Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8021

For: Refund of Erroneously Paid Excise Tax

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 1 0 2012

4:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on January 4, 2010 by Avon Products Manufacturing, Inc. as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 7 (a) (2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (2),

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1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. It involves a claim for the refund of its erroneously

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x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; P*rovided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected;

paid excise tax imposed on perfumes and toilet waters under Section 150 of the National Internal Revenue Code (NIRC) of 1997 in the amount of P35,871,643.84 for the period covering January 2, 2008 to December 29, 2008.

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

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Diliman, Quezon City.

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the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

In 1984, Revenue Regulations (RR) No. 8-84, otherwise known as the "Cosmetic Products Regulations" was issued.

Under Section 2(e) of said Revenue Regulations (RR) No. 8-84, "toilet waters" was defined as follows:

> "(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."

Also, under the said issuance, the sale of perfumes and toilet waters was subject to a fifty percent (50%) sales tax as a sale of non-essential articles. The sales tax was collected once on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles based on the gross value in money of the articles so sold, bartered, exchanged or transferred and was to be paid by the manufacturer or producer.

On January 1, 1988, the sales tax was replaced by the value-added tax (VAT) and the excise tax. The sale of perfumes and toilet waters became subject to a twenty percent (20%) excise tax on non-essential goods imposed under Section 150 (b) of the Tax Code upon their removal from the place of production.

Despite a shift from the sales tax to the VAT and excise tax, the definition of "toilet waters" in the Cosmetic Products Regulations was not modified by either statute or regulations. The VAT and excise tax provisions of the Tax Code underwent several amendments since 1986 but the definition of "toilet waters" remained untouched.

On January 4, 2010, petitioner filed a written claim for refund of erroneously paid excise taxes with respondent's Large Taxpayers Service through a letter dated December 29, 2009.

Likewise, on the same date, January 4, 2010, petitioner filed before this Court the instant Petition for Review, praying for the refund of the amount of P35,871,643.84 as erroneously paid excise tax.

In her Answer filed on February 9, 2010, respondent interposed the following Special and Affirmative Defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
>
> 5. 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;'

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

7. The amount of P35,871,643.84 being claimed by petitioner as alleged erroneously paid excise tax for the period January 2, 2008 to December 29, 2008 is not properly documented.

8. 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 vs. Manila Jockey Club, Inc., 98 Phil. 670).

9. 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)."

During trial, petitioner presented six (6) witnesses, namely: Shernan Balilo, Santos H. Collado, Manuel Joey T. Adriatico, Lloyd John C. Godilano, Jerome Antonio B. Constantino and Jocelyn Rafael.

On December 3, 2010, petitioner filed its Formal Offer of Evidence with respondent's comment. This Court in its Resolution dated January 12, 2011 admitted Exhibits "B" to "B-3", "A-1" to "A-3", "C" to "C-5", "D" to "D-4", "G", "H", "E-1" to "E-30-2", "E-37", "E-37-1", "E-37-2", "E-31-a" to "E-36-a-2", "E-30-3" to "E-30-6", "E-37-5", "E-37-3", "E-37-4", "J" to "J-4", "**E-1** (Annex 2 of Exh. K)" to "**E-38** (Annex 39 of Exh. K)", "**E-1** (Annex 2 of Exh. L)" to "**E-38** (Annex 38 of Exh. L)", Exh. "O" and "N" to "N-15-590" inclusive of sub-markings.

Further, this Court in another Resolution dated March 21, 2011, (upon petitioner's Motion for Partial Reconsideration, with manifestation of respondent's counsel that respondent will no longer file a comment) admitted Exhibits "A", "A-4", "E", "E-38", "F", "F-1", "K", "K-1", "L", "L-1", "M", "M-1", "O", "O-1", "G-1", "F-2", "F-2-1", "F-2-2", "**E-38** (Annex 3 of Exh. F)", "E-38-1", "E-38-2", "M-2" to "M-4", "N-1", "I", "N", and "Annex I of Exh. N" to "Annex XXIII of Exh. N". Thereafter, petitioner was deemed to have formally rested its case.

It is noted that Exhibit "E-1" which referred to only one document, was formally offered twice, hence, the same was admitted twice. Also, Exhibit "E-38" which referred to only one document, was formally offered thrice, hence, it was admitted thrice.

The documentary evidence formally offered and admitted are as follows:

Exhibit	Description
A	Affidavit in Lieu of Direct Examination of Mr. Shernan Balilo
A-1	Excise Tax Return for Automobiles & Non-essential Goods (BIR Form 2200-AN) dated December 29, 2007
A-2	Excise Tax Return for Automobiles & Non-essential Goods (BIR Form 2200-AN) dated January 2, 2008
A-2-1	eFPS Payment Details Reference Number 260800001964967 for Tax Period 01/02/2008
A-3	Excise Tax Return for Automobiles & Non-essential Goods (BIR Form 2200-AN) dated December 29, 2008
A-4	Signature of Mr. Shernan Balilo, p. 8
B	Claim for Refund dated December 29, 2009 filed by Avon Products Manufacturing, Inc. with the BIR LTS-Excise Group on 4 January 2010
B-1	Application for Tax Credits/Refund (BIR Form 1914) filed by Avon Products Manufacturing, Inc. and received by BIR LTS-Excise Group on January 4, 2010
B-2	Summary of Excise Tax Returns for 2008, Attachment "A" of the Claim for Refund dated December 29, 2009, received by BIR LTS-Excise Group on January 4, 2010
B-3	Summary of Excise Tax showing the breakdown of products on which excise tax totaling P35,871,643.84 was erroneously paid by Petitioner, Attachment "B" of the Claim for Refund dated December 29, 2009, stamped received by BIR LTS-Excise Group on January 4, 2010, pages 1 and 93.
C	Avon Products Mfg., Inc. Document Entry (Voucher) dated February 15, 2008 page 1
C-1	Avon Products Mfg., Inc. Document Entry (Voucher) dated February 15, 2008 page 2
C-2	KOOL COMPANY, INC. Charge Invoice No. 8210 dated February 15, 2008
C-3	KOOL COMPANY, INC. Quality Assurance Department Certificate of Analysis (Raw Ingredient Specification) dated February 15, 2008
C-4	KOOL COMPANY, INC. Delivery Receipt No. 0999 dated February 15, 2008
C-5	Bureau of Internal Revenue Official Delivery Invoice No. 32841 for Distilled Spirits

D	Avon Products Mfg., Inc. Document Entry (Voucher) dated November 5, 2008 page 1
D-1	Avon Products Mfg., Inc. Document Entry (Voucher) dated November 5 2008 page 2
D-2	Far East Alcohol Corporation Sales Invoice No. 5864 dated November 4, 2008
D-3	Far East Alcohol Corporation Delivery Receipt No. 5883 dated November 4, 2008 page 1
D-4	Bureau of Internal Revenue Official Delivery Invoice No. 0094343 for Distilled Spirits
E	Affidavit in Lieu of Direct Examination of Mr. Santos H. Collado
E-1	Batch Control Sheet - Lot No. 8010390, HEAVEN SCENT COL-Fruity Loops / FI Code I190551GA
E-1-1	RI Code I3200 Alcohol SD 40B, 77.0 %, 816.200 kg
E-1-2	RI Code I57789 NATURAL BLK CHRY & NUT, 2.000%, 21.200 kg
E-2	Batch Control Sheet Lot No. 8051089, HIP fun splash cologne- Citrus /FI Code I190541GA
E-2-1	RI Code I3200 Alcohol SD 40B, 76.830%, 749.093 kg
E-2-2	RI Code I58949 EIGHT 179290, 1.500%, 14.625 kg
E-3	Batch Control Sheet Lot No. 8031008, HEAVEN SCENT COL-Icy Blossoms /FI Code I190521GA
E-3-1	RI Code I3200 Alcohol SD 40B, 76.830%, 595.433 kg
E-3-2	RI Code I58769, ICE MINT 179.289, 1.500%, 11.625 kg
E-4	Batch Control Sheet Lot No. 8080697 HEAVEN SCENT COL- Fruity Blossom/FI Code I119671GA
E-4-1	RI Code I3200, Alcohol SD 40B, 76.000%, 541.880 kg
E-4-2	RI Code I45809, YASSOU FLORAL MF-124614, 1.500%, 10.695 kg
E-5	Batch Control Sheet Lot No. 8040688, HEAVEN SCENT COL- Floral Mist /FI Code I484281GA
E-5-1	RI Code I3200, Alcohol SD 40B, 60.000%, 678.000 kg
E-5-2	RI Code I64629, HEAVEN SCENT 451197, 1.500%, 16.950 kg
E-6	Batch Control Sheet Lot No. 8029201, HEAVEN SCENT COL- Floral Shower/FI Code I443331GA
E-6-1	RI Code I3200 Alcohol SD 40B, 60.000%, 1020.000 kg
E-6-2	RI Code I51789 PROJECT WHITE 443.430E, 2.000%, 34.000 kg

E-7	Batch Control Sheet Lot No. 8031365, FRESH & LIGHT SPLASH COLOGNE-Sweet Crush/FI Code I196971GA
E-7-1	RI Code I3200 Alcohol SD 40B, 60.000%, 1038.000 kg
E-7-2	RI Code I52129 PRIMAVERA LL012951/00, 1.500%, 25.950 kg
E-8	Batch Control Sheet Lot No. 8040567 HEAVEN SCENT COL-Floral Paradise/FI Code I443311GA
E-8-1	RI Code I3200 Alcohol SD 40B, 60.000%, 1095.000 kg
E-8-2	RI Code I6260 TRANQUIL MOMENTS NF-7319, 1.000%, 18.250 kg
E-9	Batch Control Sheet Lot No. 8060892 HEAVEN SCENT SPLASH COLOGNE- Pink Petals /FI Code I196931GA
E-9-1	RI Code I3200 Alcohol SD 40B, 60.000, 1080.000 kg
E-9-2	RI Code I7284 Baby MF-115858, 1.5000%, 27.000 kg
E-10	Batch Control Sheet Lot No. 8111245 COOL BLUE FRESH COLOGNE/FI Code I479431GA
E-10-1	RI Code I3200 Alcohol SD 40B, 75.000%, 470.250 kg
E-10-2	RI Code I63659, AVON HOMEN 285411, 1.500%, 9.405 kg
E-11	Batch Control Sheet Lot No. 8040241, COOL BLUE ICE SPRAY/FI Code I433811GA
E-11-1	RI Code I3200 Alcohol SD 40B, 60.000%, 174.000 kg
E-11-2	RI Code I52219 HOMEN ICE LL012517/00, 1.500%, 4.350 kg
E-12	Batch Control Sheet Lot No. 8090579, COOL BLUE ENIGMA SPLASH COLOGNE/ FI Code I196941GA
E-12-1	RI Code I3200 Alcohol SD 40B, 60.00%, 346.80 kg
E-12-2	RI Code I8434 LAV 002 FIX BAT42951, 2.00%, 11.560 kg
E-13	Batch Control Sheet Lot No. 8041221, COOL BLUE ENERGY COLOGNE/FI Code I433791GA
E-13-1	RI Code I3200 Alcohol SD 40B, 60.000%, 1080.000 kg
E-13-2	RI Code I46189, OCEANIC 237.107, 1.500%, 27.000 kg
E-14	Batch Control Sheet Lot No. 8040598, COOL BLUE AQUA COLOGNE/FI Code I433851GA
E-14-1	RI Code I3200, Alcohol SD 40B, 60.000%, 603.000 kg
E-14-2	RI Code I46199, PLEASANT 28.728, 1.500%, 15.075 kg
E-15	Batch Control Sheet Lot No. 8040730 COOL BLUE CHILL COLOGNE/FI Code I484251GA

E-15-1	RI Code I3200 Alcohol SD 40B, 60.000, 420.00 kg
E-15-2	RI Code I64609, CHILL A0154772/00, 1.500%, 10.500 kg
E-16	Batch Control Sheet Lot No. 8031277, NINA SPLASH COLOGNE-Huggable/FI Code I458581GA
E-16-1	RI Code I3200, Alcohol SD 40B, 60.00%, 132.00 kg
E-16-2	RI Code I62559, HUGGABLE AO045689/00, 2.00%, 4.400 kg
E-17	Batch Control Sheet Lot No. 8031364, NINA SPLASH COLOGNE-Lovable/ FI Code I459241GA
E-17-1	RI Code I3200, Alcohol SD 40B, 60.00%, 1020.000 kg
E-17-2	RI Code I62639, LOVABLE 6793, 1.80%, 30.600 kg
E-18	Batch Control Sheet Lot No. 8100799, NINA SPLASH COLOGNE-Kissable/FI Code I458591GA
E-18-1	RI Code I3200, Alcohol SD 40B, 65.00%, 342.550 kg
E-18-2	RI Code I62529, KISSABLE AN042622/00, 1.50%, 7.905 kg
E-19	Batch Control Sheet Lot No. 8051447, NINA SPLASH COLOGNE-Tickles /FI Code I478521GA
E-19-1	RI Code I3200, Alcohol SD 40B, 60.000, 150.000 kg
E-19-2	RI Code I64049, TICKLES A0045899/00, 2.000%, 5.000 kg
E-20	Batch Control Sheet Lot No. 8120159, NINA SPLASH COLOGNE-Adorable/FI Code I487861GA
E-20-1	RI Code I3200, Alcohol SD 40B, 60.000%, 569.400 kg
E-20-2	RI Code I64879, ADORABLE 451199, 1.500%, 14.235 KG
E-21	Batch Control Sheet Lot No. 8050051, NINA SPLASH COLOGNE-Cuddles/FI Code I484261GA
E-21-1	RI Code I3200, Alcohol SD 40B, 60.000%, 660.000 kg
E-21-2	RI Code I64659, CUDDLES 123733/E, 1.500%, 16.500 kg
E-22	Batch Control Sheet Lot No. 8120533, Heaven Scent Fresca splash cologe/FI Code I743873GA
E-22-1	RI Code I3200, Alcohol SD 40B, 80,000%, 332.000 kg
E-22-2	RI Code I45789, HEAVEN SCENT UP-94-A1, 1.500%, 6.225 kg
E-23	Batch Control Sheet Lot No. 8060768, SWEET HONESTY – One Love Cologne/FI Code I196991GA
E-23-1	RI Code I3200, Alcohol SD 40B, 60.000%, 81.000 kg

E-23-2	RI Code I7193, CLEAN COTTON TD17169, 1.500%, 2.025 kg
E-24	Batch Control Sheet Lot No. 8051417, SWEET HONESTY – Agua de Colonia/FI Code I817093GA
E-24-1	RI Code I3200, Alcohol SD 40B, 69.722%, 344.717 kg
E-24-2	RI Code I5109, AGUA DE COLONIA N-11997, 1.500%, 7.416 kg
E-25	Batch Control Sheet Lot No. 8080435, HEAVEN SCENT COLOGNE – Morning Bliss /FI Code I625073GA
E-25-1	RI Code I3200, Alcohol SD 40B, 76.830%, 301.860 kg
E-25-2	RI Code I8991, INNOCENCE TCW45302/A, 1.500%, 5.893 kg
E-26	Batch Control Sheet Lot No. 8070434, HEAVEN SCENT COLOGNE-Angel Blue/FI Code I670863GA
E-26-1	RI Code I3200, Alcohol SD 40B, 76.830%, 336.960 kg
E-26-2	RI Code I4939, Heaven Scent Blue M97-181, 1.500%, 6.579 kg
E-27	Batch Control Sheet Lot No. 8050788, Heaven Scent Bubble Pink Cologne/FI Code I594681GA
E-27-1	RI Code I3200, Alcohol SD 40B, 60.00%, 300.000 kg
E-27-2	RI Code I66459, NINA PINK AO045900/00, 2.00%, 10.000 kg
E-28	Batch Control Sheet Lot No. 8070435, HEAVEN SCENT COL – Lilac/FI Code I748083GA
E-28-1	RI Code I3200, Alcohol SD 40B, 76.830%, 576.225 kg
E-28-2	RI Code I46059, HEAVEN SCENT LILAC UKO13230, 1.500%, 11.250 KG
E-29	Batch Control Sheet Lot No. 8060617, HEAVEN SCENT COL – Summer Sky/FI Code I755483GA
E-29-1	RI Code I3200, Alcohol SD 40B, 76.830%, 586.981 kg
E-29-2	RI Code I47499, HEAVEN SCENT PW U1007403, 1.500%, 11.460 kg
E-30	Batch Control Sheet Lot No. 8030313, HEAVEN SCENT COL – Sunshine Yellow / FI Code I625013GA
E-30-1	RI Code I3200, Alcohol SD 40B, 76.830%, 1279.200 kg
E-30-2	RI Code I8988, SPLASH COLOGNE PN-020-398, 1.500%, 24.975 kg
E-30-3	Finished Ingredient Evaluation Report FI Code I625013GA

E-30-4	Finished Ingredient Evaluation Report FI Code I625013GA Entry for Lot No. 8030313 06 Mar 08
E-30-5	QA Test Logbook page for March 6 -7, 2008
E-30-6	Entry for Lot No. 8030313 in QA Logbook
E-31-a	Batch Control Sheet Lot No. 8111383, Prosport for HIM Body Spray (PACC) /FI Code 519223GA
E-31-a-1	RI Code I3200, Alcohol SD40B, 98.853%, 612.889 kg
E-31-a-2	RI Code I7255, PRO FITNESS RH-2426, 1.000%, 6.200 kg
E-32-a	Batch Control Sheet Lot No. 8111382, Far Away Body Spray (PACC)/ FI Code I146351GA
E-32-a-1	RI Code I3200, Alcohol SD 40B, 98.107%, 608.26 kg
E-32-a-2	RI Code I8665, FAR AWAY TCW45076, 1.750%, 10.850 kg
E-33-a	Batch Control Sheet Lot No. 8080487, Individual Blue for HIM Body Spray (PACC)/ FI Code 146291GA
E-33-a-1	RI Code I3200, Alcohol SD 40B, 98.357%, 609.81 kg
E-33-a-2	RI Code I8429, DENIM F/MEN 143.807, 1.500%, 9.300 kg
E-34-a	Batch Control Sheet Lot No. 8060904, Individual Blue for HER body spray (PACC)/ FI Code I146271GA
E-34-a-1	RI Code I3200, Alcohol SD 40B, 98.357%, 609.813 kg
E-34-a-2	RI Code I8370, HIPSTER TQ-32, 1.500%, 9.300 kg
E-35-a	Batch Control Sheet Lot No. 8050505, Celebre Body Spray (PACC)/FI Code I146221GA
E-35-a-1	RI Code I3200 Alcohol SD 40B, 98.857%, 612.91 kg
E-35-a-2	RI Code I1491, MAGNIFICENT OPT-2-BT512832, 1.000%, 6.200 kg
E-36-a	Batch Control Sheet Lot No. 8110945, Pro Sport for HIM Cologne/ FI Code I701993GA
E-36-a-1	RI Code I3200, Alcohol SD 40B, 72.000%, 79.200 kg
E-36-a-2	RI Code I7206, PRO FITNESS MENS RH-1836, 2.000%, 2.200 KG
E-37	Batch Control Sheet Lot No. 8121012, Heaven Scent Splash Cologne - Citrus Burst/ FI Code I1018351GA
E-37-1	RI Code I3200 Alcohol SD 40B, 60.000%, 1080.000 kg
E-37-2	RI Code I101867, HEAVEN SCENT AP165493/00, 1.500%, 27.000 kg
E-37-3	QA Test Logbook page for December 22-23, 2008

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E-37-4	Entry for Lot No. 8121012 in QA Logbook
E-37-5	WO Inspection Detail for Lot No. 8121012 of FI Code I10183551GA
E-38	Batch Control Sheet Lot No. 8070437, Heaven Scent SC Fruity Loops/ FI Code I1015591GA
E-38-1	RI Code I3200, Alcohol SD 40B, 77.000%, 773.850 kg
E-38-2	RI Code I57789, NATURALS BLK CHRY & NUT, 2.000%, 20.100 kgs.
F	Supplemental Affidavit in Lieu of Direct Examination of Mr. Santos H. Collado
F-1	Signature of Mr. Santos H. Collado, p.4
F-2	Attachment B of Claim for Refund dated December 29, 2009 consisting of the Summary of Excise Taxes showing the breakdown of products on which excise tax totaling P35,871,643.84 was erroneously paid by Petitioner
F-2-1	Page 48 of 93, Line for Doc No. 498849
F-2-2	Page 44 of 93, Line for Doc No. 498636
G	Basic Batch/Percent Formula for Citrus Burst with Code 1-01835-1GA
G-1	Bill of Material of FI Code I1018351GA Heaven Scent Citrus Burst
H	Bill of Material for Finished Stock of Heaven Scent Citrus Burst SC 100 ml of FI Code I1018351GA
I	PHA Packaging Schedule (4 pages) with 1 page Processing Schedule
J	Bureau of Internal Revenue Ruling No. 59-81 dated 30 March 1981
J-1	Bureau of Internal Revenue Ruling No. 535-88 dated 9 November 1988
J-2	Bureau of Internal Revenue Ruling No. 128-97 dated 10 December 1997
J-3	Bureau of Internal Revenue Ruling No. 43-2000 dated 15 September 2000
J-4	Bureau of Internal Revenue Memorandum Circular No. 17-2002 dated 24 May 2002
K	Affidavit in Lieu of Direct Examination of Mr. Manuel Joey T. Adriatico
K-1	Signature of Mr. Manuel Joey Adriatico, p. 15
L	Affidavit in Lieu of Direct Examination of Mr. Lloyd John C. Godilano
L-1	Signature of Mr. Lloyd John C. Godilano, p. 6

M	Affidavit of Mr. Jerome Antonio B. Constantino in Lieu of Direct Examination
M-1	Signature of Mr. Jerome Antonio B. Constantino, p. 14
M-2	Independent CPA's Report dated September 3, 2009 rendered in CTA Case No. 7378.
M-3	Summary of Excise Tax Returns for the Excise Tax Period February 20, 2007 to December 31, 2007
M-4	Summary of Online Tax Payment Confirmation for the Excise Tax Period February 20, 2007 to December 31, 2007
N	Ring-bound Independent CPA's Report dated June 15, 2010
N-1	Signature of Mr. Jerome Antonio B. Constantino, p. 12
Annex I of Exh. N	Summary of Excise Tax Returns for the Excise Tax Period January 2, 2008 to December 29, 2008
Annex II of Exh. N	Summary of Online Tax Payment Confirmations for the Excise Tax Period January 2, 2008 to December 29, 2008
Annex III of Exh. N	List of Bills of Materials – Finished Stock for the Excise Tax Period January 2, 2008 to December 29, 2008
Annex IV of Exh. N	List of Bills of Materials – Finished Ingredient
Annex V of Exh. N	Comparison of Bill of Materials – Finished Stocks, Bill of Materials – Finished Ingredients and Pre-Marked Batch Control Sheet
Annex VI of Exh. N	Schedule of Erroneously Paid Excise Taxes Supported by Original Duplicate Sales Invoices for the Excise Tax Period January 2, 2008 to December 29, 2008.
Annex VII of Exh. N	Schedule of Erroneously Paid Excise Taxes Supported by Original Duplicate Sales Invoices with Not Clear Photocopy but with Reprinted Copy of Sales Invoices from MACPAC system for the Excise Tax Period January 2, 2008 to December 29, 2008.
Annex VIII of Exh. N	Schedule of Erroneously Paid Excise Taxes Supported by Not Clear Original Duplicate Sales Invoices but traced to Sales Book and with Reprinted Copy of Sales Invoices from MACPAC system for the Excise Tax Period January 2, 2008 to December 29, 2008.
Annex IX of Exh. N	Debit Memo of Erroneously Paid Excise Taxes but traced to Sales Book for the Excise Tax Period January 2, 2008 to December 29, 2008
Annex X of Exh. N	Schedule of Transactional Errors, Adjustments and Sales Returns for Sales Invoices of Erroneously Paid Excise Taxes for the Excise Tax Period January 2, 2008 to December 29, 2008.

Annex XI of Exh. N	Summary of Sample Sales Invoices for each Type of Finished Stock.
Annex XII of Exh. N	Schedule of Estimated Excise Tax Amount of Finished Ingredients that can be used to more than one Finished Stock.
Annex XIII of Exh. N	Schedule of Finished Ingredients with principal ingredient of denatured alcohol and essential oil content of 3% or less which are supported by original BCS signed by the QA Analyst.
Annex XIV of Exh. N	Schedule of Finished Ingredients with principal ingredient of denatured alcohol and essential oil content of 3% or less which are supported by printed BCS duly certified as original by the processing clerk and traced to Finished Ingredient Evaluation Report or PHA Test Logbook.
Annex XV of Exh. N	Schedule of Finished Ingredients with principal ingredient of denatured alcohol and essential oil content of 3% or less which are supported by original BCS signed by the QA Analyst with incomplete detail of date processed but traced to PHA Test Log book.
Annex XVI of Exh. N	Schedule of Finished Ingredients with principal ingredient of denatured alcohol and essential oil content of 3% or less which are supported by original BCS signed by the QA Analyst with Lot Number 8019118 and 8019342 and date processed of January 25, 2007, respectively, but are dated January 2008 in PHA Retest Log Book and/or "Summary of Batch Control Sheet" (Exhibit N-10)
Annex XVII of Exh. N	Schedule of Estimated Excise Tax Amount of Finished Ingredients Converted to Export Finished Stocks.
Annex XVIII of Exh. N	List of Bills of Materials – Export Finished Stock.
Annex XIX of Exh. N	Schedule of Estimated Excise Tax Amount of Finished Ingredients produced before December 29, 2008 but not yet converted to Finished Stocks as of December 29, 2008.
Annex XX of Exh. N	Schedule of Purchases of denatured alcohol supported by original document entry vouchers, supplier's invoices and related delivery receipt and ODI.
Annex XXI of Exh. N	Schedule of Purchases of denatured alcohol supported by original document entry vouchers and certified true copy of documents (supplier's invoices and related delivery receipt and ODI).
Annex XXII of Exh. N	Schedule of Purchases of denatured alcohol -supported by original document entry voucher, supplier's invoices and ODI but without delivery receipt.
Annex XXIII of Exh. N	Schedule of Purchases of denatured alcohol supported by document entry vouchers.

N-1 to N-1j(12)	Photocopies of Excise Tax Returns
N-2 to N-2g(2)	Photocopies of Online Tax Payment Confirmations
N-3	Photocopy of Excise Tax Return dated December 29, 2007
N-4	Breakdown of Sales Invoices of Erroneously Paid Excise Taxes
N-4-1 to N-4-727	Photocopies of Sales Invoices of Erroneously Paid Excise Taxes (2 binders)
N-5	Summary of Excise Tax from MACPAC System
N-6 to N-6x(2)	Photocopies of Bills of Materials – Finished Stock
N-7 to N-7i(1)	Photocopies of Part Transaction History of Inactive Finished Stock
N-8 to N-8d(4)	Photocopies of Bills of Materials – Finished Ingredient and Basic Batch Percent Formula
N-9 to N-9a(1)	Page number 369 and 391 of Sales Book
N-10	Summary of Batch Control Sheets from MACPAC System
N-10-1 to N-10-231	Photocopies of Batch Control Sheets, Finished Ingredient Evaluation Report and Powder and Hydro Alcohol (PHA) Test Logbook (1 binder)
N-10-232 to N-10-785	Photocopies of Batch Control Sheets, Finished Ingredient Evaluation Report and Powder and Hydro Alcohol (PHA) Test Logbook (2 binders)
N-11	Export Sales from MACPAC System
N-12	Query from MACPAC System of Finished Stocks that can be produced by Finished Ingredients included in the Claim
N-13 to N-13h(1)	Photocopies of Bills of Materials – Export Finished Stock
N-14 to N-14z(1)	Photocopies of Part Transaction History of Finished Ingredients Produced before December 29, 2008 but not yet converted to Finished Stocks as of December 29, 2008
N-15	Summary of Purchases of Denatured Alcohol from MACPAC System
N-15-1 to N-15-590	Photocopies of Document Entry Voucher, Supplier's Invoice, Delivery Receipt and Official Delivery Invoice (2 binders)
O	Affidavit in Lieu of Direct Examination of Ms. Jocelyn Rafael
O-1	Signature of Ms. Jocelyn Rafael, page 3
Annex A of Exh. O	Annex XIV of CPA Report dated June 15, 2010

On April 4, 2011, respondent, through counsel, manifested that she will not present any witness.

Hence, on June 16, 2011, as per this Court's Resolution, considering respondent's Memorandum filed on May 18, 2011 and petitioner's Memorandum filed on May 25, 2011, the instant case was deemed submitted for decision,

The parties raised the following issues for this 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 Five Million Eight Hundred Seventy One Thousand Six Hundred Forty Three Pesos and Eighty Four Centavos (P35,871,643.84).
>
> 4. Whether petitioner has exhausted all administrative remedies before filing this Petition."

The foregoing issues can be summarized as follows:

> "WHETHER OR NOT PETITIONER'S SPLASH COLOGNES AND BODY SPRAYS ARE SUBJECT TO 20% EXCISE TAX IMPOSED UNDER SECTION 150 (B) OF THE NIRC OF 1997."

The pertinent portions of Revenue Regulations No. 8-84, dated June 5, 1984, provide:

> "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:
>
>> 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.
>>
>> xxx xxx xxx
>
> 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)*

Section 194 of the 1977 Tax Code was renumbered and amended to read as Section 163 by virtue of Section 23 of Presidential Decree (PD) No. 1994, dated November 5, 1985. Subsequently, on July 25, 1987, Executive Order (EO) No. 273 also renumbered and amended Section 163 to read as Section 150 of the present Tax Code.

Section 29 of EO No. 273 states:

> "SECTION 29. 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."

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.

Section 194 (renumbered and amended to read as Section 163) imposes percentage tax on non-essential products/articles; while the present Section 150 of the NIRC of 1997 imposes excise tax on non-essential goods.

Evidently, there was intent on the part of the legislature to repeal regulations inconsistent with EO No. 273, such as RR No. 8-84. Hence, the definition of "toilet waters" provided by RR No. 8-84 is only applicable to the percentage tax imposed under Section 194 of the 1977 Tax Code. The said definition does not apply to the present Section 150(b) of the NIRC of 1997, which refers to excise tax.

Section 150(b) of the NIRC of 1997 is quoted hereunder for ready reference:

> "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;"

The afore-quoted provision does not provide a definition for the term "toilet waters". However, BIR Ruling No. 043-2000 dated September 15, 2000, which was subsequently published in Revenue Memorandum

Circular No. 17-02 dated May 24, 2002, defined the term “toilet waters” to include “colognes”. The applicable portions of the said BIR Ruling read:

> "In reply, please be informed that the term ‘cologne’ which is an alocohol-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”

As the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, absent any showing that it is plainly wrong, is entitled to great weight. In the instant case, 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”.

Based on the above-mentioned definition, petitioner’s splash colognes and body sprays come within the purview of the term "toilet waters". This is due to the fact that alcohol is the principal ingredient used by petitioner in the manufacture of its splash colognes and body spray products. Thus, it is subject to the 20% excise tax on toilet waters imposed under Section 150(b) of the NIRC of 1997. Accordingly, the claim for refund must be denied.

Well-settled is the legal principle that a claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption therefrom is the exception.

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

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

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.

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice