Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1275** (CTA Case No. 8378)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
AVON PRODUCTS MANUFACTURING, INC., Respondent.	Promulgated: APR 01 2016 2:20 p.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review[1] filed, *via* registered mail, on February 25, 2015, by petitioner Commissioner of Internal Revenue, praying that the Amended Decision[2] (Assailed Decision) and Resolution[3] (Assailed Resolution) dated September 9, 2014 and February 2, 2015, respectively, of the CTA Third Division be reversed and set aside and, another one be rendered denying the claim for refund.

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested with the authority to act as such, including, *inter alia,* the power to decide disputed assessments, refunds of internal

[1] *En Banc* Rollo, pp. 1-28.
[2] Annex "A" to the Petition for Review, Ibid, pp. 29-64.
[3] Annex "B" to the Petition for Review, Id., pp. 73-77.

revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. She holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[4]

Respondent Avon Products Manufacturing, Inc. (Avon Products) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office 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.[5]

The factual antecedents of the case, as found by the CTA Third Division, are as follows:

> "For the period covering January 4, 2010 to December 31, 2010, petitioner *(Avon Products herein)* filed Three Hundred Sixteen (316) Excise Tax Returns for Automobiles & Non-Essential Goods (BIR Form No. 2200-AN) through the Electronic Filing and Payment System (EFPS). During this period, petitioner alleges that it paid the 20% excise taxes imposed on perfumes and toilet waters under Section 150 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), on its removals of perfumes, toilet waters, splash colognes and body sprays. All the Excise Tax Returns for Automobiles and Non-Essential Goods (BIR Form No. 2200-AN) filed during this period showed an aggregated amount of One Hundred Thirty Six Million Three Hundred Fifty Seven Thousand One Hundred Eleven Pesos and Eighty Centavos (P136,357,111.80) as excise taxes due.
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> Petitioner asserts that out of the total excise taxes it paid during said period, the amount of P38,561,292.43 represents the 20% excise tax erroneously paid by petitioner on removals of splash colognes and body sprays containing essential oils of three percent (3%) or less by weight.
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> Petitioner argues that since the essential oil content of its splash colognes and body spray products is not more than three percent (3%) by weight, these products are not subject to the excise tax on toilet waters imposed under Section 150 of the NIRC of 1997, and thus, claims it erroneously paid excise taxes thereon.

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[4] Par. 1, Parties, Petition for Review, Id., p. 2.
[5] Par. 1, The Facts, May 6, 2014 Decision, Division Docket (Vol. IV), pp. 1826-1827.

On June 27, 2011, petitioner filed a written claim for refund of erroneously paid excise taxes with respondent's *(CIR herein)* Large Taxpayers Service through a letter dated June 6, 2011 and a duly accomplished Application for Tax Credits/Refund (BIR Form 1914).

As grounds for its claims for refund, petitioner alleges that the principal ingredient of its products is denatured alcohol which is exempt from excise tax under Section 134 of the 1997 NIRC, and that its products do not contain essential oils more than three percent (3%) by weight and as such should not be subjected to excise tax under Section 150 of the NIRC, as well as Revenue Regulations (RR) No. 8-84, otherwise known as the 'Cosmetics Products Regulation'.

On October 11, 2011, respondent issued a letter to petitioner denying the claim for refund for lack of legal basis.

Thus petitioner filed the present Petition for Review praying for the refund of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (P38,561,292.43) representing erroneously paid excise taxes on products with essential oil content of three percent (3%) or less by weight for taxable year 2010.

On December 21, 2011, respondent filed her Answer, stating the following Special and Affirmative Defenses, as follows:

'SPECIAL AND AFFIRMATIVE DEFENSES

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of Php38,561,262.43 (sic) allegedly representing excise tax on its removals of splash colognes and body sprays with essential oil content of not more than 3% by weight was not properly documented.

6. 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.

7. Petitioner must show that it has complied with the provisions of Sections 248 and 249 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

8. In the case of *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7873*, 16 August 2011, the Second Division of the Honorable Court categorically ruled:

> Respondent countered that petitioner's claim for refund has no legal basis. Respondent argued that as manufacturer of perfume and toilet waters, petitioner is subject to excise tax pursuant to Section 150(b) of the NIRC of 1997, as amended. She added that Revenue Memorandum Circular No. 43-2000 validly interpreted Section 150(b) of the NIRC of 1997, as amended, which classified 'colognes' as 'toilet waters' subject to excise tax. Accordingly, petitioner's splash colognes and body sprays were rightfully subjected to excise tax.
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> A close scrutiny of the provisions of Revenue Regulations No. 8-84 would show that the application of the Revenue Regulations was limited to taxes imposed under Section 194(b) and (e) of the 1977 Tax Code (subsequently renumbered and amended as Section 163 under Presidential Decree No. 1994), specifically on percentage taxes on cosmetic products. The applicable portions of the said regulation read:
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>> 'SECTION 1. Scope. — Pursuant to Section 236, in relation to Section 4 of the National Internal Revenue Code, the following regulations relating to the **sales tax payable by manufacturers and/or exporters of cosmetic products** are hereby promulgated. These regulations shall be known as Revenue Regulations No. 8-84 or the Cosmetic Products Regulations. **These regulations deal with the tax on cosmetic products imposed by Section 194(b) and (e) and Section 326 of the National Internal Revenue Code, which provides as follows:**

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 a tax to be paid by the manufacturer or producer.

xxx xxx xxx

(b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentrifices, tooth paste, talcum and medicated toilet powders, hair oils and pomades.

xxx xxx xxx

(e) Similar or analogous articles, substances, or preparations to those enumerated above as determined by Minister of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.' *(Emphasis supplied)*

In view thereof, Revenue Regulations No. 8-84, which deals with percentage tax (sales tax) on cosmetic products, may not be adopted to implement Section 150(b) of the NIRC of 1997, which pertains to the imposition of excise tax, a completely different kind of tax.

It may be noted that Section 194 (renumbered as Section 163 under P.D. No. 1994) underwent several amendments until 1988 when it was amended and finally renumbered as (the present) Section 150(b) by Executive Order (EO) No. 273. The primary purpose of which Executive Order No. 273 was enacted is to replace then old percentage taxes with value-added tax (VAT). This is in accordance with the 'whereas clause' provided under the said order which states:

> 'ADOPTING A VALUE-ADDED TAX AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES
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> WHEREAS, there is a need to rationalize the present system of taxing goods and services by imposing a multi-stage value-added tax to replace the tax on original and subsequent sales tax and percentage tax on certain services;
>
> WHEREAS, the adoption of value-added tax is one of the structural reforms provided in the 1986 Tax Reform Program which is designed to simplify tax administration and make the tax system more equitable; and
>
> WHEREAS, it is also necessary to amend, revise and renumber the provisions of the National Internal Revenue Code and to transfer the collection of certain taxes as a consequence of these and previous amendments in order to strengthen and improve tax administration and facilitate compliance thereof.'

By virtue of such enactment, the old statutory principle that only one form of consumption tax shall be imposed on sale of goods, which is either the specific tax or the sales tax, as amended. As a result, the sales tax (percentage tax) imposed under Section 194 of the old Tax Code (renumbered as Section 163 under P.D. No. 1994) was amended and replaced by Section 150), which now imposes excise tax on certain goods. Clearly, the substantial amendment of the provisions under Section 194 of the old Tax Code shows the intent of the legislature to repeal the said provisions and replace it by Section 150 of the present Tax Code.

Since Section 194 of the old Tax Code (amended and renumbered as Section 163 under

P.D. No. 1994), which breathed life on the questioned Revenue Regulations, had already been substantially amended and replaced by Section 150 of the NIRC of 1997, as amended, Revenue Regulations No. 8-84, which depended upon it, is now deemed to be inapplicable.

Likewise, it is significant to note that an amended act is ordinarily to be constructed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead; or, as frequently stated by the courts, so far as regards any action after the adoption of the amendment, as if the statute had been originally enacted in its amended form. And 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. In this case, the NIRC of 1996, as amended, can be construed as if the old Tax Code had been repealed, and a new and independent act in the amended form had been adopted in its stead.

Given the afore-mentioned purpose of the amendment of the previous laws, which is actually to rationalize our taxing system and to replace the tax on original and subsequent sales tax and percentage tax, the amended act, the NIRC of 1997, should then be construed differently from the old tax law.

Relevantly, Section 29 of EO No. 273 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.' Indeed, there was intent on the part of the legislature to repeal regulations inconsistent with EO No. 273, such as Revenue Regulations No. 8-84.

Evidently, the definition of 'toilet waters' under Revenue Regulations No. 8-84 failed to acquire legislative approval upon the enactment of EO No.

273, and thus, may not be invoked by petitioner in its claim for refund.

Now, as to the proper interpretation of the term 'toilet waters' under Section 150(b) of the NIRC of 1997, as amended, it appears that the NIRC of 1997, as amended, did not provide for the definition of the term 'toilet waters.'

Nevertheless, respondent in BIR Ruling No. 43-2000, dated September 15, 2000, which was subsequently published in Revenue Memorandum Circular No. 17-02, interpreted the term 'toilet waters' to include 'colognes,' hence, subjected colognes to excise tax under Section 150(b) of the NIRC of 1997, as amended. The significant parts of the said BIR Ruling read:

> 'In reply, please be informed that the term 'cologne' which is an alcohol-based preparation is defines 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, x x x' *(Emphasis Supplied)*

As the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of her power under Section 254 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.'

Applying the foregoing definition to the instant case, the principal ingredient of petitioner's splash colognes and body sprays is alcohol and the said products are meant for putting fragrance on the skin. 'Therefore, petitioner's splash colognes and body sprays come with the purview of the term 'toilet waters,' which should be subject to 20% excise tax under Section 150(b) of the NIRC of 1997, as amended.

Notably, in the case of Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7635, 16 May 2011, the Third Division of this Court held that splash colognes and body sprays are classified as perfume or toilet waters under Section 150(b) of the NIRC of 1997.

In as much as petitioner's colognes and body sprays are subject to excise tax under Section 150(b) of the NIRC of 1997, as amended, the instant claim for refund must necessarily fail.'

9. Partaking of the nature of exemptions, claims or refund are strictly construed against claimant and cannot be allowed unless grants in the most explicit and categorical language *(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R. SP No. 16432, March 30, 1999)*. Being in the nature of tax exemption, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority *(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)*.

10. 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 such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*.'

On March 15, 2012, both parties filed a Joint Stipulation of Facts and Issues.

On March 5, 2013, petitioner filed its Formal Offer of Documentary and Object Evidence, with respondent filing a Comment (On Petitioner's Formal Offer of Evidence) on March 7, 2013, stating that she has no objections thereto.

On August 22, 2013, respondent manifested in open court that she will not present any evidence, thus the court issued a Resolution on August 30, 2013, requiring both parties to file their respective memoranda.

On September 20, 2013, respondent filed her Memorandum, while petitioner filed its Memorandum on October 7, 2013.

Thus, on October 9, 2013, the Court issued a Resolution submitting the case for decision."[6]

In a Decision[7] promulgated on May 6, 2014, the Third Division of this Court denied Avon Products' Petition for Review, the *fallo* of which reads:

> "**WHEREFORE,** in the light of the foregoing principles, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Undaunted, Avon Products filed a Motion for Reconsideration (of Decision dated May 6, 2014)[8] on May 19, 2014.

Finding merit on the foregoing Motion, the Court in Division issued an Amended Decision[9] on September 9, 2014, which granted Avon Products' claim for refund in the amount of P38,561,292.43. The dispositive portion thereof reads as follows:

> "**WHEREFORE,** premises considered, petitioner's (respondent herein) Motion for Reconsideration is hereby **GRANTED**. Our Decision dated May 6, 2014 is reversed and set aside and an **AMENDED** DECISION is hereby rendered **GRANTING** the instant Petition for Review. Petitioner is held not liable to pay the excise tax on its removals of

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[6] Pages 2 to 8, May 6, 2014 Decision, Division Docket (Vol. IV), pp. 1827-1835.
[7] Division Docket (Vol. IV), pp. 1826-1840.
[8] Division Docket (Vol. IV), pp. 1850-1864.
[9] Division Docket (Vol. IV), pp. 1879-1914.

> splash colognes and body sprays with essential oil content of not more than 3% by weight and, accordingly, respondent is ORDERED TO CEASE AND DESIST from collecting the said excise tax on such products from petitioner.
>
> Respondent (petitioner herein) is also **ORDERED TO REFUND** or issue a tax credit certificate to petitioner in the total amount of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (P38,561,292.43) representing erroneously paid excise taxes on non-essential articles under Section 150 of the National Internal Revenue Code for the period January 4, 2010 to December 10, 2010.
>
> **SO ORDERED.**"

Aggrieved, petitioner filed, *via* registered mail, on September 29, 2014, a Motion for Reconsideration (Re: Amended Decision promulgated on 9 September 2014)[10], which was denied in a Resolution[11] promulgated on February 2, 2015.

By such reason, CIR filed her Petition for Review[12] before the CTA Court *En Banc* on February 25, 2015, with Avon Products' Comment (To Petition for Review dated 9 September 2014)[13], filed on April 27, 2015.

Giving due course to the Petition, the Court *En Banc* ordered both parties to submit their Memoranda within thirty (30) days from receipt of the Resolution[14] promulgated on June 8, 2015.

On June 25, 2015, CIR filed a Manifestation[15] stating therein that she is adopting the arguments/discussions raised in her Petition for Review dated February 25, 2015 as her Memorandum, while Avon Products filed its Memorandum[16] on July 14, 2015.

Hence, this Decision.

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[10] Division Docket (Vol. IV), pp. 1923-1945.
[11] Ibid, pp. 2001-2005.
[12] See footnote no. 1.
[13] En Banc Rollo, pp. 84-89.
[14] Ibid, pp. 91-92.
[15] Id., pp. 93-96.
[16] Id., pp. 98-133.

In the case at bench, CIR raised the following issues for the consideration of this Court:

> "WHETHER OR NOT THE THIRD DIVISION ERRED IN DECLARING RESPONDENT 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.
>
> WHETHER OR NOT THE THIRD DIVISION ERRED IN ORDERING PETITIONER TO CEASE AND DESIST FROM COLLECTING THE SAID EXCISE TAX ON SUCH PRODUCTS FROM RESPONDENT.
>
> WHETHER OR NOT THE THIRD DIVISION ERRED IN ORDERING PETITIONER TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE TO RESPONDENT IN THE AMOUNT OF P38,561,292.43 ALLEGEDLY REPRESENTING ERRONEOUSLY PAID EXCISE TAXES ON NON-ESSENTIAL ARTICLES UNDER SECTION 150 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) FOR THE PERIOD 4 JANUARY 2010 TO 10 DECEMBER 2010."

In her Petition, respondent points out that Executive Order No. 273 was enacted to replace the old percentage taxes with value-added tax; that Revenue Memorandum Circular No. 17-02 (RMC No. 17-02), which emphasized BIR Ruling 43-2000, correctly defines "colognes" as "scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant"; that RMC No. 17-02 declares null and void all previous rulings pertaining thereto; that the CTA *En Banc's* Decision in *Commissioner of Internal Revenue vs. Avon Products Manufacturing Inc.,*[17] CTA Second Division's Decisions in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue cases*[18] *and Dissenting Opinion of Honorable Justice Esperanza R. Fabon-Victorino* in the Assailed Decision support her contention that "respondent's products, i.e., 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 its Memorandum, respondent counters that the definition of toilet waters under RR 8-84 is still in force because Executive Order No. 273 only amended Section 163 of the 1977 NIRC insofar as it relates to the type of tax imposed, but it retained toilet waters as the article taxed.

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[17] CTA EB No. 840 (CTA Case No. 7635), January 29, 2013.
[18] CTA Case No. 7873, August 16, 2011 and CTA Case No. 8207, September 20, 2012.

EO 273 did not repeal Section 163 or its implementing issuance, RR 8-84, in its entirety; that the legislative history of the tax on toilet waters indubitably shows that the legislative intent of EO 273 was to re-enact the definition of toilet waters under RR 8-84 under the VAT and excise tax regime; that the CIR's broad definition of toilet waters prescribed under BIR Ruling 43-2000 and RMC 17-02 contravenes the legislative intent of EO 273 to limit the taxable non-essential articles to luxury items only; that the CIR applies the definition of toilet waters under RR 8-84 even after the amendment introduced by EO 273 took effect. Therefore, she is estopped from repudiating the said definition; that RMC 17-02 publishing BIR Ruling 43-00 is invalid because only the Secretary of Finance can provide the details of what are toilet waters; and, that the tax legislation is strictly construed against the State. The principle of strict construction of claims for refund does not apply.

After a careful and thorough evaluation and consideration of the records and arguments of both parties, as well as the jurisprudence on the matter, *We* find merit in the instant Petition for Review.

The arguments raised by petitioner CIR ultimately boil down to the issue on whether or not 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 NIRC of 1997, as amended.

In order to resolve the foregoing issue, it is imperative to look into the relevant statutory provisions involving the taxation of "toilet water".

Originally, a percentage tax at the rate of seventy percent (70%) was imposed on the gross sales of "toilet waters" under Section 194 of the 1977 Tax Code, to wit:

> "SEC. 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 herein below enumerated a tax equivalent of 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 herein below 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

(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, dentrifices, toothpaste, and talcum or medicated toilet powders." (Emphasis supplied)

The term "toilet water" was first defined under Revenue Regulations No. 8-84 issued on June 5, 1984, in this wise:

SECTION 2. Articles taxable as cosmetic products. — The articles defined as follows shall be taxable as cosmetic products:

xxx xxx 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." (Emphasis supplied)"

The foregoing provision of Section 194 of the 1977 NIRC was later on amended by Presidential Decree (PD) No. 1994 on January 1, 1986, and renumbered as Section 163, which reads as follow:

"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) x x x x

(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.

x x x x."

Section 163 of the 1977 Tax Code was subsequently amended and renumbered as Section 150 (b) by virtue of Executive Order No. 273, which was enacted on July 25, 1987. In this amendment, the 50% percentage sales tax on various cosmetic products was changed to 20% excise tax on the whole sale price or value of perfumes and toilet waters. Pertinent portions of EO No. 273 provide:

"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 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 terms 'imitations thereof' shall include platings and alloys of such metals;
>
> (b) **Perfumes and toilet waters**;
>
> x x x x."

Significantly, the imposition of 20% excise tax on toilet waters was retained in Section 150 (b) of Republic Act No. 8424[19], otherwise known as the Tax Reform Act of 1997, which became effective on January 1, 1988.

Notwithstanding the foregoing amendments or revisions, respondent vigorously argue that EO No. 273 did not repeal Section 163 or its implementing issuance, RR No. 8-84, in its entirety on the ground that EO No. 273 only amended Section 163 of the 1977 NIRC insofar as it relates to the type of tax imposed, but it retained toilet waters as the article taxed.

We do not agree.

As early as January 29, 2013, the CTA Court *En Banc* in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc,*[20] citing the August 16, 2011 Decision[21] of the CTA Second Division in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue,* ruled that the substantial amendment of the provisions under Section 194 of the 1977 NIRC Tax Code shows the intent of legislature to repeal the said provisions and replace it by Section 150 of the 1997 NIRC. The Decision reads in part as follows:

> **"Since Section 194 of the old Tax Code (amended and renumbered as Section 163 under P.D. No. 1994), which breathed life on the questioned Revenue Regulations, had already been substantially amended and replaced by Section 150 of the NIRC of 1997, as amended, Revenue Regulations No. 8-84,**

[19] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.
[20] CTA EB No. 840 (CTA Case No. 7635), January 29, 2013.
[21] Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7873, August 16, 2011.

which depended upon it, is now deemed to be inapplicable.

Likewise, it is significant to note that an amended act is ordinarily to be construed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead; or, as frequently stated by the courts, so far as regards any action after the adoption of the amendment, as if the statute had been originally enacted in its amended form. And 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. In this case, the NIRC of 1997, as amended, can be construed as if the old Tax Code had been repealed, and a new and independent act in the amended form had been adopted in its stead.

Given the afore-mentioned purpose of the amendment of the previous laws, which is actually to rationalize our taxing system and to replace the tax on original and subsequent sales tax and percentage tax, the amended act, the NIRC of 1997, should then be construed differently from the old tax law.

Relevantly, Section 29 of EO No. 273 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.' Indeed, there was intent on the part of the legislature to repeal regulations inconsistent with EO No. 273, such as Revenue Regulations No. 8-84.

Considering the foregoing, RR No. 8-84, which deals with percentage tax (sales tax) on cosmetic products, may not be used to implement Section 150 (b) of the NIRC of 1997, as amended, which pertains to the imposition of excise tax. In other words, the definition of 'toilet waters' under RR No. 8-84 may not be invoked by respondent in its claim for refund." (Emphases supplied)

In a similar case of *Avon Products Manufacturing, Inc. vs. CIR*[22] dated March 18, 2013, the CTA Court *En Banc* upheld the afore-quoted

[22] CTA EB No. 847 (CTA Case No. 7873), March 18, 2013.

Decision of the Second Division and, further stated that Section 150 of the 1997 NIRC is "incompatible with the provisions of Section 194 of the old Tax Code, which pertains to percentage tax (sales tax) on cosmetic products, a tax entirely different to what is imposed by the present provision".

Also, the November 11, 2013 Decision of the CTA Court *En Banc* in Avon *Products Manufacturing, Inc. vs. CIR*[23], eloquently explained how EO No. 273 repealed not only Section 163 of the 1977 NIRC, as amended by PD No. 1994, but also RR No. 8-84, in this wise:

> **"The new Section 150 of the 1977 NIRC as amended by EO 273 is an altogether new section. First, it changed the classification of the imposable tax from a percentage tax to excise tax. Second, it omitted other items or products that it deemed taxable under Section 163 of the 1977 NIRC.**
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> Since it is presumed that the framer of the law — in this case then President Corazon Aquino — knew about RR 8-84 and its enumeration of cosmetic products but still chose to not include certain items in the current amendment, then the omission is deemed to be deliberate pursuant to the doctrine of *casus omissus pro omisso habendus est.*
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> The rule of *casus omissus pro omisso habendus est* states that a person, object or thing omitted from an enumeration must be held to have been excluded intentionally. The principle proceeds from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration. In other words, the maxim operates and applies only if and when the omission has been clearly established, and in such a case, what is omitted in the enumeration may not, by construction, be included therein. The court cannot under its power of interpretation supply the omission even though the omission may have resulted from inadvertence or because the case in question was not foreseen or contemplated.
>
> **The fact of the matter is that the framer of the law had every opportunity to define 'toilet waters' by indicating what amount of essential oil content an alcohol-based product had to have in order to be considered taxable under Section 150, but did not do so. This Court is bereft of power to expand the plain language of the provision by reading into it something that is not there. It must apply the law as it is.**

[23] CTA EB No. 978 (CTA Case No. 8207).

> **As it is patent that the distinction extant in RR 8-84 renders it inconsistent with EO 273, we consider RR 8-84 repealed in accordance with Section 29 of EO 273, its repealing clause."** (Emphases supplied)

In view of the foregoing Decisions of the CTA *En Banc*, respondent cannot find solace in the definition of toilet waters under RR No. 8-84 in invoking its claim for refund of the alleged erroneously paid excise taxes for calendar year 2010.

However, it should be noted that Section 150 (b) of the 1997 NIRC, as amended, failed to define the term "toilet water". The same was only interpreted and defined on September 15, 2005, by the then Commissioner Dakila B. Fonacier, in BIR Ruling No. 043-2000, as "a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant". The CIR also stated therein that "all other colognes are, likewise, classified as toilet waters subject to excise tax", without qualification as to the percentage (by weight) of their essential oil content. Pertinent portions of BIR Ruling No. 043-2000 provide:

> "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, x x x". (Emphasis supplied)

The aforequoted BIR Ruling 043-2000 was subsequently published in Revenue Memorandum Circular No. 17-02 (RMC 17-02) on May 24, 2002. 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, ..."

At this juncture, 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,[24] this interpretation is not conclusive and will have to be ignored if judicially found to be erroneous and clearly absurd or improper.[25]

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 the "toilet water", should be given great weight and respect[26], after all, CIR is the one vested with the exclusive and original power to interpret the provision of Tax Code and other tax laws, pursuant to Section 4 of the 1997 NIRC, as amended, which states:

"**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.

[24] Philippine Bank of Communications v. Commissioner of Internal Revenue, 361 Phil. 916, 929, January 28, 1999, per Quisumbing, J.

[25] Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

[26] Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 978 (CTA Case No. 8207), November 11, 2013; Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 894 (CTA Case No. 8021), September 16, 2013; Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 847 (CTA Case No. 7873), March 18, 2013; Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., CTA EB Case No. 840 (CTA Case No. 7635), January 29, 2013; Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8540, May 4, 2015; Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8373, May 6, 2014; Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8207, September 20, 2012; Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8021, January 10, 2012; Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7873, August 16, 2011; and, Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case no. 7635, May 16, 2011.

x x x x."

Corollary thereto, Section 4 of 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.

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.

As it has been said, time and again, that claims for tax refunds are in the nature of tax exemptions which result in loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted; it is never presumed nor be allowed solely on the ground of equity. In addition, one who claims that he is entitled to a tax refund must not only claim that the transaction subject of tax is clearly and unequivocally not subject to tax — the amount of the claim must still be proven in the normal course, in accordance with the prescribed rules on evidence.[27]

WHEREFORE, finding merit in the instant Petition for Review, the same is hereby **GRANTED**. Accordingly, the Assailed Amended Decision dated September 9, 2014, and the Assailed Resolution dated February 2, 2015, both rendered by the CTA Third Division, are hereby **SET ASIDE**. Respondent's claim for refund in the amount of P38,561,292.43, allegedly representing erroneously paid excise taxes on non-essential articles for the period January 4, 2010 to December 31, 2010 is hereby **DENIED**, for lack of merit.

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[27] Fortune Tobacco Corp. vs. Commissioner of Internal Revenue, G.R. No. 192024, July 1, 2015, citing the cases of Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012 and Calamba Steel Center vs. Commissioner of Internal Revenue, G.R. No. 151857, April 28, 2005.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
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

(I Join Justice Cotangco-Manalastas' Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

AVON PRODUCTS MANUFACTURING, INC.,
Respondent.

CTA EB No. 1275
(CTA CASE NO. 8378)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

APR 01 2016 2:20 p.m.

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DISSENTING OPINION

BAUTISTA, J:

Before the Court is a Petition for Review[1] filed by petitioner Avon Products Manufacturing, Inc. on November 16, 2011, praying for the refund of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (Php38,561,292.43) representing erroneously paid excise taxes on products with essential oil content of three percent (3%) or less by weight, for taxable year 2010.

As grounds for its claim for refund, petitioner alleges that the principal ingredient of its products is denatured alcohol which is exempt from excise tax under Section 134 of the 1997 NIRC[2] and that

[1] Records, CTA Case No. 8378, pp. 6-42, with Annexes.
[2] *Id.*, pp. 1743-1744.

its products do not contain essential oils more than 3% by weight and as such should not be subjected to excise tax under Section 150 of the NIRC, as well as Revenue Regulation ("RR") No. 8-84, otherwise known as the Cosmetics Products Regulation ("Cosmetics Products Regulation").[3]

The main issue is whether or not petitioner's products fall under "perfumes and toilet waters" which are subject to the 20% excise tax on non-essential goods.

With all due respect to my esteemed colleagues, I must dissent on the Decision of the Court.

Section 150 of the 1997 NIRC provides that:

> "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;
>
> xxx xxx xxx"

The definition of "toilet waters" is provided in the Cosmetic Products Regulations,[4] which states that:

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

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[3] *Id.*, p. 5.
[4] Revenue Regulations No. 8-84 dated June 5, 29184.

In the year 2000, the BIR issued a ruling subjecting all colognes to the 20% excise tax on toilet waters. The BIR elucidated as follows:

> "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, aftershave, lotion, or deodorant.' (Hawley's Condensed Chemical Dictionary, 11th *ed.)*
>
> Alcohol-based is that which contains ethyl alcohol or distilled spirits as chief ingredient. In view of the foregoing, Green Cross Baby Cologne is classified as toilet waters covered by Section 150(B) of the Tax Code of 1997 which provides -
>
> xxx xxx xxx
>
> Accordingly, all other colognes are, likewise, classified as toilet waters subject to excise tax under the same section, including Johnson's Baby Cologne which was classified as 'other preparations' by BIR Ruling No. 59-81 dated March 30, 1981 and confirmed by BIR Ruling No. 535-88 dated November 19, 1988.
>
> This Office therefore agrees with the recommendation of Ms. Cleotilde M. Jose, Chief, BIR Laboratory Section, Tax Fraud Division, imposing excise tax on Green Cross Cologne, Johnson's Baby Cologne and all other colognes pursuant to Section 150(b) of the Tax Code of 1997 and hereby declares BIR Ruling No. 59-81 dated March 30, 1981 and BIR Ruling No. 535-88 dated November 19, 1988 null and void."[5]

The same ruling was later published through Revenue Memorandum Circular (RMC) No. 17-02 dated May 24, 2002.

Petitioner alleges that RMC No. 17-02 modified the definition of "toilet waters" without any legal authority, and therefore splash colognes and body spray products with essential oil of not more than

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[5] BIR Ruling No. 043-2000 dated September 15, 2000.

3% by weight should not be subjected to the 20% excise tax, in compliance with the provision of the Cosmetic Products Regulations.

It is my opinion that petitioner's claim is meritorious.

As correctly pointed out by petitioner, all the changes brought about the shift from sales tax to VAT and excise tax, there was no actual change in the definition of "toilet waters" in the Cosmetic Products Regulations, be it by statute or regulation.[6]

Where there is doubt as to the proper interpretation of a statute, the uniform construction placed upon it by the executive or administrative officer charged with its enforcement will be adopted, if necessary to resolve the doubt.[7] Contemporary or contemporaneous construction is the construction placed upon the statute by an executive or administrative officer called upon to execute or administer such statute.[8] The duty of enforcing the law, which devolves upon the executive branch of government, necessarily calls for the interpretation of its ambiguous provision.[9]

Accordingly, executive and administrative officers are generally the very first officials to interpret the law, preparatory to its enforcement. These interpretations are in the form of rules and regulations, circulars, directives, opinions and rulings.[10]

It is thus entitled to great weight and respect by the courts in the interpretation of ambiguous provisions of law, and unless it is shown to be clearly erroneous, contemporaneous construction will control the interpretation of the statute by the courts.[11]

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[6] Records, pp. 1749-1762.

[7] *Agpalo, Ruben E.,* Statutory Construction. 6th Edition, 2009, p. 191 ci ting *Muñoz & Co. v. Hord,* GR No. 4832, January 28, 1909, 12 Phil. 624; *Manila Electric Railroad & Light Co. v. Board of Public Utility Commissioners,* G.R. No. 10241, March 25, 1915, 30 Phil. 387.

[8] *Ibid.,* p. 190 citing *Phil Sugar Central Agency v. Collector of Customs,* G.R. No. L-27761, December 6, 1927, 51 Phil.1 31; *In re Allen,* G.R. No. 1455, October 29, 1903, 2 Phil. 630; *Government vs. Municipality of Binangonan,* G.R. No. L-10202, March 29, 1916, 34 Phil. 518.

[9] *Id..*

[10] *Id.*

[11] Ibid., p. 192 *citing Vera v. Cueva, G.R. No. 33693 May 31,1979,* 90 SCRA 379; *Asturias Sugar Central, Inc. v. Commissioner of Customs,* G.R. No. 19337, September 30, 1967, 29 SCRA 617; *Tan v. Municipality of Pagbilao,* G.R. No. 14264, April 30, 1963, 7 SCRA 887; see also *Tamayo v. Manila Hotel Co.,* G.R. No. L-8975, June 29, 1957, 101 Phil. 810.

In the present case, it should be noted that there is no ambiguity in the provision of the Cosmetic Products Regulations when it defines *"toilet waters"* as:

> "(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: Lavender water, *Eau de* Cologne, *Eau du Toilette."*

The abbreviation *"i.e."* or *"id est"* literally means *"that* is."[12] Legal writers usually write "i.e." to inform the reader that what follows is an explanation of what had just been stated.[13] Thus, the clause *"more than* 3% *by weight"* is not a mere example of the essential oil content but is actually a description of the alcoholic or non-alcoholic preparation containing essential oils. The scented alcoholic or non-alcoholic preparations must have essential oil content of *"more than* 3% *by weight"* in order to be considered as toilet waters under the regulations.

BIR Ruling No. 043-2000 and RMC No. 17-02 expanded the coverage of toilet waters to broaden the definition to include "all other colognes." Thus while the new definition of the BIR under the ruling and the RMC is not directly contrary to the definition under the Regulations, it appears that it failed to consider the specific requirement for "more than 3% essential oil content by weight" contained in the Regulations.

As the more recent issuance, the RMC may be seen as the current interpretation of the BIR with respect to the definition of toilet waters. However, this construction may rightly be examined by the Court as against the earlier Regulations, as follows:

> "The court in a case pointed out the distinction between an interpretation by an executive officer charged with the enforcement of a law and that handed down by an executive official in an adversary proceeding:
>
> > There is indeed a basis for making such a distinction because the position of a public officer, charged with the enforcement of a law, is different from the one who must

[12] *Black's Law Dictionary*, 8th edition
[13] Ulep vs. Mauricio C. Latin Words and Phrases for Lawyers and Students

> decide a dispute. If there is fair doubt, his duty is to present the case for the side which he represents, upon which lies the responsibility for decision. If he surrenders a plausible construction, it will, at least it may, be surrendered forever, and yet it may be right. Such rulings need not have the detachment of a judicial, or semi-judicial decision, and may properly carry bias. It would seem that they should not be authoritative."[14]

Furthermore, the BIR ruling and RMC cannot amend the definition of "toilet waters" under the regulations. 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"[15]

Clearly, the definition of "toilet waters" under the Regulation must still be followed including the requirement for 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 NIRC.

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[14] *Supra* Note 16, citing *Fishgold vs. Sullivan* 154 F 2d(1946)

[15] *Bank of the Philippine Islands v. Commissioner of Internal Revenue,* G.R. No. 144653, August 28, 2001, 363 SCRA 840

Accordingly, I vote for the **GRANT** of the Petition for Review.

LOVELL R. BAUTISTA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

AVON PRODUCTS MANUFACTURING, INC.,
Respondent.

CTA EB No. 1275
(CTA Case No. 8378)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

APR 0 1 2016 2:20 p.m.

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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 hinge on 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.

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.

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

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

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.

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. Thus, I believe that there is no basis to rule that the definition of toilet waters has changed, merely because the provision has been amended. Therefore, 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. 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