REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

AVON PRODUCTS MANUFACTURING, INC., Petitioner,	**CTA EB No. 1062** (CTA Case No. 8174)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 16 2015 4:20 p.m.

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DECISION

UY, *J.*:

Before Us is a Petition for Review on Certiorari[1] filed before this Court *En Banc* on September 25, 2013, seeking the reversal and setting aside of the Decision dated May 16, 2013,[2] and the Resolution dated August 15, 2013,[3] both promulgated by the Special Second Division of this Court (hereinafter referred to as "Court in Division") in CTA Case No. 8174, entitled, *"Avon Products Manufacturing, Inc., Petitioner, versus The Commissioner of Internal*

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[1] EB Docket, pp. 5 to 51.

[2] EB Docket, pp. 53 to 78; Penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justice Juanito C. Castañeda Jr., Chairperson, and Associate Justice Caesar A. Casanova, Senior Member.

[3] EB Docket, pp. 80 to 86.

Revenue, Respondent", the dispositive portions of which respectively read:

Decision dated May 16, 2013:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED.** Accordingly, the deficiency excise tax assessment issued by respondent against petitioner on the total shortage of 21,163.49 liters relating to deliveries of denatured ethyl alcohol from January to December 2008 is hereby upheld but in the modified amount of ₱628,984.21, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Basic Tax	₱ 503,187.37
Surcharge	125,796.84
Total	₱628,984.21

In addition, petitioner is **ORDERED TO PAY:**

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency excise tax of ₱503,187.37, computed from the delivery dates indicated in respondent's Computation of Deficiency Excise Tax Per Final Decision on Disputed Assessment until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱628,984.21, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 7, 2010 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Resolution dated August 15, 2013:

"**WHEREFORE,** premises considered, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner 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.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said office, including the power to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is a manufacturer of perfumes, toilet waters, splash colognes and body sprays. It uses denatured ethyl alcohol, which it purchases from two (2) local suppliers, namely: Kooll Company, Inc. and Far East Alcohol Corporation, as raw ingredient in the manufacture of perfumes, toilet waters, splash colognes and body sprays.

The BIR, through Elvira R. Vera, Head Revenue Executive Assistant, LTS-Excise Large Taxpayers, issued to petitioner a Permit to Buy/Use Denatured Alcohol LTADII-(A)-001-01-08-14450 dated January 7, 2008 (hereinafter referred to as "BIR Permit"), authorizing petitioner to purchase denatured alcohol to be used in its production of colognes, purse concentrates, astringents and other related cosmetic preparations.

The BIR Permit was issued subject to conditions, among others: (1) petitioner shall only purchase denatured alcohol from a duly registered distiller/dealer holding a valid Permit to Operate as Distiller/Dealer of denatured alcohol; xxx; (3) all purchases of denatured alcohol from the distiller/dealer shall be supported by an Official Delivery Invoice (ODI) which shall be signed by the Revenue Officer on Premise (ROOP) assigned at the source distillery plant, and the corresponding BIR-registered Sales Invoice and Delivery Receipt shall accompany each and every shipment until it reaches the petitioner's production premises. It was also provided under Condition 3 of the said permit that in the event that the volume of purchased denatured alcohol actually received is more than or less than the volume reflected in the afore-mentioned accompanying documents, the excise tax due on the differences shall be assessed, inclusive of all applicable penalties.

From January to December 2008, petitioner made various purchases of denatured ethyl alcohol from the said two (2) local suppliers, Kooll Company, Inc. and Far East Alcohol Corporation, which were delivered to petitioner's warehouse at Calamba Premiere Industrial Park, Barangay Batino, Calamba, Laguna.

Thereafter, petitioner received from respondent a Preliminary Assessment Notice (PAN) LTFOD-2009-1-A-159 dated December 11, 2009.

Petitioner, through its representative, Shernan V. Balilo, sent a letter protest to the BIR in response to the PAN; attended the informal conference; and submitted supporting documents.

However, on July 8, 2010, petitioner received the Formal Letter of Demand (FLD) LTFOD-2009-1-A-159 dated June 16, 2010 with the attached Computation of Deficiency Excise Tax Per Formal Letter of Demand, finding petitioner liable for deficiency excise tax under Section 141(a) of the NIRC of 1997, as amended, in the amount of ₱1,096,956.43, computed as follows:

Total Discrepancies (in proof liters @ 1.89 proof)	60,779.18
Excise Tax Rate	₱ 12.58
Basic Deficiency Excise Tax	₱ 764,602.08
Interest	332,354.35
Total Deficiency Excise Tax Due	₱1,096,956.43

As detailed in Annex "A" of the FLD, the total taxable discrepancy of 60,779.18 (in P.L.) being subjected to excise tax by respondent represents the following:

(a)the total shortage of 21,163.48 liters relating to deliveries of denatured ethyl alcohol from January to December 2008, which was computed by respondent by comparing the actual volumes received by petitioner with the volumes reflected in the Official Delivery Invoice (ODI) issued by the suppliers and approved by the authorized BIR Officer, which totaled 1,309,000 liters; and

(b)a one-time overage of the actual volume received by petitioner as compared to the volume indicated in the ODI.

Respondent's Large Taxpayers Service Field Operations

Division served on petitioner Assessment Notice No. LTFOD 2009-1-A-159, demanding that petitioner pay deficiency excise tax in the amount of ₱1,096,956.43.

On August 5, 2010, petitioner protested the foregoing assessment by filing a letter-protest dated July 21, 2010 addressed to respondent, through Ms. Zenaida G. Garcia, Assistant Commissioner-LTS Excise and LTDOs.

On September 7, 2010, respondent through its Large Taxpayers Service Field Operations Division served on petitioner, by personal service, the Final Decision on Disputed Assessment (FDDA) dated September 1, 2010.

Respondent maintains that petitioner should be held liable for deficiency excise tax because the BIR Permit to Buy/Use Denatured Alcohol issued to petitioner provides that in the event that the volume of purchased denatured alcohol actually received is more or less than the volume reflected in the documents issued by the supplier, the excise tax on the difference shall be assessed.

Based on the FDDA, there was deficiency excise tax in the amount of ₱1,135,500.85, to wit:

> "In view of the foregoing, there is still found due from you a deficiency excise tax in the amount of ₱1,135,500.85, inclusive of increments assessed pursuant to Section 141(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, as shown below:

	SHORTAGES	OVERAGE	TOTAL
Volume in G.L.	21,163.49	10,994.81	32,158.30
Volume in P.L. @ 1.89 proof	39,999.00	20,780.19	60,779.19
Excise Tax Rate	₱ 12.58	₱ 12.58	₱ 12.58
Basic Deficiency Excise Tax	₱ 503,187.37	₱ 261,414.80	₱ 764,602.17
Interest	235,392.76	135,505.92	370,898.68
TOTAL AMOUNT DUE	**₱ 738,580.13**	**₱ 396,920.72**	**₱1,135,500.85**

The deficiency excise tax on the shortages is computed in the FDDA as follows:

Volume in G.L.	21,163.49
Volume in P.L. @1.89 proof	39,999.00
Excise Tax Rate	₱ 12.58

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Basic Deficiency Excise Tax	₱ 503,187.37
Interest	235,392.76
TOTAL AMOUNT DUE	**₱ 738,580.13**

Respondent imposed the excise tax on distilled spirits under Section 141(a) of the NIRC of 1997, as amended, using the rate applicable beginning January 1, 2007 of ₱12.58 per proof liter (Section 3 of Revenue Regulations No. 3-2006 dated January 3, 2006).

Petitioner admits the computations of shortages and one-time overage stated in Annex "A" of the FLD. Petitioner does not dispute the deficiency excise tax assessment computed based on the one-time overage, but assails the assessment computed based on the shortages.

Hence, petitioner filed a Petition for Review before the Court in Division, involving only the deficiency excise tax assessment on the aggregate shortages of 21,163.48 liters out of the total deliveries in 2008 of 1,309,000 liters per ODI or a loss in volume of about 1.6% of the total deliveries in 2008. The case was docketed as CTA Case No. 8174.

On November 12, 2010, respondent filed her Answer to the said Petition for Review. On November 24, 2010, petitioner filed its Reply thereto. However, on February 4, 2011, petitioner filed a Motion for Leave of Court to Admit Amended Petition for Review with the attached Amended Petition for Review dated February 2, 2010; which was granted by the Court in Division in the Resolution dated February 18, 2011.

Consequently, on March 7, 2011, respondent filed an Amended Answer interposing, among others, the defense that with the filing of an amended Petition for Review, the original petition is deemed withdrawn and ceases to perform any other function as a pleading. Corollary thereto, the date of amended pleading shall stand in place of the date of the superseded pleading. In the instant case (referring to CTA Case No. 8174), petitioner alleged that on September 7, 2010, it received the Final Decision on Disputed Assessment. Counting 30 days from the final decision as mandated by Section 228 of the NIRC, the instant petition is time-barred and the jurisdiction of the Honorable Court (referring to the Court in Division) can no longer be invoked.

On March 28, 2011, petitioner filed a Motion to Admit Attached Reply; which was likewise granted by the Court in Division in the

Resolution dated April 1, 2011.

During trial, petitioner presented its witnesses: Eduardo A. Panganiban, its Warehouse Assistant Manager; Santos H. Collado, its Quality Assurance Group Manager; and Shernan V. Balilo, its Manager for Finance. Thereafter, on October 4, 2011, petitioner filed its Formal Offer of Evidence, submitting Exhibits "A" to "HH," inclusive of sub-markings; which the Court in Division admitted, with the exception of Exhibits "I," "N," "O," "V," "EE," "EE-1," and "EE-2," in the Resolution dated October 25, 2011.

On the other hand, respondent presented Erninfo V. Villeza and Conrado P. Item as her witnesses. Thereafter, respondent filed her Formal Offer of Documentary Evidence dated May 16, 2012, submitting Exhibits "1" to "10-a," which the Court in Division admitted in the Resolution dated June 26, 2012.

On August 31, 2012, the case was submitted for decision, taking into consideration the Memorandum for the petitioner filed on July 27, 2012 and respondent's Memorandum filed on August 28, 2012. In the Resolution dated January 17, 2013 of the Court in Division, the Reply Memorandum for the Petitioner dated September 20, 2012 was admitted.

As already stated, the Court in Division denied the Petition for Review in the assailed Decision.

Aggrieved, petitioner filed its *Motion for Reconsideration (Of the: Decision dated 16 May 2013)* on May 31, 2013.[4] The said Motion, however, was denied by the Court in Division in the assailed Resolution.[5]

Undaunted, petitioner filed before the Court *En Banc* a *Motion for Extension of Time To File Petition for Review on Certiorari*[6] on September 10, 2013. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from September 11, 2013, or until September 26, 2013, within which to file its Petition for Review.[7]

On September 25, 2013, petitioner filed the instant *Petition for*

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[4] Division Docket (CTA Case No. 8174), pp. 642 to 674.
[5] EB Docket, pp. 80 to 86; Division Docket (CTA Case No. 8174), pp. 679 to 685.
[6] EB Docket, pp. 1 to 3.
[7] EB Docket, p. 4.

Review on Certiorari[8] before the Court *En Banc*, praying for the reversal of the Decision dated May 16, 2013 and the Resolution dated August 15, 2013 of the Court in Division in CTA Case No. 8174; and that petitioner's Amended Petition for Review in the same case be granted, rendering judgment:

1) Declaring the deficiency excise tax assessment in the amount of ₱738,580.13 as void and/or devoid of factual or legal basis;
2) Cancelling the said deficiency excise tax assessment;
3) Declaring the provision that petitioner shall be assessed excise taxes in the event that the volume of purchased denatured alcohol actually received is less than the volume reflected in the accompanying documents found in Condition No. 3, 2nd paragraph of the BIR Permit to Buy/Denatured Alcohol LTADII-(A)-001-01-08-14450 dated January 7, 2008, the BIR Renewal ETRD-(A)-028-012-010-01995) dated December 22, 2010 and in similar permits that respondent may issue to petitioner in the future, null and void and of no legal force and effect, and further ordering respondent to delete the said provision in all future Permits to Buy/Use Denatured Alcohol that it will issue to petitioner.

Without necessarily giving due course to the *Petition for Review on Certiorari*, respondent was ordered by the Court *En Banc* to file her Comment thereto.[9] Correspondingly, respondent filed her *Comment/Opposition (Re: Petition for Review)* on November 18, 2013.[10]

Considering the issues raised by petitioner, with respondent's comment, the Court *En Banc* resolved to give due course to the instant petition for review and required the parties to submit their respective Memorandum.[11] However, in lieu of Memorandum, both parties filed their respective manifestations, to wit: respondent, in her Manifestation filed on January 9, 2014,[12] intimated that she is adopting her *Comment/Opposition (Re: Petition for Review)* filed on November 18, 2013 as her Memorandum; while petitioner, in its Manifestation filed on February 4, 2014,[13] stated that it is adopting its Petition for Review dated September 25, 2013 and the annexes thereto as its Memorandum.

Thereafter, the case was submitted for decision on April 8,

[8] EB Docket, pp. 5 to 51.
[9] EB Docket, pp. 447 to 448.
[10] EB Docket, pp. 449 to 460.
[11] EB Docket, pp. 462 to 463.
[12] EB Docket, pp. 464 to 467.
[13] EB Docket, pp. 469 to 470.

2014.[14] Hence, this Decision.

ASSIGNMENTS OF ERRORS

Petitioner raises the following grounds in support of its Petition, to wit:

"GROUNDS FOR THE PETITION

A.

THE SECOND DIVISION SERIOUSLY ERRED IN REQUIRING PROOF THAT THE ARTICLE IN QUESTION IS DENATURED ALCOHOL AND THEN RULING THAT IT WAS NOT SUFFICIENTLY PROVEN THAT DENATURED ALCOHOL IS SUBJECT OF THE ASSESSMENT AND THAT IT IS EXEMPT FROM EXCISE TAX UNDER SECTION 141 OF THE NIRC.

(i) The fact that denatured alcohol is the article purchased by petitioner is NOT IN ISSUE. This fact is evident from the respondent's own issuances.

(ii) The fact that denatured alcohol is the article purchased by the petitioner is NOT IN ISSUE because it is judicially admitted by the respondent.

(iii) In any case, the fact that denatured alcohol is the article purchased by the petitioner is supported by the petitioner's evidence.

B.

THE SECOND DIVISION SERIOUSLY ERRED IN RULING THAT THE EXEMPTION OF DENATURED ALCOHOL FROM EXCISE TAX IMPOSED BY SECTION 141 OF THE NIRC WAS NOT ESTABLISHED.

C.

THE SECOND DIVISION SERIOUSLY ERRED WHEN IT RELIED ON RR 3-2006 AS BASIS FOR RULING THAT THE ASSESSMENT IS VALID.

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[14] Resolution dated April 8, 2014, EB Docket, pp. 473 to 474.

D.

THE SECOND DIVISION SERIOUSLY ERRED WHEN IT IGNORED AND FAILED TO RULE THAT THE CONDITION IN THE BIR PERMIT IS CONTRARY TO THE NIRC.

E.

THE SECOND DIVISION SERIOUSLY ERRED WHEN IT IGNORED AND FAILED TO RULE ON THE PETITIONER'S ARGUMENT THAT EXCISE TAX UNDER SECTION 141 OF THE NIRC CAN ONLY BE IMPOSED ON A SPECIFIC TAXABLE ARTICLE AND NOT ON EVAPORATED DENATURED ALCOHOL.

F.

THE SECOND DIVISION SERIOUSLY ERRED IN ITS SIMULTANEOUS IMPOSITION OF DEFICIENCY AND DELINQUECY INTEREST AS THE SAME IS EXCESSIVE AND UNCONSCIONABLE."[15]

Petitioner's arguments:

Petitioner argues that there are numerous indications that the subject of the assessment is denatured ethyl alcohol, as this can be found in the FLD, the FDDA, and even on the dispositive portion of the assailed Decision. Furthermore, the said fact is jointly admitted by the parties and is readily apparent from the face of the BIR Permit as well as substantially supported by evidence presented by both petitioner and the respondent.

Moreover, according to petitioner, ethyl alcohol is different from denatured alcohol because the latter is rendered unfit for intake or use due to addition of a denaturant which destroys the original character of the same and making the added denaturant difficult to separate therefrom.

Petitioner also contends that the Court in Division made a basic and serious error in relying on Sections 22 and 14 of Revenue Regulations No. 03-2006 as its basis for ruling that any shortages caused by evaporation are still subject to excise tax; and in doing so,

[15] Docket, pp. 16 to 17.

the Court in Division erroneously applied the regulations meant for one article (distilled spirits) to a completely different and even tax exempt article (denatured alcohol).

Petitioner further opines that because the Court in Division erred in its ruling on the foregoing, it ignored and failed to recognize that Condition No. 3, 2nd paragraph of the BIR Permit is an illegal administrative regulation when applied due to losses to evaporation.

Lastly, petitioner argues that deficiency interest and delinquency interest provided under Section 249(B) and 249(C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant. Moreover, according to petitioner, the taxpayer will be unduly penalized for exercising its right granted under Section 228 of the NIRC to protest an erroneous assessment.

Respondent's counter-arguments:

Respondent alleges that petitioner's articles were assessed pursuant to Section 150(b) of the NIRC of 1997, and that petitioner claims that since its splash colognes and body sprays contain essential oils of less than 3% by weight, it should not be subject to excise tax under the said Section 150(b).

From the said allegations, respondent further argues that petitioner's splash colognes and body sprays come within the purview of the term "toilet waters", which should be subject to 20% excise tax under Section 150(b) of the NIRC of 1997.

Finally, respondent stresses that claims for refund are construed strictly against the claimant for the same partake the nature of exemption taxation and as such, they are looked upon with disfavor.

THE COURT *EN BANC*'S RULING

We deny the instant *Petition for Review on Certiorari*.

Section 141 of the NIRC of 1997, as amended by Republic Act (RA) No. 9334,[16] provides as follows:

[16] AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND

"SEC. 141. *Distilled Spirits.* – On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:

(a) If produced from the sap of nipa, coconut, cassava, camote, buri palm or from the juice, syrup or sugar of the cane, provided that such materials are produced commercially in the country where they are processed into distilled spirits, per proof liter, Eleven pesos and sixty-five centavos (P11.65);

xxx xxx xxx

This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits, and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process.

'Spirits or distilled spirits' is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.

'Proof spirits' is liquor containing one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (0.7939) at fifteen degrees centigrade (15°C). **A 'proof liter' means a liter of proof spirits.**

xxx xxx xxx

The rates of tax imposed under this Section shall be increased by eight percent (8%) every two years starting on January 1, 2007 until January 1, 2011.

xxx xxx xxx." *(Emphases supplied)*

On the other hand, Section 134 of the same Code reads:

TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

> "SEC. 134. *Domestic Denatured Alcohol.* — **Domestic alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent (90%) absolute alcohol) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141**: *Provided, however,* That such denatured alcohol shall be subject to tax under Section 106(A) of this Code: *Provided, further,* That if such alcohol is to be used for motive power, it shall be taxed under Section 148(d) of this Code: *Provided, finally,* That any alcohol previously rendered unfit for oral intake after denaturing but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process shall be taxed under Section 141 of this Code and such tax shall be paid by the person in possession of such reprocessed spirits." *(Emphasis supplied)*

Based on the foregoing, it is clear that the aforequoted Section 141 imposes excise taxes on distilled spirits, which *"is the substance known as ethyl alcohol, ethanol, etc."* However, the aforequoted Section 134 provides an exemption to such imposition, when the following requisites are present: (1) when the domestic alcohol is not less than 180° proof or 90% absolute alcohol; (2) when the same is suitably denatured; and (3) when it is rendered unfit for oral intake.

Indubitably, the subject of the assessment is denatured alcohol. However, petitioner failed to prove compliance with the provisions of Section 134 of the NIRC of 1997

We agree with petitioner that the subject of the assessment is denatured alcohol.

The FDDA dated September 1, 2010[17] reads:

> "FINAL DECISION ON DISPUTED ASSESSMENT
>
> AVON PRODUCTS MANUFACTURING, INC.
> Calamba Premiere Int'l Park, Brgy. Batino
> Calamba, Laguna
>
> Gentlemen:

[17] Exhibit "D", Division Docket (CTA Case No. 8174), pp. 349 to 352.

This has reference to the 21 July 2010 letter of your legal counsel, Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Firm which was received by this Office on August 5, 2010, protesting on your behalf the deficiency excise tax assessment on the discrepancies found in the reconciliation on the volume of denatured alcohol actually received and delivered by your suppliers from January to December 2008 amounting to P1,096,956.43, inclusive of increments covered by our Formal Letter of Demand (FLD) dated June 16, 2010.

In the said letter, you cited your position on the issues raised in the FLD, as follows:

1. AVON is a manufacturer of toilet waters and not a manufacturer of alcohol products. Denatured ethyl alcohol is used as the principal raw ingredient for its products.

2. The BIR cannot arbitrarily assume that the difference represent denatured alcohol which were converted to reprocessed spirits.

3. The minimal shortages between 1% and 2% per delivery are attributable only to losses due to evaporation during delivery and handling of the denatured alcohol. The confluence of factors such as inherent material volatility, high vapour pressure, high exposure to temperatures during transit and a containment that allows for the escape of gaseous alcohol is the main reason why actual receipts are marginally lower compared to the delivery invoice quantity.

4. With respect to the one-time overage of 10.994.81 liters under ODI No. 32842. AVON's suppliers agreed to pay the related deficiency excise tax; hence, the basic tax and increments are requested to be computed so that you can pass the amount onto your suppliers.

In reply, please be informed that a thorough verification/evaluation of your protest resulted to the following:

1. It is reiterated that the BIR Permit issued to AVON as buyer/user of denatured alcohol expressly stated that in the event that the volume reflected in the documents issued to it by its suppliers, the excise tax on the difference shall be assessed, inclusive of all applicable penalties; hence, the assessment on the shortages and overages is maintained.

2. With respect to the requested tolerance of at least 1% to 2% evaporation loss on the total volume of denatured alcohol purchased, please be informed again that your request cannot be given due consideration for lack of legal basis.

In view of the foregoing, there is still found due from you a deficiency excise tax in the amount of P1,135,500.85, inclusive of increments assessed pursuant to Section 141(a) of the National

Internal Revenue Code (NIRC) of 1997, as amended, as shown below:

	SHORTAGES	**OVERAGE**	**TOTAL**
Volume in G.L.	21,163.49	10,994.81	32,158.30
Volume in P.L. @ 1.89 proof	39,999.00	20,780.19	60,779.19
Excise Tax Rate	P 12.58	P 12.58	P 12.58
Basic Deficiency Excise Tax	P 503,187.37	P 261,414.80	P 764,602.17
Interest	235,392.76	135,505.92	370,898.68
TOTAL AMOUNT DUE	**P 738,580.13**	**P 396,920.72**	**P1,135,500.85**

The complete details covering the above assessment are shown in the accompanying Annex "A" of this Final Decision.

xxx xxx xxx."

A careful reading of the foregoing would reveal that the subject of the assessment is not in issue. To be clear, it is denatured alcohol. For if it was otherwise, the FDDA could have simply stated other reasons for the denial of petitioner's protest, and would not maintain the assessment on the *"shortages and overages"* of the denatured alcohol or the supposed *"evaporation loss on the total volume of denatured alcohol purchased"*.

In the same vein, the parties, as can be gleaned from the issues jointly stipulated by them, are indifferent as to the subject of the tax imposition, and appear to presuppose that the excise tax is being imposed on the deliveries of denatured alcohol to petitioner, *viz*:

"The Parties submit the following issues for resolution by the Honorable Court:

1. Whether or not the marginal differences between the volume of denatured alcohol received by Petitioner and the volume of denatured alcohol invoiced by the supplier are subject to the excise tax on distilled spirits.

xxx xxx xxx

3. Whether or not Petitioner can be held liable for deficiency excise tax on distilled spirits on the losses incurred in the transportation and delivery of denatured alcohol.

4. <u>Whether or not the provision that Petitioner shall be assessed excise taxes in the event that the volume of purchased denatured alcohol actually received is less than the volume reflected in the accompanying documents found in Section 3, 2nd paragraph of the BIR Permit to Buy/Use</u>

Denatured Alcohol LTADII-(A)-001-01-08-14450 dated January 7, 2008, the BIR Renewal Permit ETRD-(A)-028-012-010-01995) dated December 22, 2010 and in similar permits that Respondent may issue to petitioner in the future, should be declared null and void and of no legal force and effect.

xxx xxx xxx."[18]

However, as the Court *En Banc* sees it, what is in issue is whether it was established that the denatured alcohol in question is not less than 90% absolute alcohol to qualify the same under the exempting provision of Section 134 of the NIRC of 1997.

In arguing in the affirmative, petitioner points to the Material Safety Data Sheet[19] as indicative that the delivered denatured ethyl alcohol contained an ethanol content of "94.5%" to "95%". Furthermore, petitioner contends that its witness, Santos H. Collado, who is a chemist, having extensive experience in dealing with chemicals, and as the Quality Assurance Manager of petitioner, identified the said Material Safety Data Sheet.

On this point, We do not agree with petitioner.

While it may be true that Mr. Collado identified the Material Safety Data Sheet, his identification thereof was only in relation to being one of the documents which accompany the delivery of the denatured ethyl alcohol, and not as to the alcohol content thereof. This is manifested in his Affidavit dated September 8, 2011,[20] to wit:

"Q19. You mentioned that upon delivery of the denatured ethyl alcohol, accompanying documents will be submitted to the Company? **What documents are these?**

A19. These documents include the BIR Official Delivery Invoices, which I earlier identified as Petitioner's Exhibits 'T' and 'AA.'

xxx xxx xxx

The Material Safety Data Sheet basically provides the physical and scientific properties of the denatured ethyl alcohol. The Material

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[18] Division Docket (CTA Case No. 8174), p. 195.
[19] Exhibit "DD", Division Docket (CTA Case No. 8174), pp. 383 to 386.
[20] Exhibit "GG", Division Docket (CTA Case No. 8174), pp. 317 to 322, at 320.

> **Safety Data Sheet also provides additional information such as handling and other information so that person who will handle the raw material is alerted on how to handle the material safety.**
>
> xxx xxx xxx
>
> Q20. I am showing you Petitioner's Exhibit 'CC' and 'DD,' which are the Far East Alcohol Corporation Certificate of Analysis and the Material Safety and Data Sheet (Issue Date: June 2008). Are these the documents you are referring to?
>
> A20. Yes, these are the Certificate of Analysis and Material Safety Data Sheet that accompany the deliveries of denatured ethyl alcohol." *(Emphases supplied)*

Such being the case, the subject Material Safety Data Sheet fails to persuade Us regarding the subject product's alcohol content.

In addition, We fail to see that it was ever established in the Court *a quo* that the subject denatured alcohol was *"rendered unfit for oral intake"* in order that petitioner may avail of the excise tax exemption granted under Section 134 of the NIRC of 1997.

The said Material Safety Data Sheet identifies the product as follows:

"Product Name	Ethyl Alcohol
Other Names	<u>Names</u> Rectified **FoodGrade**Ethyl Alcohol Neutral Ethyl Alcohol ETHANOL 94.5% ETHANOL 95.0%". *(Emphasis supplied)*

Based on this description, the ethyl alcohol subject of the said Data Sheet is "FoodGrade". Thus, even if We are to assume that the said Material Safety Data Sheet is persuasive, the said description creates the impression that the denatured alcohol in question is **fit for oral intake**. Such being the case, petitioner's claim of exemption under the aforequoted Section 134 becomes more doubtful.

As cases filed before this Court are litigated *de novo*, partylitigants should prove **every minute aspect** of their cases.[21] Furthermore, the burden is upon the taxpayer to prove, **by clear and convincing evidence**, that his claim for exemption has legal and factual basis.[22]

The legal basis of the excise tax assessment in this case is Section 141 of the NIRC of 1997, as amended by RA 9334, not Section 150 of the same Code.

Respondent contends that the articles were assessed under Section 150(b) of the NIRC of 1997, which provides as follows:

> "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;"

We disagree.

As shown in the FDDA dated September 1, 2010[23] and FLD dated June 16, 2010[24], the "Excise Tax Rate" that has been applied is ₱12.58.

Section 141, as earlier cited, imposes excise tax on distilled spirits *"(i)f produced from the sap of nipa, coconut, cassava, camote, buri palm or from the juice, syrup or sugar of the cane"* at rate of ₱11.65. This rate has already been increased pursuant to the following provision of the said Section 141, viz:

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[21] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[22] *The Provincial Assessor of Marinduque vs. Court of Appeals, et al.*, G.R. No. 170532, April 30, 2009.

[23] Exhibit "D", Division Docket (CTA Case No. 8174), pp. 349 to 352, at p. 350.

[24] Exhibit "A", Division Docket (CTA Case No. 8174), pp. 340 to 342, at p. 341.

"The rates of tax imposed under this Section shall be increased by eight percent (8%) every two years starting on January 1, 2007 until January 1, 2011."

The said increase has been implemented in Section 3 of Revenue Regulations (RR) No. 3-2006[25] as follows:

"SEC. 3. REVISED RATES AND BASES OF THE SPECIFIC TAX.— There shall be levied, assessed and collected a specific tax on alcohol or tobacco products, in accordance with the following schedule:

PRODUCT	EFFECTIVE January 1, 2005	**EFFECTIVE January 1, 2007**	EFFECTIVE January 1, 2009	EFFECTIVE January 1, 2011
A. ALCOHOL PRODUCTS				
(1) Distilled Spirits	Per proof liter	**Per proof liter**	Per proof liter	Per proof liter
(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane xxx xxx xxx	P 11.65	**P 12.58**	P 13.59	P 14.68
xxx xxx xxx	xxx	xxx	xxx	xxx

(Emphases supplied)

Since the delivery and receipt of the denatured alcohol in this case cover the period January to December 2008, the rate applied was ₱12.58.

More importantly, in their Amended Joint Stipulation of Facts and Issues, petitioner and respondent had judicially admitted that the excise tax assessment is anchored on Section 141(a) of the NIRC, to wit:

"12. Respondent imposed the excise tax on distilled spirits under Section 141 (a) of the National Internal Revenue Code (hereinafter the "Tax Code") using the rate applicable beginning January 1, 2007 of Php12.58 per proof liter (Section 3 of Revenue Regulations No. 3-2006 dated January 3, 2006)."[26]

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[25] SUBJECT: Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.

[26] Division Docket (CTA Case No. 8174), p. 194.

Clearly, the assertion of respondent that articles were assessed under Section 150(b) of the NIRC of 1997 and her arguments in relation thereto are without foundation.

The Court in Division is correct in relying on Section 22 of RR No. 3-2006.

Petitioner argues that the Court in Division erroneously applied the regulations meant for one article (distilled spirits) to a completely different and even tax exempt article (denatured alcohol). According to petitioner, Section 22 of RR No. 3-2006 is consistent with Section 141 of the NIRC, because distilled spirits are taxable articles, and hence, the excise taxes paid cannot be recovered by the taxpayer even if there is a subsequent loss of the tax paid article. Petitioner then emphasizes that this is not the case for denatured alcohol; for unlike distilled spirits, on its own, denatured alcohol is exempted from excise tax.

The reasoning is specious. It presupposes that denatured alcohol is not within the ambit of distilled spirits under the law.

An examination of Sections 141 and 134 is in order.

The aforequoted Section 141 of the NIRC of 1997, as amended by RA No. 9334, which imposes excise tax on **distilled spirits**, is a revenue law.

Revenue laws (such as the said Section 141) are not intended to be liberally construed. Considering that taxes are the lifeblood of the government and in Holmes' memorable metaphor, the price we pay for civilization, tax laws must be faithfully and strictly implemented.[27]

On the other hand, Section 134 of the NIRC of 1997 gives excise tax exemption to **denatured alcohol** under specific circumstances.

It must be emphasized that statutes granting tax exemptions must be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[28] The law does not look with

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[27] *Commissioner of Internal Revenue vs. Acosta*, G.R. No. 154068, August 3, 2007.
[28] *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008.

favor on tax exemptions and the entity that would seek to be thus privileged must justify by words too plain to be mistaken and too categorical to be misinterpreted.[29]

Applying the rules of construction concerning revenue laws and tax exemptions, the Supreme Court, in *Commissioner of Internal Revenue vs. Court of Appeals, et al.*,[30] said:

> "We disagree. Petitioner Commissioner of Internal Revenue erred in applying the principles of tax exemption without first applying the well-settled doctrine of strict interpretation in the imposition of taxes. **It is obviously both illogical and impractical to determine who are exempted without first determining who are covered by the aforesaid provision.** The Commissioner should have determined first if private respondent was covered by Section 205, applying the rule of strict interpretation of laws imposing taxes and other burdens on the populace, before asking Ateneo to prove its exemption therefrom. The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that '(a) statute will not be construed as imposing a tax unless it does so *clearly*, *expressly*, and *unambiguously*. x x x *(A) tax cannot be imposed without clear and express words* for that purpose. Accordingly, the general rule of requiring *adherence to the letter in construing statutes applies with peculiar strictness to tax laws* and the provisions of a taxing act are *not to be* extended by implication.' Parenthetically, in answering the question of who is subject to tax statutes, it is basic that 'in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.'"

Prescinding from the foregoing pronouncements, We shall first determine the coverage of Section 141 of the NIRC of 1997, as amended by RA No. 9334, and proceed to determine the tax exemption granted by Section 134 of the same Code.

Section 141 reads:

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[29] *Fels Energy, Inc. vs. Province of Batangas, et al.*, G.R. Nos. 168557 and 170628, February 16, 2007.
[30] G.R. No. 115349, April 18, 1997.

> "SEC. 141. *Distilled Spirits.* – xxx
>
> xxx xxx xxx
>
> **'Spirits or distilled spirits' is the substance known as ethyl alcohol, ethanol** or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures." *(Emphasis supplied)*

Based on the foregoing, the term *"distilled spirits"* is synonymous with *"ethyl alcohol"* or *"ethanol"*. Thus, it cannot be doubted that the said substances are within the taxing scope of Section 141.

On the other hand, Section 134 of the NIRC of 1997 reads:

> "SEC. 134. *Domestic Denatured Alcohol.* — **Domestic alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent (90%) absolute alcohol) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141**: xxx." *(Emphasis supplied)*

Based on the foregoing, to be entitled to the excise tax exemption or to be beyond the reach of Section 141, the following requisites must be present: (1) when the domestic alcohol is not less than 180° proof or 90% absolute alcohol; (2) when the same is suitably denatured; and (3) when it is rendered unfit for oral intake.

It would be absurd for Section 134 to contemplate an exemption *"from the excise tax prescribed in Section 141"* if, in the first place, the domestic alcohol, which is not less than 180° proof or 90% absolute alcohol, suitably denatured, and rendered unfit for oral intake, is not within the ambit of the same Section 141.

Thus, Section 141 in relation to Section 134 must be simply interpreted in this wise: As a rule, domestic alcohol is subject to excise tax under Section 141. However, when the domestic alcohol falls under the above-stated requisites, no excise tax may be imposed thereon pursuant to Section 134.

In the case *a quo*, petitioner was able to establish that the subject assessment is on the shortages of *"denatured ethyl alcohol"*.

Petitioner's witness, Mr. Collado, through his Affidavit dated September 8, 2011,[31] testified as follows to wit:

> "Q10. Do you know the subject matter of the instant case?
>
> A10. Yes. This case is the Company's protest against the assessment by Respondent Commissioner of Internal Revenue for deficiency excise taxes under Section 141 (a) of the National Internal Revenue Code in the amount of Php 1,096,956.43. The assessment was made based on aggregate shortages of 21,163.48 liters of <u>denatured ethyl alcohol</u> delivered to the company from January to December 2008.
>
> Q11. Why do you know this?
>
> A11. Since this case involves the deliveries of <u>denatured ethyl alcohol</u>, the Company and its counsels consulted me about the denatured ethyl alcohol delivered to the Company because I manage the quality assurance of all materials and products of the Company, including denatured ethyl alcohol. Hence, I became aware of the case and the assessment for deficiency excise taxes." *(Emphasis supplied)*

Considering that Section 141 defines distilled spirits as to mean *"ethyl alcohol"*, *inter alia*, and since what is involved in this case is *"denatured ethyl alcohol"*, the latter substance is within the ambit of Section 141 of the NIRC of 1997, as amended by RA No. 9334.

Nevertheless, as We have earlier ruled, petitioner cannot avail of the excise tax exemption under Section 134 simply because it failed to establish that the said denatured ethyl alcohol is not less than 180° proof or 90% absolute alcohol and that the same is rendered unfit for oral intake. Thus, the excise tax under Section 141 is imposable to petitioner's denatured ethyl alcohol.

Correspondingly, We see no reason not to apply Section 22 of RR No. 3-2006, which provides:

> "SEC. 22. LOSSES ON DISTILLED SPIRITS. — **No claim for excise tax refund or credit shall be allowed**

[31] Exhibit "GG", Division Docket (CTA Case No. 8174), pp. 317 to 322, at 318.

> **on distilled spirits that have been lost or destroyed <u>after removal</u> thereof from the place of production or released from the customs' custody.** In case of losses incurred on bonded distilled spirits, the corresponding excise tax due on such losses shall be paid to the BIR.
>
> Losses of distilled spirits or rectified alcohol incurred **<u>before removal</u>** thereof from the distillery premises shall be accounted for and recorded in the ORBs as they occur on a daily basis. For this purpose, a loss of not more than one percent (1%) for distillation and four percent (4%) of excise tax-paid distilled spirits for rectification may be allowed when such loss is not caused by fraud, negligence or carelessness of the distillers or owners of the rectifying establishments. However, no deduction for losses shall be allowed on bonded distilled spirits delivered and subsequently stored for rectification purposes as well as losses arising from rectification of such bonded distilled spirits. The total volume of losses incurred during the month less the allowable percentage of loss, if any, shall be computed and the corresponding excise tax due thereon shall be paid to the BIR on or before every eighth (8^{th}) day of the month immediately following the month of operations."

While, on its face, the first paragraph of the foregoing section merely prohibits the granting of any claim for excise tax refund or credit on distilled spirits that have been lost or destroyed after removal thereof from the place of production, it however affirms that the excise tax is imposable even when there is loss or destruction of the distilled spirits after such removal.

Notwithstanding the applicability of above-quoted Section 22, petitioner cannot avail of the allowances for loss of not more than 1% for distillation and 4% of excise tax-paid distilled spirits for rectification found in the second paragraph thereof. This is so because the said provision permits the said allowances only *"before removal* (of the distilled spirits) *from the distillery premises".* No allowance whatsoever for loss <u>after removal</u> of the distilled spirits from the place of production is provided in the same Section 22.

Moreover, the term "loss" is defined as follows:

> "The term derives its meaning from the context in which it is used. **Generally, denotes any deprivation, decrease in value**, depreciation, liability actually

> incurred, **the act of losing**, **or the thing lost**, ruin, a bad or uncollectible debt, damage to property, destruction of property, any injury; **something lost**."[32] *(Emphases supplied)*

Thus, shortages of subject denatured ethyl alcohol, whether cause by evaporation or otherwise, are within the scope of the term "loss" as used in Section 22 of RR No. 6-2003.

Such being the case, We likewise find the following Condition No. 3, 2nd paragraph, in BIR Permit,[33] as not contrary to the NIRC, viz:

> "In the event that the volume of purchased denatured alcohol actually received is more than or less than the volume reflected in the aforementioned accompanying documents, the excise tax due on the differences shall be assessed, inclusive of all applicable penalties".

Imposition of deficiency and delinquency interests.

Petitioner submits that the Court in Division seriously erred in its simultaneous imposition of the deficiency interest and the delinquency interest upon the amounts payable by petitioner. The latter argues that deficiency interest and delinquency interest provided under Section 249(B) and 249(C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant.

We do not agree with petitioner.

Section 249 of the NIRC of 1997 provides:

> "SEC. 249. *Interest.*—
>
> (A) *In General.*—There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate

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[32] Citations omitted; The Attorney's Pocket Dictionary, © 1981, p. 296.
[33] Exhibit "E", Division Docket (CTA Case No. 8174), pp. 353 to 356, at 353.

as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest.*—Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.*—In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or
(2) The amount of the tax due for which no return is required, or
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx."

Interest is imposed to *compensate* the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands.[34] It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.[35]

In this case, by its own argumentation, petitioner stresses that the deficiency interest under subsection (B) of Section 249 is applicable where the taxpayer is found to have a tax deficiency.[36] Since We find in this Decision that petitioner is liable to the deficiency excise tax assessed by respondent, there can be no doubt that petitioner is likewise liable to the deficiency interest imposed by the Court in Division.

Furthermore, We see no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

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[34] *National Power Corporation vs. City of Cabanatuan*, G.R. No. 177332, October 1, 2014.
[35] Id.
[36] Petition for Review, Par. 118, EB Docket, p. 41.

Nowhere in Section 249 does it state that if subsection (B) is applicable, subsection (C) would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B). Especially so that both subsection (B) and subsection (C) provide that the interests shall respectively accrue until full payment thereof.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – its every word.[37] Thus, every word of Section 249 should be given effect.

We find Revenue Memorandum Circular No. 46-99 dated June 18, 1999 inapplicable, since it discloses that nothing in the illustrative cases stated therein exactly applies to the case of petitioner. But even assuming *arguendo* that there is, the same may be ignored. This must be so because although it is widely accepted 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, this interpretation is not conclusive and will have to be ignored if judicially found to be erroneous and clearly absurd or improper.[38]

WHEREFORE, all the foregoing considered, the instant *Petition for Review on Certiorari* is hereby **DENIED** for lack of merit. The Decision dated May 16, 2013, and the Resolution dated August 15, 2013, both promulgated by the Court in Division in CTA Case No. 8174 is **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[37] *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009

[38] *Commissioner of Internal Revenue vs. Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, June 8, 2007.

WE CONCUR:

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Presiding Justice

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Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen S L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice