REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GREEN CROSS, INC.,
Petitioner,

CTA CASE NO. 10401

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: NOV 22 2023

9:45 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed on 16 November 2020 by petitioner Green Cross, Inc. (**petitioner**), pursuant to Section 3(a)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It prays for the refund of the allegedly erroneously paid taxes of ₱117,973,507.78, consisting of excise taxes and Value-Added Tax (**VAT**)

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1 Division Docket, Volume I, pp. 6-36.

2 **SEC. 3.** *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

on excise taxes, on the removals of cologne products/splash colognes for the taxable period of November 2018 to December 2019.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office located at 14th Floor, Common Goal Tower, Finance corner Industry Streets, Madrigal Business Park, Muntinlupa City.[3] It is licensed as a cosmetic manufacturer and trader by the Food and Drug Administration.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) and the head of the Bureau of Internal Revenue (**BIR**) who is vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

FACTS OF THE CASE

Petitioner manufactures and sells splash colognes with the brand name "Lewis & Pearl".[5] From 16 November 2018 to 17 December 2019, petitioner paid the 20% excise taxes imposed on perfumes and "toilet waters" pursuant to Section 150(b)[6] of the NIRC of 1997, as amended, as well as the 12% VAT on excise taxes, on the removals of the cologne products/splash colognes from their places of production.[7] Petitioner paid ₱106,337,067.99 of excise taxes and ₱11,636,439.79 of VAT on excise taxes, totaling to ₱117,973,507.78.

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3 Paragraph (Par.) 1, Agreed Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume III, p. 1543; and Exhibit "P-39", id., Volume VI, pp. 2650-2662.

4 Exhibits "P-1", "P-1-1", "P-2" and "P-2-1", id., Volume V, pp. 2177, 2178-2180, 2181 and 2182, respectively.

5 Par. 6, Petition for Review, supra at note 1.

6 **SEC. 150.** *Non-essential Goods.* — ...

...

(b) Perfumes and other toilet waters[.]

...

7 Par. 8, Petition for Review, supra at note 1.

Claiming that the collection of the aforesaid taxes was erroneous, petitioner, in its letter[8] and in an Application for Tax Credits/Refunds (BIR Form No. 1914)[9], filed with the BIR's Large Taxpayers Service (**BIR-LTS**) on 30 October 2020 a claim for refund of the amounts paid therefor.

Due to respondent's inaction, and before the expiration of the two (2)-year period to file its judicial claim for refund under Section 229[10] of the NIRC of 1997, as amended, petitioner filed the instant Petition for Review with this Court on 16 November 2020.[11] The case was initially raffled to the Third Division and was docketed as CTA Case No. 10401.

PROCEEDINGS BEFORE THE COURT

In the Petition, petitioner essentially argues that its "Lewis and Pearl" products should not be subjected to excise taxes because these are not considered as "toilet waters" under Section 150(b)[12] of the NIRC of 1997, as amended.

On 27 November 2020, the Third Division directed respondent to file his or her Answer to the Petition.[13] Within the extended period[14], respondent filed his or her Answer[15] on 29 January 2021 where it was alleged that petitioner's claim for refund has no legal basis as cologne products/splash colognes are considered as "toilet water" and are proper subject of excise taxes (and the related VAT on excise taxes) under Revenue Memorandum Circular (**RMC**) No. 17-02[16] in relation to Section 150(b) of the NIRC of 1997, as amended.

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8 Dated 29 October 2020, Exhibit "P-40", Division Docket, Volume VI, pp. 2663-2670.
9 Exhibit "P-41", id., p. 2671.
10 **SEC. 229**. *Recovery of Tax Erroneously or Illegally Collected.*
11 Supra at note 1.
12 Supra at note 6.
13 Division Docket, Volume II, p. 1034.
14 See Motion for Extension of Time to File Answer filed on 28 December 2020, id., Volume II, pp. 1036-1039; and Resolution dated 07 January 2021, id., p. 1041.
15 Id., pp. 1042-1048.
16 Green Cross Baby Cologne and all Other Cologne Products.

On 04 February 2021, the Court issued a Notice of Pre-Trial Conference.[17] Respondent filed his or her Pre-Trial Brief[18] on 20 May 2021 while petitioner filed its Pre-Trial Brief[19] on 28 May 2021.

During the Pre-Trial on 09 November 2021, the parties were granted a period of thirty (30) days to file their Joint Stipulation of Facts and Issues (**JSFI**).[20] On 09 December 2021, the parties submitted their JSFI.[21] On 10 March 2022, the Court issued a Pre-Trial Order[22], adopting the parties' JSFI and setting the hearing dates. Subsequently, on 24 June 2022, the Court issued an Amended Pre-Trial Brief[23] which reflected petitioner's correct exhibit numbers.

In the trial that ensued thereafter, petitioner presented four (4) witnesses, namely: (1) Chito P. Ibarrientos (**Ibarrientos**), a Chemical Engineer in petitioner's Research and Development department; (2) Shylene S. Santos (**Santos**), petitioner's Finance General Accounting Manager; (3) Shalimar Sunshine S. Feldia (**Feldia**), the Managing Director of Consumer Vibe Asia (**CVA**) Incorporated; and, (4) Theresa Michelle S. Cortes (**Cortes**), the Group Product Manager for petitioner's Personal Care.

Ibarrientos was presented to the witness stand first. Testifying through his Amended Judicial Affidavit[24], he declared that: (1) petitioner was licensed to operate as a cosmetic manufacturer and trader; (2) it manufactures and trades different variants of "Lewis & Pearl" cologne; (3) in the formulation of the said splash colognes, essential oil content in solutions are measured in percentage (%) by weight or by what is known as "Weight Percentage"; (4) "Weight Percentage" is derived by dividing the weight of essential oil by the weight of the cologne and then multiplied by 100, *e.g.*, when the weight percentage of essential oil is 2%, 98% thereof represents the total weight of the cologne that is not essential oil; (5) "Weight Percentage" of essential oils in the "Lewis & Pearl" variants are as follows:

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17 Division Docket, Volume II, pp. 1050-1051.
18 Id., Volume III, pp. 1059-1062.
19 Id., pp. 1067-1125.
20 See Order dated 09 November 2021, id., pp. 1035-1036.
21 Id., pp. 1043-1067.
22 Id., Volume V, pp. 2058-2080.
23 Id., Volume VII, pp. 3163-3187.
24 Exhibit "P-111", id., Volume III, pp. 1079-1151.

Lewis & Pearl Variants	Weight Percentage of Essential Oils
Ice Water	2.1000%
Rain	2.1199%
Dream	1.4500%
Cool Fantasy	2.3000%
New York Beats	2.5000%
Broadway Dreams	2.5000%
Candy Kiss	2.0000%
Pink Passion	2.0000%
Rush	2.2000%
Blue Navy	1.9000%
Sweet Paris	2.0000%
Cherry Blossom	1.4500%
Wish	1.4500%
Princess	2.2500%

(6) that according to Nigel Groom's Perfume Handbook (**Nigel Handbook**), "toilet water" contains about 4% to 8% essential oils by weight; *eau de cologne* about 3% to 5% of essential oils by weight; and, splash colognes contain 1% to 3% essential oils; and, (7) other personal care products such as soap, shampoo and deodorant, contain fragrances as ingredients.

In his cross-examination, Ibarrientos explained that apart from the essential oil, petitioner's cologne products contain about 55% to 57.5% of denatured alcohol, and the remaining content is water. No redirect examination was conducted. When the Court inquired as to the inclusion of the definition of splash cologne in the Nigel Handbook, Ibarrientos answered in the negative (although petitioner's counsel stated otherwise and manifested that the pertinent page of the Nigel Handbook will be offered as evidence).[25]

Santos assumed the witness stand next. Through her Amended Judicial Affidavit[26], she testified on direct examination that: (1) petitioner duly paid the excise taxes and the corresponding VAT on excise taxes from November 2018 to December 2019 as evidenced by the returns; (2) respondent illegally and erroneously collected the said

[25] TSN dated 15 March 2020, pp. 12-21.
[26] Exhibit "P-110", Division Docket, Volume III, pp. 1190-1274.

taxes on the assumption that splash colognes are classified as "toilet water"; and, (3) petitioner filed an application for tax refund with BIR-LTS on 30 October 2020.

On cross-examination[27], Santos clarified that she was not part of the team that filed the administrative claim with the BIR-LTS. No redirect examination was conducted.

The third witness, Feldia, testified through her Amended Judicial Affidavit[28] that: (1) CVA is a Market Research Agency engaged in the business of assisting companies and entrepreneurs in obtaining in-depth knowledge and understanding of the consumer market; (2) petitioner engaged CVA to conduct a market survey on consumer perception, habit, and practices related to the use of cologne and perfume; (3) out of the 123 people who participated and qualified in the survey, the results showed that 86% of them considered a cologne as a basic item while 56% considered perfume as a luxury item; and, (4) 93% of the survey respondents claimed to have no knowledge of what is "toilet water" whereas the remaining 7% were unaware of the term or have a different understanding of it.

During her cross-examination, Feldia stated that the survey conducted pertains to cologne and perfume in general and not solely on petitioner's "Lewis & Pearl" product line. No redirect examination was conducted.[29]

Cortes was petitioner's last witness and she testified in her Amended Judicial Affidavit[30] that: (1) petitioner filed its claim for refund before the Court of Tax Appeals (**CTA**) on the basis that petitioner's "Lewis & Pearl" cologne products are not considered as perfumes and toilet waters; (2) in her experience in the fragrance industry, the term "toilet waters" is not commonly used and fragrance products are usually classified as perfume or cologne; and, (3) petitioner's splash colognes are examples of lower-end fragrance products or convenience products since they are retailed at low-cost prices (around ₱15.00 to ₱58.00) and are widely distributed in local

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27 TSN dated 15 March 2020, pp. 27-28.
28 Exhibit "P-113", Division Docket, Volume VII, pp. 3100-3114.
29 TSN dated 19 April 2022, pp. 8-11.
30 Exhibit P-112, Division Docket, Volume III, pp. 1152-1174.

supermarkets and stores. Unlike colognes, perfumes are considered as luxury products because they are being sold at higher prices, distributed by upscale stores such as *Rustan's*, and advertised by high-end magazines like the *Philippine Tatler*.

In her cross-examination, Cortes confirmed that petitioner's "Lewis & Pearl" cologne products are considered as convenience products. No redirect examination was conducted. Responding to the Court's inquiry on the use of the word "cologne", Cortes explained that petitioner's product line is considered and marketed as a cologne even if it contains less than 3% of essential oil.[31]

Later, or on 30 May 2022, petitioner filed its "Formal Offer of Evidence"[32] (FOE) and offered Exhibits "**P-1**" to "**P-113**" (inclusive of sub-markings). Respondent, on 16 June 2022, filed his or her "Comment (on Petitioner's Formal Offer of Evidence)"[33] wherein he or she did not interpose any objection to the admission of the exhibits.

Prior to the resolution of petitioner's FOE, respondent filed a "Manifestation" on 21 June 2022[34] and stated that he or she will no longer present any evidence as the BIR-LTS had not finalized any report on petitioner's administrative claim for refund.

Later, the case was transferred to the Second Division.[35] On 25 August 2022, the Court issued a Resolution[36] admitting all of petitioner's exhibits except Exhibit "**P-26-12**"[37] for not being found in the records. Moreover, the Court noted that Exhibits "**P-33**", "**P-34-3**", "**P-40-1**", "**P-55**", "**P-56**", "**P-57**", "**P-58**" and "**P-100**" were unreadable; while Exhibits "**P-77**", "**P-80**", "**P-81**", and "**P-82**"[38] were offered as

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31 TSN dated 25 May 2022, pp. 7-17.
32 Division Docket, Volume V, pp. 2135-2176.
33 Id., Volume VII, pp. 3152-3154.
34 Id., pp. 3156-3158.
35 See Order dated 11 July 2022, id., p. 3188. See Administrative Circular No. 01-2022 issued on 21 June 2022.
36 Id., pp. 3190-3195.
37 Offered as 70-ml bottle of the Wish variant of GCI's spray colognes.
38 See Compliance filed on 30 May 2022, Division Docket, Volume VI, pp. 3126-3149.

Exhibit	Description
"P-33"	September 2018 issue of Philippine Tatler
"P-34-3"	Sample product feature for *Flavia Vanilla Parle Moi de Parfum* perfume in the sample Tatler Issue
"P-40-1"	Date of Application Letter for Tax Refund

excise tax returns, but without their reference numbers. In the same Resolution, the Court directed the parties to file their respective memoranda.

On 09 September 2022, petitioner filed a "Motion for Partial Reconsideration (of the Resolution dated August 25, 2022)"[39] (**MPR**), seeking the admission of Exhibit "**P-26-12**" (denied exhibit) and submitting clearer copies of the exhibits that the Court deemed to be bearing unreadable content. Despite the resolution ordering respondent to file a comment on the MPR[40], the latter failed to do so.[41]

On 30 September 2022, petitioner filed its Memorandum[42] while respondent filed his or her Memorandum[43] on 03 October 2022. On 22 November 2022, the Court issued a Resolution[44] admitting Exhibit "**P-26-12**" and noting the submission of the clearer copies of the unreadable exhibits, and submitting the case for decision.

ISSUE

As reflected in the Amended Pre-Trial Brief, the sole issue for this Court's determination is –

"P-55"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900029270083
"P-56"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900029328181
"P-57"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900029582985
"P-58"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900029684830
"P-100"	Monthly Value-Added Tax Declaration for February 2019 Reference No. 91900029695323
"P-77"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900032384760
"P-80"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900032811372
"P-81"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900032825275
"P-82"	Excise Tax Return for Automobiles & Non-Essential goods Reference No. 261900032825006

39 Id., Volume VII, pp. 3196-3204.
40 Dated 22 September 2022, id., p. 3206.
41 See Records Verification dated 18 October 2022, id., p. 3289.
42 Id., pp. 3207-3257.
43 Id., pp. 3278-3287.
44 Id., pp. 3290-3292.

WHETHER PETITIONER GREEN CROSS, INC. IS ENTITLED TO THE REFUND OR TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) OF THE ALLEGED ERRONEOUSLY PAID EXCISE TAXES AND VALUE-ADDED TAX (VAT) ON EXCISE TAX FOR TAXABLE YEARS (TYs) 2018 AND 2019 IN THE AMOUNT OF ₱117,973,507.78.

ARGUMENTS

In support of the instant petition, petitioner insists that "toilet water" (or "toilet waters") under the NIRC of 1997, as amended, should be understood in its technical or commercial meaning. According to it, under Revenue Regulation (**RR**) No. 08-84[45] (and as used in Presidential Decree [**PD**] No. 1158[46]), "toilet water" is defined as a scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils of more than 3% by weight. In Nigel Handbook, *eau de toilette* includes a preparation containing 4-8% perfume in alcohol. Petitioner insists that both respondent and this Court should consider these technical definitions in the determination of the application of Section 150(b)[47] of the NIRC of 1997, as amended.

Petitioner argues further that the amendatory statutes did not also provide any definition of "toilet waters" and the concerned agencies, such as the respondent and the Department of Finance (**DOF**), have not issued any subsequent ruling or regulation to supplant the definition of "toilet waters" in the NIRC of 1997, as amended. Thus, as discussed in *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*[48] (**American Express**), the principle of legislative approval of administrative interpretation by reenactment may be applied.

Petitioner also states that the reenactment of the statute that remained substantially unchanged from the previous statute is an indication that the legislature has adopted the prior executive construction in the older law. Thus, the term "toilet waters" under PD 1158 was specifically defined under RR No. 08-84 or the regulation

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45 Cosmetic Products Regulations.
46 A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES.
47 Supra at note 6.
48 G.R. No. 152609, 29 June 2005.

implementing the statute then in force. The term "toilet waters" was later on adopted in Section 150(b) of the Executive Order (**EO**) No. 273[49], series of 1987 and later on adopted in Section 150(b) of the NIRC of 1997, as amended. Petitioner points out that although there has been a change in the tax type (from percentage to excise tax), the use and definition of "toilet water" under RR No. 08-84 remains the same. Moreover, petitioner argues that unless a subsequent tax statute or regulation provides a different meaning, the previous technical definition must not be abandoned. The said definition must then stand and must be used in the interpretation of "toilet waters" under the current laws.

Petitioner further alleges that RMC No. 17-02[50] cannot amend nor repeal RR No. 08-84 since RMCs are mere issuances that publish pertinent portions of the law; whereas, RRs are issuances approved and signed by the Secretary of Finance (**SOF**) that specify, describe and define rules and regulation for the implementation of the Tax Code. Citing *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[51], petitioner adds that RRs should prevail over RMCs.

As to the weight percentage, petitioner emphasizes that its splash cologne products contain less than 3% of essential oils; thus, these do not come within the purview of what is considered as "toilet waters".

Lastly, petitioner contends that its splash colognes cannot be put in the same category as perfumes. Unlike perfumes that are high-priced and carried by high-end boutiques and establishment, petitioner's splash colognes are inexpensive common items that are essential to a Filipino household and may be easily purchased from any local stores.

On the other hand, respondent insists that petitioner's splash colognes are classified as "toilet waters" and are thus subject to excise taxes under Section 150(b) of the NIRC of 1997, as amended. To bolster his or her claim, respondent cites BIR Ruling No. 43-00[52], that was

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

50 Supra at note 16.

51 G.R. No. 144653, 28 August 2001.

52 Letter dated 15 September 2000. Imposition of Excise Tax on Green Cross Baby Cologne.

subsequently published in RMC No. 17-02, where BIR explicitly stated that the term "toilet waters" includes colognes.

RULING OF THE COURT

After an assiduous review of the arguments of both parties, We are constrained to deny the present Petition for Review for lack of merit.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

> ...
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> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> ...
>
> **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any **national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or

> credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[53]
>
> ...

It is well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

> (1) That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[54]
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> (2) That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said 2-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed;[55] and,
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> (3) The claim for refund must be a categorical demand for reimbursement.[56]

As to the ***first and second requirements***, petitioner's administrative and judicial claims were timely filed. It is shown that petitioner paid excise taxes on various dates from 16 November 2018 to 17 December 2019,[57] and VAT on excise taxes from 12 December 2018 to 24 January 2020.[58] Counting from the earliest payment date of 16 November 2018, petitioner had until 16 November

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53 Emphasis supplied.

54 See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

55 See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

56 *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

57 Exhibits "P-42" to "P-49", and "P-51" to "P-98", Division Docket, Volume VI, pp. 2672-2703, and 2705-2877, respectively.

58 Exhibits "P-45", "P-99" to "P-109", and "P-50", id., pp. 2684-2687, 2878-2918, and 2706, respectively.

2020 to file its administrative and judicial claims for refund. Notably, petitioner's administrative claim for refund was filed on 30 October 2020 before the BIR-LTS[59] while the judicial claim for refund was filed before this Court on 16 November 2020.[60] Thus, both administrative and judicial claims were timely filed.

Anent the ***third and last requirement***, a claimant must first file a written claim for refund, categorically demanding recovery of erroneously or illegally paid taxes with the CIR. The claimant must show indubitably the specific provision of law from which his or her right arises. It cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund.[61]

According to petitioner, the essential oil content of each variant of the "Lewis & Pearl" product line is less than 3% by weight. For this reason, and pursuant to RR No. 08-84, it maintains that its splash cologne products are not "toilet waters" and, therefore, are not subject to excise tax under Section 150(b) of the NIRC of 1997, as amended. It further points out that splash colognes are basic or common commodities as they are inexpensive products used by ordinary Filipinos in their daily lives. Hence, it contends that the splash colognes do not qualify as "non-essential goods" under Section 150(b) of the NIRC of 1997, as amended.

Respondent, on the other hand, stresses that although the term "toilet waters" under Section 150(b) of the NIRC of 1997, as amended, was not defined; still, in BIR Ruling No. 43-00 (which was subsequently published in RMC No. 17-02), the same was interpreted to include colognes thus, petitioner's cologne products/splash colognes should be imposed with excise tax.

The Court agrees with respondent.

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59 Exhibits "P-40" and "P-41", id., pp. 2663-2671.

60 Supra at note 1.

61 *Commissioner of Internal Revenue v. Rosemarie Acosta*, G.R. No. 154068, 03 August 2007.

The main issue in this case is whether petitioner's "Lewis & Pearl" product line[62] comes within the contemplation of "toilet waters" that are subjected to excise tax under Section 150(b) of the NIRC of 1997, as amended. To clarify, the term "toilet waters" has two (2) different definitions under the relevant issuances: (1) under RR No. 08-84, it is defined as "containing essential oils, *i.e.*, more than 3% by weight" (to which petitioner alleged that its' cologne products do not exceed the 3% threshold); and (2) under BIR Ruling No. 43-00, as circularized in RMC No. 17-02, it classifies cologne and "all other colognes" as "toilet waters".

For easy reference, Section 150(b) of the NIRC of 1997, as amended, reads, in part, as follows:[63]

> ...
>
> 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:
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> ...
>
> (b) Perfumes and **toilet waters**[.][64]
>
> ...

Notably, the definition of "toilet waters" is absent from the above-quoted Section 150.

It is noted that respondent is vested with the power to interpret the provisions of the NIRC of 1997, as amended, *subject* to the SOF's review, in accordance with the first paragraph of Section 4 of the NIRC of 1997, as amended, *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

62 Q&A Nos. 13 to 14, Exhibit "P-110", Division Docket, Volume III, pp. 1084-1085; and Exhibits "P-27-1" to "P-27-13", id., Volume V, pp. 2378-2390.

63 Emphasis supplied.

64 Emphasis supplied.

jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

...

Respondent's power in the above provision is usually exercised or expressed through various BIR Rulings[65] and/or RMCs. RMCs are considered administrative rulings[66] and are issuances that 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 respondent, and by offices and agencies other than the BIR (for the information, guidance or compliance of revenue personnel).[67] However, the issuances of the SOF, through the RRs, usually take precedence over the RMCs.

Section 244 of the NIRC of 1997, as amended, reads -

...

> **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.

...

In one case, the Supreme Court ruled that RRs should always prevail over BIR Rulings and RMCs.[68] Corollarily, a BIR Ruling or an RMC cannot supplant an RR. The next pivotal query is - *did respondent supplant the definition of "toilet waters" under RR No. 08-84 via the issuance of BIR Ruling No. 43-00 and RMC No. 17-02?*

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65 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. 01-03]

66 *Asia International Auctioneers, Inc., et al. v. Hon. Guillermo L. Parayno, Jr., et al.*, G.R. No. 163445, 18 December 2007.

67 Section 3(g), RAO No. 01-03.

68 See *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 144653, 28 August 2001.

We respond in the negative.

The pertinent provisions of RR No. 08-84[69] dated 05 June 1984, issued by the Ministry (now Department) of Finance, state:

> ...
>
> SECTION 1. *Scope.* — Pursuant to Section 326, in relation to Section 4 of the National Internal Revenue Code, **the following regulations** **relating to the sales tax** **payable by manufacturers and/or exporters of cosmetic products are hereby promulgated**. These regulations shall be known as Revenue Regulations No. [0]8-84 or the **Cosmetic Products Regulations. These regulations deal with the tax on cosmetic products imposed by Section 194(b) and (e)** and Section 326 of the National Internal Revenue Code, which provides as follows:
>
>> Sec. 194. ***Percentage tax on sales of non-essential products.* — There shall be levied, assessed and collected once only on every original sale, barter, exchange**, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated **a tax equivalent to fifty per centum of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer.**
>>
>> xxx xxx xxx
>>
>> (b) Perfumes, essences, extracts, **toilet waters**, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrices, tooth paste, talcum and medicated toilet powders, hair oils and pomades.
>>
>> xxx xxx xxx
>>
>> (e) Similar or analogous articles, substances, or preparations to those enumerated above as determined by the Minister of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.
>
> 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

69 Cosmetic Products Regulations.

> in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales and similar purposes.
>
> SECTION 2. *Articles taxable as cosmetic products.* — The articles defined as follows shall be taxable as cosmetic products:
>
> ...
>
> (e) ***<u>Toilet waters</u>*** **are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils i.e. more than 3% by weight**. Examples: Lav[e]nder water, Eau de Cologne, Eau de Toilette.[70]
>
> ...

The foregoing provisions show that RR No. 08-84 was promulgated to deal with percentage tax on cosmetic products imposed by Section 194 of the NIRC of 1977. In other words, 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 01 January 1986, the said Section 194 of the NIRC of 1977, as amended, was renumbered to Section 163 under PD 1994.[71] While the latter law had 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 01 January 1988, however, Section 163 under PD 1994 was renumbered and amended by Section 16 of EO No. 273[72], 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 <u>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</u>**; net of excise tax and value-added tax, of the following goods:
> >
> > ...

---

70 Emphasis supplied and underscoring supplied and italics in the original text.
71 FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE.
72 Supra at note 49; Emphasis supplied.

(b) Perfumes and **<u>toilet waters</u>**[.]"[73]

...

Upon the enactment of the Tax Reform Act of 1997[74], effective 01 January 1998, Section 150 was replicated in the same Section of the NIRC of 1997, as amended.

On 15 September 2000, respondent issued BIR Ruling No. 43-00 interpreting the term "toilet waters" under Section 150(b) of the NIRC of 1997, as amended, to include "all other colognes", pursuant to Section 4 of the same law which, as already pointed out, clothed respondent the exclusive and original jurisdiction to interpret tax laws, *subject* to the SOF's review. The relevant portion 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.
>
> 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 —
>
> ...
>
> Accordingly, **all other colognes are, likewise, classified as toilet waters subject to excise tax under the same section,** ...[75]
>
> ...

[73] Emphasis and underscoring supplied.
[74] Republic Act No. 8424.
[75] Emphasis supplied and italics in the original text.

Subsequently, BIR Ruling No. 43-00 was circularized in RMC No. 17-02.

A careful reading of Section 150, as introduced by EO No. 273 and as retained in the NIRC of 1997, as amended, reveals 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 1977/Section 163 of PD 1994 to an excise tax or *ad valorem* tax under the said Section 150. Such change is evident in the words employed. Specifically, the amendment, *inter alia*, **deleted the sales tax** particularly 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 VAT, of "toilet waters". Simply put, the law totally changed the imposition from a sales tax to an excise tax.

The distinction between a sales tax and an excise tax is clear. A sales tax is a tax imposed on the act of selling the product. It is not a tax on the property sold.[76] On the other hand, an excise tax is a tax levied on a specific article.[77] Otherwise stated, excise taxes imposed under Title VI on "Excise Taxes on Certain Goods and Services" of the NIRC of 1997, as amended, are taxes on property 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".[78] Excise taxes, as imposed under the NIRC of 1997, as amended, 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.[79]

Apropos, the deliberate selection in a statute of language differing from that of earlier subject indicates that a change of law was intended.[80] 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.

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76 See *A. Soriano y Cia v. Collector of Internal Revenue*, G.R. No. L-5896, 31 August 1955.
77 *Petron Corporation v. Mayor Tobias M. Tiangco, et al.*, G.R. No. 158881, 16 April 2008.
78 *Diageo Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183553, 12 November 2012.
79 *Petron Corporation v. Mayor Tobias M. Tiangco, et al.*, supra at note 77.
80 *Mamerto Portillo v. Enrique Salvani*, G.R. No. 32181, 10 March 1930.

The amended law or rule should accordingly be given a construction different from that previous to its amendment.[81]

Since Section 194 of the NIRC of 1977 was substantially changed and renumbered to Section 150 by EO No. 273, which reclassified the tax imposed on "toilet waters" from sales tax or percentage tax to excise tax, then, RR No. 08-84 (which was promulgated to implement Section 194 of the NIRC of 1977) may not be used to implement Section 150(b) of the NIRC of 1997, as amended, which pertains to the imposition of excise tax.

Although the term "toilets waters" remains unchanged, the modification in the nature of the tax from sales tax or percentage tax to excise tax, pursuant to EO No. 273, is an effective repeal of Section 194 of the NIRC of 1977. Therefore, RR No. 08-84, which implements the same, cannot be made to apply to the current provision on excise tax, *i.e.*, Section 150(b) of the NIRC of 1997, as amended.

Otherwise stated, given the amendment introduced by EO No. 273, the meaning of the term "toilet waters" has changed. Thus, the definition of "toilet waters" under RR No. 08-84 was, in effect, abandoned by the subsequent amendment of Section 194 of the NIRC of 1977 which it implements. Accordingly, to respond to the query, this Court finds that respondent *did* not supplant the definition of "toilet waters" under RR No. 08-84 by his or her issuance of BIR Ruling No. 43-00 and RMC No. 17-02.

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.[82] Relative thereto, the definition of "cologne" or "toilet waters", as stated in BIR Ruling No. 43-00, appears to suggest clearly that either should be understood in the 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).

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81 *Laguna Metts Corporation v. Court of Appeals, et al.*, G.R. No. 185220 (Resolution), 27 July 2009.

82 *The San Miguel Corporation v. The Municipal Council, et al.*, G.R. No. L-30761, 11 July 1973.

Moreover, it is widely accepted that the interpretation placed upon a statute by executive officers, who carry the duty to enforce it, is entitled to great respect by the courts.[83] Administrative interpretation of a tax law, while not conclusive, should be followed unless clearly erroneous.[84]

Furthermore, to date, the SOF, who is vested with the power to review rulings of respondent, has not modified, or reversed these issuances. Neither did the SOF issue any new implementing rule relative to the definition of "toilet waters". Hence, the interpretation accorded by respondent shall prevail.

It bears emphasis that the Supreme Court has consistently held that RR No. 08-84 may not be used to implement Section 150(b) of the NIRC of 1997, as amended, which pertains to the imposition of excise tax. Although the term "toilets waters" remains unchanged, the change in the *nature* of the tax from percentage tax to excise tax pursuant to EO No. 273 is an effective repeal of Section 194 (renumbered to Section 163 under PD 1994) of the NIRC of 1977.[85] The policy determinations made by the SOF attending the implementing rule under the old provision on percentage tax, *i.e.*, RR No. 08-84, cannot be made to apply to the current provision on excise tax, *i.e.*, Section 150(b) of the NIRC of 1997, as amended.[86]

Thus, the definition of "toilet waters" in BIR Ruling No. 43-00 and RMC No. 17-02 must be sustained.

THE PRINCIPLE OF LEGISLATIVE APPROVAL OF ADMINISTRATIVE INTERPRETATION BY REENACTMENT IS NOT APPLICABLE.

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83 *Philippine Bank of Communications v. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, 28 January 1999.

84 *WM. H. Anderson v. Juan Posadas, Jr., Collector of Internal Revenue,* G.R. No. 44100, 22 September 1938.

85 *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,* G.R. No. 205602 (Resolution), 10 August 2015. See *Avon Products Manufacturing, Inc. v. Commissioner of Internal* Revenue, G.R. No. 206286 (Resolution), 02 March 2022; *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,* G.R. No. 224079 (Resolution), 29 March 2023.

86 Id.

Petitioner contends that the principle of administrative interpretation by reenactment is applicable in the construction or interpretation of the term "toilet waters" under Section 150(b) of the NIRC of 1997, as amended.

We disagree.

In *American Express*[87], the Supreme Court elucidated on the principle of legislative approval of administrative interpretation by reenactment, to wit:

> ...
>
> ...[U]pon the enactment of RA 8424, which substantially carries over the particular provisions on zero rating of services under Section 102(b) of the Tax Code, the principle of legislative approval of administrative interpretation by reenactment clearly obtains. This principle means that "the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction.
>
> The legislature is presumed to have reenacted the law with full knowledge of the contents of the revenue regulations then in force regarding the VAT, and to have approved or confirmed them because they would carry out the legislative purpose. The particular provisions of the regulations we have mentioned earlier are, therefore, re-enforced. "When a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the [l]egislature thereafter [reenacts] the provisions [**without**] **substantial change**, such action is to some extent confirmatory that the ruling carries out the legislative purpose.
>
> ...

As can be gleaned from the foregoing, when the legislature reenacts a law that has been construed by an executive agency **without substantial change**, it is an indication of the adoption by the legislature of the prior construction by the agency.

Here, as already shown, there was a substantial change insofar as the nature or kind of tax imposed, between then Section 194(b) of the NIRC of 1977, and ultimately Section 150(b) of NIRC of 1997, as amended. To stress, the change in the law was substantial because the

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87 Supra at note 48; Citations omitted and emphasis supplied.

former tax that was imposed under the said Section 194(b), upon which RR No. 08-84 was based, is a sales tax or percentage tax, while the tax that is imposed by the later law is an excise tax. Thus, the said principle could not apply.

THE DETERMINATIVE FACTOR FOR PURPOSES OF IMPOSING EXCISE TAXES ON NON-ESSENTIAL GOODS IS THE FUNCTION OF THE PRODUCT.

The Court could not also share petitioner's view that since its products are inexpensive and allegedly used by ordinary Filipinos in their daily lives, the same could not qualify as non-essential goods subject to excise tax.

The NIRC of 1997, as amended, defined non-essential goods by providing an enumeration of goods deemed falling within its category or classification. An examination of these items reveals that the characterization of whether an article is non-essential or not does not depend on its price or value but rather on its inherent functionality.[88] For example, the imitation jewelry, despite its affordability, the same is still subject to excise tax as a non-essential good because it has no function other than for personal adornment and embellishment.[89] The same is true for perfumes and "toilet waters".

With the above disquisitions, this Court finds that there has been no erroneous or illegal collection of excise taxes and VAT on excise taxes that can be refunded to petitioner.

On a final note, it is well-established that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[90] The burden is on the taxpayer to show that he

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88 See DOF Opinion No. 012-2022, 29 June 2022 and DOF Opinion No. 012-2022-A, 07 August 2023.

89 Id.

90 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

has strictly complied with the conditions for the grant of the tax refund or credit.

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

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

<u>ATTESTATION</u>

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice