



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 2, 2022, which reads as follows:

“G.R. No. 206286 (*Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*); G.R. No. 209257 (*Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*); G.R. No. 210068 (*Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*). — Before the Court are three consolidated Petitions for Review¹ filed by Avon Products Manufacturing, Inc. (Avon Products) questioning the Court of Tax Appeals’ (CTA) issuances denying its claim for refund of excise taxes paid on removals of splash colognes and body sprays in 2007, 2008, and 2009 on the ground that these products are “toilet waters” subject to the excise tax on non-essential goods under Section 150 (b)² of the 1997 National Internal Revenue Code, as amended³ (Tax Code).

The central issue in these cases is whether the definition of “toilet waters” in Revenue Regulations (RR) No. 8-84⁴ as “containing essential oils *i.e.* more than 3% by weight” is applicable in determining the toilet waters subject to the excise tax under Section 150 (b) of the Tax Code.

The petitions are bereft of merit.

We emphasize that, on August 10, 2015, the Court issued a Resolution⁵ 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:

¹ *Rollo* (G.R. No. 206286), Vol. 1, pp. 10-70; *rollo* (G.R. No. 209257), Vol. 1, pp. 9-54; and *rollo* (G.R. No. 210068), Vol. 1, pp. 3-45.

² 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:

XXXX

(b) Perfumes and toilet waters;

XXXX.

³ Republic Act No. 8424, Entitled “AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES,” approved on December 11, 1997.

⁴ COSMETIC PRODUCTS REGULATIONS, June 5, 1984.

⁵ See *rollo* (G.R. No. 210068), Vol. II, pp. 960-961.

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 1997 NIRC, as amended, which pertains to the imposition of excise tax. **Albeit the words "toilet 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 [the] 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. (Emphasis supplied).⁶

It bears noting that when Title IV on Excise Taxes was crafted in Presidential Decree (PD) No. 1994,⁷ Section 194 (b) of the 1977 Tax Code dealing with "toilet waters" was renumbered as Section 163 (b) but remained subject to percentage tax.⁸ Executive Order (EO) No. 36⁹ reduced the rate¹⁰ imposable on every original sale, barter, exchange, or similar transaction for a consideration of "toilet waters," but the nature of the tax was the same. PD No. 1994 and EO No. 36 did not change the tax imposed on "toilet waters." The definition of the term given by RR No. 8-84 as "containing essential oils i.e. more than 3% by weight" remained. Simply put, manufacturers and producers of toilet waters with 3% or less essential oil content are not subject to the percentage tax on their sales.

⁶ *Id.*

⁷ Entitled "FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE," November 5, 1985. See Section 20 of PD No. 1994.

⁸ Section 23 of PD No. 1994 reads in part:

SFC. 23. Section 194 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:

"SFC. 163. **Percentage tax on sales of non-essential articles.** 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 herein below enumerated a tax equivalent to 50% 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:

XXXX

"[b] Perfumes, essences, extracts, **toilet waters**, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrice, toothpaste, talcum and medicated toilet powders, hair oils and pomades.

XXXX." (Emphases supplied.)

⁹ Entitled "FURTHER AMENDING CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED," July 30, 1986.

¹⁰ From 50% in PD No. 1994 to 30% in EO No. 36.

Significantly, on July 25, 1987, the President issued EO No. 273,¹¹ adopting the Philippine Value-Added Tax (VAT) system. The second *Whereas Clause* stated that "there is a need to rationalize the present system of taxing goods and services by imposing a multi-stage [VAT] to replace the tax on original and subsequent sales tax and percentage tax on certain services."¹² Accordingly, "[a]ny person who, in the course of trade or business, sells, barter or exchanges goods, renders services or engages in similar transactions and any person who imports goods shall be subject to the [VAT]" or percentage tax. The adoption of the VAT system effectively subjected all sales in the ordinary course of trade or business of toilet waters, regardless of essential oil content, to the VAT or percentage tax.

The question now is whether the definition of toilet waters in RR No. 8-84 was carried over in Section 150 (b) of EO No. 273.

We answer in the negative.

When EO No. 273 renumbered Section 163 of PD No. 1994, the enumeration of articles covered by the provision was reduced to three.¹³ EO

¹¹ Entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES," January 1, 1988.

¹² Emphasis supplied.

¹³ The following are non-essential articles under Section 163 of PD No. 1994, as amended by EO No. 36:

(a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metal used in filling, mounting or fitting of the teeth); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The term 'imitations thereof' shall include platings and alloys of such metals.

(b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restorations, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrice, toothpaste, talcum and medicated toilet powders, hair oils and pomades.

(c) Dice, mahjong sets and playing cards.

(d) Jukeboxes.

(e) Automobiles (except motor vehicles classified as trucks, jeeps and utility vehicles). A sale of an automobile shall, for purposes of this section, be considered as a sale of the chassis and of the body, together with parts and accessories with which the same is usually equipped, including the other parts and accessories permanently attached thereto at the time of the original sale.

(f) Parts and accessories of automobiles which are primarily for ornamentation or embellishment.

(g) Yachts and other vessels intended for pleasure or sports.

(h) Harpsichords, accordions, pianos and electric or electronic musical organs.

(i) Firearms and cartridges or other forms of ammunition.

(j) Household-type electric vacuum cleaners or polishers.

(k) Washing machines, clothes dryers and combination washing machine and clothes dryers of all types.

(l) Textiles wholly or in chief value of silk, wool, or linen; nylon or other synthetic and/or chemical fabrics not intended for clothing; wool and silk hats; and furs and manufactures thereof.

(m) Electricity and/or battery-operated beauty equipment and accessories.

(n) Electricity and/or battery-operated toys.

(o) Television sets, phonographs or gramophones, combination radio-phonograph sets, tape recorders, video tape recorders, tape decks, car stereos, cassette radios, and similar articles for reproducing and/or recording music, sound and images and any combination thereof.

(p) Air-conditioning units.

(q) Similar or analogous articles, substances or preparations to those enumerated above as determined by the Commissioner of Internal Revenue based on the essentiality of the articles.

EO No. 273 renumbered and amended Section 163 to read as follows:

No. 273 modified the kind of tax imposed on “toilet waters” in Section 163 from sales tax, or the tax on the performance, carrying on, or exercise of an activity or business, to excise tax, a tax on the property.¹⁴ The provision was transferred to “Title VI – Excise Taxes on Certain Articles,” in Chapter 6, together with “Fireworks,”¹⁵ “Cinematographic Films,”¹⁶ “Saccharine,”¹⁷ and “Automobiles.”¹⁸ The alteration in the nature of tax imposed on “toilet waters” in Section 163 (previously Section 194) indicates that a change of law was intended. In *Laguna Metts Corp. v. Court of Appeals*,¹⁹ we held that “[a]s a rule, an amendment by the deletion of certain words or phrases indicates 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.”

Indeed, the reclassification of the tax imposed on “toilet waters” into excise taxes is an effective repeal of the old provision. Section 29 of EO No. 273 provides that “the provisions of any law, whether general or special, rules and regulations and other issuances or parts which are inconsistent with th[e] Order are repealed, amended or modified accordingly.” RR. No. 8-84 specifically deals with the tax imposed on cosmetic products under Sections 194 (b) and (e) of the 1977 Tax Code, to wit:

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:**

xxxx. (Emphases in the original.)

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:

(a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth); opera glasses and lorgnettes. The term ‘precious metals’ shall include platinum, gold, silver, and other metals of similar or greater value. The terms ‘imitations thereof’ shall include platings and alloys of such metals;

(b) Perfumes and toilet waters;

(c) Yachts and other vessels intended for pleasure or sports.

¹⁴ See *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, 716 Phil. 433, 475 (2014); *Diageo Philippines, Inc. v. Commissioner of Internal Revenue*, 698 Phil 385, 392-393 (2012); *Petron Corp. v. Tiangco*, 574 Phil 620, 628 (2008).

¹⁵ Section 131 of PD No. 1994 (renumbered to Section 146 under EO No. 273).

¹⁶ Section 133 of PD No. 1994 (renumbered to Section 147 under EO No. 273).

¹⁷ Section 135 of PD No. 1994 (renumbered to Section 148 under EO No. 273).

¹⁸ Section 135-A of EO No. 36 (renumbered to Section 149 under EO No. 273).

¹⁹ G.R. No. 185220 (Resolution), July 27, 2009, 611 Phil. 530, 536 (2009).

The sales tax or percentage tax imposed by Section 194 (b) of the 1977 Tax Code on "toilet waters" ceased to exist when EO No. 273 modified the nature of the imposable tax to excise tax under Section 163. In effect, RR No. 8-84, which was integrated into the amended and replaced Section 194 (b) of the 1977 Tax Code, is already inapplicable. Hence, the definition of the term "toilet waters" as "containing essential oils *i.e.* more than 3% by weight" given by RR No. 8-84 cannot be made to apply in determining the "toilet waters" subject to the excise tax under Section 150 (b) of the present Tax Code.

Finally, we stress that Section 27²⁰ of EO No. 273 mandates the Secretary of Finance to promulgate rules and regulations to implement the EO. However, the Secretary of Finance did not issue rules construing the term "toilet waters" as it did in RR No. 8-84. On the other hand, the Commissioner of Internal Revenue (CIR) exercised its authority to interpret the provisions of the Tax Code²¹ and issued BIR Ruling No. 043-2000²² and Revenue Memorandum Circular (RMC) No. 17-02,²³ treating *all* toilet waters, regardless of essential oil content, subject to the excise tax under Section 150 (b). To date, the Secretary of Finance, who is vested with the power to review rulings of the CIR,²⁴ has not modified or reversed the CIR's issuances.

It is a settled rule that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts.²⁵ Administrative construction of tax law, while not conclusive, will be followed unless clearly erroneous.²⁶ Avon Products has not shown why we should deviate from this well-settled rule. Thus, the general interpretation of the statute accorded by the CIR in BIR Ruling No. 043-2000 and published in RMC No. 17-02 shall be given effect. Since Avon Products admitted that the principal ingredient of its splash colognes and body sprays is alcohol, and the products are meant for putting fragrance on the skin, the CTA correctly concluded that Avon Products' splash colognes and body sprays are "toilet waters" subject to the excise tax on non-essential goods in Section 150 (b) of the Tax Code. Accordingly, Avon Products is not entitled to a refund.

FOR THESE REASONS, the petitions for review are DENIED.

²⁰ SECTION 27. The Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, shall promulgate the rules and regulations to effectively implement this Executive Order.

²¹ SECTION 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. 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. xxx.

²² Re: IMPOSITION OF EXCISE TAX ON GREEN CROSS BABY COLOGNE.

²³ Subject: GREEN CROSS BABY COLOGNE AND ALL OTHER COLOGNE PRODUCTS.

²⁴ Section 4, Tax Code.

²⁵ *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929 (1999).

²⁶ See *People v. Hernandez*, 59 Phil. 272, 276 (1933) and *Molina v. Rafferty*, G.R. No. L-11988, 37 Phil. 545-562 (1918).

SO ORDERED.”

By authority of the Court:

Mis-DCBatt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court JB 9/12/22

ROMULO MABANTA BUENAVENTURA SAYOC &
DELOS ANGELES
Counsel for Mabanta and De los Angeles
21st Floor, Philamlife Tower
8767 Paseo de Roxas, 1226 Makati City

COURT OF TAX APPEALS
Agham Road, Diliman
110 Quezon City
(CTA EB No. 847)
(CTA Case No. 7873)

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

Atty. Christopher Sandico
Litigation & Prosecution Division
BUREAU OF INTERNAL REVENUE
Room 703, 7/F BIR Bldg.
1100 Quezon City

PHILIPPINE JUDICIAL ACADEMY
Research Publications and Linkages Office
Supreme Court, Manila
[research_philja@yahoo.com]

PUBLIC INFORMATION OFFICE
Supreme Court, Manila
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES
Supreme Court, Manila

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

G.R. No. 206286, 209257 and 210068

**(134)
URES**