REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8540

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 04 2015

1:30 p.m.

x - x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This Petition for Review filed by Avon Products Manufacturing, Inc. seeks the refund of the amount of Fifty-Three Million Five Hundred Thirty-Nine Thousand Six Hundred Thirty-Seven Pesos and Fifty-Seven Centavos (₱53,539,637.57), allegedly representing its erroneously paid excise taxes for the period covering January 3, 2011 to April 28, 2012.

STATEMENT OF FACTS

Petitioner Avon Products Manufacturing, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Calamba

Premiere Industrial Park, Barangay Batino, Calamba, Laguna.[1] It is engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet waters, splash colognes, and body sprays.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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

Petitioner filed a written claim for refund of the alleged erroneously paid excise taxes with respondent's Large Taxpayers Service through a letter[4] dated July 16, 2012 and a duly accomplished Application for Tax Credits/Refund (BIR Form No. 1914)[5] on July 20, 2012.[6]

Believing it would be futile to wait for the action of respondent on its administrative claim for refund, petitioner filed the instant Petition for Review on September 3, 2012.

Respondent then filed her Answer[7] on October 23, 2012, interposing the following special and affirmative defenses:

> "4. Petitioner's articles were assessed pursuant to Section 150(b) of the Tax Code of 1997 which provides –
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> > '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

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[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 142.
[2] Par. 1, Stipulation of Facts, JSFI, docket, p. 144.
[3] Par. 3, Jurisdictional Allegations, Petition for Review, docket, p. 5.
[4] Exhibit "Q".
[5] Exhibit "Q-1".
[6] Par. 2, Stipulation of Facts, JSFI, docket, p. 144.
[7] Docket, pp. 71-97.

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:

(a) . . .
(b) Perfumes and toilet waters;
(c) . . .'

Petitioner claims that its splash colognes and body sprays should not be classified as 'toilet waters' invoking Revenue Regulations No. 8-84 which defines 'toilet waters' as follows:

> '(e) Toilet waters are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils i.e., more than 3% by weight. Examples: Lavander water, Eau de Cologne, Eau de Toilette.'

Petitioner claims that since its splash colognes and body sprays contain essential oils of less than 3% by weight, it should not be subject to tax under Section 150(b) of the NIRC.

Revenue Memorandum Circular No. 17-02 which emphasized BIR Ruling 43-2000, correctly defines 'colognes' 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.)

It bears stressing that the foregoing even declares null and void all previous BIR ruling pertaining thereto. This is a valid interpretation of Section 150(b) of the NIRC of 1997, as amended.

In general, rules and regulations issued by administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect, or partake of the nature, of a statute. The reason is that statutes express the policies, purposes, objectives, remedies and sanctions intended by the legislature in general terms. The details and manner of carrying them out are oftentimes left to the administrative agency entrusted with their enforcement. **(Commissioner of Internal Revenue vs. Solidbank Corporation, G.R 148191, November 2003)**

Regulations are formal pronouncements of the respondent, intended to prescribe the methods of administration and enforcement. These are valid as long as the standards set by the legislature are complied with. Specifically, the regulation must (1) be 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. **(Commissioner of Internal Revenue vs. Solidbank Corporation, G.R No. 148191, November 2003)** While Revenue Memorandum Circulars are issuances disseminating amplification of the rules, precedents, laws, regulations, opinions and other orders and directives issued or administered by the Commissioner for the information, guidance or compliance. These are accorded great respect like any other administrative issuances, being interpretations intended to carry the provisions of the Tax Code.

When 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. **(La Suerte Cigar Factory vs. Court of Appeals, January 1985)**

It also bears stressing that respondent is not bound by its previous rulings. To the contrary, the overruling of decisions is inherent in the interpretation of laws. Therefore, respondent cannot be faulted much less denounced for overturning previous BIR rulings.

Petitioner humbly submits that BIR Ruling No. 43-2000 dated September 15, 2000, which was published in RMC 17-02 is a valid interpretation of the provisions of the NIRC of 1997, as amended. BIR Ruling No. 43-2000 merely **RESTATED** the universal definition of cologne as 'toilet waters' which is subject to excise tax under Section 150(b) of the National Internal Revenue Code of 1997 (NIRC of 1997).

Nowhere in the provision of Section 150(b) of the NIRC of 1997 is it required for essential oil content of more than 3% by weight before toilet water can be subjected to the 20% excise tax. The law is clear and makes no distinction as to the definition of toilet waters particularly as to the content of essential oils. Since the law makes no distinction or exemptions, neither should the Honorable Court. It is a principle in statutory construction that '***when the law does not distinguish, neither should we*** (Ubi lex non distinguit nec nos distinguere debemus)'.

It is noteworthy that Revenue Regulations No. 8-84 was already in existence even before the NIRC of 1997 took effect. Thus, BIR Ruling No. 43-2000 dated September 15, 2000 merely restated if not validly interpreted the provision of the NIRC of 1997.

To shed more light to the foregoing discussion, respondent hereunder quotes the dissenting opinion of Honorable Justice Olga Palanca-Enriquez in CTA Case No. 7635, entitled Avon Products Manufacturing Corp. vs. Commissioner of Internal Revenue:

'With all due respect to my esteemed colleagues, after a thorough and careful study of the facts of the case, as well as the applicable laws and jurisprudence, I vote to maintain our Amended Decision dated May 16, 2011.

The Majority ruled, as follows:

'Respondent's interpretation of Section 150 (b) of the 1997 Tax Code, as amended, should have taken into consideration the existing regulations under RR No. 8-84. This, respondent failed to do when it issued BIR Ruling No. 43-2000 and RMC No. 17-02. While the new definition of the BIR under its ruling, and RMC No. 17-02 appears to be an interpretation of Section 150 (b) of the 1997 Tax Code, as amended; and the same ruling and RMC are not directly contrary to the definition of 'toilet waters' under RR No. 8-84, it appears that respondent failed to consider the specific requirement for 'more than 3% essential oil content by weight' contained in RR No. 8-84.'

I cannot agree. A careful reading of *Revenue Regulations No. 8-84* shows that it does not implement *Section 150 (b) of the NIRC of 1997, as amended. RR No. 8-84* clearly implements *Section 194 of the 1977 Tax Code,* which imposes sales tax (percentage tax), while *Section 150 of the NIRC of 1997, as amended,* imposes excise tax. Therefore, *RR No. 8-84* cannot be applied to *Section 150* as this Section pertains to excise tax. It must be emphasized that the law or *Section 194* of the old Tax Code, which *RR No. 8-84* seeks to implement, had already been repealed with the enactment of

Executive Order No. 273*. Consequently, we cannot single out a certain portion of *RR No. 8-84* and apply the same to *Section 150 of the NIRC of 1997, as amended.

As previously ruled by this Court in the Amended Decision dated May 16, 2011, *Section 150 (b) of the NIRC of 1997, as amended,* does not provide for any distinction on any kind of perfume or toilet waters, which are subject to excise tax. Furthermore, in *BIR Ruling No. 43-2000,* the BIR already issued a ruling regarding the definition of 'toilet waters'. The BIR likewise issued *Revenue Memorandum Circular No. 17-02* interpreting the provision of *Section 150 of the NIRC of 1997, as amended.* Such issuance was made pursuant to the power of the Commissioner under *Section 245 of the NIRC of 1997, as amended.*

Well settled is the rule that tax refunds are in the nature of tax exemptions. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only a clear and unequivocal provision of law on the basis of language too plain to be mistaken *(Silkair (Singapore) Pte., Ltd. vs. Commissioner of Internal Revenue, 613 SCRA 638).*

For all the foregoing, I vote to deny petitioner Avon Products Manufacturing, Inc.'s 'Motion for Reconsideration of Amended Decision dated 16 May 2011)' for lack of merit.' *(Emphasis supplied)*

5. The Honorable Court in Avon Products Manufacturing Inc. vs CIR (CTA Case 7873, August 18, 2011) aptly ratiocinated that:

> 'A close scrutiny of the provisions of Revenue Regulations No. 8-84 would show that the application of the Revenue Regulation was limited to taxes imposed under Section 194(b) and (e) of the 1977 Tax Code (subsequently renumbered and amended as Section 163 under Presidential Decree No. 199417), specifically on percentage taxes on cosmetic products.
>
> The applicable portions of the said regulation read:
>
> '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 Sections 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 hereinbelow enumerated a tax equivalent to fifty per centum of the gross value in money of the articles so sold, bartered, exchanged or

transferred, such tax to be paid by the manufacturer or producer.

xxx xxx xxx

(b) Perfumes, essences, extracts, 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.' (Emphasis supplied)

In view thereof, Revenue Regulations No. 8-84, which deals with percentage tax (sales tax) on cosmetic products, may not be adopted to implement Section 150(b) of the NIRC of 1997, which pertains to the imposition of excise tax, a completely different kind of tax.

It may be noted that Section 194 (renumbered as Section 163 under P.D. No. 1994) underwent several amendments until 1988, when it was amended and finally renumbered as (the present) Section 150(b) by Executive Order (EO) No. 273. The primary purpose for which Executive Order No. 273 was enacted is to replace the old percentage taxes with value-added tax (VAT). This is in accordance with the 'whereas clause' provided under the said order, which states:

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

WHEREAS, there is a need to rationalize the present system of taxing goods and services by imposing a multi-stage value-added tax to replace the tax on original and subsequent sales tax and percentage tax on certain services;

WHEREAS, the adoption of value-added tax is one of the structural reforms provided in the 1986 Tax Reform Program which is designed to simplify tax administration and make the tax system more equitable; and

WHEREAS, it is also necessary to amend, revise and renumber the provisions of the National Internal Revenue Code and to transfer the collection of certain taxes as a consequence of these and previous amendments in order to strengthen and improve tax administration and facilitate compliance thereof;'

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. 18 As a result, the sales tax (percentage tax) imposed under Section 194 of the old Tax Code (renumbered as Section 163 under P.O. 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 Regulation, 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.'

From the foregoing, it is apparent that petitioner's reliance on Revenue Regulation 8-84 is clearly misplaced. Its argument of non-taxability has no leg to stand on since the Honorable Court in the aforementioned decision held that RR 8-84 was limited to taxes imposed under Section 194(b) and (e) of the 1977 Tax Code which has been substantially amended and repealed by subsequent legislation. Moreso, Section 150 (b) does not provide for any distinction on the kind of perfume or toilet waters which shall be subject to tax. Therefore, petitioner's cologne splash and body sprays which belongs to the same category should be subject to excise tax.

The definition of 'toilet waters' under Revenue Memorandum Circular No. 17-02 which emphasized BIR Ruling 43-2000 is at this instant operative and applicable. Consistent with the principle of judicial precedents, the Honorable Court in the recent case of Avon Manufacturing Products Inc. vs CIR (CTA Case 8021, January 10, 2012) followed the Decision dated August 18, 2011 and even made a pronouncement that:

> 'Based on the above-mentioned definition, petitioner's splash colognes and body sprays come within the purview of the term 'toilet waters'. This is due to the fact that

> alcohol is the principal ingredient used by petitioner in the manufacture of its splash colognes and body spray products. Thus, it is subject to the 20% excise tax on toilet waters imposed under Section 150(b) of the NIRC of 1997. Accordingly, the claim for refund must be denied.'

6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

Respondent respectfully avers that before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive law**, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. <u>**First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this**</u> Je

> **case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**' *(Emphasis and underscoring supplied)*

The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions such as was exercised by the Honorable Court herein. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because, as previously stated, these are matters peculiarly within the competence of the administrative agency.

Well-settled is the rule that exhaustion of available administrative remedies is a condition sine qua non before taking a judicial action. The Honorable Supreme Court, in a long line of cases, has consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought **(Province of Zamboanga del Norte vs. Court of Appeals, 342 SCRA 549, 557 [2000]; Zabat vs. Court of Appeals, 338 SCRA 551, 560 [2000]; Diamonon vs. Department of Labor and Employment, 327 SCRA 283, 291 [2000]; Social Security System Employees Association vs. Bathan-Velasco, 313 SCRA 250, 252 [1999]; Paat vs. Court of Appeals, 266 SCRA 167, 175 [1997]).**

Moreso, the Honorable Supreme Court had the occasion to rule that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. Thus, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, courts will shy away from a dispute until the system of administrative redress had been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly ***(Gorospe vs. Vinzons-Chato, G.R. No. 132228. January 21, 2003).***

Respondent respectfully submits that petitioner's claim for refund should not be considered as filed considering petitioner's failure to comply with the duly mandated legal requirements (*i.e. submission of complete supporting documents*). While it is true that petitioner filed an administrative claim for refund, the same is considered merely *pro forma* as it failed to submit documentary evidence to prove its entitlement thereto. Petitioner here failed to substantiate its administrative claim for refund.

Had petitioner submitted all relevant documents to substantiate its claim for refund or tax credit, respondent would have the opportunity to determine the veracity of its claim and might refund or issue a tax credit certificate for the claimed amount. Such failure of petitioner to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function. It must be remembered, that in the case of *Jariol vs. Commission on Elections*, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate and speedy. Another thing, the respect and consideration due to each branch of the government demand that the judicial department abstain, whenever possible from interfering in the acts of the other departments except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them. **(Bagatsing vs. Ramirez, 74 SCRA 306)**

Equally noteworthy is the fact that the Highest Tribunal in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, GR No. 145526 promulgated on March 26, 2007** held:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. <u>Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim.</u> <u>**In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.**</u> xxx' *(Emphasis and Underscoring provided)*

Thus, as clearly stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said action. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund. *Jr*

Failure of petitioner to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for purposes of formality but is jurisdictional in nature.

Prescinding from and anent the foregoing considerations, petitioner's failure to exhaust all available administrative remedies which led to the premature filing of the instant petition divests the Honorable Court of jurisdiction over the instant petition.

7. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (***Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670***).

In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> 'Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the

> same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'

Taxes collected are presumed to be in accordance with laws and regulations.

Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***). Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (***Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005***). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. ***(Sea-Land Service. Vs. Court of Appeals, 357 SCRA 444)***.

Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of jurisdiction and/or for lack of merit.

8. The amount of Fifty Three Million Five Hundred Thirty Nine Thousand Six Hundred Thirty Seven and 37/100 (₱53,539,637.57) being claimed by petitioner arising from excise taxes allegedly paid and incurred for the period January 3, 2011 to April 28, 2012 is not properly documented.

9. Following the premise above-mentioned, petitioner has the burden of proving that the right to such

tax refund indubitably exists and well-founded doubt is fatal to the claim."

Respondent's Pre-Trial Brief[8] was filed on November 9, 2012; while petitioner's Pre-Trial Brief[9] was submitted on November 19, 2012.

On December 21, 2012[10], petitioner asked the Court to commission Jerome Antonio B. Constantino as the Independent Certified Public Accountant for the case; which the Court granted on January 28, 2013.[11]

On January 2, 2013, the Court approved the parties' Joint Stipulation of Facts and Issues[12] filed on December 21, 2012, and terminated the pre-trial.[13]

During trial, petitioner presented Mayette P. Encarnacion, Maricel R. Sabino, Shernan Balilo, Lloyd John C. Godilano, William L. Tan, Ronald S.I. Alonzo, and Dennis S. Orge as its witnesses.

Petitioner also formally offered its documentary and testimonial evidence.

On the other hand, respondent's counsel manifested during the hearing on April 7, 2014 that respondent will not present evidence and will rest her case.[14]

On April 7, 2014[15], petitioner proffered in evidence the previously denied Exhibits "J", "K", "L", "M", "BB-4-1072" to "BB-4-1075", and "BB-12-60"; which the Court noted via Resolution[16] dated May 2, 2014.

[8] Docket, pp. 100-104.
[9] Docket, pp. 106-112.
[10] Docket, p. 127.
[11] Minutes of the Hearing dated January 28, 2013, docket, p. 177.
[12] Docket, pp. 142-146.
[13] Resolution, docket, p. 148.
[14] Minutes of the Hearing dated April 7, 2014, docket, p. 1338.
[15] Docket, p. 1339.
[16] Resolution, docket, pp. 1355-1356.

Subsequently, the case was submitted for decision on June 18, 2014, after the Court considered petitioner's Memorandum filed on May 30, 2014 and the Report of the Records Division dated June 16, 2014, stating that no memorandum has been filed by respondent.[17]

STATEMENT OF ISSUES

The parties interposed their respective issues[18] for this Court's resolution, to wit:

Petitioner's submitted issues

1. Whether or not the definition of the term "toilet waters" under Revenue Regulations No. 8-84 can be validly amended by BIR Ruling No. 043-2000 dated September 15, 2000 which was published in Revenue Memorandum Circular No. 17-02;

2. Whether or not petitioner's splash colognes and body sprays containing essential oils of 3% or less by weight are subject to the 20% excise tax on toilet waters;

3. Whether or not petitioner is entitled to a refund of erroneously paid excise tax in the amount of Fifty-Three Million Five Hundred Thirty-Nine Thousand Six Hundred Thirty-Seven Pesos and Fifty-Seven Centavos (₱53,539,637.57);

4. Whether or not respondent implements Revenue Memorandum Circular No. 17-02 against other manufacturers of splash colognes and body sprays containing essential oil of 3% or less;

5. Whether or not the doctrine of exhaustion of administrative remedies applies to the instant Petition; and

[17] Resolution, docket, p. 1448.
[18] Stipulation of Issues, JSFI, docket, pp. 142-144.

6. Whether the principle of statutory construction of strict interpretation of tax exemptions or the principle of statutory construction of strict construction of taxing provisions applies to the instant Petition.

Respondent's submitted issues

7. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund;

8. Whether petitioner's claim for refund of excise taxes for the period January 3, 2011 to April 28, 2012 was filed within the period prescribed by law; and

9. Whether petitioner is entitled to a refund or tax credit in the total amount of Fifty-Three Million Five Hundred Thirty-Nine Thousand Six Hundred Thirty-Seven Pesos and 37/100 (₱53,539,637.37) allegedly representing excise taxes for the period January 3, 2011 to April 28, 2012.

DISCUSSION/RULING

The Court will determine first the timeliness of the filing of petitioner's administrative and judicial claims for refund. Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the procedure regarding the refund of erroneously paid taxes, which are quoted hereunder for ready reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are

returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Section 229 governs exclusively all kinds of refund or credit of internal revenue taxes erroneously or illegally imposed or collected.[19] Consequently, Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. However, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of

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[19] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006 (492 SCRA 575).

Tax Appeals must be filed within the two-year period from the **date of payment of the tax**, regardless of any supervening cause that may arise after payment. Therefore, the date of payment of the tax is important for purposes of counting the two-year prescriptive period.[20]

In the case of excise taxes, the goods subject to such tax cannot leave the place where they were manufactured without paying the correct amount of tax. Section 130(A)(2) of the NIRC of 1997, as amended, states:

> "SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* –
>
> (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –
>
> xxx xxx xxx
>
> (2) *Time for Filing of Return and Payment of the Tax.* – **Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**: xxx *(Emphasis supplied)*

Here, the claim for refund pertains to the period of January 3, 2011 to April 28, 2012. This means that petitioner had two years or until January 3, 2013 within which to file both its administrative and judicial claims for refund.

Applying the foregoing in the present case, Petitioner timely filed both its administrative and judicial claims on July 20, 2012[21] and September 3, 2012[22], respectively. Thus, the Court has jurisdiction over this case.

[20] *Manila North Tollways Corporation v. Commissioner of Internal Revenue*, CTA EB No. 812 (CTA Case No. 7864), October 11, 2012.
[21] Exhibits "Q" and "Q-1".
[22] Petition for Review, docket, p. 5.

The Court will now determine whether or not petitioner is entitled to a refund of erroneously paid excise tax in the amount of ₱53,539,637.57.

Section 150(b) of the NIRC of 1997, as amended, provides:

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

With regard to the taxability of cologne as toilet water, Revenue Memorandum Circular (RMC) No. 17-2002 that published BIR Ruling No. 043-2000, pertinently provides:

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

Anent this matter, petitioner contends that the definition of toilet waters under Revenue Regulations (RR) No. 8-84 or the

Cosmetic Products Regulations was not validly amended by BIR Ruling No. 043-2000 dated September 15, 2000, which was published in RMC No. 17-2002.

Petitioner insists that RR No. 8-84 is still in force, because Executive Order (EO) No. 273 only amended Section 163 of the Tax Code insofar as it relates to the tax imposed, but it did not repeal Section 163 or its implementing issuance (RR No. 8-84) in its entirety. It asserts that respondent's action, i.e., proposing an amendment to RR No. 8-84 to change the definition of toilet waters by removing the minimum essential oil content requirement of more than three percent (3%) by weight; and the non-collection from other manufacturers of the 20% excise tax on toilet waters if the essential oil content is not more than 3% by weight, would show that the definition of the term toilet waters under RR No. 8-84 is valid and that scented preparations containing essential oils of 3% or less by weight is not subject to 20% excise tax. Petitioner likewise alleges that RMC No. 17-2002, publishing BIR Ruling No. 043-2000, is invalid because only the Secretary of Finance can provide the details of what are toilet waters.

It is noteworthy that percentage tax at the rate of seventy percent (70%) was imposed on the gross sales of toilet waters under Section 194 of the 1977 Tax Code, which states:

> "SEC. 194. *Percentage tax on sales of jewelry, toilet preparations and others.* – There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent of seventy per centum of the gross value in money of the articles sold, bartered, exchanged or transferred such tax to be paid by the manufacturer or producer: *Provided*, That, where the articles enumerated herein below are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles:
>
> xxx xxx xxx

> (b) Perfumes, essences, extracts, **toilet waters**, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparations, by whatsoever name known or distinguished; and any of the above which are used or applied or intended to be used or applied for toilet purposes; except tooth and mouth washes, dentifrices, toothpaste, and talcum or medicated toilet powders." *(Emphasis supplied)*

RR No. 8-84, issued on June 5, 1984, defined the term "toilet waters" in the following manner:

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

On January 1, 1986, Section 23 of Presidential Decree (PD) No. 1994 amended and renumbered Section 194 of the 1977 Tax Code as Section 163, to wit:

> "Section 23. Section 194 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:
>
>> Sec. 163. Percentage tax on sale of non-essential articles. – There shall be levied, assessed and collected, once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership

of, or title to, the articles herein below enumerated a tax equivalent to 50% of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer:

xxx xxx xxx

(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." *(Emphasis supplied)*

Section 16 of EO No. 273, that took effect on January 1, 1988, likewise amended and renumbered Section 163 of the 1977 Tax Code as Section 150, thus:

"Sec. 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby renumbered and amended to read as follows:

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

(a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filing, mounting or fitting of the teeth); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The terms 'imitations thereof' shall include platings and alloys of such metals;

(b) **Perfumes and toilet waters**;

(c) Yachts and other vessels intended for pleasure or sports." *(Emphasis supplied)*

Aside from renumbering Section 163 as Section 150 of the 1977 Tax Code, EO No. 273 imposed 20% excise tax on the wholesale price or value of "toilet waters" instead of the previous percentage tax.

Upon the enactment of the Tax Reform Act of 1997, the NIRC of 1997 similarly imposed a 20% excise tax on toilet waters also under Section 150 thereof.

Subsequently, respondent issued RMC No. 17-2002 on May 24, 2002, publishing BIR Ruling No. 043-2000, which defined the term "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant and ruled that all other colognes are classified as "toilet waters" subject to excise tax under Section 150(b) of the NIRC of 1997.

In the previous case of *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[23], involving the same parties as in this present case, the Court of Tax Appeals *En Banc* held that:

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

[23] CTA EB No. 978, November 11, 2013.

Manufacturing, Inc. vs. CIR promulgated last September 16, 2013, where we said:

> 'Well-settled is the rule that rulings of administrative agencies which interprets *(sic)* the law are persuasive and deserves *(sic)* great weight provided that they are in harmony with the Constitution and the laws they aim to implement. In relation thereto, under Section 4 of the 1997 NIRC, the CIR is vested with the exclusive and original power to interpret tax laws, *viz.*:
>
> > 'Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – **The power to interpret the provisions of this code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**'
> >
> > The power to decide disputed assessments, refunds, of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.' *(Emphasis supplied)*
>
> The aforequoted provision of the 1997 NIRC is clear and unequivocal. The CIR has the power to interpret the provisions of the NIRC and other national tax laws, subject to review by the Secretary of Finance. In issuing BIR Ruling No. 043-2000, the CIR was merely exercising its power of interpreting a provision of the NIRC. It is worthy to note that the Secretary of Finance, who is vested with the power to review rulings issued by

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the CIR, has not modified or reversed BIR Ruling No. 043-2000.

The CIR's interpretation of the term 'toilet waters' in BIR Ruling No. 043-2000 should be given great weight. The term 'toilet waters' as interpreted by the CIR in BIR Ruling No. 043-2000 did not actually give a new meaning or definition to the term 'toilet waters' as found in Section 150(b) of the 1997 NIRC. The CIR merely did what it was mandated to do, that is, to interpret the law. The CIR correctly followed the tenets of his authority by not unduly qualifying or expanding the meaning of the law. Since Section 150(b) of the 1997 NIRC is silent on the definition of 'toilet waters', the legal maxim Ubi lex non distinguit, nec nos distinguire debemos, or if the law does not distinguish should be followed. **Thus, without a statutory distinction, the aforementioned BIR Ruling should govern as regards the term 'toilet waters' and it should be applicable to all kinds of toilet waters, which include petitioner's colognes and body sprays.**'

Accordingly, there is no basis to grant petitioner's claim for refund of the excise taxes paid in the amount of ₱38,873,976.07 **on removals of splash colognes and body spray products** for the period January 5, 2009 to December 29, 2009. **Removals of splash colognes and body sprays even if they contain essential oils of 3% or less in weight remain subject to the 20% excise tax under Section 150 of the 1997 NIRC.**" *(Emphasis supplied)*

It cannot be overly emphasized that Section 4 of the NIRC of 1997, as amended, provides that the power to interpret the provisions of the Tax Code and other tax laws shall be under the exclusive and original jurisdiction of the BIR Commissioner, subject to review by the Secretary of Finance. ✓

The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts.[24]

Since Section 150(b) of the NIRC of 1997, as amended, is silent as to the definition of the term "toilet waters", the clarification made by respondent in BIR Ruling No. 043-2000 as to the definition of the same is given great weight. Therefore, the definition of "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant, and the classification of the same, covering all other colognes, as provided in the Revenue Memorandum Circular No. 17-2002, will apply.

Accordingly, since petitioner's splash colognes and body sprays are considered toilet waters as contemplated under Section 150(b) of the NIRC of 1997, as amended, and RMC No. 17-2002, the same are subject to the 20% excise tax on toilet waters.

Well-settled is the legal principle that being a derogation of the sovereign authority, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption. When based on such statute, a claim for tax refund partakes of the nature of an exemption. Hence, the same rule of strict interpretation against the taxpayer-claimant applies to the claim.[25]

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

SO ORDERED.

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

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[24] *Compania General De Tabacos de Filipinas v. Hon. Court of Appeals, et al.*, G.R. No. 147361, March 23, 2004; *Commissioner of Internal Revenue v. The Hon. Court of Appeals, et al.*, G.R. No. 108358, January 20, 1995 (240 SCRA 368).

[25] *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012, 672 SCRA 350.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AVON PRODUCTS MANUFACTURING INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8540

Members:

Castañeda,Jr.,*Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 04 2015 1:30 p.m.

x- x

DISSENTING OPINION

COTANGCO-MANALASTAS, J.:

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

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

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

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

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

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

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

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

An examination of the 1977 and 1997 Tax Code shows that there has been no great change in the wording of the law. The 1977 Tax Code, in Section 194, enumerated several products as being subject to the sales tax then imposed. EO 273 then reduced the products to only two, perfumes and toilet waters; which were then subjected to excise tax. This latter provision has been carried on up to the present 1997 Tax Code. Despite the change in the tax imposed and the reduction of the products enumerated, it is notable that the same terms used in the old provision were also used in the new provision. These are (a) perfumes, and (b) toilet waters.

As early as 1984, RR 8-84 has already provided the definition of toilet waters. This definition has not been changed

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

or amended. When the provisions of the Tax Code were renumbered and amended, the lawmakers are presumed to know all the existing laws with respect to the subject matter. Thus, they are presumed to know the meaning attached to the term "toilet waters" as provided under RR 8-84. And yet, the term "toilet waters" is still used in the law's enumeration of products subject to tax. Thus, I believe that there is no basis to rule that the definition of toilet waters has changed, merely because the provision has been amended. Therefore, the definition of "toilet waters" as "containing essential oils of more than 3% by weight" has been carried over to the 1997 Tax Code's use of the phrase "toilet waters" found in Section 150 thereof.

Respondent's issuance of BIR Ruling No. 043-2000, and its subsequent publication in Revenue Memorandum Circular No. 17-02, cannot be given effect as the aforementioned issuances expands the definition of "toilet waters", and do not conform to the specific definition under RR 8-84. Clearly, the definition of "toilet waters" under RR 8-84 must still be followed including the requirement of essential oil content of more than 3% by weight. As such, petitioner's products which have less than 3% essential oil content by weight should not be subject to the 20% excise tax under Section 150(b) of the 1997 Tax Code.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice