REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

AVON PRODUCTS MANUFACTURING, INC., *Petitioner,*	**CTA Case No. 8378**
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	SEP 9 2014 10:48 a.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J.*:

For this Court's consideration is a Motion for Reconsideration filed by petitioner Avon Products Manufacturing, Inc. (Avon) on May 19, 2014 asking for reconsideration of our Decision dated May 6, 2014 (Decision) which denied petitioner's claim for refund of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (₱38,561,292.43) representing erroneously paid excise taxes on non-essential articles under Section 150 of the National Internal Revenue Code of 1997 (1997 NIRC) for the period January 4, 2010 to December 31, 2010.

Petitioner's Grounds for Reconsideration

Petitioner presented the following as grounds for reconsideration:

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

2. The power of the Commissioner of Internal Revenue to interpret tax laws does not include the power to promulgate Revenue Regulations. Under Section 244 of the 1997 NIRC, the Commissioner of Internal Revenue can only recommend to the Secretary of Finance a Revenue Regulations;

3. The definition of toilet waters under Revenue Regulations No. 8-84 continues to be effective considering that, as correctly found by the Honorable Court, the essential wordings "perfumes" and "toilet waters" remained the same despite several amendments to the NIRC and neither Congress nor the Secretary of Finance has provided a new definition of "toilet waters";

4. The definition of toilet waters under Revenue Regulations 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 reenactment; and

5. The obstinate refusal of the Respondent to answer whether or not it collects the 20% excise tax on the colognes to the addressee of BIR Ruling 43-2000 and the other evidence adduced by petitioner show that respondent has not abandoned the definition of toilet waters under Revenue Regulations No. 8-84 and has not in fact enforced BIR Ruling 43-2000 even against the addressee.

Respondent's Opposition

On June 6, 2014, respondent Commissioner of Internal Revenue filed its Opposition thereto, arguing the following:

1. Revenue Memorandum Circular No. 17-02 (RMC 17-02) which emphasized BIR Ruling 43-2000 correctly defines "colognes" and declares null and void all previous BIR rulings pertaining thereto and that such is a valid interpretation of Section 150(b) of the 1997 NIRC;

2. RMC 17-02 and BIR Ruling 43-2000 must be accorded great respect like any other administrative issuance, they being interpretations intended to carry out the provisions of the 1997 NIRC;

3. The application of Revenue Regulations No. 8-84 (RR 8-84) is limited to the percentage taxes on cosmetic products imposed under Section 194(b) and (e) of the 1977 Tax Code which was subsequently renumbered and amended as Section 163 und Presidential Decree No. 1994 (PD 1994), and hence, RR 8-84 may not be adopted to implement Section 150(b) of the 1997 NIRC which pertains to the imposition of excise tax;

4. An amended act such as the 1997 NIRC must be construed as though the original statute had been repealed and a new and independent act in the amended form had been adopted in its stead. Therefore, the amended act should be given a construction different from that of the law prior to its amendment;

5. By virtue of Section 29 of Executive Order No. 273 (EO 273) there was intent on the part of the legislature to repeal regulations inconsistent with EO 273 such as RR 8-84; and

6. Claims for refund partake the nature of exemptions and should be strictly construed against the claimant.

The Ruling of the Court on Reconsideration

Whenever a motion for reconsideration is filed by a party, as long as the same adequately raises a valid ground, this Court has to evaluate the merits of the arguments to prevent an unjust decision from attaining finality. There are instances where members of appellate courts do change their minds after restudying the facts and the law, gaining a broader perspective by a mutual exchange of views, and considering the facts of the case against the backdrop of the ever changing conditions of society.

After a thorough re-examination of the case, we find that our Decision dated May 6, 2014 overlooked certain aspects which, if not corrected, would cause extreme and irreparable damage and prejudice to petitioner. This Court, therefore, grants petitioner's motion for reconsideration.

Change in Type of Tax Imposed; No Change in Definition of Taxable Item

There is no question that ever since "toilet waters" was introduced as a taxable item via statute, it has been subject to different types of taxes.

Under Section 194 of the 1977 National Internal Revenue Code (NIRC), it has been subject to percentage taxes.

On June 5, 1984, when Revenue Regulation No. 8-84 (RR 8-84) came into effect, it continued to be subject to percentage taxes.

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

On January 1, 1988, Executive Order No. 273 (EO 273) replaced the sales tax with the value-added tax (VAT) and the excise tax. It amended and renumbered Section 163 of the 1977 NIRC as Section 150 of the 1977 NIRC. Instead of imposing a percentage tax, an **excise tax** of 20% based on the wholesale price or value of the "toilet waters" was imposed.

About a decade later, on January 1, 1998, when the Tax Reform Act of 1997 took effect, the amended Tax Code 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.

As the facts stand, the kind of tax imposed on the taxable item -- "toilet waters" -- has varied through the years, beginning with a percentage tax or a sales tax, and evolving into an excise tax. Neither party disputes that.

However, **the type of tax the legislature decides to impose on a certain thing or item is decidedly different from the thing or the item which is subject to the tax**. That is the crux of the controversy here which this Court decided merits a second, deeper look into.

How has "toilet waters" been defined throughout all these legislation? And given that the 1997 NIRC did not provide for a definition of the term, what did the legislators have in mind when they crafted Section 150 of the 1997 NIRC?

Revenue Regulations No. 8-84 Remains to Be the Standing Administrative Issuance Defining *"Toilet Waters"*

The 1997 NIRC, as amended, did not provide for a definition of the term "toilet waters". The first instance that "toilet waters" was defined since its inclusion in the 1977 NIRC was in RR 8-84, the Cosmetics Products Regulation.

"Toilet waters" was defined as "scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils, i.e. more than 3% by weight. Examples: Lavender water, Eau de Cologne, Eau de Toilette."[6]

It was only when the CIR issued BIR Ruling No. 43-2000 on September 15, 2000, which was subsequently published in RMC No. 17-02 (RMC 17-02), that the term "toilet waters" was deemed to include "colognes". From 1984 up until September 15, 2000, "toilet waters" were construed as those preparations which contained essential oils that were more than 3% by weight.

[6] Cosmetic Products Regulation, Revenue Regulations No. 8-84, June 5, 1984.

However, if we are to ascertain legislative intent to properly construe "toilet waters", then we must ascertain what the legislative intent was when Section 150 was crafted and included in the 1997 NIRC. Subsequent to that, the administrative interpretation of "toilet waters" by the CIR must be compared and contrasted to legislative intent to see if its own definition of the taxable item passes muster.

Administrative Interpretation
Entitled to Great Weight

Respondent claims that the RMC in question, RMC 17-02, ought to be accorded great respect like any other administrative issuance since they are interpretations intended to carry out the provisions of the Tax Code.

In support of this, respondent cited ***CIR vs. Solidbank Corporation***[7] and ***La Suerte Cigar and Cigarette Factory vs. CTA***[8]. In the ***La Suerte*** case, the Supreme Court opined that "[w]hen an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law. Construction by an executive branch of government of a particular law although not binding upon the courts must be given weight as the construction came from the branch of government called upon to implement the law."[9]

This Court holds the principles cited by respondent in the aforementioned cases to be sound. However, the cited cases themselves contain their own caveats as to when such administrative interpretation is entitled to great weight. The ***La Suerte Case*** exhorts that the circular or memorandum rendered by the administrative agency must **merely interpret a pre-existing law.**

The ***Solidbank Case***, on the other hand, mandates that "[Regulations] are valid as long as the standards set by the legislature are complied with. Specifically, the regulation must be (1) germane to the object and purpose of the law; (2) **not contradict, but conform to, the standards the law prescribes**; and (3) be issued for the sole purpose of carrying into effect the general provisions of tax laws."

As Justice Bautista alluded to in his Dissenting Opinion to our Decision on May 6, 2014 (Original Decision), it is only "[when] there is doubt as to the proper interpretation of a statute, [that] the uniform construction placed upon it by the executive or administrative officer charged with its enforcement will be adopted, if necessary to resolve the doubt."[10]

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[7] G.R. No. 148191, November, 2003.
[8] G.R. No. L-36130, January 17, 1985.
[9] *Id.*
[10] Justice Bautista's Dissenting Opinion to Decision in CTA Case No. 8378, May 6, 2014.

We find that there is no ambiguity in the definition of "toilet waters" in the Cosmetic Products Regulation. The abbreviation *"i.e."* or *"id est"* literally means *"that is."*[11] Legal writers usually write "i.e." to inform the reader that what follows is an explanation of what had just been stated.[12] Thus, the clause *"more than 3% by weight"* is not a mere example of the essential oil content but is actually a description of the alcoholic or non-alcoholic preparation containing essential oils. The scented alcoholic or non-alcoholic preparations must have essential oil content of *"more than 3% by weight"* in order to be considered as toilet waters under the regulations.[13]

In ***Dumaguete Cathedral Credit Cooperative [DCCCO] v. CIR***[14], the Supreme Court held:

> "It bears stressing that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, **unless such interpretations are in a sharp conflict with the governing statute or the Constitution and other laws.** In this case, BIR Ruling No. 551-888 and BIR Ruling [DA-591-2006] are in perfect harmony with the Constitution and the laws they seek to implement. Accordingly, the interpretation in BIR Ruling No. 551-888 that cooperatives are not required to withhold the corresponding tax on the interest from savings and time deposits of their members, which was reiterated in BIR Ruling [DA-591-2006], applies to the instant case."

At issue is the weight this Court ought to give to RMC 17-02, BIR Ruling No. 43-2000, and RR 8-84 -- all administrative issuances. However, we find that there is a pervading dissonance between RMC 17-02, BIR Ruling No. 43-2000, and Section 150 of the 1997 NIRC, the law it seeks to implement, which will be discussed further below.

BIR Ruling No. 43-2000 and RMC 17-2000 Cannot Amend the Definition of "Toilet Waters" Under the Regulations

The Bureau of Internal Revenue (BIR) website[15] defines the various administrative issuances as follows:

> "**Revenue Regulations (RRs)** are issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that **specify, prescribe or define rules and**

[11] *Id.* citing *Black's Law Dictionary*, 8th Edition.
[12] *Id.* citing *Ulep, Mauricio C.,* Latin Words and Phrases for Lawyers and Students.
[13] *Id.* at Note 6.
[14] G.R. No. 182722, January 22, 2010.
[15] http://www.bir.gov.ph/lumangweb/hom_issrul.html.

regulations for the effective enforcement of the provisions of the National Internal Revenue Code (NIRC) and related statutes.

Revenue Memorandum Circular (RMCs) are 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.

BIR Rulings are the official position of the Bureau to queries raised by taxpayers and other stakeholders relative to **clarification and interpretation** of tax laws." *(Emphasis ours)*

Even a cursory look at the definitions given by the BIR itself would reflect a hierarchy within the administrative issuances that could be issued by the BIR. This is only but proper since whatever powers the Secretary of Finance (SOF) or the CIR has are necessarily derived from the originating statute, the 1997 NIRC.

Section 244 of the 1997 NIRC expressly grants the power to promulgate rules and regulations to the SOF, as follows:

"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."

On the other hand, rulings made by the CIR are by virtue of the power to interpret tax laws and decide tax cases granted unto her under Section 4 of the NIRC[16].

The finer distinctions of the powers granted to the SOF and the CIR, respectively, were discussed by the Supreme Court in ***BPI Leasing Corporation v. Court of Appeals***[17] in this wise:

"Administrative issuances may be distinguished according to their nature and substance: legislative and interpretative. A **legislative rule** is in the matter of subordinate legislation, designed to implement a primary legislation by providing the details thereof. An **interpretative rule**, on the other hand, is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

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[16] 1997, NIRC. "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and 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."
[17] G.R. No. 127624, 18 November 2003.

> The Court finds the questioned revenue regulation to be legislative in nature. Section 1 of Revenue Regulation 19-86 plainly states that it was promulgated pursuant to Section 277 of the NIRC. Section 277 (now Section 244) is an express grant of authority to the Secretary of Finance to promulgate all needful rules and regulations fo the effective enforcement of the provisions of the NIRC. In *Paper Industries Corporation of the Philippines v. Court of Appeals,* <u>the Court recognized that the application of Section 277 calls for none other than the exercise of quasi-legislative or rule-making authority. Verily, it cannot be disputed that Revenue Regulation 19-86 was issued pursuant to the rule-making power of the Secretary of Finance, thus making it legislative, and not interpretative as alleged by BLC."</u>[18] (*Emphasis ours)*

The case before us involves only one Revenue Regulation -- RR 8-84 -- which gives the definition of "toilet waters". This regulation was created pursuant to the rule-making authority of the SOF and has the effect of law. Therefore, if the SOF has the power to promulgate regulations, and the CIR has the power to interpret the law under Sec 4 of the 1997 NIRC, such interpretation cannot overstep its mandate and override regulations that the SOF has prescribed.

As such, petitioner is correct in asserting that although the CIR has the power to amplify laws, rules and regulations previously issued, the CIR, through RMC 17-02 and BIR Ruling 43-2000, cannot amplify Section 150 of the NIRC or modify the existing definition of "toilet waters" under Revenue Regulation 8-84 which is an administrative regulation issued by the Secretary of Finance pursuant to his rule-making powers.

In fact, this rule-making power given to the SOF is so sacrosanct that despite the broad authority given to the CIR to delegate powers vested in her to select subordinate officials under Section 7 of the NIRC, "[t]he power to recommend the promulgation of rules and regulations by the Secretary of Finance" is one out of the four items which the CIR may not delegate.[19] This only confirms that while the CIR has the power to recommend the promulgation of rules and regulations to the SOF, the legislative aspect is **<u>actually reserved for the SOF</u>**. Therefore the CIRs interpretation of the law -- Section 150 in this case -- is limited by existing regulations promulgated by the SOF on the matter, specifically RR 8-84.

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[18] *Id.*

[19] 1997, NIRC. "SEC. 7. *Authority of the Commissioner to Delegate Power.* -- The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief o higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance; x x x"

Even jurisprudence confirms this hierarchy within administrative issuances. In ***Bank of the Philippine Islands vs. Commissioner of Internal Revenue,***[20] the Supreme Court held that a Revenue Memorandum Circular is merely an administrative interpretation of the law which cannot be given effect if it is contrary to a Revenue Regulation. The pertinent excerpt from the case is quoted below:

> "Second. Petitioner contends that what Section 78 required was an information return, not an income tax return. It cites Revenue Memorandum Circular No. 14-85, of then Acting Commissioner of Internal Revenue Ruben B. Ancheta, referring to an "information return" in interpreting Executive Order No. 1026, which amended Section 78.
>
> The contention has no merit. **The circular in question must be considered merely as an administrative interpretation of the law which in no case is binding on the courts**. The opinion in question cannot be given any effect inasmuch as it is contrary to Section 244 of Revenue Regulation No. 2, as amended, which was issued by the Minister of Finance pursuant to the authority granted to him by Section 78 of the Tax Code. **This regulation prevails over the memorandum circular of the Acting Commissioner of Internal Revenue, which petitioner invokes.**"[21] *(Emphasis ours)*

This Court is reminded that a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. Even if the courts may not be in agreement with its stated policy or innate wisdom, it is nonetheless valid, provided that its scope is within the statutory authority or standard granted by the legislature.[22]We find that respondent exceeded her authority in providing a new definition of toilet waters in RMC 17-02. If the technical definition of toilet waters under Revenue Regulations 8-84 will have to be modified, the SOF must promulgate a new amendatory revenue regulation to provide a new definition for the term "toilet waters".

The definition of the term "cologne" lifted from Hawley's Condensed Chemical Dictionary cited in BIR Ruling No. 43-00 and published in RMC 17-02, will hardly suffice as its purported authority cannot override legislation by the legislature or the quasi-legislation by the SOF, those specifically authorized to wield it. Ultimately, the definition of "toilet waters" under the RR 8-84 must still be followed including the requirement for essential oil content of more than 3% by weight.

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[20] 363 SCRA 840 (2001).

[21] *Bank of the Philippine Islands v. Commissioner of Internal Revenue,* G.R. No. 144653, August 28, 2001, 363 SCRA 840.

[22] *Id.* at 448-449.

BIR Ruling No. 43-2000 and RMC No. 17-02 are Both Overbroad and Disregard Intent of the Law; Intent is to Tax Non-Essential Goods or Luxury Items

In order to give us a more holistic perspective on how "toilet waters" is to be construed, we must look at the intent of not only RR 8-84, but also Section 194 of the old Tax Code where it was mentioned in the first instance.

Section 194 of the 1977 Tax Code imposed a percentage tax on "jewelry, toilet preparations, and others". "Toilet waters" was listed under Section 194[23] along with perfumes, essences, extracts, and the like. Section 194, however, did not provide a definition for "toilet waters". Subsequently, RR 8-84 was issued to implement the percentage tax on cosmetic products imposed under Section 194 (b) of the 1977 NIRC and it defined "toilet waters".

Over time, Section 194 of the 1977 Tax Code was amended. It was amended by Section 23 of PD 1994 and Section 194 was renumbered to Section 163. PD 1994 imposed a "percentage tax on the sale of **NON-ESSENTIAL Articles**". "Toilet waters" was listed under Section 163 along with the following:

> "(a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones, and imitations thereof; articles 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 mounting for spectacles or eyeglasses, and dental gold or gold alloys and other precious metal used in filling, 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 term "imitations thereof" shall include plantings and alloys of such metals.
>
> "(b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restorations, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrice, toothpaste, talcum and medicated toilet powders, hair oils and pomades.
>
> "(c) Dice, mahjong sets and playing cards.
>
> "(d) Jukeboxes.
>
> "(e) Manufactured parts and accessories of automobiles which are principally for ornamentation of embellishment.
>
> "(f) Similar or analogous articles, substances or preparations to those enumerated above as determined by the Minister of Finance upon the recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product."

[23] Section 194 (b), 1977 NIRC.

The general rule is that where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to, persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned.[24]

The purpose of the rule of *ejusdem generis* is to give effect to both the particular or general words, by treating the particular words as indicating the class and the general words as indicating all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their restricted sense, it would have made an enumeration of particular subjects but would have used only general terms.[25]

Section 163 of the 1977 NRC was eventually amended by EO 273. It renumbered Section 163 to Section 150. Although it changed the kind of tax imposed on "toilet waters" from percentage tax to an excise tax, the item being taxed -- "toilet waters" -- was still categorized under Section 150's **"NON-ESSENTIAL GOODS"** along with the following:

> "(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."

The amendments made by EO 273 to the 1977 NIRC remained and were adopted in the 1997 NIRC. It is from this point that legislative intent has to be construed because Section 150 of the 1997 NIRC is supposedly what BIR Ruling No. 43-2000 and RMC 17-02 interpreted.

Without a doubt, the definition provided by CIR is not only found wanting, but is also overbroad. Since the CIR gave a general definition of "toilet waters", she indiscriminately taxed **ALL types of toilet waters**, which is not what is contemplated under the statute. RR 8-84 made a distinction between toilet waters or colognes which are considered "Non-essential

[24] Agpalo, Ruben E., *Statutory Construction*, 6th Ed., 2009, p. 308, citing Go Tiaco y Hermanos v. Union Insurance Society of Canton, 40 Phil. 40 (1919); Chartered Bank of India v. Imperial, 48 Phil. 931 (1921); Mutuc v. Commission on Elections, G.R. No. 32717, November 26, 1970; 36 SCRA 228; Vera v. Cuevas, G.R. No. 33693, May 31, 1979, 90 SCRA 379.
[25] Agpalo, Ruben E., Statutory Construction, 6th Ed., 2009, p. 309, citing National Power Corp. v. Angas, 208 SCRA 542 (1992).

Articles" (those containing essential oils of more than 3% by weight) otherwise known as "Luxury Items" and those whose essential oil content is less than 3% by weight which, logically, would not be considered so.

This is the most apt construction of Section 150 of the 1997 NIRC taking into account relevant human experience with the different types of "toilet waters" or colognes out in the market today. It is inconceivable that the legislature, in their collective wisdom, intended to consider all types of toilet waters as non-essential goods at par with jewelry, yachts, and the like. While there are "toilet waters" or colognes being offered by internationally famous design houses as part of their signature scents that considerably have a higher essential oil content which is reflected in the purchase price; there are also "toilet waters" or colognes used by the common Filipino masses to alleviate the effects and stench of pollution, taking public transportation, and the harsh tropical climate which by no stretch of the imagination could be considered a "luxury item".

The legislative intent to tax only non-essential goods or cosmetic products is also evident in EO 273 when it removed several items in Section 150 which were previously present in Section 163. In Section 150(b) of EO 273, only "perfumes and toilet waters" remained. The legislature **removed the following items**: essences, extracts, cosmetics, hair dressings, hair dyes, hair restorations, aromatic cachous, toilet powders, dentrifice, toothpaste, talcum and medicated toilet powders, hair oils and pomades.

These items were rightfully removed from the list of "Non-Essential Goods" presumably because two decades after their first inclusion in the 1977 NIRC, these items are now merchandise that are commonly stocked, bought, and sold in grocery stores and supermarket shelves, unlike its counterparts that remained -- "perfumes and toilet waters" which still remain to be displayed in glass casings in high-end department stores and boutiques.

The most frequent application of rule of *Ejusdem Generis* is found where specific and generic terms of the same nature are employed in the same act, the latter following the former. While in the abstract, general terms are to be given their natural and full signification, yet where they follow specific words of like nature they take their meaning from the latter, and are presumed to embrace only things or persons of the kind designated by them.[26]

The principle of *ejusdem generis* is based on the proposition that had the legislature intended the general words to be used in their generic and unrestricted sense, it would not have enumerated the specific words.[27]

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[26] Agpalo, Ruben E., Statutory Construction, 6th Ed., 2009, p. 309 citing U.S. v. Santo Niño, 13 Phil. 141, 142 (1909); see also Director of Public Works v. Sing Juco, 53 Phil. 205 (1929)
[27] *Id.* at p. 310, citing Go Tiaco y Hermanos v. Union Insurance Society of Canton, 40 Phil. 40 (1919); Murphy, Morris & Co. v. Collector of Customs, 11 Phil. 456 (1908).

The rule of *ejusdem generis* is not of universal application; it should be used to carry out, not defeat the intent of the law. While our focus remains on how "toilet waters" is to be construed, we must not lose sight of the context in which it is mentioned or enumerated in -- "Toilet waters" as a "Non-Essential Good".

Interpretation Must Reflect the Intent of the Law

In this case, it is quite obvious that the CIR's interpretation of the law is questionable. Interpretation should reflect the intent of the legislature. Unless, the legislature has changed the intent behind the law over time, the interpretation of the administrative agency must be in line with the intent already established behind the law. From the wording of Section 194 of the 1977 Tax Code, PD 1994, and EO 273, the intent of the legislature seems to be unchanged. The type of tax imposed may have changed, but the intent to tax non-essential goods or luxury items has not.

In ***Philippine Bank of Communications v. CIR***[28], the Supreme Court held that circulars and administrative issuances should not run against the statute passed by Congress. We quote:

> "When the Acting Commissioner of Internal Revenue issued RMC 7-85, changing the prescriptive period of two years to ten years on claims of excess quarterly income tax payments, such circular created a clear inconsistency with the provision of Sec. 230 of the 1977 NIRC. In so doing, the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress.
>
> It bears repeating that Revenue Memorandum Circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. **Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement**." *(Emphasis ours)*

Hence, the CIR's interpretation cannot be given weight for to do so would, in effect, amend the statute.

[28]*Philippine Bank of Communications vs. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals*, G.R. No. 112024. January 28, 1999.

<u>**Legislative Approval of Administrative Interpretation by Reenactment**</u>

We find that in construing the definition of "toilet waters" when Section 150 of the 1997 NIRC was enacted, that the principle of legislative approval of administrative interpretation by reenactment applies.

As early as 1984, "toilet waters" had already been defined by RR 8-84 and such definition has not been changed or amended. It is a well-settled rule that when Congress enacts or amends a particular statute, they are presumed to know all the existing laws with respect to the subject matter. Thus, when they enacted the 1997 NIRC, they knew the meaning attached to the term "toilet waters" as provided under RR 8-84, and yet, still included it in the enumeration of taxable items under Section 150. 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.

The Supreme Court, in ***Western Mindanao Power Corporation v. CIR***[29]**,** explains the principle of legislative approval by reenactment in this wise:

> "Finally, upon 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 '<u>**the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction**</u>.'[30] 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

[29] Western Mindanao Power Corporation v. Commissioner of Internal Revenue, G.R. 181136, June 13, 2012.

[30] *Id.* citing ABS-CBN Broadcasting Corp. v. CTA, supra, p. 43, per Melencio-Herrera, J. (citing Alexander Howden & Co., Ltd. v. Collector of Internal Revenue, 121 Phil. 579, 587, April 14, 1965, and Biddle v. Commissioner of Internal Revenue, 302 U.S., 573, 582, 58 S.Ct. 379, 383, January 10, 1938). See In re R. Mcculloch Dick, 38 Phil. 41, 77-78, April 16, 1918, per Carson, J. (quoting Sutherland, Statutory Construction, Vol. II, [2nd ed.], sections 403 and 404).

that the ruling carries out the legislative purpose.'"[31] *(Emphasis ours)*

Similarly, in ***ABS-CBN Broadcasting Corp. v. CTA***[32], the Supreme Court held that when a statute is reenacted substantially unchanged, there is a case of legislative approval of administrative interpretation. In that case, Republic Act No. 2343, dated June 20, 1959, which was the basis of General Circular No. V-334, was just one in a series of enactments regarding Sec. 24(b) of the Tax Code. Republic Act No. 3825 came next on June 22, 1963 without changing the basis but merely adding a proviso. Republic Act No. 3841, also dated on June 22, 1963, followed after, omitting the proviso and inserting some words. It was only on June 27, 1968 under Republic Act No. 5431, which became the basis of Revenue Memorandum Circular No. 471, that Sec. 24(b) was amended to refer specifically to 35% of the "gross income."

The Court said that "The principle of legislative approval of administrative interpretation by reenactment clearly obtains in this case. It provides that 'the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction.' Note should be taken of the fact that this case involves not a mere opinion of the Commissioner or ruling rendered on a mere query, but a Circular formally issued to 'all internal revenue officials' by the then Commissioner of Internal Revenue."[33]

One of our findings in our Original Decision was that although the Tax Code had undergone several amendments and revisions, the "essential wording has not been changed". Not only has the intent of the framers survived the amendments of laws; but the construction thereof also has as well. This doctrine has been reiterated in other cases, including ***Commissioner of Internal Revenue v. American Express***[34] and ***Dumaguete Cathedral Credit Cooperative [DCCCO] v. Commissioner of Internal Revenue***[35]. RR 8-84, therefore, is still authoritative in defining "toilet waters" and should have the same meaning and effect under the 1997 NIRC as it had since its effectivity in 1984.

Furthermore, as petitioner correctly contends, it is an established principle in statutory construction that the technical or legal, and not the ordinary or general, meaning of a word used in a statute should be adopted in the construction of the statute, in the absence of any qualification or intention to the contrary.[36] Words that have, or have been used in, a technical sense or

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[31] *Id.* at Note 43 citing Commissioner of Internal Revenue v. Solidbank Corp., 416 SCRA 436, 455, November 25, 2003, per Panganiban, J. (footnoting Alexander Howden & Co., Ltd. v. The Collector [Now Commissioner] of Internal Revenue, supra, p. 587, per Bengzon, J.P., J.); the latter case citing Laxamana v. Baltazar, 92 Phil. 32, 34-35, September 19, 1952, and Mead Corporation v. Commissioner of Internal Revenue, 116 F.2d. 187, 194, November 29, 1940, per Jones, Circuit J.
[32] G.R. No. L-52306 October 12, 1981.
[33] *Id.*
[34] G.R. No. 152609, June 29, 2005.
[35] G.R. No. 182722, January 22, 2010.
[36] Manila Herald Publishing Co., Inc. v. Ramos, 88 Phil. 94, 99 (1951); Manlayon v. Lising, 106 SCRA 237 (1981); People v. Salico, 84 Phil. 722 (1949); Rura v. Lopena, 137 SCRA 121 (1986).

those that have been judicially construed to have certain meaning should be interpreted according to the sense in which they have been previously used, although the sense may vary from the strict or literal meaning, of the words.[37] The presumption is that the language used in a statute, which has a technical or well-known legal meaning, is used in that sense by the legislature.[38]

Even a change in phraseology or an omission of certain words will not be held to necessarily alter the construction of the law as amended. Thus, in ***Greenfield v. Meer***[39], the Supreme Court held:

> "The change of phraseology alone does not lead to the conclusion that it was the intention of the lawmaker to amend or change the constructions of the old law as contended by the appellee. For it is a well-establised rule, recognized by the Supreme Court of Ohio in the case of Conger vs. Barker's Adm'r (11 Ohio St., 1); "**that in the revision of statutes, neither an alteration in phraseology nor the omission or addition of words in the latter statute, shall be held, necessarily, to alter the construction of the former act. And the court is only warranted in holding the construction of a statute, when revised, to be changed, where the intent of the legislature to make such change is clear, or the language used in the new act plainly requires such change of construction.**"[40]

Pursuant to the principle of **legislative approval of administrative interpretation by reenactment** which we have just discussed above, by carrying over the use of the term "toilet waters" (and not providing for a new definition), EO 273 is deemed to have approved the definition of the term "toilet waters" found in RR 8-84 . As Congress did not also provide for a new definition of "toilet waters" in RA 8424 or the 1997 NIRC, Congress is deemed to have reenacted the existing definition.

The Spirit Prevails Over the Letter of the Law

From the foregoing discussion, we see that the intent behind Section 194 of the 1977 Tax Code was to impose taxes on non-essential goods or what would be considered as "luxury goods". Over time, PD 1994 and EO 273 have specifically identified the items as "non-essential goods".

RR 8-84 was needed in order to implement Section 194 of the 1977 Tax Code since Section 194 did not provide a definition for "toilet waters". When RR 8-84 was issued, it provided a definition for this non-essential good. It

[37] Krivenko v. Register of Deeds, 79 Phil. 461 (1947).
[38] Keepner v. U.S., 11 Phil 669 (1904).
[39] Greenfield v. Meer, 77 Phil. 394 (1946).
[40] *Id.*

differentiated "toilet waters", the non-essential good contemplated by the law, from other similar products or regular "toilet waters". By specifying that the "toilet waters" contemplated in Section 194 of the old Tax Code must have more than 3% essential oil content, **RR 8-84 limited the scope of this statute to luxury items**.

There is a general definition of "toilet waters". However, there are also different kinds of "toilet waters" depending on its ingredients which include aromatic compounds or "essential oils". The "toilet waters" contemplated initially by Section 194 of the 1977 Tax Code is the kind of toilet water that may be considered a non-essential good in the same vein as yachts and jewelry.

RR 8-84 solidified the intent behind Section 194 of the 1977 Tax Code by clearly defining that the toilet waters contemplated by the Section 194 was not just the general type of toilet water but one that was particularly scented, one that was either alcoholic or non-alcoholic, one that was primarily used as a body fragrance, and one that contained essential oils of more than 3% by weight. It even cited examples such as Lavender Water, Eau de Cologne and Eau de Toilette. The cited examples have essential oil content ranging from 2% to 15%[41] with Lavender Water containing essential oil with water in equal parts; Eau de Cologne having essential oils ranging from 2% to 5%; and Eau de Toilette having essential oils ranging from typically 5% to as much as 15%.

Further, PD 1994 and EO 273, by specifically listing "toilet waters" under "non-essential goods/articles", recognized the "toilet water" contemplated in Section 194 of the 1977 Tax Code which was solidified by RR 8-84.

To put it into perspective, if we were to apply the BIR Ruling 43-2000 which categorically imposed a 20% excise tax on all "scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant", we would be disregarding the distinction the law intended between high-end alcohol-based colognes and any type of generic scented alcohol and requiring the same 20% excise tax across the board.

Respondents asserted that the excise tax imposed in the 1997 Tax Code is different from the percentage tax imposed in RR 8-84; and that EO 273 replaced old percentage taxes with value-added taxes; thus, the 1997 Tax Code must be construed differently from the old tax laws.

We disagree. The kind of tax imposed on the item may have been changed, but the item that the tax has been imposed upon has not. The items taxed are still categorized under "non-essential goods".

Section 194 of the 1977 Tax Code, PD 1994, EO 273, and subsequently Section 150 of the 1997 Tax Code essentially have the same intent, insofar as

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[41] http://beauty.about.com/od/fragranceperfumes/a/difference-between-perfumes.htm

they seek to impose a tax, regardless of the kind of tax, on goods of the same nature -- non-essential goods.

It necessarily follows, therefore, that the CIR's interpretation of "toilet waters" in petitioner's case does not reflect the intent of the statutes from its conception until its most recent amendment. The definition provided by the CIR is a simple definition of "toilet waters" in general, lifted from a **condensed chemical dictionary**. A general definition does not reflect the intent of the statute to direct the imposition of the tax on a specific type of "toilet water", one which can be considered a non-essential good.

Since the matter at hand involves the imposition of a tax, the taxable item in question must be given a proper technical definition. RR 8-84 provided a technical definition which delineated, among all the types of "toilet waters" on the market, which kind of toilet water was contemplated under the law.

In ***Dumaguete Cathedral Cooperative [DCCCO] v. CIR***[42], the Supreme Court reminds the courts on how to discharge its sacred mandate of judicial review, thus:

> "We need not belabor that what is within the spirit is within the law even if it is not within the letter of the law because the spirit prevails over the letter. *Apropos* is the ruling in the case of *Alonzo v. Intermediate Appellate Court*, to wit:
>
> > But as has also been aptly observed, we test a law by its results; and likewise, we may add, by its purposes. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.
> >
> > Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a particular case because of its peculiar circumstances. In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, [is] slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.
> >
> > As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots

[42] *Id.* at Note 35.

to the literal command without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of a law," so we are warned, by Justice Holmes again, "where these words import a policy that goes beyond them." While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to "the spirit that vivifieth," to give effect to the lawmaker's will.

The spirit, rather than the letter of a statute determines its construction, hence, a statute must be read according to its spirit or intent. For what is within the spirit is within the statute although it is not within the letter thereof, and that which is within the letter but not within the spirit is not within the statute. Stated differently, a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers. (Underscoring ours)"

Proof Adduced Entitles Petitioner to a Refund

We find that petitioner has adduced sufficient proof[45] to establish its claim that the splash colognes and body sprays that were removed from its place of production had a percentage of essential oil that was less than 3% by weight, as follows:

#	PRODUCT	ESSENTIAL OIL CONTENT	EXHIBIT	DESCRIPTION
1	AVON HOMEN POWER COLOGNE DEODORANT	1.5%	Y	Basic Batch/Percent Formula for After Bath Freshener with Code 1-01645-1GA
			Y-2	Line of 1.5%, RI Code 1-01580, Homen Power 877720, 1.5 LBS
2	COOL BLUE HOMEN POWER FI	1.5%	Z	Bill of Material of Finished Ingredient (FI) Code I1016451GA Cool Blue Power FI

[45] Batch control sheets and ICPA report showing essential oil content of certain products manufactured by petitioner from petitioner's Formal Offer of Documentary and Objective Evidence.

			Z-2	Line of I1-01580 Homen Power 877720, 1.5%
			BB (Annex 4 of Exh. PPP)	Batch Control Sheet Lot No. 10110924, Cool Blue Homen Power/FI Code I1016451GA
			BB-1	Line of RI Code I3200 Alcohol SD 40B, 60.0000%, 765.000 kg
			BB-2	Line of RI Code I1-01580 Homen Power 877720, 1.5000%, 19.125 kg
3	COOL BLUE ENIGMA COL FI	2%	**EE**	Batch Control Sheet Lot No.10010416 Cool Blue Enigma Col/FI Code I196941GA
			EE-1	Line of RI Code I3200 Alcohol SD 40B, 60.0000%, 517.200 kg
			EE-2	Line of RI Code I8434 LAV 002 Fix BAT42951, 2.0000%, 17.240 kg
4	COOL BLUE SMOOTH COL FI	1.5%	**FF** (Annex 6 of Exh. PPP)	Batch Control Sheet Lot No.10010092 Cool Blue Smooth Col/FI Code I1029161GA
			FF-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 849.000 kg
			FF-2	Line of RI Code I1-01679, Cool Blue 235064L, 1.5000%, 21.225 kg
5	NINA P. PRINCESS SC FI	1.5%	**GG** (Annex 7 of Exh. PPP)	Batch Control Sheet Lot No. 10010418 Nina P. Princess SC FI /FI Code I1037501GA
			GG-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 1080 kg
			GG-2	Line of RI Code I1-03755, Nina RO7-521, 1.5000%, 27.000 kg
6	S ELEM CLEAN SPICES FI	2.2%	**HH** (Annex 8 of Exh. PPP)	Batch Control Sheet Lot No.10010510 S Elem Clean Spices FI/FI Code I1040371GA
			HH-1	Line of RI Code I3200, Alcohol SD 40B, 73.0000%, 83.220 kg
			HH-2	Line of RI Code I1-03514, Fresh Spices UQ204053/00, 2.2000%, 2.508 kg
7	HSCENT ICY FROST SC FI	1.5%	**II** (Annex 9 of	Batch Control Sheet Lot No.10010123 HSCent ICY Frost SC FI/FI Code

			Exh. PPP)	I1056471GA
			II-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 120.000 kg
			II-2	Line of RI Code I1-05686, Heaven Scent AQ182960/00, 1.5000%, 3.000 kg
<u>8</u>	HEAVEN SCENT CLASSIC BOUQUET	1.5%	**JJ** (Annex 10 of Exh. PPP)	Batch Control Sheet Lot No.10010029 Heaven Scent Classic Bouquet /FI Code I1063441GA
			JJ-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 1080 kg
			JJ-2	Line of RI Code I1-06360, Classic Bouquet 86308039, 1.500%, 27.000 kg
<u>9</u>	NINA GIGGLES FI	1.5%	**KK** (Annex 11 of Exh. PPP)	Batch Control Sheet Lot No.10090253 Nina Giggles FI/FI Code I1118301GA
			KK-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 510.000 kg
			KK-2	Line of RI Code I1-11856, Nina 2550892, 1.5000%, 12.750 kg
<u>10</u>	HS FRUITY BLOSSOM COL FI	1.5%	**LL** (Annex 12 of Exh. PPP)	Batch Control Sheet Lot No.10010914 HS Fruity Blossom Col FI/FI Code I119671GA
			LL-1	Line of RI Code I3200, Alcohol SD 40B, 76.0000%, 1,368.000 kg
			LL-2	Line of RI Code I45809 Yassou Floral MF-124614, 1.5000%, 27.000 kg
<u>11</u>	HEAVEN SCENT C. BURST FI	1.5%	**MM** (Annex 13 of Exh. PPP)	Batch Control Sheet Lot No.10010912 Heaven Scent C. Burst FI/FI Code I1018351GA
			MM-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 819.000 kg
			MM-2	Line of RI Code I1-01867, HSCENT AP165493/00 CBURST, 1.5000%, 20.475 kg
<u>12</u>	HSCENT SC FRTYLOOPS FI RE	2%	**NN** (Annex 14 of Exh. PPP)	Batch Control Sheet Lot No.10010080 HSCENT SC FRTYLOOPS FI RE/FI Code I1015591GA
			NN-1	Line of RI Code I3200, Alcohol SD 40B, 77.0000%,

				277.200 kg
			NN-2	Line of RI Code I57789, Natural Blk CHRY & NUT, 2.0000%, 7.200 kg
<u>13</u>	NINA LOVABLE SC FI	1.8%	**OO** (Annex 15 of Exh. PPP)	Batch Control Sheet Lot No.10010559 Nina Lovable Sc FI/FI Code I459241GA
			OO-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 508.800 kg
			OO-2	Line of RI Code I62639, Lovable 6793, 1.8000%, 15.264 kg
<u>14</u>	NINA KISSABLE SC FI	1.5%	**PP** (Annex 16 of Exh. PPP)	Batch Control Sheet Lot No.10010125 Nina Kissable SC FI/FI Code I458591GA
			PP-1	Line of RI Code I3200, Alcohol SD 40B, 65.0000%, 458.250 kg
			PP-2	Line of RI Code I62529, Kissable AN042622/00, 1.5000%, 10.575 kg
<u>15</u>	NINA HUGGABLE SC FI	2%	**QQ** (Annex 17 of Exh. PPP)	Batch Control Sheet Lot No. 10010811 Nina Huggable SC FI/FI Code I458581GA
			QQ-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 1,080.000 kg
			QQ-2	Line of RI Code I62559, Huggable AO045689/00, 2.0000%, 36.000 kg
<u>16</u>	HSCENT FLORAL SHOWER FI	2%	**RR** (Annex 18 of Exh. PPP)	Batch Control Sheet Lot No. 10010371 HSCENT FLORAL SHOWER FI/FI Code I443331GA
			RR-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 835.200 kg
			RR-2	Line of RI Code I51789, Project White 443.430E, 2.0000%, 27.840 kg
<u>17</u>	HSCENT FLORAL PARADISE FI	1%	**SS** (Annex 19 of Exh. PPP)	Batch Control Sheet Lot No. 10010293 HSCENT FLORAL PARADISE FI/FI Code I443311GA
			SS-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 1,080 kg
			SS-2	Line of RI Code I6260, Tranquil Moments NF7319/2, 1.0000%, 18.000 kg

18	COOL BLUE AQUA COL FI	1.5%	**TT** (Annex 20 of Exh. PPP)	Batch Control Sheet Lot No. 10010730 Cool Blue Aqua Col FI/FI Code I433851GA
			TT-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 1,020.000 kg
			TT-2	Line of RI Code I46199, Pleasant 72.702, 1.5000%, 25.500 kg
19	COOL BLUE ICE COL FI	1.5%	**UU** (Annex 21 of Exh. PPP)	Batch Control Sheet Lot No. 10010246 Cool Blue Ice Col FI/FI Code I433811GA
			UU-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 1,080 kg
			UU-2	Line of RI Code I52219, Homen Ice LL012517/00, 1.5000%, 27.000 kg
20	COOL BLUE ENERGY COL FI	1.5%	**VV** (Annex 22 of Exh. PPP)	Batch Control Sheet Lot No. 10010651 Cool Blue Energy Col FI/FI Code I433791GA
			VV-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 372.000 kg
			VV-2	Line of RI Code I46189, Oceanic 237.107, 1.5000%, 9.300 kg
21	HSCENT COL PINK PETAL FI	1.5%	**WW** (Annex 23 of Exh. PPP)	Batch Control Sheet Lot No. 10011350 HSCent Col Pink Petal FI/FI Code I196931GA
			WW-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 951.000 kg
			WW-2	Line of RI Code I7284, Baby MF-115858, 1.5000 %, 23.775 kg
22	HEAVEN SCENT LILAC FI	1.5%	**XX** (Annex 24 of Exh. PPP)	Batch Control Sheet Lot No. 10020024 Heaven Scent Lilac FI/FI Code I748083GA
			XX-1	Line of RI Code I3200, Alcohol SD 40B, 76.8300%, 345.735 kg
			XX-2	Line of RI Code I46059, Seventh Heaven MOD1, 1.5000%, 6.750 kg
23	HSCENT FRESCA COL FI	1.5%	**YY** (Annex 25 of Exh. PPP)	Batch Control Sheet Lot No. 10010417 HSCent Fresca Col FI/FI Code I743873GA

			YY-1	Line of RI Code I3200, Alcohol SD 40B, 80.000%, 1,080 kg
			YY-2	Line of RI Code I45789, HSCent Spanish UP-94-A1, 1.5000%, 27.000kg
<u>24</u>	HSCENT COL ANGEL BLUE FI	1.5230%	**ZZ** (Annex 26 of Exh. PPP)	Batch Control Sheet Lot No. 10010241 HSCent Col Angel Blue FI/FI Code I670863GA
			ZZ-2	Line of RI Code I4939 HSCent Blue M97-181, 1.5230%, 13.631 kg
<u>25</u>	HEAVEN SCENT S. YELLOW FI	1.5230%	**AAA** (Annex 27 of Exh. PPP)	Batch Control Sheet Lot No. 10010557 Heaven Scent S. Yellow FI/FI Code I625013GA
			AAA-1	Line of RI Code I3200, Alcohol SD 40B, 78.0000%, 1,251.12 kg
			AAA-2	Line of RI Code I8988 Radiance PN020.398, 1.5230%, 24.429 kg
<u>26</u>	HS BUBBLE PINK FI	2%	**BBB** (Annex 28 of Exh. PPP)	Batch Control Sheet Lot No. 10010130 HS Bubble Pink FI/FI Code I594681GA
			BBB-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 837.000 kg
			BBB-2	Line of RI Code I66459 Nina Pink AO045900/00, 2.0000%, 27.900 kg
<u>27</u>	NINA CUDDLES SC FI	1.5%	**CCC** (Annex 29 of Exh. PPP)	Batch Control Sheet Lot No. 10010411 Nina Cuddles SC FI/FI Code I484261GA
			CCC-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 294.000 kg
			CCC-2	Line of RI Code I64659 Cuddles 123733/E, 1.5000%, 7.350 kg
<u>28</u>	COOL BLUE CHILL COL FI	1.5%	**DDD** (Annex 30 of Exh. PPP)	Batch Control Sheet Lot No. 10010091 Cool Blue Chill Col FI/FI Code I484251GA
			DDD-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 594.000 kg
			DDD-2	Line of RI Code I64609 Chill A0154772/00, 1.5000%, 14.850 kg
<u>29</u>	NINA TICKLES SC FI	2%	**EEE**	Batch Control Sheet Lot No.

			(Annex 31 of Exh. PPP)	10010419 Nina Tickles SC FI/FI Code I478521GA
			EEE-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 216.000 kg
			EEE-2	Line of RI Code I64049 Tickles A0045899/00, 2.0000%, 7.200 kg
<u>30</u>	COOL BLUE FRESH COL FI	1.5%	**FFF** (Annex 32 of Exh. PPP)	Batch Control Sheet Lot No. 10010108 Cool Blue Fresh Col FI/FI Code I479431GA
			FFF-1	Line of RI Code I3200, Alcohol SD 40B, 75.0000%, 616.500 kg
			FFF-2	Line of RI Code I63659 Avon Homen 285411, 1.5000%, 12.330 kg
<u>31</u>	FRSHNLITE SWTCRUSH FI REF	1.5%	**OOO** (Annex 33 of Exh. PPP)	Batch Control Sheet Lot No. 10020330 FRSHLITE SWTCRUSH FI REF/FI Code I1003691GA
			OOO-1	Line of RI Code I3200, Alcohol SD 40B, 60.0000%, 558.000 kg
			OOO-2	Line of RI Code I52129 Primavera LL012951/00, 1.5000%, 13.950 kg

<u>Petitioner is Entitled to a Refund in the Amount of ₱38,561,292.43</u>

The claim for refund covers the period starting January 4, 2010 to December 31, 2010. This means that petitioner had two years or until January 4, 2012, at the earliest, within which to file its claim for refund both in the administrative and judicial levels. The administrative claim[46] was filed on June 27, 2011 and the judicial claim was filed on November 16, 2011. Clearly, the refund claim was filed within the two-year prescriptive period.

To support its claim, petitioner submitted the following documents, which were all examined and verified by the Court-commissioned Independent Certified Public Accountant (ICPA), Constantino Guadalquiver & Co., through its Partner, Mr. Jerome Antonio B. Constantino, to wit:

1. Summary of Excise Tax[47]
2. Summary of Excise Tax Returns[48]
3. Excise Tax Returns[49]

[46] Par. 4, Stipulation of Facts, Docket p. 99.
[47] Exhibit RRR-5.
[48] Exhibit RRR, Annex I.
[49] Exhibits RRR-1 to RRR-1a(13).

4. Summary of Online Tax Payment Confirmations[50]
5. Online Tax Payment Confirmations[51]
6. Breakdown of Erroneously Paid Excise Taxes[52]
7. Breakdown of Sales Invoices of Erroneously Paid Excise Taxes[53]
8. Sales Invoices of Erroneously Paid Excise Taxes[54]
9. Bills of Materials – Finished Stock[55]
10. Bills of Materials – Finished Ingredient and Basic Batch Percent Formula[56]
11. Summary of Batch Control Sheets[57]
12. Batch Control Sheets, Finished Ingredient Evaluation Report and Powder and Hydro Alcohol (PHA) Test Logbook[58]
13. Document Entry Voucher, Supplier's Invoices, Delivery Receipts and Official Delivery Invoices[59]

A thorough scrutiny of the evidence submitted before us show that the findings and observations of the Court-commissioned ICPA in his report[60] dated July 23, 2012 are indeed accurate.

For the period January 4, 2010 to December 29, 2010, petitioner filed with the BIR its Excise Tax Returns and paid 20% excise taxes on its removal of perfumes, toilet waters, splash colognes and body sprays totalling One Hundred Thirty Six Million Three Hundred Fifty Seven Thousand One Hundred Eleven Pesos and Eighty Centavos (₱136,357,111.80) which were offset against the advance excise tax payments/deposits made by petitioner, as illustrated below:

Balance Carry Over from Previous Return, Exhibits RRR-3 and RRR-3a		₱ 3,058,024.25
Add: Excise Tax Replenishment per Return		
January 7, 2010 , Exhibit RRR-2	₱ 4,000,000.00	
January 14, 2010, Exhibit RRR-2a(1)	4,000,000.00	
January 24, 2010 , Exhibit RRR-2b(1)	4,000,000.00	
January 28, 2010 , Exhibit RRR-2c(1)	4,000,000.00	
February 4, 2010 , Exhibit RRR-2d(1)	4,000,000.00	
February 18, 2010 , Exhibit RRR-2e(1)	4,000,000.00	
February 27, 2010 , Exhibit RRR-2f(1)	4,000,000.00	
March 10, 2010 , Exhibit RRR-2g(1)	4,000,000.00	
March 21, 2010 , Exhibit RRR-2h(1)	4,000,000.00	
April 11, 2010 , Exhibit RRR-21(1)	4,000,000.00	

[50] Exhibit RRR, Annex II.
[51] Exhibits RRR-2 to RRR-2k(2).
[52] Exhibit RRR, Annex V1.
[53] Exhibits RRR-4, pp. 1 to 86.
[54] Exhibits RRR-4-1 to RRR-4-968.
[55] Exhibits RRR-6 to RRR-6g(2).
[56] Exhibits RRR-7 to RRR-7c(2).
[57] Exhibit RRR-8, pp. 1 to 16.
[58] Exhibits RRR-8-1 to RRR-8-832.
[59] Exhibits RRR-13-1 to RRR-13-116.
[60] Exhibit RRR.

April 26, 2010 , Exhibit RRR-2j(1)	4,000,000.00	
April 28, 2010 , Exhibit RRR-2k(1)	2,000,000.00	
May 11, 2010 , Exhibit RRR-2l(1)	4,000,000.00	
May 25, 2010 , Exhibit RRR-2m(1)	4,000,000.00	
June 10, 2010 , Exhibit RRR-2n(1)	4,000,000.00	
June 20, 2010 , Exhibit RRR-2o(1)	4,000,000.00	
June 23, 2010 , Exhibit RRR-2p(1)	4,000,000.00	
July 1, 2010 , Exhibit RRR-2q(1)	4,000,000.00	
July 8, 2010 , Exhibit RRR-2r(1)	2,000,000.00	
July 18, 2010 , Exhibit RRR-2s(1)	4,000,000.00	
July 29, 2010 , Exhibit RRR-2t(1)	2,000,000.00	
August 4, 2010 , Exhibit RRR-2u(1)	4,000,000.00	
August 10, 2010 , Exhibit RRR-2v(1)	2,000,000.00	
August 18, 2010 , Exhibit RRR-2w(1)	4,000,000.00	
August 26, 2010 , Exhibit RRR-2x(1)	2,000,000.00	
September 1, 2010 , Exhibit RRR-2y(1)	4,000,000.00	
September 11, 2010 , Exhibit RRR-2z(1)	4,000,000.00	
September 15, 2010 , Exhibit RRR-2a(2)	4,000,000.00	
September 28, 2010 , Exhibit RRR-2b(2)	2,000,000.00	
October 1, 2010 , Exhibit RRR-2c(2)	4,000,000.00	
October 15, 2010 , Exhibit RRR-2d(2)	4,000,000.00	
October 30, 2010 , Exhibit RRR-2e(2)	4,000,000.00	
November 9, 2010 , Exhibit RRR-2f(2)	4,000,000.00	
November 19, 2010 , Exhibit RRR-2g(2)	4,000,000.00	
December 1, 2010 , Exhibit RRR-2h(2)	4,000,000.00	
December 8, 2010 , Exhibit RRR-2i(2)	4,000,000.00	
December 20, 2010 , Exhibit RRR-2j(2)	4,000,000.00	
December 27, 2010 , Exhibit RRR-2k(2)	2,000,000.00	138,000,000.00
Total Advance Payment of Excise Taxes		₱ 141,058,024.25
Less: Total Excise Tax on Actual Removal per Returns for the period January 4, 2010 to December 29, 2010, Exhibit RRR, Annex I, p.10		136,357,111.80
Remaining Balance of Advance Payment of Excise Tax per Return as of December 29, 2010, Exhibit RRR-1a(13), line 24		₱ 4,700,912.45

The above table readily shows that for the period January 7, 2010 to December 27, 2010, petitioner made several advance payments of excise tax in the amount of ₱138,000,000.00 which when added to the beginning balance of advance excise tax deposits amounting to ₱3,058,024.25 will result to an aggregate sum of ₱141,058,024.25, which is more than enough to cover the excise taxes due on petitioner's actual removals per returns amounting to ₱136,357,111.80.

As found by the ICPA, out of the ₱136,357,111.80 excise taxes paid by petitioner, ₱38,561,292.43 represents 20% excise taxes paid on removals of splash colognes and body sprays containing essential oils of 3% or less by weight, detailed as follows:

Exhibit	Date Indicated Per Excise Tax Return	Excise Tax Paid Per Return	Total Amount of Excise Tax on Actual Removals per Summary of Excise Tax (Exhibit RRR-5)	Excise Tax on Products with Essential Oil Content of 3% or less per Breakdown of Sales Invoices of Erroneously Paid Excise Taxes (Exhibit RRR-4)[61]
RRR-1	1/4/2010	₱ 180,336.25	₱ 180,336.25	₱ 22,753.13
RRR-1a(1)	1/5/2010	384,771.88	384,771.88	120,395.81
RRR-1b(1)	1/6/2010	556,092.14	556,092.14	185,333.24
RRR-1c(1)	1/7/2010	684,615.13	684,615.13	291,252.27
RRR-1d(1)	1/8/2010	475,944.70	475,944.70	123,084.27
RRR-1e(1)	1/9/2010	133,424.41	133,424.41	62,539.78
RRR-1f(1)	1/10/2010	564,501.63	564,501.63	31,737.93
RRR-1g(1)	1/11/2010	372,592.26	372,592.26	91,002.66
RRR-1h(1)	1/12/2010	929,608.17	929,608.17	255,547.92
RRR-1i(1)	1/13/2010	816,018.04	816,018.04	281,253.46
RRR-1j(1)	1/14/2010	596,003.85	596,003.85	347,700.87
RRR-1k(1)	1/15/2010	758,516.79	758,516.79	221,855.45
RRR-1l(1)	1/16/2010	239,317.75	239,317.75	95,734.54
RRR-1m(1)	1/17/2010	464,677.22	464,677.22	16,131.51
RRR-1n(1)	1/18/2010	235,325.12	235,325.12	85,953.22
RRR-1o(1)	1/19/2010	181,822.16	181,822.16	45,353.74
RRR-1p(1)	1/20/2010	476,892.59	476,892.59	271,741.56
RRR-1p(1)	1/21/2010	770,858.39	770,858.39	309,736.42
RRR-1q(1)	1/22/2010	651,317.45	651,317.45	138,355.01
RRR-1r(1)	1/23/2010	881,415.82	881,415.82	173,296.65
RRR-1s(1)	1/24/2010	71,792.82	71,792.82	31,780.98
RRR-1t(1)	1/25/2010	274,131.52	274,131.52	205,357.11
RRR-1u(1)	1/26/2010	535,184.79	535,184.79	220,318.66
RRR-1v(1)	1/27/2010	308,198.29	308,198.29	127,011.38
RRR-1w(1)	1/28/2010	646,611.87	646,611.87	218,169.00
RRR-1x(1)	1/29/2010	1,031,538.25	1,031,538.25	512,518.46
RRR-1y(1)	1/30/2010	1,251,638.66	1,251,638.66	39,780.87
RRR-1z(1)	1/31/2010	1,065,388.40	1,065,388.40	47,611.39
RRR-1a(2)	2/1/2010	408,453.59	408,453.59	184,872.08
RRR-1b(2)	2/2/2010	185,085.92	185,085.92	134,453.65
RRR-1c(2)	2/3/2010	236,834.96	236,834.96	235,654.50
RRR-1d(2)	2/4/2010	476,745.56	476,745.56	195,038.73
RRR-1e(2)	2/5/2010	427,351.20	427,351.20	152,767.82
RRR-1f(2)	2/6/2010	452,136.65	452,136.65	148,165.59
RRR-1g(2)	2/7/2010	130,602.27	130,602.27	54,656.25
RRR-1h(2)	2/8/2010	248,123.81	248,123.81	210,186.80

[61] Breakdown per Exhibit RRR-4 can be traced to supporting invoices marked as Exhibits RRR-4-1 to RRR-4-968; Breakdown can also be seen per Annexes VI and VII of Exhibit RRR.

RRR-1i(2)	2/9/2010	339,359.15	339,359.15	235,425.39
RRR-1j(2)	2/10/2010	300,340.97	300,340.97	279,070.23
RRR-1k(2)	2/11/2010	236,305.32	236,305.32	83,807.05
RRR-1l(2)	2/12/2010	458,315.03	458,315.03	180,669.25
RRR-1m(2)	2/13/2010	576,537.31	576,537.31	150,193.97
RRR-1n(2)	2/14/2010	180,214.89	180,214.89	6,177.87
RRR-1o(2)	2/15/2010	444,172.01	444,172.01	120,651.84
RRR-1p(2)	2/16/2010	401,711.74	401,711.74	121,879.22
RRR-1q(2)	2/17/2010	254,706.12	254,706.12	188,494.84
RRR-1r(2)	2/18/2010	545,652.17	545,652.17	353,120.38
RRR-1s(2)	2/19/2010	485,868.38	485,868.38	130,481.47
RRR-1t(2)	2/20/2010	245,857.39	245,857.39	60,734.17
RRR-1u(2)	2/22/2010	475,033.07	475,033.07	110,418.58
RRR-1v(2)	2/23/2010	649,669.85	649,669.85	187,566.92
RRR-1w(2)	2/24/2010	724,738.30	724,738.30	290,573.58
RRR-1x(2)	2/25/2010	426,743.03	426,743.03	168,560.72
RRR-1y(2)	2/26/2010	548,734.05	548,734.05	169,369.87
RRR-1z(2)	2/27/2010	207,947.04	207,947.04	88,576.18
RRR-1a(3)	2/28/2010	279,413.99	279,413.99	48,147.93
RRR-1b(3)	3/1/2010	152,806.09	152,806.09	80,281.55
RRR-1c(3)	3/2/2010	401,635.14	401,635.14	156,760.43
RRR-1d(3)	3/3/2010	402,813.28	402,813.28	167,376.59
RRR-1e(3)	3/4/2010	564,127.95	564,127.95	170,758.62
RRR-1f(3)	3/5/2010	663,844.05	663,844.05	188,428.21
RRR-1g(3)	3/6/2010	168,732.24	168,732.24	38,707.86
RRR-1h(3)	3/7/2010	49,243.35	49,243.35	-
RRR-1i(3)	3/8/2010	256,310.31	256,310.31	71,859.82
RRR-1j(3)	3/9/2010	401,856.67	401,856.67	64,903.96
RRR-1k(3)	3/10/2010	626,378.37	626,378.37	64,354.96
RRR-1l(3)	3/11/2010	540,494.93	540,494.93	162,887.15
RRR-1m(3)	3/12/2010	497,699.09	497,699.09	220,290.86
RRR-1n(3)	3/13/2010	129,211.77	129,211.77	15,001.49
RRR-1o(3)	3/14/2010	158,603.42	158,603.42	-
RRR-1p(3)	3/15/2010	545,326.19	545,326.19	132,162.99
RRR-1q(3)	3/16/2010	559,693.71	559,693.71	204,349.33
RRR-1r(3)	3/17/2010	419,041.66	419,041.66	91,083.70
RRR-1s(3)	3/18/2010	459,741.16	459,741.16	83,706.77
RRR-1t(3)	3/19/2010	360,486.17	360,486.17	66,306.98
RRR-1u(3)	3/20/2010	24,814.15	24,814.15	-
RRR-1v(3)	3/21/2010	30,120.44	30,120.44	-
RRR-1w(3)	3/22/2010	258,557.46	258,557.46	117,183.14
RRR-1x(3)	3/23/2010	264,613.31	264,613.31	
RRR-1y(3)	3/24/2010	210,341.87	210,341.87	99,814.26
RRR-1z(3)	3/25/2010	272,101.91	272,101.91	149,422.92
RRR-1a(4)	3/26/2010	648,816.24	648,816.24	160,884.26
RRR-1b(4)	3/27/2010	32,606.60	32,606.60	18,641.77
RRR-1c(4)	3/29/2010	212,065.09	212,065.09	32,669.25
RRR-1d(4)	3/30/2010	147,372.51	147,372.51	14,348.43

RRR-1e(4)	3/31/2010	25,196.74	25,196.74	16,954.94
RRR-1f(4)	4/5/2010	17,201.39	17,201.39	94,022.33
RRR-1g(4)	4/6/2010	156,555.57	156,555.57	63,782.73
RRR-1h(4)	4/7/2010	333,728.53	333,728.53	94,890.31
RRR-1i(4)	4/8/2010	265,997.49	265,997.49	45,595.83
RRR-1j(4)	4/9/2010	193,994.70	193,994.70	-
RRR-1k(4)	4/10/2010	563,065.52	563,065.52	10,219.98
RRR-1l(4)	4/11/2010	203,388.69	203,388.69	22,053.31
RRR-1m(4)	4/12/2010	508,243.09	508,243.09	169,006.74
RRR-1n(4)	4/13/2010	560,992.84	560,992.84	86,577.36
RRR-1o(4)	4/14/2010	328,388.67	328,388.67	40,913.95
RRR-1p(4)	4/15/2010	702,092.62	702,092.62	24,206.75
RRR-1q(4)	4/16/2010	388,960.27	388,960.27	110,391.17
RRR-1r(4)	4/17/2010	59,763.29	59,763.29	22,022.41
RRR-1s(4)	4/18/2010	309,866.58	309,866.58	149,882.76
RRR-1t(4)	4/19/2010	33,086.45	33,086.45	7,414.46
RRR-1u(4)	4/20/2010	260,244.56	260,244.56	114,631.70
RRR-1v(4)	4/21/2010	205,150.76	205,150.76	97,940.21
RRR-1w(4)	4/22/2010	388,933.02	388,933.02	21,054.23
RRR-1x(4)	4/23/2010	385,876.57	385,876.57	18,265.50
RRR-1y(4)	4/24/2010	398,660.06	398,660.06	37,427.97
RRR-1z(4)	4/25/2010	741,559.41	741,559.41	53,625.79
RRR-1a(5)	4/26/2010	445,892.06	445,892.06	112,590.17
RRR-1b(5)	4/27/2010	527,108.70	527,108.70	82,120.85
RRR-1c(5)	4/29/2010	959,273.14	959,273.14	36,640.67
RRR-1d(5)	5/1/2010	129,651.94	129,651.94	25,733.21
RRR-1e(5)	5/3/2010	130,700.27	130,700.27	7,755.44
RRR-1f(5)	5/4/2010	274,986.21	274,986.21	84,088.57
RRR-1g(5)	5/5/2010	50,791.05	50,791.05	19,423.40
RRR-1h(5)	5/6/2010	753,597.49	753,597.49	260,269.84
RRR-1i(5)	5/7/2010	556,562.77	556,562.77	289,028.28
RRR-1j(5)	5/8/2010	382,535.10	382,535.10	88,226.13
RRR-1k(5)	5/9/2010	25,928.84	25,928.84	-
RRR-1l(5)	5/11/2010	329,383.94	329,383.94	138,349.94
RRR-1m(5)	5/12/2010	711,882.01	711,882.01	183,084.19
RRR-1n(5)	5/13/2010	454,482.31	454,482.31	72,470.16
RRR-1o(5)	5/14/2010	368,566.38	368,566.38	3,337.62
RRR-1p(5)	5/15/2010	128,633.48	128,633.48	-
RRR-1q(5)	5/17/2010	356,630.40	356,630.40	62,057.76
RRR-1r(5)	5/18/2010	566,229.66	566,229.66	264,289.93
RRR-1s(5)	5/19/2010	397,099.89	397,099.89	107,950.28
RRR-1t(5)	5/20/2010	178,312.89	178,312.89	14,338.67
RRR-1u(5)	5/21/2010	271,461.25	271,461.25	5,836.19
RRR-1v(5)	5/22/2010	169,183.18	169,183.18	1,574.09
RRR-1w(5)	5/24/2010	190,600.52	190,600.52	125,287.69
RRR-1x(5)	5/25/2010	158,667.16	158,667.16	99,973.87
RRR-1y(5)	5/26/2010	126,922.39	126,922.39	71,443.04
RRR-1z(5)	5/27/2010	281,684.81	281,684.81	105,040.72

RRR-1a(6)	5/28/2010	652,647.59	652,647.59	89,207.27
RRR-1b(6)	5/29/2010	170,231.79	170,231.79	60,400.90
RRR-1c(6)	5/31/2010	203,255.71	203,255.71	39,448.24
RRR-1d(6)	6/1/2010	313,955.00	313,955.00	178,446.39
RRR-1e(6)	6/2/2010	232,840.92	232,840.92	95,878.97
RRR-1f(6)	6/3/2010	571,265.11	571,265.11	116,901.76
RRR-1g(6)	6/4/2010	574,383.82	574,383.82	163,114.92
RRR-1h(6)	6/5/2010	456,325.50	456,325.50	78,665.14
RRR-1i(6)	6/6/2010	29,644.52	29,644.52	-
RRR-1j(6)	6/7/2010	321,425.21	321,425.21	48,625.21
RRR-1k(6)	6/8/2010	191,576.36	191,576.36	27,777.47
RRR-1l(6)	6/9/2010	503,631.99	503,631.99	224,286.27
RRR-1m(6)	6/10/2010	216,933.20	216,933.20	13,707.40
RRR-1n(6)	6/11/2010	644,887.81	644,887.81	167,153.25
RRR-1o(6)	6/12/2010	614,527.08	614,527.08	77,169.24
RRR-1p(6)	6/13/2010	232,671.34	232,671.34	167,175.26
RRR-1q(6)	6/14/2010	370,122.33	370,122.33	147,238.62
RRR-1r(6)	6/15/2010	660,269.51	660,269.51	255,970.38
RRR-1s(6)	6/16/2010	597,744.54	597,744.54	162,395.95
RRR-1t(6)	6/17/2010	691,658.02	691,658.02	81,142.51
RRR-1u(6)	6/18/2010	938,065.72	938,065.72	121,438.79
RRR-1v(6)	6/19/2010	416,687.56	416,687.56	22,610.74
RRR-1w(6)	6/20/2010	947,720.65	947,720.65	222,923.39
RRR-1x(6)	6/21/2010	429,563.66	429,563.66	157,421.38
RRR-1y(6)	6/22/2010	455,326.86	455,326.86	197,064.44
RRR-1z(6)	6/23/2010	122,512.49	122,512.49	185,084.09
RRR-1a(7)	6/24/2010	366,850.46	366,850.46	154,044.12
RRR-1b(7)	6/25/2010	430,806.35	430,806.35	205,988.21
RRR-1c(7)	6/26/2010	109,262.17	109,262.17	-
RRR-1d(7)	6/27/2010	470,354.11	470,354.11	175,674.63
RRR-1e(7)	6/29/2010	617,540.87	617,540.87	211,412.37
RRR-1f(7)	6/30/2010	605,598.36	605,598.36	74,164.25
RRR-1g(7)	7/1/2010	629,667.85	629,667.85	142,183.47
RRR-1h(7)	7/2/2010	533,440.36	533,440.36	161,429.86
RRR-1i(7)	7/3/2010	210,755.03	210,755.03	131,555.84
RRR-1j(7)	7/5/2010	717,712.51	717,712.51	173,826.18
RRR-1k(7)	7/6/2010	427,235.98	427,235.98	168,394.51
RRR-1l(7)	7/7/2010	299,310.74	299,310.74	22,626.23
RRR-1m(7)	7/8/2010	338,338.20	338,338.20	134,236.88
RRR-1n(7)	7/9/2010	594,883.56	594,883.56	193,977.49
RRR-1o(7)	7/10/2010	428,939.86	428,939.86	41,782.26
RRR-1p(7)	7/11/2010	541,554.99	541,554.99	139,262.62
RRR-1q(7)	7/12/2010	972,413.99	972,413.99	123,527.04
RRR-1r(7)	7/13/2010	524,805.06	524,805.06	131,988.21
RRR-1s(7)	7/14/2010	180,921.97	180,921.97	142,743.63
RRR-1t(7)	7/15/2010	299,435.56	299,435.56	92,042.67
RRR-1u(7)	7/16/2010	126,231.80	126,231.80	52,386.68
RRR-1v(7)	7/17/2010	109,832.72	109,832.72	-

RRR-1w(7)	7/18/2010	261,508.82	261,508.82	163,078.82
RRR-1x(7)	7/19/2010	397,884.72	397,884.72	178,468.18
RRR-1y(7)	7/20/2010	576,639.14	576,639.14	263,204.60
RRR-1z(7)	7/21/2010	197,483.19	197,483.19	113,636.24
RRR-1b(8)	7/22/2010	403,747.53	403,747.53	174,062.26
RRR-1c(8)	8/23/2010	230,618.81	230,618.81	76,663.86
RRR-1d(8)	7/24/2010	95,692.88	95,692.88	40,656.19
RRR-1e(8)	7/25/2010	153,785.96	153,785.96	83,577.86
RRR-1f(8)	7/26/2010	259,676.54	259,676.54	239,010.58
RRR-1g(8)	7/27/2010	689,023.00	689,023.00	74,287.50
RRR-1h(8)	7/29/2010	313,545.07	313,545.07	218,956.65
RRR-1i(8)	7/30/2010	1,403,257.87	1,403,257.87	273,450.36
RRR-1j(8)	7/31/2010	108,264.19	108,264.19	57,168.48
RRR-1k(8)	8/2/2010	230,339.92	230,339.92	121,750.67
RRR-1l(8)	8/3/2010	557,345.12	557,345.12	231,914.65
RRR-1m(8)	8/5/2010	471,895.06	471,895.06	206,800.24
RRR-1n(8)	8/6/2010	681,872.37	681,872.37	258,736.15
RRR-1o(8)	8/7/2010	599,243.29	599,243.29	230,845.28
RRR-1p(8)	8/8/2010	172,345.89	172,345.89	120,609.51
RRR-1q(8)	8/9/2010	507,195.45	507,195.45	159,388.92
RRR-1r(8)	8/10/2010	281,251.57	281,251.57	217,749.22
RRR-1s(8)	8/11/2010	557,557.97	557,557.97	338,918.02
RRR-1t(8)	8/12/2010	576,399.22	576,399.22	269,771.85
RRR-1u(8)	8/13/2010	721,302.85	721,302.85	217,643.23
RRR-1v(8)	8/14/2010	193,213.02	193,213.02	55,209.03
RRR-1w(8)	8/16/2010	343,381.81	343,381.81	153,067.04
RRR-1x(8)	8/17/2010	462,442.98	462,442.98	191,737.02
RRR-1y(8)	8/18/2010	641,102.05	641,102.05	231,278.72
RRR-1z(8)	8/19/2010	414,464.39	414,464.39	147,165.07
RRR-1a(9)	8/20/2010	477,300.93	477,300.93	124,007.66
RRR-1b(9)	8/21/2010	201,088.61	201,088.61	61,982.13
RRR-1c(9)	8/23/2010	436,311.01	436,311.01	149,998.16
RRR-1d(9)	8/24/2010	500,591.23	500,591.23	171,066.66
RRR-1e(9)	8/25/2010	806,578.79	806,578.79	214,316.32
RRR-1f(9)	8/26/2010	828,096.04	828,096.04	80,327.38
RRR-1g(9)	8/27/2010	1,190,866.73	1,190,866.73	54,393.79
RRR-1h(9)	8/28/2010	770,309.77	770,309.77	158,474.39
RRR-1i(9)	8/31/2010	335,537.76	335,537.76	156,733.84
RRR-1j(9)	9/1/2010	587,489.74	587,489.74	208,120.21
RRR-1k(9)	9/2/2010	318,392.73	318,392.73	43,829.12
RRR-1l(9)	9/3/2010	256,931.30	256,931.30	15,566.77
RRR-1m(9)	9/4/2010	241,506.87	241,506.87	21,024.92
RRR-1n(9)	9/5/2010	196,839.87	196,839.87	67,472.83
RRR-1o(9)	9/6/2010	265,691.42	265,691.42	154,413.56
RRR-1p(9)	9/7/2010	829,592.21	829,592.21	362,378.44
RRR-1q(9)	9/8/2010	153,304.20	153,304.20	142,117.94
RRR-1r(9)	9/9/2010	755,830.37	755,830.37	157,337.01
RRR-1s(9)	9/10/2010	966,685.12	966,685.12	105,211.58

RRR-1t(9)	9/11/2010	358,859.92	358,859.92	26,269.92
RRR-1u(9)	9/13/2010	839,115.09	839,115.09	163,808.24
RRR-1v(9)	9/14/2010	668,378.69	668,378.69	234,196.63
RRR-1w(9)	9/15/2010	1,316,499.76	1,316,499.76	294,786.82
RRR-1x(9)	9/16/2010	650,032.47	650,032.47	165,054.60
RRR-1y(9)	9/17/2010	574,799.03	574,799.03	137,758.84
RRR-1z(9)	9/18/2010	397,344.57	397,344.57	61,259.00
RRR-1a(10)	9/20/2010	170,878.28	170,878.28	73,079.21
RRR-1b(10)	9/21/2010	581,202.91	581,202.91	191,802.70
RRR-1c(10)	9/22/2010	419,035.02	419,035.02	159,527.74
RRR-1d(10)	9/23/2010	145,551.57	145,551.57	63,830.75
RRR-1e(10)	9/24/2010	457,912.96	457,912.96	26,009.82
RRR-1f(10)	9/25/2010	41,735.77	41,735.77	27,434.01
RRR-1g(10)	9/27/2010	262,026.47	262,026.47	125,290.93
RRR-1h(10)	9/28/2010	295,500.19	295,500.19	14,913.94
RRR-1i(10)	9/29/2010	485,121.51	485,121.51	101,810.80
RRR-1j(10)	9/30/2010	1,210,839.09	1,210,839.09	185,734.27
RRR-1k(10)	10/1/2010	330,749.70	330,749.70	73,574.60
RRR-1l(10)	10/2/2010	67,666.64	67,666.64	38,055.61
RRR-1m(10)	10/4/2010	245,171.23	245,171.23	72,558.80
RRR-1n(10)	10/5/2010	151,795.35	151,795.35	93,159.50
RRR-1o(10)	10/6/2010	339,388.97	339,388.97	41,076.41
RRR-1p(10)	10/7/2010	452,881.67	452,881.67	113,214.02
RRR-1q(10)	10/8/2010	680,942.45	680,942.45	110,520.79
RRR-1r(10)	10/9/2010	146,612.70	146,612.70	16,926.91
RRR-1s(10)	10/11/2010	531,449.68	531,449.68	192,639.09
RRR-1t(10)	10/12/2010	279,126.44	279,126.44	158,776.64
RRR-1u(10)	10/13/2010	446,651.57	446,651.57	154,541.18
RRR-1v(10)	10/14/2010	473,813.18	473,813.18	104,178.88
RRR-1w(10)	10/15/2010	257,088.47	257,088.47	71,120.01
RRR-1x(10)	10/16/2010	106,738.52	106,738.52	33,039.16
RRR-1y(10)	10/18/2010	166,202.06	166,202.06	43,280.79
RRR-1z(10)	10/19/2010	383,573.64	383,573.64	144,278.19
RRR-1a(11)	10/20/2010	454,395.71	454,395.71	117,974.55
RRR-1b(11)	10/21/2010	213,689.80	213,689.80	21,578.89
RRR-1c(11)	10/22/2010	183,722.83	183,722.83	-
RRR-1d(11)	10/23/2010	96,081.84	96,081.84	71,457.55
RRR-1e(11)	10/26/2010	577,404.34	577,404.34	212,769.23
RRR-1f(11)	10/27/2010	964,634.52	964,634.52	191,095.10
RRR-1g(11)	10/28/2010	613,704.26	613,704.26	22,462.27
RRR-1h(11)	10/29/2010	959,280.43	959,280.43	48,753.24
RRR-1i(11)	10/30/2010	1,042,872.46	1,042,872.46	90,496.73
RRR-1j(11)	11/4/2010	754,216.57	754,216.57	89,945.09
RRR-1k(11)	11/5/2010	1,041,090.27	1,041,090.27	271,559.69
RRR-1l(11)	11/6/2010	411,831.10	411,831.10	27,032.24
RRR-1m(11)	11/8/2010	322,108.82	322,108.82	32,599.59
RRR-1n(11)	11/9/2010	591,196.56	591,196.56	133,201.69
RRR-1o(11)	11/10/2010	131,609.92	131,609.92	68,756.96

RRR-1p(11)	11/11/2010	409,737.20	409,737.20	147,309.37
RRR-1q(11)	11/12/2010	785,309.18	785,309.18	216,620.27
RRR-1r(11)	11/13/2010	361,964.23	361,964.23	61,485.24
RRR-1s(11)	11/15/2010	275,332.58	275,332.58	35,914.36
RRR-1t(11)	11/16/2010	231,818.90	231,818.90	90,225.81
RRR-1u(11)	11/17/2010	77,395.37	77,395.37	77,395.37
RRR-1v(11)	11/18/2010	335,243.28	335,243.28	175,084.39
RRR-1w(11)	11/19/2010	846,470.79	846,470.79	113,780.31
RRR-1x(11)	11/20/2010	247,624.78	247,624.78	41,180.07
RRR-1y(11)	11/22/2010	588,293.53	588,293.53	54,288.10
RRR-1z(11)	11/23/2010	539,519.24	539,519.24	137,903.85
RRR-1a(12)	11/24/2010	475,935.42	475,935.42	97,360.49
RRR-1b(12)	11/25/2010	996,651.06	996,651.06	97,613.87
RRR-1c(12)	11/26/2010	653,437.82	653,437.82	89,033.58
RRR-1d(12)	11/27/2010	111,198.18	111,198.18	22,218.12
RRR-1e(12)	11/30/2010	89,406.27	89,406.27	55,937.38
RRR-1f(12)	12/1/2010	695,213.41	695,213.41	122,248.06
RRR-1g(12)	12/2/2010	660,286.78	660,286.78	166,552.90
RRR-1h(12)	12/3/2010	868,804.55	868,804.55	131,337.17
RRR-1i(12)	12/5/2010	87,134.85	87,134.85	17,288.42
RRR-1j(12)	12/6/2010	498,937.82	498,937.82	111,459.84
RRR-1k(12)	12/7/2010	722,077.21	722,077.21	245,762.19
RRR-1l(11)	12/8/2010	556,729.26	556,729.26	269,463.58
RRR-1m(11)	12/9/2010	638,907.60	638,907.60	267,296.53
RRR-1n(11)	12/10/2010	302,867.30	302,867.30	176,031.53
RRR-1o(11)	12/11/2010	78,200.11	78,200.11	45,936.99
RRR-1p(11)	12/13/2010	336,768.27	336,768.27	134,584.17
RRR-1q(11)	12/14/2010	862,727.23	862,727.23	316,074.85
RRR-1r(11)	12/15/2010	730,496.84	730,496.84	185,399.25
RRR-1s(11)	12/16/2010	777,943.92	777,943.92	208,007.91
RRR-1t(11)	12/17/2010	416,383.23	416,383.23	132,878.70
RRR-1u(11)	12/18/2010	156,369.37	156,369.37	5,999.08
RRR-1v(11)	12/20/2010	649,938.79	649,938.79	189,732.48
RRR-1w(11)	12/21/2010	760,012.98	760,012.98	302,200.58
RRR-1x(11)	12/22/2010	441,560.12	441,560.12	246,854.05
RRR-1y(11)	12/23/2010	568,231.36	568,231.36	121,495.11
RRR-1y(11)	12/24/2010	144,215.53	144,215.53	28,604.38
RRR-1y(11)	12/27/2010	420,838.92	420,838.92	93,733.69
RRR-1z(11)	12/28/2010	564,746.76	564,746.76	186,266.64
RRR-1a(13)	12/29/2010	80,304.68	80,304.68	21,988.80
Total		**₱ 136,357,111.80**	**₱ 136,357,111.80**	**₱ 38,561,292.43**

In fine, petitioner sufficiently proved that it paid excise taxes on removals of splash colognes and body sprays with essential oil content of not more than 3% by weight in the amount of ₱38,561,292.43 for the period January 4, 2010 to December 29, 2010.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **GRANTED.** Our Decision dated May 6, 2014 is reversed and set aside and an **AMENDED** DECISION is hereby rendered **GRANTING** the instant Petition for Review. Petitioner is held not liable to pay the excise tax on its removals of splash colognes and body sprays with essential oil content of not more than 3% by weight and, accordingly, respondent is ORDERED TO CEASE AND DESIST from collecting the said excise tax on such products from petitioner.

Respondent is also **ORDERED TO REFUND** or issue a tax credit certificate to petitioner in the total amount of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (₱38,561,292.43) representing erroneously paid excise taxes on non-essential articles under Section 150 of the National Internal Revenue Code for the period January 4, 2010 to December 10, 2010.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(With Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AVON PRODUCTS MANUFACTURING, INC., Petitioner,	CTA Case No. 8378
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 9 2014 10:48 a.m.

x---x

DISSENTING OPINION

Fabon-Victorino, *J.:*

With high respect to my esteemed colleagues in the majority, I vote to deny petitioner's Motion for Reconsideration thereby affirming the Court's ruling in the assailed Decision of May 6, 2014 that **petitioner's splash colognes and body sprays are subject to the 20% excise tax imposed under Section 150(b) of the NIRC, as amended,** hence, it is not entitled to the refund sought.

The same was the position of the Court *En Banc* in *CTA EB Case No. 840,*[1] which involved the same parties and issues. In the said case, petitioner fervently insisted, as it does in the present case, that its splash colognes and body sprays are not subject to the twenty percent (20%) excise tax on non-essential goods imposed under Section 150 of the NIRC of 1997, as amended. Allegedly, these products do not fall within the definition of "toilet waters" as scented alcoholic or non-alcoholic preparation primarily used as body

[1] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*; January 29, 2013.

fragrance containing essential oils of more than 3% by weight under Revenue Regulations (RR) No. 8-84.

A revisit of the permutations of the pertinent laws reveals the contrary.

The 1977 NIRC, specifically Section 194(b) thereof, imposed percentage tax on "toilet waters" *sans* definition of the term "toilet waters."

To implement the imposition of said percentage tax, the BIR issued RR No. 8-84, also known as Cosmetic Products Regulations, which defined for the first time "toilet waters" as scented alcoholic or non-alcoholic preparation primarily used as body fragrance containing essential oils, i.e. more than 3% by weight. Examples: Lavander water, Eau de Cologne, Eau de Toilette.

Relevantly, Section 1 of RR No. 8-84 states that the regulations shall cover only tax on cosmetic products imposed under Section 194(b) and (e) and Section 326 of the 1977 NIRC, thus:

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

Subsequently, Section 194 of the 1977 NIRC was amended by Section 23 of PD No. 1994 dated November 5, 1985 and renumbered as Section 163 which reads as follows:

> 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 or, 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.**

(a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones, and imitations thereof; articles 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 mounting for spectacles or eyeglasses, and dental gold or gold alloys and other precious metal used in filling, 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 term 'imitations thereof' shall include platings and alloys of such metals.

(b) Perfumes, essences, extracts, **toilet waters,** cosmetics, hair dressings, hair dyes, hair restorations, aromatic, cachous, toilet powders, except tooth and mouth washes, dentifrice, toothpaste, talcum and medicated toilet powders, hair oils and pomades. *(Emphases supplied)*

Section 163 of the 1977 NIRC was further amended and was finally renumbered as Section 150(b) by Executive Order No. 273 dated July 25, 1987, which was enacted purposely to replace the old percentages taxes with value-added tax (VAT) as indicated in the "whereas clause" of EO No. 273. Section 150 (b) provides as follows:

> Section 150(b) of the NIRC of 1997, as amended, reads:
>
> SEC. 150. *Non-essential Goods.* — There shall be levied, assessed and collected a tax equivalent to twenty percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:
>
> xxx xxx xxx
>
> (b) **Perfumes and toilet waters**;

Note that the foregoing provision explicitly imposed an excise tax of 20%, not a percentage tax, based on the wholesale price or value of the toilet waters. This imposition of excise tax on toilet waters remains in the 1997 NIRC which adopted Section 16 of EO No. 273. More importantly, Section 29 of the same EO unequivocally states that the provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof which are inconsistent with the EO are repealed, amended or modified accordingly.

Subsequently, the Commissioner of Internal Revenue (CIR), in the exercise of his power to interpret tax laws under Section 4 of the 1997 NIRC, issued BIR Ruling No. 043-2000 dated September 15, 2000 which was published in RMC No. 17-02, defining toilet waters, without qualification as to weight or volume, as "scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant. The Ruling provides as well that "all other colognes are, likewise, classified as toilet waters subject to excise tax under the same section". To date, this BIR Ruling remains unmodified or reversed by the Secretary of Finance, pertinent portion of which is hereby quoted for easy reference, thus:

> 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. 535-88 dated November 19, 1988.

It has been ruled that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts.[2] However, such interpretation is not conclusive and will have to be "ignored if judicially found to be erroneous"[3] and "clearly absurd or improper",[4] which is certainly not obtaining in the present case.

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[2] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929, January 28, 1999, per Quisumbing, J.

[3] *Ibid.*, (citing *People v. Hernandez*, 59 Phil. 272, 276, December 22, 1933, and *Molina v. Rafferty*, 37 Phil. 545, 555, February 1, 1918).

[4] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 159647, April 15, 2005, p. 26, per Panganiban, J.

The Second Division of this Court shared the same views as indicated in its Decision[5] in a similar case for refund filed by petitioner involving the same issues. It further explained eloquently the legal effect of the amendments of the pertinent provisions of the law, to wit:

> By virtue of such enactment, the old statutory principle that only one form of consumption tax shall be imposed on sale of goods, which is either the specific tax or the sales tax, was amended. As a result, the sales tax (percentage tax) imposed under Section 194 of the old Tax Code (renumbered as Section 163 under P.D. No. 1994) was amended and replaced by Section 150, which now imposes excise tax on certain goods. Clearly, the substantial amendment of the provisions under Section 194 of the old Tax Code shows the intent of the legislature to repeal the said provisions and replace it by Section 150 of the present Tax Code.
>
> Since Section 194 of the old Tax Code (amended and renumbered as Section 163 under P.D. No. 1994), which breathed life on the questioned Revenue Regulations, had already been substantially amended and replaced by Section 150 of the NIRC of 1997, as amended, Revenue Regulations No. 8-84, which depended upon it, is now deemed to be inapplicable.
>
> Likewise, it is significant to note that an amended act is ordinarily to be construed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead; or, as frequently stated by the courts, so far as regards any action after the adoption of the amendment, as if the statute had been originally enacted in its amended form. And as a rule, an amended act should be given a construction different from that of the law prior to its

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[5] *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7873, August 16, 2011.

> amendment, for it is presumed that the legislature would not have amended it had it not wanted to change its meaning. In this case, the NIRC of 1997, as amended, can be construed as if the old Tax Code had been repealed, and a new and independent act in the amended form had been adopted in its stead.
>
> Given the afore-mentioned purpose of the amendment of the previous laws, which is actually to rationalize our taxing system and to replace the tax on original and subsequent sales tax and percentage tax, the amended act, the NIRC of 1997, should then be construed differently from the old tax law.

In fine, petitioner may not validly invoke the definition of "toilet waters" under RR No. 8-84 to justify its claim for refund.

Significantly, this ruling has been fortified in a recent case for refund[6] filed by petitioner wherein the Court *En Banc* declared that petitioner' splash colognes and body sprays are subject to 20% excise tax on non-essential goods imposed under section 150(b) of the NIRC of 1997, hence not entitled to refund.

In view of the foregoing ratiocination, I vote to **AFFIRM** the Decision promulgated on May 6, 2014.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[6] Avon Products Manufacturing Inc. v. Commissioner of Internal Revenue, CTA EB No. 894, September 16, 2013.