REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 978
(CTA Case No. 8207)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
and
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 11 2013

x - x

DECISION

RINGPIS-LIBAN, *J.*:

This is a Petition for Review under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Rule 43 of the Rules of Court, seeking the reversal of the Decision[1] dated September 20, 2012 and the Resolution[2] dated December 13, 2012 of the CTA Second Division (2nd Division). The assailed Decision and Resolution denied petitioner's claim for refund of alleged erroneously paid excise taxes for the period January 5, 2009 to December 29, 2009.

[1] *Rollo*, CTA EB Case No. 978, pp. 55-72.
[2] *Rollo*, pp. 74-80.

THE FACTS[3]

Avon Products Manufacturing, Inc. (petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Calamba Premier Industrial Park, Barangay Batino, Calamba, Laguna. Petitioner is engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet waters, splash colognes, and body sprays.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the authority to decide, approve, and grant tax refunds. She holds office at the BIR National Office Building, Diliman Quezon City.

Petitioner alleges that for the period covering January 5, 2009 to December 29, 2009, it paid the twenty percent (20%) excise taxes imposed on perfumes and toilet waters under Section 150 of the National Internal Revenue Code of 1997 (1997 NIRC) on its removal of perfumes, toilet waters, splash colognes, and body sprays. The excise taxes paid for the said period on products actually removed by petitioner from their place of production totaled P133,827,221.51.

Petitioner asserts that out of the total excise taxes it paid during said period, the amount of P38,873,976.07 represents the 20% excise tax erroneously paid by petitioner on removals of splash colognes and body sprays containing essential oils of three percent (3%) or less by weight.

Petitioner argues that since the essential oil content of its splash colognes and body spray products is not more than 3% by weight, these products are not subject to the excise tax on toilet waters imposed under Section 150 of the NIRC of 1997, and thus, claims it erroneously paid excise taxes thereon.

On December 9, 2010, petitioner filed a written claim for refund of its erroneously paid excise taxes with respondent's Large Taxpayer's Service through a letter dated December 7, 2010 and a

[3] *Rollo*, pp. 55-61, as found by the 2nd Division.

duly accomplished Application for Tax Credits/Refund (BIR Form No. 1914).

Due to respondent's failure to act on petitioner's claim for refund, petitioner opted to file a Petition for Review on December 22, 2010. Respondent filed her Answer on January 26, 2011. A Motion to Admit with attached Supplement and Amended Petition for review was filed by petitioner on February 24, 2011. Respondent filed an Amended Answer on April 13, 2011.

On May 27, 2011, the parties filed their Joint Stipulation of Facts and Issues which was approved in a Resolution dated May 31, 2011.

After trial, the 2nd Division rendered its Decision, *to wit*:

> "In view of the foregoing, the toilet waters used in the petitioner's splash colognes and body sprays would fall within the purview of the definition of 'toilet waters' contemplated by Section 150(b) of the NIRC of 1997, in relation to RMC No. 17-02. As a consequence, petitioner's splash cologne and body spray products should be subject to the 20% excise tax on toilet waters provided by Section 150(b) of the NIRC of 1997, as amended. Accordingly, petitioner's claim for refund must be denied.
>
> x x x
>
> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit."[4]

Petitioner's Motion for Reconsideration was likewise denied through a Resolution dated December 13, 2012, which was received by petitioner on December 19, 2012. Petitioner moved for and was granted an additional 15 days or until January 18, 2013 to file its Petition for Review.

Hence, this Petition for Review before the Court *En Banc* was timely filed on January 18, 2013.

On February 19, 2013, respondent filed its Comment/Opposition.[5] On April 2, 2013, respondent manifested that she would be adopting her Comment/Opposition as her

[4] *Rollo*, pp. 70-71.
[5] *Rollo*, pp 113-126.

Memorandum. Petitioner, on the other hand, filed its Memorandum on April 15, 2013, and the case was submitted for decision on May 8, 2013.

The Assignment of Errors

The following assignment of errors[6] was presented by the petitioner:

I. The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the definition of "toilet waters" under Revenue Regulations No. 8-84 (RR 8-84) was repealed by Executive Order No. 273 (EO 273).

II. 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 RR 8-84 and that RR 8-84 is not applicable to excise tax.

III. The Honorable 2nd Division of the Court of Tax Appeals erred in ruling on the issue of whether or not RR 8-84 was repealed by EO 273 as the same was not an issue in this case.

IV. The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the respondent can supplant the definition of "toilet waters" found in RR 8-84 through a mere BIR ruling.

V. The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the respondent is not estopped from denying the continued applicability of the definition of "toilet waters" under RR 8-84.

VI. The Honorable 2nd Division of the Court of Tax Appeals erred in ruling that the petitioner is claiming an

[6] *Rollo*, pp. 14-15, edited for consistency.

> exemption from excise tax and failed to provide a basis for its claim that its splash colognes and body sprays are exempt from the imposition of excise tax under Section 150(b) of the Tax Code when, in fact, what petitioner is asserting is that its products are not "toilet waters" subject to the excise tax under said Section 150(b).

The Ruling of the Court

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

Petitioner argues that the definition of "toilet waters" under Revenue Regulations No. 8-84[7], otherwise known as the *"Cosmetic Products Regulations"*, still applies. RR 8-84 requires that the product have a minimum essential oil content of more than 3% by weight in order to be considered "toilet waters". Since the essential oil content of petitioner's splash colognes and body spray products is not more than 3% by weight -- a fact not controverted by respondent[8] -- these products are not "toilet waters" as the term is defined. As such, petitioner's products are not subject to the 20% excise tax on toilet waters under Section 150 of the Tax Code. They erroneously paid taxes thereon for which they are entitled to a refund.

On the other hand, respondent argues that RR 8-84 has been repealed, and that the more recent rulings of the BIR, specifically BIR Ruling No. 043-2000[9], as reiterated in Revenue Memorandum Circular No. 17-02[10], should apply. These rulings defined colognes and toilet waters as **"scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant."**[11] The changes in the law have

---

[7] Cosmetic Products Regulation, June 5, 1984.
[8] *Rollo*, p. 11.
[9] Ruling on Proper Tax to be Imposed on Green Cross Baby Cologne product, issued September 15, 2000.
[10] Subject: Green Cross Baby Cologne and Other Cologne Products, issued May 24, 2002.
[11] *Id.*

therefore rendered the prior definition of "toilet waters" under RR 8-84 inapplicable.

This Court finds merit in respondent's position.

A brief look at the history of how the definition of "toilet waters" has evolved throughout the various amendments of the law, rules and regulations, and other administrative issuances is imperative. Such will show that "toilet waters", regardless of their essential oil content, are still subject to excise tax.

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

> "Section 194. ***Percentage tax*** *on sales of jewelry, toilet preparations and others*- There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow **enumerated a tax equivalent of seventy per centum of the gross value in money of the articles sold, bartered, exchanged or transferred such tax to be paid by the manufacturer or producer: Provided,** That, where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles:
>
> x x x
>
> (b) Perfumes, essences, extracts, **toilet waters,** cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparations, by whatsoever name known or distinguished; and any of the above which are used or applied or intended to be used or applied for toilet purposes; except tooth and mouth washes, dentrifices, toothpaste, and talcum or medicated toilet powders. x x x" (*Emphasis supplied)*

The 1977 NIRC did not define "toilet waters".

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

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

> "**Section 2. Articles taxable as cosmetic products.** - The articles defined as follows shall be taxable as cosmetic products:
>
> x x x
>
> (e) *Toilet waters* are scented alcoholic or non-alcoholic preparations primarily used as body fragrance **containing essential oils**, i.e. **more than 3% by weight**. Examples: Lavander water, Eau de Cologne, Eau de Toilette." *(Emphasis supplied)*

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

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

> "SECTION 23. Section 194 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:
>
> '**Sec. 163. Percentage tax on sale of non-essential articles.** - There shall be levied, assessed and collected, once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated **a tax equivalent to 50% of the gross value in money** of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer:
>
> x x x
>
> (b) Perfumes, essences, extracts, **toilet waters,** cosmetics, hair dressings, hair dyes, hair restorations, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrices, toothpaste, talcum and medicated toilet powders, hair oils and pomades.
>
> x x x
>
> Any material, part or accessory of the above-mentioned articles shall be taxed under this section." *(Emphasis supplied)*

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

The pertinent section of EO 273 is quoted below:

> **"SECTION 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby renumbered and amended to read as follows:**
>
> **SEC. 150. Non-essential goods.** --- There shall be levied, assessed and collected a tax equivalent to 20% based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and custom duties; net of excise tax and value-added tax, of the following goods:
>
> (a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filing, mounting or fitting of the teeth); opera glasses and lorgnettes. The term `precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The terms 'imitations thereof' shall include platings and alloys of such metals;
>
> (b) **Perfumes and toilet waters;**
>
> (c) Yachts, and other vessels intended for pleasure or sports." (*Emphasis supplied*)

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

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

On September 15, 2000, the BIR, in response to a query by the Kapunan Imperial Panaguiton & Bongolan Law Offices on the proper tax to be imposed on its client's Green Cross Baby Cologne product, issued BIR Ruling No. 043-2000. The Commissioner of Internal Revenue (CIR) then[12] interpreted and defined the term "toilet waters" as *"a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant"*[13].

The CIR also categorically ruled that all other colognes were classified as "toilet waters" subject to excise tax under section 150 (b) of the 1997 NIRC, without qualification as to the percentage (by weight) of their essential oil content. Pertinent portions of BIR Ruling No. 043-2000 are quoted hereunder:

> "In reply, please be informed that the term 'cologne' which is an alcohol-based preparation is defined as follows:
>
> > 'Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave, lotion or deodorant' (Hawley's Condensed Chemical Dictionary, 11th ed.)
>
> x x x
>
> Accordingly, **all other colognes are, likewise, classified as <u>toilet waters subject to excise tax</u> under the same section, xxx."** (*Emphasis supplied*)

The aforequoted BIR Ruling 043-2000 was eventually published in Revenue Memorandum Circular No. 17-12 (RMC 17-12) on May

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

8, 2002. It is the standing administrative issuance[14] that amplifies Section 150 of the NIRC of 1997.

This Court is of the opinion that EO 273 repealed not only Section 163 of the 1977 NIRC as amended by PD 1994, but also RR 8-84 as well. The repealing clause of EO 273 states:

> "Sec. 29. The provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof which are inconsistent with this Order are hereby repealed, amended or modified accordingly."

The new Section 150 of the 1977 NIRC as amended by EO 273 is an altogether new section. First, it changed the classification of the imposable tax from a percentage tax to excise tax. Second, it omitted other items or products that it deemed taxable under Section 163 of the 1977 NIRC.

Since it is presumed that the framer of the law -- in this case then President Corazon Aquino -- knew about RR 8-84 and its enumeration of cosmetic products but still chose to not include certain items in the current amendment, then the omission is deemed to be deliberate pursuant to the doctrine of *casus omissus pro omisso habendus est.*

The rule of *casus omissus pro omisso habendus est* states that a person, object or thing omitted from an enumeration must be held to have been excluded intentionally. The principle proceeds from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration. In other words, the maxim operates and applies only if and when the omission has been clearly established, and in such a case, what is omitted in the enumeration may not, by construction, be included therein.[15] The court cannot under its power of interpretation supply the omission even though

[14] The BIR website defines "Revenue Memorandum Circular (RMCs)" as issuances that publish pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.
[15] Agpalo, Ruben E., *Statutory Construction,* 2009 ed., pp. 336 citing People v. Manantan, 115 Phil. 657 (1962).

the omission may have resulted from inadvertence or because the case in question was not foreseen or contemplated.[16]

The fact of the matter is that the framer of the law had every opportunity to define "toilet waters" by indicating what amount of essential oil content an alcohol-based product had to have in order to be considered taxable under Section 150, but did not do so. This Court is bereft of power to expand the plain language of the provision by reading into it something that is not there. It must apply the law as it is.

As it is patent that the distinction extant in RR 8-84 renders it inconsistent with EO 273, we consider RR 8-84 repealed in accordance with Section 29 of EO 273, its repealing clause.

Upon the advent of Section 150 of the 1997 NIRC therefore, there existed no prevailing administrative interpretations of the said section until the issuance of BIR Ruling No. 043-2000 and, subsequently, RMC 17-02. The effectivity and applicability of both these administrative issuances as regards subjecting "toilet waters" to excise tax regardless of their essential oil content by weight has been previously upheld by this Court in *Avon Products Manufacturing Inc. vs CIR*[17] promulgated last September 16, 2013, where we said:

> "Well-settled is the rule that rulings of administrative agencies which interprets *(sic)* the law are persuasive and deserves *(sic)* great weight[18] 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**

---

[16] *Id.* citing Cartwrite v. Cartwrite, 40 A2d 30, 155 ALR 1088 (1944).

[17] CTA EB No. 894 (CTA Case No. 8021), September 16, 2013.

[18] *Id.* citing Chamber of Real Estate And Builders' Associations, Inc., vs. The Hon. Executive Secretary Alberto Romulo, G.R. No. 160756, March 9, 2010 citing Compania General De Tabacos De Filipinas v. Court of Appeals, G.R. No. 147361, March 23, 2004, 426 SCRA 203, 210, citing Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372.

> **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 should be followed.[19] Thus, without a statutory distinction, the aforementioned BIR Ruling should govern as regards the term 'toilet waters' and it should be applicable to all kinds of toilet waters, which include petitioner's colognes and body sprays."

Accordingly, there is no basis to grant petitioner's claim for refund of the excise taxes paid in the amount of P38,873,976.07 on

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

removals of splash colognes and body spray products for the period January 5, 2009 to December 29, 2009. Removals of splash colognes and body sprays even if they contain essential oils of 3% or less in weight remain subject to the 20% excise tax under Section 150 of the 1997 NIRC.

WHEREFORE, in the light of the foregoing principles, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated September 20, 2012 and the assailed Resolution dated December 13, 2012 of the CTA-Second Division in the CTA Case No. 8207, entitled "*Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED.**

SO ORDERED.

Ma. Belen M. Li

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(Concurred with Dissenting Opinion of J. Manalastas)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(With Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 978
(CTA Case No. 8207)

Present:

Del Rosario, *P.J.*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

NOV 11 2013 Apolinario 9:10 a.m.

x- x

DISSENTING OPINION

COTANGCO-MANALASTAS, J.:

With due respect, I dissent from the opinion of the majority and hold that the definition of toilet waters under Revenue Regulations No. 8-84 (RR 8-84) is still applicable.

The issues hinge on the definition of toilet waters under RR 8-84 and its applicability to Section 150 of the 1997 NIRC with respect to the toilet waters subject to the excise tax. The 20% excise tax on non-essential goods is imposed under Section 150 of the 1997 NIRC, which provides:

> "**Sec. 150. Non-essential Goods**. – There shall be levied, assessed and collected a tax equivalent to twenty-percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:

> xxx
> (b) Perfumes and toilet waters;
> xxx"

While the current law has no supporting Revenue Regulations which provide for the definition of perfumes and toilet waters, it must be pointed out that RR 8-84 was previously issued dealing specifically with cosmetic products.

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

> "Section 2. Articles taxable as cosmetic products. – The articles defined as follows shall be taxable as cosmetic products:
> 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."

RR 8-84 was issued in relation to the then Section 194 of the 1977 Tax Code, which enumerated the cosmetic products as "*perfumes*, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders."[1]

The Tax Code underwent several amendments and its provisions were also renumbered. But throughout these changes, the essential wording of the provision dealing with these cosmetic products has remained the same. It was only from the issuance of Executive Order No. 273 (EO 273) wherein the products were limited to two, which are "perfumes and toilet waters", and now classified as non-essential goods subject to excise tax.

An examination of the 1977 and 1997 Tax Code shows that there has been no great change in the wording of the law. The 1977 Tax Code, in Section 194, enumerated several products as being subject to the sales tax then imposed. EO 273 then reduced the products to only two, perfumes and toilet waters; which were then subjected to excise tax. This latter provision has been carried on up to the present 1997 Tax Code. Despite the change in the tax imposed and the

---

[1] 1977 Tax Code, Section 194(b).

reduction of the products enumerated, it is notable that the same terms used in the old provision were also used in the new provision. These are (a) perfumes, and (b) toilet waters.

As early as 1984, RR 8-84 has already provided the definition of toilet waters. This definition has not been changed or amended. When the provisions of the Tax Code were renumbered and amended, the lawmakers are presumed to know all the existing laws with respect to the subject matter. Thus, they are presumed to know the meaning attached to the term "toilet waters" as provided under RR 8-84. And yet, the term "toilet waters" is still used in the law's enumeration of products subject to tax. Thus, I believe that there is no basis to rule that the definition of toilet waters has changed, merely because the provision has been amended. Therefore, the definition of "toilet waters" as "containing essential oils of more than 3% by weight" has been carried over to the 1997 Tax Code's use of the phrase "toilet waters" found in Section 150 thereof.

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 the aforementioned issuances expands the definition of "toilet waters", and do not conform to the specific definition under RR 8-84. Clearly, the definition of "toilet waters" under RR 8-84 must still be followed including the requirement of essential oil content of more than 3% by weight. As such, petitioner's products which have less than 3% essential oil content by weight should not be subject to the 20% excise tax under Section 150(b) of the 1997 Tax Code.

WHEREFORE, I vote that the instant Petition for Review be GRANTED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice