REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GREEN CROSS, INC., *Petitioner,*	**CTA *EB* NO. 2912** (CTA Case No. 10401)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 0 3 2025 2:07

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review filed by petitioner Green Cross, Inc. on May 8, 2024, seeking the reversal of the Decision dated November 22, 2023 (Assailed Decision) and the Resolution dated April 16, 2024 (Assailed Resolution) promulgated by the Court of Tax Appeals (CTA) Special Second Division[1] in CTA Case No. 10401, entitled *Green Cross, Inc. vs. Commissioner of Internal Revenue*.

The Assailed Decision and Resolution denied petitioner Green Cross, Inc.'s Petition for Review, wherein it prayed for the refund of the alleged erroneously paid taxes of ₱117,973,507.78, representing excise taxes on the removals of cologne products/splash colognes

[1] Composed of Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David.

and Value-Added Tax (VAT) on these excise taxes for the taxable period from November 2018 to December 2019.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office located at 14th Floor, Common Goal Tower, Finance corner Industry Streets, Madrigal Business Park, Muntinlupa City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR), the government agency mandated by law to assess and collect all national internal revenue taxes, fees, and charges. Respondent holds office at the BIR Building, BIR Road, Diliman Quezon City.[3]

THE FACTS

For the period beginning November 16, 2018 to December 17, 2019, petitioner paid excise taxes amounting to ₱106,337,067.99[4] on the removals of its cologne products/splash colognes from their place of production. Additionally, petitioner paid VAT on these excise taxes amounting to ₱11,636,439.79[5] for the taxable period October 2018 to December 2019.

Petitioner then filed an administrative claim for refund of its alleged erroneously paid excise taxes and VAT on excise taxes with the BIR Large Taxpayers Service through a letter dated October 29, 2020,[6] and a duly accomplished Application for Tax Credits/Refund[7] filed on October 30, 2020, in the total amount of ₱117,973,507.78.

Due to the inaction of petitioner and in order to preserve its right to judicially claim for refund its alleged erroneously paid excise taxes and VAT on excise taxes for the period November 2018 to December 2019, petitioner filed the Petition for Review[8] on November 16, 2020, which was raffled to the CTA Third Division.

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[2] Par. 1, Agreed Facts, Joint Stipulation of Facts and Issues, CTA Division Docket Vol. III, p. 1043.
[3] Par. 2, Agreed Facts, Joint Stipulation of Facts and Issues, CTA Division Docket Vol. III, p. 1043.
[4] Par. 9, The Material Facts, Petition for Review, CTA Division Docket Vol. I, p. 8.
[5] Par. 10, The Material Facts, Petition for Review, CTA Division Docket Vol. I, p. 10.
[6] Exhibit "P-40," CTA Division Docket Vol. VI, pp. 2663-2670.
[7] Exhibit "P-41," CTA Division Docket Vol. VI, p. 2671.
[8] CTA Division Docket Vol. I, pp. 6-32.

Summonses were personally served upon the CIR and the Office of the Solicitor General on December 4, 2020.[9]

On December 28, 2020, respondent personally filed a Motion for Extension of Time to File Answer,[10] which the Court in Division granted on January 7, 2021,[11] setting a non-extendible period of thirty (30) days from January 4, 2021 or until February 3, 2021, within which to file Answer.

Thereafter, on January 29, 2021, respondent filed his Answer,[12] raising the special and affirmative defense that petitioner is not entitled to refund because it is liable for excise taxes on the removal of its cologne products/splash colognes from their place of production and the corresponding VAT on its excise taxes, pursuant to Section 150(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, *vis-à-vis* the definition of "toilet waters" under BIR Ruling No. 43-2000, which was subsequently published in Revenue Memorandum Circular (RMC) No. 17-02.

The Court set the case for pre-trial on June 3, 2021.[13]

Respondent's Pre-Trial Brief[14] was filed on May 20, 2021, while petitioner's Pre-trial Brief[15] was filed on May 28, 2021. After a series of resettings,[16] the Pre-Trial Conference was held on November 9, 2021 during which, hearing dates were also set.[17]

On December 9, 2021, the parties filed their Joint Stipulation of Facts and Issues (JSFI).[18] With the approval of their JSFI, the Court deemed the Pre-Trial terminated on December 16, 2021.[19] On March 10, 2022, the Court in Division issued the Pre-Trial Order.[20] Upon petitioner's motion, an Amended Pre-Trial Order[21] was issued on June 24, 2022, to reflect petitioner's correct exhibit markings.

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[9] CTA Division Docket Vol. II, p. 1034.
[10] CTA Division Docket Vol. II, pp. 1036-1039.
[11] CTA Division Docket Vol. II, p. 1041.
[12] CTA Division Docket Vol. II, pp. 1042-1049.
[13] CTA Division Docket Vol. II, pp. 1050-1051.
[14] CTA Division Docket Vol. III, pp. 1059-1063.
[15] CTA Division Docket Vol. III, pp. 1067-1125.
[16] CTA Division Docket Vol. III, pp. 1329, 1331.
[17] CTA Division Docket Vol. III, pp. 1035-1036.
[18] CTA Division Docket Vol. III, pp. 1043-1067.
[19] CTA Division Docket Vol. III, p. 1071.
[20] CTA Division Docket Vol. V, pp. 2058-2080.
[21] CTA Division Docket Vol. VII, pp. 3163-3187.

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: (1) Chito P. Ibarrientos,[22] a Chemical Engineer in petitioner's Research and Development Team; (2) Shylene S. Santos,[23] petitioner's Finance General Accounting Manager; (3) Shalimar Sunshine S. Feldia,[24] the Managing Director of Consumer Vibe Asia Incorporated; and, (4) Theresa Michelle S. Cortes,[25] petitioner's Group Product Manager for Personal Care.

Petitioner filed its Formal Offer of Evidence[26] on May 30, 2022. Respondent filed his Comment[27] thereon on June 16, 2022.

On June 21, 2022, respondent filed a Manifestation[28] stating that he will not be presenting any witness in the instant case.

On July 11, 2022, the case was transferred to the CTA Second Division due to the reorganization of the CTA Second and Third Divisions.[29]

In the Resolution dated August 25, 2022,[30] the Court admitted in evidence petitioner's exhibits, save for Exhibit "P-26-12" for not being found in the records.

On September 9, 2022, petitioner filed a Motion for Partial Reconsideration (of the Resolution dated August 25, 2022) and Submission of Clearer Copies of Exhibits.[31]

Petitioner filed its Memorandum[32] on September 30, 2022. Meanwhile, respondent filed his Memorandum[33] on October 3, 2022.

In the Resolution dated November 22, 2022,[34] the Court in Division granted the Motion for Partial Reconsideration, noted the Submission of Clearer Copies of Exhibits, and submitted the case for decision.

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[22] Exhibit "P-111", CTA Division Docket Vol. VI, pp. 3004-3076.
[23] Exhibit "P-110", CTA Division Docket Vol. VI, pp. 2919-3003.
[24] Exhibit "P-113", CTA Division Docket Vol. VII, pp. 3100-3114.
[25] Exhibit "P-112", CTA Division Docket Vol. VII, pp. 3077-3099.
[26] CTA Division Docket Vol. V, p. 2135 to Vol. VII, p. 3125.
[27] CTA Division Docket Vol. VII, pp. 3152-3155.
[28] CTA Division Docket Vol. VII, pp. 3156-3159.
[29] CTA Division Docket Vol. VII, p. 3188.
[30] CTA Division Docket Vol. VII, pp. 3190-3195.
[31] CTA Division Docket Vol. VII, pp. 3196-3204.
[32] CTA Division Docket Vol. VII, pp. 3207-3277.
[33] CTA Division Docket Vol. VII, pp. 3278-3288.
[34] CTA Division Docket Vol. VII, pp. 3291-3293.

Thereafter, the Court in Division promulgated the Assailed Decision, denying the Petition for Review. The dispositive portion of the Decision reads:

> "**WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Green Cross, Inc. on 16 November 2020 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."[35]

On January 3, 2024, petitioner timely filed a Motion for Reconsideration,[36] which was denied for lack of merit in the Assailed Resolution, *viz*:

> "**ACCORDINGLY**, petitioner Green Cross, Inc.'s Motion for Reconsideration filed on 03 January 2024 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."[37]

On May 8, 2024, petitioner filed the present Petition for Review,[38] with the Court *En Banc*.

In the Minute Resolution dated June 10, 2024,[39] the Court *En Banc* directed respondent to comment on the Petition for Review within ten (10) days from notice thereof.

Subsequently, in the Minute Resolution dated July 16, 2024,[40] the Court *En Banc* noted the Records Verification Report dated July 4, 2024, stating that respondent failed to file his Comment on the Petition for Review, and submitted the case for decision.

THE ISSUE

The issue in the case at bar is:

> Whether or not the Court in Division erred in ruling that petitioner is not entitled to a refund in the amount of ₱117,973,507.78, representing its excise taxes and VAT

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[35] CTA Division Docket Vol. VII, p. 3319.
[36] CTA Division Docket Vol. VII, pp. 3321-3354.
[37] CTA Division Docket Vol. VII, p. 3372.
[38] CTA *En Banc* Docket, pp. 1-100.
[39] CTA *En Banc* Docket, p. 101.
[40] CTA *En Banc* Docket, p. 103.

on excise taxes on the removal of its cologne products/splash colognes from the place of production for the taxable period from November 2018 to December 2019.

THE PARTIES' ARGUMENTS

Petitioner argues that: (i) the prospective application of Revenue Regulations (RR) No. 9-23 means that the definition of "toilet waters" under RR No. 8-84 governed during the years 2018 and 2019; (ii) the change in the type of tax imposed on "toilet waters", from percentage tax to excise tax, did not result in the abandonment of the definition provided under RR No. 8-84; (iii) the absence of a new revenue regulation by the Secretary of Finance (SOF) when the tax imposition on "toilet waters" shifted from percentage tax to excise tax indicates that the Government intended the definition of "toilet waters" under RR No. 8-84 to remain in effect; (iv) the purported amendment of the definition of "toilet waters" under RR No. 8-84 by RMC No. 17-02 is not allowed; (v) its splash cologne products are not "non-essential goods" since they are basic, common commodities not intended solely for personal adornment or embellishment; and, (vi) the Supreme Court's decisions in the *Avon Cases*[41] are not applicable to the present case.

THE COURT *EN BANC'S* RULING

The present Petition for Review is unmeritorious.

The Court En Banc has jurisdiction over the present petition

Prior to addressing the merits, the Court *En Banc* shall first determine whether it has jurisdiction to take cognizance of the present petition.

Section 2, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

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[41] *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205602, August 10, 2015; *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206286, 209257, 210086, March 2, 2022; *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 224079, March 29, 2023.

> "Sec. 2. Cases within the jurisdiction of the Court *en banc*. — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (a) Decisions or resolutions on motion for reconsideration or new trial of the **Court in Division** in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]" *(Boldfacing and underscoring supplied)*

Furthermore, Section 3(b), Rule 8 of the RRCTA, as amended, provides:

> "Sec. 3. Who may appeal; period to file petition. – xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days** from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review." *(Boldfacing supplied)*

The present Petition for Review falls within the scope of Section 2(a)(1) of the RRCTA as it seeks the review of the Assailed Decision and Resolution of the Court in Division in CTA Case No. 10401. Thus, the Court *En Banc* has appellate jurisdiction over the subject matter of the present Petition for Review.

The Court *En Banc* notes that petitioner received a copy of the Assailed Resolution on April 25, 2024, giving it until May 10, 2024 to file an appeal.[42] Clearly, the filing of the present Petition for Review on May 8, 2024 was made within the prescribed period. The Court *En Banc* has therefore acquired jurisdiction to take cognizance of the present Petition for Review.

Prefatorily, the Court *En Banc* notes that petitioner's arguments in the present Petition for Review, apart from the assertion that the prospective application of RR No. 9-23 means that the definition of "toilet waters" under RR No. 8-84 governed during the years 2018 and 2019, are mere rehash of its arguments in the Motion for

[42] CTA Division Docket Vol. VII, pp. 3366.

Reconsideration that were already sufficiently passed upon in the assailed Resolution. Nevertheless, the Court *En Banc* will address petitioner's arguments to put its mind to rest once and for all.

The legislative history of Section 150(b) of the NIRC of 1997, as amended

The crux of the controversy pertains to the definition of the term "toilet waters". Under Section 194 of Presidential Decree (PD) No. 1158 or the National Internal Revenue Code (NIRC) of 1977, "toilet waters" are subject to percentage tax, to wit:

> "SECTION 194. **Percentage tax** on sales of jewelry, toilet preparations and others. — There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated a tax equivalent to **seventy per centum of the gross value in money** of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer: Provided, That where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles:
>
> xxx xxx xxx
>
> (b) Perfumes, essences, extracts, **toilet waters**, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparations, by whatsoever name known or distinguished; and any of the above which are used or applied or intended to be used or applied for toilet purposes; except tooth and mouth washes, dentrifices, tooth paste, and talcum or medicated toilet powders.
>
> xxx xxx xxx" (*Boldfacing and underscoring supplied)*

Subsequently, Section 194 of the NIRC of 1977 was amended by Section 1 of PD No. 1358 dated April 21, 1978, which reads:

> "SECTION 1. Certain sections of Title V of the National Internal Revenue Code as amended, are hereby further amended to read as follows:
>
> xxx xxx xxx

> 'SEC. 194. **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 hereinbelow enumerated a tax equivalent to **fifty per centum of the gross value in money** of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer:
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> xxx xxx xxx
>
> (b) Perfumes, essences, extracts, **toilet waters**, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentrifices, tooth paste, talcum and medicated toilet powders, hair oils and pomades.
>
> xxx xxx xxx
>
> (e) Similar or analogous articles, substances or preparations to those enumerated above as determined by the Secretary of Finance upon the recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.
>
> xxx xxx xxx" (*Boldfacing and underscoring supplied)*

The definition of the term "toilet waters" was not provided in the NIRC of 1977, as amended. Its definition was first provided by RR No. 8-84, otherwise known as the "Cosmetic Products Regulations", which was issued by the then CIR to implement the percentage tax on cosmetic products imposed under Section 194(b) of the NIRC of 1977, as amended. The pertinent sections of RR No. 8-84 are quoted hereunder:

> "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. [0]8-84 or the Cosmetic Products Regulations. **These regulations deal with the tax on cosmetic products imposed by Section 194(b) and (e) and Section 326 of the National Internal Revenue Code**, which provides as follows:
>
> xxx xxx xxx

> SECTION 2. Articles taxable as cosmetic products. - The articles defined as follows shall be taxable as cosmetic products:
>
> xxx xxx xxx
>
> (e) **Toilet waters are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils i.e. more than 3% by weight**. Examples: Lav[e]nder water, Eau de Cologne, Eau de Toilette.
>
> xxx xxx xxx." *(Boldfacing and underscoring supplied)*

A close scrutiny of the above-quoted provisions shows that the application of RR No. 8-84 is limited to taxes imposed under Section 194(b) and (e) of the NIRC of 1977, as amended, specifically percentage taxes on cosmetic products. Thereafter, Section 194 of the NIRC of 1977 was further amended by Section 23 of PD No. 1994 dated November 5, 1985, and renumbered as Section 163, which reads:

> "SECTION 23. Section 194 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:
>
> 'Sec. 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:
>
> xxx xxx xxx
>
> (b) Perfumes, essences, extracts, **toilet waters**, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentifrice, toothpaste, talcum and medicated toilet powders, hair oils and pomades;
>
> xxx xxx xxx" *(Boldfacing and underscoring supplied)*

Eventually, Section 163 of the NIRC of 1977, as amended by PD No. 1994, was amended and renumbered as Section 150 by Executive Order (EO) No. 273 dated July 25, 1987, which states:

> "SECTION 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby renumbered and amended to read as follows:
>
> > SEC. 150. Non-essential Goods. - There shall be levied, assessed and collected a tax equivalent to **twenty percent (20%) based on the wholesale price or the value of importation** used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:
> >
> > xxx xxx xxx
> >
> > (b) Perfumes and **toilet waters**;
> >
> > xxx xxx xxx" *(Boldfacing and underscoring supplied)*

From the above-cited provision of EO No. 273, instead of imposing percentage tax, an excise tax of 20% based on the wholesale price or value of the "toilet waters" was imposed.

The NIRC of 1997 otherwise known as the "Tax Reform Act of 1997", retained the imposition of excise tax on "toilet waters", *viz*:

> "SECTION 150. Non-essential Goods. — There shall be levied, assessed and collected a tax equivalent to **twenty percent (20%) based on the wholesale price or the value of importation** used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:
>
> xxx xxx xxx
>
> (b) Perfumes and **toilet waters**;
>
> xxx xxx xxx" *(Boldfacing and underscoring supplied)*

Subsequently, BIR Ruling No. 043-2000 dated September 15, 2000 was issued, wherein the then CIR categorically ruled that colognes are classified as "toilet waters" subject to excise tax under Section 150(b) of the NIRC of 1997, as amended, without qualification as to the percentage (by weight) of their essential oil content. Pertinent portions of BIR Ruling No. 043-2000 are quoted hereunder:

> "In reply, please be informed that the term 'cologne' which is an alcohol-based preparation is defined as follows:

> '**Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant**.' (Hawley's Condensed Chemical Dictionary, 11th ed.)
>
> Alcohol-based is that which contains ethyl alcohol or distilled spirits as chief ingredient. In view of the foregoing, Green Cross Baby Cologne is classified as toilet waters covered by Section 150(b) of the Tax Code of 1997 which provides -
>
> xxx xxx xxx
>
> Accordingly, **all other colognes are, likewise, classified as toilet waters subject to excise tax under the same section**, including Johnson's Baby Cologne which was classified as 'other preparations' by BIR Ruling No. 59-81 dated March 30, 1981 and confirmed by BIR Ruling No. 535-99 dated November 19, 1988.
>
> This Office therefore agrees with the recommendation of Ms. Cleotilde M. Jose, Chief, BIR Laboratory Section, Tax Fraud Division, imposing excise tax on Green Cross Baby Cologne, Johnson's Baby Cologne and all other colognes pursuant to Section 150(b) of the Tax Code of 1997 and hereby declares BIR Ruling No. 59-81 dated March 30, 1981 and BIR Ruling No. 535-88 dated November 19, 1988 null and void." *(Boldfacing and underscoring supplied)*

BIR Ruling No. 043-2000 was later circularized by the BIR through RMC No. 17-02.

RR No. 8-84 was repealed by the subsequent amendments to the NIRC of 1977

Under Section 16 of EO No. 273, the 50% percentage tax on the sale of various cosmetic products was changed to 20% excise tax on non-essential goods, including perfumes and toilet waters. Notably, Section 29 of the same statute provides that the provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof that are inconsistent with the Order are repealed, amended or modified accordingly.

Section 29 of EO No. 273[43] is a general repealing clause, the effect of which is characterized as an implied repeal as it does not

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[43] SECTION 29. The provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof which are inconsistent with this Order are hereby repealed, amended or modified accordingly.

specify the orders, rules or regulations it intends to abrogate.[44] Implied repeal occurs when two statutes cover the same subject matter and they are so inconsistent and incompatible that they cannot be reconciled or harmonized. Both cannot be given effect and therefore, one law's enforcement would nullify the other.[45]

A repeal by implication is frowned upon in this jurisdiction. They are not favored unless there is clear intent from the legislative body, or unless it is convincingly demonstrated that the laws are so contradictory and incompatible that coexistence is impossible.[46]

To reiterate, RR No. 8-84 was issued to implement **sales or percentage tax on cosmetic products** as imposed under Section 194(b) of the NIRC of 1977. While, seemingly, the article taxed under Section 194(b) of the NIRC of 1977 and RR No. 8-84 is identical to that taxed under Section 150(b) of the NIRC of 1997, as amended, the actual subject of the taxation and the character of the tax imposed upon it are not the same. As succinctly put by the Court in Division:

> "The distinction between a sales tax and an excise tax is clear. **A sales tax is a tax imposed on the act of selling the product**. It is not a tax on the property sold. **On the other hand, an excise tax is a tax levied on a specific article**. Otherwise stated, excise taxes imposed under Title VI on "Excise Taxes on Certain Goods and Services" of the NIRC of 1997, as amended, are taxes on property which are imposed on "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported". Excise taxes, as imposed under the NIRC of 1997, as amended, do not pertain to the performance, carrying on, or exercise of an activity, at least not to the extent of equating excise with business taxes."[47] *(Boldfacing supplied)*

The subject matter of the imposition of percentage or sales tax is the act of selling a product, while for excise taxes, it is the manufacture, production, or importation of specific goods. Since these taxes are imposed on different subject matters and serve distinct purposes, they are inherently shaped by unique policy considerations. Consequently, any rules and regulations promulgated to implement the amended law must align with the particular policy

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[44] *The United Harbor Pilots' Association of the Philippines, Inc. vs. Association of International Shipping Lines, Inc., in its own behalf and in representation of its members and Philippine Ports Authority*, G.R. No. 133763, November 13, 2002.
[45] *Alliance of Non-Life Insurance Workers of the Philippines vs. Mendoza*, G.R. No. 206159, August 26, 2020.
[46] *The United Harbor Pilots' Association of the Philippines, Inc. vs. Association of International Shipping Lines, Inc., in its own behalf and in representation of its members and Philippine Ports Authority*, G.R. No. 133763, November 13, 2002.
[47] CTA *En Banc* Docket, p. 87.

considerations behind the new tax imposed. Clearly, the rationale behind RR No. 8-84 is inconsistent with the policy framework for excise tax on toilet waters under Section 150(b) of the NIRC of 1997, as amended. Thus, in implementing Section 29 of EO No. 273, RR No. 8-84 must be considered implicitly repealed upon its effectivity.

Furthermore, even without invoking the general repealing clause under Section 29 of EO No. 273, RR No. 8-84 must still be deemed repealed by Section 16 of the same Executive Order.[48] Since Section 194 of the NIRC of 1977, which gave life to RR No. 8-84, has been substantially amended and replaced by Section 150 of the NIRC of 1997, as amended, it logically follows that RR No. 8-84, which relied on the former provision, is now deemed inapplicable.[49] With the repeal of the law it was intended to implement, there is nothing for RR No. 8-84 to enforce.

In light of the foregoing, RR No. 8-84, which governs the imposition of a percentage or sales tax on cosmetic products, cannot be used to implement Section 150(b) of the NIRC of 1997, as amended, which pertains to the imposition of excise tax. Thus, the definition of "toilet waters" under RR No. 8-84 cannot be invoked by petitioner to support its claim for refund.

The principle of legislative approval of administrative interpretation by reenactment is not applicable

Petitioner argues that the principle of legislative approval of administrative interpretation by reenactment applies in this case, and therefore, RR No. 8-84 and its definition of "toilet waters" should not be considered repealed. Petitioner asserts that lawmakers are presumed to have been aware of the definition of "toilet waters" under RR No. 8-84 when they (i) enacted EO No. 273 and the NIRC of 1997, as amended, and (ii) chose not to introduce a new definition for "toilet waters" in either EO No. 273 or the NIRC of 1997, as

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[48] SECTION 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby renumbered and amended to read as follows:

> "SEC. 150. Non-Essential Goods. — There shall be levied, assessed and collected a tax equivalent to 20% based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties; net of excise tax and value-added tax, of the following goods: xxx (b) Perfumes and toilet waters; xxx"

[49] *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 7873, August 16, 2011.

amended. Furthermore, petitioner contends that the shift in the type of tax imposed does not affect the definition of the term, citing by analogy RR No. 13-80, which defines the term "quarry resources". It claims that the BIR continued to rely on the definition provided by RR No. 13-80 even after a shift in the type and rate of tax—from royalty tax plus rent to excise tax— when the BIR issued BIR Ruling Nos. DA-138-03 and DA-450-06, which respectively state:

BIR Ruling No. DA-138-03

"Moreover, Section 151(B)(4) of the same Code defines 'quarry resources' as follows:

> '(4) 'Quarry resources' shall mean any common stone or other common mineral substances as the Director of the Bureau of Mines and Geo-Sciences may declare to be quarry resources such as, but not restricted to, marl, marble, granite, volcanic cinders, basalt, tuff and rock phosphate: Provided, That they contain no metal or metals or other valuable minerals in economically workable quantities.

Section 2(h) of Revenue Regulations No. 13-80 dated November 7, 1980 or Regulations Governing the Taxation of Minerals and Mineral Products implementing B.P. Blg. 84 contains the foregoing definition and also provides, in the second paragraph thereof, that "quarry resources include sand and gravel whether removed from river beds or quarried." Such being the case, said products are subject to the then 3% excise tax based on the actual market value of the annual gross output thereof at the time of removal of those locally extracted or produced." *(Boldfacing and underscoring supplied)*

BIR Ruling No. DA-450-06

"Moreover, Section 151 (B)(4) of the same Code defines 'quarry resources' as follows:

> '(4) 'Quarry resources' shall mean any common stone or other common mineral substances as the Director of the Bureau of Mines and Geo-Sciences may declare to be quarry, resources such as, but not restricted to, marl, marble, granite, volcanic cinders, basalt, tuff and rock phosphate: Provided, That they contain no metal or metals or other valuable minerals in economically workable quantities.

Section 2(h) of Revenue Regulations No. 13-80 dated November 7, 1980 or the Regulations Governing the Taxation of Minerals and Mineral Products implementing B.P. Blg. 84 contains the foregoing definition and also provides, in the

> **second paragraph thereof, that quarry resources include sand and gravel whether removed from river beds or quarried."** Such being the case, said products are subject to the then 3% excise tax based on the actual market value of the annual gross output thereof at the time of removal of those locally extracted or produced." *(Boldfacing and underscoring supplied)*

The principle of legislative approval of administrative interpretation by reenactment holds that "the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction."[50] The rationale behind this principle is that the legislature is presumed to have reenacted the law with full awareness of the existing revenue regulations and to have implicitly approved or affirmed them because they would carry out the legislative purpose.[51]

Petitioner's argument hinges on the presumption that lawmakers were aware of RR No. 8-84's definition of "toilet waters" at the time they enacted EO 273 and NIRC of 1997, as amended. The crucial determinant here, however, is whether the reenacted statute is "substantially unchanged."

As previously discussed, there was a substantial change in the nature of the tax imposed between Section 194(b) of the NIRC of 1977 and Section 150(b) of the NIRC of 1997, as amended. That the change has nothing to do with the definition of a word is irrelevant. The shift in the nature of the tax constitutes a substantial revision, involving different policy considerations. As the Supreme Court held in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*,[52] *viz*:

> "**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

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[50] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[51] *Id.*
[52] *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205602, August 10, 2015.

> 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." *(Boldfacing and underscoring supplied)*

Furthermore, the cited BIR rulings are not analogous to the case at bar. In the aforequoted rulings, the BIR explicitly adopted the definition of "quarry resources" provided in RR No. 13-80, thereby reinstating the interpretation of the previous revenue regulations. Effectively, they reestablished the same definition of the term. In the present case, however, the BIR made no such reference. Instead, it adopted a different interpretation, as it is empowered to do under the NIRC of 1997, as amended.

Petitioner's argument that the Court in Division made a policy determination by concluding that RR No. 8-84's definition of "toilet waters" cannot apply to excise-taxed toilet waters because of the change of the nature of tax is likewise without merit.

Policy decisions fall entirely within Congress' discretion, exercised through its plenary legislative powers. The Court, as a rule, cannot pass upon questions of wisdom, justice, or expediency of legislation done within the co-equal branch's authority.[53] The judiciary's role is to interpret laws, holding exclusive jurisdiction and ultimate authority within its own sphere.[54]

In this case, by refraining from applying the definition in RR No. 8-84, given its repeal, the Court avoided making a policy determination. Had it chosen to apply the repealed regulation, this could have been interpreted as extending or creating policy beyond the scope of current law. Instead, it adhered to its interpretative role by recognizing the legal change (i.e., the repeal of RR No. 8-84) and applying only the law as it stands.

The paucity of merit in petitioner's position is evident in the multiple cases[55] decided by the Supreme Court holding that RR No. 8-84 is already inapplicable. Under the doctrine of *stare decisis*, a

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[53] Section 1, Article VI, 1987 Constitution; *Macalintal vs. Commission on Elections*, G.R. Nos. 263590 & 263673, June 27, 2023.
[54] Section 1, Article VIII, 1987 Constitution; *Belgica vs. Ochoa, Jr.*, G.R. Nos. 208566, 208493 & 209251, November 19, 2013.
[55] *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205602, August 10, 2015; *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206286, 209257, 210086, March 2, 2022; *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 224079, March 29, 2023.

conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different.[56] Once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[57]

RMC No. 17-02 is a valid issuance of the CIR, interpreting the term "toilet waters"

As it has been established that RR No. 8-84 has been repealed, the Court must now rely solely on the law and any relevant issuances to determine the definition of "toilet waters." It is a well-settled rule that rulings of administrative agencies interpreting the law are persuasive and deserve great weight,[58] provided they are in harmony with the Constitution and the laws they are meant to implement. In this regard, Section 4 of the NIRC of 1997, as amended, vests the CIR with the exclusive authority to interpret tax laws:

> "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**. The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." (*Boldfacing and underscoring supplied*)

In line with this authority, the CIR, through BIR Ruling No. 043-2000 dated September 15, 2000, and later published in RMC No. 17-02, defined "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant. This definition was drawn from *Hawley's Condensed Chemical Dictionary, 11th edition*.

Section 4 of the NIRC of 1997, as amended, is clear: the CIR has the authority to interpret the NIRC and other national tax laws, subject to review by the SOF. In issuing BIR Ruling No. 043-2000, the CIR was merely exercising its mandate to interpret a provision of the

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[56] *Chinese Young Men's Christian Association of the Philippine Islands vs. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008.
[57] *Fermin vs. People*, G.R. No. 157643, March 28, 2008.
[58] *Chamber of Real Estate and Builders' Associations, Inc. vs. Romulo*, G.R. No. 160756, March 9, 2010.

NIRC. Notably, the SOF, who has the authority to review and reverse the CIR's rulings, has not modified or overturned this ruling.

Prescinding from the foregoing, the CIR's interpretation of the term "toilet waters" in BIR Ruling No. 043-2000 should be accorded great weight. The CIR did not introduce a new meaning to the term "toilet waters" in Section 150(b) of the NIRC of 1997, as amended, but merely fulfilled its mandate to interpret the law. The CIR exercised its authority appropriately, neither expanding nor limiting the law's scope unduly. Given that Section 150(b) of the NIRC of 1997, as amended, does not define "toilet waters," the legal maxim *ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, we should not distinguish) is applicable. In the absence of a statutory distinction, the BIR Ruling governs, rendering the term "toilet waters" applicable to all kinds of toilet waters, including petitioner's colognes and body sprays.

The prospective application of RR No. 9-23 does not necessarily imply a different prior interpretation

Petitioner argues that because the SOF amended the definition of "toilet waters" in RR No. 9-23, which took effect only on July 28, 2023, and is applied prospectively, it follows that the definition of "toilet waters" under RR No. 8-84 must have governed the term prior to that date.

This claim is *non sequitur*. The mere fact that the SOF defined "toilet water" in RR No. 9-23, does not necessarily imply that a different definition applied previously. The key consideration is whether an authoritative interpretation of the term "toilet waters" existed prior to RR No. 9-23. As previously established, such an interpretation had already been provided by the CIR in BIR Ruling No. 043-2000 as circularized in RMC No. 17-02, and this definition was neither modified nor overruled by the SOF.

Splash colognes are non-essential goods

Lastly, petitioner contends that, based on principles of statutory construction, its splash cologne products are not the non-essential goods subject to excise tax contemplated under Section 150 of the NIRC of 1997, as amended. Petitioner further argues that when the

legislature crafted Section 150 on "non-essential goods," its intention was to impose a consumption tax on luxury items, rather than on any goods arguably deemed non-essential to a person's existence. To support this, petitioner cites House Bill No. 6993, filed only on January 30, 2023, where the Explanatory Note clarifies that the legislature envisioned non-essential goods as those "whose prices are beyond the reach of the bulk of consumers, and which are not significant or important inputs to other value-adding industries."

A plain reading of Section 150 and its heading, "Non-essential goods," however, is clear and unambiguous. It explicitly imposes excise tax on toilet waters without any price-based qualifications. Therefore, all products categorized as toilet waters are subject to excise tax, regardless of their price or market reach. Moreover, the term "non-essential goods," as commonly understood, refers to the functionality of the products rather than their market value. This interpretation aligns with the Opinion of the SOF, *viz*:

> "The Department believes that **it is the function of the object that principally determines whether it is non-essential or semi-essential.** Further, it should be noted that the price or value of the items do not necessarily dictate whether certain goods are non-essential or semi-essential."[59] *(Boldfacing supplied)*

Since the language of the statute is plain and unambiguous, there is no need for further interpretation or to examine legislative intent. The law must be applied as written.

Following the valid and binding interpretation made by the CIR in RMC No. 17-02, cologne products/splash colognes are considered "toilet waters", which are non-essential goods subject to the 20% excise tax imposed by Section 150(b) of the NIRC of 1997, as amended.

In view of the foregoing disquisition, the Court *En Banc* finds no reversible error in the Court in Division's denial of the refund claim of petitioner.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Green Cross, Inc. is hereby **DENIED** for lack of merit. The Decision dated November 22, 2023 and the Resolution dated April 16, 2024, rendered by the Court's Special Second Division in CTA Case No. 10401 are **AFFIRMED**.

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[59] DOF Opinion No. 012-2022, June 29, 2022.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice