



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

**AVON PRODUCTS
 MANUFACTURING, INC.,**
 Petitioner,

G.R. No. 222480

Present:

BERSAMIN*, J.,
Acting Chairperson,
 DEL CASTILLO,**
 JARDELEZA,
 TIJAM, and
 GESMUNDO, JJ.***

- versus -

**COMMISSIONER OF INTERNAL
 REVENUE,**
 Respondent.

Promulgated:

NOV 07 2018

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DECISION

TIJAM, J.:

Before Us is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by petitioner Avon Products Manufacturing, Inc. (Avon) assailing the Decision² dated March 16, 2015 and the Resolution³ dated January 15, 2016 of the Court of Tax Appeals (CTA) En Banc in CTA EB No. 1062 (CTA Case No. 8174), affirming the deficiency assessment of excise tax issued to Avon for the total shortage of 21,163.48 liters of

* Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

** On official business.

*** Designated Additional Member per Special Order No. 2607-A dated October 24, 2018; On official leave.

¹ *Rollo*, pp. 12-59.

² Penned by Associate Justice Erlinda P. Uy with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito M. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringis-Liban, *concurring*. Id. at 62-89.

³ Id. at 90-100.

denatured ethyl alcohol, which evaporated during transit from its supplier to Avon's warehouse in Calamba, Laguna.

The antecedent facts

Avon is a manufacturer of perfumes, toilet waters, splash colognes and body sprays. It uses denatured alcohol as a raw ingredient in the manufacture of the above products.⁴

The Bureau of Internal Revenue (BIR) issued a Permit to Buy/Use Denatured Alcohol⁵ to Avon dated January 7, 2008. The permit provides that as long as denatured alcohol is used solely in the production of the latter's products, it will be exempted from excise tax. However, the BIR permit imposed a condition⁶ that in the event the volume of denatured alcohol purchased by Avon from its suppliers is more than or less than the volume of denatured alcohol actually received by Avon, the latter will be assessed excise tax due on the difference.

From January to December 2008, Avon made various purchases of denatured alcohol from its suppliers amounting to 1,309,000 liters.⁷ In accordance with Section 134⁸ of the National Internal Revenue Code (NIRC) and the BIR Permit, such purchases were not subjected to excise tax.

However, during transit, marginal quantities of the purchased denatured alcohol evaporated. As such, the BIR issued a Formal Letter of Demand⁹ finding Avon liable for deficiency excise tax on distilled spirits¹⁰

⁴ Id. at 15 and 64.

⁵ Id. at 296-299.

⁶ Condition No. 3 – All purchases of denatured alcohol from the distiller/dealer shall be supported by an Official Delivery Invoice (ODI) issued to you. In case of purchases from the dealer/trader, the ODI shall be issued to the name of the dealer with a notation that such delivery is for your account. The said ODI shall be signed and attested to by the Revenue Officer on-Premise (ROOP) assigned at the source distillery plant. In addition, the corresponding BIR-registered Sales Invoice and Delivery Receipt shall accompany each and every shipment until it reaches your production premises.

In the event that the volume of purchased denatured alcohol actually received is more than or less than the volume reflected in the aforementioned accompanying documents, the excise tax due on the differences shall be assessed, inclusive of all applicable penalties; Id. at 296.

⁷ Id. at 16.

⁸ 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 automotive 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.

⁹ *Rollo*, pp. 283-284.

¹⁰ Section 141. *Distilled Spirits.* - On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:

on the evaporated denatured alcohol in the amount of Php1,135,500.85.

The BIR alleged that from the 1,309,000 liters of denatured alcohol purchased by Avon from January to December 2008, there were shortages of 21,163.48 liters.

Avon protested the assessment. The BIR issued a Final Decision on Disputed Assessment (FDDA) dated September 1, 2010¹¹ denying Avon's protest. The latter filed a Petition for Review before the CTA only assailing the deficiency assessment on the excise tax over the shortages of 21,163.48 liters in the amount of Php738,580.13.¹²

The CTA Second Division in its Decision¹³ dated May 16, 2013 ruled in favor of the Commissioner of Internal Revenue (CIR), thus:

WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, the deficiency excise tax assessment issued by respondent against petitioner on the total shortage of 21,163.4[8] liters relating to deliveries of denatured ethyl alcohol from January to December 2008 is hereby upheld but in the modified amount of ₱628,948.21, 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 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 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane, provided such materials are produced commercially in the country where they are processed into distilled spirits, per proof liter, Eight pesos (P8.00): Provided, That if produced in a pot still or other similar primary distilling apparatus by a distiller producing not more than one hundred (100) liters a day, containing not more than fifty percent (50%) of alcohol by volume, per proof liter, Four pesos (P4.00);

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¹¹ Rollo, pp. 292-293.

¹² Id. at 17.

¹³ Id. at 165-190.

SO ORDERED.¹⁴

Avon's motion for reconsideration was likewise denied¹⁵ by the CTA Second Division.

Avon elevated the case to the CTA En Banc, the latter however denied¹⁶ Avon's petition and affirmed the decision of the CTA Second Division in a Decision dated March 16, 2015. The motion for reconsideration of Avon suffered the same fate and was denied¹⁷ by the CTA En Banc in a Resolution dated January 15, 2016.

Hence, this petition raising the following assignment of errors:

A.

THE CTA SERIOUSLY ERRED [THAT] THE PETITIONER FAILED TO PROVE THAT DENATURED ALCOHOL IS SUBJECT OF THE ASSESSMENT AND THAT IT IS EXEMPT FROM EXCISE TAX UNDER SECTION 141 OF THE NIRC.

B.

THE CTA SERIOUSLY ERRED IN RULING THAT RR 3-2006 APPLIES TO THE ASSESSMENT FOR THE EVAPORATED DENATURED ALCOHOL.

C.

THE CTA SERIOUSLY ERRED IN RULING THAT THE *LA TONDEÑA* CASE IS NOT APPLICABLE.

D.

THE CTA SERIOUSLY ERRED WHEN IT IGNORED AND FAILED TO RULE THAT THE CONDITION IN THE BIR PERMIT IS CONTRARY TO THE NIRC.

E.

THE CTA DECISION AND RESOLUTION RUN COUNTER TO THE PRINCIPLE THAT EXCISE TAX UNDER SECTION 141 OF THE NIRC ONLY BE IMPOSED ON A SPECIFIC TAXABLE ARTICLE.

F.

THE CTA SERIOUSLY ERRED IN ITS SIMULTANEOUS IMPOSITION OF [DEFICIENCY] AND DELINQUENCY INTEREST AS THE SAME IS EXCESSIVE AND UNCONSCIONABLE.¹⁸

¹⁴ Id. at 189.

¹⁵ Resolution dated August 15, 2013; id. at 192-198.

¹⁶ Id. at 88.

¹⁷ Id. at 90-100.

¹⁸ Id. at 24-25.

Ultimately, the issue for Our resolution is whether Avon should be assessed deficiency excise tax over the shortages of denatured alcohol which evaporated during transit before its processing, rectification or distillation.

Avon's allegations

Avon claimed that Revenue Regulations (RR) No. 3-2006¹⁹ is not applicable to the deficiency assessment for the evaporated denatured alcohol. The CTA erroneously applied the rules meant for distilled spirits to a completely different and tax-exempt article (denatured alcohol). Section 22²⁰ of RR No. 3-2006 applies to a distiller and to distilled spirits not to denatured alcohol.²¹ Avon was not engaged in the business of producing distilled spirits. Hence, the denatured alcohol it purchased and stored should continue to be exempted from excise tax unless it is reprocessed into a distilled spirit. Thus, there was no legal basis to arbitrarily extend its application to denatured alcohol and to Avon, who is not a distiller.²²

Further, Avon contended that the CTA erred in not applying the case of *La Tondeña Inc., v. Collector of Internal Revenue, et. al.*,²³ where this Court held that “until the spirits requiring rectification has been converted into a finished product, no specific tax shall be due from the rectifier receiving them.” Thus, “as long as the alcohol requires rectification, all unintentional, casual, unavoidable and/or natural losses prior to the conversion into some finished product, should not be subject to specific tax.”²⁴ As such, the shortages of 21,163.48 liters of denatured alcohol that evaporated in transit from January to December 2008, which were not subject to rectification nor were converted to a finished product, should not be subject to an excise tax.²⁵

¹⁹ Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.

²⁰ 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.

²¹ *Rollo*, p. 33.

²² *Id.* at 35-36.

²³ 116 Phil. 398, 404 (1962).

²⁴ *Rollo*, p. 38.

²⁵ *Id.* at 39.

Avon also claimed that Condition No. 3²⁶ contained in Avon's permit to Buy/Use Denatured Alcohol is contrary to the tax exemption as provided under Section 134 of the NIRC. The BIR cannot simply override the provision of the NIRC and arrogate upon itself the authority to impose the excise tax on distilled spirits on a tax-exempt article that evaporated prior to its conversion to a distilled or reprocessed spirit.²⁷

Respondent's contentions

The Office of the Solicitor General (OSG), on behalf of the CIR, alleged that while it was not contested that the article subject of the case is denatured alcohol, Avon failed to prove that the same is exempted from excise tax. Avon failed to establish that the denatured alcohol in question was not less than 90% absolute alcohol to qualify exemption under Section 134 of the NIRC. As such, Section 22 of RR No. 3-2006 as to losses on distilled spirits is applicable in the present case.

The Court's ruling

The petition is impressed with merit.

Section 129 of the NIRC provides that *excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported.*

As held in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,²⁸ excise tax attaches upon goods manufactured or produced in the Philippines as soon as its existence, thus:

The transformation undergone by the term "excise tax" from its traditional concept up to its current definition in our Tax Code was explained in the case of *Petron Corporation v. Tiangco*, as follows:

Admittedly, the proffered definition of an excise tax as "a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation" derives from the compendium *American Jurisprudence*, popularly referred to as *Am Jur* and has been cited in previous decisions of this Court, including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our Tax Code, such as the NIRC of 1939, as amended, or the NIRC of 1977 because in those laws the term "excise tax" was not used at all. In contrast, the nomenclature used in those prior

²⁶ Id. at 296.

²⁷ Id. at 42.

²⁸ 727 Phil. 506 (2014).

laws in referring to taxes imposed on specific articles was "specific tax." Yet beginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable **"to goods manufactured or produced in the Philippines... and to things imported."** (Underscoring ours) This definition was carried over into the present NIRC of 1997. Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem* tax" which is imposed and based on the selling price or other specified value of the goods. In other words, **the meaning of "excise tax" has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles.**

The change in perspective brought forth by the use of the term "excise tax" in a different connotation was not lost on the departed author Jose Nolleto as he accorded divergent treatments in his 1973 and 1994 commentaries on our tax laws. Writing in 1973, and essentially alluding to the *Am Jur* definition of "excise tax," Nolleto observed:

Are specific taxes, taxes on property or excise taxes –

In the case of *Meralco v. Trinidad* ([G.R.] 16738, 1925) it was held that specific taxes are property taxes, a ruling which seems to be erroneous. Specific taxes are truly excise taxes for the fact that the value of the property taxed is taken into account will not change the nature of the tax. It is correct to say that specific taxes are taxes on the privilege to import, manufacture and remove from storage certain articles specified by law.

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nolleto, in his 1994 commentaries, wrote:

1. *Excise taxes*, as used in the Tax Code, **refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. They are either specific or ad valorem.** (Underscoring ours)

2. *Nature of excise taxes.* – They are imposed directly on certain specified goods. (*infra*) They are, therefore, taxes on property. (see *Medina vs. City of Baguio*, 91 Phil. 854.)

A tax is not excise where it does not subject directly the product or goods to tax but indirectly as an incident to, or in connection with, the

business to be taxed.

In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is "synonymous with 'privilege tax' and [both terms] are often used interchangeably." At the same time, they offer a caveat that "[e]xcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, 'for domestic sale or consumption or for any other disposition.'"

It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one "upon the performance, carrying on, or the exercise of an activity." This current definition was already in place when the Code was enacted in 1991, and we can only presume that it was what the Congress had intended as it specified that local government units could not impose "excise taxes on articles enumerated under the [NIRC]." This prohibition must pertain to the same kind of excise taxes as imposed by the NIRC, and not those previously defined "excise taxes" which were not integrated or denominated as such in our present tax law.²⁹ (Emphasis supplied.)

Thus, under the current definition, the liability for excise tax on distilled spirit attaches upon its existence. Section 141³⁰, as amended by

²⁹ Id. at 514-516.

³⁰ SEC. 141. *Distilled Spirits*. - On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise tax as follows:

"(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane, provided such materials are produced commercially in the country where they are processed into distilled spirits, per proof liter, Eleven pesos and sixty-five centavos (P11.65);

"(b) If produced from raw materials other than those enumerated in the preceding paragraph, the tax shall be in accordance with the net retail price per bottle of seven hundred fifty milliliter (750 ml.) volume capacity (excluding the excise tax and the value-added tax) as follows:

"(1) Less than Two hundred and fifty pesos (P250.00) - One hundred twenty-six pesos (P126.00), per proof liter;

"(2) Two hundred and fifty pesos (P250.00) up to Six hundred and seventy-five pesos (P675.00) - Two hundred fifty-two pesos (P252.00), per proof liter; and

"(3) More than Six hundred and seventy five pesos (P675.00) -Five hundred four pesos (P504.00), per proof liter.

"(c) Medicinal preparations, flavoring extracts, and all other preparations, except toilet preparations, of which, excluding water, distilled spirits form the chief ingredient, shall be subject to the same tax as such chief ingredient.

"This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits, and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process.

"Spirits or distilled spirits' is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures. (Underscoring ours)

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Republic Act (R.A.) No. 9334, specifically provides that *“the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process.”*

Thus, as soon as the substance known as ethyl alcohol or ethanol has been processed, rectified or distilled, liability for payment of excise tax correspondingly attaches.

“Proof spirits’ is liquor containing one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (0.7939) at fifteen degrees centigrade (15⁰C). A ‘proof liter’ means a liter of proof spirits.

“Net retail price’, as determined by the Bureau of Internal Revenue through a price survey to be conducted by the Bureau of Internal Revenue itself, or by the National Statistics Office when deputized for the purpose by the Bureau of Internal Revenue, shall mean the price at which the distilled spirits is sold on retail in at least ten (10) major supermarkets in Metro Manila, excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed outside Metro Manila, the ‘net retail price’ shall mean the price at which the distilled spirits is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

“Variants of existing brands and variants of new brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the proper classification thereof based on their suggested net retail price: *Provided, however,* That such classification shall not, in any case, be lower than the highest classification of any variant of that brand.

“A ‘variant of a brand’ shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.

“New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.

“Willful understatement of the suggested net retail price by as much as fifteen percent (15%) of the actual net retail price shall render the manufacturer liable for additional excise tax equivalent to the tax due and difference between the understated suggested net retail price and the actual net retail price.

“New brand’ shall mean a brand registered after the date of effectivity of R.A. No. 8240.

“Suggested net retail price’ shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported distilled spirits are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket to which a particular new brand of distilled spirits, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a particular new brand of distilled spirits shall be classified: *Provided, however,* That brands of distilled spirits introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.

“The rates of tax imposed under this Section shall be increased by eight percent (8%) every two years starting on January 1, 2007 until January 1, 2011.

“Any downward reclassification of present categories, for tax purposes, of existing brands of distilled spirits duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

“The classification of each brand of distilled spirits based on the average net retail price as of October 1, 1996, as set forth in Annex ‘A’, including the classification of brands for the same products

Rectification refers 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.³¹ While distillation is the process of separating the components or substances from a liquid mixture by selective boiling and condensation.³²

Section 134 of the NIRC provides that denatured alcohol of not less than 180° degrees proof or ninety-percent (90%) absolute alcohol shall, when suitably denatured and rendered unfit for oral intake, be exempt from excise tax as provided for under Section 141 of the NIRC, thus:

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 automotive 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

which, although not set forth in said Annex 'A', were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.

"Manufacturers and importers of distilled spirits shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every third month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of distilled spirits sold at his establishment for the three-month period immediately preceding.

"Any manufacturer or importer who, in violation of this Section, knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall, upon final findings by the Commissioner that the violation was committed, be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as manufacturer or importer of distilled spirits.

"Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.

"Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

"If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation." (Emphasis supplied)

³¹ Section 14 of Revenue Regulations No. 3-2006.

³² <https://en.wikipedia.org/wiki/Distillation>.

shall be paid by the person in possession of such reprocessed spirits.
(Emphasis ours)

As stated above, denatured alcohol is completely exempted from excise tax, unless: 1) the denatured alcohol is less than 180° proof or 90% absolute alcohol, when suitably denatured³³ and rendered unfit for oral intake; or, when 2) the denatured alcohol previously unfit for oral intake underwent fermentation, dilution, purification, or other similar process, in both instances, the denatured alcohol will be subjected to excise tax.

Thus, to resolve the question of whether the evaporated denatured alcohol subject in the present case should be subjected to excise tax, We must determine whether the denatured alcohol is less than 180° proof or 90% absolute alcohol or, whether it underwent reprocess, rectification, fermentation, dilution, purification, or other similar process to render it fit for oral intake.

The CIR, claimed that Avon failed to sufficiently show that the evaporated denatured alcohol was more than 180° proof or 90% absolute alcohol in order for it to be exempted from excise tax. We rule in the negative.

As shown in the Formal Letter of Demand³⁴ of the BIR, it is specifically indicated that the denatured alcohol purchased by Avon, which evaporated during transit has 189° proof or 94.5% absolute alcohol. As such, in this aspect, the denatured alcohol is rendered unfit for oral intake, therefore exempt from excise tax.


To consider the CIR's allegation that Avon was not able to show that the denatured alcohol was more than 180° proof or 90% absolute alcohol was belied by the Formal Letter of Demand and the FDDA³⁵. If the CIR, believed that the denatured alcohol purchased by Avon was not suitably denatured, then it could have rendered a deficiency assessment on the whole 1,309,000 liters of denatured alcohol purchased from January to December 2008, instead it only assessed excise tax on the 21,163.48 liters denatured alcohol that evaporated during transit, on the belief that losses of distilled spirits under Section 22 of RR No. 3-2006 can be equally applied to losses of denatured alcohol.

³³ Section 2(p) of RR No. 3-2006, provides:

(p) **SUITABLY DENATURED** – shall refer to the condition of ethyl alcohol when a material or substance, known as denaturant, has been added to the ethyl alcohol, in accordance with the approved formula of the BIR, to destroy the character of the same and making the added denaturant difficult to separate therefrom.

³⁴ *Rollo*, pp. 283-284.

³⁵ *Id.* at 292.



Having established that the denatured alcohol is more than 180° proof or 90% absolute alcohol, it now becomes necessary to determine whether the denatured alcohol purchased by Avon underwent rectification, distillation or other similar processes to render it fit for oral intake.

After scrutiny of the records, We hold that the denatured alcohol which evaporated during transit did not go through the process of distillation or rectification to a distilled spirits. As such, the liability for excise tax was not attached. To reiterate, excise tax is applied only if the denatured alcohol is reprocessed to a distilled spirit.

The CTA therefore erred when it applied Section 22³⁶ of RR No. 3-2006 on the denatured alcohol that evaporated during transit. As clearly provided, Section 22 deals with losses on distilled spirits. In this case, the evaporated denatured alcohol did not undergo any rectification, distillation, fermentation or other similar processes. It would be absurd to treat the 1,287,836.52 liters of denatured alcohol that Avon received as free of excise tax and to treat the shortages of 21,163.48 liters that evaporated during transit and did not undergo any rectification or distillation process as liable for excise tax, since the spring cannot rise higher than its source.

It is well-settled that tax statutes are construed *strictissimi juris* against the government.³⁷ "Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided."³⁸ Here, CTA applied Section 22 of RR No. 3-2006 which treats losses on distilled spirit to losses on denatured alcohol without any legal basis. The CIR failed to present any proof that the denatured alcohol which evaporated was reprocessed to a distilled spirit. Neither did the CIR show any legal justification in applying Section 22 of RR No. 3-2006 to a completely different article. As such, the 21,163.48 liters of denatured alcohol which evaporated during transit are still exempt from excise tax without any specific law subjecting the same to excise tax.

³⁶ 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.

³⁷ *CIR v. Court of Appeals*, 363 Phil. 130 (1999).

³⁸ *Health Care Providers Inc., v. Commissioner of Internal Revenue*, 616 Phil. 387, 411 (2009).

101

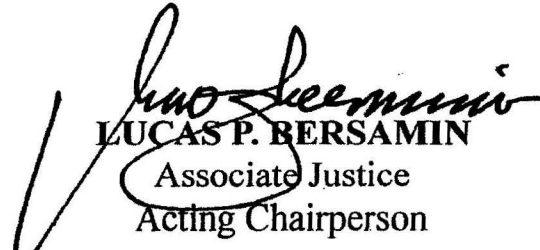
WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 16, 2015 and the Resolution dated January 15, 2016 of the Court of Tax Appeals En Banc in CTA EB No. 1062 are hereby **REVERSED and SET ASIDE**. The Final Decision on Disputed Assessment No. 2009-1-A-159 dated September 1, 2010 is declared **VOID and WITHOUT LEGAL EFFECT**.

SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:



LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

(On official leave)
MARIANO C. DEL CASTILLO
Associate Justice

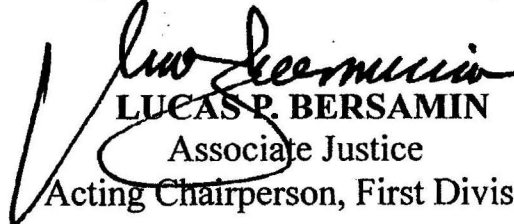


FRANCIS H. JARDELEZA
Associate Justice

(On official leave)
ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY


LIBRADA C. BUENA
Division Clerk of Court
First Division
Supreme Court



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)