REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AVON PRODUCTS MANUFACTURING, INC., Petitioner,	**CTA CASE NO. 8540**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 1 1 2015 9:43 Am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's **Motion for Reconsideration (Of Decision promulgated on May 4, 2015)**, filed on May 15, 2015, without respondent's comment per Records Verification dated June 18, 2015.

Petitioner seeks reconsideration of the Court's Decision dated May 4, 2015, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit."[1]

In the aforesaid motion, petitioner raises the following grounds:

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[1] Docket, p. 1481.

I. The definition of toilet waters under BIR Ruling 43-2000 and RMC 17-02 is invalid, devoid of legal force and effect and cannot supplant the legal definition of toilet waters under Revenue Regulations No. 8-84 because under Section 224 of the 1997 NIRC only the Secretary of Finance can provide the legal definition of "toilet waters" and the details of Section 150 (b) of the 1997 NIRC.

II. The power of the Commissioner of Internal Revenue to interpret tax laws does not include the power to promulgate Revenue Regulations. Under Section 244 of the 1997 NIRC, the Commissioner of Internal Revenue can only recommend to the Secretary of Finance a Revenue Regulations.

III. The legal definition of toilet waters under Revenue Regulations 8-84 still applies in construing Section 150(b) of the 1997 NIRC under the rules of statutory construction such as the principle of legislative approval of administrative interpretation by reenactment.

IV. The obstinate refusal of the respondent to answer whether or not it collects the 20% excise tax on the colognes to the addressee of BIR Ruling 43-2000 and the other evidence adduced by petitioner show that respondent has not abandoned the legal definition of toilet waters under Revenue Regulations No. 8-84 and has not in fact enforced BIR Ruling 43-2000 even against the addressee.

V. Section 150(b) of the NIRC which is a taxing provision should be strictly construed against the government. The rule on strict construction of tax exemption is not applicable in the instant petition.[2]

The Court finds the motion unmeritorious.

The definition of "toilet waters" under Revenue Regulation (RR) No. 8-84, issued on June 5, 1984, is no longer applicable considering that the provision of law which the regulation seeks to implement has

[2] Docket, pp. 1487-1488.

long been amended. The subsequent issuance of Revenue Memorandum Circular (RMC) No. 17-2002, publishing BIR Ruling No. 043-2000, created a new definition of "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant, and classified all other colognes as "toilet waters" subject to excise tax under Section 150(b) of the National Internal Revenue Code (NIRC) of 1997.

A perusal of the BIR Ruling reveals that it contains the CIR's interpretation of Section 150(b) of the NIRC of 1997. BIR Ruling is considered as official position of the Bureau to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws.[3] Evidently, the BIR Ruling was issued in the exercise of CIR's power to interpret tax law pursuant to Section 4 of the NIRC of 1997, to wit:

> SEC. 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.
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> xxx xxx xxx

When the BIR renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law.[4] Thus, RMC No. 17-2002 and BIR Ruling No. 043-2000 must be given effect since these issuances are the recent interpretation of an existing law. While it is true that the power to promulgate regulations belongs to the Secretary of Finance, it should also be emphasized that the power to interpret the NIRC of 1997 and other tax laws rests within the *exclusive and original jurisdiction* of the respondent.

Furthermore, respondent has the power to recommend to the Secretary of Finance what may eventually be promulgated in the form of rules and regulations pursuant to Section 244 of the NIRC of 1997, *viz*: ge

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[3] http://www.bir.gov.ph/iss_rul/issuances.htm
[4] *La Suerte Cigar and Cigarette Factory vs. Court of Appeals*, G.R. No. L-36130 & L-36131, January 17, 1985, 134 SCRA 29.

> SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

Thus, the Court reiterates its ruling in the assailed Decision, to wit:

> "It cannot be overly emphasized that Section 4 of the NIRC of 1997, as amended, provides that the power to interpret the provisions of the Tax Code and other tax laws shall be under the exclusive and original jurisdiction of the BIR Commissioner, subject to review by the Secretary of Finance.
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> The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts.
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> Since Section 150(b) of the NIRC of 1997, as amended, is silent as to the definition of the term 'toilet waters', the clarification made by respondent in BIR Ruling No. 043-2000 as to the definition of the same is given great weight. Therefore, the definition of 'toilet waters' as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant, and the classification of the same, covering all other colognes, as provided in the Revenue Memorandum Circular No. 17-2002, will apply."

Further, the principle of legislative approval of administrative interpretation by reenactment is inapplicable to the instant case. Section 194 of the NIRC of 1977, which originally imposed percentage tax on toilet waters among others, was not reenacted, rather, it was amended in several instances. The Court has pointed out in the assailed Decision that: ge

> "Aside from renumbering Section 163 as Section 150 of the 1977 Tax Code, EO No. 273 imposed 20% excise tax on the wholesale price or value of 'toilet waters' instead of the previous percentage tax."[5]

Considering that this case is a claim for refund, it is incumbent upon petitioner to discharge the burden of proof of its entitlement to refund. "It is hornbook principle that a claim for a tax refund/credit is in the nature of a claim for an exemption and the law is construed in *strictissimi juris* against the one claiming it and in favor of the taxing authority."[6] Here, petitioner failed to convince the Court of its entitlement to refund.

WHEREFORE, petitioner's **Motion for Reconsideration (Of Decision promulgated on May 4, 2015)** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[5] Docket, p. 1478.
[6] *Metro Manila Shopping Mecca Corp. vs. Toledo*, G.R. No. 190818, June 5, 2013, 697 SCRA 425.