REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1598
(CTA Case No. 8812)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

OCT 02 2018

x- 2:36 p.m. - x

DECISION

Fabon-Victorino, J.:

Before the Court is an appeal[1] filed on March 6, 2017 by petitioner Avon Products Manufacturing, Inc. seeking to reverse and set aside the Decision[2] dated September 22, 2016, which denied its *Petition for Review* for lack of merit and the subsequent the Resolution[3] dated January 31, 2017, which denied its Motion for Reconsideration, both rendered by the Court in Division in CTA Case No. 8812.

The antecedent facts are as follows:

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[1] En Banc docket, pp. 8-39.
[2] En Banc docket, pp. 42-64.
[3] En Banc docket, pp. 68-75.

Petitioner is a domestic corporation, with principal office address at Calamba Premiere Industrial Park, Barangay Batino, Calamba Laguna.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Quezon City.

On September 18, 2013, petitioner filed with respondent's Large Taxpayers Service, a written claim for refund dated September 17, 2013 of the amount of ₱62,337,821.27, allegedly representing its erroneously paid excise taxes for the period covering May 4, 2012 to September 30, 2013.

On December 6, 2013, petitioner amended its written claim for refund dated September 17, 2013: (1) to show the breakdown of the claim per calendar quarter in compliance with respondent's requirements; and (2) to include in the refund claim the taxable periods up to September 30, 2013, as follows:

Quarter	Amount of Claim
May to June 2012	₱3,398,563.60
July to Sept. 2012	8,728,069.85
Oct. to Dec. 2012	14,904,540.94
Jan. to March 2013	13,197,673.46
Apr. to June 2013	13,732,632.59
July to Sept. 2013	8,376,340.83
Total	**₱62,337,821.27**

On March 13, 2014, petitioner filed another written claim for refund of erroneously paid excise taxes covering the period October 1 to December 31, 2013, in the amount of ₱12,759,272.87. On even date, petitioner amended its claim for refund for the quarter ending December 31, 2012 from ₱14,904,540.94 to ₱14,934,817.19.

There being no action on the part of respondent on the said administrative claims for refund, petitioner elevated its case before the Court in Division *via* a Petition for Review filed on May 2, 2014.

In his *Answer,* respondent contended that the amount of ₱75,127,370.39 allegedly representing excise tax on its removals of splash colognes and body sprays with essential oil content of not more than 3% by weight for the period May 1, 2012 to December 31, 2013 was not properly documented. Respondent stressed that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to discharge the burden is fatal to the claim.

Respondent maintained that petitioner's splash colognes and body sprays, which falls within the purview of the term "toilet waters", were rightfully subjected to excise tax under Section 150(b) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Trial ensued during which petitioner presented testimonial and documentary evidence to prove its case. Respondent, despite the opportunity granted, failed to present any.

On September 22, 2016, the Court in Division promulgated the assailed Decision denying petitioner's judicial claim for refund. Following the Court *En Banc's* ruling in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.,*[4] which upheld the effectivity and applicability of BIR Ruling No. 43-2000 and Revenue Memorandum Circular (RMC) No. 17-02, the Court in Division ruled that since Section 150 of the NIRC of 1997, as amended, has no definition of the term "toilet waters", and in view of the inapplicability of the provisions of Revenue Regulations (RR) No. 8-84, the interpretation of respondent in BIR Ruling No. 43-2000 deserves great weight and respect since it merely interpreted the words in its plain and ordinary meaning. Thus, applying respondent's interpretation of the term "toilet waters" to the instant case, petitioner's products, *i.e.*, splash colognes and body sprays,

[4] CTA EB No. 1275, April 1, 2016.

fall within the purview of the term "toilet waters" which should be subject to 20% excise tax under Section 150(b) of the NIRC of 1997, as amended.

Petitioner moved for a reconsideration of the adverse ruling, the same was however denied in the equally assailed Resolution of January 31, 2017.

Hence, the instant *Petition for Review* filed on March 6, 2017, citing the following errors allegedly committed by the Court in Division, to wit:

I. The Court erred in ruling that the principle that tax refunds are strictly construed is applicable in this case.

II. The Court erred in ruling that amendments to the Tax Code abandoned the definition of toilet waters under the RR No. 8-84.

III. The Court erred in ruling that Respondent can supplant the definition of toilet waters found in RR 8-84 through a mere BIR ruling or circular.

Petitioner asserts that instead of the principle that *tax refunds are strictly construed against the taxpayer*, the principle of strict interpretation in the imposition of taxes should be applied in the instant case. Petitioner states that it is not asking for a tax exemption but is stating that its splash colognes and body sprays are not subject to excise tax on non-essential goods under Section 150(b) of the 1997 NIRC. Given that taxes or duties are to be construed strictly against the State and in favor of the taxpayer, it should be determined first whether the taxpayer is liable to pay a tax before demanding that it proves its exemption therefrom. Citing the case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[5], petitioner submits that in a claim for refund based on erroneously paid taxes, the governing principle is the strict interpretation of tax laws.

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[5] G.R. Nos. 167274-75, July 21, 2008.

Petitioner further claims that the definition of "toilet waters" under BIR Ruling No. 43-2000 and RMC No. 17-02 is invalid, devoid of legal force and effect, and cannot supplant the legal definition of "toilet waters" under RR No. 8-84. By relying on respondent's power to interpret tax laws under Section 4 of the NIRC of 1997, the Court in Division allegedly overlooked Section 244 of the same Code which provides that it is the Secretary of Finance that has the power to "*promulgate all needful rules and regulations for the effective enforcement*" of the NIRC. Thus, it is beyond the authority of respondent - who only has the power to interpret tax laws - to unilaterally replace RR No. 8-84's definition of "toilet waters" and provide a new one through RMC No. 17-02. And while RMC No. 17-02 can amplify and publish BIR Ruling No. 43-2000, it cannot broaden the coverage of Section 150 of the NIRC of 1997, or modify the existing legal definition of "toilet waters" under RR No. 8-84, issued by the Secretary of Finance pursuant to his rule-making powers. To modify the legal definition of toilet waters under RR No. 8-84, the Secretary of Finance must issue another revenue regulation defining "toilet waters". Since the definition of "toilet waters in RMC No. 17-02 is contrary to RR No. 8-84, it is deemed invalid, irrelevant, and without force and effect.

Petitioner further contends that under the rules of statutory construction, including the principle of legislative approval of administrative interpretation by reenactment, the legal definition of "toilet waters" under RR No. 8-84 will apply to construe Section 150(b) of the NIRC of 1997, as amended. Per petitioner, the legal definition of "toilet waters" under RR No. 8-84 continues to be applicable because the term "toilet waters" was retained in the Tax Code despite having undergone several amendments and revisions and Congress did not provide for a new definition of "toilet waters" in either Executive Order (EO) No. 273 or Republic Act (RA) No. 8424 or the Tax Reform Act of 1997. For petitioner, following established jurisprudence, Congress is deemed to have reenacted the existing legal definition.

Lastly, respondent's action clearly manifests that he still considers the definition of "toilet waters" under RR No. 8-84 valid, binding, and effective when he sought to amend RR No. 8-84 but was opposed by the manufacturers and other members of the industry. On these grounds, petitioner concludes that respondent is already estopped from denying the continued enforceability of RR No. 8-84.

In his *Memorandum* [6] dated August 31, 2017, respondent counters that petitioner failed to discharge its burden of proving its entitlement to the refund sought. He contends that petitioner's splash colognes and body sprays were properly assessed in accordance with Section 150(b) of the NIRC of 1997, as amended, which imposes 20% excise tax on non-essential goods like perfumes and toilet waters. RMC No. 17-02 validly interpreted Section 150(b) of the NIRC of 1997, as amended, which classified "colognes" as "toilet waters" subject to excise tax. For respondent, when an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law. And though not binding upon the courts, it must be given weight as an interpretation/construction coming from the branch of government charged with the duty to implement the law.

<u>The Court *En Banc's* Ruling</u>

The instant *Petition for Review* lacks merit.

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

Petitioner opines that the definition of "toilet waters" by respondent in BIR Ruling No. 43-2000, which was

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[6] En Banc docket, pp. 138-147.

circularized through RMC No. 17-02, for purposes of the imposition of excise tax under Section 150(b) of the 1997 NIRC is invalid, without legal force and effect, and cannot supplant the legal definition of "toilet waters" under RR No. 8-84.

The Court *En Banc* is not convinced.

It is worth to emphasize that the effectivity and applicability of RMC No. 17-02, and the applicability of RR No. 8-84, on the other hand, as regards subjecting "toilet waters" to excise tax regardless of their oil content by weight, have been upheld in a number of cases[7] by this Court. In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*,[8] this Court ruled, thus:

> The wide disagreement on respondent's entitlement to the refund sought warrants the determination of whether RR No. 8-84 still implements Section 150(b) of the NIRC of 1997, as amended.
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> Section 150 (b) of the NIRC of 1997, as amended, reads:
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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 importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:
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>> xxx xxx xxx

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[7] *Avon Products Manufacturing, Inc. v. The Commissioner of Internal Revenue*, CTA EB Case No. 1351, April 24, 2017; *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, CTA EB Case No. 1275, April 1, 2016; *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 978, November 11, 2013; *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 894, September 16, 2013; *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 847, March 18, 2013; and *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, CTA EB Case No. 840, January 29, 2013.

[8] CTA EB Case No. 840, January 29, 2013.

> (b) Perfumes and toilet waters;

On the other hand, the pertinent provisions of implementing rules and regulations known as the Cosmetic Products Regulations or simply RR No. 8-84, 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 Section 194(b) and (e) and Section 326 of the National Internal Revenue Code, which provides as follows:
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>> 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.
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>> xxx xxx xxx
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>> (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.

A scrutiny of the above-quoted provisions shows that the application of **RR No. 8-84 is limited to taxes imposed under Section 194 (b) and (e) of the NIRC of 1977, specifically percentage taxes on cosmetic products**.

However, let it be emphasized that **Section 194, which was renumbered to Section 163, was amended several times until 1988 and finally renumbered as Section 150 by Executive Order (EO) No. 273**. **And under its "whereas clause", EO No. 273 was enacted to replace the old percentage taxes with value-added tax (VAT)**, to wit:

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

> Thus, under **Section 16 of EO No. 273, the 50% percentage tax on the sale of various cosmetic products was changed to 20% excise tax on perfumes and toilet waters. Significantly, Section 29 provides that the provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof which are inconsistent with the Order are repealed, amended or modified accordingly**. (*Citations omitted; Boldfacing supplied*)

The Court *En Banc* further explained that:

> 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 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.

Relevantly, Section 29 of EO No. 273 provides that "the provisions of any law,

> whether general or special, rules and regulations and other issuances or parts thereof which are inconsistent with this Order are hereby repealed, amended or modified accordingly." Indeed, **there was intent on the part of the legislature to repeal regulations inconsistent with EO No. 273, such as Revenue Regulations No. 8-84.** (*Citations omitted; Boldfacing supplied*)

This Court ruled then, as we rule now, that RR No. 8-84, which deals with percentage tax (sales tax) on cosmetic products, may not be used to implement Section 150(b) of the NIRC of 1997, as amended, which pertains to the imposition of excise tax. In other words, the definition of "toilet waters" under RR No. 8-84 may not be invoked by respondent in its claim for refund.

Respondent did not supplant/amend the definition of "toilet waters" under RR No. 8-84 via the issuance of BIR Ruling No. 43-2000 and RMC No. 17-02:

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

Thus, prior to the issuance of BIR Ruling No. 43-2000 and RMC No. 17-02, there was no prevailing administrative interpretations of Section 150 of the NIRC of 1997, as amended.

In this regard, respondent issued BIR Ruling No. 43-2000 and RMC No. 17-2002 to interpret the term "toilet waters" under Section 150(b) of the NIRC of 1997, as amended, pursuant to Section 4 of the 1997 NIRC, as amended, which clothed respondent the exclusive and original jurisdiction to interpret tax laws, subject to review by the Secretary of Finance. The pertinent provision of Section 4 of the 1997 NIRC reads:

> 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. (*Underscoring supplied*)

In issuing BIR Ruling No. 43-2000, which was circularized through RMC No. 17-02, respondent merely interpreted the term "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant, and classified all other colognes as toilet waters subject to excise tax under Section 150(b) of the NIRC of 1997, as amended. Significantly, the Secretary of Finance, who is vested with the power to review rulings issued by the CIR, has not modified or reversed BIR Ruling No. 43-2000. Neither the Secretary of Finance has issued revenue rules and regulations pursuant to Section 244 of the NIRC of NIRC, to implement and interpret Section 150 of the 1997 NIRC, including the definition of "toilet waters" under Section 150(b). Evidently, respondent CIR did not supplant or amend any revenue rule or regulation pertaining to the definition of "toilet waters" for excise tax purposes as none exists in the first place.

The principle of legislative approval of administrative interpretation by reenactment is not applicable in this case:

Petitioner argues that the legal definition of "toilet waters" under RR No. 8-84 continues to be applicable because the term "toilet waters" was retained in the Tax Code despite several amendments and revisions and Congress did not provide for a new definition of "toilet waters" in either EO No. 273 or RA No. 8424 or the Tax Reform Act of 1997.

We are not persuaded.

The principle of legislative approval by re-enactment may briefly be stated to wit: Where a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions **without substantial change**, such action is to some extent confirmatory that the ruling carries out the legislative purpose.[9] In other words, under the said principle, the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction.[10]

As discussed above, <u>there was a substantial change between the then Section 194(b) [thereafter, renumbered as Section 163(a) by PD No. 1994] of the NIRC of 1977 and Section 150(b), both of the NIRC of 1977, as amended by EO No. 273, and of the NIRC of 1997</u>. The change in the law was substantial as **the tax imposed under Section 194(b), upon which RR No. 8-84 was based, is a sales tax or percentage tax, while the tax imposed by the later law is an excise tax**.

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

As correctly pointed out by the Court in Division, this case involves a claim for refund. And like tax exemption, which is in derogation of the State's taxing power, claim for refund must be construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.[11]

To be sure, the Court *En Banc* adheres to the time-honored principle that tax laws are strictly construed against the State. In fact, the same was likewise applied in this case. However, as found by the Court, petitioner is covered

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[9] *Alexander Howden & Co., Ltd., et al. vs. The Collector (now Commissioner) of Internal Revenue*, G.R. No. L-19392, April 14, 1965.
[10] *Dumaguete Cathedral Credit Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 182722, January 22, 2010.
[11] *JAKA Investments Corp. vs. Commissioner of Internal Revenue*, G.R. No. 147629, July 28, 2010 citing *Compagnie Financiere Sucres Et Denrees vs. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006.

by Section 150(b) of the NIRC of 1997 *vis-à-vis* the valid interpretation placed thereto by respondent in BIR Ruling No. 43-2000. Thus, there is no basis to grant petitioner's claim for refund of the excise taxes paid in the amount of ₱75,127,370.39 on the removals of splash colognes and body sprays products for the period May 2012 to December 2013.

WHEREFORE, the instant *Petition for Review* is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision dated September 22, 2016 and Resolution dated January 31, 2017, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice