REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

C.T.A. Case No. 7635

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 16 2011
ABPernant 3:31p.m.

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AMENDED DECISION

COTANGCO-MANALASTAS, J.:

For resolution are respondent's Motion for Reconsideration filed on February 7, 2011 and petitioner's Motion for Clarification/Partial Reconsideration filed through registered mail on February 8, 2011, seeking reconsideration of the Decision dated January 20, 2011. The Assailed Decision granted petitioner's claim for refund or issuance of tax credit certificate of its erroneously paid excise taxes, as follows:

> "WHEREFORE, finding merit in the instant Petition for Review, the same is hereby PARTIALLY GRANTED. Accordingly, respondent is ordered to refund or issue a tax credit certificate to petitioner in the amount of P48,817,178.85, representing erroneously paid excise taxes on products with essential oil content of 3% or less for the period May 17, 2005 to February 20, 2007."[1]

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[1] *Rollo*, C.T.A. Case No. 7635, p. 958.

Respondent, in its motion for reconsideration, reiterates the argument that Revenue Memorandum Circular No. 43-2000 is a valid interpretation of Section 150(b) of the 1997 Tax Code, as amended. Respondent further posits that Section 150(b) is clear, without any distinction as to the definition of toilet waters particularly as to the percentage of essential oils it contains.[2] On the other hand, petitioner requests clarification of the decision such that it be declared as not liable to pay the excise tax on its removals of splash colognes and body sprays with essential oil content of not more than 3% by weight and accordingly, order respondent to cease and desist from collecting the said excise taxes on such products.[3]

The foregoing issues hinge on the proper application of Section 150(b) of the 1997 Tax Code, as amended, 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:
>
> x x x
>
> (b) Perfumes and toilet waters;
>
> x x x"

In the Assailed Decision, we applied the definition of "toilet waters" under Revenue Regulations (RR) No. 8-84[4] in ruling that petitioner's products which have less than 3% essential oil content by weight are not subject to the 20% excise tax.

After further deliberation and deep introspection, we are constrained to reverse our findings and rule that petitioner is not entitled to refund or issuance of tax credit certificate of the 20% excise taxes paid for the reasons below.

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[2] *Rollo*, pp. 960-967.
[3] *Rollo*, p. 987.
[4] *Cosmetic Products Regulations*, June 5, 1984.

RR No. 8-84 was issued in relation to the then percentage tax applied on sales of cosmetic products under Section 194(b) and (e) of the 1977 Tax Code. Said provision provides:

> "Sec. 194. Percentage tax on sales of non-essential products. – 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 fifty per centum 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.
>
> x x x
>
> (b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrices, tooth paste, talcum and medicated toilet powders, hair oils and pomades.
>
> x x x
>
> (e) Similar or analogous articles, substances, or preparations to those enumerated above as determined by the Minister of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product."

Section 194, which was renumbered to Section 163[5], underwent several amendments until 1988, when it was amended and finally renumbered as [the present] Section 150(b) by Executive Order (EO) No. 273[6]. Thus, under EO No. 273, the percentage sales tax on various cosmetic products was changed to the 20% excise tax on perfumes and toilet waters. Section 29 of EO No. 273 further provides that "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."

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[5] *Presidential Decree No. 1994*, November 5, 1985, Section 23.
[6] *Adopting a Value-Added Tax, Amending for this purpose certain provisions of the National Internal Revenue Code, and for other purposes*, dated July 25, 1987, Section 16.

There was no intent to apply RR No. 8-84, referring to sales taxes, to the new value-added and excise tax system under E.O. No. 273. In fact, there was no more need for the Cosmetic Products Regulations since E.O. No. 273 deleted the other cosmetic products contained in Section 163(b) of the old Tax Code and limited itself to "perfumes and toilet waters" in Section 150(b) of the 1997 Tax Code, as amended.

Based on the foregoing, RR No. 8-84, which applied to percentage sales tax on cosmetic products, does not apply to Section 150(b) of the 1997 Tax Code, as amended, which refers to excise tax.

We agree with respondent that Section 150(b) of the 1997 Tax Code, as amended, makes no distinction as to the type of perfume or toilet waters which shall be subject to the 20% excise tax. The 1997 Tax Code does not provide the definition of perfumes or toilet waters which leads this Court to conclude that such terms have been used in their ordinary meaning.

Clearly, with the repeal of RR No. 8-84 by EO No. 273, the definitions made therein of the terms "perfume" and "toilet waters" were also repealed.

Parenthetically, perfumes and toilet waters are widely understood to mean preparations or liquids meant for putting fragrance on the skin, and are generally interchangeable. Thus, producers may distinguish between perfumes, eau de cologne and eau de toilette, but the same are collectively referred to as perfumes or colognes. Even Hawley's Condensed Chemical Dictionary, which was cited in BIR Ruling No. 43-2000[7], dated September 15, 2000, reinforces the interchangeability of perfume and toilet waters, to wit:

> "In reply, please be informed that the term 'cologne' which is an alcohol-based preparation is defined as follows:

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[7] Subsequently published in Revenue Memorandum Circular No. 17-02, May 24, 2002.

> 'Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant.' (Hawley's Condensed Chemical Dictionary, 11th ed.)" (*Underscoring supplied*)

Therefore, BIR Ruling No. 43-2000, and subsequently, RMC No. 17-02, is the proper application of Section 150(b) as determined by the BIR, whose duty it is to enforce the 1997 Tax Code, as amended. As such, petitioner's products are subject to the 20% excise tax imposed on perfumes and toilet waters.

Even assuming arguendo that RR No. 8-84 was not completely repealed for being inconsistent with E.O. No. 273, this Court finds that there is sufficient basis to rule that petitioner is subject to the 20% excise tax on its products, regardless of the essential oil content of its products. The last paragraph of Section 2 of RR No. 8-84 provides:

> "Articles, substances or preparations which are similar or analogous to the above enumerated articles based on the inherent essentiality of the product shall, likewise be classified as cosmetic products. The similar or analogous articles are those advertised or held out to be suitable for the same purposes mentioned above regardless of the name by which it may be known or distinguished." (*Underscoring supplied*)

Applying the abovementioned provision, petitioner's products, which are all similar in nature to perfumes and toilet waters, whether they are called perfumes, toilet waters, splash colognes or body sprays[8], shall be subject to the 20% excise tax imposed under Section 150(b) of the 1997 Tax Code, as amended.

WHEREFORE, finding merit in respondent's Motion for Reconsideration, the same is hereby **GRANTED**. Accordingly, the Assailed Decision dated January 20, 2011 is hereby **REVERSED** and **SET ASIDE**. The Petition for Review is

[8] *Rollo*, pp. 1, 199 and 859.

DENIED on the ground that petitioner is subject to the 20% excise tax under Section 150(b) of the 1997 Tax Code, as amended.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice