Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 20, 2022**, *which reads as follows:*

"G.R. No. 198776 (*Spouses Emmanuel S. Castillo and Luzviminda Flores-Castillo v. Carlito Y. Santos, Mario Mamangon, Mike Septimo, and Philippine National Bank*). For this Court's resolution is a Petition for Review on *Certiorari*[1] dated October 18, 2011 filed by spouses Emmanuel S. Castillo and Luzviminda Flores-Castillo (petitioners) seeking to reverse and set aside the Decision[2] dated May 25, 2011 and the Resolution[3] dated September 28, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 90292.

The CA reversed and set aside the Decision[4] dated July 18, 2006 of the Regional Trial Court (RTC) of Guimba, Nueva Ecija and dismissed the complaint against respondent Philippine National Bank (PNB).

Facts of the Case

Petitioners filed a Complaint[5] for breach of contract and damages against PNB and its branch officers namely; Carlito Y. Santos (Santos) – Manager, Mario Mamangon (Mamangon) – Assistant Manager, and Mike Septimo (Septimo) – Loan Officer of PNB-Guimba branch.

Petitioners were engaged in the poultry business[6] and were valued clients of PNB-Guimba branch for six years before the former transferred their loan account to Rizal Commercial Banking Corporation (RCBC)-Guimba branch.[7] Sometime in January 1997, respondents Santos, Mamangon, and Septimo visited the residence of petitioner and was able to convince them to transfer their loan account from RCBC-Guimba branch to PNB-Guimba branch.[8]

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1 *Rollo*, pp. 3-30.
2 Id. at 60-67. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr., concurring.
3 Id. at 35-37.
4 Id. at 48-55. Penned by Judge Ismael P. Casabar.
5 Id. at 38-42.
6 Id. at 5-6.
7 Id. at 38.
8 Id. at 112.

Petitioners alleged in their complaint that during the meeting at their residence, Santos, Mamangon, and Septimo offered them a loan package of ₱5,000,000.00 under liberal terms and conditions in order to finance the improvement and expansion of their poultry business.[9] It was supposedly under these terms that petitioners were convinced to transfer their loan account from RCBC-Guimba branch to PNB-Guimba branch.[10] However, only the total amount of ₱2,900,000.00 was released. Petitioners claimed that they demanded respondent PNB to release the remaining ₱2,100,000.00 of the loan proceeds, but they were refused.[11] Accordingly, petitioners claimed that due to respondent PNB's failure to release the remaining loan proceeds, they were not able to expand their poultry business and the chicks they previously ordered all died, thus, they suffered damages in the amount of ₱750,000.00 representing actual losses and ₱5,000,000.00 as unrealized income.[12]

In their Answer,[13] respondents conceded that while they indeed visited petitioners at their residence to discuss available loan packages, they denied that they promised and assured a loan in the amount of ₱5,000,000.00.[14] During trial, petitioners presented a hand written list of loans prepared by Santos that PNB was allegedly offering to petitioners.[15] However, respondents denied that this was an offer, rather only a mere illustration of the possible total loan petitioners could obtain from PNB.[16] Respondents further contended that the amount of loan that was approved by PNB was only ₱2,900,000.00, broken down as follows: ₱2,000,000.00 Home Sweet Loan; ₱400,000.00 Pangkabuhayan ng Bayan Loan; and ₱500,000.00 Time Loan Commercial.[17]

Respondents clarified that while petitioners applied for a loan package in the amount of ₱5,000,000.00, this amount is not automatically granted and released without first seeing an appraisal report on petitioners' collateral as well as a study and review of their business.[18] Respondents alleged that the collateral put up by petitioners was insufficient to justify the grant and release of the full amount of ₱5,000,000.00.[19] Respondents, in fact, advised petitioners to improve and construct additional poultry houses so that the higher officials of PNB would approve the remaining loan application, however petitioners failed to do so. Moreover, respondents alleged that the loan extended to petitioners was far more liberal and beneficial to them considering that it was for the amount of ₱2,900,000.00 for a term of 10 years, while the loan granted by RCBC was for ₱2,200,000.00 for a term of one year in the form of a credit line.[20]

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9 Id. at 6.
10 Id.
11 Id.
12 Id.
13 Id. at 43-45.
14 Id. at 43-44.
15 Id. at 94.
16 Id. at 112.
17 Id. at 62.
18 Id. at 94.
19 Id. at 112.
20 Id. at 92.

Ruling of the Regional Trial Court

In its Decision[21] dated July 18, 2006, the RTC ruled in favor of petitioners and ordered PNB to pay the amount of ₱1,656,000.00 representing petitioners' unrealized income and ₱750,000.00 representing the value of the layer chicks ordered by petitioners, as compensatory damages. On the other hand, the RTC dismissed the case with respect to the other defendants.

The dispositive portion of the decision reads:

> "**WHEREFORE,** judgment is rendered:
>
> 1. Ordering the defendant Philippine National Bank to:
>
> a. Pay to the plaintiffs the sum of P2,406,000 (P1,656,000 + P750,000) in compensatory damages plus P50,000 as Attorney's fees; and
>
> b. Pay the cost of the suit, and
>
> 2. Dismissing the case against defendants Carlito Santos, Mario G. Mamangon and Mike Septimo.
>
> SO ORDERED.[22] (Emphasis in the original)

Thereafter, PNB filed a Notice of Appeal.[23]

Ruling of the Court of Appeals

In its Decision[24] dated May 25, 2011, the CA granted PNB's appeal and set aside the RTC decision, dismissing the case against PNB. The dispositive portion of the CA decision reads:

> **WHEREFORE,** in view of the foregoing, the appeal is granted. The Decision dated 18 July 2006 of the Regional Trial Court of Guimba, Nueva Ecija, Branch 33 is reversed and set aside and a new one entered dismissing the case against defendant-appellant PNB.
>
> **SO ORDERED.**[25] (Emphases in the original)

In reversing the RTC decision, the CA ruled that the loan amount consented by respondent PNB is only ₱2,900,000.00. The CA held that the amount of ₱5,000,000.00 applied for by petitioners is still subject to the approval process of respondent PNB which takes into consideration, among others, the collateral or security put up by petitioners. The relevant portion of the CA decision states:

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21 Id. at 48-55.
22 Id. at 54-55.
23 Id. at 57.
24 Id. at 60-67.
25 Id. at 66-67.

> We have reviewed the evidence presented by the contending parties in the instant case, and have arrived at the reasoned conclusion that the amount of loan consented by PNB is only ₱2,900,000.00. The amount of ₱5,000,000.00 applied for by plaintiffs-appellees is not necessarily the amount of the loan, since the same is subject to approval by the bank based on the recommendation of the credit worthiness of the borrower and the sufficiency of the collateral. Having experienced previous loan processing with RCBC, plaintiffs-appellees should know that the branch officers do not have the final say on the loan, as it is always subject to approval by the bank credit committee. In this case, the only proof presented by plaintiffs-appellees is a mere handwritten and unsigned computation which bears the total amount of Four Million Eight Hundred Thousand Pesos (₱4,800,000.00). This could not be construed as the loan approval of herein defendant-appellant. From the records of the case, what is clear is that the loan granted was only the amount of ₱2,900,000.00, which was duly approved and released by defendant-appellant PNB to plaintiff-appellee.[26]

On June 3, 2011, counsel for petitioners received a copy of the CA decision, while PNB received a copy thereof on June 7, 2011.[27] However, on September 9, 2011 the CA received petitioners' Motion with Leave of Court to Admit Attached Motion for Reconsideration dated September 9, 2011 (motion to admit) with attached motion for reconsideration.[28] Petitioners claimed that their counsel of record suffered a stroke and was in a severe medical condition, which prevented him from filing their appeal on time or from notifying petitioners on the status of their case.[29] Thus, petitioners sought for the admission of their motion for reconsideration despite it being filed beyond the reglementary period.[30]

The CA eventually denied petitioners' Motion to Admit and accordingly their Motion for Reconsideration in its Resolution dated September 28, 2011.

Hence, the present petition for review on certiorari.

Issues

The issues raised before this Court are:

1. Whether the CA decision is already final and executory; and
2. Whether the CA was correct in dismissing the case against PNB.

The Court's Ruling

After a review of the records and the allegations of petitioners, this Court finds no reversible error in the CAs' appreciation of the evidence on record and its conclusions of law.

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26 Id. at 63-64.
27 Id. at 36.
28 Id.
29 Id. at 69.
30 Id. at 74.

We, therefore, resolve to deny the petition.

I. *The CA decision is already final and executory and thus, beyond this Court's power of review.*

An appeal is not a matter of right, but is one of sound judicial discretion and may only be availed of in the manner provided by the law and the rules.[31] Thus, a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.[32] Relatedly, a motion for reconsideration is a privilege, which may be granted subject to the conditions for its exercise or availability and must be invoked only in the manner and within the period provided for by the rules.[33]

Rule 51, Section 10 and Rule 52, Section 1 of the Rules of Court, respectively state:

> SECTION 10. *Entry of Judgments and Final Resolutions.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.
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> x x x x
>
> SECTION 1. *Period for Filing.* — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

The foregoing provisions are similarly found in the 2009 Internal Rules of Procedure of the CA, which state:

> **Section 1.** ***Entry of Judgment.*** – Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.
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> x x x x
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> **Section 5.** ***Entry of Judgment and Final Resolution.*** – If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution

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31 *Indoyon, Jr. v. Court of Appeals*, 706 Phil. 200, 212 (2013).
32 *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corp.*, 724 Phil. 508, 517 (2014).
33 *People v. Sandiganbayan*, G.R. Nos. 233061-62, July 28, 2020.

> and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

Thus, a party may file a motion for reconsideration, an appeal, or a motion for new trial within 15 days from receipt of the decision. Failure to file the necessary pleading within the reglementary period would render the CA decision final and executory.

The material dates are undisputed.

On **June 3, 2011**, counsel for petitioners received a copy of the CA decision.[34] It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client, and receipt of notice by counsel is the reckoning point of the reglementary period.[35] Thus, petitioners have 15 days from June 3, 2011 or until June 18, 2011 within which to file their motion for reconsideration. However, neither parties filed any motions or appeal questioning the decision of the CA within the reglementary period. It was only on **September 9, 2011** or **97 days** after receipt of the CA decision, that petitioners filed the motion to admit with attached motion for reconsideration.[36]

Clearly, petitioners' motion for reconsideration was filed way beyond the period provided under the rules. Having failed to file the necessary pleading within the reglementary period, the CA decision has already lapsed into finality and the CA was duty bound to enter it in the book of entries of judgments.

Petitioners claimed that their counsel of record suffered a stroke and was in a severe medical condition, which prevented him from filing their appeal on time or from notifying petitioners on the status of their case.[37] Thus, petitioners sought for the admission of their motion for reconsideration despite it being filed beyond the reglementary period.[38]

The general rule is that the negligence and mistakes of the counsel are binding on the client[39] except when they constitute gross negligence as to amount to a deprivation of property without due process.[40]

We find petitioners' excuse unsatisfactory to warrant the allowance of the filing of the motion for reconsideration beyond the reglementary period. After a cursory review of medical certificate attached to the motion to admit, We could not but affirm the findings of the CA. Petitioners' counsel suffered a stroke as early as 2009, and it was from this point that his health started to decline; that he was constrained to slow down in the practice of his profession;

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34 *Rollo*, p. 36.
35 *Ram's Studio and Photographic Equipment, Inc. v. CA*, 400 Phil. 542, 549 (2000).
36 *Rollo*, p. 36.
37 Id. at 69.
38 Id. at 74.
39 *Lagua v. Court of Appeals*, 689 Phil. 452, 458 (2012).
40 See *Dela Cruz v. Sison*, 508 Phil. 36 (2005).

and that in 2011 he only handled very few cases.[41]

Notably, although petitioners' counsel suffered from severe health concerns, it was not to such extent as would prohibit him from informing his clients of his condition and the status of their cases. Moreover, if indeed petitioners' counsel started to slow down in the practice of law, since he suffered from stroke in 2009, prudence would dictate that he should have informed his clients of his supposed inability to handle case dutifully. In any case, it was petitioners' duty to keep in touch with their counsel and to be kept abreast with the status and progress of their case.[42]

Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him or her of an adverse judgment resulting in the loss of his or her right to appeal is not a ground for setting aside a judgment, valid and regular on its face.[43] Consequently, the failure of petitioners to timely file a motion for reconsideration or appeal has rendered the CA decision final and executory.

We have consistently ruled a judgment that has acquired finality becomes immutable and unalterable[44] and could no longer be modified in any respect or attacked directly or indirectly, even by the highest court of the land. The doctrine of finality and immutability of judgments is grounded on the fundamental considerations of public policy and sound practice to the effect that, at the risk of occasional error, the judgments of the courts must become final at some definite date set by law.[45]

II. ***The CA correctly dismissed the complaint against PNB.***

Petitioners claim that PNB offered them a loan package of ₱5,000,000.00 under liberal terms and conditions[46] to convince them to return and transfer their loan account from RCBC-Guimba branch to PNB-Guimba branch.[47] In support of their contention, petitioners presented a handwritten list of loans prepared by Santos that were supposedly being offered by PNB.[48] However, out of the supposed ₱5,000,000.00 loan package, only the amount of ₱2,900,000.00 was released by PNB despite petitioners' demands. Petitioners, thus, claimed that due to PNB's failure to release the remaining loan proceeds, they were not able to expand their poultry business and they suffered damages as a result.[49]

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41 *Rollo*, p. 78.
42 *GCP-Manny Transport Services, Inc. v. Judge Principe*, 511 Phil. 176, 186 (2005).
43 *Mercury Drug Corp. v. Court of Appeals*, 390 Phil. 902, 913-914 (2000).
44 *Cervantes v. Court of Appeals*, 512 Phil. 210 (2005).
45 *Sofio v. Valenzuela*, 682 Phil. 51, 60 (2012).
46 *Rollo*, p. 6.
47 Id.
48 Id. at 94.
49 Id. at 6.

Respondents, on the other hand, denied that they promised and assured a loan in the amount of ₱5,000,000.00.[50] Respondents countered that the handwritten list of loans prepared by respondent Santos was not a definite offer but was merely a presentation/illustration of the possible total loan petitioners could obtain from respondent PNB.[51] Respondents clarified that while petitioners applied for a loan package in the amount of P5,000,000.00 only the amount of ₱2,900,000.00 could be released as this was the only amount that could be secured by their collateral.[52]

We are in accord with the CA's ruling.

A simple loan or *mutuum* is a contract where one of the parties delivers to another, either money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid.[53] A loan contract is not a consensual contract but a real contract, and it shall not be perfected until the delivery of the object of the contract.[54] Necessarily, the delivery of the proceeds of the loan by the lender to the borrower is indispensable to perfect the contract of loan.[55]

As correctly concluded by the CA, the amount applied for in a loan is not necessarily the amount that the bank is obligated to grant and release, since the same is still subject to the bank's review and approval process taking into consideration an applicant's creditworthiness and sufficiency of the collateral.[56]

This Court has often taken judicial notice of the practices of banks and other financial institutions. Precisely, it has noted that it is their uniform practice, before approving a loan, to investigate, examine and assess would-be borrowers' credit standing or real estate offered as security for the loan applied.[57]

Thus, between the parties' conflicting narration We are more inclined to agree with respondents.

In the instant case, respondent PNB released and delivered only the amount of ₱2,900,000.00 considering that the collateral put up by petitioners was not sufficient to cover the amount of ₱5,000,000.00. It would have been manifestly reckless for respondent PNB to release the entire loan proceeds despite the insufficiency of petitioners' collaterals.

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50 Id. at 112.
51 Id.
52 Id.
53 *Sps. Sy v. Westmont Bank*, 797 Phil. 694, 708 (2016).
54 *BPI Investment Corp. v. Court of Appeals*, 427 Phil. 350, 359 (2002).
55 *Sps. Sy v. Westmont Bank*, supra at 708-709.
56 *Rollo*, p. 64.
57 *Solidbank Corp. v. Mindanao Ferroalloy Corp.*, 502 Phil. 651 (2005); *Heirs of Manlapat v. Court of Appeals*, 498 Phil. 453 (2005); *Home Bankers Savings & Trust Co. v. Court of Appeals*, 496 Phil. 637 (2005); *Rural Bank of Sta. Ignacia Inc. v. Dimatulac*, 449 Phil. 800 (2003); *Cruz v. Bancom Finance Corporation*, 429 Phil. 225 (2002).

Consequently, upon the release and delivery of the loan proceeds, the loan contract was perfected. The loan contract having been perfected, petitioners could not demand from PNB the release of the remaining balance of the loan applied for. Once the proceeds have been delivered, the unilateral characteristic of the contract arises and the borrower is bound to pay the lender an amount equal to that received.[58]

All the foregoing told, We find no reversible error in the CA decision dismissing the case against PNB.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* dated October 18, 2011 filed by petitioners spouses Emmanuel S. Castillo and Luzviminda Flores-Castillo is **DENIED** for lack of merit.

SO ORDERED."

By authority of the Court:

MisaelDCBatt
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Division Clerk of Court
9/14/22

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58 *Sps. Sy v. Westmont Bank*, supra note 53 at 709.

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

N O T I C E

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 Review[1] 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 amended[3] (Tax Code).

The central issue in these cases is whether the definition of "toilet waters" in Revenue Regulations (RR) No. 8-84[4] 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 Resolution[5] 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:

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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 "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 [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. 36[9] reduced the rate[10] 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.

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[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:
SEC. 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:
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, barters 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

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[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*, 746 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 27[20] 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 Code[21] and issued BIR Ruling No. 043-2000[22] 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**.

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[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:

MisDCBatt
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