REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AVON PRODUCTS MANUFACTURING, INC., Petitioner,	**CTA Case No. 8812**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 31 2017 2:00 pm

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RESOLUTION

CASANOVA, *J.*:

For the Court's resolution is petitioner's **Motion for Reconsideration (of Decision promulgated on September 22, 2016)**, filed on October 10, 2016, with respondent's **Comment/Opposition (Re: Motion for Reconsideration)**, filed on October 28, 2016.

Petitioner moves for the reconsideration of the Decision promulgated on September 22, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner interposes the following grounds:

1. The definition of "toilet waters" under Bureau of Internal Revenue (BIR) Ruling No. 43-2000 and Revenue Memorandum Circular (RMC) No. 17-2002 is invalid, devoid of legal force and effect, and cannot supplant the definition of "toilet waters" under Revenue Regulations (RR) No. 8-84 because under Section 244 of the 1997 National Internal Revenue Code (NIRC), only the Secretary of Finance can provide the definition of "toilet waters" and the details of Section 150 (b) of the 1997 NIRC.

2. The power of the Commissioner of Internal Revenue (CIR) to interpret tax laws does not include the power to promulgate revenue regulations. Under Section 244 of the 1997 NIRC, the CIR can only recommend to the Secretary of Finance a revenue regulations.

3. The legal definition of toilet waters under RR No. 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.

4. 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 No. 43-2000 and the other evidence adduced by petitioner show that respondent has not abandoned the definition of toilet waters under RR No. 8-84 and has not in fact enforced BIR Ruling No. 43-2000 even against the addressee.

5. The principle of strict interpretation in the imposition of taxes should be applied to the instant case.

On the other hand, respondent claims, among others, that the NIRC of 1997, as amended, did not provide for the definition of the term "toilet waters" as used in Section 150(b) of the same law. Hence, according to respondent, BIR Ruling No. 43-2000 dated September 15, 2000 which was subsequently published in RMC No. 17-2002, correctly defined the term "toilet waters" to include "colognes" subject to excise tax under Section 150(b) of the NIRC of

1997, as amended. He further stresses that the said issuance even declares null and void all previous BIR Rulings pertaining thereto.

At the outset, it must be noted that the foregoing issues are mere reiteration of the issues and arguments previously set forth in petitioner's Memorandum[1] filed before this Court, and which the latter had already considered, weighed, and resolved before it rendered the assailed Decision now sought to be reconsidered.

Petitioner mainly asserts that the definition of "toilet waters" under RR No. 8-84 was not validly amended by BIR Ruling No. 43-2000, which was published in RMC No. 17-2002. Petitioner contends that the power of respondent to interpret the provisions of the NIRC of 1997 does not include the power to supplant the definition of "toilet waters" prescribed by the Secretary of Finance, pursuant to his authority under Section 244 of the NIRC of 1997. Petitioner also claims that Section 244 of the NIRC of 1997 expressly provides that in the promulgation of revenue regulations, the authority of the CIR is only recommendatory. The power to promulgate rules and regulations is only with the Secretary of Finance and not with respondent.

Petitioner's motion has no merit.

The definition of "toilet waters" under RR No. 8-84 is no longer applicable in this case since the provision of law [Section 194(b) of the NIRC of 1977] which the regulation seeks to implement has long been amended. In this regard, respondent issued BIR Ruling No. 043-2000 and RMC No. 17-2002 to interpret the term "toilet waters" under Section 150(b) of the NIRC of 1997, as amended, pursuant to his power to interpret the provisions of the NIRC and other tax laws under Section 4 of the NIRC of 1997, as follows:

> "**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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[1] Docket, (Vol. IV), p. 1667.

Prior to the issuance of BIR Ruling No. 043-2000 and RMC No. 17-2002, there was no prevailing administrative interpretations of Section 150 of the 1997 NIRC, as ruled by this Court *En Banc* in the case of *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[2].

The subsequent issuance of RMC No. 17-2002, which published BIR Ruling No. 043-2000, provided 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 NIRC of 1997.

In the assailed Decision, the Court had already discussed the inapplicability of RR No. 8-84, citing the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[3], as follows:

> "The effectivity and applicability of the said administrative issuances, and the inapplicability of RR No. 8-84, on the other hand, as regards subjecting 'toilet waters' to excise tax regardless of their essential oil content by weight, has been previously upheld by this Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, to wit:
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>> xxx, it bears noting that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts, this interpretation is not conclusive and will have to be ignored if judicially found to be erroneous and clearly absurd or improper.
>>
>> Having previously discussed that RR No. 8-84, which deals with percentage tax on cosmetic products, may not be used to implement Section 150(b) of the NIRC of 1997, as amended, the interpretation therefore, of CIR, in BIR Ruling No. 43-2000 and RMC 17-02, as to the definition of 'toilet water', should be given great weight and respect, after all, CIR is the one vested with the exclusive and original power to interpret

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[2] CTA EB No. 978, November 11, 2013.
[3] CTA EB No. 1275, April 1, 2016.

> the provision of Tax Code and other laws, pursuant to Section 4 of the 1997 NIRC, as amended xxx.
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> xxx xxx xxx
>
> Corollary thereto, Section 4 of the Revenue Administrative Order No. 2-2001 states that '(a)ll rulings and issuances of the Commissioner of Internal Revenue that pertain to the implementation and interpretation of the Tax Code and other tax laws are valid, unless revoked, reversed, modified, or superseded by the Secretary of Finance.'
>
> It bears noting that the Secretary of Finance, who is vested with the power to review the rulings issued by the CIR, made no modification or reversal of the foregoing BIR Ruling and RMC. By such reason, the definition of 'toilet water' as 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 BIR Ruling No. 43- 2000 and RMC 17-02, should apply to all kinds of toilet waters.
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> Thus, applying the foregoing interpretation to the case at bench, respondent's splash colognes and body sprays fall within the purview of the term 'toilet waters', which should be subject to 20% excise tax under Section 150(b) of the 1997 NIRC, as amended."

In the case of *Philippine Health Care Providers, Inc., vs. Commissioner of Internal Revenue*[4], the Supreme Court ruled that the interpretation of an administrative agency which is tasked to implement a statute is accorded great respect and ordinarily controls the interpretation of laws, as follows:

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[4] G.R. No. 167330, September 18, 2009.

"xxx It is well-settled that the interpretation of an administrative agency which is tasked to implement a statute is accorded great respect and ordinarily controls the interpretation of laws by the courts. The reason behind this rule was explained in *Nestle Philippines, Inc. v. Court of Appeals*:

> The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. vs. Commissioner of Customs*, the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret."

Considering that Section 150 of the NIRC of 1997, as amended, did not define the term "toilet waters", and in view of the inapplicability of RR No. 8-84, respondent's interpretation in BIR Ruling No. 43-2000 deserves great weight and respect.

Petitioner further contends that the legal definition of "toilet waters" under RR No. 8-84 still applies in construing Section 150(b) of the 1997 NIRC under the principle of legislative approval of administrative interpretation by reenactment.

In the case of *Alexander Howden & Co., Ltd., et al. vs. The Collector (now Commissioner) of Internal Revenue*[5], the Supreme Court explained the principle of legislative approval by reenactment, as follows:

> "The principle of legislative approval by re-enactment may briefly be stated thus: Where a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions without substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."

The principle of legislative approval of administrative interpretation by reenactment is not applicable to this case. Section 194 of the NIRC of 1977, which originally imposed percentage tax on toilet water among others was not reenacted, but rather, was amended in several instances. The Court stressed in the assailed Decision that:

> "Notably, aside from renumbering Section 163 as Section 150 of the NIRC of 1977, EO No. 273 imposed 20% excise tax on the wholesale price or value of the 'toilet waters' instead of the previous percentage tax. xxx"

In the case of *Compagnie Financiere Sucres Et Denrees vs. Commissioner of Internal Revenue*[6], the Supreme Court ruled that:

> "Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **he who claims an exemption must be able to justify his claim by the clearest grant of statute**

[5] G.R. No. L-19392, April 14, 1965.
[6] G.R. No. 133834, August 28, 2006.

In the instant case, petitioner seeks a refund. Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. xxx

xxx xxx xxx"

Considering that this case involves a claim for refund, the same, therefore, must be construed strictly against petitioner. The burden of proof to establish the factual basis of its claim for refund lies with petitioner. In this regard, petitioner failed to discharge the burden of proof of its entitlement to refund.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of Decision promulgated on September 22, 2016)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

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