Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8174
For: *Cancellation of Deficiency Excise Tax Assessment*

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated: MAY 16 2013
3:25 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed on October 7, 2010 by Avon Products Manufacturing, Inc. praying for the cancellation of the Final Decision on Disputed Assessment (FDDA)[1] of the Commissioner of Internal Revenue issued through the Assistant Commissioner of Internal Revenue, of alleged deficiency excise tax in the aggregate amount of ₱738,580.13 covering the taxable year 2008.

Petitioner 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 the Calamba Premiere Industrial Park, Barangay Batino, Calamba, Laguna.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said

[1] Exhibit "D", Docket, pp. 349 to 350.
[2] Par. 1, Summary of Admitted Facts, Amended Joint Stipulation of Facts and Issues (AJSFI), Docket, p. 191.

office, including the power to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is a manufacturer of perfumes, toilet waters, splash colognes and body sprays. It uses denatured ethyl alcohol, which it purchases from two (2) local suppliers, namely: Kooll Company, Inc. and Far East Alcohol Corporation, as raw ingredient in the manufacture of perfumes, toilet waters, splash colognes and body sprays.[3]

The BIR through Elvira R. Vera, Head Revenue Executive Assistant, LTS-Excise Large Taxpayers, issued to petitioner a Permit to Buy/Use Denatured Alcohol LTADII-(A)-001-01-08-14450 dated January 7, 2008,[4] authorizing petitioner to purchase denatured alcohol to be used in its production of colognes, purse concentrates, astringents and other related cosmetic preparations.

The said BIR Permit was issued subject to conditions, among others: (1) petitioner shall only purchase denatured alcohol from a duly registered distiller/dealer holding a valid Permit to Operate as Distiller/Dealer of denatured alcohol; xxx; (3) all purchases of denatured alcohol from the distiller/dealer shall be supported by an Official Delivery Invoice (ODI) which shall be signed and attested to by the Revenue Officer on Premise (ROOP) assigned at the source distillery plant, and the corresponding BIR-registered Sales Invoice and Delivery Receipt shall accompany each and every shipment until it reaches the petitioner's production premises. It was also provided under Condition 3 of the said permit that in the event that the volume of purchased denatured alcohol actually received is more than or less than the volume reflected in the afore-mentioned accompanying documents, the excise tax due on the differences shall be assessed, inclusive of all applicable penalties.

[3] Par. 15, Statement of the Case, Petition for Review, Docket, p. 7.
[4] Exhibit "E", Docket, pp. 353 to 356; Exhibit "9", Docket, pp. 462 to 465.

From January to December 2008, petitioner made various purchases of denatured ethyl alcohol from its two (2) local suppliers, Kooll Company, Inc. and Far East Alcohol Corporation (FEACO), which were delivered to petitioner's warehouse at Calamba Premiere Industrial Park, Barangay Batino, Calamba, Laguna.[5]

Thereafter, petitioner received from respondent a Preliminary Assessment Notice (PAN) LTFOD-2009-1-A-159 dated December 11, 2009.[6]

Petitioner, through its representative, Shernan V. Balilo,[7] sent a letter protest to the BIR in response to the PAN; attended the informal conference; and submitted supporting documents.[8]

However, on July 8, 2010, petitioner received the Formal Letter of Demand (FLD) LTFOD-2009-1-A-159 dated June 16, 2010[9] with the attached Computation of Deficiency Excise Tax Per Formal Letter of Demand[10], finding petitioner liable for deficiency excise tax under Section 141(a) of the NIRC of 1997, as amended, in the amount of ₱1,096,956.43, computed as follows:

Total Discrepancies (in proof liters @1.89 proof)	60,779.18
Excise tax rate	₱ 12.58
Basic deficiency excise tax	₱ 764,602.08
Interest	332,354.35
Total deficiency excise tax due	**₱1,096,956.43**

As detailed in Annex "A" of the Formal Letter of Demand, the total taxable discrepancy of 60,779.18 (in P.L.)

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[5] Exhibit "FF", Docket, pp. 310 to 315.
[6] Exhibit "1", BIR Records, pp. 72 to 74; Exhibit "8", Docket, pp. 428 to 432; Exhibit "HH", Docket, p. 288.
[7] Manager for Finance of petitioner.
[8] Exhibit "HH", Docket, pp. 287-291.
[9] Exhibit "A", Docket, pp. 340 to 341; Exhibit "4", BIR Records, pp. 101 to 102; Par. 4, Summary of Admitted Facts, AJSFI, Docket, p. 192.
[10] Annex "A" of FLD LTFOD-2009-1-A-159 dated June 16, 2010, Docket, p. 342.

being subjected to excise tax by respondent represents the following:[11]

(a) the total shortage of 21,163.48 liters relating to deliveries of denatured ethyl alcohol from January to December 2008, which was computed by respondent by comparing the actual volumes received by petitioner with the volumes reflected in the Official Delivery Invoice (ODI) issued by the suppliers and approved by the authorized BIR Officer, which totaled 1,309,000 liters; and

(b) a one-time overage of the actual volume received by petitioner as compared to the volume indicated in the ODI.

Respondent's Large Taxpayers Service Field Operations Division served on petitioner Assessment Notice No. LTFOD 2009-1-A-159[12], demanding that petitioner pay deficiency excise tax in the amount of ₱1,096,956.43.[13]

On August 5, 2010, petitioner protested the foregoing assessment by filing a letter-protest dated July 21, 2010[14] addressed to respondent, through Ms. Zenaida G. Garcia, Assistant Commissioner-LTS Excise and LTDOs.

On September 7, 2010, respondent through its Large Taxpayers Service Field Operations Division served on petitioner, by personal service, the Final Decision on Disputed Assessment dated September 1, 2010.[15]

Respondent maintains that petitioner should be held liable for deficiency excise tax because the BIR Permit to Buy/Use Denatured Alcohol issued to petitioner provides that in the event that the volume of purchased denatured alcohol actually received is more or less than the volume reflected in

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[11] Par. 6, Summary of Admitted Facts, AJSFI, Docket, p. 192.
[12] Exhibit "B", Docket, p. 343; Exhibit "5", BIR Records, p. 98.
[13] Par. 5, Summary of Admitted Facts, AJSFI, Docket, p. 192.
[14] Exhibit "C", Docket, pp. 345 to 348.
[15] Par. 8, Summary of Admitted Facts, AJSFI, Docket, p. 193; Exhibit "D", Docket, pp. 349 to 350; Exhibit "7", BIR Records, pp. 113 to 114.

the documents issued by the supplier, the excise tax on the difference shall be assessed.[16]

Based on the FDDA, there was a deficiency excise tax in the amount of ₱1,135,500.85, to wit:[17]

"In view of the foregoing, there is still found due from you a deficiency excise tax in the amount of ₱1,135,500.85, inclusive of increments assessed pursuant to Section 141(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, as shown below:

	SHORTAGES	**OVERAGE**	**TOTAL**
Volume in G.L.	21,163.49	10,994.81	32,158.30
Volume in P.L. @ 1.89 proof	39,999.00	20,780.19	60,779.19
Excise Tax Rate	₱ 12.58	₱ 12.58	₱ 12.58
Basic Deficiency Excise Tax	₱ 503,187.37	₱ 261,414.80	₱ 764,602.17
Interest	235,392.76	135,505.92	370,898.68
TOTAL AMOUNT DUE	**₱738,580.13**	**₱396,920.72**	**₱1,135,500.85**

The deficiency excise tax on the shortages is computed in the FDDA as follows:[18]

Volume in G.L.	21,163.49
Volume in P.L. @ 1.89 proof	39,999.00
Excise Tax Rate	₱ 12.58
Basic Deficiency Excise Tax	₱ 503,187.37
Interest	235,392.76
TOTAL AMOUNT DUE	**₱738,580.13**

Respondent imposed the excise tax on distilled spirits under Section 141(a) of the NIRC of 1997, as amended, using the rate applicable beginning January 1, 2007 of ₱12.58 per proof liter (Section 3 of Revenue Regulations No. 3-2006 dated January 3, 2006).[19]

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[16] Par. 3, Summary of Admitted Facts, AJSFI, Docket, p. 192.
[17] Par. 9, Summary of Admitted Facts, AJSFI, Docket, p. 193; Exhibit "D", Docket, p. 350; Exhibit "7", BIR Records, pp. 113 to 114.
[18] Par. 11, Summary of Admitted Facts, AJSFI, Docket, p. 193.
[19] Par. 12, Summary of Admitted Facts, AJSFI, Docket, p. 194.

Petitioner admits the computations of shortages and one-time overage stated in Annex "A" of the FLD.[20] Petitioner does not dispute the deficiency excise tax assessment computed based on the one-time overage, but assails the assessment computed based on the shortages.

Hence, the instant Petition for Review involves only the deficiency excise tax assessment on the aggregate shortages of 21,163.48 liters out of the total deliveries in 2008 of 1,309,000 liters per ODI or a loss in volume of about 1.6% of the total deliveries in 2008.[21]

On November 12, 2010, respondent filed her Answer[22]. On November 24, 2010, petitioner filed its Reply[23] thereto. However, on February 4, 2011, petitioner filed a Motion for Leave of Court to Admit Amended Petition for Review[24] with the attached Amended Petition for Review dated February 2, 2010[25]; which was granted in the Resolution[26] dated February 18, 2011. Consequently, on March 7, 2011, respondent filed an Amended Answer[27] interposing the following defenses:

> "7. Petitioner Avon Products Manufacturing, Inc. is liable to pay its deficiency excise tax in the total amount of Seven Hundred Thirty Eight Thousand, Five Hundred Eighty and 13/100 (₱738,580.13). Since petitioner does not dispute the deficiency assessment on the one-time overage of the actual volume received by petitioner as compared to the volume indicated in the ODI, the instant petition involves only the deficiency assessment on the total shortages, computed as follows:

Volume in G.L.	21,163.49
Volume in P.L. @ 1.89 proof	39,999.00
Excise Tax Rate	12.58
Basic Deficiency Excise	503,187.37

[20] Par. 7, Summary of Admitted Facts, AJSFI, Docket, p. 193.
[21] Par. 10, Summary of Admitted Facts, AJSFI, Docket, p. 193.
[22] Docket, pp. 40 to 49.
[23] Docket, pp. 51 to 56.
[24] Docket, pp. 98 to 101.
[25] Docket, pp. 102 to 113.
[26] Docket, p. 144.
[27] Docket, pp. 145 to 156.

Tax	
Interest	235,392.76
TOTAL AMOUNT DUE	**738,580.13**

8. On a resolution dated February 18, 2011, the Honorable Court admitted amended Petition for Review filed by petitioner. Rule 10 Section 8 of the Rules on Civil Procedure provides for the effect of amended pleadings, to wit:

   Sec. 8 Effect of amended pleadings.
   An amended pleading supersedes the pleading that it amends.

   The Highest Court had an occasion to discuss the matter by way of judicial pronouncement in the case of **Wallem Philippines Shipping, Inc. vs. S.R. Farms (G.R. No. 161849, July 9, 2010)** wherein it ruled:

   The settled rule is that the filing of an amended pleading does not retroact to the date of the filing of the original; hence, the statute of limitation runs until the submission of the amendment.

   Thus, the original petition is deemed withdrawn and ceases to perform any other function as a pleading. Corollary thereto, the date of amended pleading shall stand in place of the date of the superseded pleading. In the instant case, petitioner alleged that on September 7, 2010, it received the Final Decision on Disputed Assessment. Counting 30 days from the final decision as mandated by Section 228 of the NIRC, the instant petition is time-barred and the jurisdiction of the Honorable Court can no longer be invoked.

9. Assuming it cannot be sustained on that ground; still the aforementioned assessment has become final and executory. Petitioner avers that it filed a protest letter within 30 days disputing the deficiency excise tax assessment. However, it failed to submit documents in support of its protest within 60 days from filing of protest.

   9.1 Section 228 of the NIRC of 1997 is hereunder quoted for ready reference:

> *Such assessment 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 <u>shall</u> become final****.*

Relative therewith, Revenue Regulations No. 12-99 implementing the provisions of the NIRC of 1997 governing assessment of national internal revenue taxes likewise provides:

> ***Section 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.***
>
> *3.1.5 Disputed Assessment*
>
> *xxx*
>
> *The taxpayer shall submit the required documents in support of his protest* ***within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment <u>shall</u> become final, executory and demandable****.*

The foregoing was promulgated pursuant to the power of the Commissioner of Internal Revenue to interpret tax laws as enunciated in Section 4 of the NIRC, to wit:

> ***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.*

9.2. The mandatory character of Section 228 and Revenue Regulations No. 12-99 cannot be gainsaid. The word 'shall' connotes an imperative and indicates the mandatory character of a statute. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication. **(CIR v. Court of**

Appeals, 338 Phil. 322, 330 (1997). To rule otherwise would not just prevent the Commissioner from reconsidering the protested assessment but will practically render nugatory the intention of Congress.

9.3 Since petitioner failed to submit relevant documents in support of its protest, the assessment has become final and executory. This warrants the dismissal of the instant petition inasmuch as no jurisdiction was acquired by this Honorable Court.

9.4 Petitioner cannot cloak itself with the supposed discussion with the Large Taxpayers Service Field Operations Division and Head Revenue Executive Assistant for LTS Excise Taxpayers Group to justify its failure to submit supporting documents. The law is mandatory and compulsory. And compliance therewith is mandated.

9.5 Further, Government is not bound by the errors and mistakes committed by its officials or agents in making tax assessments specially when due to misinterpretation or application of tax laws, more so when done in good faith. **(Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals G.R. No. 106611 July 21, 1994)**

10. Avon Products Manufacturing, Inc. is a holder of permit to engage in business as buyer of denatured alcohol under BIR Permit No. LTAD II (A)-001-01-08-14450 dated January 7, 2008 subject to certain conditions.

11. Condition No. 3 Paragraph 2 of the above-mentioned permit provides that in the event that the volume of purchased denatured alcohol actually received by AVON is more than or less than the volume reflected in the documents issued by its suppliers, the excise tax on the difference shall be assessed, inclusive of all applicable penalties. While Condition No. 10 provides that a duly notarized liquidation report of denatured alcohol used in production shall be submitted to LTFOD within ten (10) days immediately following the month of production of the products using the purchased denatured alcohol. These conditions are necessary for the proper implementation of the law on excise taxes.

12. The volume of denatured alcohol received by AVON was compared to the deliveries made by its suppliers. The basis was the Liquidation Reports and Official Register Books submitted by Avon and its suppliers. Accordingly, petitioner is found liable to pay deficiency excise tax on the discrepancies found in the reconciliation of the volume of denatured alcohol actually received by AVON against the deliveries made by its suppliers.

13. At this instant, the condition imposed on the BIR permit in computing the total shortages is assailed for being an impossible condition. This claim holds no water. Time and again, the Supreme Court held (that) obligations arising from contracts have the force of law between the parties and should be complied with in good faith. In characterizing the contract as such, the law stresses the obligatory nature of a binding and valid agreement.

    The act of petitioner in assailing the validity of the conditions imposed in the permit just because it worked to its disadvantage cannot be countenanced. It must be stressed that the permit is both in the nature of a privilege and a contract. After consenting to the conditions imposed in the permit, it already constitutes a contract between the parties. Consequently, petitioner is now estopped from impugning the validity of the conditions cited in the permit.

14. In addition, worthy of emphasis is the fact that petitioner prayed for the nullity of BIR permits. The dispositive portion of the prayer reads:

    > 'Hence, the provision that petitioner shall be assessed excise taxes in the event that the volume of purchased denatured alcohol actually received is less than the volume reflected in the accompanying documents found in Section 3, 2nd paragraph of the BIR Permit to Buy/Use Denatured Alcohol LTADII-(A)-001-01-08-14450 dated January 7, 2008, the BIR Renewal Permit ETRD-(A)-028-010-01995) dated December 22, 2010 **and similar permits that respondent may issue to petitioner in the future** should be declared null and void and of no legal force and effect.'

From the foregoing, it is apparent that petitioner is including in its reliefs sought the nullity of future BIR permits when in fact there is as yet no justiciable controversy on those matters.

A justiciable controversy has been defined as, 'a definite and concrete dispute touching on the legal relations of parties having adverse legal interests' which may be resolved by a court of law through the application of a law. Courts, as a rule, will desist from taking cognizance of speculative or hypothetical cases, advisory opinions and in cases that has become moot. **(Curatan vs DENR, G.R. No. 134958. January 31, 2001)**

Undeniably, the prayer for nullity for future provisions cannot be granted because of the absence of an actual case or controversy ripe for judicial adjudication. The issue is not real and a mere theoretical question. Thus, it is beyond the Court's power of judicial review.

15. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

16. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005)**

17. Petitioner has not pointed out any provision or item in the assessment notice which bears a trace of falsity. The averments were based on conjectures, surmises and speculations. These cannot supply the basis for the charge of impropriety of the assessments made."

On March 28, 2011, petitioner filed a Motion to Admit Attached Reply[28]; which was granted in the Resolution[29] dated April 1, 2011.

During trial, petitioner presented its witnesses: Eduardo A. Panganiban, its Warehouse Assistant Manager[30]; Santos H. Collado, its Quality Assurance Group Manager[31]; and Shernan V. Balilo, its Manager for Finance[32].

Thereafter, on October 4, 2011, petitioner filed its Formal Offer of Evidence[33], submitting Exhibits "A" to "HH", inclusive of sub-markings; which this Court admitted, with the exception of Exhibits "I", "N", "O", "V", "EE", "EE-1", and "EE-2", in the Resolution[34] dated October 25, 2011.

The documentary evidence formally offered and admitted are as follows:

Exhibit	Description
A	BIR Formal Letter of Demand LTFOD-2009-1-A-159 dated June 16, 2010
B	Assessment Notice No. LTFOD 2009-1-A-159
C	Protest Letter dated July 21, 2010
D	BIR Final Decision on Disputed Assessment LTFOD-2009-1-A-159 dated September 1, 2010
E	BIR Permit to Buy/Use Denatured Alcohol (LTADII-(A)-001-01-08-14450 dated January 7, 2008
F	BIR Renewal of Permit to Buy/Use Denatured Alcohol (ETRC-(A)-028-012-010-01995) dated December 22, 2010

[28] Docket, pp. 159 to 160.
[29] Docket, p. 169.
[30] Minutes of Hearing dated June 22, 2011, Docket, p. 219.
[31] Minutes of Hearing dated September 14, 2011, Docket, p. 276.
[32] Minutes of Hearing dated September 14, 2011, Docket, p. 276.
[33] Docket, pp. 277 to 286.
[34] Docket, pp. 401 to 402.

G	Pictures of Delivery Truck and Safety Valve
H	Pictures of Storage Tank and Safety Valve
I	Avon Document Entry (Voucher) Document AIAC 00425187, Document Date 11.05.08
J	Far East Alcohol Corporation Delivery Receipt No. 5883
K	Far East Alcohol Corporation Sales Invoice Receipt No. 5864
L	Avon Truck – Gate 3 Weighing Receipt dated 11.05.08
M	Avon Weight Data dated 5 November 2008
N	BIR Official Delivery Invoice No. 0094343
O	Avon Document Entry (Voucher) Document AIAC 00426927, Document Date 12.04.08
P	Far East Alcohol Corporation Sales Invoice No. 5885
Q	Far East Alcohol Corporation Sales Invoice No. 5910
R	Avon Truck – Gate 3 Weighing Receipt dated 12.04.08
S	Avon Weight Data dated 4 December 2008
T	BIR Official Delivery Invoice No. 0094364
U	Avon Part Transaction History Alcohol SD 40B dated 12/29/08
V	Avon Document Entry (Voucher) Document AIAC 00427293, Document Date 12.12.08

W	Far East Alcohol Corporation Sales Invoice No. 5893
X	Far East Alcohol Corporation Delivery Receipt No. 5919
Y	Avon Truck – Gate 3 Weighing Receipt dated 12.12.08
Z	Avon Weight Data dated 12 December 2008
AA	BIR Official Delivery Invoice No. 0094372
BB	Avon Part Transaction History Alcohol SD 40B dated 12/29/08
CC	Far East Alcohol Corporation Certificate of Analysis (Date Delivered 1-19-11)
DD	Material Safety Data Sheet (Issue Date: June 2008)
EE	Perry's Chemical Engineers' Handbook 7^{th} Edition
EE-1	Table re: Heats of Vaporization of Inorganic and Organic Compounds (pp. 2-156 and 2-157)
EE-2	Compound No. 83 – Ethanol
FF	Affidavit in Lieu of Direct Examination of Mr. Eduardo A. Panganiban
FF-1	Signature of Mr. Eduardo A. Panganiban
GG	Affidavit in Lieu of Direct Examination of Mr. Santos H. Collado
GG-1	Signature of Mr. Santos H. Collado
HH	Affidavit in Lieu of Direct Examination of Mr. Shernan V. Balilo
HH-1	Signature of Mr. Shernan V. Balilo

On the other hand, respondent presented Erninfo V. Villeza[35] and Conrado P. Item[36] as her witnesses. Thereafter, respondent filed her Formal Offer of Documentary Evidence dated May 16, 2012[37], submitting Exhibits "1" to "10-a"; which this Court admitted in the Resolution[38] dated June 26, 2012.

The documentary evidence formally offered and admitted by respondent are as follows:

Exhibits	Description
1	Preliminary Assessment Notice (PAN) dated December 11, 2009
2	Computation of Deficiency Excise Tax per Preliminary Assessment Notice
3	Memorandum dated June 16, 2010
4	Formal Letter of Demand dated June 16, 2010
5	Assessment Notice dated June 16, 2010
6	Memorandum dated September 1, 2010
7	Final Decision on Disputed Assessment dated September 1, 2010
8	Affidavit of Revenue Officer Erninfo V. Villeza
8-a	Signature of Affiant Erninfo V. Villeza
9	BIR Permit to Buy/Use Denatured Alcohol (LTADII-A-001-01-08)
10	Affidavit of Conrado P. Item
10-a	Signature of Affiant Conrado P. Item

35 Minutes of Hearing dated February 6, 2012, Docket, p. 434.
36 Minutes of Hearing dated March 7, 2012, Docket, p. 446; Minutes of Hearing dated March 28, 2012, Docket, p. 447.
37 Docket, pp. 455 to 461.
38 Docket, pp. 477 to 479.

On August 31, 2012[39], the case was submitted for decision, taking into consideration the Memorandum for the Petitioner[40] filed on July 27, 2012 and respondent's Memorandum[41] filed on August 28, 2012.

In the Resolution dated January 17, 2013, the Reply Memorandum for the Petitioner dated September 20, 2012 was admitted.

The following are the parties' jointly stipulated issues[42] submitted for this Court's consideration:

> "1. Whether or not the marginal differences between the volume of denatured alcohol received by Petitioner and the volume of denatured alcohol invoiced by the supplier are subject to the excise tax on distilled spirits.
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> 2. Whether or not the excise tax on distilled spirits can be imposed if no article is manufactured.
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> 3. Whether or not Petitioner can be held liable for deficiency excise tax on distilled spirits on the losses incurred in the transportation and delivery of denatured alcohol.
>
> **4. Whether or not the provision that Petitioner shall be assessed excise taxes in the event that the volume of purchased denatured alcohol actually received is less than the volume reflected in the accompanying documents found in Section 3, 2nd paragraph of the BIR Permit to Buy/Use Denatured Alcohol LTADII-(A)-001-01-08-14450 dated January 7, 2008, the BIR Renewal Permit ETRD-(A)-028-012-010-01995) dated December 22, 2010 and in similar permits that Respondent may issue to petitioner in the future, should be declared null and void and of no legal force and effect.**

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[39] Docket, p. 564.
[40] Docket, pp. 486 to 526.
[41] Docket, pp. 533 to 562.
[42] Docket, pp. 195 to 196.

5. Whether or not Petitioner is liable for the deficiency excise assessment in the amount of ₱738,580.13 inclusive of interests and penalties for the calendar year 2008.

6. Whether Petitioner has complied with the governing rules and regulations with regard to protesting assessment of taxes as provided in Section 228 of the National Revenue Code (NIRC) of 1997, as amended."

The principal issue is whether or not petitioner is liable to pay the aggregate amount of ₱738,580.13, representing deficiency excise tax inclusive of interest for the taxable year 2008.

Petitioner argues that the assessment issued against it has no legal and factual bases because the assessment imposes excise tax on a tax-exempt product such as a domestic denatured alcohol and because respondent did not impose excise tax on any specific article. Petitioner asserts that a domestic denatured alcohol becomes subject to excise tax on distilled spirits only when it undergoes processing and is converted to reprocessed spirits, citing Section 134 of the NIRC of 1997, as amended.

Petitioner claims that the excise tax being assessed by respondent is not based on the particular volume of reprocessed spirits but on the sum of the losses/shortages in volume per delivery caused by evaporation during transit; and that respondent has not shown that said shortages in volume were actually converted by petitioner into distilled spirits subject of excise tax under Section 141(a) of the NIRC of 1997, as amended.

Petitioner posits that Condition No. 3, 2nd paragraph of the BIR Permit, which is reiterated in the renewal permit, requiring petitioner to pay excise tax even for evaporation losses, which is an impossible condition, is null and void. Petitioner contends that it complied with the governing rules and regulations with regard to protesting assessment of taxes as provided in Section 228 of the NIRC, as amended and that its Amended Petition for Review did not supplant the Original Petition for Review and neither was its cause of action barred by prescription or the statute of limitations.

Respondent counters that this Court has no jurisdiction to take cognizance of the instant Petition for Review since the Amended Petition for Review, which superseded the Original Petition for Review, was filed by petitioner only on February 4, 2011 or 150 days after petitioner received the Final Decision on Disputed Assessment on September 7, 2010. Respondent asserts that the assessment has become final and executory, since petitioner failed to submit documents in support of its protest within 60 days from filing of protest, citing Section 228 of the NIRC of 1997, as amended, in relation to Revenue Regulations (R.R.) No. 12-99.

Respondent argues that petitioner is liable for deficiency excise tax on distilled spirits on the losses incurred in the transportation and delivery of denatured alcohol being a holder of BIR Permit No. LTAD II(A)-001-01-08-14450 dated January 7, 2008, a permit to engage as buyer of denatured alcohol subject to certain conditions, specifically Condition No. 3, paragraph 2 thereof. As alleged by respondent, tax assessments are presumed correct and made in good faith.

In its Reply-Memorandum, petitioner posits that respondent's reliance on Section 245(f) of the NIRC of 1997 is misplaced because Section 245(f) of the NIRC of 1997 does not authorize respondent to impose Condition No. 3, 2nd paragraph in the BIR Permit and said Section should be construed in conjunction with Section 244 of the same law, which empowers the Secretary of Finance to promulgate the necessary revenue regulations to implement the NIRC. As alleged by petitioner, respondent failed to cite any specific rule or regulation on denatured alcohol promulgated by the Secretary of Finance in support of her position; hence, Condition No. 3, 2nd paragraph of the BIR Permit is an unreasonable and arbitrary condition unilaterally imposed by respondent, in violation of Sections 134 and 141 of the NIRC of 1997, as amended.

Before going to the merits of the instant petition, this Court shall first resolve the issue regarding jurisdiction.

Respondent contends that this Court has no jurisdiction to take cognizance of the instant Petition for Review since the Amended Petition for Review, which supposedly superseded the Original Petition for Review, was filed by petitioner only on February 4, 2011, or 150 days after petitioner received the Final Decision on Disputed Assessment on September 7, 2010.

The contention is misplaced.

Jurisdiction once acquired by a court over a case remains with it until the full termination of the case, unless a law provides the contrary.[43] It remains unaffected by subsequent events.[44]

In the instant case, petitioner filed the Original Petition for Review on October 7, 2010, which is within the 30-day period to file a Petition for Review reckoned from the date of its receipt of the FDDA on September 7, 2010. On February 4, 2011, petitioner filed a Motion for Leave of Court to Admit Petition for Review, attaching an Amended Petition for Review. The motion was granted in the Resolution dated February 18, 2011; hence, the Amended Petition for Review was admitted. The Court had acquired jurisdiction over the appeal upon the filing of the original pleading on October 7, 2010, followed by the exercise of jurisdiction when the Court granted petitioner's Motion to Admit Amended Petition. From that point, the jurisdiction of this Court already attached, thereby vesting the Court with the authority to dispose of the case on the merits until its termination.

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[43] *The Secretary of Health, et al. vs. Court of Appeals, et al.*, G.R. No. 112243, February 23, 1995.

[44] *In the Matter of the Petition to Approve the Will of Cipriano Abut, et al. vs. Felipe Abut, et al.*, G.R. No. L-26743, May 31, 1972.

Moreover, amendments in pleadings do not necessarily expunge those previously filed. Amendments made, more so when ordered by the court, relate back to the date of the original complaint, if, as in the case at bar, the claim asserted in the amended pleading arose out of the same conduct, transaction or occurrence. Amendment presupposes the existence of something to be amended and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended.[45]

This Court shall now discuss the merits of the instant case.

It must be stressed that petitioner applied for and was granted by respondent a Permit to Buy/Use Denatured Alcohol LTADII-(A)-001-01-08-14450[46] dated January 7, 2008, to purchase denatured alcohol to be used in the production of perfumes, toilet waters, splash colognes and body sprays. Under the permit, petitioner shall pay the excise tax imposed under Section 141 of NIRC of 1997, as amended, on distilled spirits, which is based on the revised rate of ₱12.58 per proof liter effective as of January 1, 2007.[47]

The assessment pertains to the shortage of the volume of alcohol, determined by comparing the alcohol volume based on Official Delivery Invoice, which is greater than the volume of alcohol actually received. Petitioner alleges that the difference (shortage) was caused by evaporation during transit, and as such, it should not be made liable for deficiency excise tax on distilled spirits under Section 141(a) of the NIRC of 1997, as amended.

Petitioner's contention lacks merit.

Section 22 of R.R. No. 3-2006, implementing Section 141 of the NIRC of 1997, as amended, provides:

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[45] *Philippine Independent Church, etc. vs. Juana Mateo, et al.*, G.R. No. L-14793, April 28, 1961.
[46] Exhibit "E", Docket, pp. 353 to 356.
[47] See Section 3, R.R. No. 3-2006.

"SEC. 22. *Losses on Distilled Spirits.* - **No claim for excise tax refund or credit shall be allowed on distilled spirits that have been lost or destroyed after removal thereof from the place of production or released from the customs' custody.** In case of losses incurred on bonded distilled spirits, the corresponding excise tax due on such losses shall be paid to the BIR.

Losses of distilled spirits or rectified alcohol incurred before removal thereof from the distillery premises shall be accounted for and recorded in the ORBs as they occur on a daily basis. For this purpose, a loss of not more than one percent (1%) for distillation and four percent (4%) of excise tax-paid distilled spirits for rectification may be allowed when such loss is not caused by fraud, negligence or carelessness of the distillers or owners of the rectifying establishments. However, no deduction for losses shall be allowed on bonded distilled spirits delivered and subsequently stored for rectification purposes as well as losses arising from rectification of such bonded distilled spirits. The total volume of losses incurred during the month less the allowable percentage of loss, if any, shall be computed and the corresponding excise tax due thereon shall be paid to the BIR on or before every eighth (8th) day of the month immediately following the month of operations." *(Emphasis supplied)*

On the other hand, Section 14 of R.R. No. 3-2006 states:

"SEC. 14. *Tax-Exempt Removal of Alcohol for Rectification Purposes.* - Distilled spirits such as, but not limited to, ethyl alcohol, may be removed from the place of production for purposes of rectification by another establishment without prepayment of the specific tax. **For this purpose, the distiller and the rectifier shall file separately an application for a permit to remove tax-exempt alcohol and an application for a permit to purchase tax-exempt alcohol, respectively, with the BIR Offices concerned where the distiller and the rectifier are registered or required to be registered as excise taxpayers.** xxx

xxx xxx xxx

For purposes of this section, the term 'rectification' shall refer to the process of refining, purifying or enhancing the quality of ethyl alcohol only by distillation. Other processes intended to improve or enhance the

> quality of alcohol such as, but not limited to, aging, purification, filtration, carbon-treatments, etc., without distillation undertaken by the rectifier or rectifier-compounder itself, are deemed excluded under the term rectification as defined herein. Hence, deliveries of under-bond alcohol from distilleries to any rectifier or rectifier/compounder employing processes not falling squarely under the definition of rectification shall not be allowed.
>
> **Any allowance for losses or actual losses incurred, whether or not due to negligence, in-transit, handling/storage or during the rectification process shall not be allowed or granted. The excise tax due on losses shall be paid by the rectifier on or before the eighth (8th) day of the month immediately following the month of operation**. xxx" *(Emphasis supplied)*

Based on the foregoing provisions, it is clear that losses due to evaporation is covered and contemplated by the excise tax impositions because "no claim for excise tax refund or credit shall be allowed on distilled spirits that have been lost or destroyed after removal thereof from the place of production or released from the customs' custody", and that "any allowance for losses or actual losses incurred, whether or not due to negligence, in-transit, handling/storage or during the rectification process shall not be allowed or granted." Section 14 of R.R. No. 3-2006 even expressly provides that the "excise tax due on losses shall be paid by the rectifier on or before the eighth (8th) day of the month immediately following the month of operation."

Petitioner also argues that it is exempt from excise tax under Section 134 of the NIRC, which applies in the case of domestic denatured alcohol.

This assertion is untenable.

Firstly, petitioner applied for and has been granted permit, with corresponding conditions covering excise tax liability under Section 141 of the NIRC of 1997, as amended, and not under Section 134 thereof. Hence, petitioner is estopped from questioning the applicable tax corresponding to the kind of alcohol it purchased.

Secondly, petitioner failed to show that it is exempt from the payment of tax under Section 134 of the NIRC of 1997, which provides:

> "SEC. 134. *Domestic Denatured Alcohol*. - Domestic alcohol of not less than one hundred eighty degrees (180°) proof (**ninety percent (90%) absolute alcohol**) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141: *Provided, however*, That **such denatured alcohol shall be subject to 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 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 this Code and such tax shall be paid by the person in possession of such reprocessed spirits." *(Emphasis supplied)*

The above-quoted provision provides that to be exempt from excise tax under Section 141 of the NIRC of 1997, as amended, the alcohol should be 90% absolute alcohol suitably denatured and rendered unfit for oral intake. Petitioner failed to establish this fact. In any case, such denatured alcohol is still subject to tax under Section 106(A) of the NIRC of 1997, which imposes value-added tax.

Statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the state.[48] In this regard, taxation is the rule and exemption is the exception. 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.[49]

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[48] *PLDT vs. City of Davao, et al.,* G.R. No. 143867, March 25, 2003.
[49] *Sea-Land Service, Inc. vs. Court of Appeals,* 357 SCRA 444.

Petitioner further argues that the terms and conditions of the permit, which provides that the difference due to losses/shortages in volume per delivery caused by evaporation during transit shall be subject to excise tax, is null and void for being an impossible condition. Petitioner posits that the "condition imposed by the BIR permit clearly subjects petitioner to an impossible condition because the petitioner is being assessed for taxes on the basis of a product that was never received or produced at all." An impossible condition, petitioner contends, should be deemed not written into a contract, or imposed unilaterally, which amounts to a contract of adhesion.

Again, the contention lacks merit.

The condition referred to by petitioner under the terms of the permit has been expressly provided by Sections 14 and 22 of R.R. No. 3-2006, implementing Section 141 of the NIRC. Hence, petitioner may not raise the issue of the "impossibility of the condition" without first assailing the legality and validity of the said Revenue Regulation before a proper forum, and at the proper time when the same regulation was first issued, published and made effective.

Consequently, considering that petitioner admits the computations of shortages and one-time overage stated in Annex "A" of the FLD[50], this Court hereby upholds the assessment against petitioner for the basic deficiency excise tax in the amount of ₱503,187.37, as computed below:

	Shortages
Volume in gauge liters	21,163.49
Volume in proof liters at 1.89 proof	39,999.00
Excise Tax Rate per proof liter	₱ 12.58
Basic Deficiency Excise Tax	**₱503,187.37**

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the

[50] Par. 7, Summary of Admitted Facts, AJSFI, Docket, p. 193.

deficiency excise tax assessment issued by respondent against petitioner on the total shortage of 21,163.49 liters relating to deliveries of denatured ethyl alcohol from January to December 2008 is hereby upheld but in the modified amount of ₱628,984.21, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Basic Tax	₱ 503,187.37
Surcharge	125,796.84
Total	**₱628,984.21**

In addition, petitioner is **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency excise tax of ₱503,187.37, computed from the delivery dates indicated in respondent's Computation of Deficiency Excise Tax Per Final Decision on Disputed Assessment[51] until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱628,984.21, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 7, 2010[52] until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

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[51] Annex "A" of FDDA, BIR Records, pp. 111 to 112.
[52] Date of receipt of the FDDA by petitioner.

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.
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice