REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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AVON PRODUCTS MANUFACTURING, INC., Petitioner,	**CTA EB No. 1351** (CTA Case No. 8540)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** APR 24 2017 2:15 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by Avon Products Manufacturing, Inc. on September 14, 2015 against the Commissioner of Internal Revenue,[1] praying for the reversal and setting aside of the Decision dated May 4, 2015[2] and Resolution dated August 11, 2015[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8540, entitled *"Avon Products Manufacturing, Inc., Petitioner, vs. Commissioner of Internal*

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[1] EB Docket, pp. 6 to 42.

[2] EB Docket, pp. 43 to 77; Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Caesar A. Casanova. Associate Justice Amelia R. Cotangco-Manalastas rendered a Dissenting Opinion.

[3] EB Docket, pp. 78 to 82; Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas.

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

Decision dated May 4, 2015:

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

Resolution dated August 11, 2015:

> "**WHEREFORE,** petitioner's **Motion for Reconsideration (Of Decision promulgated on May 4, 2015)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

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 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, Agham Road, Diliman, Quezon City.

For the period January 3, 2011 to April 28, 2012, petitioner purportedly paid the twenty percent (20%) excise tax imposed on perfumes and toilet waters under Section 150 of the National Internal Revenue Code (NIRC) of 1997 on its removals of perfumes, toilet waters, splash colognes, and body sprays.

Petitioner filed a written claim for refund of the alleged erroneously paid excise taxes with respondent's Large Taxpayers Service through the letter dated July 16, 2012 and a duly accomplished Application for Tax Credit/Refund (BIR Form No. 1914) on July 20, 2012.

Believing it would be futile to wait for the action of respondent on its administrative claim for refund, petitioner filed a *Petition for Review* on September 3, 2012 before the Court in Division. The case was docketed as CTA Case No. 8540.

Respondent filed his *Answer* on October 23, 2012 in said case, alleging, among others, that petitioner's articles were assessed pursuant to Section 150(b) of the Tax Code of 1997; that petitioner claims that splash colognes and body sprays should not be classified as "toilet waters" invoking Revenue Regulations (RR) No. 8-84; that since its splash colognes and body sprays contain essential oils of less than 3% by weight, it should not be subject to tax under Section 150(b) of the NIRC; and that Revenue Memorandum Circular (RMC) No. 17-02, which emphasized BIR Ruling No. 43-2000, correctly defines the term "colognes" and that this issuance even declares null and void all previous BIR rulings pertaining thereto.

On the other hand, respondent submits that he is not bound by previous rulings; that BIR Ruling No. 43-2000, which was published in RMC No. 17-02, is a valid interpretation of the provision of the NIRC of 1997, as amended; that nowhere in the provision of Section 150(b) of the NIRC of 1997 is it required for essential oil content of more than 3% by weight before toilet water can be subjected to the 20% excise tax; that it is apparent that petitioner's reliance on RR No. 8-84 is clearly misplaced, and petitioner's argument of non-taxability has no leg stand on, since the Court has already held that RR No. 8-84 was limited to taxes imposed under Section 194(b) and (e) of the 1977 Tax Code which has been substantially amended and repealed by subsequent legislation. Allegedly, a claim for refund is not *ipso facto* granted because respondent still has to investigate and ascertain the validity of the claim.

During pre-trial held on November 22, 2012, the Court in Division granted the parties a period of twenty (20) days to file their Joint Stipulation of Facts and Issues[4]. On January 2, 2013[5], the Court in Division approved the parties' *Joint Stipulation of Facts and Issues*[6] filed on December 21, 2012 and terminated the pre-trial.

During trial, petitioner presented Mayette P. Encarnacion,

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[4] Minutes of the hearing held on November 22, 2012, Division Docket (CTA Case No. 8540), Vol. I, p. 114

[5] Resolution dated January 2, 2013, Division Docket (CTA Case No. 8540), Vol. I, p. 148

[6] Joint Stipulation of Facts and Issues, Division Docket (CTA Case No. 8540), Vol. I, pp. 142-146

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Maricel R. Sabino, Shernan Balilo, Lloyd John C. Godilano, William L. Tan, Ronald S.I. Alonzo, and Dennis S. Orge as its witnesses. After formally offering its documentary and testimonial evidence, petitioner rested its case.

On the other hand, respondent's counsel manifested during the hearing on April 7, 2014, that respondent will not present evidence and will rest his case[7]. On the other hand, petitioner's counsel manifested that he will file a Proffer of Evidence. It appears that on even date, petitioner filed a "Proffer of Evidence" alleging that the Court in Division denied admission of Excluded Evidence, and thus proffers in evidence Exhibits "J", "K", "L", "M", "BB-4-1072" to "BB-4-1075", and "BB-12-60"; which the Court took note in the Resolution dated May 2, 2014.[8]

Subsequently, CTA Case No. 8540 was submitted for decision on June 18, 2014, taking into consideration petitioner's *Memorandum* filed on May 30, 2014, and the Report dated June 16, 2014 of this Court's Judicial Records Division, stating that no memorandum was filed by respondent.

In the assailed Decision,[9] petitioner's *Petition for Review* was denied for lack of merit.

In her Dissenting Opinion,[10] however, Justice Cotangco-Manalastas opines that the definition of toilet waters under Revenue Regulations No. 8-84 (RR 8-84) is still applicable, even if the provision has been amended. She further said that respondent's issuance of BIR Ruling No. 043-2000, and its subsequent publication in Revenue Memorandum Circular No. 17-02, cannot be given effect as it expands the definition of "toilet waters," and do not conform to the specific definition under RR 8-84. 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 1997 Tax Code.

Petitioner filed its *Motion for Reconsideration (Of Decision*

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[7] Minutes of hearing held on April 7, 2014, Division Docket (CTA Case No. 8540), Vol. III, p.1338

[8] Division Docket (CTA Case No. 8540), Vol. IV, p.1355

[9] EB Docket, pp. 43 to 74; Division Docket (CTA Case No. 8540) – Vol. IV, pp. 1451 to 1482.

[10] EB Docket, pp. 75 to 77.

promulgated on May 4, 2015) on May 15, 2015.[11] Notably, no comment was filed by respondent to petitioner's motion within the given period as directed in the Resolution dated May 19, 2015.[12]

On August 11, 2015, the Court in Division rendered the assailed Resolution,[13] denying petitioner's *Motion for Reconsideration (Of Decision promulgated on May 4, 2015)* for lack of merit.

Thereafter, on September 1, 2015, petitioner filed before the Court *En Banc* a *Motion For Extension of Time (To file Petition for Review)*,[14] praying for a period of fifteen (15) days from September 1, 2015 or until September 16, 2015, within which to file its *Petition for Review*.

The Court *En Banc* then granted petitioner a final and non-extendible period of fifteen (15) days from September 1, 2015 or until September 16, 2015, within which to file the said *Petition for Review*.[15] On September 14, 2015, petitioner filed the instant *Petition for Review*.

Subsequently, in the Resolution dated September 28, 2015,[16] the Court *En Banc* ordered respondent to file its *Comment* to the instant *Petition for Review* within ten (10) days from receipt thereof. However, respondent failed to file the said *Comment*.

In the Resolution dated February 11, 2016,[17] the Court *En Banc* gave due course to the instant *Petition for Review*, and required the parties to submit their respective memorandum, within a non-extendible period of thirty (30) days from receipt of the said Resolution. Petitioner filed its *Memorandum* on March 23, 2016.[18] Respondent, however, failed to file his *Memorandum*.[19]

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[11] Division Docket (CTA Case No. 8540) – Vol. IV, pp. 1486 to 1505.
[12] Division Docket (CTA Case No. 8540), Vol. IV, p.1507
[13] EB Docket, pp. 78 to 82; Division Docket (CTA Case No. 8540) – Vol. IV, pp. 1510 to 1514.
[14] EB Docket, pp. 1 to 4.
[15] Minute Resolution dated September 3, 2015, EB Docket, p. 5.
[16] EB Docket, pp. 125 to 126.
[17] EB Docket, pp. 129 to 130.
[18] EB Docket, pp. 131 to 159.
[19] Per Records Verification dated April 21, 2016 issued by the Judicial Records Division of this Court, EB Docket, p. 160.

On May 24, 2016, this case was deemed submitted for decision.[20]

Hence, this Decision.

THE ISSUES

Petitioner raises, in its Memorandum,[21] the following issues to be resolved by the Court *En Banc*, to wit:

"I.

Whether the Honorable 2nd Division of the Court of Tax Appeals erred in ruling that Respondent can supplant the definition of toilet waters found in RR 8-84 through a mere BIR ruling or circular.

II.

Whether the Honorable 2nd Division of the Court of Tax Appeals erred in ruling that amendments to the Tax Code abandoned the definition of toilet waters under the RR 8-84.

III.

Whether the Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the principle that tax refunds are strictly construed is applicable in this case."

Petitioner's arguments:

Petitioner argues that the definition of toilet waters under BIR Ruling No. 43-2000 and Revenue Memorandum Circular (RMC) No. 17-02 is invalid, devoid of legal force and effect, and cannot supplant the legal definition of toilet waters under RR No. 8-84 because under Section 244 of the 1997 NIRC, only the Secretary of Finance can provide the legal definition of "toilet waters" and the details of Section 150(b) of the 1997 NIRC.

According to petitioner, the power of the Commissioner of Internal Revenue to interpret tax laws does not include the power to promulgate revenue regulations. In this connection, petitioner points

[20] Resolution dated May 24, 2015, EB Docket, pp. 162 to 163.
[21] EB Docket, pp. 137 to 138.

out that the Commissioner of Internal Revenue can only recommend to the Secretary of Finance revenue regulations.

Petitioner further contends that the legal definition of toilet waters under RR No. 8-84 still applies in construing Section 150(b) of the 1997 NIRC under the rules of statutory construction, such as the principle of legislative approval of administrative interpretation by Re-enactment. Allegedly, even respondent has admitted that the definition of "toilet waters" under RR No. 8-84 continues to be binding and effective.

Finally, petitioner claims that tax legislation is strictly construed against the State.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Respondent, being the Commissioner of Internal Revenue (CIR), is vested with the power to interpret the provisions of the NIRC of 1997, subject to review by the Secretary of Finance, in accordance with the first paragraph of Section 4 of the NIRC of 1997, *viz*:

> "SEC. 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."

This power of the CIR is usually expressed in the form of BIR Rulings[22] and/or revenue memorandum circulars. Parenthetically,

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[22] BIR Rulings are classified as follows:

a) *Rulings of first impression* — These refer to the rulings, opinions and interpretations of the Commissioner of Internal Revenue with respect to the provisions of the Tax Code and other tax laws without established precedent, and which are issued in response to a specific request for ruling filed by a taxpayer with the Bureau of Internal Revenue. Provided, however, that the term shall include reversal, modification or revocation of any existing ruling.

b) *Rulings with established precedents* — These refer to mere reiteration of previous rulings, opinions and interpretations of the Commissioner, as delegated to duly authorized internal revenue officers (i.e., Deputy Commissioner, Legal and Inspection Group; Assistant Commissioner, Legal Service; Regional Directors) that are issued in response to a specific request for ruling filed by a taxpayer with the Bureau of Internal Revenue. [Section 3 (a) and (b), Revenue Administrative Order (RAO) No. 02-01 dated October 22, 2001] while revenue memorandum circulars are considered administrative *rulings* which are issued from time to time by the CIR;[23] they are also considered as issuances which *"disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."*[24]

The Secretary of Finance, in turn, is empowered to promulgate rules and regulations, usually in the form of RRs, upon the recommendation of the CIR, pursuant to Section 244 of the NIRC of 1997, to wit:

> "SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code."

Thus, it is without question that RRs should always prevail over BIR Rulings and revenue memorandum circulars;[25] the former being an issuance by a superior; while the latter is being by a subordinate official. As a corollary then, a BIR Ruling or RMC cannot supplant provisions of an RR.

However, the pivotal inquiry in this case is whether the CIR has, in effect, supplanted the definition of "toilet waters" under RR No. 8-84 via the issuance of BIR Ruling No. 43-2000 and RMC No. 17-02.

We answer in the negative.

The legislative history of Section 150(b) of the NIRC of 1997, and the administrative issuances relative thereto.

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[23] *Asia International Auctioneers, Inc., et al. vs. Parayno, et al.*, G.R. No. 163445, December 18, 2007.
[24] Section 3 (f), RAO No. 02-01 dated October 22, 2001.
[25] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 144653, August 28, 2001.

In the assailed Decision, the Court in Division has already presented the legislative history of the present Section 150(b) of the NIRC of 1997, particularly with reference to the taxation of "toilet waters". But a reiteration thereof and a closer look thereon are warranted under the premises.

Pertinent provisions of RR No. 8-84 point to the legal bases in the issuance thereof, *i.e.*, Sections 4, 194(b) and (e), and 326 of the NIRC of 1977, and the nature of tax being imposed in relation to "toilet waters', to wit:

> "SECTION 1. *Scope.* — Pursuant to Section 326, in relation to Section 4 of the National Internal Revenue Code, **the following regulations <u>relating to the sales tax</u> payable by manufacturers and/or exporters of cosmetic products are hereby promulgated**. These regulations shall be known as Revenue Regulations No. 8-84 or **<u>the Cosmetic Products Regulations</u>**. **<u>These regulations deal with the tax on cosmetic products imposed by Section 194(b) and (c)</u>** 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, **<u>toilet waters</u>**, 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.
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'(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 essentially of the product.

'The authority of the Secretary (now Minister) of Finance to determine articles similar or analogous to those subject to a rate of **sales tax under a certain category enumerated in Sections 194**, 196 and 197 of this Code shall be without prejudice to the power of the Commissioner of Internal Revenue 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 sale and similar purposes.'

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.

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SECTION 4. ***Computation of the Percentage Tax on Sales.—***

(a) ***Imposition and payment of the sales tax. —*** **The percentage tax prescribed in Section 194 of the National Internal Revenue Code shall be imposed on the sale of articles enumerated and defined in Section 2 of this regulation.** The tax is 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 or products sold, bartered or exchanged, and it shall be paid by the manufacturer or producer of said articles or products.

> (b) *Tax based on gross sales.* — **The percentage tax on sales is computed by multiplying the gross selling price of the articles sold, bartered, exchanged or transferred by 50%.**
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> xxx xxx xxx." *(Emphases and underscoring supplied)*

Based on the foregoing, it is clear that what is being imposed under Section 194(b), particularly concerning "toilet waters", is **a sales tax** on every original sale, barter, exchange, etc. thereof.

On January 1, 1986, the said Section 194 of the NIRC of 1977 was renumbered to Section 163(a) under Presidential Decree (PD) No. 1994[26]. While the latter law introduced certain amendments in the said Section 194, the imposition of the same sales tax on every original sale, barter, exchange, etc. of "toilet waters" was retained verbatim.

Effective January 1, 1988, however, Section 163 of the NIRC of 1986 was renumbered and amended by Section 16 of Executive Order (EO) No. 273[27], to wit:

> "Sec. 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 customs duties**; net of excise tax and value-added tax, of the following goods:
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> xxx xxx xxx
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> (b) Perfumes and **toilet waters**.

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[26] FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE.

[27] ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES.

> xxx xxx xxx." *(Emphases and underscoring supplied)*

Section 150 was carried over in the same Section of the NIRC of 1997, upon the enactment of the Tax Reform Act of 1997,[28] which embodied the NIRC of 1997, effective January 1, 1998.

On September 15, 2000, the BIR issued BIR Ruling No. 043-00, the substantial contents of which reads:

> "It is represented that the product Green Cross Baby Cologne is a preparation, the chief ingredient of which is distilled spirits; and that no further specific tax should be imposed or assessed against Green Cross Baby Cologne product pursuant to Section 141(c) of the Tax Code of 1997 and as ruled by this Office in BIR Ruling No. 59-81 dated March 30, 1981 and BIR Ruling No. 535-88 dated November 9, 1988.
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> 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. 535-99 dated November 19, 1988.

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[28] Republic Act No. 8424.

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 Baby 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."

Subsequently, BIR Ruling No. 043-00 was circularized by the BIR through RMC No. 17-02.

The definition of "toilet waters" under RR No. 8-84 was, in effect, abandoned by the subsequent amendments of the NIRC.

A careful reading of Section 150, as introduced by EO No. 273 and as retained in the NIRC of 1997, would reveal that the legislature changed the nature of the tax being imposed in relation to "toilet waters", *i.e.*, from being a sales tax or percentage tax under Section 194(b) of the NIRC of 1997/Section 163(a) of PD No. 1994 to an excise tax or *ad valorem* tax under the said Section 150. Such change can be seen primarily by the words employed. **Specifically, the amendment, *inter alia*, brought about the deletion of the sales tax specifically imposed on every original sale, barter, exchange, etc. of "toilet waters"**, and made a tax imposition on the wholesale price or the value of importation, net of excise tax and value-added tax, of "toilet waters". Simply put, the law totally changed the imposition from a sales tax to an excise tax.

It must be emphasized that there is a distinction between a sales tax and an excise tax.

A sales tax is a tax on the act of selling the product. **It is not a tax on the property sold.**[29] Upon the other hand, an excise tax is a tax levied on a specific article.[30] Otherwise stated, excise taxes imposed under Title VI of the NIRC of 1997 are **taxes on property**

[29] Philippine Law Dictionary ©1988 (Third Edition), p. 856; Refer also to *A. Soriano y Cia vs. Collector of Internal Revenue*, G.R. No. L-5896, August 31, 1955.
[30] *Petron Corporation vs. Tiangco, et al.*, G.R. No. 158881, April 16, 2008.

which are imposed on *"goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported."*[31] Excise taxes, as imposed

under the NIRC, do not pertain to the performance, carrying on, or exercise of an activity, at least not to the extent of equating excise with business taxes.[32]

Apropos, the deliberate selection in a statute of language differing from that of earlier subject indicates that a change of law was intended.[33] As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment.[34]

The definition of the term "toilet waters" given by, or as interpreted in, RR No. 8-84 was in the context it was used under the former Section 194(b) of the NIRC of 1977 [or Section 163(a) per PD No. 1994], *i.e.*, as relating to the sales tax payable by manufacturers and/or exporters of cosmetic products. This is precisely the reason why RR No. 8-84 was otherwise known as the *"Cosmetic Products Regulations". Ratione cessat lex, et cessat lex.* (When the reason for the law ceases, the law ceases.) It is not the letter alone but the spirit of the law also that gives it life.[35]

Thus, since the meaning of the said term has changed by virtue of the amendment introduced by EO No. 273, the said definition of "toilet waters" under RR No. 8-84 and pursuant to Section 194(b) of the NIRC of 1977, may no longer be used in the tax imposition under the present Section 150(b) of the NIRC of 1997.

Furthermore, well settled is the rule that in the absence of legislative intent to the contrary, technical or commercial terms and phrases, when used in tax statutes, are presumed to have been used in their technical sense or in their trade or commercial meaning.[36]

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[31] *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183553, November 12, 2012.
[32] *Petron Corporation vs. Tiangco, et al.*, G.R. No. 158881, April 16, 2008
[33] *Portillo vs. Salvani*, G.R. No. 32181, March 10, 1930.
[34] *Laguna Metts Corporation vs. Court of Appeals, et al.*, G.R. No. 185220, July 27, 2009.
[35] *Lim vs. People of the Philippines*, G.R. No. 190834, November 26, 2014.
[36] *San Miguel Corporation vs. Municipal Council, et al.*, G.R. No. L-30761, July 11, 1973.

Relative thereto, the definition of *"cologne"* or *"toilet water"*, as stated in BIR Ruling No. 043-00, appears to be rendered in its *"technical sense"* or *"trade or commercial meaning"*, since the said definition were taken from a Chemical Dictionary, *i.e.,* the Hawley's Condensed Chemical Dictionary. Thus, this definition must be sustained.

Hence, the Court *En Banc* finds no error or irregularity in the said definition of *"cologne"* or *"toilet water"*, as adopted in the said BIR Ruling No. 043-00. Correspondingly, We find no merit in petitioner's contention that the CIR has, in effect, supplanted the definition of *"toilet waters"* under RR No. 8-84 via the issuance of BIR Ruling No. 43-2000 and RMC No. 17-02.

The principle of legislative approval of administrative interpretation by reenactment is not applicable.

Moreover, in view of the foregoing discussions, there is likewise no merit in petitioner's contention that the principle of legislative approval of administrative interpretation by reenactment obtains in this case.

The principle of legislative approval by re-enactment may briefly be stated thus: Where a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions **without substantial change**, such action is to some extent confirmatory that the ruling carries out the legislative purpose.[37] In other words, under the said principle, the reenactment of a statute **substantially unchanged** is persuasive indication of the adoption by Congress of a prior executive construction.[38]

As already shown, **there was a substantial change** between the then Section 194(b) [thereafter, renumbered as Section 163(a) by PD No. 1994] of the NIRC of 1977 and Section 150(b), both of the NIRC of 1977, as amended by EO No. 273, and of the NIRC of 1997. It must be emphasized that the change in the law was substantial because the former tax that was imposed under the said Section

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[37] *Alexander Howden & Co., Ltd., et al. vs. The Collector (now Commissioner) of Internal Revenue*, G.R. No. L-19392, April 14, 1965.

[38] *Dumaguete Cathedral Credit Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 182722, January 22, 2010.

194(b), upon which RR No. 8-84 was based, is a sales tax or percentage tax, while the tax that is imposed by the later law is an excise tax.

There was no judicial admission on the part of respondent that definition of "toilet waters" under RR No. 8-84 continues to be binding and effective.

Petitioner further avers that even respondent has admitted that the definition of "toilet waters" under RR No. 8-84 continues to be binding and effective. In support of this averment, petitioner points out the following:

1. Respondent refused to cooperate with petitioner and produce relevant documents in its custody which would have readily shown whether or not he is collecting the excise tax on splash colognes and body sprays of other manufacturers, such as the addressee of BIR Ruling No. 43-00, which is being enforced against petitioner. According to petitioner, the refusal of respondent, through Ms. Andes, the Chief of the BIR Large Taxpayers Field Operations, to produce the documents in its official custody gives rise to the presumption that "evidence willfully suppressed would be adverse if produced."

2. Petitioner made specific factual allegations in its Petition that respondent has not been collecting excise tax on toilet waters from all other manufacturers of colognes and body sprays; and yet, respondent failed to produce any rebuttal evidence when such rebuttal evidence (if it existed) would have been readily available and easy to produce for respondent.

3. Another compelling proof that the legal definition of "toilet waters" under RR No. 8-84 has not been abandoned is respondent's efforts to draft an amendment to the said RR to the effect of reducing the essential oil content from 3% to 1.5%. According to petitioner, the BIR conducted a public hearing and circulated an exposure draft of the proposed RR, for that purpose.

4. Respondent stipulated in CTA Case Nos. 7535, 7873, and 8021, involving the same parties and the same issues but covering the refund for different taxable periods of erroneously

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paid excise taxes, that the definition of "toilet waters" under RR No. 8-84 has not been repealed.

We do not agree with petitioner.

A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted.[39] The term "admission", in turn, embraces any statement of fact made by a party which is against his interest or unfavorable to the conclusion for which he contends or inconsistent with the facts alleged by him.[40] It can also mean as any act, declaration or omission as to a relevant fact in favor or against a person's own interest.[41]

In this case, We see nothing in the records that would lead Us to conclude that respondent has made an admission that the meaning of "toilet waters" under RR No. 8-84 continues to be binding and effective. In fact, We see only petitioner's allegations to this effect.

Respondent's supposed refusal *"to cooperate with petitioner and produce relevant documents"* could not be taken as to constitute the said alleged admission, since the same is validly justified, as found by the Court in Division in the Resolution dated June 27, 2013[42]. The primary reason of respondent for the said supposed refusal is not to suppress evidence that is unfavorable to him or the Government, but that the production of the *"Official Register Book Non-Essential Goods Manufacturing Operations"* submitted by Green Cross, Inc. to the BIR will be in utter violation of Section 270 of the NIRC of 1997.[43]

Relative thereto, the failure of respondent to produce rebuttal evidence, despite the fact that petitioner made specific factual allegations in its Petition that respondent has not been collecting

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[39] *Ybiernas, et al. vs. Tanco-Gabaldon, et al.*, G.R. No. 178925, June 1, 2011.
[40] Philippine Law Dictionary, Third Edition, ©1988, p. 35, citing *Gomez v. Lituania*, 65 OG 7592.
[41] Philippine Law Dictionary, Third Edition, ©1988, p. 35, citing *People v. Galvez*, 22639-CR, June 30, 1982.
[42] Docket – Vol. III (CTA Case No. 8540), pp. 1184 to 1190.
[43] Respondent's *Motion to Quash (RE: Subpoena Duces Tecum and Ad Testificandum dated 10 April 2013)*, Docket – Vol. III (CTA Case No. 8540), p. 1166.

excise tax on toilet water from all other manufacturer of colognes and body sprays, could not also be treated as an indication that respondent admitted that the meaning of "toilet waters" under RR No. 8-84 continues to be binding and effective. Respondent is not required to disprove petitioner's allegations or evidence in relation to the refund claim.

Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.[44] It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.[45]

Neither can We adhere to petitioner's proposition that respondent's efforts to draft an amendment to the said RR is another compelling proof that the legal definition of "toilet waters" under RR No. 8-84 has not been abandoned.

As already pointed out, the function of respondent, as the CIR, in the promulgation of RRs under the earlier quoted Section 244 of the NIRC of 1997, is recommendatory, and it is the Secretary of Finance who is the public officer authorized to promulgate the same. Thus, what must be shown, at the very least, is that respondent made a recommendation to the Secretary of Finance for the amendment of RR No. 8-84 to the effect of changing the definition of "toilet waters" by reducing the essential oil content from 3% to 1.5%. Considering that it was not shown, in this case, that respondent has made such recommendation, We cannot conclude that respondent has, in effect, admitted that the definition of "toilet waters" under RR No 8-84 has not been abandoned. To the mind of this Court, the conduct of public hearings by the BIR and the circulation of an exposure draft of the proposed RR amending the definition of "toilet waters" under RR No. 8-84 is merely preparatory in making respondent's recommendation, and should not be equated as the recommendation itself by respondent.

We also could not find merit in petitioner's contention to the effect that since respondent stipulated in CTA Case Nos. 7535, 7873, and 8021, that the definition of "toilet waters" has not been repealed,

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[44] *Commissioner of Internal Revenue vs. Far East Bank & Trust Co.*, G.R. No. 173854, March 15, 2010.
[45] Supra.

respondent has admitted that the said definition is still binding and effective.

Section 4 of Rule 129 of the Rules of Court provides:

> "Sec. 4. *Judicial admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the **same case**, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made." *(Emphasis and underscoring supplied)*

In this connection, petitioner invokes the ruling of the Supreme Court in *Republic Glass Corporation, et al. vs. Qua*,[46] wherein it was held that while an admission made in another case are not technically judicial admissions as defined by the Rules of Evidence, "if made in a judicial proceeding it is entitled to greater weight".

For easy reference and a better understanding of what has been laid down by the High Court, the ruling in the said case reads:

> "A party may make judicial admissions in (a) the pleadings filed by the parties, (b) during the trial either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.
>
> xxx. To constitute judicial admission, the admission must be made in the **same case** in which it is offered. If made in another case or in another court, the fact of such admission must be proved as in the case of any other fact, although if made in a judicial proceeding it is entitled to greater weight." *(Underscoring supplied)*

A careful reading of the foregoing would reveal that while it is true that the Supreme Court held that a judicial admission *"is entitled to greater weight"*, it does not say that the requirement of proving the fact of the admission *"in another case or in another court...as in the case of any other fact"* can or should already be dispensed with. Simply put, the fact of such admission must still be proved like any relevant fact, despite it being made in another proceeding. It must be stressed that to constitute judicial admission, the admission must be

[46] G.R. No. 144413, July 30, 2004.

made in the same case in which it is offered.

Thus, since the supposed stipulation made by respondent in the said cases was not offered and admitted in evidence, the same cannot be considered by the Court *En Banc*. Courts cannot consider evidence which has not been formally offered.[47]

There is no estoppel.

Petitioner also argues that the BIR's actuations, *i.e.*, in issuing BIR Ruling Nos. 59-81, 553-88 and 128-97, which did not consider baby colognes as toilet waters but as "other preparations", clearly show that the legal definition of "toilet waters" has not been abandoned. Petitioner insists that respondent is already estopped from denying the continued enforceability of the definition of toilet waters under RR No. 8-84.

The reasoning of petitioner is untenable.

The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result.[48] It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.[49]

The elements of estoppel are: _*first*_, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; _*second*_, the other in fact relies, and relies reasonably or justifiably, upon that communication; _*third*_, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and _*fourth*_, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect

[47] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[48] *Megan Sugar Corporation vs. Regional Trial Court of Iloilo, et al.*, G.R. No. 170352, June 1, 2011.
[49] *Commissioner of Internal Revenue, vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

or foresee such action.[50]

In this case, petitioner failed to prove the foregoing elements, particularly in relation to the first element, that respondent communicated to petitioner the contents of BIR Ruling Nos. 59-81, 553-88 and 128-97 *"**in a misleading way**, either by words, conduct or silence"*; and to the fourth element, that respondent knew, expected or foresaw that petitioner would act upon the said BIR Rulings or that respondent expected or foresaw such action. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[51] Furthermore, it is hard to believe that petitioner was misled by the rulings made in BIR Ruling Nos. 59-81, 553-88 and 128-97. This must be so because the assailed BIR Ruling No. 043-00 was issued as early as September 15, 2000, or has been in existence for more than ten (10) years prior to the period of the refund claim (*i.e.*, from January 3, 2011 to April 28, 2012). If petitioner knew about the said earlier BIR Rulings, it could also have known BIR Ruling No. 043-00, which was even circulated in RMC No. 17-02.

In fine, considering that there is no indication that petitioner was misled by respondent, there is no estoppel in this case.

The principle that tax refunds are strictly construed is applicable to this case.

As a final attempt to salvage its case, petitioner argues that tax legislation is strictly construed against the State. Petitioner points out that it is not invoking a tax exemption but is asserting that its splash colognes and body sprays are not subject to excise tax on non-essential goods imposed under Section 150(b) of the NIRC of 1997. It then invokes the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation* ("*Fortune Tobacco* case")[52], wherein it was decreed as follows:

> "Finally, the Commissioners contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax

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[50] *British American Tobacco vs. Camacho, et al.*, G.R. No. 163583, August 20, 2008.
[51] *De Jesus vs. Guerrero III, et al.*, G.R. No. 171491, September 4, 2009.
[52] G.R. Nos. 167274-75, July 21, 2008.

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exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobaccos claim for refund is premised on its erroneous payment of the tax, or better still the governments exaction in the absence of a law.

Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.

A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.

Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti,* which covers not only mistake in fact but also mistake in law.

The Government is not exempt from the application of *solutio indebiti.* Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.

> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.
>
> What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. 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. 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. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws."

We find that the argument of petitioner is erroneous and its reliance in the aforequoted case is misplaced. To be sure, the Court *En Banc* adheres to the time-honored principle that tax laws are strictly construed against the State, and have applied the same in this case. As already shown in the above disquisition, however, petitioner is covered by Section 150(b) of the NIRC of 1997 vis-à-vis the valid interpretation placed thereto by respondent in BIR Ruling No. 043-00, and thus, is subject to excise tax on its splash colognes and body sprays.

In the same vein, the *Fortune Tobacco* case is not on all fours with the instant case. As clearly held therein, tax refunds (or tax credits), as opposed to tax refunds, *"are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another."* In this case, there can be no unjust enrichment on the part of the Government or respondent at the expense of petitioner, because the imposition of the subject excise tax is in accordance with law. In other words, there is no erroneous payment of excise tax to speak of in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated May 4, 2015 and Resolution dated August 11, 2015, both rendered by the Court in Division in CTA Case No. 8540, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVON PRODUCTS MANUFACTURING, INC., *Petitioner,*	**CTA EB NO. 1351** (CTA Case No. 8540)
	Present:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 24 2017 2:15 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Avon Products Manufacturing, Inc. thereby affirming the assailed Decision dated May 4, 2015 and Resolution dated August 11, 2015 of the Court in Division.

The crux of the controversy revolves around the definition of "toilet waters" under Section 150 (b) of the National Internal Revenue Code of 1997 ("1997 NIRC").

Petitioner insists that the definition of "toilet waters" under Revenue Regulations (RR) No. 8-84 (otherwise known as the "Cosmetic Products Regulations"), issued by the Minister of Finance, upon recommendation of the Acting Commissioner of Internal Revenue (CIR), pursuant to Section 326 (now Section 244), in relation to Section 4 of the National Internal Revenue Code of 1977 ("1977 NIRC"), to implement the **sales tax** imposed on cosmetic products by Sections 194(b) and (e) of the 1977 NIRC, applies in determining whether "toilet waters" under Section 150 (b) of the 1997 NIRC should be subject to **excise tax**.

Petitioner contends that the definition of "toilet waters" by the CIR in BIR Ruling No. 43-2000, which was circularized through Revenue Memorandum Circular (RMC) No. 17-02, for purposes of the imposition of excise tax under Section 150 (b) of the 1997 NIRC is invalid as it amends the definition of "toilet waters" under RR No. 8-84.

It is worthy to note that BIR Ruling No. 43-2000 was issued by the CIR pursuant to Section 4 of the 1997 NIRC which vests upon the CIR the exclusive and original jurisdiction to interpret tax laws and decide tax cases. Section 4 of the 1997 NIRC states:

> "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." (Boldfacing supplied)

Clearly, Section 4 of the 1997 NIRC pertains to the exclusive "interpretative power" of the CIR. Thus, when the CIR issued BIR Ruling No. 43-2000 and RMC No. 17-02, interpreting "toilet waters" for purposes of the imposition of excise tax under Section 150 (b) of the 1997 NIRC, the CIR was simply exercising his exclusive and original jurisdiction to interpret a provision of the 1997 NIRC. In doing so, the CIR was neither supplanting nor amending the definition of "toilet waters" under RR No. 8-84 which pertains to the imposition of sales tax on toilet waters.

In contrast, Section 244 of the 1997 NIRC pertains to the power of the Secretary of Finance, upon recommendation of the CIR, to issue rules and regulations anent specific "Compliance Requirements" under the NIRC. Section 245 of the 1997 NIRC enumerates the matters which may be contained in rules and regulations, albeit said enumeration is not exclusive. Sections 244 and 245 of the 1997 NIRC provide:

"TITLE IX

Compliance Requirements

xxx xxx xxx

CHAPTER III

Rules and Regulations

SECTION 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. — **The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code**.

SECTION 245. Specific Provisions to be Contained in Rules and Regulations. — **The rules and regulations of the Bureau of Internal Revenue shall, <u>among other things</u>, contain provisions specifying, prescribing or defining**:

(a) The time and manner in which Revenue Regional Directors shall canvass their respective Revenue Regions for the purpose of discovering persons and property liable to national internal revenue taxes, and the manner in which their lists and records of taxable persons and taxable objects shall be made and kept;

(b) The forms of labels, brands or marks to be required on goods subject to an excise tax, and the manner in which the labeling, branding or marking shall be effected;

(c) The conditions under which and the manner in which goods intended for export, which if not exported would be subject to an excise tax, shall be labelled, branded or marked;

(d) The conditions to be observed by revenue officers respecting the institutions and conduct of legal actions and proceedings;

(e) The conditions under which goods intended for storage in bonded warehouses shall be conveyed thither, their manner of storage and the method of keeping the entries and records in connection therewith, also the books to be kept by Revenue

Inspectors and the reports to be made by them in connection with their supervision of such houses;

(f) The conditions under which denatured alcohol may be removed and dealt in, the character and quantity of the denaturing material to be used, the manner in which the process of denaturing shall be effected, so as to render the alcohol suitably denatured and unfit for oral intake, the bonds to be given, the books and records to be kept, the entries to be made therein, the reports to be made to the Commissioner, and the signs to be displayed in the business or by the person for whom such denaturing is done or by whom, such alcohol is dealt in;

(g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, the manner in which the proper books, records, invoices and other papers shall be kept and entries therein made by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes;

(h) The conditions to be observed by revenue officers respecting the enforcement of Title III imposing a tax on estate of a decedent, and other transfers mortis causa, as well as on gifts and such other rules and regulations which the Commissioner may consider suitable for the enforcement of the said Title III;

(i) The manner in which tax returns, information and reports shall be prepared and reported and the tax collected and paid, as well as the conditions under which evidence of payment shall be furnished the taxpayer, and the preparation and publication of tax statistics;

(j) The manner in which internal revenue taxes, such as income tax, including withholding tax, estate and donor's taxes, value-added tax, other percentage taxes, excise taxes and documentary stamp taxes shall be paid through the collection officers of the Bureau of Internal Revenue or through duly authorized agent banks which are hereby deputized to receive payments of such taxes and the returns, papers and statements that may be filed by the taxpayers in connection with the payment of the tax: *Provided, however*, That notwithstanding the other provisions of this Code prescribing the place of filing of returns and payment of taxes, the Commissioner may, by rules and regulations, require that the tax returns, papers and statements and taxes of large taxpayers be filed and paid, respectively, through collection officers or through duly authorized agent banks: *Provided, further*, That the Commissioner can exercise this power within six (6) years from the approval of Republic Act No. 7646 or the completion of its comprehensive computerization program, whichever comes earlier: *Provided, finally*, That separate venues for the Luzon, Visayas and Mindanao areas may be designated for the filing of tax returns and payment of taxes by said large taxpayers.

xxx xxx xxx." (Boldfacing supplied)

As afore-stated, while Section 4 of the 1997 NIRC vests upon the CIR the exclusive and original jurisdiction to interpret the provisions of the NIRC, subject to the review by the Secretary of Finance, the power of the Secretary of Finance to issue revenue regulations under Section 244 of the 1997 NIRC, and pursuant to the CIR's power to recommend its promulgation under Section 7 (a) of the 1997 NIRC, cannot be disputed.

In the case at bar, the Secretary of Finance has not issued any revenue regulations to implement and interpret Section 150 of the 1997 NIRC, including the definition of "toilet waters" under Section 150 (b). Thus, in issuing BIR Ruling No. 43-2000 and RMC No. 17-02, the CIR was merely exercising his authority under Section 4 of the 1997 NIRC. The CIR did not supplant or amend any revenue regulations as to the definition of "toilet waters" for excise tax purposes as none exists in the first place.

In my *ponencia* in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*,[1] involving the same parties and issue, I elucidated on the CIR's authority to interpret "toilet waters" that must be subjected to excise tax, *viz.*:

> "In BIR Ruling No. 043-2000 dated September 15, 2000, which was published by the BIR in RMC No. 17-02, the term 'toilet waters' was interpreted and defined by the CIR as '**a scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant'**. The CIR also categorically ruled that colognes are 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.)
>>
>> xxx xxx xxx
>>
>> Accordingly, **all other colognes are, likewise, classified as toilet waters subject to excise tax** under the same section . . . .' (Emphasis supplied)

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[1] CTA EB Case No. 894, September 16, 2013.

Well-settled is the rule that rulings of administrative agencies which interprets the law are persuasive and deserves great weight 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.

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, we should not distinguish, should be followed. 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**." (Boldfacing and underscoring supplied)

In fine, I find no basis to grant petitioner's claim for refund of excise taxes paid on splash colognes and body sprays for the period January 3, 2011 to April 28, 2012.

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All told, I VOTE to DENY the Petition for Review filed by Avon Products Manufacturing, Inc. and AFFIRM the assailed Decision dated May 4, 2015 and Resolution dated August 11, 2015 of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice