22-000215-0051

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10855

BASF PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. APRILYN T. POBAR
ATTY. SHERYLL P. CACAYURAN
Bureau of Internal Revenue- Revenue Region No.8B
Legal Division, BIR Regional Office Building
2nd Floor, No.313 Sen. Gil Puyat Avenue
Makati City

ROMULO MABANTA BUENAVENTURA SAYOC & DELOS ANGELES
21st Floor, AIA Tower (formerly Philam Tower)
8767 Roxas Avenue, Makati City

GREETINGS:

You are hereby notified by these presents that on **April 28, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 29, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BASF PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10855**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 28 2025; 1:30PM

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RESOLUTION

CUI-DAVID, J.:

On September 27, 2024, the Court promulgated a Decision (*assailed Decision*),[1] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

The *assailed Decision* denied petitioner's claim for a refund of the alleged erroneously paid and/or collected excise tax and value-added tax (VAT) on its importation of Lactolan ® LS 5879 on May 12, 2020, in the aggregate amount of ₱7,560,000.00.

Unable to agree, petitioner filed the instant *Motion for Reconsideration (of the Decision promulgated on 27 September 2024)*[2] by personal service on October 22, 2024, and via electronic mail (e-mail) on October 23, 2024, praying for the

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1 Docket – Vol. II, pp. 623–642.
2 *Id.* at 643–655.

Court to reconsider the *assailed Decision*, based on the following grounds:

I. Lactolan ® LS 5879 is a cosmetic ingredient, not a vapor product subject to excise tax under Republic Act No. 11467.

II. There is no law imposing excise taxes on the importation of cosmetic ingredients such as Lactolan ® LS 5879.

In support thereof, petitioner avers that in the *assailed Decision*, the Court did not give credence to its contention that Lactolan ® LS 5879 is a cosmetic ingredient intended for skin and hair products and not intended for nicotine use or related to vapor products. The Court allegedly based its decision on the assertion that the *Safety Data Sheet* and *Product Brochure* provided were self-serving and were not supported by any independent proof, such as a License to Operate and Certificate of Product Registration from the Food and Drug Administration (FDA).

However, petitioner points out that under FDA Circular No. 2013-015 dated June 20, 2013, with the subject, "*Deregulation of Bulk Industrial Chemicals Used as Raw Materials in Cosmetic Products and Household Products Considered as Urban Hazardous Substances,*" the importation of chemicals for use as ingredients in the manufacture of cosmetics is no longer regulated by the FDA. And since the importation of Lactolan ® LS 5879 is not regulated, petitioner asserts that its witness' lack of knowledge of whether the importation is regulated by the FDA should not be taken against him since the regulatory matters are handled by a separate department in its organization, not by the Supply Chain. Moreover, petitioner submits that respondent's speculation that Lactolan ® LS 5879 is subject to registration with the FDA should not have been given credence, as respondent did not provide any basis for such speculation.

As regards the Court's finding that the *Safety Data Sheet* and *Product Brochure* offered in evidence are self-serving, petitioner points out that the said *Safety Data Sheet* and *Product Brochure* are standard commercial documents coming from manufacturers/suppliers used in the domestic and international trade, sale, marketing, and distribution of chemical products and substances.

According to petitioner, the practice of preparing a *Safety Data Sheet* of a particular chemical is a standard practice recognized by various government agencies such as the Department of Environment and Natural Resources (DENR), which issued DENR Administrative Order No. 2015-09 dated May 19, 2015 with the subject, "*Rules and Regulations for the Implementation of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) in Preparation of Safety Data Sheet (SDS) and Labelling Requirements of Toxic Chemical Substances.*" Allegedly, the said regulation defines Safety Data Sheet as a "*document prepared by the manufacturer that contains important physical characteristics, ecological, health, safety and toxicological information on chemical substances or mixtures, or ingredients used at the workplace, transported, and utilized by consumers.*" Hence, for petitioner, it is only natural that the *Safety Data Sheet* and *Product Brochure* originate from petitioner and its foreign BASF affiliate, as they are the manufacturers/suppliers of the subject Lactolan ® LS 5879.

Likewise, petitioner contends that the fact that the *Safety Data Sheet* and *Product Brochure* originate from them does not make said *Safety Data Sheet* and *Product Brochure* self-serving because there can be no other source of information on Lactolan ® LS 5879 other than them. Further, its witness, Mr. Angelo Publico, as Supply Chain Manager, is competent to identify and testify on the *Safety Data Sheet* and *Product Brochure* because the safety data sheets and product brochures of the chemicals imported by petitioner are used in the normal course of performing his functions as Supply Chain Manager. Petitioner adds that there is no reason for the Court to disregard the contents of the *Safety Data Sheet* and *Product Brochure,* which indicate that Lactolan ® LS 5879 is a cosmetic ingredient for skin and hair products, especially since government agencies such as the DENR, the Bureau of Customs, and the BIR rely on safety data sheets submitted by manufacturers in the regular and ordinary course of business.

Petitioner also differs with the alleged reasoning of the Court that even if Lactolan ® LS 5879 is a cosmetic ingredient that is not used for its nicotine content and does not contain nicotine, it is still subject to the definition of conventional "freebase" or "classic nicotine" that is liable for excise tax. According to petitioner, Section 3 of Republic Act (RA) No.

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11467[3] clearly states that the excise tax only covers vapor products, which are further classified as (i) nicotine salt or (ii) freebase or classic nicotine. Petitioner asserts that for a cosmetic ingredient like Lactolan ® LS 5879 to fall under the taxing provision, it is necessary first to determine whether it falls within the definition of vapor products before discussing whether it constitutes conventional "freebase" or "classic nicotine". Allegedly, Lactolan ® LS 5879, a cosmetic ingredient for skin and hair care products, does not constitute vapor products subject to excise tax under the law.

Petitioner further contends that no law imposes excise taxes on the importation of cosmetic ingredients such as Lactolan ® LS 5879. Allegedly, in the *assailed Decision*, the Court stated that petitioner failed to provide any specific legal provision to justify that it should be exempt from excise tax.

However, petitioner claims that it is not seeking an exemption from excise taxes on its Lactolan ® LS 5879 importation, asserting that the same is not subject to any excise tax in the first place. According to petitioner, a review of Title VI of the Tax Code (Excise Taxes on Certain Goods) reveals no provisions subjecting raw materials for cosmetics or cosmetic ingredients to any specific excise tax.

In his *Comment/Opposition [To Petitioner's Motion for Reconsideration (of the Decision promulgated on 27 September 2024)]*[4] filed via registered mail on January 2, 2025, and e-mail on January 6, 2025, respondent asks the Court to deny petitioner's Motion for Reconsideration for lack of merit.

Respondent submits that petitioner is mistaken when it argues that the importation of chemicals for use as ingredient in the manufacture of cosmetics, such as Lactolan ® LS 5879, is no longer regulated by the FDA by virtue of FDA Circular No. 2013-015 dated June 20, 2013 or otherwise known as the *"Deregulation of Bulk Industrial Chemicals Used as Raw Materials in Cosmetic Products and Household Products Considered as Urban Hazardous Substances."*

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3 AN ACT AMENDING SECTIONS 109,141, 142, 143,144, 147, 152, 263, 263-A, 265, AND 288-A, AND ADDING A NEW SECTION 290-A TO REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AND FOR OTHER PURPOSES.

4 Docket, pp. 685–688.

According to respondent, Department of Health (DOH) Administrative Order No. 2016-0003 dated February 15, 2016, or the "*Guidelines on the Unified Licensing Requirements and Procedures of the Food and Drug Administration (FDA),*" specifically contains a repealing clause which indicates the intent to repeal all prior inconsistent rules and issuances, to wit:

> "VIII. REPEALING CLAUSE
>
> All issuances, or parts thereof, pertaining to LTO applications covered by this Administrative Order are hereby repealed."

Respondent avers that FDA Circular No. 2013-015 dated June 20, 2013, is a prior issuance than DOH Administrative Order No. 2016-0003 dated February 15, 2016. He also notes that the FDA, a regulatory agency, is under the direct control and supervision of the Department of Health (DOH) pursuant to RA No. 3720, also known as the "*Food, Drug, and Cosmetic Act*".

Hence, for respondent, since the DOH clearly intended to repeal the prior issuance made by an agency under its direct control and supervision, the requirement to secure a License to Operate from the FDA for establishments that are manufacturers, traders, and distributors of cosmetic products still stands.

Petitioner's *Motion for Reconsideration* must fail.

After carefully reviewing the record and thoroughly evaluating the arguments presented by petitioner in its *Motion for Reconsideration*, the Court finds no sufficient or compelling reason to disturb its ruling in the *assailed Decision*. Except for the claim that the importation of chemicals used as ingredients in the manufacture of cosmetics is no longer regulated by the FDA, citing FDA Circular No. 2013-015, all other arguments set forth in petitioner's *Motion* have already been addressed, thoroughly discussed and passed upon by the Court in the *assailed Decision*, specifically on pages 8 to 18.

Regarding the claim that the importation of chemicals for use as an ingredient in the manufacture of cosmetics is no longer regulated by the FDA, citing FDA Circular No. 2013-015, the Court concurs with respondent that the cited FDA

Circular has been superseded by DOH Administrative Order No. 2016-0003.

Notably, in the *assailed Decision*, the Court, citing DOH Administrative Order No. 2016-0003, found that petitioner failed to prove that Lactolan ® LS 5879 qualifies as a "cosmetic" under RA No. 9711[5] for failure to present FDA certificates of registration or an FDA License to Operate indicating that Lactolan ® LS 5879 is recognized as a cosmetic ingredient/product.

Given these findings, the Court sees no valid reason to reconsider or modify the *assailed Decision* of September 27, 2024.

WHEREFORE, premises considered, the *Motion for Reconsideration (of the Decision promulgated on 27 September 2024)* filed by petitioner BASF Philippines, Inc. is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(I vote to deny petitioner's Motion for Reconsideration. Petitioner failed to prove that Lactolan ® LS 5879 is a cosmetic ingredient that is not subject to excise tax under Section 144 of the NIRC.)

ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[5] Food and Drug Administration (FDA) Act of 2009.