REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GREEN CROSS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10401**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
APR 16 2024 2:45 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Green Cross, Inc.'s (**petitioner**'s/**GCI**'s) "Motion for Reconsideration"[1] (**MR**) filed on 03 January 2024, with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Comment (On Petitioner's Motion for Reconsideration)" (**Comment**) filed on 31 January 2024.[2]

In the MR, petitioner seeks to reverse the Court's ruling in the Decision dated 22 November 2023[3] (**assailed Decision**) which denied its claim for refund of its alleged erroneously paid excise taxes and the corresponding value-added tax (**VAT**) on excise taxes, *viz*:

> ...
> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Green Cross, Inc. on 16 November 2020 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
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> ...

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1 Division Docket, Volume VII, pp. 3319-3347.
2 Id., pp. 3355-3362.
3 Id., pp. 3294-3318.

Petitioner argues that the definition of "toilet waters" under Revenue Regulation (**RR**) No. 08-84[4] stayed the same despite the change in the tax type, *i.e.* from sales tax to excise tax. It explains that the Bureau of Internal Revenue (**BIR**) did not provide any subsequent issuances to amend the meaning of "toilet waters" despite changing its tax type. Thus, BIR intended to carry the meaning of "toilet waters" from RR No. 08-84 instead of abandoning it as this Court mistakenly ruled in the assailed Decision.

To bolster its stance, petitioner cites as example the word "quarry resources" which also shifted the tax type from royalty tax under RR No. 13-80[5], to excise tax under the National Internal Revenue Code (**NIRC**) of 1997, as amended. According to it, the definition of "quarry resources" under RR No. 13-80 was still used despite the change in tax type. Hence, based on the foregoing precedent, the principle of legislative approval of administrative interpretation by reenactment is applicable also to the definition of "toilet waters".

Moreover, petitioner claims that since the Secretary of Finance (**SOF**) did not immediately enact any new regulation modifying the definition of "toilet waters" after the change in the tax type only meant that it also did not intend to change the meaning thereof under RR No. 08-84. Although Revenue Memorandum Circular (**RMC**) No. 17-02[6] was issued later to that effect, petitioner declares that an RMC cannot amend or modify an RR.

Further, petitioner clarifies that the SOF and the BIR issued a recent regulation, RR No. 09-2023[7], which defined "toilet water" as referring to "a less concentrated form of any other type of perfume in liquid form used as body fragrance, aftershave or skin freshener and shall include, but is not limited to, *eau de toilette, eau de cologne, eau de fraiche*, colognes, splash colognes, baby colognes, spray-on colognes, body sprays, body mists, body splash, aerosol colognes, aromatic waters such as florida water and lavender water, and aftershave lotions". However, as the said regulation was only approved on 28 July 2023, it amended the definition of "toilet waters" prospectively therefrom. Petitioner opines that RR No. 9-2023 is not applicable to the instant case

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4 Cosmetic Products Regulations.
5 Regulations Governing the Taxation of Minerals and Mineral Products.
6 Green Cross Baby Cologne and all Other Cologne Products.
7 Rules and Regulations Governing the Imposition of Excise Tax on Perfumes and Toilet Waters as Provided under Section 150 (b) of the National Internal Revenue Code of 1997, as Amended.

considering that the refund claim arose from years 2018 to 2019, or prior to its enactment.

Relative thereto, petitioner avers that this Court erred in making its own policy determination when it ruled that the definition of "toilet waters" under RR No. 08-84 should not be made to apply when the tax type changed. It posits that prior to the approval of RR No. 9-2023, no other regulation was issued to change the meaning of "toilet waters". Hence, RR No. 08-84 must be used in ruling upon its claim of refund as it was the only existing regulation defining toilet water at that time.

Petitioner also insists that its splash colognes are basic commodities that should not be subject to excise taxes. It contends that the Court's comparison of the splash colognes to imitation jewelry under Section 150[8] of the NIRC of 1997, as amended, has no basis. Reiterating its argument, petitioner declares that prior to RR No. 9-2023, petitioner's splash colognes were not considered as "toilet waters" that are taxable under the present Tax Code.

On the same contention, petitioner advances the view that the Supreme Court's rulings in *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*[9] (**2015 Avon Products**) and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*[10] (**2022 Avon Products**) are inapplicable since in the latter cases, the following grounds were not argued: (1) that splash colognes are inexpensive basic items which are necessary for everyday use; and, (2) that petitioner presented evidence showing the technical and accepted commercial definition of "toilet waters". With the new factual basis and pieces of evidence, petitioner prays that this Court reconsiders the ruling in the assailed Decision and grants its claim for refund.

Respondent, on the other hand, counter-argues that this Court did not err in denying petitioner's claim for refund. He or she points out that one of petitioner's witness, Theresa Michelle S. Cortes, admitted that the product line of "Lewis & Pearl" splash colognes are considered and marketed as a cologne. He or she also avers that since tax refunds are in the nature of tax exemption, petitioner has the duty to establish

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[8] **Section 150.** ***Non-essential Goods.*** – [.]
[9] G.R. No. 205602, 10 August 2015.
[10] G.R. Nos. 206286, 02 March 2022.

the basis of its exemption. However, in this case, petitioner miserably failed to do so.

We resolve.

An examination of the MR shows that petitioner failed to raise any material arguments that would warrant the reversal of Our previous ruling.

Petitioner's contentions were already addressed in the *2022 Avon Products* where the Supreme Court held rather very clearly that the definition of "toilet waters" under RR No. 08-84 were not carried over in Section 150(b) of Executive Order (**EO**) No. 273 (which changed the tax imposition from sales tax to excise tax). The Supreme Court went on to rule that splash colognes and body sprays are "toilet waters" subject to the excise tax on non-essential goods pursuant to Section 150 (b) of the NIRC of 1997, as amended. The Supreme Court declared:

> ...
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> The question now is whether the definition of toilet waters in RR No. 8-84 was carried over in Section 150 (b) of EO No. 273.
>
> We answer in the negative.
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> When EO No. 273 renumbered Section 163 of PD No. 1994, the enumeration of articles covered by the provision was reduced to three. EO No. 273 modified the kind of tax imposed on "toilet waters" in Section 163 from sales tax, or the tax on the performance, carrying on, or exercise of an activity or business, to excise tax, a tax on the property. The provision was transferred to "Title VI — Excise Taxes on Certain Articles," in Chapter 6, together with "Fireworks," "Cinematographic Films," "Saccharine," and "Automobiles." The alteration in the nature of tax imposed on "toilet waters" in Section 163 (previously Section 194) indicates that a change of law was intended. In *Laguna Metts Corp. v. Court of Appeals*, we held that "[a]s a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment."
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> Indeed, the reclassification of the tax imposed on "toilet waters" into excise taxes is an effective repeal of the old provision. 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 which are inconsistent with th[e] Order are repealed, amended or modified accordingly." RR No. 8-84 specifically deals with the tax imposed on cosmetic products under Sections 194 (b) and (e) of the 1977 Tax Code, to wit:

> 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: (Emphases in the original.)

The sales tax or percentage tax imposed by Section 194 (b) of the 1977 Tax Code on "toilet waters" ceased to exist when EO No. 273 modified the nature of the imposable tax to excise tax under Section 163. In effect, RR No. 8-84, which was integrated into the amended and replaced Section 194 (b) of the 1977 Tax Code, is already inapplicable. **Hence, the definition of the term "toilet waters" as "containing essential oils, *i.e.*, more than 3% by weight" given by RR No. 8-84 cannot be made to apply in determining the "toilet waters" subject to the excise tax under Section 150 (b) of the present Tax Code.**

Finally, we stress that Section 27 of EO No. 273 mandates the Secretary of Finance to promulgate rules and regulations to implement the EO. However, the Secretary of Finance did not issue rules construing the term "toilet waters" as it did in RR No. 8-84. On the other hand, the Commissioner of Internal Revenue (CIR) exercised its authority to interpret the provisions of the Tax Code and issued BIR Ruling No. 043-2000 and Revenue Memorandum Circular (RMC) No. 17-02, treating *all* toilet waters, regardless of essential oil content, subject to the excise tax under Section 150 (b). To date, the Secretary of Finance, who is vested with the power to review rulings of the CIR, has not modified or reversed the CIR's issuances.

It is a settled rule 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. Administrative construction of tax law, while not conclusive, will be followed unless clearly erroneous. Avon Products has not shown why we should deviate from this well-settled rule. Thus, the general interpretation of the statute accorded by the CIR in BIR Ruling No. 043-2000 and published in RMC No. 17-02 shall be given effect. Since Avon Products admitted that the principal ingredient of its splash colognes and body sprays is alcohol, and the products are meant for putting fragrance on the skin, **the CTA correctly concluded that Avon Products' splash colognes and**

> **body sprays are "toilet waters" subject to the excise tax on non-essential goods in Section 150 (b) of the Tax Code. Accordingly, Avon Products is not entitled to a refund.**[11]
>
> ...

In addition, as petitioner pointed out, both the SOF and BIR already issued RR No. 9-2023 which clarified the definition of "toilet water" as including but not limited to **colognes, splash colognes, baby colognes, spray-on colognes, body sprays, body mists, body splash, and aerosol colognes**. Hence, the foregoing issuance reinforces Our ruling that splash colognes are indeed "toilet water" that are subject to excise taxes under Section 150(b) of the NIRC of 1997, as amended.

ACCORDINGLY, petitioner Green Cross, Inc.'s Motion for Reconsideration filed on 03 January 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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11 Citations omitted, emphasis supplied and italics in the original text.