7

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** *which reads as follows:*

"G.R. No. 231480 (Avon Products Manufacturing, Inc., *Petitioner,* **v. Commissioner of Internal Revenue,** *Respondent*). – This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the Decision[2] dated 24 April 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1351. The assailed Decision affirmed the denial[3] by the CTA Second Division of the claim of Avon Products Manufacturing, Inc. (petitioner) for a claim for refund or issuance of tax credit in the total amount of Php53,539,637.57, representing alleged erroneously paid excise tax on non-essential articles under Section 150 of the Tax Code for the period 03 January 2011 to 28 April 2012.

Antecedents

Petitioner is engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet water, splash colognes and body sprays.[4] For the period of 03 January 2011 to 28 April 2012, petitioner purportedly paid the 20% excise tax imposed on

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1 *Rollo*, pp. 12-48.

2 *Id.* at 49-73; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals *En Banc*, with a Concurring Opinion by Presiding Justice Roman G. Del Rosario. Associate Justice Catherine T. Manahan inhibited.

3 *Id.* at 291-322; penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Caesar A. Casanova of the CTA Second Division, with Associate Justice Amelia R. Cotangco-Manalastas dissenting.

4 *Id.* at 50.

perfumes and toilet waters under Section 150(b)[5] of the Tax Code on its removals of perfumes, toilet waters, splash colognes and body sprays.[6]

Invoking Revenue Regulations (RR) No. 8-84, petitioner claims that splash colognes and body sprays should not be classified as "toilet waters" and that since its splash colognes and body sprays contain essential oils of less than three percent (3%) by weight, it should not be subject to tax under Section 150(b) of the Tax Code.[7]

As such, petitioner filed a written claim for refund of the alleged erroneously paid excise taxes with the Commissioner of Internal Revenue (CIR)'s Large Taxpayers Service through the letter dated 16 July 2012 and a duly accomplished Application for Tax Credit/Refund (Bureau of Internal Revenue (BIR) Form No. 1914) on 20 July 2012.[8] Believing, however, that it would be futile to wait for the action of the CIR on its administrative claim for refund, petitioner filed a Petition for Review on 03 September 2012 before the CTA in Division.[9]

On the other hand, the CIR submits that petitioner's articles were assessed pursuant to Section 150(b) of the Tax Code and that Revenue Memorandum Circular (RMC) No. 17-02, which emphasized BIR Ruling No. 43-2000, correctly defines the term "colognes" and that this issuance even declares null and void all previous BIR rulings pertaining thereto.[10]

The CIR further posits that: (1) it is not bound by previous rulings; (2) BIR Ruling No. 43-2000, which was published in RMC No. 17-02, is a valid interpretation of the provision of the Tax Code; (3) nowhere in the provision of Section 150(b) of the Tax Code is it required for essential oil content of more than three percent (3%) by weight before toilet water can be subject to the 20% excise tax; and (4) petitioner's argument of non-taxability has no leg to stand on since

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5 **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;
(c) xxx.

6 *Rollo*, p. 50.

7 *Id.* at 51.

8 *Id.*

9 *Id.* at 51.

10 *Id.*

the Court has already held that Revenue Regulation (RR) No. 8-84 was limited to taxes imposed under Section 194 (b) and (e) of the 1977 Tax Code which has been substantially amended and repealed by subsequent legislation. Per the CIR, a claim for refund is not *ipso facto* granted because the CIR still has to investigate and ascertain the validity of the claim.[11]

Upon termination of the pre-trial, trial on the merits proceeded. The case was submitted for decision on 18 June 2014.[12]

Ruling of the CTA Division

On 04 May 2015, the CTA Second Division promulgated a Decision denying the Petition for Review, *viz*:

> **WHEREFORE**, premises considered, petitioner's Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[13]

The CTA Division held that the CIR has the power to interpret the provisions of the Tax Code, subject to review by the Secretary of Finance. In issuing BIR Ruling No. 43-2000, the CIR merely exercised this power, while the Secretary of Finance did not modify nor reverse said Ruling.[14] Since Section 150(b) of the Tax Code is silent as to the definition of the term "toilet waters," the clarification made by the CIR in BIR Ruling No. 43-2000 that "toilet waters" pertains to a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant, and the classification of the same covering all other colognes, as provided in the RMC No. 17-2002, shall apply.[15]

Accordingly, the CTA Division found that petitioner's splash colognes and body sprays fall under the category of toilet waters, thus, subject to 20% excise tax. Moreover, it ruled that considering a tax refund partakes the nature of exemption,[16] a statute granting tax exemption should be strictly construed against the person or entity claiming the exemption.

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[11] *Id.*
[12] *Id.* at 51-52.
[13] *Id.* at 321.
[14] *Id.* at 319-320.
[15] *Id.* at 321.
[16] *Id.*

Petitioner's Motion for Reconsideration was denied by the CTA Division in its Resolution dated 11 August 2015.[17] Dissatisfied, petitioner filed a Petition for Review with the CTA *En Banc* on 14 September 2015.[18]

Ruling of the CTA *En Banc*

In its 24 April 2017 Decision,[19] the CTA *En Banc* denied the Petition for Review. The dispositive portion thereof reads, to wit:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated May 4, 2015 and Resolution dated August 11, 2015, both rendered by the Court in Division in CTA Case No. 8540, are **AFFIRMED.**
>
> **SO ORDERED.**[20]

The CTA *En Banc* clarified that while a BIR Ruling or RMC cannot supplant provisions of an Revenue Regulation, the definition of "toilet waters" under RR No. 8-84 was abandoned by subsequent amendments of the Tax Code.[21] Further, in the absence of legislative intent to the contrary, technical or commercial terms and phrases, when used in tax statutes, are presumed to have been used in their technical sense or in their trade or commercial meaning. Relative thereto, the definition of "cologne" or "toilet water," as stated in BIR Ruling No. 43-2000, appears to be rendered in its "technical sense" or "trade or commercial meaning," since the said definition were taken from a Chemical Dictionary, *i.e.*, the Hawley's Condensed Dictionary. As such, this definition must be sustained.[22]

Hence, this Petition for Review on *Certiorari*.[23]

Issue

Essentially, the issue is whether or not the CTA *En Banc* erred in affirming the denial of the CTA Second Division of petitioner's claim for refund or issuance of tax credit certificate.

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17 *Id.* at 53.
18 *Id.* at 128-151.
19 *Id.* at 49-73.
20 *Id.* at 72.
21 *Id.* at 61.
22 *Id.* at 62-63.
23 *Id.* at 12-48.

Ruling of the Court

The petition is without merit.

The findings and conclusions of the CTA are accorded with the highest respect

At the outset, it bears stressing that this Court is not a trier of facts. Accordingly, the Court accords findings and conclusions of the CTA with the highest respect. As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation. Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court.[24]

Upon careful review of the instant case, We find no cogent reason to reverse or modify the findings of the CTA Division, as affirmed by the CTA *En Banc*.

RR No. 8-84 may not be used to implement Section 150(b) of the Tax Code, as amended

In an earlier case rendered by the Court in 2015 entitled, *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue (2015 Avon),*[25] We held that RR No. 8-84, which deals with the percentage tax on cosmetic products under Section 194 (renumbered to Section 163) of the 1977 Tax Code, may not be used to implement Section 150(b) of the 1997 Tax Code, as amended, which pertains to the imposition of excise tax.

We take notice that the *2015 Avon* case, which pertains to a similar claim for refund with the CIR on 20% excise taxes paid on colognes and body sprays, was disposed of through an unsigned resolution. This does not distract from the fact, however, that the *2015 Avon* case and the instant petition before the Court involve the same

[24] *Sitel Philippines Corp. v. Commissioner of Internal Revenue,* 805 Phil. 464 (2017), G.R. No. 201326, 08 February 2017 [Per J. Caguioa].
[25] G.R. No. 205602, 10 August 2015 [Notice].

parties, subject matter and issues. And, considering further that unsigned resolutions are essentially *meaningful only to the parties,*[26] the instant petition is necessarily bound by the principle of *res judicata.*

Even if the 2015 Avon case was disposed by this Court through an unsigned resolution, the same ruling would still constitute an actual adjudication on the merits because the legal basis cited to support the conclusion on why there was an absence of reversible error committed in the challenged judgment signifies this Court's assent to the findings and conclusion of the lower court.[27] Hence, even if the 2015 Avon case is not doctrinal, the judgment in the said case is binding on the parties here.

In any event, the Court will still proceed to rule on the issues based on the relevant law and established jurisprudence if only to write *finis* to the matter at hand.

Albeit the words "toilets waters" remain undisturbed, the change in the nature of the tax from percentage tax to excise tax pursuant to Executive Order No. 273 is an effective repeal of Section 194 (renumbered to Section 163) of the 1977 Tax Code.[28] Verily, the amendment of the Tax Code brought about the deletion of the sales tax specifically imposed on every original sale, barter, exchange of toilet waters, and made a tax imposition on the wholesale price or the value of importation, net of excise tax and value-added tax, of toilet waters. Simply put, the law totally changed the imposition from a sales tax to an excise tax.

As a rule, an amendment by the deletion of certain words or phrases indicate an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment.[29] Since the meaning of "toilet waters" has changed by virtue of the amendment of the Tax Code, RR No. 8-84 may no longer be used to enforce the tax imposition under Section 150(b) of the Tax Code.

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[26] Section 6(c), Rule 13, 2010 Internal Rules of the Supreme Court.
[27] *Denila v. Republic,* G.R. No. 206077, 15 July 2020 [Per J. Gesmundo].
[28] *Supra* at note 25.
[29] *Laguna Metts Corp. v. Court of Appeals,* 611 Phil. 530 (2009), G.R. No. 185220, 27 July 2009 [Per J. Corona].

Therefore, the policy determinations made by the Secretary of Finance attending the implementing rule under the old provision on percentage tax, *i.e.*, RR No. 8-84, cannot be made to apply to the current provision on excise tax, *i.e.*, Section 150(b) of the 1997 Tax Code, as amended.[30]

It is firmly established that rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or **to embrace matters not covered by the statute**. Hence, with these considerations, it is up to the Secretary of Finance to issue a new implementing rule relative to the current nature of the tax on toilet waters; absent which, the general interpretation of the statute accorded by the BIR should prevail.[31]

In this regard, since Article 150 (b) of the Tax Code is silent as to the definition of the term "toilet waters," the CIR may exercise its power to interpret the current Tax Code and clarify the definition of toilet waters.[32] Consequently, the CIR's clarification in BIR Ruling No. 43-2000 as to the definition of "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant, and the classification of the same covering all other colognes, as provided in the RMC No. 17-2002, shall govern.

As the CTA *En Banc* correctly discussed, while RMCs are considered administrative rulings which are issued from time to time by respondent, they are also considered as issuances which "disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."[33]

Verily, in issuing BIR Ruling No. 43-2000 and RMC No. 17-02 defining "toilet waters" for the purposes of the imposition of excise tax under Section 150(b) of the Tax Code, the CIR was exercising its exclusive and original jurisdiction to interpret a provision of the Tax Code. In doing so, the CIR was neither supplanting nor amending the

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30 *Supra* at note 25.
31 *Id.*
32 Section 4, Tax Code.
33 *Rollo*, pp. 55-56.

definition of "toilet waters" under RR No. 8-84 which pertains to the imposition of sales tax on toilet waters. As explained by the lower court, the CIR did not actually give a new meaning to the term "toilet waters" as found in Section 150(b) of the Tax Code. It merely did what it was mandated to do, that is, to interpret the law.[34]

Further, well settled is the rule that in the absence of legislative intent to the contrary, technical or commercial terms and phrases, when used in tax statutes, are presumed to have been used in their technical sense or in their trade or commercial meaning.[35] Relative thereto, and as aptly pointed out by the CTA *En Banc*, the definition of "cologne" or "toilet water" as stated in BIR Ruling No. 043-00, appears to be rendered in its "technical sense" or "trade or commercial meaning" since the said definition were taken from the Hawley's Condensed Dictionary.[36] Thus, this definition is not unlawful.

Actions for tax refund or credit are in the nature of a claim for exemption, thus, law is construed in strictissimi juris against the taxpayer

On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[37]

Therefore, in view of petitioner's failure to prove, to the satisfaction of this Court, its entitlement to the grant of tax refund or issuance of tax credit of the alleged erroneously paid excise taxes for the period of 03 January 2011 to 28 April 2012, the Court deems it necessary to deny its claims for the same.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated 24 April 2017 rendered by the Court of Tax Appeals *En Banc* in CTA EB No. 1351 is **AFFIRMED.**

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162

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[34] *Id.* at 79.

[35] *San Miguel Corp. v. Municipal Council of Mandaue, Province,* 152 Phil. 30 (1973), G.R. No. L-30761, 11 July 1973 [Per J. Antonio].

[36] *Rollo,* pp. 62-63.

[37] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222428, 19 February 2018 [Per J. Peralta].

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
162

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