Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AVON PRODUCTS MANUFACTURING, INC., Petitioner,	**CTA Case No. 8812**
	Members: **CASTAÑEDA, JR.**, *Chairperson*, *and*
-versus-	**CASANOVA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 2 2 2016 10:50 a.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed on May 2, 2014, by petitioner Avon Products Manufacturing, Inc. against respondent Commissioner of Internal Revenue, seeking the refund of the amount of Seventy Five Million One Hundred Twenty Seven Thousand Three Hundred Seventy Pesos and Thirty Nine Centavos (₱75,127,370.39), allegedly representing erroneously paid excise taxes for the period covering May 4, 2012 to December 31, 2013.

The factual antecedents of the case are as follows:

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.[2]

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[1] Docket (Vol. I), pp. 14-39.
[2] Par. 1, I. Summary of Admitted Facts, Joint Stipulation of Facts (JSF), Docket (Vol. III), p. 1322.

Respondent is the duly appointed 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[3], 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 the written claim for refund[4] dated September 17, 2013 to request for the refund of erroneously paid excise taxes for the quarters ending June 30, 2012 to September 30, 2013 as follows:[5]

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 Mar. 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 with respondent's Large Taxpayers Service, a written claim for refund[6] of erroneously paid excise taxes for the quarter ending December 31, 2013 in the amount of ₱12,759,272.87.[7]

On even date, petitioner amended its claim for refund[8] for the quarter ending December 31, 2012 from ₱14,904,540.94 to ₱14,934,817.19. As a result, the claim for refund for the quarters ending June 30, 2012 to September 30, 2013 increased to ₱62,368,097.52 broken down by quarter as follows:

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[3] Exhibit P-4, Docket (Vol. II), p. 654.
[4] Exhibit "P-4-3".
[5] Par. 4, I. Summary of Admitted Facts, JSF, Docket (Vol. III), p. 1323.
[6] Exhibit "P-4-10".
[7] Par. 5, I. Summary of Admitted Facts, JSF, Docket (Vol. III), p. 1323.
[8] Exhibit "P-4-12".

Quarter	Amount of Claim
May to June 2012	₱ 3,398,563.60
July to Sept. 2012	₱ 8,728,069.85
Oct. to Dec. 2012	**₱ 14,934,817.19**
Jan. to Mar. 2013	P 13,197,673.46
Apr. to June 2013	P 13,732,632.59
July to Sept. 2013	P 8,376,340.83
Total	**₱ 62,368,097.52**

There being no action taken by respondent on petitioner's administrative claim for refund, petitioner filed the present Petition for Review before this Court on May 2, 2014.

On May 27, 2014, respondent filed his Answer[9], interposing the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The amount of P75,127,370.39 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 quarters ending 30 June 2012 up to 30 September 2013 and for the quarters ending 31 December 2013 was not properly documented.
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> 6. 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/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204 and 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
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> 8. In the case of *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7873, 16 August 2011*, the Second Division of the Honorable Court categorically ruled:

[9] Docket (Vol. I), pp. 82-92.

Respondent countered that petitioner's claim for refund has no legal basis. Respondent argued that as manufacturer of perfume and toilet waters, petitioner is subject to excise tax pursuant to Section 150(b) of the NIRC of 1997, as amended. She added that Revenue Memorandum Circular No. 43-2000 validly interpreted Section 150(b) of the NIRC of 1997, as amended, which classified 'colognes' as 'toilet waters' subject to excise tax. Accordingly, petitioner's splash colognes and body sprays were rightfully subjected to excise tax.

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. 1994), 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:**

> Section 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 a tax to be paid by the manufacturer or producer.
>
> xxx xxx xxx
>
> (b) Perfumes, essences, extracts, toilet waters, cosmetic, 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
>
> (c) 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 THE 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. 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.

Evidently, the definition of 'toilet waters' under Revenue Regulations No. 8-84 failed to acquire legislative approval upon the enactment of EO No. 273; and thus, may not be invoked by petitioner in its claim for refund.

Now, as to the proper interpretation of the term, 'toilet waters' under Section 150(b) of the NIRC of 1997, as amended, it appears that the NIRC of 1997, as amended, did not provide for the definition of the term 'toilet waters'.

Nevertheless, respondent in BIR Ruling No. 43-2000, dated September 15, 2000, which was subsequently published in Revenue Memorandum Circular No. 17-02, interpreted the term 'toilet waters' to include 'colognes'; hence, subjected colognes to excise tax under

Section 150(b) of the NIRC of 1997, as amended. The significant parts of the said BIR Ruling read:

'In reply, please be informed that the term 'cologne' which is an alcohol-based preparation is defined as follows:

xxx xxx xxx

As the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of her power under Section 245 of the NIRC to 'make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales tax and similar purposes'.

Applying the foregoing definition to the instant case, the principal ingredient of petitioner's splash colognes and body sprays is alcohol and the said products are meant for putting fragrance on the skin. Therefore, petitioner's splash colognes and body sprays come 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.

Notably, in the case of Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7635, 16 May 2011, the Third Division of this Court held that splash colognes and body sprays are classified as perfume or toilet waters under Section 150(b) of the NIRC of 1997.

In as much as petitioner's splash colognes and body sprays are subject to excise tax under Section 150(b) of the NIRC of 1997, as amended, the instant claim for refund must necessarily fail.

9. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."*

Respondent filed his Pre-trial Brief[10] on June 13, 2014, while petitioner filed its Pre-trial Brief[11] on July 15, 2014. The Pre-trial Conference was held on October 13, 2014.[12]

The parties filed their Joint Stipulation of Facts[13] on October 10, 2014, which was approved[14] by the Court on October 22, 2014.

On January 14, 2015, petitioner filed its Formal Offer of Documentary and Object Evidence[15], offering Exhibits "P-4" to "P-23", inclusive of submarkings.

In the Resolution[16] dated February 4, 2015, the Court admitted most of petitioner's Exhibits except Exhibits "P-11.1101", "P-11.1209",

[10] Docket (Vol. I), pp. 115-118.
[11] Docket (Vol. II), pp. 124-132.
[12] Minutes of the Hearing, Docket (Vol. III), p. 1326.
[13] Docket (Vol. III), pp. 1322-1325.
[14] Docket (Vol. III), pp. 1349-1357.
[15] Docket (Vol. III), pp. 1425-1487.
[16] Docket (Vol. III), pp. 1493-1496.

"P-11.1303", "P-22.20" to "P-22.23", "P-4-27", "P-16.3" to "P-16.1428", P-16.1732" to "P-16.1733", "P-11.416" to "P-11.424", "P-11.445" to "P-11.448", "P-11.451" to "P-11.456", and "P-12" to "P-12.25".

On February 9, 2015, petitioner filed a Motion for Partial Reconsideration (of the Resolution dated 04 February 2015 on Petitioner's Formal Offer of Evidence)[17].

In the Resolution[18] dated April 8, 2015, the Court ordered the presentation of the recalled witness, Independent Certified Public Accountant (ICPA), Ms. Annalyn B. Artuz, to correct, clarify, and reconcile the inconsistencies and to testify on the excluded exhibits.

For his part, respondent manifested in open court[19] that he will no longer present any evidence. Therefore, the parties are given a period of thirty (30) days from receipt of the Court's Resolution on petitioner's Formal Offer of Evidence within which to file their respective Memoranda.[20]

On June 2, 2015, petitioner filed its Amended Formal Offer of Documentary and Object Evidence[21]. The Court, in a Resolution[22] dated July 9, 2015, admitted most of the exhibits therein except for Exhibits "P-12" to "P-12.25.

Thus, petitioner filed a Motion for Partial Reconsideration (of the Resolution dated 9 July 2015 on Petitioner's Amended Formal Offer of Evidence)[23] which was granted by the Court in a Resolution[24] dated September 28, 2015.

Petitioner filed its Memorandum[25] on November 9, 2015 while respondent filed his Memorandum[26] on August 4, 2015, and the case was submitted for decision per Resolution[27] dated November 11, 2015.

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[17] Docket (Vol. III), pp. 1498-1506.
[18] Docket (Vol. III), pp. 1509-1512.
[19] Minutes of the Hearing dated May 18, 2015, Docket (Vol. III), p. 1525-1526.
[20] Per Resolution dated May 26,2015, Docket (Vol. III), pp. 1530-1531.
[21] Docket (Vol. IV), pp. 1535-1599.
[22] Docket (Vol. IV), pp. 1605-1609.
[23] Docket (Vol. IV), pp. 1611-1618.
[24] Docket (Vol. IV), pp. 1645-1647.
[25] Docket (Vol. IV), pp. 1660-1746.
[26] Docket (Vol. IV), pp. 1619-1640.
[27] Docket (Vol. IV), p. 1756.

The parties raised the following issues:

For petitioner[28]:

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. 43-2000 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 imposed under Section 150 of the National Internal Revenue Code.

3. Whether or not petitioner is entitled to a refund of erroneously paid excise tax in the amount of ₱75,127,370.39.

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, including the addressee of BIR Ruling No. 43-2000.

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

For respondent[29]:

6. Whether or not petitioner is entitled to refund in the amount of ₱75,127,370.39, allegedly representing excess tax on its removals of splash colognes and

[28] Petitioner's Pre-Trial Brief, Docket (Vol. I), p. 125.
[29] Respondent's Pre-Trial Brief, Docket (Vol. I), p. 115.

body sprays with essential oil content of not more than 3% by weight for the quarters ending June 30, 2012 up to September 30, 2013 and for the quarters ending December 31, 2013.

The issues can be summarized into whether or not petitioner is entitled to refund the amount of ₱75,127,370.39, allegedly representing excess tax on its removals of splash colognes and body sprays with essential oil content of not more than 3% by weight for the quarters ending June 30, 2012 up to September 30, 2013 and for the quarters ending December 31, 2013.

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 National Internal Revenue Code (NIRC) of 1997 provide for the procedure for the refund of erroneously paid taxes, which are quoted hereunder for easy 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." (*Emphasis supplied*)

Section 229 governs exclusively all kinds of refund or credit of internal revenue taxes erroneously or illegally imposed or collected.[30] 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 this Court must be filed within two years 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.[31]

Here, the claim for refund covers the period May 4, 2012 to December 31, 2013. This means that petitioner had two years, or until May 4, 2014, at the earliest, within which to file both its administrative and judicial claims for refund.

Petitioner filed its administrative claims with respondent's Large Taxpayer Service on September 18, 2013, as amended on December 6, 2013[32], covering the period May 4, 2012 to September 30, 2013, and on March 13, 2014[33], covering the quarter ended December 31, 2013, and subsequently elevated its claim with this Court on May 2, 2014. Clearly, the refund claims were filed within the two-year prescriptive period.

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[30] *Commissioner of Internal Revenue vs. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006.
[31] *Manila North Tollways Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 812 (CTA Case No. 7864), October 11, 2012.
[32] Exhibits "P-4-3" to "P-4-9".
[33] Exhibits "P-4-10" to "P-4-11".

The Court will now proceed on the merits of the instant case.

Petitioner bases its refund claim of 20% excise tax imposed on the toilet waters used in its splash colognes and body spray products on the ground that the definition of "toilet waters" under Revenue Regulations (RR) No. 8-84, otherwise known as the "Cosmetic Products Regulations" was not validly amended by BIR Ruling No. 43-2000, which was published in Revenue Memorandum Circular (RMC) 17-2002.

According to petitioner, a historical review of Section 163 of the NIRC of 1977 and its various permutations until its present form as Section 150 of the NIRC of 1997, as well as the power of the Secretary of Department of Finance to issue regulations, unmistakably shows that there was no intention to abandon and replace the definition of toilet waters found in RR No. 8-84. Despite the various amendments that preceded the current Section 150 of the NIRC of 1997, including the change in the kind of tax imposed, the definition of "toilet waters" remained untouched.

Moreover, petitioner contends that no revenue regulation was issued to implement Section 150(b) of the NIRC of 1997, imposing an excise tax on perfumes and toilet waters.

However, in 2000, respondent issued BIR Ruling No. 43-2000 dated September 15, 2000, wherein then Commissioner of Internal Revenue Dakila B. Fonacier classified Green Cross Baby Cologne as toilet waters covered by Sections 150(b) of the NIRC of 1997 and is therefore subject to excise tax, and revoked the previous BIR Rulings exempting Johnson's Baby Cologne from the excise tax. To justify its taxability, the BIR used the broad definition of "cologne" in Hawley's Condensed Chemical Dictionary, 11^{th} ed., to wit:

> "Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave, lotion or deodorant."

BIR Ruling No. 43-2000 was then published in Revenue Memorandum Circular (RMC) No. 17-02, providing that colognes are considered toilet waters subject to excise tax. Petitioner, however, contends that only the Secretary of Finance can amend RR No. 8-84 by issuing appropriate amendatory revenue regulations. Consequently, the definition of "toilet waters" under RR No. 8-84 continues to be valid.

Petitioner likewise alleges that the respondent has not been collecting the 20% excise tax on toilet waters from all other manufacturers of colognes and body sprays with essential oil content including Green Cross, Inc., the addressee of BIR Ruling No. 43-2000. This actuation shows that respondent and other BIR officials still view that the definition of "toilet waters" under RR No. 8-84 as valid, binding and effective.

This Court finds petitioner's arguments without merit.

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

Initially, "toilet waters" were subject to percentage tax under Revenue Regulations No. 8-84 implementing Section 194 of the NIRC of 1977, to wit:

> Sec. 194. *Percentage tax on sales of non-essential products.* – There shall be levied, assessed and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent to fifty per centum of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer.
>
> xxx xxx xxx
>
> (b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrices, tooth paste, talcum and medicated toilet powders, hair oils and pomades.

xxx xxx xxx

> (e) Similar or analogous articles, substances, or preparations to those enumerated above as determined by the Minister of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.

xxx xxx xxx

However, "toilet waters" was not defined in the said NIRC of 1977. It was only on June 5, 1984 when "toilet waters" was first defined under RR No. 8-84 which was issued by the BIR to implement the percentage tax on cosmetic products imposed under Section 194(b) of the NIRC of 1977. Under RR No. 8-84, "toilet waters" is defined as follows:

> "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: Lavender water, Eau de Cologne, Eau de Toilette."

On January 1, 1986, Section 23 of Presidential Decree (PD) No. 1994 amended Section 194 of the NIRC of 1977 and renumbered it as Section 163, which reads:

> "SECTION 23. Section 194 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:
>
> > 'Sec. 163. *Percentage tax on sale of non-essential articles.* - There shall be levied, assessed and collected, once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent to 50% of the

> gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer:
>
> 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."

Thereafter, Section 163 was amended and renumbered as Section 150 by virtue of Executive Order (EO) No. 273 which was enacted on July 25, 1987. The pertinent Section of EO 273 provides:

> "SECTION 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby renumbered and amended to read as follows:
>
> SEC. 150. Non-essential goods. – There shall be levied, assessed and collected a tax equivalent to 20% based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties; net of excise tax and value-added tax, of the following goods:
>
> xxx xxx xxx
>
> (b) Perfumes and toilet waters;"

Notably, aside from renumbering Section 163 as Section 150 of the NIRC of 1977, EO No. 273 imposed 20% excise tax on the wholesale price or value of the "toilet waters" instead of the previous percentage tax. Even upon the enactment of the "Tax Reform Act of 1997", Section 150 of the NIRC of 1997 similarly imposed a 20% excise tax on toilet waters also in 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.

The effectivity and applicability of the said administrative issuances, and the inapplicability of RR No. 8-84, on the other hand, as regards subjecting "toilet waters" to excise tax regardless of their essential oil content by weight, has been previously upheld by this Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[34], to wit:

> "xxx, it bears noting that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts, this interpretation is not conclusive and will have to be ignored if judicially found to be erroneous and clearly absurd or improper.
>
> Having previously discussed that RR No. 8-84, which deals with percentage tax on cosmetic products, may not be used to implement Section 150(b) of the NIRC of 1997, as amended, the interpretation therefore, of CIR, in BIR Ruling No. 43-2000 and RMC 17-02, as to the definition of 'toilet water', should be given great weight and respect, after all, CIR is the one vested with the exclusive and original power to interpret the provision of Tax Code and other laws, pursuant to Section 4 of the 1997 NIRC, as amended, which states:
>
>> 'SEC. 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.'
>
> Corollary thereto, Section 4 of the Revenue Administrative Order No. 2-2001 states that '(a)ll rulings and issuances of the Commissioner of Internal Revenue that pertain to the implementation and interpretation of the Tax Code and other tax laws are valid, unless revoked,

[34] CTA EB No. 1275 (CTA Case No. 8378), April 1, 2016.

> reversed, modified, or superseded by the Secretary of Finance'.
>
> It bears noting that the Secretary of Finance, who is vested with the power to review the rulings issued by the CIR, made no modification or reversal of the foregoing BIR Ruling and RMC. By such reason, the definition of 'toilet water' as 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 BIR Ruling No. 43- 2000 and RMC 17-02, should apply to all kinds of toilet waters.
>
> Thus, applying the foregoing interpretation to the case at bench, respondent's splash colognes and body sprays fall within the purview of the term 'toilet waters', which should be subject to 20% excise tax under Section 150 (b) of the 1997 NIRC, as amended."

Moreover, in a similar case[35], 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 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

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

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 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, nee 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 P38,873,976.07 **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*)

Considering that Section 150 of the NIRC of 1997, as amended, provides no definition of the term "toilet waters", and in view of the inapplicability of the provisions of RR No. 8-84, the interpretation of respondent in BIR Ruling No. 43-2000 deserves great weight and respect especially since it merely interpreted the word in its plain and ordinary meaning.

Thus, applying the foregoing interpretation to the instant case, petitioner's products, i.e., splash colognes and body sprays, 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.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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, Second Division

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