REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8378

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 02 2015
1:02 p.m.

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RESOLUTION

For this Court's consideration is respondent's Motion for Reconsideration filed on September 29, 2014 asking for reconsideration of our Amended Decision dated September 9, 2014 (Amended Decision) which reversed and set aside the Decision dated May 6, 2014. The Amended Decision held, as follows:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration is hereby **GRANTED.** Our Decision dated May 6, 2014 is reversed and set aside and an **AMENDED DECISION** is hereby rendered **GRANTING** the instant Petition for Review. Petitioner is held not liable to pay the excise tax on its removals of splash colognes and body sprays with essential oil content of not more than 3% by weight and, accordingly, respondent is **ORDERED TO CEASE AND DESIST** from collecting the said excise tax on such products from petitioner.
>
> Respondent is also **ORDERED TO REFUND** or issue a tax credit certificate to petitioner in the total amount of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (₱38,561,292.43) representing erroneously paid excise taxes on non-essential

articles under Section 150 of the National Internal Revenue Code for the period January 4, 2010 to December 10, 2010.

SO ORDERED."

On October 1, 2014, this Court issued a Resolution ordering petitioner to comment on respondent's Motion for Reconsideration (Re: Amended Decision promulgated on 9 September 2014) within fifteen (15) days from notice.

On October 17, 2014, petitioner filed its Comment (to Respondent's Motion for Reconsideration of Amended Decision). As petitioner manifested that it received the Resolution ordering them to comment on October 8, 2014, petitioner had until October 23, 2014 to file its Comment. Hence, petitioner's Comment was timely filed.

Respondent's Grounds for Reconsideration

As grounds for reconsideration, respondent claims that the entire dispositive of the Amended Decision is in error and propounds the following arguments:

1. Revenue Memorandum Circular No. 17-02 (RMC 17-02) which emphasized BIR Ruling 43-2000 correctly defines "colognes" and declares null and void all previous BIR rulings pertaining thereto and that such is a valid interpretation of Section 150(b) of the 1997 NIRC;

2. RMC 17-02 and BIR Ruling 43-2000 must be accorded great respect like any other administrative issuance, they being interpretations intended to carry out the provisions of the 1997 NIRC;

3. The application of Revenue Regulations No. 8-84 (RR 8-84) is limited to the percentage taxes on cosmetic products imposed under Section 194(b) and (e) of the 1977 Tax Code which was subsequently renumbered and amended as Section 163 und Presidential Decree No. 1994 (PD 1994), and hence, RR 8-84 may not be adopted to implement Section 150(b) of the 1997 NIRC which pertains to the imposition of excise tax;

4. An amended act such as the 1997 NIRC must be construed as though the original statute had been repealed and a new and independent act in the amended form had been adopted in its stead. Therefore, the amended act should be given a construction different from that of the law prior to its amendment; and

5. By virtue of Section 29 of Executive Order No. 273 (EO 273) there was intent on the part of the legislature to repeal regulations inconsistent with EO 273 such as RR 8-84.

The arguments raised by respondent in its Motion for Reconsideration of the Amended Decision are not new. In fact, this Court previously considered them favourably when *We* penned the original Decision of May 6, 2014. However, as previously discussed, after restudying the facts and the law, gaining a broader perspective by a mutual exchange of views, and considering the facts of the case against the backdrop of the ever changing conditions of society, this Court feels that the Amended Decision correctly appreciates certain aspects of the case at bar that it overlooked in the original Decision.

Respondent's grounds for reconsideration, therefore, with the exception of certain excerpts culled from the *Associate Justice Esperanza R. Fabon-Victorino's* Dissenting Opinion[1] of the Amended Decision, have already been exhaustively studied and considered by this Court not only once -- when deliberating upon the original Decision -- but, twice, when deliberating upon the Amended Decision, as well.

As regards respondent's contention that RMC 17-02 and BIR Ruling 43-2000 correctly defines "colognes" and declares null and void all previous BIR rulings pertaining thereto, thereby being the only valid interpretation of Section 150(b) of the 1997 NIRC, this Court has already discussed at length the reasons why RR 8-84 remains to be the standing administrative issuance defining "toilet waters". The definition of toilet waters under BIR Ruling 43-2000 and RMC 17-02 is invalid, devoid of legal force and effect, and cannot supplant the definition of toilet waters under RR 8-84 because under Section 244 of the 1997 NIRC only the Secretary of Finance (SOF) can provide the definition of "toilet waters" and the details of Section 150(b) of the 1997 NIRC.

Corollary to this, the Court further went on to explain that the power of the Commissioner of Internal Revenue to interpret tax laws does not include the power to promulgate Revenue Regulations. Under Section 244 of the 1997 NIRC, the Commissioner of Internal Revenue can only recommend to the Secretary of Finance its suggestions regarding Revenue Regulations.

When all three administrative issuances (BIR Ruling 43-2000, RMC 17-02, and RR 8-84) are placed side by side with each other, we see that the source from which each kind of issuance derives its authority differs. While RMCs and BIR Rulings are made by the CIR by virtue of the power to interpret tax laws and decide tax cases granted unto her under Section 4 of the NIRC, Revenue Regulations, on the other hand, are created by virtue of Section 244 of

[1] Dissenting Opinion, promulgated September 9, 2014.

the NIRC which grants the SOF the authority to promulgate rules and regulations. As such, a BIR Ruling and a RMC cannot unilaterally overturn a Revenue Regulation for want of authority. The CIR, plainly speaking, is not granted this power which is reserved for the SOF.

As regards respondent's contention that RMC 17-02 and BIR Ruling 43-2000 must be accorded great respect like any other administrative issuance, they being interpretations intended to carry out the provisions of the 1997 NIRC, this Court does agree that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts. However, when such interpretations are in a sharp conflict with the governing statute or the Constitution and other laws, this Court cannot uphold the same.

As such, petitioner is correct in asserting that although the CIR has the power to amplify laws, rules and regulations previously issued, the CIR, through RMC 17-02 and BIR Ruling 43-2000, cannot amplify Section 150 of the NIRC or modify the existing definition of "toilet waters" under Revenue Regulation 8-84 which is an administrative regulation issued by the Secretary of Finance pursuant to his rule-making powers.

Furthermore, this Court has also previously discussed that both BIR Ruling 43-2000 and RMC 17-02 are both overbroad and disregard the intent of the law which is to tax non-essential goods or luxury items.

With respect to respondent's contention that the application of RR 8-84 is limited to the percentage taxes on cosmetic products imposed under Section 194(b) and (e) of the 1977 Tax Code which was subsequently renumbered and amended as Section 163 under PD 1994, and hence, RR 8-84 may not be adopted to implement Section 150(b) of the 1997 NIRC which pertains to the imposition of excise tax, this Court has previously emphasized the difference between the type of tax imposed and the definition of the taxable item. While the various laws subsequently changed the type of tax that would be imposed on "toilet waters", there has been no change in the definition of the taxable item itself.

The definition of toilet waters under RR 8-84 continues to be effective considering that the essential wordings, "perfumes" and "toilet waters", remained the same despite several amendments to the NIRC and neither Congress nor the Secretary of Finance has provided a new definition of "toilet waters". The definition of the term "cologne" lifted from Hawley's Condensed Chemical Dictionary cited in BIR Ruling 43-2000 and published in RMC 17-02 cannot override legislation by the legislature or the quasi-legislation by the SOF. Ultimately, the definition of "toilet waters" under RR 8-84 must still be followed including the requirement for essential oil content of more than 3% by weight.

Respondent's contention that an amended act such as the 1997 NIRC must be construed differently from the law prior to its amendment has also been discussed in the Amended Decision. This Court believes that under the rules of statutory construction such as the principle of legislative approval of administrative interpretation by reenactment, the definition of toilet waters under RR 8-84 still applies in construing Section 150(b) of the 1997 NIRC.

Finally, respondent argues that by virtue of Section 29 of Executive Order No. 273 (EO 273) there was intent on the part of the legislature to repeal regulations inconsistent with EO 273 such as RR 8-84. Again, although there was a change in the type of tax; there was no change in the type of item subject to the tax. Hence, the definition of "toilet waters" in RR 8-84 has not been repealed given that the definition, by itself, was not inconsistent with EO 273. EO 273 may have changed the tax imposed on toilet waters, but despite being subject to a different kind of tax, this did not change the definition of "toilet waters" as delineated by RR 8-84 because it was not inconsistent with EO 273.

WHEREFORE, considering all of the foregoing premises, respondent's Motion for Reconsideration of the Amended Decision promulgated on September 9, 2014 is **DENIED** for lack of merit.

SO ORDERED.

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice