REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA E.B. No. 608** (C.T.A. Case No. 7736)
	Present:
-*versus*-	**ACOSTA, *P.J.*** **CASTAÑEDA, Jr.,** **BAUTISTA,** **UY,** **CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA, and** **COTANGCO- MANALASTAS, *JJ.***
INTERNATIONAL PHARMACEUTICALS, INC. *Respondent.*	**Promulgated:** OCT 2 5 2011 1:50 p.m.

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D E C I S I O N

Acosta, PJ:

The Petition for Review, filed by the Commissioner of Internal Revenue (CIR) pursuant to Section 2, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, seeks for this Court En Banc to reverse and set aside the Decision of the Court's Special First Division promulgated on 11 December 2009. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, petitioner Casino Rubbing Alcohol is hereby declared exempt from excise tax under the National Internal Revenue Code of 1997 and the Assessment for deficiency excise tax in the amount of P176,848,083.46 is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Petitioner likewise prays for the setting aside of the Resolution dated 16 March 2010 that affirmed the 11 December 2009 Decision and which dispositive portion reads:

> **WHEREFORE**, finding no cogent reason or overriding justification to disturb the assailed *Decision*, respondent's *Motion for Reconsideration* is hereby denied for lack of merit.
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> **SO OREDERED.**

Below are the facts as culled from the records of the case:

Petitioner CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties and fines connected therewith. She holds office at the BIR, National Office Building, Diliman, Quezon City.

Respondent International Pharmaceuticals, Inc. (IPI), on the other hand, is a private corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Mandaue City, Cebu. IPI is the manufacturer of

Casino Rubbing Alcohol, an antiseptic or disinfectant, which has for its chief ingredient domestic denatured ethyl alcohol.

The ethyl alcohol in Casino Rubbing Alcohol was denatured to render it unfit for human consumption under the authority and supervision of members of the excise tax division based on formula previously approved by petitioner CIR. Conformably then with Section 134 of the National Internal Revenue Code (NIRC) of 1997, which exempts domestic alcohol of not less than one hundred eighty degrees proof *when suitably denatured and rendered unfit for oral intake*, petitioner did not impose an excise tax on respondent's denatured alcohol.

In a Notice of Discrepancy dated 10 February 2002, however, the BIR informed IPI of deficiency income excise tax due on its denatured alcohol used in the manufacture of Casino Rubbing Alcohol, which is classified as medicinal preparation, as the same is taxable under Section 141 of the NIRC of 1997. This letter was thereafter opposed by IPI.

The BIR, not in agreement with IPI's position, on 07 October 2003 issued a Preliminary Assessment Notice for alleged excise tax deficiency for taxable years 2000 to 2002, which was, in turn opposed by respondent IPI in a letter dated 25 November 2003.

The assessments and protests from both sides finally led to the issuance of a Formal Letter of Demand dated 28 March 2005 by CIR, who was then Deputy

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Commissioner for Special Concerns (Officer-in-Charge Large Taxpayers Service), Kim Jacinto-Henares, requesting payment of the deficiency excise tax liability.

On 18 May 2005, respondent filed its Protest/Motion for Reconsideration (with prayer to refer the case to BIR's Appellate Division), praying for the setting aside of the 28 March 2005 Formal Letter of Demand. This Protest/Motion for Reconsideration of respondent was denied by Deputy Commissioner Henares, in her capacity as Deputy Commissioner of Special Concerns (OIC-Large Taxpayers Service), for lack of legal and factual basis via a Final Decision on Disputed Assessment on 16 August 2005.

IPI thereafter on 15 September 2005 filed a Motion for Reconsideration of the decision of the Deputy Commissioner Henares, addressed to the then BIR Commissioner Jose Buñag, with a motion to elevate the assessment to the BIR's Appellate Division.

During the pendency of the latest filed motion, Ms. Elvira R. Vera, Head Revenue Executive Assistant/LTS-Excise Large Taxpayers, issued a WARRANT OF DISTRAINT AND/OR LEVY dated 05 November 2007, in the amount of P176,848,083.46. A copy of the warrant was served on IPI on 04 March 2008. Seven days later, or on 11 March 2008, respondent IPI, having considered the received warrant as a denial of its appeal to the BIR Appellate Division, filed with this Court a Petition for Review with Motion to Suspend Collection of Disputed Tax Liability.

Trial on the merits ensued and thereafter, the Special First Division promulgated the assailed 11 December 2009 Decision granting IPI's Petition for Review.

Her Motion for Reconsideration having been denied by the Court in Division in a Resolution promulgated on 16 March 2010, petitioner filed this instant Petition for Review before the Court En Banc assigning as lone error:

> THE HONORABLE FIRST DIVISION ERRED IN DECLARING THAT RESPONDENT'S CASINO RUBBING ALCOHOL IS EXEMPT FROM EXCISE TAX UNDER THE NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC OF 1997), AND CANCELLING AND SETTING ASIDE THE DEFICIENCY EXCISE TAX ASSESSMENT IN THE AMOUNT OF P176,848,083.46.

After the Court required respondent IPI to file its Comment to the Petition for Review, IPI filed a Manifestation, posted on 15 June 2010, stating that while it received the Order requiring it to file its Comment, it has not received any copy of the Petition for Review filed by petitioner. Respondent in its Manifestation prayed that the Petition for Review be dismissed for being fatally defective.

The Court then ordered petitioner to explain within a period of fifteen (15) days why respondent was not able to receive a copy of the Petition for Review filed with the Court En Banc and, additionally, why Attorneys Claro B. Ortiz and Leo D. Mauricio had failed to present proof of compliance with the MCLE requirements for the third compliance period.

After petitioner filed her Compliance, respondent on 03 August 2010 filed a Manifestation with Motion to Dismiss, praying that the Manifestation be noted and

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that the Petition for Review be dismissed. Said Manifestation and Motion to Dismiss was denied by the Court in a Resolution dated 27 August 2010. In the same Resolution, respondent IPI was ordered to file its Comment/Opposition to the Petition for Review within ten (10) days and Attorney Leo D. Mauricio was further ordered to present a copy of his MCLE certification for the third compliance period.

Respondent filed its Comment on 23 September 2010 and, on 14 October 2010, the Court En Banc resolved to give due course to the Petition for Review. The case was deemed submitted for decision on 19 January 2011, which was after both parties timely filed their respective memoranda.

On 03 February 2011, petitioner filed a Motion to Admit Supplemental Memorandum with attached Supplemental Memorandum, citing as reason the *inordinately heavy volume of work brought about by the resignation of two of her lawyers, the reassignment of her lawyers to the RATE office and the promotion of erstwhile Chief, Atty. Claro B. Ortiz* for the failure to incorporate an additional argument in her filed Memorandum. Respondent IPI filed an Opposition thereto on 28 February 2011, which the Court deemed to be not filed since respondent failed to file the prescribed number of copies, in violation of the express provision of Section 4, Rule 5 of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

In the interest of justice, petitioner CIR's Motion to Admit Supplemental Memorandum is hereby granted and the attached Supplemental Memorandum is thus admitted.

Given that the additional issue raised by the petitioner in her Supplemental Memorandum touches on this Court's jurisdiction, this Court deems it prudent to pass upon and resolve the same prior to delving into the merits of the case.

Petitioner submits that the Court in Division had no jurisdiction to decide the respondent's Petition for Review because the deficiency tax assessment had become final, executory and demandable after IPI failed to file its Petition for Review with the Court of Tax Appeals within thirty (30) days from receipt of petitioner's Final Decision on Disputed Assessment (FDDA), in accordance with Section 228 of the NIRC of 1997.

Based on facts and admitted evidence, IPI received on 07 September 2005 a Notice of FDDA dated 16 August 2005 issued by then Deputy Commissioner Henares. Uncontroverted as well is that on 15 September 2005, IPI filed a Motion for Reconsideration of this FDDA of Deputy Commissioner Henares, addressed to the then BIR Commissioner Jose Buñag, with a motion to elevate the assessment to the BIR's Appellate Division.

Petitioner maintains that respondent IPI should have filed a judicial appeal or, properly, a Petition for Review before this Court, questioning the 16 August 2005 FDDA, after it received Deputy Commissioner Henares' FDDA. Citing the 2010 case of ***Fishwealth Canning Corporation vs. Commissioner of Internal Revenue***, GR No. 179343, 21 January 2010, it is petitioner's position that the filing by the respondent of a motion for reconsideration on 15 September 2005 did not toll the

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running of the thirty-day period mandated by the NIRC to appeal the FDDA to this Court. Accordingly, respondent's Petition for Review should have been filed on or before 07 October 2005, or within thirty (30) days from 07 September 2005. Seeing that the Petition for Review was only filed on 11 March 2008, after the lapse of almost two (2) years from the time IPI received petitioner's FDDA, the assessment has become final, executory and demandable.

The Supreme Court, relying on Section 228 of the NIRC of 1997, stated in the case of ***Fishwealth Canning Corporation***, *supra*, that:

> Section 228 of the 1997 Tax Code provides that an assessment
>
> x x x may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Underscoring supplied)
>
> In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.
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> Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed

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out of time. For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.

Although this Court agrees that a motion for reconsideration of respondent CIR's FDDA will not toll the prescribed thirty (30) day period to appeal the said decision to this Court from said decision, it is this Court's opinion, nonetheless, that the Motion for Reconsideration filed by IPI on 15 September 2005 **did in fact toll the period** for the filing of a judicial appeal pursuant to Section 3.1.5 of Revenue Regulation (RR) 12-99. Said section states in part that—

> 3.1.5 Disputed Assessment. The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable. In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner. (Underscoring supplied.)

Clearly, if the FDDA was issued by the Commissioner's duly authorized representative, a taxpayer may still elevate the protest to the CIR within thirty days

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(30) from the receipt thereof and the said FDDA shall not attain finality. In such a case, the protest shall be decided by the Commissioner.

The elevation of the protest to then Commissioner Buñag within the thirty-day period provided by RR 12-99 prevented the FDDA, issued by Deputy Commissioner Henares, from attaining finality. Consequently, the resolution of Commissioner Buñag, if it was issued prior to the Warrant of Distraint and/or Levy, should have been the proper decision that was to be elevated to this Court via a Petition for Review.

Moreover, inasmuch as Section 228 of the NIRC of 1997 likewise provides the taxpayer alternative remedies with respect to the appeal to this Court of an assessment protest, i.e., a Petition for Review may be filed before a division of this Court within thirty (30) days from receipt of an adverse decision of the CIR **or** from the lapse of one hundred eighty (180) days from the submission of the supporting documents for the protest, respondent IPI may choose to either await the decision of the CIR or immediately elevate the case to this Court after the lapse of one hundred eighty days of inaction of the administrative agency. IPI evidently chose to wait for the decision of the CIR as it filed its Petition for Review on 11 March 2008, eight days after it received a Warrant of Distraint and/or Levy on 03 March 2008. This warrant should properly be treated as the adverse decision appealable to this Court under Section 228 of the NIRC. Since IPI had until 02 April 2008 to file its petition with this Court with respect to its assessment protest, its Petition for Review filed on 11 March 2008 was timely filed.

Going now to the merits of the case, this Court likewise finds the petitioner's petition bereft of merit.

Petitioner's case is centered on two main arguments:

1. As a medicinal preparation, Casino Rubbing Alcohol is subject to excise tax under Section 141 of the NIRC of 1997; and
2. The First Division erred in not applying the whole meaning of Section 134 of NIRC of 1997 in deciding the instant case.

Tax Exempt Denatured Alcohol

Section 134 of the NIRC of 1997 provides that domestic alcohol when suitably denatured and rendered unfit for human consumption is exempt from the excise tax imposed on Distilled Spirits by Section 141, *infra*, of the same code. Section 134, in full, reads:

> **SEC. 134. - Exemption in favor of domestic denatured alcohol—** Domestic alcohol of not less than one hundred eighty degrees proof (ninety per centum absolute) shall when suitably denatured and rendered unfit for human intake, be exempt from the specific tax prescribed in Section 141; provided, however, that such denatured alcohol shall be subject to the tax under Section 106 (A) of this Code; Provided, further, That if such alcohol is to be used for motive power, it shall be taxed under section 148 (D) of this Code; Provided, finally, that any alcohol previously rendered unfit for oral intake or after denaturing but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any

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other similar process shall be taxed under Section 141 of this Code and shall be paid by the person in the possession of such reprocessed spirits.

The law is clear that domestic alcohol, one hundred eighty (180) proof or more, when *suitably denatured and rendered unfit for human intake* shall be exempt from excise tax. Exceptions however to this exemption are:

1. When such denatured alcohol is to be used for motive power, it shall be taxed under section 148 (D) of the NIRC of 1997; and
2. When any alcohol previously rendered unfit for oral intake or after denaturing but *subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process* shall be taxed under Section 141 of the NIRC of 1997.

Based on undisputed facts on record, IPI's denatured alcohol is encompassed by the general rule of the abovequoted Section and is thus exempted from excise tax. This Court finds no reason to disturb the findings of the Court's Special First Division when it pronounced that—

> the denaturing of alcohol to render it unfit for human consumption at petitioner's premises at IPI Distillery, Central Manapala, Negros Occidental, was done under written authority and supervision of the officially designated personnel of the Excise Tax Division of the Bureau of Internal Revenue. The parties even admitted the existence of petitioner's evidence authorizing denaturing and certification of said denaturing of alcohol done at petitioner's premises.
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> Pursuant to Section 134 of the NIRC of 1997, as amended, denatured alcohol, when suitably denatured and rendered unfit for oral intake, is exempt from the excise tax prescribed in Section 141 of the same Code. The

> only condition is that when the same, which was previously rendered unfit for oral intake after denaturing, but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process, shall be taxed under Section 141 of the NIRC of 1997 and such tax shall be paid by the person in possession of such re-processed spirits. In other words, denatured alcohol can become subject to excise tax when the same is re-processed to make it potable.

Petitioner raises now before the Court En Banc the issue that IPI failed to present any proof that its denatured alcohol, the chief ingredient of its Casino Rubbing Alcohol, fully conformed to the provision of Section 134. According to petitioner, there was no proof submitted that the 10,739,736 proof liters of denatured alcohol that was used in Casino Rubbing Alcohol was not less than one hundred eighty (180) proof.

It is this Court's opinion that respondent IPI need not present evidence that its denatured alcohol was not less than one hundred eighty (180) proof since the same can be derived from the Preliminary Assessment Notice (PAN) and the FDDA issued by the BIR.

Petitioner explains in her Memorandum that since the tax base used in computing the excise tax for spirits is in proof liters, the BIR converted the volume of denatured alcohol in Casino Rubbing Alcohol to proof liters, *viz:*

> The results of the audit showed that the base on BIR Official Registry Book (ORB) for the years 2000, 2001, 2002, Casino Rubbing Alcohol used as chief ingredient a total of 5,682,400 gauge liters (g.l.) of denatured alcohol. Based on the degree proof of the denatured alcohol, the 5,682,400 gauge liters was computed to 10,739,736 proof liters (p.l.) of

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denatured alcohol. Alcohol is taxed by proof liters thus the tax base was 10,739,736. [1]

The formula to convert gauge liters to proof liters is:

gauge liters x (proof / 100) = proof liters

Using simple algebra and the figures supplied in the PAN and the FDDA to compute for the *proof*, one will arrive at one hundred eighty nine (189) proof[2] for IPI's denatured alcohol.

With no credible contrary evidence, this Court finds IPI's denatured alcohol to be a domestic alcohol of more than one hundred eighty (180) proof, which was suitably denatured and rendered unfit for human intake, and, hence, exempt from the excise tax.

Medicinal Preparation Liable to Tax

Another contention of petitioner is that IPI's Casino Rubbing Alcohol, its chief ingredient being the tax-exempt denatured alcohol, is liable to the excise tax under Section 141 of the NIRC of 1997 since the same is classified as medicinal preparation. Petitioner posits—

> While Section 134 of the NIRC of 1997 exempts denatured alcohol from excise tax prescribed by Section 141 irrespective of use, the exemption does not apply to medicinal preparations using distilled spirits which should be

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[1] Petitioner's Memorandum filed on 12 December 2010

[2] 5,682,400 x (proof/100) = 10,739,736
56,824/proof = 10,739,736
proof = 10,739,736/56,824
proof = 189

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subject to excise tax whether it is capable of human intake or not. Casino Rubbing Alcohol is a medicinal preparation.[3]

The pertinent portion of Section 141 reads:

> **SEC. 141. Distilled Spirits.** – On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:
>
> xxx.xxx.xxx
>
> (c) Medicinal preparations, flavouring extracts, and all other preparations, except toilet preparations, of which, excluding water, distilled spirits form the chief ingredient, shall be subject to the same tax as such chief ingredient. (Underscoring supplied.)

Clearly, what is being taxed in medicinal preparations is the chief ingredient of the said preparation and not the end product. This is obvious in the phrase *shall be subject to the same tax as the chief ingredient* as well as in the assessment notices issued by the BIR. The PAN and FDDA used as tax base the proof liters of the denatured alcohol, the chief ingredient, and not Casino Rubbing Alcohol, the medicinal preparation. The *tax that attaches to the chief ingredient* thus shall also be the tax of the preparations under this subsection (c) of Section 141, NIRC 1997. In determining the tax thereunder, naturally, the taxing authority should first examine the taxability of the chief ingredient before deciding that a medicinal preparation is liable to the excise tax. Needless to state, if the chief ingredient is tax exempt, then the preparation is likewise exempt. Conclusively ruling therefore that all medicinal preparations are taxable under Section 141 is erroneous as the law itself qualifies those medicinal preparations that are subject to the tax.

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[3] *Supra*, footnote 1.

The chief ingredient of Casino Rubbing Alcohol is denatured alcohol, which is tax-exempt. Consequently, the medicinal preparation, i.e., Casino Rubbing Alcohol, is not subject to any excise tax under Section 141 as well.

ACCORDINGLY, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision of the Court's Special First Division promulgated on 11 December 2009 and the subsequent Resolution dated 16 March 2010 are hereby **AFFIRMED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA COTANGCO-MANALASTAS
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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice