REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION, Petitioner,	**CTA CASE NO. 9111**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 2 6 2017 11:00 a.m.

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DECISION

CASTAÑEDA, JR., ***J.***:

THE CASE

In this Petition for Review, petitioner Petron Corporation prays for the refund or the issuance of a tax credit certificate (TCC) amounting to ₱67,947,122.00, representing the excise taxes on its importation of alkylate paid on various dates from August 12, 2013 to March 17, 2014.

THE FACTS

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.[1]

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).[2] 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.	IEIRD No.
M/T Aulac Venus	August 12, 2013	11,034,871	41824/DS[3]	129808664[4]
M/T British Tranquility	December 7, 2013	29,119,849	ML-6727[5]	132701974[6]
M/T Hyun Ju	December 14, 2013	27,792,402	MS13HJ15B[7]	132702017[8]

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

Bill of Lading No.	Date of Payment	Excise Tax Paid
41824/DS[9]	August 12, 2013[10]	P27,792,402
ML-6727[11]	December 9, 2013/	P11,034,871

[1] Pars. 1 and 6, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. II, pp. 473-474.
[2] Exhibits "P-28" to "P-58", Docket, Vol. II, pp. 719-749.
[3] Exhibit "P-4", Docket, Vol. II, p. 681.
[4] Exhibit "P-8", Docket, Vol. II, p. 689.
[5] Exhibit "P-12", Docket, Vol. II, p. 693.
[6] Exhibit "P-16", Docket, Vol. II, p. 702.
[7] Exhibit "P-20", Docket, Vol. II, p. 706.
[8] Exhibit "P-24", Docket, Vol. II, p. 719.
[9] Exhibit "P-4", Docket, Vol. II, p. 681.
[10] Exhibits "P-9" and "P-11", Docket, Vol. II, pp. 690 and 692.
[11] Exhibit "P-12", Docket, Vol. II, p. 693.

	March 17, 2014[12]	
MS13HJ15[13]	December 13,2013/ March 17, 2014[14]	29,119,849
TOTAL		**P67,947,122**

On June 5, 2015, petitioner filed an administrative claim for refund of excise tax with the BIR.[15] 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*,[16] 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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7. As here, the Commissioner of Internal Revenue (CIR) is not the real party in interest.

8. 'The determination of who the real-party-in-interest is requires going back to the elements of a cause of action. A cause of action involves the existence of a right and a violation of such right. Evidently, the owner of the right violated stands to be the real party in interest

[12] Exhibits "P-17" to "P-19", Docket, Vol. II, pp. 703 to 705.
[13] Exhibit "P-20", Docket, Vol. II, p. 706.
[14] Exhibits "P-25" to "P-27", Docket, Vol. II, pp. 716 to 718.
[15] Exhibit "P-67", Docket, Vol. II, p. 783; Exhibit "P-68", Docket, Vol. II, pp. 785-797.
[16] Docket, Vol. I, pp. 110-132.

as plaintiff and the person responsible for the violation is the real party in interest as defendant.'

9. Section 2, Rule 3 of the Rules of Court simply provides:

> 'A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.'

10. Applying the aforementioned in the instant case, petitioner paid to the Bureau of Customs (BOC) excise taxes for its importation of alkylate in the aggregate amount of ₱67,947,122.00. It is the BOC who collected the excise taxes on importation of alkylate involved.

11. Thus, petitioner cannot claim for refund and implead CIR herein considering that the amounts involved are collections of BOC, and are never transferred to the Bureau of Internal Revenue (BIR).

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.

12. It can be gleaned that petitioner is primarily seeking judgment from this Honorable Court to declare that petitioner is not liable for excise taxes on its importation of alkylate. The alleged cause of action for refund of taxes being merely consequential to that primarily sought.

13. Petitioner became liable for excise tax on its importation of alkylate on the basis of Section 148 (e) of

the Tax Code as implemented by the Letter from the CIR dated 29 June 2012 (BIR Letter) through Customs Memorandum Circular No. 164-2012 (CMC 164-2012). Quoted hereunder is the body of CMC 164-2012:

> Please find attached the letter dated June 29, 2012 from the Bureau of Internal Revenue Commissioner Kim S. Jacinto-Henares stating that '**alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148 (e) of the NIRC of 1997, as amended.**'

14. Petitioner contends that since there is no basis for the imposition of excise tax on the importation of alkylate, it should be considered erroneously paid by or illegally collected from petitioner. However, <u>there is, in fact a legal basis for such imposition of excise tax, that is, Section 148 (e) of the Tax Code as implemented by the BIR Letter and CMC 164-2012.</u>

15. In view thereof, <u>whether the basis for the imposition of excise tax on importation of alkylate is valid and sufficient must first be determined before petitioner can claim for refund of alleged erroneous payment or illegal collection</u>. Absence of such determination of validity and applicability of the BIR Letter and CMC 164-2012 to the present case, petitioner's cause of action would have no leg to stand on.

16. Petitioner, in claiming refund, invoked Section 229 of the Tax Code, to wit:

> '**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been

> collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> xxx xxx xxx'

17. In light of the foregoing**, no claim for refund may be made by petitioner considering that there were no erroneous or illegal collections of excise taxes from petitioner**, <u>there being legal basis for such collection, to wit, Section 148 (e) of the Tax Code in relation to the BIR Letter and CMC 164-2012</u>.

18. The BIR Letter and CMC 164-2012 were issued in the performance of official functions of the CIR and Commissioner of Customs (COC), respectively. In the absence of proof of any irregularities in the performance of their official duties, such issuances will not be disturbed.

19. Verily, administrative issuances have the force and effect of law. They benefit from the presumption of validity and constitutionality enjoyed by the statutes. (Rufino O. Eslao vs. Commission on Audit, G.R. No. 108310, September 1, 1994).

20. Thus in the absence of any declaration rendering the BIR Letter and CMC 164-2012 illegal and void, such issuances shall be valid and applicable to the present case.

C. <u>Interpretative rulings issued by the CIR are subject to review by the Secretary of Finance.</u> *gr* xxx xxx xxx

23. The BIR Letter sent by respondent to the COC which was implemented by CMC 164-2012 is clearly an interpretation of Section 148 (e) of the Tax Code. Therefore, it was issued pursuant to the power of the Commissioner to interpret the provision of Tax Code under **the first paragraph of Section 4 of the Tax Code**, and shall be subject to review by the **Secretary of Finance (SOF).**

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D. Petitioner failed to exhaust administrative remedies.

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28. Petitioner cannot invoke the urgency of judicial intervention; in fact, petitioner had ample time, even before August 2013 to raise the subject matter for review by the Secretary of Finance. Instead of bringing the matter before the Secretary of Finance for appropriate review, petitioner unjustifiably disregarded the doctrine. Clearly, petitioner slept on its right to have the interpretation of the CIR be reviewed and reversed by Secretary of Finance. Thus, the exceptions to the doctrine are not available to petitioner.

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31. From the foregoing, it is quite apparent that the authority to determine the validity of the BIR Letter which pronounced the rule that alkylate is a substance subject to excise tax and which was implemented by CMC 164-2012 is vested with the SOF as provided by law. Such exhaustion of administrative remedies is a requirement which must be complied with before judicial intervention can be availed of.

32. Absent the declaration rendering the BIR Letter as implemented by CMC 164-2012 invalid or illegal, payments made by petitioner cannot be considered erroneously and illegally collected, thus, there is no legal basis for the claim of refund and/or issuance of tax credit certificate."

On February 19, 2016, petitioner and respondent filed their Joint Stipulation of Facts and Issues.[17] On March 3, 2016, the Court issued a Pre-Trial Order.[18]

Petitioner presented the following witnesses: **Mr. Michael F. Manzano** – petitioner's Commercial Services Manager,[19] **Mr. Jonathan F. Del Rosario** – petitioner's Batangas Terminal Manager,[20] **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),[21]**Ms. Cecilia N. Sengia** – petitioner's Accounting Superintendent/OIC of the Administration Department of its Refinery Division,[22] **Ms. Ma. Clarissa C. Arguelles** – petitioner's Tax Manager,[23] **Ms. July Ann D. Vivas** – petitioner's Financial Accounting Manager,[24] **Mr. Bayani I. Rodriguez, Jr.** – petitioner's Process Engineering A Manager,[25] **Ms. Ma. Milagros F. Padernal** – Court-commissioned Independent Certified Public Accountant,[26] and **Mr. Simon Christopher Mulqueen** – Director of Technical Service for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel

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[17] Docket, Vol. II, pp. 473-486.
[18] Docket, Vol. II, pp. 490-499.
[19]Judicial Affidavit of Michael F. Manzano, Docket, Vol. I, pp. 154-165; Minutes of the Hearing dated March 7, 2016, Docket, Vol. II, p. 500.
[20] Judicial Affidavit of Jonathan F. Del Rosario, Docket, Vol. I, pp. 241-244; Minutes of the Hearing dated March 30, 2016, Docket, Vol. II, p. 516.
[21] Judicial Affidavit of Mr. Ian Ferdinand S. Bravo, Docket, Vol. I, pp. 258-262; Minutes of the Hearing dated April 20, 2016, Docket, Vol. II, p. 527.
[22] Judicial Affidavit of Cecilia N. Sengia, Docket, Vol. I, pp. 269-274; Minutes of the Hearing dated March 30, 2016, Docket, Vol. II, p. 516.
[23] Judicial Affidavit of Ma. Clarissa C. Arguelles, Docket, Vol. I, pp. 292-301; Minutes of the Hearing dated March 7, 2016, Docket, Vol. II, p. 500.
[24] Docket, Vol. I, pp. 380-385; Minutes of the Hearing dated April 20, 2016, Docket, Vol. II, p. 527.
[25] Judicial Affidavit of Bayani I. Rodriguez, Jr., Docket, Vol. II, pp. 435-444; Minutes of the Hearing dated March 30, 2016, Docket, Vol. II, p. 516.
[26] Judicial Affidavit of Ma. Milagros F. Padernal, Docket, Vol. II, pp. 577-583; Minutes of the Hearing dated June 29, 2016 & September 5, 2016, respectively, Docket, Vol. II, pp. 567 & 590.

Specialties.[27] On October 27, 2016, petitioner filed its Formal Offer of Exhibits.[28]

On the other hand, on October 12, 2016, respondent, through counsel, manifested that he has no witness to present.[29]

On May 8, 2017, petitioner filed its Memorandum[30] while on June 13, 2017, respondent filed through registered mail his Memorandum.[31]

Thus, on June 16, 2017, [32] the case was submitted for decision. Hence, this Decision.

THE ISSUES

The parties stipulated the following issues to be resolved by the Court:[33]

1. Whether or not the Honorable Court has jurisdiction over the instant petition;

2. Whether or not petitioner is liable for excise tax on the importation of alkylate; and

3. 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 (IEIRD) Nos. 129808664, 132701974, and 132702017 in the aggregate amount of ₱67,947,122.00.

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[27] Judicial Affidavit of Simon Chrstopher Mulqueen, Docket, Vol. II, pp. 504-511; Minutes of the Hearing dated October 12, 2016, Docket, Vol. II, p. 598.
[28] Docket, Vol. II, pp. 607-676.
[29] Minutes of the Hearing dated October 12, 2016, Docket, Vol. II, p. 598.
[30] Docket, Vol. III, pp. 1083-1130.
[31] Docket, Vol. III, pp. 1138-1157.
[32] Order, Docket, Vol. III, p. 1159.
[33] Stipulation of Issues, JSFI, Docket, Vol. II, p. 474.

THE RULING

The Court has jurisdiction to entertain the present claim for refund

Respondent argues that petitioner is primarily seeking for the Court to declare that its alkylate importations are not subject to tax, and that its claim for refund is merely consequential to the present action.[34]

Respondent's argument is incorrect.

The Court of Tax Appeals is a court of special or limited jurisdiction. As such, it can only take cognizance of matters that are clearly within its jurisdiction.[35] The CTA's jurisdiction is found in Republic Act (RA) No. 1125, as amended by RA No. 9282, which pertinently provides that:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a

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[34] See Note 16.
[35] *Cathay Pacific Airways, Ltd. v. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

> specific period of action, in which case the inaction shall be deemed a denial;"

Similarly, Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;"

Based on the above-quoted provisions, the Court shall exercise jurisdiction over cases involving the inaction of respondent in claims for refund, among others.

In this case, an examination of the instant Petition shows that petitioner is appealing the inaction of respondent on its claim for refund. Incidentally, petitioner's claim is anchored on the ground that its alkylate importations are not subject to excise tax. In other words, there is only one cause of action in this case, *i.e.*, claim for refund on the ground that petitioner's alkylate importations are not subject to excise tax, which is within the jurisdiction of this Court.

In relation thereto, the pronouncement of the Supreme Court in the case of *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*[36] is instructive as to what matters may be adjudicated by this Court in cases falling within its exclusive appellate jurisdiction. The Supreme Court said:

> "In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court *en banc* has ruled that the CTA now has the power of certiorari in cases within its appellate jurisdiction. To elucidate:
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> > On the strength of the above constitutional provisions, it can be fairly interpreted that **<u>the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction</u> on the part of RTC in issuing an interlocutory order <u>in cases falling within the exclusive appellate jurisdiction of the tax court</u>. It, thus, follows that <u>the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases</u>.**
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> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a

[36] G.R. No. 210987, November 24, 2014.

> particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**"[37]

Under the above-quoted jurisprudence, this Court has the power of *certiorari* in cases within its appellate jurisdiction. The Supreme Court then concludes that this Court can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

While the *Philam* case involves an assessment, this Court may apply the above-quoted doctrine to cases that involve claims for refund, as in this case, the same being within its exclusive appellate jurisdiction. In other words, in order to fully adjudicate the issues involved in this case, the Court is also tasked to determine whether petitioner's alkylate importations are not subject to excise tax.

On this score, the Court is aware of the decision of the Supreme Court in *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation*[38](previous *Petron* case). Consequently, the ruling of the Supreme Court in the previous *Petron* case was applied by this Court in *Petron Corporation vs. Commissioner of Internal Revenue, et al.*,[39] which involved the same issues and parties in the present case.

In the previous *Petron* case, petitioner questioned the propriety of Customs Memorandum Circular (CMC) No. 164-2012 dated July 18, 2012 without, however, elevating the matter to the Secretary of Finance. CMC No. 164-2012 pertinently states:

> "[Alkylate which is a product of distillation similar to that of naphta, is subject to excise tax under Section

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[37] Id., citing *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014.
[38] G.R. No. 207843, July 15, 2015.
[39] CTA Case No. 8544, May 17, 2016.

> 148(e) of the National Internal Revenue Code (NIRC) of 1997."

The Supreme Court dismissed petitioner's Petition on the ground of lack of jurisdiction and prematurity, as follows:

> "In this case, Petron's tax liability was premised on the COC's issuance of CMC No. 164-2012, which gave effect to the CIR's June 29, 2012 Letter interpreting Section 148(e) of the NIRC as to include alkylate among the articles subject to customs duties, hence, Petron's petition before the CTA ultimately challenging the legality and constitutionality of the CIR's aforesaid interpretation of a tax provision. In line with the foregoing discussion, however, the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as its resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148(e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance and ultimately by the regular Courts. In *British American Tobacco v. Camacho*, the Court ruled that the CTA's jurisdiction to resolve tax disputes excludes the power to rule on the constitutionality or validity of a law, rule or regulation, to wit:
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>> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. xxx.
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>> xxx xxx xxx
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> As the CIR aptly pointed out, the phrase 'other matters arising under this Code', as stated in the second

paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase 'disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto' and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, *i.e.* those controversies over which that CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-judicial powers.

In *Enrile vs. Court of Appeals*, the Court, applying the statutory construction principle of *ejusdem generis*, explained the import of using the general clause 'other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs' in the enumeration of cases subject to the exclusive appellate jurisdiction of the CTA, saying that:

> [T]he 'other matters' that may come under the general clause should be **of the same nature as those that have preceded them** applying the rule of construction known as *ejusdem generis*. (Emphasis and underscoring supplied)

Hence, as the CIR's interpretation of a tax provision involves an exercise of her quasi-legislative functions, the proper recourse against the subject tax ruling expressed in CMC No. 164-2012 is a review by the Secretary of Finance and ultimately by the regular courts. In *Commissioner of Customs v. Hypermix Feeds Corporation*, the Court has held that:

> The determination of whether a specific rule or set of rules issued by an administrative

> agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power to judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. xxx."

Moreover, the Supreme Court held that "Petron prematurely invoked the jurisdiction of the CTA. Under Section 7 of RA 1125, as amended by RA 9282, what is appealable to the CTA is the decision of the COC over a customs collector's adverse ruling on a taxpayer's protest." Adding that Section 11 of RA No. 1125 "is no less categorical in stating that what may be the subject of an appeal to the CTA is a decision, ruling or inaction of the CIR or the COC."[40]

Furthermore, the Supreme Court ruled in the previous *Petron* case that petitioner failed to exhaust its administrative remedies, as follows:

> "Notably, Petron admitted to not having filed a protest of the assessment before the customs collector and elevating a possible adverse ruling therein to the COC, reasoning that such a procedure would be costly and impractical, and would unjustly delay the resolution of the issues which, being purely legal in nature anyway, were also beyond the authority of the customs collector to resolve with finality. This admission is at once decisive of the CTA's jurisdiction over the petition. There being no protest ruling by the customs collector that was appealed to the COC, the filing of the petition before the CTA was premature as there was nothing yet to review.
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> Verily, the fact that there is no decision by the COC to appeal from highlights Petron's failure to exhaust

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[40] See Note 39.

> administrative remedies prescribed by law. Before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail of all administrative processes afforded him, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action. While there are exceptions to the principle of exhaustion of administrative remedies, it has not been sufficiently shown that the present case falls under any of the exceptions."[41]

At the time the previous Petron case was promulgated by the Supreme Court, CTA Case No. 8544 was still pending before this Court. Recognizing that the principle of judicial courtesy is an exception rather than the general rule, the proceedings in CTA Case No. 8544 proceeded in its natural course. Thus, this Court reiterated the ruling of the Supreme Court in the previous *Petron* case and ruled that the CTA has no jurisdiction over the original Petition, *i.e.*, to invalidate CMC No. 164-2012.

While it appears that the previous *Petron* cases before the Supreme Court and this Court are intimately similar to the present case, *i.e.*, all of the cases involve the issue of determining whether petitioner's alkylate importations are subject to excise tax, the Court deems it proper to take cognizance of the instant case on the following grounds:

First, in the previous *Petron* cases, petitioner's main cause of action is to question the validity of CMC No. 164-2012 without exhausting its administrative remedies, *i.e.*, by questioning the subject CMC and appealing the adverse decision of the same before the Secretary of Finance. In the instant case, petitioner's cause of action involves its claim for refund on the ground that its alkylate importations are not subject to excise tax. Verily, there is an obvious difference between the previous *Petron* cases and the instant case because the previous *Petron* cases involved respondent's exercise of

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[41] Id.

his quasi-legislative powers, while this case involves respondent's exercise of his quasi-judicial powers in determining the propriety of petitioner's claim for refund; and

Second, in CTA Case No. 8544, petitioner likewise claimed for refund which was denied by this Court. However, it is noteworthy that petitioner's claim for refund in the said case was merely raised in a supplemental petition. Considering that the original petition questioning the validity of CMC No. 164-2012 was dismissed for lack of jurisdiction, the necessary consequence thereof is also the dismissal of the supplemental petition. Interestingly, the supplemental petition was likewise denied on the ground of petitioner's failure to pay the requisite docket fees, the supplemental petition being in the nature of an initiatory pleading.

In the instant case, petitioner's main and only cause of action is its claim for refund. Thus, under Section 7 of RA No. 1125 in relation to the ruling of the Supreme Court in the *Philam* case, the Court may validly take cognizance of this case being an appeal on the inaction of respondent over petitioner's claim for refund, and adjudicate on the issue whether petitioner's alkylate importations are subject to excise tax.

Considering the foregoing, the Court declares that it has jurisdiction over the present case.

Petitioner's alkylate importations are subject to excise tax

Petitioner contends that its alkylate importations are not subject to excise tax because: (1) alkylate cannot be used as a motor fuel; (2) alkylate is not a product of distillation; and (3) its importations are exclusively intended for use solely as raw material or blending component in the manufacture of unleaded premium gasoline, among others.

The Court disagrees with petitioner.

Section 148 (e) of the NIRC of 1997, as amended, pertinently provides:

> "SEC. 148. *Manufactured Oils and Other Fuels.* – There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
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> xxx xxx xxx
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> (e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35): *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;"

Under the above-quoted law, excise tax shall attach to mineral oils or motor fuels, *i.e.*, naphtha, regular gasoline and other similar products of distillation, as soon as they are in existence as such. Based on the foregoing, the Court shall now determine whether petitioner's alkylate importations are subject to excise tax. On this score, it is imperative for the Court to determine the nature of alkylate based on the pieces of evidence submitted by petitioner. Je

Petitioner presented witness Ian Ferdinand S. Bravo who has custody of the DOE Letter dated June 27, 2012.[42] 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:

> "The DOE is of the position that Alkylate is not a finished product but **an intermediate or raw gasoline component** used as blendstock in the production of PNS-compliant unleaded gasoline consistent with requirements of the Philippine Clean Air Act. xxx
>
> xxx xxx xxx
>
> **While alkylate may have properties, especially octane and aromatics, that meet gasoline specifications**, alkylate is a high octane but law 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[43] 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

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[42] Exhibit "P-82", Docket, Vol. I, pp. 263-264.
[43] See Note 27.

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. He pertinently states in his Judicial Affidavit that:

"Q-13 How is alkylate produced?
A-13 Alkylate is produced from the combination of light olefins (C3-C5) with isobutane in the presence of a strong acid catalyst. The process is known as alkylation.

xxx xxx xxx

Q-15 What, if you know, are the raw materials or feedstock to produce alkylates?
A-15 Light C3-C5 olefins, e.g. isobutene and isobutane.

Q-16 How are these raw materials produced?
A-16 Light C3-C5 olefins are typically produced from a fluid catalytic cracker (FCC) unit and/or a coker unit.

Isobutane, on the other hand, is a component of natural gas. It can be a **product of crude oil distillation or it can also be recovered from other petroleum refinery streams** that result from catalytic cracking, catalytic reforming.

Q-17 You mentioned that isobutane can be a product of crude oil distillation. What is crude oil?

A-17 xxx xxx xxx

Crude oil is the basic material to produce transport fuel.

xxx xxx xxx

Q-23 What is the purpose or use of alkylate? *Jc*

A-23 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** e.g. distillation boiling range.

Q-24 How does alkylate affect the manufactured gasoline when blended together?
A-24 Alkylate typically increases the octane number of a straight run gasoline or naphtha."*(Emphasis supplied)*

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?
A As a result, Isobutane is a crude oil distillation."[44]

Finally, witness Bayani I. Rodriguez Jr.[45] 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. He states:

"JUSTICE CASTAÑEDA:
I propound additional questions.

Q How is alkylate derived?
A Alkylate is produced by combining two (2) gases using sulfuric acid, using reactor chillers to produce gasoline components. So it's like combining two (2) molecules and creating one gasoline molecules.

Q Is the ultimate material there is crude oil?

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[44] Transcript of Stenographic Notes (TSN) dated October 12, 2016, p. 5.
[45] See Note 25.

A No, your Honor. It's LPG. Olefins and Isobutane. They are derived from cracking of heavy materials from the crude oil. It's a special process.

Q What is the ultimate raw material involved?
A The ultimate raw material is actually not directly from crude oil.

Q Yah. When you say ultimate you go all the way down.
A Yes, your Honor. Yah, we use crude oil to separate different products. So the separation is the physical separation of the molecules. Then the bottoms, the very heavy ones, it undergoes a special reaction, a chemical reaction. First, to crack those materials to become the raw material for alkylation. So that't the process. The cracked material that the raw material is the feed to alkylation plant to produce alkylate."[46]

Based on the foregoing, the nature of alkylate can be summarized as follows:

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.

[46] TSN dated March 30, 2016, pp. 6-7.

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.

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.

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.

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.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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