REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

C.T.A. Case No. 7635

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:

OCT 5 2011
ABFernand 4:05p.m.

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AMENDED DECISION

COTANGCO-MANALASTAS, J.:

For resolution is petitioner's Motion for Reconsideration filed on June 7, 2011 with respondent's comment, of the following issues:

I. Respondent has explicitly and implicitly admitted that Revenue Regulation No. 8-84 continues to be binding and effective.

II. Executive Order No. 273 only amended Section 163 of the 1977 National Internal Revenue Code and did not repeal Section 163 thereof or its implementing issuance, Revenue Regulation No. 8-84, in its entirety.

III. The definition of "toilet waters" under RR 8-84 is not inconsistent with the amendments introduced by Executive Order No. 273. Principles of Statutory Construction do not favor the Honorable Court's ruling in its Amended Decision.

IV. The enumeration in Section 150 of the 1997 NIRC limits the items subject to the Excise Taxes; to expand the definition of "toilet waters" will amount to amending Section 150. a

V. RMC 17-02 publishing BIR Ruling 43-00 is invalid because only the Secretary of Finance can provide the details of what is "toilet waters":

VI. Whether Revenue Regulations No. 8-84 was repealed by Executive Order No. 273 was not in issue and therefore the Honorable Court's ruling thereon is invalid.[1]

We will discuss the last issue first, as this is central to the resolution of the instant motion for reconsideration.

Petitioner argues that the issue of whether Revenue Regulations (RR) No. 8-84 was repealed by Executive Order No. 273 was not raised in the petition. An examination of respondent's comment and memorandum reveals that respondent has always maintained the position that the questioned Revenue Memorandum Circular (RMC) No. 17-02 was an interpretation of Section 150(b) of the 1997 Tax Code, as amended, without any reference to RR No. 8-84.

Indeed, while the Court may validly consider issues and facts not within the pleadings to arrive at a full and complete disposition of the case[2], the same circumstances do not arise in the instant case. The repeal of RR No. 8-84 was not raised as an issue nor is it central to the instant case as to necessitate a ruling upon it. Therefore, the Court's ruling on the repeal of RR No. 8-84 is invalid.

The foregoing disposes the need to discuss the first three issues. The fourth and fifth issues can be distilled into the discussion of the effect of respondent's RMC No. 17-02 on RR No. 8-84.

The issues have been limited to whether RMC No. 17-02 issued by the respondent validly interpreted Section 150(b) of the 1997 Tax Code, as amended, in a

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[1] *Rollo*, C.T.A. Case No. 7635, pp. 1029-1030.
[2] *Lydia Sumipat, et al. vs. Brigido Banga, et al.*, G. R. No. 155810, August 13, 2004, citing *Catholic Bishop of Balanga vs. Court of Appeals*, G.R. No. 112519, November 14, 1996.

relation to RR No. 8-84.[3] Or, as stated by petitioner, whether respondent may validly amend RR No. 8-84 by issuing BIR Ruling No. 43-2000 and, subsequently, RMC No. 17-02.[4]

Revenue Regulations No. 8-84 not having been repealed, the definition of "*toilet waters*" is unchanged and continues to be "*scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils i.e. more than 3% by weight.*"[5] As discussed in the original *Decision*:

> "The abbreviation "*i.e.*" or "*id est*" literally means "*that is*". Legal writers usually write "i.e." to inform the reader that what follows is an explanation of what had just been stated. This should not be confused with the abbreviation "*e.g.*" or "*exempli gratia*" which literally means "for example". Thus, the clause "*more than 3% by weight*" is not a mere example of the essential oil content but is actually a more specific description of the alcoholic or non-alcoholic preparation containing essential oils. The scented alcoholic or non-alcoholic preparations must have essential oil content of "*more than 3% by weight*" in order to be considered as toilet waters under the regulations."[6] (*Citations omitted*)

Respondent's interpretation of Section 150(b) of the 1997 Tax Code, as amended, should have taken into consideration the existing regulations under RR No. 8-84. This, respondent failed to do when it issued BIR Ruling No. 43-2000 and RMC No. 17-02. While the new definition of the BIR under its ruling and RMC No. 17-02 appears to be an interpretation of Section 150(b) of the 1997 Tax Code, as amended; and the same ruling and RMC are not directly contrary to the definition of "toilet waters" under RR No. 8-84, it appears that respondent failed to consider the specific requirement for "more than 3% essential oil content by weight" contained in RR No. 8-84.[7]

[3] *Rollo*, p. 1094.
[4] *Rollo*, p. 866.
[5] Revenue Regulations No. 8-84, Section 2(e).
[6] *Rollo*, pp. 948-949.
[7] *Ibid.*

Clearly, the definition of "toilet waters" under the Regulation must still be followed including the requirement for essential oil content of more than 3% by weight. As such, petitioner's products which have less than 3% essential oil content by weight should not be subject to the 20% excise tax under Section 150(b) of the 1997 Tax Code, as amended.[8]

As discussed in the original *Decision*, upon examination of the evidence and testimony presented, the Court found that the amount of P48,817,178.85 was refundable as erroneously paid excise taxes for the period May 17, 2005 to February 20, 2007.

In addition to its claim for refund or issuance of tax credit certificate, petitioner prayed that respondent be ordered to cease and desist from collecting the said excise tax from petitioner.[9] However, this Court finds no basis to issue such order.

Nowhere in the records of the case does it appear that respondent has assessed petitioner for the 20% excise tax on the subject products with 3% or less essential oil content, what was shown was only that respondent received the erroneous payment of the 20% excise taxes on said products upon removal from the place of production. This is borne out by the following statement by petitioner's witness, to wit:

> "Q14. If the industry practice was to pay the excise tax only on products containing essential oil of more than 3% by weight, why did the Company pay the excise tax?
>
> A14. When the Company's computerized production and inventory system was designed the demand for splash colognes and body sprays was still small so the Company's production of these products was very minimal. The Company decided to program its computerized production system to automatically compute a 20% excise tax on all scented preparations. Thereafter, the demand and production of splash colognes and body sprays increased but the

[8] *Rollo*, p. 950.
[9] *Rollo*, p. 909 and p. 977.

> system still automatically computed a 20% excise tax on the products with less than 3% essential oil content because the program was not modified."[10]

WHEREFORE, finding merit in petitioner's Motion for Reconsideration, the same is hereby **GRANTED**. Accordingly, the Amended Decision dated May 16, 2011 is **SET ASIDE**, and the original Decision dated January 20, 2011 is hereby **REINSTATED**. Respondent is hereby **ORDERED** to refund or issue a tax credit certificate to petitioner in the amount of P48,817,178.85, representing erroneously paid excise taxes on products with essential oil content of 3% or less for the period May 17, 2005 to February 20, 2007.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

See attached Dissenting Opinion
(with Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

[10] *Exhibit A*, Affidavit in Lieu of Direct Examination of Mr. Shernan Balilo, p. 3.

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

AVON PRODUCTS MANUFACTURING, INC., *Petitioner,*	C.T.A. CASE NO. 7635
	Members:
-versus-	BAUTISTA, *Chairperson,* PALANCA-ENRIQUEZ, *and* MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** OCT 5 2011

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DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect to my esteemed colleagues, after a thorough and careful study of the facts of the case, as well as the applicable laws and jurisprudence, I vote to maintain our Amended Decision dated May 16, 2011.

The Majority ruled, as follows:

> "***Respondent's interpretation of Section 150 (b) of the 1997 Tax Code, as amended, should have taken into consideration the existing regulations under RR No. 8-84.*** This, respondent failed to do when it issued BIR Ruling No. 43-2000 and RMC No. 17-02. While the new definition of the BIR under its ruling and RMC No. 17-02 appears to be an interpretation of Section 150 (b) of the 1997 Tax Code, as amended; and the same ruling and RMC are not directly

> contrary to the definition of "toilet waters" under RR No. 8-84, it appears that respondent failed to consider the specific requirement for "more than 3% essential oil content by weight" contained in RR No. 8-84."

I cannot agree. A careful reading of *Revenue Regulations No. 8-84* shows that it does not implement *Section 150 (b) of the NIRC of 1997, as amended. RR No. 8-84* clearly implements *Section 194 of the 1977 Tax Code*, which imposes sales tax (percentage tax), while *Section 150 of the NIRC of 1997, as amended*, imposes excise tax. Therefore, *RR No. 8-84* cannot be applied to *Section 150* as this Section pertains to excise tax. It must be emphasized that the law or *Section 194* of the old Tax Code, which *RR No. 8-84* seeks to implement, had already been repealed with the enactment of *Executive Order No. 273.* Consequently, we cannot single out a certain portion of *RR No. 8-84* and apply the same to *Section 150 of the NIRC of 1997, as amended.*

As previously ruled by this Court in the Amended Decision dated May 16, 2011, *Section 150 (b) of the NIRC of 1997, as amended,* does not provide for any distinction on any kind of perfume or toilet waters, which are subject to excise tax. Furthermore, in *BIR Ruling No. 43-2000*, the BIR already issued a ruling regarding the definition of "toilet waters". The BIR likewise issued *Revenue Memorandum Circular No. 17-02* interpreting the provision of *Section 150 of the NIRC of 1997, as amended.* Such issuance was made pursuant to the power of the Commissioner under *Section 245 of the NIRC of 1997, as amended.*

Well settled is the rule that tax refunds are in the nature of tax exemptions. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken (*Silkair (Singapore) Pte., Ltd. vs. Commissioner of Internal Revenue, 613 SCRA 638*).

For all the foregoing, I vote to deny petitioner Avon Products Manufacturing, Inc.'s "Motion for Reconsideration (of Amended Decision dated 16 May 2011)" for lack of merit.

OLGA PALANCA-ENRIQUEZ
Associate Justice