REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVON PRODUCTS MANUFACTURING, INC., *Petitioner,*	**CTA EB CASE No. 847** (CTA CASE No. 7873)
	Members:
-versus-	CASTAÑEDA, JR., Acting PJ, BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 18 2013

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DECISION

***MINDARO-GRULLA, J.*:**

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4,* in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),*[1] *as amended,* of the Decision dated

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[1] Rule 4, SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

August 16, 2011[2] and the Resolution dated November 03, 2011[3] rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

<u>Decision dated August 16, 2011:</u>

"**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

<u>Resolution dated November 03, 2011:</u>

"**WHEREFORE,** the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED."

The facts of the case as recited by the Second Division in Its Decision[4] read as follows:

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(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

x x x x x x x x x

Rule 8, SEC. 4. *Where to appeal; mode of appeal.* – x x x

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

x x x x x x x x x

[2] Penned by Associate Justice Juanito C. Castañeda Jr., concurred in by Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla, *En Banc* Docket, pp. 55-67.
[3] Penned by Associate Justice Juanito C. Castañeda Jr., concurred in by Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla, *En Banc* Docket, pp. 69-78.
[4] *Supra* note 2.

"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 the Calamba Premiere Industrial Park, Barangay Batino, Calamba, Laguna. Petitioner is engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet waters, splash colognes, and body sprays.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with the authority to decide, approve and grant tax refunds. She holds office at the BIR National Office Building, Diliman, Quezon City.

On February 11, 2009, petitioner filed a written claim for refund of erroneously paid excise taxes with respondent's Large Taxpayers Service-Excise through a letter dated February 9, 2009. Petitioner asserted that its splash colognes and body sprays are not subject to the twenty percent (20%) excise tax on non-essential goods imposed under Section 150 of the National Internal Revenue Code (NIRC), considering that these products do not contain more than three percent (3%) by weight of essential oils; hence, cannot be considered "toilet waters" as the term is defined under Revenue Regulations No. 8-84, otherwise known as the "Cosmetic Products Regulations". In view thereof, petitioner requested a refund of overpaid excise taxes in the total amount of P37,880,502.74, allegedly representing the 20% excise tax erroneously paid by petitioner on removals of splash colognes and body sprays containing essential oils of 3% or less by weight.

Respondent failed to resolve petitioner's written claim for refund, prompting petitioner to file the instant Petition for Review on February 16, 2009.

Respondent filed her Answer on March 24, 2009, and interposed the following Special and Affirmative Defenses:

> "6. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 7. Petitioner's claim for refund has no legal basis. As manufacturer of perfume and toilet waters, petitioner is subject to excise tax

pursuant to Section 150 (b) of the National Internal Revenue Code of 1997 which provides thus:

> 'SEC. 150. - **Non-Essential Goods**. - There shall be levied , assessed and collected a tax equivalent to twenty percent (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:
>
> (a) XXX
> (b) Perfumes and toilet waters;'

8. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).

9. The amount of Thirty Seven Million Eight Hundred Eighty Thousand Five Hundred Two Pesos and 74/100 (P37,880,502.74) being claimed by petitioner as alleged erroneously paid excise tax for the period February 20, 2007 to December 31, 2007 is not properly documented.

10. Furthermore, 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. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670).'**

11. 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 as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."**

On August 16, 2011, this Court's Second Division issued the assailed Decision[5] denying the Petition on the ground that a close scrutiny of the provisions of Revenue Regulation (RR) 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 (PD) No. 1994), specifically on percentage taxes on cosmetic products. Since the said Revenue Regulation deals with percentage tax (sales tax) on cosmetic products, it 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.

The Second Division ruled that there was a substantial amendment in the provision of Section 194 of the old Tax Code, by virtue of Executive Order (EO) No. 273,[6] which shows the intent of the legislature to repeal the said provision and replace it with Section 150 of the present Tax Code. Since Section 194 of the old Tax Code had already been substantially amended and repealed by Section 150 of the National Internal Revenue Code (NIRC) of 1997, RR No. 8-84, which depended upon the former, is now deemed to be not applicable.

Subsequently, respondent in BIR Ruling No. 43-2000, dated September 15, 2000, which was thereafter published in Revenue Memorandum Circular (RMC) 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. Thus:

[5] *Ibid.*
[6] Adopting A Value-Added Tax, Amending For This Purpose Certain Provisions Of The National Internal Revenue Code, And For Other Purposes

> 'Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave, lotion, or deodorant.' (Hawley's Condensed Chemical Dictionary, 11th ed.)

Since 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", such was given great weight by this Court's Second Division and applied the above-mentioned definition of "toilet waters" in petitioner's present case. 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.

Petitioner's Motion for Reconsideration was denied for lack of merit[7], hence, this Petition.[8]

The issue is whether petitioner is entitled to a refund of its alleged erroneously paid excise tax in the amount of Thirty Seven Million Eight Hundred Eighty Thousand Five Hundred Two Pesos and 74/100 (₱37,880,502.74).

We rule in the negative.

Petitioner asserts estoppel on the part of respondent when the latter admitted in the Joint Stipulation of Facts and Issues[9] that "[t]he definition of the term "toilet waters" under Revenue Regulations No. 8-84 otherwise known as the Cosmetic Products Regulations has not been repealed.[10] To state that the government is not estopped from collecting taxes, in the instant case, from collecting the excise tax on petitioner's splash colognes and body sprays, would cause it prejudice.

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[7] *Supra* note 3.
[8] *En Banc* docket, pp. 7-53.
[9] *En Banc* docket, pp. 249-252.
[10] *Ibid.,* p. 250.

It is noted that respondent's agents caused the admission in the Joint Stipulation of Facts and Issues. However, the well-entrenched principle is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. We recognize that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[11]

This Court reiterates the legal principle that:

> "[E]stoppel generally finds no application against the State when it acts to rectify mistakes, errors, irregularities, or illegal acts, of its officials and agents, irrespective of rank. This ensures efficient conduct of the affairs of the State without any hindrance on the part of the government from implementing laws and regulations, despite prior mistakes or even illegal acts of its agents shackling government operations and allowing others, some by malice, to profit from official error or misbehavior. **The rule holds true even if the rectification prejudices parties who had meanwhile received benefits.**[12]

This principle is particularly true when it comes to the collection of taxes. As we stated in *Intra-Strata Assurance Corporation v. Republic of the Philippines*:

> It has long been a settled rule that the government is not bound by the errors committed by its agents. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers. **This is particularly true in the collection of legitimate taxes due where the collection has to be made whether or not**

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[11] *Commissioner of Internal Revenue vs. Petron Corporation*, G.R. No. 185568, March 21, 2012, citing *Secretary of Finance vs. Oro Maura Shipping Lines*, G.R. No. 156946, July 15, 2009.

[12] *Secretary of Finance vs. Oro, supra,* citing *Kapisanan ng Manggagawa sa Government Service Insurance System vs. COA*, G.R. No. 150769, August 31, 2004, 437 SCRA 371; *Baybay Water District vs. COA*, G.R. Nos. 147248-49, January 23, 2002, 374 SCRA 482.

> **there is error, complicity, or plain neglect on the part of the collecting agents**. In *CIR v. CTA*, we pointedly said:
>
> > It is axiomatic that the government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. **Thus, it should be collected without unnecessary hindrance or delay**."[13] [Emphasis in the original.]

Even on the argument that estoppel will not lie as an exception when it would cause prejudice to petitioner, when no justifiable reason to apply the exception to the general rule, the general rule stays applicable.

Petitioner asserts further that since the issue of whether RR No. 8-84 has been repealed by EO No. 273 was not raised before this Court's Second Division, the finding before the Division should be declared invalid.

The Revised Rules of this Court[14], as amended, expressly provides that in deciding a case, the Court of Tax Appeals may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. In the instant case, it is of necessity to determine whether the definition of "toilet waters" under RR No. 8-84 is still applicable to petitioner to consider whether it is liable to pay the excise tax imposed by Section 150(b) of the 1997 NIRC, hence, the need to determine if any repeal has been made on the said Revenue Regulation.

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[13] *Ibid.*
[14] Rule 14, Sec. 1, 2005 RRCTA, as amended.

Petitioner contends that EO No. 273 only amended Section 194 of the old Tax Code, which gave life to RR No. 8-84. Since there was no repeal, RR No. 8-84 is still applicable.

RR No. 8-84, in relation to Section 194 of the old Tax Code, states:

> "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:**
>
> > 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 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 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." [Emphasis supplied]

It is 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 Section 150(b) by EO No. 273. Section 150 of the present Tax Code provides:

> "SEC. 150. - Non-Essential Goods. - There shall be levied, assessed and collected a tax equivalent to twenty percent (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:
>
> (a) XXX
> (b) Perfumes and toilet waters;"

It is therefore plain beyond doubt that Section 150 of the present Code is incompatible with the provisions of Section 194 of the old Tax Code, which pertains to percentage tax (sales tax) on cosmetic products, a tax entirely different to what is imposed by the present provision.

In interpreting a provision, the Court must look into the history of times, examine the state of things existing when the subject laws were framed.[15] Whether or not an Act is impliedly repealed is a question of legislative intent to be ascertained by examination of both statutes, and in light of reason, purpose and object of both.[16] The primary purpose for which EO No. 273 was enacted is to replace the old percentage taxes with value added tax (VAT) in accordance

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[15] *De Los Santos vs. Mallare et al* 87 Phil 289.
[16] *US vs. Tantoco,* 34 Phil 772.

with the "whereas clause" provided under the said order,[17] hence:

> "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."[18]

In construing the law, the legislative policy or intent behind the enactment must be ascertained. Where the legislative policy is so strong, as shown not only by the provisions of the law under examination but also by the amendatory acts thereto, a construction to carry out the evident policy of the law must be undertaken.[19] If indeed, the legislature intended to apply the definition of 'toilet waters' under RR No. 8-84 to Section 150 of the present Tax

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ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS 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;

xxx xxx xxx

18 *Supra* note 2, pp. 62-63.
19 *Martin,* Statutory Construction, 1972, citing *Tinio, et. al. vs. Frances et. al.*, 98 Phil 32.

Code, it could have easily included such definition in the law itself, or through a Revenue Regulation that would implement the said amended provision.

The alteration in the amendatory act cannot mean but a change of the intent on the part of the legislature to apply a kind of tax different from what was previously imposed. That the legislature intended Section 150 of the 1997 NIRC to completely amend or replace Section 194 of the old Tax Code, in its entirety, is evident from the specific provision of EO No. 273, that Section 194 (subsequently renumbered as Section 163 by PD No. 1994) was further amended *to read as follows,* thus:

> "Sec. 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;"
> >
> > [Emphasis supplied]

It is a rule on statutory construction that:

> "The intent of the legislature to set out the original act of a section as amended is most commonly indicated by a statement in the amendatory act that the original law is amended *'to read as follows.'* The legislature thereby declares that the new statute is a substitute for the original act or section. Only those provisions of the original act or section repeated in the amendment are retained. (1 Sutherland Statutory Construction, 3rd Ed., pp. 420-421.)

> When the amendatory act purports to set out the original act or section as amended, **all matters in the act or section that are omitted in the amendment are considered repealed**. (U. S. vs. One Ice Box, 37 F. [2d] 120 [N. D. Ill. 1930]; Mitchell vs. Walden Motor Co., 235 Ala. 34, 177 So 151 [1936]; Buckman vs. Board of Directors, 188 Ark. 396, 66 Sw [2d] 619 (1934), and others.)"[20] [Emphasis supplied]

The definition of "toilet waters" under RR No. 8-84 being no longer applicable, considering that Section 194 of the old Tax Code, has been repealed, the question arises as to what is the present definition of "toilet waters" that should apply to petitioner. Since the present NIRC does not provide for any definition of "toilet waters," as applicable to Section 150(b) thereof, this Court is obliged to resort to any other laws, rulings or regulations, as opinions and rulings of officials of the government called upon to execute or implement laws, command much respect and weight.[21]

As earlier mentioned, in BIR Ruling No. 43-2000, dated September 15, 2000, which was subsequently published in RMC No. 17-02, respondent 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.

Respondent's authority to interpret provisions of tax laws is couched in Section 4 of the 1997 NIRC, which provides that, "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." All 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, reversed, modified, or

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[20] Cited in the case of *Parras vs. Land Registration Commission*, G.R. No. L-16011, July 26, 1960.
[21] *Tan vs. Municipality of Pagbilao*, Quezon 7 SCRA 887; *Regalado vs. Yulo* 61 Phil 173; *Grapilon vs. Municipal Council of Carigara*, L-12347, May 30, 1961.

superseded by the Secretary of Finance.[22] Hence, unless and until the Secretary of Finance reverses or modifies the definition made by respondent of 'toilet waters' as applied to Section 150 of the 1997 NIRC, such shall be considered valid with full force and effect.

Applying now the foregoing, since 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, its 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.

Moreover, even if we allow petitioner's contention that RR No. 8-84 still subsists, RMC No. 17-02 would still be given weight in the implementation of Section 150 of the 1997 Tax Code. On the assumption that both RR No. 8-84 and RMC No. 17-02 are of equal theoretical application in the instant case, where the provisions of these two are of contrary tenor, the former being a provision specifically designed for the implementation of Section 194 of the old Tax Code, imposing percentage tax, while the latter being a provision applicable to Section 150 of the present NIRC, the former must yield to the latter.

Even if BIR Ruling No. 43-2000 and RMC No. 17-02 are inexistent, this Court would still include petitioner's products under the ambit of Section 150(b) of the present Tax Code simply because the products are considered as perfumes and toilet waters, without any distinction or whatsoever dictated by the said provision, considering the definition given to "toilet waters" under RR No. 8-84 is not applicable. Although Courts should not totally disregard executive construction except for the most cogent reasons, the final construction of statutes rests with the Courts and not with the Executive.[23] Where a statute contains no limitations in its operation or scope, courts should not engraft any.[24] To do

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[22] Section 4, Revenue Administrative Order No. 2-2001.
[23] *Smith vs. Higginbottom*, 48 A. 2d., 754.
[24] *HSBC vs. Peters*, 116 Phil. 284 (1910)

such thing would be to do violence to the language of the law and to invade the legislative sphere.[25]

Since it is established that petitioner is taxable for its toilet waters, its claim for refund must be construed strictly against it. In essence, petitioner is claiming for a tax exemption as its contention is to be exempted from excise tax imposed by Section 150 of the present Tax Code by virtue of the definition of "toilet waters" under RR No. 8-84. Unfortunately, petitioner was not able to prove entitlement to its claim for exemption.

Taxes are what we pay for civilized society,[26] or are the lifeblood of the nation. The law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[27] A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.[28] Elsewise stated, taxation is the rule, exemption therefrom is the exception.[29] The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed.[30]

He who claims for an exemption from his share of the common burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken.[31] For exemptions from taxation are not favored in law, nor are they presumed.

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[25] *Republic Flour Mills, Inc., vs. Commissioner of Customs*, G.R. No. 28463, May 31, 1971, 39 SCRA 268; *Crisologo vs. Macadaeg*, 94 Phil. 862 (1954).
[26] Justice Holmes in his dissent in *Compania General vs. Collector of Internal Revenue*, 275 U.S. 87, 100 [1927].
[27] *Agpalo, Ruben E.*, Statutory Construction [1990 ed.], p. 217; *Sands, Dallas C.*, Statutes and Statutory Construction, vol. 3 [1974], p. 217.
[28] *Sinco,* Philippine Political Law [1954], p. 587.
[29] *Sands, supra* note 27, p. 207.
[30] *Mactan Cebu International Airport Authority vs. Marcos*, G.R. No. 120082 September 11, 1996; *Commissioner of Internal Revenue vs. Mitsubishi Metal Corporation,* 181 SCRA 214, 224 (1990).
[31] *Surigao Consolidated Mining Co. Inc., vs. Commissioner of Internal Revenue*, G.R. No. 14878, December 26, 1963, 9 SCRA 728.

They must be expressed in the clearest and most unambiguous language and not left to mere implications.[32]

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

SO ORDERED.

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

WE CONCUR:

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(with Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[32] *Jai Alai Corporations vs. Court of Tax Appeals*, 106 Phil. 345 (1959); *Commissioner of Internal Revenue vs. Guerrero,* G.R. No. 28812, September 22, 1967; *Commissioner of Internal Revenue vs. Visayan Electric Co.,* G.R. No. 22611, May 27, 1968.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer for the opinion of the Court *En Banc.*

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVON PRODUCTS MANUFACTURING, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 847
(CTA Case No. 7873)

Present:

Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAR 18 2013 CwApolinario 1:30 p.m.

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DISSENTING OPINION

COTANGCO-MANALASTAS, J.:

With due respect, I dissent from the opinion of the majority and hold that the definition of toilet waters under Revenue Regulations No. 8-84 (RR 8-84) is still applicable.

The issues hinge on the definition of toilet waters under RR 8-84 and its applicability to Section 150 of the 1997 NIRC with respect to the toilet waters subject to the excise tax. The 20% excise tax on non-essential goods is imposed under Section 150 of the 1997 NIRC, which provides:

> "**Sec. 150. Non-essential Goods**. There shall be levied, assessed and collected a tax equivalent to twenty-percent (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
> (b) Perfumes and toilet waters;
> xxx"

While the current law has no supporting Revenue Regulations which provide for the definition of perfumes and toilet waters, it must be pointed out that RR 8-84 was previously issued dealing specifically with cosmetic products.

Under RR 8-84, "toilet waters" is defined as:

> "Section 2. Articles taxable as cosmetic products. The articles defined as follows shall be taxable as cosmetic products:
>
> 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: Lavander water, Eau de Cologne, Eau de Toilette."

RR 8-84 was issued in relation to the then Section 194 of the 1977 Tax Code, which enumerated the cosmetic products as "perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders."[1]

The Tax Code underwent several amendments and its provisions were also renumbered. But throughout these changes, the essential wording of the provision dealing with these cosmetic products has remained the same. It was only from the issuance of Executive Order No. 273 (EO 273) wherein the products were limited to two, which are "perfumes and toilet waters", and now classified as non-essential goods subject to excise tax.

An examination of the 1977 and 1997 Tax Code shows that there has been no great change in the wording of the law. The 1977 Tax Code, in Section 194, enumerated several products as being subject to the sales tax then imposed. EO 273 then reduced the products to only two, perfumes and toilet waters; which were then subjected to excise tax. This latter provision has been carried on up to the present 1997 Tax Code. Despite the change in the tax imposed and the reduction of the products enumerated, it is notable that the same terms used in the old provision were also used in the new provision. These are (a) perfumes, and (b) toilet waters.

As early as 1984, RR 8-84 has already provided the definition of toilet waters. This definition has not been changed or amended. When the provisions of the Tax Code were renumbered and amended, the lawmakers are presumed to know all the existing laws with respect to the subject matter. Thus, they are presumed to know the meaning attached to the term "toilet waters" as provided under RR 8-84. And yet, the term "toilet waters" is still used in the law's enumeration of products subject to tax. Thus, I believe that

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[1] 1977 Tax Code, Section 194(b).

there is no basis to rule that the definition of toilet waters has changed, merely because the provision has been amended. Therefore, the definition of "toilet waters" as "containing essential oils of not more than 3% by weight" has been carried over to the 1997 Tax Code's use of the phrase "toilet waters" found in Section 150 thereof.

Respondent's issuance of BIR Ruling No. 043-2000, and its subsequent publication in Revenue Memorandum Circular No. 17-02, cannot be given effect as the aforementioned issuances expands the definition of "toilet waters", and do not conform to the specific definition under RR 8-84. Clearly, the definition of "toilet waters" under RR 8-84 must still be followed including the requirement of 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.

WHEREFORE, I vote that the instant Petition for Review be GRANTED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice