Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PETRON CORPORATION, Petitioner,

CTA EB NO. 1835
(CTA Case No. 9111)

-versus-

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Promulgated:
JUL 19 2019 3:48 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on August 9, 2018 is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as

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[1] 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 motions 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;

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Sec. 4. *Where to appeal; mode of appeal.*-

(a) xxx.

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

(c) xxx.

amended, of the Decision[2] in the case entitled Petron Corporation vs. Commissioner of Internal Revenue (CIR), docketed as CTA Case No. 9111, dated October 26, 2017, rendered by the Second Division of this Court, and its Resolution[3] dated March 27, 2018.

The Second Division of this Court denied petitioner's claim for refund for excise tax paid on the importation of alkylate. The Second Division of this Court ruled that petitioner's importations of alkylate are subject to excise tax.

Petitioner assails both the aforesaid Decision and Resolution, the pertinent portions of which, respectively, read as follows:

Decision dated October 26, 2017:

"Thus, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state.

Applying Section 148 of the NIRC of 1997, as amended, the law does not qualify whether the mineral oil or motor fuel subject to excise tax could be commercially used. In fact, the law is categorical when it stated that there shall be collected on refined and manufactured mineral oils and motor fuels excise taxes which shall attach to the goods enumerated ***as soon as they are in existence as such.*** *Therefore, whether alkylate is not a finished gasoline is immaterial, because excise tax attaches upon it as soon as it is in existence as such.*

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Considering the foregoing, the Court rules that petitioner's alkylate importations are subject to excise tax. Hence, the denial of its claim for refund is in order.

WHEREFORE*, premises considered, the instant Petition for Review is* ***DENIED*** *for lack of merit.*

SO ORDERED.*"*

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[2] En Banc Docket, pp. 47-71.
[3] En Banc Docket, pp. 72-79.

Resolution March 27, 2018:

*"**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration [of the Decision dated October 26, 2017]** is hereby **DENIED** for lack of merit.*

***SO ORDERED**."*

The antecedent facts as narrated by the Court in Division in its Decision read as follows:

Petitioner Petron Corporation is a corporation organized and existing under the laws of the Philippines, with principal office at San Miguel Corporation Head Office Complex, 40 San Miguel Avenue,1550 Mandaluyong. It is registered with the Bureau of Internal Revenue (BIR) with duly issued Certificate of Registration and Computerized Accounting System (CAS) Permit.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office including, inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

From January 2009 to June 2012, petitioner made various alkylate importations covered by their corresponding Authority to Release Imported Goods (ATRIG). No excise tax was imposed upon said importations.

The controversy arose when, in 2013, petitioner made several alkylate importations on various dates, which importations were subjected to their corresponding excise taxes, as follows:

Vessel name	***Arrival dates***	***Excise Tax***	***Bill of Lading No.***	***IERD No.***
M/T Aulac Venus	*August 12, 2013*	*11,034,871*	*41824/DS*	*129808664*
M/T British Tanquility	*December 7, 2013*	*29,119,849*	*ML-6727*	*132701974*
M/T Hyun Ju	*December 14, 2013*	*27,792,402*	*MS13HJ15B*	*132702017*

As such, petitioner was constrained to pay the said excise taxes, as follows:

Bill of Lading No.	***Date of Payment***	***Excise Tax Paid***

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41824/DS	*August 12, 2013*	*P27,792,402*
ML-6727	*December 9, 2013/ March 17, 2014*	*P11,034,871*
MS13HJ15B	*December13, 2013/ March 17, 2014*	*29,119,849*
TOTAL		***P67,947,112***

On June 5, 2015, petitioner filed an administrative claim for refund of excise tax with the BIR. On August 7, 2015, petitioner filed the instant case considering that respondent did not act on petitioner's claim.

Essentially, petitioner asserts in both its administrative and judicial claim for refund that its alkylate importations are not subject to excise taxes because alkylate is not among those articles subject to excise tax under Title VI of the National Internal Revenue Code (NIRC) of 1997, as amended.

On November 9, 2015, respondent filed his Answer Ex-Abudanti Ad Cautelam, where he raised the following pertinent special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

A. The instant petition is dismissible for its failure to state cause of action.

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B. Assuming arguendo that respondent is the real party in interest, it is still dismissible for its subject matter is not within the jurisdiction of the Honorable Court.

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C. Interpretative rulings issued by the CIR are subject to review by the Secretary of Finance.

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D. Petitioner failed to exhaust administrative remedies.

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On February 19, 2016, petitioner and respondent filed their Joint Stipulation of Facts and Issues. On March 3, 2016, the Court issued a Pre-Trial Order.

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> *Petitioner presented the following witnesses:* ***Mr. Michael F. Manzano*** *- petitioner's Commercial Services Manager,* ***Mr. Jonathan F. Del Rosario*** *- petitioner's Batangas Terminal Manager,* ***Mr. Ian Ferdinand S. Bravo*** *- Senior Science Research Specialist of the Retail Market Monitoring and Special Concerns Division of the Oil Industry Management Bureau (OIMB) of the Department of Energy (DOE),* ***Ms. Cecilia N. Sengia*** *- petitioner's Accounting Superintendent/OIC of the Administration Department of its Refinery Division,* ***Ms. Ma. Clarissa C. Arguelles*** *- petitioner's Tax Manager,* ***Ms. July Ann D. Vivas*** *- petitioner's Financial Accounting Manager,* ***Mr. Bayani I. Rodriguez, Jr.*** *- petitioner's Process Engineering A Manager,* ***Ms. Ma. Milagros F. Padernal*** *- Court-commissioned Independent Certified Public Accountant, and* ***Mr. Simon Christopher Mulqueen*** *- Director of Technical Service for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel Specialties. On October 27, 2016, petitioner filed its Formal Offer of Exhibits.*
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> *On the other hand, on October 12, 2016, respondent, through counsel, manifested that he has no witness to present.*
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> *On May 8, 2017, petitioner filed its Memorandum while on June 13, 2017, respondent filed through registered mail his Memorandum.*
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> *Thus, on June 16, 2017, the case was submitted for decision. xxx."*

On October 26, 2017 Decision, petitioner's petition praying for the refund of excise taxes paid on the alkylate importations was denied for lack of merit by the Second Division of this Court. Likewise, petitioner's "Motion for Partial Reconsideration [of the Decision dated October 26, 2017]" was denied for lack of merit.

Hence, this Petition for Review was filed.

The issues raised by petitioner Petron Corp. in the petition are as follows:

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"WHETHER OR NOT PETITIONER IS LIABLE FOR EXCISE TAX ON THE IMPORTATION OF ALKYLATE."

II.

"WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE TO RECOVER THE EXCISE TAXES PAID ON IMPORTED ALKYLATE COVERED BY IMPORT ENTRY AND INTERNAL REVENUE DECLARATION NOS. 129808664, 132701974 AND 132702017 IN THE AGGREGATE AMOUNT OF p67,947,122.00."

Petitioner argues that the Court's Second Division erred (1) in finding that alkylate used as a blending component is taxable under Section 148 of the 1997 NIRC and upholding that alkylate may be taxed twice, which is not only contrary to law but is unjust, oppressive, and punitive; (2) in finding alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state and is therefrom subject to excise tax; (3) in finding that alkylate is a product of distillation that is subject to excise tax.

We resolve.

In claiming tax refund in the nature of tax exemption, this Court is guided by the principle that such tax exemptions are strictly construed against the taxpayer claimant and must be based under clear and unmistakable terms. The Supreme Court in the case *Commissioner of Internal Revenue vs. Solidbank Corporation*[4] instructively ruled the treatment of tax refunds as follows:

> *"Tax refunds are in the nature of tax exemptions. Such exemptions are strictly construed against the taxpayer, being highly disfavored and almost said "to be odious to the law." Hence, those who claim to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the*

[4] G.R. No. 148191, November 25, 2003.

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statute. They must be able to point to some positive provision, not merely a vague implication, of the law creating that right.

The right of taxation will not be surrendered, except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty — its most essential power of taxation — by vague or ambiguous language. Since tax refunds are in the nature of tax exemptions, these are deemed to be "in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption."

No less than our 1987 Constitution provides for the mechanism for granting tax exemptions. They certainly cannot be granted by implication or mere administrative regulation. Thus, when an exemption is claimed, it must indubitably be shown to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim."

In the case at bar, it is undisputed that petitioner imported "alkylates" and paid an excise tax in the total amount of Php 67,947,112.00.

The relevant provisions of law in resolving the claim for refund of the alleged erroneous and illegally collected excise tax on the importation of alkylate are Sections 129, 131, and 148 (e) of the National Internal Revenue Code of 1997, as amended, to wit:

"SEC. 129. Goods Subject to Excise Taxes. -Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.

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SEC. 131. Payment of Excise Taxes on Imported Articles.- (A) Persons Liable. - Excise taxes on imported

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articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption."

xxx xxx xxx.

SEC. 148. Manufactured Oils and Other Fuels.- There shall be collected on refined and manufactured mineral oils and motor fuel, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

xxx xxx xxx.

(e) ***Naphtha, regular gasoline and other similar products of distillation****, per liter of volume capacity, Four pesos and eighty centavos (P4.80): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (P0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;*

From the above provisions, excise tax is imposed on goods manufactured, produced or imported in the Philippines for domestic sales or consumption or for any other disposition. Specifically, excise tax shall be collected on refined and manufactured mineral oils and motor fuel such as naphtha, regular gasoline, and other similar products of distillation, as soon as they come into existence. In case of imported articles, unless the excise tax has been paid it cannot be released from the customhouse. Thus, tax accrues

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from the time imported goods are to be released from the customhouse.

Petitioner claims that an alkylate is not subject to excise tax because it is not among the products enumerated as taxable under Section 148 of the 1997 NIRC, as amended, considering that alkylate is not a product from primary distillation of crude; and that alkylate is a blending component or raw material not subject to excise tax; and that the imposition of excise tax on alkylate would result to taxing it twice. Furthermore, petitioner insists that alkylate is not a product of distillation but through the process of alkylation.

We are not persuaded.

Excise tax is an indirect tax applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sales or consumption, and to things imported. Excise tax shall be collected on refined and manufactured mineral oils and motor fuel; and shall attached to naphtha, regular gasoline and other similar products of distillation as soon as they are in existence. Similarly, if one imports naphtha, regular gasoline and other similar products of distillation, the importer shall be liable for excise tax for the importation thereof.

As pointed out by petitioner, naphtha (either light or heavy naphtha) can be subjected to blending or further processing to produce PNS compliant finished gasoline products suitable and ready for public consumption, or be used as they are as blending components, additives, or as raw material for the production of finished gasoline or other products.[5] Similarly, an alkylate can be used as they are as blending components, additives, or as raw material for the production of finished gasoline or other products. Moreover, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state.

As aptly found by the Court's Division, the nature of alkylate can be summarized as follows:

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[5] Petition, par. No 46-.47. p 12.

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1. Alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements.

2. It is impractical or uneconomical to import and sell alkylate as the 93 or 95 RON finished product itself. Conversely, alkylate may be sold as a finished product itself, although the same may be impractical or uneconomical.

3. It is produced from the combination of raw materials, i.e., light olefins (C3-C5) with isobutane, which are products of crude oil- the basic material to produce transport fuel.

4. Isobutane, a raw material of alkylate, is produced from crude oil distillation.

5. It is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. It increases the octane number of a straight run gasoline or naphtha.

6. Alkylate is a gasoline component produced by combining two (2) gases using sulfuric acid, using reactor chillers.

From the foregoing, without the process of distillation, alkylates raw materials cannot come into existence without which, the process of alkylation and product of alkylates cannot be had. Likewise, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state. Thus, We find that alkylate fall within the category of naphtha, regular gasoline and other similar products of distillation under Sec. 148 (e) of the 1997 NIRC, the Court in Division correctly ruled as follows:

> *Petitioner presented witness Ian Ferdinand S. Bravo who has custody of the DOE Letter dated June 27, 2012. Said Letter expressed the opinion of the DOE, through Director Zenaida Y. Monsada of the OIMB, regarding the nature of Alkylate. The DOE Letter pertinently states:*
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> > *"The DOE is of the position that Alkylate is not a finished product but* ***an intermediate or raw***

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> ***gasoline component*** *used as blendstock in the production of PNS-compliant unleaded gasoline consistent with requirements of the Philippine Clean Air Act. Xxx*
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> *xxx xxx xxx.*
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> ***While alkylate may have properties, especially octane and aromatics, that meet gasoline specifications,*** *alkylate is a high octane but low aromatic substance that makes it desirable as a blending component for gasoline production. These two essential properties (octane and aromatics) found in alkylate demand high price. For comparison, the 2010 average import price (Shell and Petron) of alkylate is $100,368, which is considerably much higher than the $90,236 average import price (Shell) of 95 Research Octane Number (RON) during the same period.* ***Hence, it would not obviously be practical and economical to import alkylate and sell it as the 93 or 95 RON finished product itself."*** *(Emphasis supplied)*

Based on the foregoing, alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements. Considering that octane and aromatics found in alkylate demand higher price, it is impractical or uneconomical to import and sell it as the 93 or 95 RON finished product itself.

Petitioner also presented witness Simon Christopher Mulqueen to testify as to the nature of Alkylate. Based on his testimony, alkylate is produced from the combination of raw materials, i.e., light olefins (C3-C5) with isobutene, which are products of crude oil -the / basic material to produce transport fuel. Alkylate is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. xxx.

xxx xxx xxx.

During his cross-examination, witness Mr. Mulqueen testified that isobutane, a raw material for alkylate, is a product of crude oil distillation. Thus:

> *"Q You also mentioned that Isobutane, which is also a raw material for alkylate can be a product of crude oil distillation, am I correct?*

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> *A As a result, Isobutane is a crude oil distillation."*
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> *Finally, witness Bayani I. Rodriguez Jr. supported the testimonies of Mr. Mulqueen in his Judicial Affidavit, i.e., alkylate is a mere blending component. However, during the hearing held on March 30, 2016, Mr. Rodriguez testified before the Court that alkylate is, in essence, a gasoline component. xxx.*
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> *xxx xxx xxx.*
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> *"Thus, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state.*
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> *Applying Section 148 of the NIRC of 1997, as amended, the law does not qualify whether the mineral oil or motor fuel subject to excise tax could be commercially used. In fact, the law is categorical when it stated that there shall be collected on refined and manufactured mineral oils and motor fuels excise taxes which shall attach to the goods enumerated **as soon as they are in existence as such.** Therefore, whether alkylate is not a finished gasoline is immaterial, because excise tax attaches upon it as soon as it is in existence as such.*
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> *Furthermore, based on the evidence presented, the Court finds that alkylate is a product of distillation. True, it is alkylation, not distillation, that is required to produce the final alkylate product. However, it must be remembered that isobutane - one of the raw materials of alkylate, is a product of distillation. Simply put, there can be no alkylate without isobutane which is a product of distillation. As such, it is obvious that alkylate first passes through the process of distillation because it cannot come into existence without its raw material isobutane."*

Furthermore, We find double taxation of alkylate does not exist in this case. Imported alkylates are taxed only once, that is, upon their importation in relation to Sections 129, 131 and 148 (e) of the NIRC of 1997, as amended.

In the case Commissioner of Internal Revenue vs. Bank of Commerce, citing Commissioner of Internal Revenue vs. Solidbank Corporation[6], double taxation is defined as follows:

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[6] G.R. No. 148191, 25 November 2003

> *"Double taxation means taxing the same property twice when it should be taxed only once; that is, "xxx taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.*

The subject matter of the tax imposed herein is on the importation of alkylate, while the subject matter of the excise tax on the alleged use of an alkylate as a blending component or raw material to produce another product is a different subject matter. The first imposition is concerned on the importation of articles while the alleged subsequent imposition is on the manufacturing or production of goods in the Philippines for domestic sale or consumption or for any other disposition. Notably, the law itself affirms this theory of two different subject matters arising from same imported article. When imported goods go through reprocessing, the imposition of tax happens twice. The first imposition is upon importation of goods, and second, upon removal or reprocessed goods from production site.

Evidently, there is no double taxation when one of its elements is absent. Here, the imposition of tax is on two different subject matters. Hence, the element "same subject matter" is wanting.

In addition, only naphtha, when used as a raw material, is subject to Php 0.00 (zero) excise tax. The supposed legislative intention to exempt regular gasoline and other similar products of distillation was not evident in the language. If it is truly the legislature's intent to exempt the importation of alkylate or regular gasoline and other similar products of distillation as raw materials from excise tax under Sec. 148 (e) of the NIRC of 1997, as amended, it would have done so by expressing it using clear, concise and appropriate language. It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others. The rule

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is expressed in the familiar maxim, *expressio unius est exclusio alterius.*[7]

Here, only naphtha, when used as a raw material, is subject to P0.00 excise tax, which under Sec. 148 (e) of the NIRC of 1997, as amended, is still subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance. There is nothing in the provision that expressly subject alkylate to P0.00 excise tax when used as a raw material.

Tax exemptions must be clear and unequivocal. *A* taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[8]

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 1835 is **DENIED** for lack of merit. Accordingly, the Decision dated October 26, 2017, rendered by the Second Division of this Court in CTA Case No. 9111, and its Resolution dated March 27, 2018 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[7] Sario Malinias vs. Commission on Elections et al., G.R. No. 146943, October 4, 2002.
[8] Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, G.R. No. 156040, December 11, 2008.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON OFFICIAL LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

(Took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(Took no part)
MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice