REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AVON PRODUCTS MANUFACTURING, INC., Petitioner,	**CTA CASE NO. 7873**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 16 2011 4:00 p.m

x- x

DECISION

CASTAÑEDA, JR., *J.*:

The case involves a Petition for Review filed by Avon Products Manufacturing, Inc. to seek the refund or the issuance of tax credit certificate in the total amount of THIRTY SEVEN MILLION EIGHT HUNDRED EIGHTY THOUSAND FIVE HUNDRED TWO PESOS AND 74/100 (P37,880,502.74), allegedly representing its erroneously paid excise tax.

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.[1] Petitioner is engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet waters, splash colognes, and body sprays.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with the authority to decide, approve and grant tax refunds. She holds office at the BIR National Office Building, Diliman, Quezon City.

On February 11, 2009, petitioner filed a written claim for refund of erroneously paid excise taxes with respondent's Large Taxpayers Service-Excise through a letter dated February 9, 2009.[2] Petitioner asserted that its splash colognes and body sprays are not subject to the twenty percent (20%) excise tax on non-essential goods imposed under Section 150 of the National Internal Revenue Code (NIRC), considering that these products do not contain more than three percent (3%) by weight of essential oils; hence, cannot be considered "toilet waters" as the term is defined under Revenue Regulations No. 8-84, otherwise known as the "Cosmetic Products Regulations". In view thereof, petitioner requested a refund of overpaid excise taxes in the total amount of P37,880,502.74, allegedly representing the 20% excise tax erroneously paid by petitioner on removals of splash colognes and body spays containing essential oils of 3% or less by weight.[3]

Respondent failed to resolve petitioner's written claim for refund, prompting petitioner to file the instant Petition for Review on February 16, 2009.

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[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 154
[2] Par. 2, Stipulation of Facts, JSFI, docket, p. 155
[3] Exhibit "F"

Respondent filed her Answer[4] on March 24, 2009, and interposed the following Special and Affirmative Defenses:

"6. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.

7. 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) xxx
(b) Perfumes and toilet waters;'

8. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR)

9. The amount of Thirty Seven Million Eight Hundred Eighty Thousand Five Hundred Two Pesos and 74/100 (P37,880,502.74) being claimed by petitioner as alleged erroneously paid excise tax for the period February 20, 2007 to December 31, 2007 is not properly documented.

10. 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 v. Manila Jockey Club, Inc., 98 Phil. 670**).'

[4] Docket, pp. 115-120

11. 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**)."

Subsequently, the case was set for pre-trial conference on April 17, 2009.[5]

Respondent's Pre-trial Brief[6] was filed on April 7, 2009; while petitioner's Pre-trial Brief[7] was filed on April 14, 2009.

The parties filed their Joint Stipulation of Facts and Issues[8] on June 2, 2009; which was later approved in a Resolution dated June 4, 2009. In the same Resolution[9], the pre-trial was considered terminated.

During trial, both parties were given the opportunity to present their documentary and testimonial evidence. Exhibits "A" to "L-15-630" were offered by petitioner and thereafter admitted by this Court as part of petitioner's evidence.[10] On the other hand, Exhibits "1" to "3-a" were admitted by this Court as part of the evidence for respondent.[11]

On March 30, 2011, the case was submitted for decision after petitioner filed its Memorandum[12] on March 14, 2011 and respondent filed her Memorandum[13] on March 25, 2011.[14]

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[5] Notice of Pre-Trial Conference dated March 26, 2009, docket, p. 122
[6] Docket, pp. 123-127
[7] Docket, pp. 129-143
[8] Docket, pp. 154-157
[9] Docket, p. 158
[10] Resolution dated April 30, 2010, docket, pp. 475-476
[11] Resolution dated November 25, 2010, docket, pp. 506-507
[12] Docket, pp. 546-617
[13] Docket, pp. 618-634
[14] Resolution dated March 30, 2011, docket, p. 657

The parties submitted the following issues[15] for the Court's resolution:

"1. Whether or not the definition of the term 'toilet waters' under Revenue Regulations No. 8-84 can be validly amended by BIR Ruling No. 43-2000 dated September 15, 2000 which was published in Revenue Memorandum Circular No. 17-02.

2. Whether or not Petitioner's splash colognes and body sprays containing essential oils of 3% or less by weight are subject to the 20% excise tax on toilet waters.

3. Whether or not Petitioner is entitled to a refund of erroneously paid excise tax in the amount of Thirty Seven Million Eight Hundred Eighty Thousand Five Hundred Two Pesos and Seventy Four Centavos (P37,880,502.74) for the period February 20, 2007 to December 31, 2007."

Entrenched in our jurisprudence is the principle that tax refunds are in the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. As tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which the right arises; it cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.[16]

Bearing this in mind, this Court shall now determine whether petitioner's claim for tax refund can be granted.

Petitioner averred that its splash colognes and body sprays should not be classified as "toilet waters" under Section 150(b) of the NIRC of 1997, as

[15] Stipulation of Issues, JSFI, docket, p. 155
[16] G.R. No. 154068, August 3, 2007, *Commissioner of Internal Revenue vs. Rosemarie Acosta*, 529 SCRA 177

amended, invoking the provision under Revenue Regulations No. 8-84; which defined the term "toilet waters" as scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils more than 3% by weight. Considering that petitioner's splash colognes and body sprays purportedly contain essential oils of less than 3% by weight, the said articles should not be subject to excise tax on toilet waters under Section 150(b) of the NIRC of 1997, as amended. The relevant portion of Section 150 of the NIRC of 1997, as amended, 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:
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> xxx xxx xxx
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> (b) Perfumes and toilet waters;"

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.

A close scrutiny of the provisions of Revenue Regulations No. 8-84 would show that the application of the Revenue Regulation 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[17]), specifically on percentage taxes on cosmetic products. The applicable portions of the said regulation read:

> "SECTION 1. *Scope.* — Pursuant to Section 326, 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 Sections 194(b) and (e) and Section 326 of the National Internal Revenue Code, which provides as follows:**
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> > 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.
> >
> > 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, dentifrices, 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 the Minister of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product." (*Emphasis supplied*)

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[17] Section 23, Presidential Decree (P.D.) No. 1994

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 for which Executive Order No. 273 was enacted is to replace the 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 THIS 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, was amended.[18] 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 Regulation, 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 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.[19] 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.[20] In this case, the NIRC of 1997, as amended, can be

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[18] Ortega, National Internal Revenue Code of 1997 Annotated, First Edition 2006, Vol. 2, p. 294
[19] *Demetria Estrada vs. Uldarico Caseda*, G.R. No. L-1560, October 25, 1949, 84 Phil. 791
[20] Agpalo, Statutory Construction, Fifth Edition 2003, p. 390, citing *Palanca vs. City of Manila, et al.*, 41 Phil. 125 (1920)

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 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*)

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 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".[21]

Applying the foregoing definition to the instant case, the principal ingredient of petitioner's splash colognes and body sprays is alcohol[22] and the said products are meant for putting fragrance on the skin. Therefore, petitioner's splash colognes and body sprays come 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.

Notably, in the case of *Avon Products Manufacturing, Inc., vs. Commissioner of Internal Revenue*[23], the Third Division of this Court held that

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[21] G.R. No. 108524, November 10, 1994, Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary, Commissioner of the Bureau of Internal Revenue (BIR), and Revenue District Officer, BIR Misamis Oriental, 238 SCRA 63
[22] Par. 7, Memorandum for the Petitioner, docket, p. 552
[23] CTA Case No. 7635, May 16, 2011

splash colognes and body sprays are classified as perfume or toilet waters under Section 150(b) of the NIRC of 1997.

Inasmuch as petitioner's splash 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.

Time and again, We have held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.[24]

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

[24] *Silkair (Singapore) Pte., Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 638

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division