REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

PETRON CORPORATION, Petitioner,	**CTA EB NO. 2425** (CTA Case Nos. 9565, 9606 & 9645)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 04 2022 3:30 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR PARTIAL RECONSIDERATION [Re: Decision dated 21 June 2022]***[1] filed on July 18, 2022, without respondent's comment despite due notice[2], seeking the reconsideration of this Court's Decision[3] dated June 21, 2022, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 24, 2020 and Resolution dated January 12, 2021, both

[1] EB Docket – Vol. 3, pp. 1436 to 1471.
[2] Records Verification dated August 25, 2022, EB Docket – Vol. 3, p. 1474.
[3] EB Docket – Vol. 3, pp. 1401 to 1419.

rendered by the Court in Division in CTA Cases No. 9565, 9606 & 9645 are **AFFIRMED**.

SO ORDERED."

In support of its *Motion*, petitioner reiterates that alkylate does not fall under the phrase "similar products of distillation". According to petitioner, there is no factual basis to conclude that alkylate is an indirect product of distillation; or that the isobutane used to reduce the specific batch of imported alkylate was produced by distillation.

Further, petitioner maintains that it has discharged its burden to prove its entitlement to a refund when it showed that alkylate was not among those listed under Section 148(e). Allegedly, alkylate is a product of alkylation, not distillation.

Petitioner likewise contends that no excise taxes should be imposed on alkylate because it is not imported for domestic sale or consumption or for any other disposition. There was allegedly double taxation when the imported alkylate was taxed twice – first upon importation, and then again upon withdrawal of the finished petroleum product.

THE COURT'S RULING

After careful examination and consideration of the instant *Motion*, it is noted that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

Petitioner failed to substantiate its claim that alkylate is not among the excisable articles under Section 148 (e) of the NIRC of 1997, as amended.

It bears reiterating that excise tax under Section 148 (e) of the NIRC of 1997, as amended, shall apply, *inter alia*, to naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence.

As held in the assailed Decision, alkylate first passes through the process of distillation as the same cannot come into existence without its raw material isobutane. Thus, while it is true that alkylation, not distillation, is required to produce alkylate, it is without doubt 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.

Further, the Court finds no credence in petitioner's stance that the burden of evidence is allegedly shifted to the CIR to present evidence that Section 148 (e) or (f) of the NIRC of 1997, as amended, cover alkylates.

It is well settled that the party who alleges a fact has the burden of proving it.[4] In refund claims, the burden of proof to establish entitlement thereto rests on the claimant taxpayer.[5] Needless to state, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[6]

Thus, between petitioner and respondent, it is the former, being the claimant, who has the burden of proving the veracity of its claim for refund. Accordingly, in the absence of any clear and sufficient basis for tax exemption, the Court cannot grant the refund of excise taxes sought by petitioner inasmuch as the same are not erroneously assessed or collected.

Petitioner failed to establish the existence of double taxation in this case.

As regards petitioner's assertion that there was allegedly double taxation when the imported alkylate was taxed twice – first upon importation, and then again upon withdrawal of the finished petroleum product, the same is without merit.

Double taxation applies when two taxes are 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.

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[4] *Portuguez vs. GSIS Family Bank (Comsavings Bank), et al.,* G.R. No. 169570, March 2, 2007.

[5] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 168856, August 29, 2012.

[6] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.,* G.R. Nos. 201665 and 201668, August 30, 2017.

In this case, it bears reiterating that no double taxation exists as one of its elements is lacking, i.e., that the two taxes must be imposed on the same subject matter.

To emphasize, there are two subject matters in this case: (1) excise tax on the importation of alkylate; and (2) excise tax on the alleged use of alkylate as a blending component or raw material to produce another product is a different subject matter.

The first imposition of tax is upon the importation of goods, and the second, upon removal or reprocessed goods from production site. In other words, the first imposition is simply concerned with the importation of articles, while the subsequent imposition is on the manufacturing production of goods in the Philippines for domestic sale or consumption or for any other disposition.

Clearly, the imposition of excise tax is on two different subject matters. Thus, no double taxation exists in this case.

In fine, the Court *En Banc* finds no compelling reason to reconsider, modify or reverse the assailed Decision.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With due respect, I reiterate my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I maintain my vote [joining the Dissenting Opinion of the Presiding Justice])
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I maintain my position)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice