REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8378

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
MAY 6 2014
2:53 p.m.

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DECISION

RINGPIS-LIBAN, *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 (₱38,561,292.43) representing erroneously paid excise taxes on products with essential oil content of three percent (3%) or less by weight, for taxable year 2010.

THE FACTS

Avon Products Manufacturing, Inc. (petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Calamba Premier Industrial Park, Barangay Batino, Calamba, Laguna. Petitioner is engaged in the manufacture of

[1] *Records,* CTA Case No. 8378, pp. 6-9, with Annexes.

cosmetic and personal care products, including perfumes, toilet waters, splash colognes and body sprays.[5]

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.

For the period covering January 4, 2010 to December 31, 2010, petitioner 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).[6] 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.[7] 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 (₱136,357,111.80) as excise taxes due.[8]

Petitioner asserts that out of the total excise taxes it paid during said period, the amount of ₱38,561,292.43 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.[9]

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.

On June 27, 2011, petitioner filed a written claim for refund of erroneously paid excise taxes with respondent's Large Taxpayers Service through a letter dated June 6, 2011 and a duly accomplished Application for Tax Credits/Refund (BIR Form 1914).[10]

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,[11] 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

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[5] *Id.*, Joint Stipulation of Facts and Issues, p. 99.
[6] *Id.*, p. 1735.
[7] *Id.*
[8] *Id.*, pp. 1735-1743.
[9] *Id.*
[10] *Id.*, Joint Stipulation of Facts and Issues, p. 99.
[11] *Id.*, pp. 1743-1744.

tax under Section 150 of the NIRC, as well as Revenue Regulation (RR) No. 8-84, otherwise known as the "Cosmetics Products Regulation".[12]

On October 11, 2011, respondent issued a letter to petitioner denying the claim for refund for lack of legal basis.[13]

Thus petitioner filed the present Petition for Review[14] praying for the refund of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (₱38,561,292.43) 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,[15] 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.
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> 5. The amount of Php38,561,262.43 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.
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> 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.
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> 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:
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>> 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

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[12] *Id.*, p. 5.
[13] *Id.*, p. 1744.
[14] *Id.*, pp. 6-42, with Annexes.
[15] *Id.*, pp. 54-64

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), specifically on percentage taxes on cosmetic products. The applicable portions of the said regulation read:

> '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 Sections 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
>
> 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, nulls 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) ot 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:
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> > '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, 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 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.
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> 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.
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> 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

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> 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)*.
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> 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.[16]

On March 5, 2013, petitioner filed its Formal Offer of Documentary and Object Evidence,[17] with respondent filing a Comment (On Petitioner's Formal Offer of Evidence)[18] 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,[19] thus the court issued a Resolution on August 30, 2013,[20] requiring both parties to file their respective memoranda.

On September 20, 2013, respondent filed her Memorandum,[21] while petitioner filed its Memorandum on October 7, 2013.[22]

Thus, on October 9, 2013, the Court issued a Resolution submitting the case for decision.[23]

Hence, this Decision.

The Issues

As contained in the Joint Stipulation of Facts and Issues,[26] the following issues are raised for the consideration of this Court:

> "1. WHETHER OT NOT THE DEFINITION OF THE TERM 'TOILET WATERS' UNDER REVENUE REGULATIONS NO. 8-84 (RR 8-84) CAN BE VALIDLY AMENDED BY BIR

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[16] *Id.*, pp. 97-102, with Annex.
[17] *Id.*, pp. 897-952.
[18] *Id.*, pp. 1684-1686.
[19] *Id.*, pp. 1716.
[20] *Id.*, pp. 1718-1719.
[21] *Id.*, pp. 1720-1732.
[22] *Id.*, pp. 1734-1821.
[23] *Id.*, p. 1823.
[26] *Id.*, Joint Stipulation of Facts and Issues, p. 98.

RULING NO. 43-2000 DATED SEPTEMBER 15, 2000 WHICH WAS PUBLISHED IN REVENUE MEMORANDUM CIRCULAR NO. 17-02 (RMC 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 EIGHT MILLION FIVE HUNDRED SIXTY ONE THOUSAND TWO HUNDRED NINETY TWO PESOS AND FORTY THREE CENTAVOS (PHP38,561,292.43)."

The foregoing issues may be summarized into whether or not petitioner's products fall under "perfumes and toilet waters" which are subject to the twenty percent (20%) excise tax on non-essential goods.

The Ruling of the Court

The resolution of this case hinges on the single issue of whether or not petitioner's splash colognes and body spray products may be classified as "toilet waters" which are subject to the twenty percent (20%) excise tax on non-essential goods despite the fact that they contain essential oils of 3% or less by weight.

Petitioner argues that the definition of "toilet waters" under Revenue Regulations No. 8-84[28], otherwise known as the *"Cosmetic Products Regulations"*, still applies. RR 8-84 requires that the product have a minimum essential oil content of more than 3% by weight in order to be considered "toilet waters". Since the essential oil content of petitioner's splash colognes and body spray products is not more than 3% by weight, these products are not "toilet waters" as the term is defined. As such, petitioner's products are not subject to the 20% excise tax on toilet waters under Section 150 of the Tax Code. They erroneously paid taxes thereon for which they are entitled to a refund.

On the other hand, respondent argues that RR 8-84 has been repealed, and that the more recent rulings of the BIR, specifically BIR Ruling No. 043-2000[30], as reiterated in Revenue Memorandum Circular No. 17-02[31] should apply. These rulings defined colognes and toilet waters as **"scented alcohol-based liquid used as**

[28] Cosmetic Products Regulation, June 5, 1984.
[30] Ruling on Proper Tax to be Imposed on Green Cross Baby Cologne product, issued September 15, 2000.
[31] Subject: Green Cross Baby Cologne and Other Cologne Products, issued May 24, 2002.

perfume, after-shave, lotion, or deodorant."[32] The changes in the law have therefore rendered the prior definition of "toilet waters" under RR 8-84 inapplicable.

This Court finds merit in respondent's position. A brief look at the history of how the definition of "toilet waters" has evolved throughout the various amendments of the law, rules and regulations, and other administrative issuances is imperative at this point. Such will ultimately show that "toilet waters", regardless of their essential oil content, are still subject to excise tax.

Initially, "toilet waters" were subject to percentage tax under **Section 194 of the 1977 NIRC**, as follows:

> "Section 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 hereinbelow **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 hereinbelow 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:
>
> x x x
>
> (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. x x x" (*Emphasis supplied)*

The 1977 NIRC did not define "toilet waters".

On June 5, 1984, "toilet waters" was first defined under RR 8-84. This Revenue Regulation was previously issued by the BIR to implement the percentage tax on cosmetic products imposed under Section 194(b) of the 1977 NIRC.

Under RR 8-84, "toilet waters" is defined thus:

> "**Section 2. Articles taxable as cosmetic products**. - The articles defined as follows shall be taxable as cosmetic products:
>
> x x x
>
> (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)*

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[32] *Id.*

RR 8-84 also enumerated the cosmetic products which were subject to the percentage tax as "perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders."

On January 1, 1986, Section 23 of Presidential Decree (PD) No. 1994 amended Section 194 of the 1977 NIRC and renumbered it as Section 163. It further reduced the percentage tax rate from 70% to 50%. Section 23 of PD 1994 reads:

> "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:
>
> 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, dentifrices, toothpaste, talcum and medicated toilet powders, hair oils and pomades.
>
> x x x
>
> Any material, part or accessory of the above-mentioned articles shall be taxed under this section." (*Emphasis supplied)*

On January 1, 1988, **EO 273** amended and renumbered Section 163 of the 1977 NIRC as **Section 150 of the 1977 NIRC**. Furthermore, instead of imposing a percentage tax, an excise tax of 20% based on the wholesale price or value of the "toilet waters" was imposed.

The pertinent section of EO 273 is quoted below:

> **"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 custom duties; net of excise tax and value-added tax, of the following goods:
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> (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 filing, 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;**
>
> (c) Yachts, and other vessels intended for pleasure or sports." (*Emphasis supplied*)

Although the Tax Code had undergone several amendments and revisions to this point, the essential wording of the provision dealing with these cosmetic products remained the same. It should be noted that it was only from the issuance of EO 273 wherein the products were limited to two -- "perfumes and toilet waters" -- which were now classified as non-essential goods subject to excise tax.

The "*Tax Reform Act of 1997*" or the 1997 NIRC kept the imposition of excise tax on "toilet waters" also in Section 150 thereof. The amendments made by EO 273 to the 1977 NIRC remained and were adopted in the 1997 NIRC.

On September 15, 2000, the BIR, in response to a query by the Kapunan Imperial Panaguiton & Bongolan Law Offices on the proper tax to be imposed on its client's Green Cross Baby Cologne product, issued BIR Ruling No. 043-2000. The Commissioner of Internal Revenue (CIR) then[33] interpreted and defined the term "toilet waters" as *"a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant"*[34].

The CIR also categorically ruled that all other colognes were classified as "toilet waters" subject to excise tax under section 150 (b) of the 1997 NIRC, without qualification as to the percentage (by weight) of their essential oil content. 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.)
>
> x x x

[33] CIR Dakila B. Fonacier.
[34] BIR Ruling No. 043-2000 citing Hawley's Condensed Chemical Dictionary, 11th ed.

> Accordingly, **all other colognes are, likewise, classified as <u>toilet waters subject to excise tax</u> under the same section, xxx."** (*Emphasis supplied)*

The aforequoted BIR Ruling 043-2000 was eventually published in Revenue Memorandum Circular No. 17-12 (RMC 17-12) on May 28, 2002. It is the standing administrative issuance[35] that amplifies Section 150 of the NIRC of 1997.

The effectivity and applicability of both these administrative issuances as regards subjecting "toilet waters" to excise tax regardless of their essential oil content by weight has been previously upheld by this Court in *Avon Products Manufacturing Inc. vs CIR*[38] promulgated last September 16, 2013, where we said:

> "Well-settled is the rule that rulings of administrative agencies which interprets *(sic)* the law are persuasive and deserves *(sic)* great weight[39] provided that they are in harmony with the Constitution and the laws they aim to implement. In relation thereto, under Section 4 of the 1997 NIRC, the CIR is vested with the exclusive and original power to interpret tax laws, viz:
>
>> '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.'**
>>
>> The power to decide disputed assessments, refunds, of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." (*Emphasis supplied*)
>
> The aforequoted provision of the 1997 NIRC is clear and unequivocal. The CIR has the power to interpret the provisions of the NIRC and other national tax laws, subject to review by the Secretary of Finance. In issuing BIR Ruling No. 043-2000, the CIR was merely exercising its power of interpreting a provision of the NIRC. It is worthy to note that the Secretary of Finance, who is vested with the power to review rulings issued by the CIR, has not modified or reversed BIR Ruling No. 043-2000.

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[35] The BIR website defines "Revenue Memorandum Circular (RMCs)" as issuances that publish pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.
[38] CTA EB No. 894 (CTA Case No. 8021), September 16, 2013.
[39] *Id.* citing Chamber of Real Estate And Builders' Associations, Inc., vs. The Hon. Executive Secretary Alberto Romulo, G.R. No. 160756, March 9, 2010 citing Compania General De Tabacos De Filipinas v. Court of Appeals, G.R. No. 147361, March 23, 2004, 426 SCRA 203, 210, citing Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372.

> The CIR's interpretation of the term 'toilet waters' in BIR Ruling No. 043-2000 should be given great weight. The term 'toilet waters' as interpreted by the CIR in BIR Ruling No. 043-2000 did not actually give a new meaning or definition to the term 'toilet waters' as found in Section 150(b) of the 1997 NIRC. The CIR merely did what it was mandated to do, that is, to interpret the law. The CIR correctly followed the tenets of his authority by not unduly qualifying or expanding the meaning of the law. Since Section 150(b) of the 1997 NIRC is silent on the definition of 'toilet waters', the legal maxim *Ubi lex non distinguit, nec nos distinguire debemos*, or if the law does not distinguish should be followed. [40] Thus, without a statutory distinction, the aforementioned BIR Ruling should govern as regards the term 'toilet waters' and it should be applicable to all kinds of toilet waters, which include petitioner's colognes and body sprays."

Accordingly, there is no basis to grant petitioner's claim for refund of the excise taxes paid in the amount of ₱38,561,292.43 on removals of splash colognes and body spray products for the period January 4, 2010 to December 31, 2010. Removals of splash colognes and body sprays even if they contain essential oils of 3% or less in weight remain subject to the 20% excise tax under Section 150 of the 1997 NIRC.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[40] *Id.* citing Colgate-Palmolive Philippine, Inc., vs. Gimenez, G.R. No. L-14787, January 28, 1961; Philippine National Bank vs. Amores, G.R. No. L-54551, November 9, 1987; Amores vs. House of Representatives Electoral Tribunal, G.R. No. 189600, June 29, 2010.

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

AVON PRODUCTS MANUFACTURING, INC., *Petitioner,*	**CTA CASE NO. 8378**
-versus-	Members: **Bautista,** *Chairperson* **Fabon-Victorino,** *and* **Ringpis-Liban, JJ.**
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 6 2014 2:53 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 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 No. 8-84, otherwise known as the Cosmetics Products Regulation ("RR 8-84" or the "Cosmetics Products Regulation").[3]

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[1] *Records*, C.T.A. Case No. 8378, pp. 6-42, with Annexes.
[2] *Id.*, pp. 1743-1744.
[3] *Id.*, p. 5.

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 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 de Toilette."

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[4] Revenue Regulations No. 8-84 dated June 5, 1984.

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, after-shave, 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

[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]

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:

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[6] *Records*, pp. 1749-1762.
[7] *Agpalo, Ruben E.*, Statutory Construction. 6th Edition, 2009, p. 191 citing *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.131; *In re Allen*, G.R. No. 1455, October 29, 1903, 2 Phil. 630; *Government v. 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.

> "(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:
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> > '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 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

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

> 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.
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> 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 v. Sullivan*, 154 F 2d 785 (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 filed by Avon Products Manufacturing, Inc., subject to the verification of its excise taxes on products with essential oil content of less than three percent (3%) or less by weight, for taxable year 2010.

LOVELL R. BAUTISTA
Associate Justice