 and 1997 Tax Code shows that there has been no great change in the wording of the law. The 1977 Tax Code, in Section 194, enumerated several products as being subject to the sales tax then imposed. EO 273 then reduced the products to only two, perfumes and toilet waters; which were then subjected to excise tax. This latter provision has been carried on up to the present 1997 Tax Code. Despite the change in the tax imposed and the reduction of the products enumerated, it is notable that the same terms used in the old provision were also used in the new provision. These are (a) perfumes, and (b) toilet waters. Verily, EO 273 merely amended and did not repeal Section 163 of the 1977 NIRC; the very language used in EO 273 refutes the view that Section 163 of the1977 NIRC and RR 8-84 were repealed. Section 16 of EO 273 reads:

> “"Sec. 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby **renumbered** and **amended** to read as follows:
>
> > "Sec. 150. Non-essential goods. There shall be levied, assessed and collected a tax equivalent to 20°/o based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties; net of excise tax and value-added tax, of the following goods:
> >
> > xxx xxx xxx
> >
> > (b) Perfumes and toilet waters;" [Emphasis supplied]

As early as 1984, RR 8-84 has already provided the definition of toilet waters. This definition has not been changed or amended. When the provisions of the Tax Code were renumbered and amended, the lawmakers are presumed to know all the existing laws with respect to the subject matter. Thus, they are presumed to know the meaning attached to the term “toilet waters” as provided under RR 8-84. And yet, the term “toilet waters” is still used in the law’s enumeration of products subject to tax. I believe that there is no basis to rule that the definition of toilet waters has changed, merely because the provision has been amended. Thus, the definition of “toilet waters” as “containing essential oils of more than 3% by weight” has been carried over to the 1997 Tax Code’s use of the phrase “toilet waters” found in Section 150 thereof.

Respondent’s issuance of BIR Ruling No. 043-2000, and its subsequent publication in Revenue Memorandum Circular

No. 17-02, cannot be given effect as the aforementioned issuances expands the definition of "toilet waters", and do not conform to the specific definition under RR 8-84. The BIR ruling and RMC cannot be seen as amending the definition of toilet waters under the regulations. As aptly cited by the petitioner, it has been ruled by the Supreme Court that a Revenue Memorandum Circular is merely an administrative interpretation of the law which cannot be given effect if it is contrary to a Revenue Regulation, to wit:

> "Second. Petitioner contends that what Section 78 required was an information return, not an income tax return. It cites Revenue Memorandum Circular No. 14-85, of then Acting Commissioner of Internal Revenue Ruben B. Ancheta, referring to an "information return" in interpreting Executive Order No. 1026, which amended Section 78.
>
> The contention has no merit. The circular in question must be considered merely as an administrative interpretation of the law which in no case is binding on the courts. The opinion in question cannot be given any effect inasmuch as it is contrary to Section 244 of Revenue Regulation No. 2, as amended, which was issued by the Minister of Finance pursuant to the authority granted to him by Section 78 of the Tax Code. x x x"[2]

Clearly, the definition of "toilet waters" under RR 8-84 must still be followed including the requirement of essential oil content of more than 3% by weight. As such, petitioner's products which have less than 3% essential oil content by weight should not be subject to the 20% excise tax under Section 150(b) of the 1997 Tax Code.

WHEREFORE, I vote that the instant Petition for Review be GRANTED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[2] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 144653, August 28, 2001.