Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **March 29, 2023**, *which reads as follows:*

"G.R. No. 224079 (*Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*). – Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Avon Products Manufacturing, Inc. (Avon), assailing the Decision[2] of the Court of Tax Appeals (CTA) *En Banc* (CTA-EB) in CTA EB No. 1275, which reversed and set aside the Amended Decision[3] and Resolution[4] of the CTA Third Division and denied Avon's claim for the refund of supposedly erroneously paid excise taxes from January 4, 2010 to December 31, 2010 amounting to ₱38,561,292.43.

The Antecedent Facts

The facts, as culled from the records of the instant case,[5] are as follows:

Avon is a domestic corporation engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet waters, splash colognes and body sprays.[6] For the period January 2, 2010 to December 31, 2010, Avon electronically filed 316 Excise Tax Returns for Automobiles & Non-Essential Goods (BIR Form No. 2200-AN).[7]

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1 *Rollo*, pp. 10-49, Petition for Review on *Certiorari*.
2 Id. at 50-72, Court of Tax Appeals (CTA) *En Banc* (CTA-EB) Decision. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring; Associate Justices Lovell R. Bautista, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, dissenting; Associate Justice Erlinda P. Uy took no part.
3 Id. at 112-147, CTA Amended Decision. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Lovell R. Bautista, concurring; Associate Justice Esperanza R. Fabon-Victorino, dissenting.
4 Id. at 156-160, CTA Resolution.
5 Id. at 54-57 and 114-132.
6 Id.
7 Id.

During the aforementioned period, Avon paid the 20% excise taxes on perfumes and toilet waters under Section 150[8] of the National Internal Revenue Code of 1997 (NIRC). Out of the total excise taxes paid by Avon, ₱38,561,292.42 represents excise taxes paid on removals of splash colognes and body sprays containing essential oils of 3% or less by weight.[9]

On June 27, 2011, Avon filed a written claim for refund of erroneously paid taxes with the Bureau of Internal Revenue's (BIR) Large Taxpayer Service (BIR-LTS) through a letter and a duly accomplished Application for Tax Credits/Refund (BIR Form 1914).[10] Its claim for refund was anchored on its argument that its splash colognes and body sprays, whose essential oil content are not more than 3% by weight, are not subject to the 20% excise tax provided in Section 150 of the NIRC, considering that the said products are not within the ambit of the definition of "toilet waters" as provided in Section 2(e) of Revenue Regulations No. 08-84 dated June 5, 1984 (RR 8-84), to wit:

> (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.[11]

On October 18, 2011, the BIR-LTS denied Avon's claim for refund for lack of legal basis.[12]

Proceedings before the CTA

On November 16, 2011, Avon filed its Petition for Review (CTA petition) with the CTA, which was docketed as CTA Case No. 8378 and raffled to the CTA's Third Division. In the CTA petition, Avon prayed that the CTA order the Commissioner of Internal Revenue (CIR) to, among others, refund ₱38,561,292.43 representing the supposedly erroneously paid excise taxes from January 4, 2010 to December 31, 2010.[13]

The CIR then filed an Answer[14] to the CTA petition.

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8 Section 150. *Non-essential Services.* – 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:
x x x x
(b) Perfumes and toilet waters;
x x x x (Underscoring supplied)

9 *Rollo*, pp. 54-57 and 114-132.

10 Id.

11 Id.

12 Id.

13 Id. at 52.

14 Id.

On March 15, 2012, Avon and the CIR filed their Joint Stipulation of Facts and Issues[15] with the CTA. After the issuance of a Pre-Trial Order,[16] the CTA Third Division proceeded with a trial on the merits.

After presenting seven witnesses,[17] Avon terminated its presentation of evidence and formally [illegible] Division admitted to evidence all documentary evidence offered by Avon.

Meanwhile, during the hearing on August 22, 2013, the CIR waived its right to present evidence. Subsequently and upon the directive of the CTA Third Division, the parties to the case submitted their respective memoranda.[18]

The CTA Third Division issued its Decision on May 8, 2014. In the CTA Decision, the CTA Third Division denied Avon's prayer for refund, and held that the definition of "toilet waters" under RR 8-84 cannot be used to interpret the term "toilet waters" in Section 150(b) of the NIRC.[19]

On May 19, 2014, Avon filed a Motion for Reconsideration[20] praying for the reversal of the CTA Decision. The same was opposed by the CIR in its Opposition[21] filed with the CTA.

On September 9, 2014, the CTA Third Division promulgated the Amended Decision, which granted Avon's Motion for Reconsideration and reversed the CTA Decision. In the Amended Decision, the CTA Third Division held that: (a) the definition of "toilet waters" found in RR 8-84 remain as the operative definition of such term as found in Section 150(b) of the NIRC, considering that the amendments to the then Tax Code did not repeal the interpretation of "toilet waters" found in RR 8-84;[22] (b) Revenue Memorandum Circular No. 17-02 (RMC 17-02), which published BIR Ruling 43-2000, and modified the definition of "toilet waters" found in RR 8-84 is not valid considering that administrative issuances of the CIR cannot amend regulations issued by the Secretary of Finance in the exercise of his/her rule-making power;[23] (c) in any event, RMC 17-02 and BIR Ruling 43-2000 are both overbroad and did not take into consideration the intent of the law;[24] and (d) Avon was able to prove its entitlement to a refund on the

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15 Id

16 Id.

17 During trial, Avon presented the following witnesses:
1. Liza D. Pabale – Tax, Treasury and Internal Control Supervisor of Avon;
2. Maricel R. Saabino – Quality Assurance Manager of Avon;
3. William L. Tan – Assistant Packaging Manager of Avon;
4. Lloyd John C. Godilano – Processing Manager of Avon;
5. Ronald S.I. Alonzo – PHA Processing Coordinator of Avon;
6. Jerome B. Constantino – a commissioned independent certified public accountant; and
7. Mayette Punzalan- Encarnacion – Finance Manager of Avon.

18 *Rollo*, pp. 54-57 and 114-132.

19 Id

20 Id.

21 Id.

22 Id. at 114-117 and 125-127.

23 Id. at 117-120.

24 Id. at 121-124 and 127-130.

excise taxes it paid for its splash colognes and body sprays with essential oil content of not more than 3% by weight for the period January 4, 2010 to December 10, 2010,[25] thus:

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **GRANTED**. Our decision dated May 6, 2014 is reversed and set aside and an **AMENDED** DECISION is hereby rendered **GRANTING** the instant Petition for Review. Petitioner is held not liable to pay the excise tax on its removals of splash colognes and body sprays with essential oil content of not more than 3% by weight and, accordingly, respondent is ORDERED TO CEASE AND DESIST from collecting the said excise tax on such products from petitioner.
>
> Respondent is also **ORDERED TO REFUND** or issue a tax credit certificate to petitioner in the total amount of Thirty Eight Million Five Hundred Sixty One Thousand Two Hundred Ninety Two Pesos and Forty Three Centavos (₱38,561,292.43) representing erroneously paid excise taxes on non-essential articles under Section 150 of the National Internal Revenue Code for the period January 4, 2010 to December 10, 2010.
>
> **SO ORDERED**.[26] (Emphasis in the original)

Subsequently, the CIR filed a Motion for Reconsideration,[27] which prayed for the reversal of the Amended Decision. Avon filed its Comment[28] in response thereto. Finally, on February 2, 2015, the CTA Third Division issued a Resolution denying the CIR's Motion for Reconsideration, *viz.*:

> **WHEREFORE**, considering all of the foregoing premises, respondent's Motion for Reconsideration of the Amended Decision promulgated on September 9, 2014 is **DENIED** for lack of merit.[29] (Emphasis in the original)

Proceedings before the CTA-EB

Undeterred, the CIR sought the reversal of the Amended Decision and the Resolution denying its Motion for Reconsideration by filing a Petition for Review[30] with the CTA-EB, which was later docketed as CTA EB No. 1275.

On April 1, 2016, the CTA-EB issued the assailed Decision, which granted the CIR's Petition for Review. In the assailed Decision, the CTA-EB held that: (a) the repeal of the Tax Code likewise brought about the repeal of the definition of "toilet waters" provided in RR 8-84; and (b) the current definition of "toilet waters" is the one provided in BIR Ruling No. 043-2000 and RMC 17-02, which state that "toilet waters" are considered as colognes

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25 Id. at 130-145.
26 Id. at 146.
27 Id.
28 Id.
29 Id. at 160.
30 Id.

and are subject to 20% excise tax. Thus, the dispositive portion of the assailed Decision reads:

> **WHEREFORE**, finding merit in the instant Petition for Review, the same is hereby **GRANTED**. Accordingly, the Assailed Amended Decision dated September 9, 2014 and the Resolution dated February 2, 2015, both rendered by the CTA Third Division, are hereby **SET ASIDE**. Respondent's claim for refund in the amount of P38,561,292.43 allegedly representing erroneously paid excise taxes on non-essential articles for the period January 4, 2010 to December 31, 2010 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[31] (Emphasis in the original)

Proceedings before this Court

On May 19, 2016, Avon filed its Petition for Review on *Certiorari*[32] before this Court. In its petition, Avon raised the following arguments: (a) RMC 17-02, which published BIR Ruling 43-00 is invalid because the CIR's interpretation of the term "toilet waters" cannot supplant the Secretary of Finance's interpretation of the same term;[33] (b) the amendments introduced by Executive Order No. 237 only changed the type of tax applicable to "toilet waters," and thus, did not repeal the definition of the same as provided in RR 8-84;[34] (c) legislative intent of the pertinent provision of the NIRC is to only tax non-essential or luxury "toilet waters";[35] (d) the principle *casus omissus pro omisso habendus est* does not apply to the instant case;[36] and (e) legislative approval of administrative interpretation by reenactment applies.[37]

On February 6, 2017, the CIR, through the Office of the Solicitor General, filed a Comment[38] of even date. In the Comment, the CIR argued that: (a) Avon failed to raise any special and compelling circumstance to warrant this Court to exercise its discretion to review the instant case under Rule 45 of the Rules of Court;[39] and (b) the CTA-EB correctly interpreted and applied Section 150 (B) of the NIRC, as amended, in ruling that products falling under the term "toilet waters," as defined in RMC No. 17-02, are subject to 20% excise tax.[40]

On May 19, 2017, Avon filed its Reply (to Respondent's Comment dated 6 February 2016).[41] In its Reply, Avon argued that (a) the fact that

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31 Id. at 70.
32 Id. at 10-49.
33 Id. at 23-25.
34 Id. at 25-32.
35 Id. at 32-37.
36 Id. at 37-38.
37 Id. at 38-40.
38 Id.
39 Id. at 605-611.
40 Id. at 611-619.
41 Id.

three members of the CTA-EB dissented from the assailed Decision shows that "there is a question of substance that needs to be determined by [this Court]" and that the "assailed Decision was not in accord with or the applicable decision of [this Court];"[42] (b) the legislative history of the term "toilet waters" shows that the technical definition of the same, as stated in RR 8-84, has been adopted and carried over to Section 150(b) of the NIRC;[43] (c) the CIR has no power to define or to amend the definition of the term "toilet waters" provided by the Secretary of Finance in RR 8-84;[44] and (d) the principle of strict construction of taxing provision should be applied rather than the strict construction of tax refunds.[45]

Issue

The issue in this case is whether Avon's splash colognes and body sprays, whose essential oil content are not more than 3% by weight, are subject to 20% excise tax under Section 150(b) of the NIRC.

The Court's Ruling

The petition has no merit.

The question of whether Avon's splash colognes and body sprays, whose essential oil content are not more than 3% by weight, are subject to 20% excise tax has already been resolved by this Court in the 2015 case of *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*[46] (*2015 Avon case*), and in the 2022 cases of *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*[47] (*2022 Avon cases*), where this Court ruled that RR 8-84 cannot be used to implement Section 150(b) of the NIRC.

In particular, in the *2015 Avon case*, this Court held:

> After a judicious review of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the January 29, 2013 Decision of the Court of Tax Appeals (CTA) in CTA EB No. 840 for failure of petitioner Avon Products Manufacturing, Inc. (petitioner) to show that the CTA committed any reversible error in denying its claim for the refund of excise taxes paid for colognes and body sprays containing three percent (3%) or less weight of essential oils.
>
> As correctly found by the CTA *En Banc*, Revenue Regulation (RR) No. 8-84, which deals with the percentage tax on cosmetic products under Section 194 (renumbered to Section 163) of the 1977 National Internal Revenue Code (NIRC), may not be used to implement Section 150 (b) of the

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42 Id. at 632-635.
43 Id. at 635-640.
44 Id. at 640-641.
45 Id. at 641-642.
46 G.R. No. 205602 (Resolution), August 10, 2015.
47 G.R. Nos. 206286, 209257, and 210086 (Resolution), March 2, 2022.

> 1997 NIRC, as amended, which pertains to the imposition of excise tax. Albeit the words "toilets waters" remain unchanged, 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 NIRC. 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 NIRC, as amended. Well-settled is the rule 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 Bureau of Internal Revenue should prevail.[48] (Emphasis in the original; underscoring supplied; citations omitted)

Meanwhile, in the *2022 Avon cases*, this Court emphasized that: "on August 10, 2015, the Court issued a Resolution denying Avon Products' similar claim for refund of excise taxes paid on removals of splash colognes and body sprays for the period of May 17, 2005 to February 20, 2007. Going over it in relation to the present cases, we find no compelling reason to differ from the Court's previous pronouncement[.]"[49]

All the foregoing considered, this Court finds that its previous rulings in the *2015 Avon case* and the *2022 Avon cases* apply as *res judicata* to the instant case.

In *Republic v. Yu*,[50] this Court expressed that *res judicata* literally means a matter already adjudged or decided:

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[51] (Citations omitted)

Notably, for *res judicata* to apply, all of its essential requisites must exist.

The elements of *res judicata* are as follows: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject

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48 *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, supra note 46.
49 *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, supra note 47.
50 519 Phil. 391 (2006).
51 Id. at 395-396.

matter and the parties; (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.[52]

Here, all of the aforementioned elements of *res judicata* are present: *first*, this Court's Resolutions in the *2015 Avon case* and the *2022 Avon cases*, which denied Avon's claim for refund have long become final and executory; *second*, such Resolutions are considered an adjudication on the merits of the case; *third*, that this Court exercises jurisdiction over an appeal of the decision of the CTA-EB is beyond cavil; and *fourth*, between the *2015 Avon case* and the *2022 Avon cases*, and the instant case, there exists: (1) identity of parties, *i.e.*, Avon and the CIR; (2) identity of subject matter, *i.e.*, the supposedly erroneous excise tax payments paid by Avon on its splash colognes and body sprays, whose essential oil content are not more than 3% by weight; and (3) identity of cause of action, *i.e.*, the supposed incorrect interpretation of the term "toilet waters" in Section 150(b) of the NIRC which led to the imposition of 20% excise tax on Avon's splash colognes and body sprays, whose essential oil content are not more than 3% by weight.

Undeniably, *res judicata* is applicable in this case, considering that the matters raised in the Petition have already been squarely adjudged by this Court. "Controversies, once decided on the merits shall remain in repose for there should be an end to litigation which, without the doctrine, would be endless."[53]

Finally, given that this Court had already ruled against Avon in the *2015 Avon case* and the *2022 Avon cases*, and such rulings have already become final, this Court finds that there is no more need to further belabor Avon's other arguments in the instant case.

WHEREFORE, the Petition for Review on *Certiorari* dated May 19, 2016 filed by Avon Products Manufacturing, Inc. is **DENIED** due to *res judicata*. The Decision dated April 1, 2016 of the Court of Tax Appeals *En Banc* in CTA EB No. 1275 is **AFFIRMED** *in toto*.

SO ORDERED."

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

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52 *Heirs of Elliot v. Corcuera*, G.R. No. 233767, August 27, 2020, 947 SCRA 417.
53 *Dela Rama v. Judge Mendiola*, 449 Phil. 754, 765 (2003).

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