REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS AND THE BUREAU OF CUSTOMS,
Respondents.

CTA Case No. 8535

Present:

BACORRO-VILLENA, *Acting Chairperson,*
MODESTO-SAN PEDRO*, and,
CUI-DAVID, *JJ.*

Promulgated: APR 2 7 2023

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DECISION

BACORRO-VILLENA, J.:

At bar is an Amended Petition for Review[1] filed by petitioner Pilipinas Shell Petroleum Corporation (**petitioner/PSPC**) on 08 October 2012, seeking the reversal and nullification of Document No. M-059-2012 dated 29 June 2012 (**Document No. M-059-2012**) issued by respondent Commissioner of Internal Revenue (**respondent CIR**) as well as the Letter dated 01 October 2012 (**01 October 2012 Demand Letter**) issued by respondent Collector of Customs of the Port of Batangas (**respondent Collector**). It further seeks a declaration from the Court that petitioner is not liable for any of the excise taxes and

* Designated as Special Member *per* Memorandum dated 18 April 2023.

1 Division Docket, Volumes III-IV, pp. 1388-1472. The original Petition for Review (id., Volume I, pp. 6-88) was filed on 24 August 2012.

corresponding value-added tax (**VAT**) thereon and that respondents CIR, Collector and Bureau of Customs (**respondent BOC**), or any other person acting on their behalf, be enjoined permanently from demanding and/or collecting any and all duties, excise taxes and VAT on its alkylate importations.

As culled from the Decision of the Supreme Court in *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division), et al.*[2] promulgated on 15 March 2021 (**15 March 2021 Decision**), an offshoot of the instant case, the antecedent facts are as follows:

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> [Petitioner] is a corporation engaged in the manufacture and distribution of petroleum products. As an integral part of its manufacturing process, and to comply with Republic Act No. (RA) 8749, otherwise known as the "Philippine Clean Air Act of 1999" and the Philippine National Standards (PNS), [petitioner] started to import alkylate - a raw material and blending component to be mixed with other substances to produce petroleum products. For [petitioner's] alkylate importations between May 2010 until August 2011, the Bureau of Internal Revenue (BIR) issued twenty-one (21) Authorities to Release Imported Goods (ATRIGs) which all stated that alkylate was not subject to excise tax considering that it is "not among those articles enumerated under Title VI of NIRC 1997." Subsequently, [respondent] BOC further conducted an independent/third-party test of the specifications of alkylate, which showed that alkylate was, in fact, not in the nature of premium plus, premium, or regular gasoline but a mere component additive, and hence, should not be subject to excise tax.
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> Despite these findings, records show that the BIR, in September 2011, began inserting a *colatilla* in the ATRIGs it issued for [petitioner's] alkylate importations, stating that the BIR's tax assessments was "without prejudice to the collection of the corresponding excise taxes, penalties and interests depending on the final resolution of the Office of the Commissioner on the issue on whether this item is subject to the excise taxes under the NIRC of 1997, as amended." Since the ATRIGs were issued directly to [respondent] BOC, and not to [petitioner], the latter only found out about the *colatilla* later in the proceedings. Further, around the same time (September 2011), [respondent] Collector also sent a request for a legal opinion to the Department of Energy (DOE) with respect to the nature

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2 G.R. Nos. 210501, 211294 & 212490, 15 March 2021; Citations omitted, emphasis, italics and underscoring in the original text.

of alkylate. In a Letter dated June 27, 2012, the DOE likewise held that alkylate was not a finished product but an intermediate product; hence, not subject to excise tax.

In spite of all the foregoing findings, [respondent] Collector still issued a Memorandum dated June 4, 2012 addressed to then Commissioner of Customs (COC) Rozzano Rufino Biazon (Commissioner Biazon) requesting for a formal legal opinion on whether it could collect excise taxes on [petitioner's] alkylate importations. Commissioner Biazon forwarded the same to the BIR through a Letter dated June 13, 2012 (June 13, 2012 Letter). In the meantime, [petitioner] discovered the *colatilla* in its ATRIGs; consequently, it filed a Letter to the BIR Large Taxpayer Services (LTS), decrying violation of due process. The BIR-LTS, however, did not reply to this Letter as of the time of filing of the instant case.

On June 29, 2012, [respondent] CIR issued **<u>Document No. M-059-2012</u>** in response to Commissioner Biazon's June 13, 2012 Letter. In this issuance, [respondent] CIR cited the report of the BIR Laboratory Section, Excise Taxpayers Regulatory Division, which found that alkylate was similar to naphtha as a product of distillation. Based on this, it opined that **<u>alkylate importations are subject to excise tax</u>** and corresponding value-added taxes (VAT). Afterwards, Commissioner Biazon issued Customs Memorandum Circular (CMC) No. 164-2012 on July 18, 2012 directing [respondent] Collector to take "appropriate action" based on Document No. M-059-2012.

Aggrieved, [petitioner] filed a **petition for review with the CTA on August 24, 2012 assailing Document No. M-059-2012**. It claimed that the said issuance was actually an invalid BIR Ruling since it was issued without factual bases and in violation of its right to due process. [Petitioner's] petition was docketed as **CTA Case No. 8535** and initially raffled to the CTA Second Division.

In August 2012, the BIR began issuing ATRIGs assessing [petitioner's] alkylate importations for excise tax. As such, [petitioner] filed a **Verified Urgent Motion for the Issuance of a <u>Suspension Order with a Prayer for Immediate Issuance of a Temporary Restraining Order</u> dated September 17, 2012** (September 17, 2012 Verified Urgent Motion) in CTA Case No. 8535 seeking to enjoin [respondent] Collector and the BIR from implementing Document No. M-059-2012 for [petitioner's] subject and future alkylate importations. [Respondents] BOC and the Collector opposed the same.

On August 31, 2012, Commissioner Biazon sent a letter to [respondent] CIR requesting for assistance in the computation of deficiency excise taxes and applicable interests and penalties for [petitioner's] previous importations from 2010 to 2012. On September

5, 2012, [respondent] CIR issued a letter-reply containing the requested computation in the aggregate amount of ₱1,994,500,677.47. As a result, on **October 1, 2012**, [respondent] Collector sent a **Demand Letter to [petitioner] for the deficiency excise taxes, inclusive of interest and penalties, in the amount of ₱1,994,500,677.47** as computed by [respondent] CIR in her September 5, 2012 letter-reply. Because of this development, [petitioner] **amended its Petition for Review in CTA No. 8535 to include the October 1, 2012 Demand Letter (Amended Petition).**

On October 5, 2012, the CTA Second Division initially denied [petitioner's] September 17, 2012 Urgent Verified Motion on the ground that **no assessment has yet been issued**. However, on [petitioner's] motion for reconsideration and upon presenting the October 1, 2012 Demand Letter, **the CTA reversed itself via a Resolution dated October 22, 2012**, and issued a **Suspension Order covering the ₱1,994,500,677.47** demand by [respondent] Collector **(October 22, 2012 Suspension Order)**. This notwithstanding, the CTA clarified that it was granting a Suspension Order only on the amounts covered by the assessment contained in the Demand Letter which was for importations from January 2010 to June 2012, and not a general Suspension Order as to future or incoming shipments. Anent these future/incoming shipments, it held that it had no authority to enjoin the collection of taxes sans an actual assessment. **Notably, the October 22, 2012 Resolution did not rule on** [petitioner's] **separate prayer** (in the September 17, 2012 Verified Urgent Motion) **for the issuance of a TRO/WPI to enjoin the implementation of Document No. M-059-2012.**

Thereafter, [respondents] **CIR, BOC, and the Collector filed an Omnibus Motion to dismiss the case, to lift the October 22, 2012 Suspension Order, and to require** [petitioner] **to explain how it obtained Document No. M-059-2012.** Essentially, they argued that: (*a*) the CTA has no jurisdiction over the case since Document No. M-059-2012 was neither a ruling nor an adverse decision but a mere internal communication between [the] COC and [respondent] CIR; (*b*) [petitioner] failed to exhaust the protest procedure under the Tariff and Customs Code of the Philippines (TCCP) in order to properly contest the tax assessment in the October 1, 2012 Demand Letter, thus rendering the same final and executory; and (*c*) [petitioner] failed to prove its entitlement to a Suspension Order. The Omnibus Motion was opposed by [petitioner] which maintained that Document No. M-059-2012 was, in fact, a BIR Ruling and was issued by [respondent] CIR in the exercise of [his or] her quasi-judicial powers. In any event, it would fall under the "other matters" jurisdiction of the CTA.

On November 19, 2012, [respondent] CIR filed a separate Answer in CTA Case No. 8535, similarly arguing that the CTA did not have jurisdiction over the case and that [petitioner] failed to exhaust administrative remedies.

Prior to the resolution of the Omnibus Motion, [petitioner] filed two (2) separate Urgent Verified Motion for Suspension Orders for its alkylate importations on November 5, 2012 and December 17, 2012. In a Resolution dated January 4, 2013, the CTA denied the December 17, 2012 Motion on the ground that no assessment has yet been issued by [respondent] Collector for the alleged shipment.

Meanwhile, in a Resolution dated January 28, 2013, the CTA Second Division denied the November 5, 2012 Urgent Verified Motion and the Omnibus Motion. With respect to the Urgent Verified Motion, the CTA reiterated its position in its January 4, 2013 Resolution that no Suspension Order could be issued sans an actual assessment. As to the Omnibus Motion, it held that it has jurisdiction over [petitioner's] petition since: (*a*) **the assailed Document No. M-059-2012 was actually in the nature of a BIR Ruling**; and (*b*) the likewise assailed **October 1, 2012 Demand Letter was a tax assessment** given that liability of the taxpayer was definitively determined. Finally, the CTA held that there was sufficient basis to maintain the Suspension Order over the ₱1,994,500,677.47 assessment in the October 1, 2012 Demand Letter.

Unperturbed, [respondents] BOC and the Collector moved for reconsideration but was denied by the CTA First Division (not the Second Division due to a reorganization) in a Resolution dated June 24, 2013. [Respondents] BOC and the Collector then elevated this resolution to the CTA *En Banc* through a Petition for Review, docketed as **CTA EB Case No. 1047**. However, in a Resolution dated February 10, 2014, the CTA *En Banc* denied due course to their petition for being the wrong remedy to contest an interlocutory order of the CTA First Division. **Undeterred,** [respondents] **BOC and the Collector filed their Petition for Review on *Certiorari* before [the Supreme] Court assailing the CTA *En Banc*'s Resolution, which was docketed as <u>G.R. No. 211294</u>.**

On June 17, 2013, [petitioner] filed yet another Urgent Verified Motion for Suspension Order for its alkylate importation, this time presenting the Import Entry and Internal Revenue Declaration (IEIRD) and the ATRIG corresponding to its importation to prove an existing assessment against it. This was opposed by [respondents] BOC and the Collector. On the other hand, [respondent] CIR filed a Motion to Dismiss in response, reiterating the grounds she raised in her separate Answer filed in CTA Case No. 8535.

In a Resolution dated July 15, 2013, the CTA First Division denied [respondent] CIR's Motion to Dismiss on the ground that the CTA's jurisdiction over the case had already been settled through the

CTA's Resolutions dated January 28, 2013 and June 24, 2013. Furthermore, it granted [petitioner's] June 17, 2013 Urgent Verified Motion, and **issued a Suspension Order covering the excise taxes for** [petitioner's] **alkylate shipment under IEIRD Nos. C-1298-13 and C-1301-13.** [Respondent] CIR's Motion for Reconsideration was denied through a Resolution dated October 14, 2013, prompting it **to file a Petition for *Certiorari* before [the Supreme] Court assailing these twin Resolutions, which was docketed as G.R. No. 210501.**

Thereafter, [petitioner] filed several other Urgent Verified Motions for Suspension Orders for its succeeding alkylate importations from September 11, 2013 until February 26, 2014, but the same were withdrawn due to the CTA's inability to resolve the same within the fifteen (15) day period under the TCCP.

On March 19, 2014, [petitioner] filed its **Urgent Verified Motion for the Issuance of a Suspension Order Against the Collection of Excise Taxes and Value Added Tax thereon on the Shipment of 80,162 Barrels of Alkylate as Delivered by the Vessel MT Marine Express.** However, this was denied by the CTA First Division in a Resolution dated April 2, 2014, opining that it has **no jurisdiction to issue Suspension Orders on incoming alkylate importations because the same were not covered by the Amended Petition for Review.** Furthermore, it held that [petitioner] failed to initiate protest proceedings and that, in any event, jeopardy was not proven. Distressed by the CTA's sudden change of position, [petitioner] **filed a Petition for *Certiorari* with an application for the issuance of a TRO and/or WPI before [the Supreme] Court assailing the April 2, 2014 Resolution of the CTA, which was docketed as G.R. No. 212490.**

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In respondent CIR's aforesaid Answer[3] filed on 19 November 2012, he or she raised the following affirmative defenses: (1) the Court has no jurisdiction over the case as the subject document is an internal letter between heads of government agencies; (2) assuming that the subject document is a ruling, still, the Court has no jurisdiction as it does not fall under the special jurisdiction conferred upon it by law; (3) assuming that the subject document is a ruling, still, petitioner failed to exhaust administrative remedies; (4) as the Court has no jurisdiction over the main action, it has no power to grant the ancillary remedy prayed for; and, (5) petitioner is liable to pay taxes on its alkylate importations.

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[3] Division Docket, Volume VI, pp. 2431-2457.

On 26 December 2012, petitioner filed a Reply[4] to the said Answer in refutation of respondent CIR's contentions.

Meanwhile, respondents Collector and BOC filed their Answer/Comment[5] on 08 August 2013 raising the following defenses: (1) the 01 October 2012 Demand Letter had already become final and executory; (2) petitioner is liable for the assessed excise taxes on its alkylate importations pursuant to Section 129[6] and 131[7], in relation to Section 148[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended[9]; (3) there is no double taxation; (4) the government was greatly prejudiced by the non-payment of the excise taxes; and, (5) the issuance of the Document No. M-059-2012 did not deny petitioner due process.

Subsequently, the separate Pre-Trial Briefs of respondent CIR, and respondents Collector and BOC were filed on 16 January 2014[10] and 11 February 2014[11], respectively. On the other hand, petitioner's own Pre-Trial Brief[12] was filed on 07 February 2014.

Later, the Supreme Court issued a Notice of Resolution dated 30 July 2014[13] confirming the Temporary Restraining Order (**TRO**) it issued on 07 July 2014. Respondents Collector and BOC filed a Motion for Reconsideration[14] (**MR**) on 05 August 2014, but the Supreme Court denied the same in its Notice of Resolution dated 22 October 2014.[15]

Dissatisfied, respondents Collector and BOC filed with the Supreme Court a "Motion for Leave (to File a Second Motion for Reconsideration) and Second Motion for Reconsideration"[16] on 27 November 2014 but they were denied in its 08 April 2015 Resolution.[17]

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4 Id., Volume VII, pp. 2770-2845.
5 Id., Volume IX, pp. 3926-3961.
6 **SEC. 129.** *Goods Subject to Excise Taxes.* -
7 **SEC. 131.** *Payment of Excise Taxes on Imported Articles.* – ...
8 **SEC. 148.** *Manufactured Oils and Other Fuels.* - ...
9 But prior to the amendments brought about by Republic Act (RA) No. 10963 otherwise known as "Tax Reform for Acceleration and Inclusion (TRAIN)."
10 Division Docket, Volume X, pp. 4192-4196.
11 Id., Volume XI, pp. 4962-4972.
12 Id., Volume X, 4505-4546.
13 Id., Volume XXIV, pp. 11772-11775.
14 Id., pp. 11670-11710.
15 Id., Volume XXIX, pp. 14224-14227.
16 Id., pp. 14237-14283.
17 Id., pp. 14490-14491.

During the initial pre-trial conference[18] on 11 August 2016, petitioner manifested that it will adopt the testimonies of its four (4) witnesses who already testified during the hearing for petitioner's motions for the issuance of suspension order, namely: (1) Nicasio Manuel (**Manuel**); (2) Shaiful Bahari Bin Zainuddin (**Zainuddin**); (3) Yur[i] S. [Ladanga] (**Ladanga**); and, (4) Rene Benavidez (**Benavidez**). Moreover, petitioner also manifested that it will present eight (8) additional witnesses in support of the main case. Later, the parties filed their Joint Stipulations[19] on 11 November 2016.

On 27 February 2017, the Court issued the Pre-Trial Order.[20] After petitioner filed its "Motion for Correction/Amendment [of the Pre-Trial Order dated 27 February 2014]"[21] on 06 March 2017, the Court granted[22] the same and ordered the issuance of Amended Pre-Trial Order.[23]

Thereafter, trial ensued.

On 27 June 2017, petitioner presented its first witness, Cristino Q. Navarro (**Navarro**), who testified by direct examination through his Judicial Affidavit.[24] Navarro's testimony was offered to prove, among others, that: (1) SGS (Subic Bay), Inc. (**SGS**), of which he is the Laboratory Manager, conducted an analysis of a sample of petitioner's alkylate importation; and, (2) SGS issued the results thereof under Certificate of Analysis SB11-00677.003[25] which revealed that alkylate is "neither regular, premium, or premium plus gasoline."

On 25 July 2017, petitioner's second witness, Andres E. Landicho (**Landicho**), testified through his Judicial Affidavit.[26] Landicho's testimony was offered to prove, among others, that all of petitioner's alkylate importations and those that will still be imported was and will be used as raw materials in the manufacture of legally saleable finished petroleum products in the Philippines.

18 See Order dated 11 August 2016, id., Volume XXX, pp. 14665-14667.
19 Id., pp. 14813-14818.
20 Id., pp. 14921-14937.
21 Id., pp. 14942-14948.
22 See Resolution dated 08 January 2018, id., Volume XXXI, pp. 15178-15186.
23 Id., pp. 15204-15222.
24 Exhibits "P-100" and "P-100-1", id., Volume XI, pp. 4760-4770.
25 Exhibits "P-7" and "P-7-A", id., Volume XXXII, p. 15489.
26 Exhibits "P-101" and "P-101-a", id., Volume XI, pp. 4921-4950.

On 29 August 2017[27], petitioner presented its third witness, Maycel Barata (**Barata**), who, through her Judicial Affidavit[28], testified by direct examination. Barata's testimony was offered to prove, among others, that petitioner has paid in full the excise taxes due on the entire volume of the finished petroleum products, which include the subject imported alkylate as blended, upon withdrawal from petitioner's Tabangao Refinery.

On 26 September 2017[29], the fourth witness, Michelle C. Masinsin (**Masinsin**), also assumed the witness stand where she, through her Judicial Affidavit[30], testified that: (1) petitioner submits the Daily Product Delivery Report of Excise Tax Due on Petroleum Products (**DPDR**), the Daily Removal Report of Excise Tax Due on Petroleum Products (**DRR**) and the draft Withdrawal Certificates to the Bureau of Internal Revenue (**BIR**) Revenue Officer on Premise (**ROOP**); and, (2) the BIR ROOP reviews the said documents and thereafter signs the Withdrawal Certificates.

On 24 October 2017[31], petitioner presented its fifth witness, Claude A. Mallet (**Mallet**), who testified[32] that: (1) he holds a Bachelor's degree in Analytical and Industrial Chemistry from Institut National Supérieur de Chimie Industrielle de Rouen (**INSCIR**), Rouen, France and a Master of Science degree in Analytical and Industrial Chemistry likewise from INSCIR; (2) he had further training in petroleum laboratory techniques at the Institut Francais de Pétrole (**IFP**) in Rueil-Malmaison, Paris; (3) he is an expert in petroleum and a technical consultant in the oil and gas industry; (4) he provided independent technical expertise, advice and/or opinion on the specifications and quality of petitioner's alkylate shipments; (5) alkylate is merely a blending component used in the production of finished grade motor gasoline and not a finished gasoline product for domestic sale or consumption; and, (6) alkylate is not a product of distillation, nor is it similar to naphtha or regular gasoline.

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27 See Order dated 29 August 2017, id., Volume XXXI, pp. 15108-15109.
28 Exhibits "P-102" and "P-102-a", id., Volume XI, pp. 4951-4961.
29 See Order dated 26 September 2017, id., Volume XXXI, pp. 15129-15130.
30 Exhibits "P-103" and "P-103-A", id., Volume XI, pp. 4913-4920.
31 See Order dated 24 October 2017, id., Volume XXXI, pp. 15154-15155.
32 See Judicial Affidavit, Exhibits "P-104" and "P-104-A", id., Volume X, pp. 4690-4706.

In the meantime, the case was transferred again to the Second Division pursuant to CTA Administrative Circular No. 02-2018[33] dated 18 September 2018.[34]

On 16 March 2018, petitioner filed a "Motion to Present Additional Witness and Request for Issuance of *Subpoena Ad Testificandum Et Duces Tecum*"[35] which the Court denied in its Resolution dated 09 May 2018.[36] On 30 May 2018, petitioner filed an MR[37] but the same was still denied in the Court's 15 October 2018 Resolution.[38]

On 20 March 2018[39], petitioner presented Laila Mateo Acain (**Acain**) as its last witness who, through her Judicial Affidavit[40], declared that: (1) the BIR issued Document No. M-059-2012 without notice to petitioner or any opportunity for it to be heard, in violation of its due process rights; (2) Petron Corporation (**Petron**) has been importing alkylate since 2003 but it was never assessed with excise taxes on its past importations of alkylate from 2003 to May 2012; and, (3) respondents have been discriminating against petitioner instead of being treated similarly as Petron.

On 20 February 2019, petitioner filed its Formal Offer of Evidence[41] (**FOE**), with respondent CIR's Comment[42] filed on 21 February 2019 and respondents Collector and BOC's Comment[43] filed on 01 April 2019. On 05 April 2019 and 21 June 2019, petitioner filed its replies to the separate comments of respondent CIR[44] and respondents Collector and BOC.[45]

On 05 July 2019, petitioner filed a Motion to Inhibit[46] after learning of the Second Division's Decision in CTA Case Nos. 8914 & 8981

33 Reorganizing the Three (3) Divisions of the Court.
34 See Resolution dated 15 October 2018, Division Docket, Volume XXXI, pp. 15345-15350.
35 Id., pp. 15228-15233.
36 Id., pp. 15302-15309.
37 Id., pp. 15310-15322.
38 Id., pp. 15345-15350.
39 See Order dated 20 March 2018, id., pp. 15240-15241.
40 Exhibits "P-107" and "P-107-A", id., Volume XI, pp. 4776-4796.
41 Id., Volume XXXII, pp. 15374-15474.
42 Id., pp. 15870-15872.
43 Id., Volume XXXIII, pp. 15954-16011.
44 Id., pp. 15948-15953; The Court admitted the said Reply in its 15 April 2019 Resolution (id., p. 16020).
45 Id., pp.16091-16124; The Court admitted the said Reply in its 23 July 2019 Resolution (id., pp. 16138-16139).
46 Id., pp. 16126-16135.

entitled *Petron Corporation v. Commissioner of Internal Revenue* (which similarly involves the issue of taxability of alkylate importations) as it believes that the Justices of the Second Division were already predisposed to rule against it. Respondent CIR then filed Opposition (Re: Motion to Inhibit)[47] on 06 August 2019 while respondent Collector and BOC filed their Opposition (to Petitioner's Motion for Inhibition dated 05 July 2019)[48] on 15 August 2019. Petitioner filed a Motion for Leave to File and Admit Consolidated Reply with the attached Consolidated Reply[49] on 27 September 2019, which the Court granted and admitted, respectively, in its Resolution dated 09 October 2019.[50]

On 10 January 2020[51], the Court resolved petitioner's FOE and admitted all of the latter's documentary evidence, except Exhibits "Y-Motion for Suspension Order"[52] and "P-13-SO".[53] In the same Resolution, the Court noted petitioner's Tender of Excluded Evidence incorporated in its FOE and likewise denied petitioner's Motion to Inhibit.

On petitioner's Motion for Partial Reconsideration[54] (**MPR**) filed on 10 February 2020, the Court, in its Order[55] issued on the same day, reconsidered the denial of the said documents and consequently admitted the same. It, however, refused to recuse from hearing the case in the absence of valid grounds to do so.

On 11 March 2020[56], respondent CIR presented the lone witness, Ma. Lourdes Rosula R. Ramos (**Ramos**), who testified by direct examination, through her Judicial Affidavit.[57] The testimony of Ramos was offered to prove, among others, that alkylate is a product of distillation similar to naphtha and therefore, subject to excise tax under Section 148(e)[58] of the NIRC of 1997, as amended.

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47 Id., pp. 16142-16146.
48 Id., pp. 16171-16185.
49 Id., pp. 16190-16206.
50 Id., p. 16209.
51 See Resolution dated 10 January 2020, id., pp. 16211-16228.
52 ATRIG dated 12 December 2012.
53 IEIRD No. C832-14 dated 18 March 2014.
54 Division Docket, Volume XXXIII, pp. 16232-16246.
55 Id., p. 16281.
56 See Order dated 11 March 2020, id., p. 16283.
57 Exhibits "R-2" and "R-2-A", id., Volume XI, pp. 5098-5101.
58 **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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On 02 September 2020[59], respondents Collector and BOC presented their lone witness, Ms. Rowena Matienzo (**Matienzo**), who testified[60] that, as part of her official duties, she extracted the spreadsheet summary of petitioner's alkylate importations.

On 09 September 2020, respondent CIR filed his or her FOE[61] while respondents Collector and BOC filed their "Respondents' Formal Offer of Evidence"[62] on 06 October 2020. In response, petitioner filed its Consolidated Comment/Opposition[63] thereto on 20 October 2020.

On 18 December 2020, the Court, in its Resolution dated 18 December 2020[64], resolved respondents' separate FOEs and admitted all their documentary evidence (except respondents Collector and BOC's Exhibit "R-1"[65] and respondent CIR's own Exhibit "R-1").[66]

On 29 January 2021, respondent CIR filed his or her Memorandum[67] while respondents Collector and the BOC filed their own on 04 February 2021.[68] On the other hand, petitioner filed its Memorandum[69] on 03 March 2021.

Thereafter, the Supreme Court promulgated its 15 March 2021 Decision[70] which, as aforementioned, sprang from the instant case. In the said consolidated Decision, the Supreme Court held, among others,

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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[.]

59 See Order dated 02 September 2020, Division Docket, Volume XXXIII, p. 16374.
60 Exhibits "R-8" and "R-8-1", id., pp. 16313-16320.
61 Id., pp. 16375-16377.
62 Id., Volume XXXIV, pp. 16520-16531.
63 Id., pp. 16587-16604.
64 Id., pp. 16744-16745.
65 Organizational Chart of Bureau of Customs.
66 Memorandum Report (Position Paper on Alkylate) dated 19 June 2012.
67 Division Docket, Volume XXXIV, pp. 16747-16757.
68 Id., Volume XXXV, pp. 17002-17070.
69 Id., Volume XXXVI, pp. 17516-17654.
70 Supra at p. 2.

that: (1) this Court has jurisdiction over the subject matter of the instant case or over the challenges raised against BIR issuances including Document No. M-059-2012 since it is a BIR ruling; (2) although there is a violation of the doctrine of exhaustion of administrative remedies, exceptions apply herein, such as when the question involved is purely legal or the necessity of judicial intervention was shown; and, (3) this Court has jurisdiction over respondent Collector's 01 October 2012 Demand Letter.

However, the Supreme Court also ruled that this Court did not have jurisdiction to issue suspension orders over assessments against petitioner's alkylate importations beyond the period covered by its Amended Petition for Review; consequently, this Court cannot issue a suspension order for the assessments against petitioner's subsequent and future alkylate importations.

Respondents Collector and BOC filed an MR[71] to the said 15 March 2021 Decision of the Supreme Court.

On 30 July 2021, petitioner filed an "Urgent Verified Motion for the Issuance of a Temporary Restraining Order/Writ of Preliminary Injunction" dated 29 July 2021[72] (**29 July 2021 Urgent Verified Motion**) following the Supreme Court's action to remand the case to this Court to resolve the issue on the propriety of issuing a TRO and/or Writ of Preliminary Injunction (**WPI**) to enjoin the implementation of Document No. M-059-2012 (during the pendency of this case in accordance with the Supreme Court's 15 March 2021 Decision).

In its "Manifestation with Urgent Motion to Set Hearing Through Videoconferencing"[73] filed on 14 September 2021, petitioner manifested that subsequent to its filing of the above 29 July 2021 Urgent Verified Motion, a Demand Letter dated 18 August 2021[74] (**18 August 2021 Demand Letter**) was issued by District Collector Atty. Ma. Rhea M. Gregorio (**Atty. Gregorio**) against petitioner relative to the subject excise taxes on its alkylate importations. Petitioner thus prayed for the prompt resolution of its "Urgent Verified Supplemental Motion for the

71 Id., Volume XL, pp. 20674-20691.
72 Id., Volume XXXVI, pp. 17737-17768.
73 Id., Volume XXXVII, pp., 18315-18320.
74 Id., Volume XXXIX, p. 19465.

Issuance of a Writ of Preliminary Injunction and Suspension Order with a Prayer for the Immediate *Ex Parte* Issuance of a 60-Day Temporary Restraining Order"[75] (**Supplemental Motion**) it filed on 06 August 2021.

During the hearing on petitioner's Urgent Verified Motion, respondents Collector and BOC manifested their objection to petitioner's application for suspension order and raised an issue on the Court's jurisdiction prompting the Court to direct the parties to submit their respective memoranda on the said matter.[76]

In compliance with the said directive, petitioner[77] and respondents Collector and BOC[78] filed their respective memoranda both on 20 September 2021. On the other hand, respondent CIR filed a Manifestation[79] on 14 October 2021, stating that he or she would no longer be filing a memorandum since it is respondent BOC's assessment which is involved in the TRO prayed for.

In resolving the issue on jurisdiction, the Court, in its Resolution dated 05 November 2021[80], ruled that while it is not vested with jurisdiction to issue a suspension order and/or TRO/WPI on the 18 August 2021 Demand Letter, it has jurisdiction to hear the application for TRO/WPI against Document No. M-059-2012. Thus, the Court set the case for hearing on the propriety of issuing a TRO/WPI to enjoin the implementation of the said document.

On 22 November 2021, respondents Collector and BOC filed an MR[81] while petitioner filed an Opposition[82] thereto on 29 November 2021.

In the meantime, petitioner filed an Extremely Urgent Motion to Resolve[83] as it again received another Demand Letter dated 28 October

75 Id., pp. 19432-19456.
76 See Order dated 15 September 2021, id., Volume XXXVII, pp. 18698-18699.
77 Id., Volume XXXIX, pp. 19402-19423.
78 Id., pp. 19820-19857.
79 Id., pp. 19814-19816.
80 Id., Volume XL, pp. 20497-20518.
81 Id., pp. 20612-20623.
82 Id., pp. 20575-20585.
83 Id., pp. 20519-20526.

2021[84] (**28 October 2021 Demand Letter**) from Atty. Gregorio. The letter reiterated the demand for payment of the total amount of ₱3,491,629,824.00. Later, petitioner filed an Urgent Motion for Earlier Setting[85] on 29 November 2021 requesting that the hearing be set at a date earlier than the setting on 26 January 2022.

On 14 February 2022, the Court issued a Resolution[86] denying respondents Collector and BOC's MR while rendering petitioner's Urgent Motion for Earlier Setting of Hearing moot.

During the hearing on 02 March 2022, counsel for respondents Collector and BOC manifested that petitioner had paid the excise taxes under protest rendering thus the latter's prayer for issuance of TRO/WPI as moot.[87]

On 12 May 2022, the Court received a Notice of Resolution dated 23 February 2022[88] from the Supreme Court denying respondents Collector and BOC's MR with finality and directing the issuance of entry of judgment immediately.

In its 30 March 2022 Resolution[89], the Court considered the case submitted for decision.

On 07 March 2023, petitioner filed a Manifestation[90] invoking the Supreme Court's ruling in *The Philippine Stock Exchange, Inc., et al. v. Secretary of Finance, et al.*[91] (**Philippine Stock Exchange**) in further support of this petition.

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84 Id., p. 20527.
85 Id., pp. 20569-20574.
86 Id., pp. 20650-20656.
87 See Order dated 02 March 2022, id., p. 20664.
88 Id., pp. 20710-20711.
89 Id., p. 20698.
90 Id., pp. 20746-20751.
91 G.R. No. 213860, 05 July 2022.

ISSUES

As stated in the Amended Pre-Trial Order dated 24 January 2018[92], the following issues are to be resolved:

I.
WHETHER PETITIONER PILIPINAS SHELL PETROLEUM CORPORATION IS LIABLE TO PAY THE TAXES DUE ON ITS IMPORTATIONS OF ALKYLATE; AND,

II.
WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE CASE.

ARGUMENTS

Petitioner insists that the Court has jurisdiction over the instant case that directly assails Document No. M-059-2012 (which is a BIR ruling) as well as the assessments resulting therefrom.

Petitioner further maintains that it is not liable for the alleged excise taxes and VAT because Document No. M-059-2012 has no legal basis as alkylate is *not* among the goods subject to excise tax under Section 148(e) of the NIRC of 1997, as amended. In support thereof, petitioner claims that its *unrebutted* evidence would show that alkylate is not a manufactured finished product for consumption, but a mere raw material.

In addition, petitioner claims that Document No. M-059-2012 is void due to the following reasons: (1) it was issued without prior notice, hearing and publication, in blatant violation of petitioner's constitutional right to due process; (2) it is being applied retroactively to petitioner's past importations, in violation of Section 246[93] of the NIRC of 1997, as amended; and, (3) it allows double taxation in its prohibited sense.

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92 Supra at note 23.
93 **SEC. 246.** *Non- Retroactivity of Rulings. – ...*

Petitioner adds that the assessment of excise tax against it breaches the equal protection clause since a "similarly situated" taxpayer like Petron is not being assessed with the same tax.

Lastly, petitioner maintains that it is not liable for the alleged deficiency excise taxes because it has paid all taxes due on its importation and use of alkylate. Consequently, the imposition of interest and surcharges is likewise illegal and without basis.

On the other hand, respondent CIR claims that as contained in the 18 January 2012 Report of the Officer-in-Charge (**OIC**)-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, alkylate qualifies as a product similar to naphtha (used as gasoline blending component) in terms of boiling range, volatility and recovery process. Furthermore, excise tax applies to goods manufactured or produced in the Philippines for domestic sale or consumption or any other disposition and to things imported. Thus, although the alkylate imported by petitioner is alleged to have been used merely as blending component, it is still subject to excise tax for being "a thing imported".

On the other hand, respondents Collector and BOC contend that the Court has no jurisdiction over the Amended Petition for Review, as it does not have authority to review, reverse or nullify an inter-government agency letter. Moreover, respondents Collector and BOC add that the Court has no jurisdiction or authority to review, reverse or nullify a demand letter from respondent Collector, which had not even been contested in the administrative level in accordance with Section 2308[94] of the Tariff and Customs Code of the Philippines[95] (**TCCP**).

As to the merits of the case, respondents Collector and BOC reiterate the argument of respondent CIR that the importation of alkylate, being a similar product of distillation, is subject to excise tax

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94 **SEC. 2308.** *Protest and Payment Upon Protest in Civil Matters.* — When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301.

95 Presidential Decree No. 1464 entitled "A DECREE TO CONSOLIDATE AND CODIFY ALL THE TARIFF AND CUSTOMS LAWS OF THE PHILIPPINES."

for falling under "things imported" in Section 129[96], in relation to Section 148(e)[97] of the NIRC of 1997, as amended. According to respondents Collector and BOC, Section 129 subjects the imported goods or articles to excise tax regardless of the purpose of such importation.

Furthermore, respondents Collector and BOC insist that there is no double taxation in herein case as there are two (2) different subject matters involved – the imported alkylate, on one hand, for being "things imported"; and, the produced or manufactured motor gasoline for falling under "manufactured oils and other fuels," on the other.

RULING OF THE COURT

At the onset, it must be emphasized that the Court will no longer tackle the issues that have already been resolved with finality by the Supreme Court in its 15 March 2021 Decision (and which it also affirmed in its Notice of Resolution dated 23 February 2022). Specifically, this Court treats as law of the case the Supreme Court's pronouncement that: (1) this Court has jurisdiction over the subject matter of the instant case or over challenges to BIR issuances such as Document No. M-059-2012 (since it is considered as a BIR ruling); (2) although there is a violation of the doctrine of exhaustion of administrative remedies, exceptions apply herein, such as when the question involved is purely legal or the necessity of judicial intervention is shown; and, (3) this Court has jurisdiction over respondent Collector's 01 October 2012 Demand Letter.

Anent the remaining issues, the Court will discuss the parties' respective arguments, *in seriatim*.

Before delving into the issue on the taxability of alkylate as allegedly a similar product of distillation, the Court deems it propitious to first rule on petitioner's decry of violation of its constitutional right to due process.

To recap, petitioner claims that its constitutional right to due process was violated when respondent CIR issued Document No. M-059-2012 without prior notice, hearing and publication and when the

96 Supra at note 6.
97 Supra at note 58.

same was made to apply retroactively despite the same being prejudicial to it.

ASIDE FROM SUBSTANTIALLY INCREASING PETITIONER PILIPINAS SHELL PETROLEUM CORPORATION'S BURDEN, DOCUMENT NO. M-059-2012 HAS TO BE ISSUED IN ORDER TO MAKE IT LIABLE FOR EXCISE TAX; HENCE, PRIOR NOTICE, HEARING, AND PUBLICATION ARE REQUIRED FOR ITS VALIDITY.

In order to determine whether there is indeed a violation of petitioner's constitutional right to due process, it is of primordial importance to ascertain if the questioned issuance necessitates prior notice, hearing, and publication.

In *Republic of the Philippines, represented by the Bureau of Food and Drugs (now Food and Drug Administration) v. Drugmaker's Laboratories, Inc., et al.*[98], the Supreme Court discussed the different kinds of administrative regulations and which type will need to comply with the requirements of prior notice, hearing, and publication, to wit:

> ...
>
> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.

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[98] G.R. No. 190837, 05 March 2014; Citations omitted, emphasis in the original text and supplied.

> **In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding, except when the same is merely an interpretative rule.** This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. **When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.**"
>
> ...

Recently, in the case of *Philippine Stock Exchange*[99], the Supreme Court reiterated the rule that if the interpretative regulation substantially increases the burden of those governed, public participation and publication are required. It held:

> ...
>
> Interpretative rules, however, are an exception from the requirement of public participation, or prior notice and hearing. When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. **But surely, if the interpretative regulation substantially increases the burden of those governed, public participation and publication are a must**, thus:
>
> > Accordingly, an administrative regulation can be construed as simply interpretative or internal in nature, dispensing with the requirement of publication, when its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, however, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter, to be duly

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[99] Supra at note 90; Citations omitted, italics in the original text and emphasis supplied.

informed, before that new issuance is given the force and effect of law.

In fine, the gauge on determining if a regulation requires prior notice and hearing is its substance or content. Prior notice and hearing are required if the regulation substantially increases the burden of those governed, notwithstanding its nomenclature—despite the regulation being called or designated as interpretative.

Thus, if the questioned regulations here in this case are legislative rules or substantially increase the burden of those governed, they should have undergone prior notice and hearing (which, in this case, are undisputedly absent) for their validity. If they are interpretative rules, prior notice and hearing are not essential for their validity.

Here, the Court finds that the questioned regulations are not mere interpretative issuances; they are legislative in nature that change, if not increase, the burden of those governed. Notice and hearing are thus required for their validity.

The questioned regulations, particularly SEC MC 10-2014, substantially changed the procedure currently observed by the market participants. The questioned regulations impose a new obligation—that is, the transmittal of the alphalist of payees to the listed companies—on the PDTC, their transfer agents and depository account holders. This obligation did not exist before because the practice then was the reporting of PCD Nominee as the payee in the alphalist. With the questioned regulations, there will be a significant change on how the parties involved, including the investors themselves, will make decisions and act. As aptly pointed out by Senior Associate Justice Leonen and Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier), **the questioned regulations upended long established practices and changed a long[-]standing rule in imposing this new burden.**

...

In yet another set of cases, the Supreme Court also considered the pertinent issuance as one requiring prior notice, hearing and publication if without the same, the taxpayer would not have been liable for the tax.

This is exemplified in the case of *Commissioner of Internal Revenue v. Hon. Court of Appeals, et al.*[100] where Revenue Memorandum Circular (**RMC**) No. 37-93[101] had to be issued in order to place "Hope Luxury," "Premium More" and "Champion" within the classification of locally manufactured cigarettes bearing foreign brands so as to have them covered by Republic Act (**RA**) No. 7654.[102] The Supreme Court noted that without RMC No. 37-93, the enactment of RA 7654 would have had no new tax rate consequence on the said products thus due observance of the requirements of notice, of hearing, and of publication should not have been then ignored, *viz*:

> ...
>
> A reading of RMC 37-93, particularly considering the circumstances under which it has been issued, convinces us that the circular cannot be viewed simply as a corrective measure (revoking in the process the previous holdings of past Commissioners) or merely as construing Section 142(c)(1) of the NIRC, as amended, **but has, in fact and most importantly, been made in order to place "Hope Luxury," "Premium More" and "Champion" within the classification of locally manufactured cigarettes bearing foreign brands and to thereby have them covered by RA 7654.** Specifically, the new law would have its amendatory provisions applied to locally manufactured cigarettes which *at the time of its effectivity* were not so classified as bearing foreign brands. **Prior to the issuance of the questioned circular, "Hope Luxury," "Premium More," and "Champion" cigarettes were in the category of locally manufactured cigarettes *not* bearing foreign brand subject to 45% *ad valorem* tax. Hence, without RMC 37-93, the enactment of RA 7654, would have had no new tax rate consequence on private respondent's products. Evidently, in order to place "Hope Luxury," "Premium More," and "Champion" cigarettes within the scope of the amendatory law and subject them to an increased tax rate, the now disputed RMC 37-93 had to be issued.** In so doing, the BIR not simply interpreted the law; verily, it legislated under its quasi-legislative authority. The due observance of the requirements of notice, of hearing, and of publication should not have been then ignored.
>
> ...

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100 G.R. No. 119761, 29 August 1996; Emphasis and italics supplied.

101 Reclassification of Cigarette Subjects to Excise Tax.

102 AN ACT REVISING THE EXCISE TAX BASE, ALLOCATING A PORTION OF THE INCREMENTAL REVENUE COLLECTED FOR THE EMERGENCY EMPLOYMENT PROGRAM FOR CERTAIN WORKERS, AMENDING FOR THE PURPOSE SEC. 142 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

Likewise, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[103], RMC No. 66-2003 was issued stating that with the advent of the provisions of Minimum Corporate Income Tax (**MCIT**) in the then newly enacted NIRC of 1997, Philippine Airlines, Inc. (**PAL**), in case of operating loss, may either opt to subject itself to MCIT or to the 2% franchise tax, whichever is lower. The Supreme Court, however, noted that since it effectively increases the tax burden of PAL making it liable for a tax for which it was not made liable before, RMC No. 66-2003 cannot be given effect without previous notice or publication, to wit:

> ...
>
> It is significant to note that RMC No. 66-2003 was issued only on 14 October 2003, more than two years after FY 2000-2001 of PAL ended on 31 March 2001. This violates the well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.
>
> **Moreover, despite the claims of the CIR that RMC No. 66-2003 is just a clarificatory and internal issuance, the Court observes that RMC No. 66-2003 does more than just clarify a previous regulation and goes beyond mere internal administration. It effectively increases the tax burden of PAL and other taxpayers who are similarly situated, making them liable for a tax for which they were not liable before. Therefore, RMC No. 66-2003 cannot be given effect without previous notice or publication to those who will be affected thereby.** ...
>
> ...

Lastly, in *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*[104], Revenue Memorandum Order (**RMO**) No. 15-91[105] was issued treating pawnshops as subject to 5% lending investor's tax. The Supreme Court, in invalidating the said issuance as well as RMC No. 43-91[106], held that without the said issuances, pawnshops would not be made liable to pay the 5% percentage tax (considering that they were not specifically included in the then Section 116 of the NIRC of 1977, as amended), thusly:

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[103] G.R. No. 180066 07 July 2009; Citation omitted and emphasis supplied.

[104] G.R. No. 150947, 15 July 2003; Citations omitted, italics in the original text and emphasis supplied.

[105] Liability of Pawnshops to the 5% Lending Investor's Tax.

[106] Clarification of Revenue Memorandum Circular Nos. 15-91 and 34-91 and Revenue Audit Memorandum Order No. 2-91.

...

Adding to the invalidity of the RMC No. 43-91 and RMO No. 15-91 is the absence of publication. While the rule-making authority of the CIR is not doubted, like any other government agency, the CIR may not disregard legal requirements or applicable principles in the exercise of quasi-legislative powers.

Let us first distinguish between two kinds of administrative issuances: the *legislative rule* and the *interpretative rule.* A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. An interpretative rule, on the other hand, is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

In *Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary*, this Tribunal ruled:

> ... In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing. In this connection, the Administrative Code of 1987 provides:
>
> *Public Participation.* – [(1)] If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
>
> (2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the first hearing thereon.
>
> (3) In case of opposition, the rules on contested cases shall be observed.
>
> In addition, such rule must be published.

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to

> accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.
>
> RMO No. 15-91 and RMC No. 43-91 cannot be viewed simply as implementing rules or corrective measures revoking in the process the previous rulings of past Commissioners. **Specifically, they would have been amendatory provisions applicable to pawnshops. Without these disputed CIR issuances, pawnshops would not be liable to pay the 5% percentage tax, considering that they were not specifically included in Section 116 of the NIRC of 1977, as amended. In so doing, the CIR did not simply interpret the law. The due observance of the requirements of notice, hearing, and publication should not have been ignored.**
>
> ...

There is no doubt that the assailed BIR issuance here substantially increases the burden of the taxpayer (petitioner) hence, it should have complied with the requirement of prior notice, hearing and publication before it could be given effect.

Applying the aforementioned cases in the instant case, **it is noted that petitioner herein has been importing alkylate since May 2010 and the Authorities to Release Imported Goods[107] (ATRIGs) issued therefor commonly stated that it is exempt from excise tax since it is not among those articles enumerated under Title VI of the NIRC of 1997 and *per* Laboratory Report dated 21 January 2009. Thus, petitioner is not being held liable for its alkylate importations from May 2010 to August 2011.**

It is likewise noted that the same notation appeared in the ATRIGs for its importations from September 2011 up to June 2012 although there is an added *colatilla* which states that "[t]his is without prejudice to the collection of the corresponding excise taxes, penalties and interests depending on the final resolution of the Office of the Commissioner on the issue whether this item is subject to the excise taxes under the National Internal Revenue Code of 1997, as amended."

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[107] Exhibits "B-Motion for Suspension Order" to "B-29-Motion for Suspension Order", Division Docket, Volume II, pp. 631-660.

However, such tax treatment changed with the issuance of Document No. M-059-2012[108] wherein it was ruled that:

> ...
>
> In view of the foregoing, this Offices of the opinion that the importations of the subject article by PSPC are covered by excise tax at the rate of Php 4.35 per liter under Section 148(e) of the NIRC of 1997, as amended. Accordingly. PSPC should pay the amount of Php 1,384,721,993.00 representing the unpaid excise taxes and the corresponding VAT, exclusive of Increments, on the importations of Alkylate from 2010 up to the present as declared in the twenty eight (28) import entries.
>
> ...

From the foregoing, it is evident that the issuance of Document No. M-059-2012 not only substantially increased the burden of petitioner but it was also through its issuance that allowed alkylate to be the subject of excise tax (although it is not among those enumerated in Title VI of the NIRC of 1997, as amended, as stated in its ATRIGs from May 2010 to June 2012).

As such, Document No. M-059-2012 should have complied with the requirement of prior notice, hearing and publication before applying the same to petitioner's importations. As the records reveal clearly, petitioner was not even notified of its issuance much less heard before the same was given effect.

In the *unrebutted* sworn declaration of petitioner's witness, Acain, she declared:

> ...
>
> 33. Q: How did PSPC learn that it was being assessed excise taxes on its Alkylate importations also upon entry, if you know?
>
> A: **An article was published in the Manila Times dated 15 June 2011 stating that PSPC was being assessed and was being made to pay additional excise taxes in the approximate amount of One Billion Six Hundred Million Pesos (PhP1,600,000,000.00), plus interests,**

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108 Exhibit "M-2-Motion for Suspension Order", id., Volume IV, pp. 1745-1749.

and surcharges for its past Alkylate importations from May 2010 to June 2011.

Also, PSPC belatedly discovered the colatilla inserted in the later ATRIGs issued by the BIR stating that the ATRIG was without prejudice to the collection of the corresponding excise taxes, penalties and interests depending on the final resolution of the Office of the Commissioner on the issue on whether Alkylate is subject to the excise taxes under the NIRC of 1997. **Thus, it was a total surprise because PSPC was never notified of any matter on this issue pending with the Office of the Commissioner**. We assumed that the previous treatment of Alkylate continued.

...

36. Q: What was your reaction, if any, when you learned of the reported additional assessment of excise taxes on PSPC's Alkylate importations?

A: I was very surprised.

37. Q: Why were you surprised?

A: Because, firstly, we knew that Petron was not being assessed excise taxes upon entry but only upon withdrawal of the finished grade motor gasoline containing the imported Alkylate as blended from its refinery. In fact, the Petron ATRIG I showed earlier was dated long after the news report (Annex "E") came out, and the Petron ATRIG stated that the Alkylate was not subject to excise tax upon entry. Secondly, the BIR itself admitted in the ATRIGs issued for the PSPC's Alkylate importations that said Alkylate importations are not subject to excise taxes upon entry.

Lastly, **PSPC was never notified of any proceeding before the BIR to determine whether Alkylate is subject to excise tax** twice, i.e., upon entry in the Philippines and upon withdrawal from the refinery of the finished grade motor gasoline containing the imported Alkylate, **nor was it given an opportunity to participate and/or give its position on the same**. Thus, when the assessment based on BIR Ruling No. M-059-2012 was issued against PSPC, it totally surprised me because I thought the issue was already settled when the Tariff Commission adopted the results of the testing of SGS, the independent third party surveyor.[109]

...

[109] Exhibit "P-107", id., Volume XI, pp. 4783-4785; Emphasis supplied.

Respondents offered no contradictory evidence and the declaration was never controverted. As it thus stands, considering that Document No. M-059-2012 did not only substantially increase petitioner's burden but that it was likewise issued to treat alkylate as subject to excise tax, the same should have undergone prior notice, hearing and publication. Given the lapses that amount to a violation of petitioner's right to due process, Document No. M-059-2012 should be struck down for being illegal and unlawful.

DOCUMENT NO. M-059-2012, TO THE EXTENT THAT IT WAS APPLIED RETROACTIVELY, ALSO VIOLATED SECTION 246 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, AND PETITIONER PILIPINAS SHELL PETROLEUM CORPORATION'S RIGHT TO DUE PROCESS.

Assuming *ex gratia in argumenti* that Document No. M-059-2012 complied with the requirements of prior notice, hearing and publication, it could still not apply to petitioner's importations prior to its issuance on 29 June 2012.

As earlier discussed, in petitioner's previous importations of alkylate, the ATRIGs issued therefor state that alkylate is exempt from excise tax since it is not among those articles enumerated under Title VI of the NIRC of 1997 and *per* Laboratory Report dated 21 January 21, 2009. Therefore, it is clear that before the issuance of Document No. M-059-2012, petitioner's alkylate importations had always been treated as exempt from excise tax. However, Document No. M-059-2012, which was issued only on 29 June 2012, made it possible to impose excise tax (even) on petitioner's prior importations or from May 2010, to wit:

> ...
>
> In view of the foregoing, this Offices of the opinion that the importations of the subject article by PSPC are covered by excise tax at the rate of Php 4.35 per liter under Section 148(e) of the NIRC of 1997, as amended. Accordingly. PSPC should pay the amount of Php 1,384,721,993.00 representing the unpaid excise taxes and the corresponding VAT, exclusive of Increments, on the importations of

Alkylate **from 2010 up to the present** as declared in the twenty eight (28) import entries.[110]

...

Section 246 of the NIRC of 1997, as amended, provides:

...

> **SEC. 246.** *Non-Retroactivity of Rulings.* — **Any revocation, modification or reversal of** any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings** or circulars **promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.[111]

...

In no uncertain terms, the foregoing provides that any revocation, modification or reversal shall *not* be given retroactive application if the same will be prejudicial to the taxpayer's interest.

In *Banco De Oro, et al. v. Republic of the Philippines, et al.*[112], the Supreme Court ruled as follows:

...

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals,* the Commissioner demanded from petitioner deficiency withholding income tax on film rentals remitted to foreign corporations for the years 1965 to 1968. The assessment was made under Revised Memo Circular No. 4-71 issued in 1971, which used gross income as tax basis for the required withholding tax, instead of one-half of the film rentals

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110 Supra at note 108; Emphasis supplied.
111 Emphasis supplied.
112 G.R. No. 198756, 16 August 2016; Citations omitted and emphasis supplied.

> as provided under General Circular No. V-334. **In setting aside the assessment, this Court ruled that in the interest of justice and fair play, rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where applying them would prove prejudicial to taxpayers who relied in good faith on previous issuances of the Commissioner.** ...
>
> ...

As Document No. M-059-2012 was given retroactive application to petitioner's prejudice, the same likewise constituted a violation of its right to due process.

AT ANY RATE, ALKYLATE IS *NOT* SUBJECT TO EXCISE TAX AS IT IS *NOT* A PRODUCT OF DISTILLATION SIMILAR TO NAPHTHA.

Even if the Court would choose to overlook the due process challenges in herein case, it could not still veer away from the inevitable conclusion that alkylate should not be subject to excise tax. In *Exxonmobil Petroleum and Chemical Holdings, Inc. - Philippine Branch v. Commissioner of Internal Revenue*[113], the Supreme Court enumerated the conditions for the imposition of excise tax as follows:

> ...
>
> Excise taxes are imposed under Title VI of the NIRC. They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported. **In effect, these taxes are imposed when two conditions concur: *first*, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC**; and *second*, that said articles are for domestic sale or consumption, excluding those that are actually exported.
>
> ...

To be imposed with excise tax, the article must belong to any of the categories of goods enumerated in Title VI of the NIRC of 1997, as amended. In other words, articles are not generally excisable *unless* it specifically belongs to any of the goods enumerated thereunder. The pertinent provision in Title VI of the NIRC of 1997, as amended, reads:

---

113 G.R. No. 180909, 19 January 2011; Citations omitted, italics in the original text and emphasis supplied.

> ...
>
> **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:
>
> ...
>
> (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, [z]ero (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[.][114]
>
> ...

While a simple reading of the said provision would reveal that alkylate is not among the articles enumerated therein, alkylate, according to respondent CIR, is a product of distillation similar to that of naphtha[115] and thus encompassed in the phrase "other similar products of distillation."

It is noted that respondent CIR argues vehemently that "in terms of boiling range, volatility and recovery process", alkylate qualifies as a product similar to naphtha used as gasoline blending component. Respondent CIR adds that "[n]aphtha is produced by (1.) fractional distillation of crude oil or **(2.) by 'other refinery processes' and recovered from refinery streams by fractional distillation.** Similarly, Alkylate produced by 'other refinery process' (which is alkylation) is recovered also by fractional distillation".[116]

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114 Emphasis supplied.
115 Exhibit M-2-Motion for Suspension Order, Division Docket, Volume IV, p. 1748.
116 Id., p. 1747; Emphasis in the original text.

Petitioner counters that alkylate and naphtha are different in terms of the processes of production, chemical composition, octane number and sulfur content.

The resolution of the issue would thus hinge on the proper application of the tools of statutory construction, particularly, the principle of *ejusdem generis* to the phrase "other similar products of distillation".

Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned".[117]

In construing the phrase "other similar products of distillation", the same must only include or be restricted to things or cases akin to, resembling, or of the same kind or class as those specifically mentioned, that is, naphtha or regular gasoline – in terms of their production.

Petitioner's witness, Mallet, an expert in petroleum and a technical consultant in the oil and gas industry, testified as to the nature of alkylate as follows:

> ...
>
> 14. Q: You mentioned that, today, under a modern refinery set-up, many refiners are obliged to replace some of their usual blending components with "high value" products like Alkylate. What is Alkylate?
>
> A: In the course of my experience and expertise in the petroleum industry, **I have come to know Alkylate as a high-octane product of an alkylation reaction in an Alkylation Unit**, that is, non-olefinic and non-aromatic and has only traces of Sulfur. Alkylate is used to increase the octane number of low-grade gasoline.[118]
>
> ...

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117 *Alta Vista Golf and Country Club v. The City of Cebu, et al.*, G.R. No. 180235, 20 January 2016. citing *Pelizloy Realty Corporation v. The Province of Benguet*, G.R. No. 183137, 10 April 2013.

118 Exhibit "P-104", Division Docket, Volume X, p. 4697; Emphasis supplied.

Mallet went on to describe the difference between alkylate and naphtha in terms of their production, to wit:

...

20. Q: You mentioned that naphtha is one of the various crude components directly produced from the physical process of Crude Oil Atmospheric Distillation. **What is the difference, if any, between naphtha and Alkylate?**

A: First, **naphtha is a product of distillation,** thru the Atmospheric Distillation Unit, **whereas Alkylate is not.** As I mentioned, **Alkylate involves combining–at the molecular level–isobutane or Light Branched Paraffins with Light Hydrocarbon Olefins through Alkylation. Thus, the processes for their production are very different from each other. Distillation is a mere physical separation process, by simple application of heat**, such that the nature of the crude oil constituents is not altered.[119]

...

...

Even respondent CIR's own witness, Ramos, confirmed (during her cross-examination) that there is no direct distillation of alkylate from crude oil and alkylation and distillation are different processes, *viz*:

...

ATTY. AGBAYANI:

Q. So Ms. Witness, to illustrate, when crude oil is distilled or subjected to heat at different temperatures, the crude distillation could produce different products, correct? Like LPH, naphtha, kerosene, correct?

MS. RAMOS:

A. And others.

ATTY. AGBAYANI:

Q. And among others, yes. Ms. Witness, now at what temperatures will you think crude oil directly produce alkylate?

[119] Id., p. 4698; Emphasis supplied.

MS. RAMOS:

A. **There is no direct distillation of alkylate from crude oil**, however, alkylate can be formed by the re-option of products coming from petroleum or crude oil.

ATTY. AGBAYANI:

Thank you. Ms. Witness.

MS. RAMOS:

A. And then, after that... *(interrupted).*

ATTY. AGBAYANI:

It's okay.

JUSTICE CASTANEDA:

Please elaborate.

MS. RAMOS:

A. And then, after the process, **it has to be distilled in order that alkylate is to be recovered.** Without distillation, there will be no alkylate. **Although it is already formed but there is to be distillation in order to separate it from the other compounds produced.**[120]

...

ATTY. AGBAYANI:

Q. Ms. Witness, earlier. in your report, you also mentioned of alkylation, **is alkylation equivalent to distillation?**

MS. RAMOS:

A. **They are different processes.**

JUSTICE CASTANEDA:

What is the difference?

MS. RAMOS:

A. Alkylation is a process for by the alkylate form by reacting an olefin and isobutane. In the course of the formation of alkylate, **there should be a process of distillation in order to recover the alkylate form.** As I have mentioned earlier, it is not only alkylate that is formed in the reaction.

JUSTICE CASTANEDA:

Proceed.

---

[120] TSN dated 11 March 2020, pp. 11-12; Emphasis supplied.

ATTY. AGBAYANI:
Q. **So alkylation is necessary to produce alkylate?**

MS. RAMOS:
A. **Yes.**[121]

...

Similarly evident from the said testimony is the fact that while there has to be distillation after the process of alkylation, the same is necessary only to recover the alkylate form[ed] or separate it from other compounds produced. *In other words,* distillation is not necessary for the alkylate's production (as it is already formed after the process of alkylation).

In sum, the following conclusions can be deduced from respondent CIR's own evidence or own witness:

1. Alkylation is the process by which alkylate formed;

2. Alkylation and distillation are different processes;

3. There is no direct distillation of alkylate from crude oil; and,

4. The process of distillation is only for the recovery of the alkylate.

In fact, even in the questioned Document No. M-059-2012, alkylate is similar to naphtha only "in terms of boiling range, volatility and recovery process" – but *not* in how it is produced.

En totale, it cannot be said that alkylate is a product of distillation. Hence, its importation should not be subject to excise tax in the absence of a law which clearly, expressly and unambiguously impose such tax on the said article.

Finally, in the very recent case of *Petron Corporation v. Commissioner of Internal Revenue*[122], the Supreme Court categorically

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121 TSN dated 11 March 2020, pp. 14-15; Emphasis supplied.
122 G.R. No. 255961, 20 March 2023; Citations omitted, italics in the original text and emphasis supplied.

declared that alkylate does not fall under the category of "other similar products of distillation" hence not subject to excise tax, to wit:

> ...
>
> Consequently, the payment of excise taxes by petitioner upon its importation of alkylate is deemed illegal and erroneous in the absence of a specific provision of law that distinctly and categorically imposes tax thereon. As discussed earlier, the rule that tax laws must be construed *strictissimi juris* against the government and in favor of the taxpayer applies herein since Sec. 148 (e) of the 1997 NIRC, as amended, did not clearly, expressly, and unambiguously impose tax on alkylate (or those which are not directly produced by distillation).
>
> Corollary to the above rule, **the absence of a distinction in Sec. 148 (e) of the 1997 NIRC, as amended, between *primary and secondary or direct and indirect* products of distillation should work in petitioner's favor.**
>
> Additionally, We agree with petitioner's position that **the statutory construction principle of *ejusdem generis* is equally applicable in the instant case, thus removing alkylate from the ambit of "other products of distillation," even if some of its raw materials undergo the process of distillation.**
>
> Under the principle of *ejusdem generis,* "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."
>
> **Therefore, in construing the phrase "other similar products of distillation" as stated in Sec. 148 (e) of the 1997 NIRC, as amended, the same must only include or be restricted to things or cases akin to, resembling, or of the same kind or class as those specifically mentioned, *(i.e.,* naphtha and regular gasoline). In light of the Court's determination that alkylate does not belong to the same category as naphtha and regular gasoline, the same should not be subjected to excise tax.**
>
> ...

On this score, it is settled that the Court is not bound by the administrative interpretations or rulings of executive officers. As We have consistently ruled, interpretations placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of

> remaining consistent and in harmony with, the law they seek to apply and implement.
>
> **For this Court to subject alkylate to excise tax, the authority should be reasonably founded on the language of the statute. That language is wanting in this case.** "In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. **Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper." Here, We find that the CIR's interpretation as to the nature and taxability of alkylate is patently erroneous for lack of both textual and non-textual support.**
>
> **As previously pointed out, alkylate is not among the excisable articles enumerated in Sec. 148 (e) of the 1997 NIRC, as amended. Neither can it be categorized as "other similar products of distillation" precisely because it is *not a direct product of distillation*.** Given this, the CTA's reliance on the CIR's administrative interpretation on the matter is utterly misplaced. To reiterate, administrative interpretations cannot go beyond or be inconsistent with the terms and provisions of the law it seeks to interpret or implement.
>
> ...

Considering the foregoing, it is now beyond dispute that alkylate is *not* a product of distillation similar to naphtha and regular gasoline hence *not* subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

Notwithstanding Our disquisition and ruling that alkylate is not subject to excise tax, We find it necessary to briefly discuss petitioner's other issues to completely dispose this case that had been, unfortunately, pending for more than ten (10) years before the courts.

Specifically, this Court will address petitioner's other remaining contentions, namely: (1) excise taxes are imposed only on finished products for domestic sale or consumption, and not on raw materials; (2) subjecting its alkylate importation to excise tax will amount to double taxation; and, (3) the assessment on petitioner without making the same assessment to a similarly situated taxpayer violates the equal protection clause.

GOODS IMPORTED NEED NOT BE FOR DOMESTIC SALES OR CONSUMPTION OR FOR ANY OTHER DISPOSITION BEFORE THE SAME IS SUBJECTED TO EXCISE TAX.

As to the first remaining contention, petitioner supports the same by claiming that the phrase "for domestic sale or consumption or for any other disposition" under Section 129 of the NIRC of 1997, as amended, qualifies also the articles imported into the Philippines such that imported raw materials are not subject to excise tax. Simply put, for the imported goods to be subject to excise tax, the same must be "for domestic sale or consumption or for any other disposition."

We do not agree.

Section 129 of the NIRC of 1997, as amended, provides:

> ...
>
> **Sec. 129.** *Goods Subject to Excise Taxes.* – Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales 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.'[123]
>
> ...

A plain reading of the said provision would show that the phrase "for domestic sales or consumption or for any other disposition" qualifies only the phrase "goods manufactured or produced in the Philippines."

[123] Emphasis supplied.

As a rule, qualifying words restrict or modify only the words or phrases to which they are immediately associated. They do not qualify words or phrases which are distantly or remotely located. In other words, in the absence of legislative intent to the contrary, preferential and qualifying words and phrases must be applied only to their immediate or last antecedent, and not to the other remote or preceding words or association of words.[124]

Applying thus the doctrine of last antecedent, the phrase "for domestic sales or consumption or for any other disposition" qualifies only the phrase "goods manufactured or produced in the Philippines."

The Court is not unaware that in *Petron Corporation v. Mayor Tobias M. Tiangco, et al.*[125] (**Tiangco**), the Supreme Court appeared to have adopted the rephrased wordings of Section 129 of the NIRC of 1997, as amended, when it quoted a known author in taxation law, such that it appeared that the phrase "for domestic sale or consumption or for any other disposition" qualifies importations as well, to wit:

> ...
>
> In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is "synonymous with 'privilege tax' and [both terms] are often used interchangeably." At the same time, they offer a caveat that "[e]xcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, 'for domestic sale or consumption or for any other disposition.'"
>
> ...

A closer reading of the said case, specifically the quoted portion above would, however, reveal that the same merely discussed the distinction between the uses of the term "excise tax" as one which refers to both tax on privilege and the one imposed in Title VI of the NIRC of 1997, as amended.

The very same author quoted in *Tiangco* is of the view that the phrase "for domestic sales or consumption or for any other disposition"

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124 Statutory Construction by Ruben E. Agpalo, Sixth Edition (2009), p. 337; Citations omitted.
125 G.R. No. 158881, 16 April 2008; Citations omitted.

qualifies only the phrase "goods manufactured or produced in the Philippines" when he stated in his book[126] that:

> ...
>
> 1. Excise taxes, as used in the Tax Code, refer to taxes applicable (a) to certain specified or selected goods or articles manufactures or produced in the Philippines for domestic sale or consumption or for any other disposition and (b) to things imported into the Philippines. They are either specific or *ad valorem*.
>
> ...

Thus, it is clear that the goods imported need not be for domestic sales or consumption or for any other disposition before the same is subjected to excise tax.

THERE IS NO DOUBLE TAXATION

The Court is also of the same opinion as respondents that there is no double taxation involved in herein case. In *Commissioner of Internal Revenue v. Bank of Commerce*[127], the Supreme Court discussed double taxation as follows:

> ...
>
> *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**.
>
> ...

Thus, for direct duplicate taxation to exist, the taxes imposed must be same in terms of subject matter, purpose, taxing authority, jurisdiction, taxing period and kind or character.

---

126 The National Internal Revenue Code Annotated, Volume II, Eleventh Edition (2016), p. 268.

127 G.R. No. 149636, 08 June 2005; Emphasis supplied and italics in the original text.

In the case at bar, assuming for the sake of argument that alkylate is one of the excisable goods or articles, the Court finds that the imposition of excise tax upon its importation and the imposition of excise tax on the removal from production site of the manufactured finished product of gasoline to which the same was blended does not constitute direct duplicate taxation, as the excise tax is imposed on the two (2) different subject matters – *first*, on the importation of alkylate and *second*, on the removal of the manufactured gasoline from production site. Consequently, no double taxation in its obnoxious sense exists.

THERE IS NO VIOLATION OF THE EQUAL PROTECTION CLAUSE

We also find no merit in petitioner's third remaining contention that the equal protection clause is violated when a similarly situated taxpayer (like Petron) is not being assessed of the same excise tax.

The Court takes judicial notice of the case of *Commissioner of Internal Revenue v. Court of Tax Appeals, et al.*[128] where the recital of facts thereof reveals that Petron was likewise assessed for excise tax on its importation of alkylate.

As a final note, "[t]he Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that '(a) statute will not be construed as imposing a tax unless it does *so clearly, expressly, and unambiguously. x x x (A) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws* and the provisions of a taxing act are not to be extended by implication.' Parenthetically, in answering the question of who is subject to tax statutes, it is basic that 'in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.'"[129]

---

128 G.R. No. 207843, 14 February 2018.

129 *Commissioner of Internal Revenue v. The Court of Appeals, et al.*, G.R. No. 115349, 18 April 1997; Citation omitted and italics in the original text.

WHEREFORE, in view of all the foregoing, petitioner Pilipinas Shell Petroleum Corporation's Amended Petition for Review is hereby **GRANTED**. Accordingly, Document No. M-059-2012, dated 29 June 2012, issued by respondent Commissioner of Internal Revenue and the Letter, dated 01 October 2012, issued by respondent Collector of Customs of the Port of Batangas are hereby **NULLIFIED**. Consequently, respondents Commissioner of Internal Revenue, Collector of Customs of the Port of Batangas and the Bureau of Customs, or any person acting on their behalf, are hereby **ENJOINED** from demanding or collecting, in any manner, excise tax and value-added tax thereon on petitioner Pilipinas Shell Petroleum Corporation's alkylate importations.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(*With Separate Concurring Opinion*)
LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, AND THE BUREAU OF CUSTOMS,
Respondents.

CTA CASE NO. 8535

Members:

BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

APR 2 7 2023

x- -x

SEPARATE CONCURRING OPINION

CUI-DAVID, J.:

I concur with the conclusions outlined in the scholarly opinion of my esteemed colleague, Associate Justice Jean Marie A. Bacorro- Villena. However, I write this separate opinion to express my views relative to petitioner's claim that its right to due process was violated when respondent Commissioner of Internal Revenue (CIR) issued Document No. M-059-2012 without prior notice, hearing, and publication, and when the same was made to apply retroactively despite the same being prejudicial to it.

Like my esteemed colleague, I believe that Document No. M-059-2012 should be declared null and void. However, the reason, in my opinion, should not be for lack of prior notice, hearing, and publication but due to the ruling of the Supreme Court in the recent case of *Petron Corporation v. Commissioner* *of Internal Revenue (Petron),*[1] where the Supreme interpreted, for the first time, Section 148(e) of the National Internal Revenue Code of 1997, as amended, which is the subject of Document No. M-059-2012.

Let me explain.

Document No. M-059-2012, dated June 29, 2012, is merely interpretative and gives no real consequence more than the law itself has already prescribed. Hence, its applicability needs nothing further than its bare issuance.

For easy reference, the pertinent portion of Document No. M-059-2012 reads:

> Dear Commissioner Biazon:
>
> We refer to your letter dated 13 June 2012, forwarding the Memorandum dated 04 June 2012 of District Collector Rene M. Benavides of Collection District No. IV-Batangas, **seeking our opinion ruling on the propriety of the demand for payment of the unpaid excise tax and the corresponding Value-Added Tax (VAT) against Pilipinas Shell Petroleum Corporation (PSPC) amounting to P1,384,721,993.00, on its various importations of Alkylate from the year 2010 up to present as declared in twenty-eight (28) import entries**.
>
> It appears that District Collector Rene M. Benavides is having an apprehension on the propriety of collecting the Excise Tax and VAT on the subject importations considering that the Tariff Commission has issued Ruling No. 11-056 dated 14 March 2012 and that the importations are covered by Authorities to Release Imported Goods (ATRIG), exempting the subject importation from excise tax.
>
> Ruling
>
> **The subject importations are subject to excise tax and the corresponding VAT on the said excise tax. Hence, we find no legal impediment on the issuance of the**

[1] G.R. No. 255961, March 20, 2023.

hw

demand letter against PSPC for the collection of excise tax and VAT amounting to P1,384,721,993.00 on its various importations of Alkylate.

xxx xxx xxx

As contained in the January 18, 2012 report of the OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, in terms of boiling range, volatility and recovery process, Alkylate qualifies as a product similar to naphtha used as gasoline blending component. **Naphtha is produced by (1.) fractional distillation of crude oil or, (2.) by "other refinery process" and recovered from refinery streams by fractional distillation. Similarly, Alkylate produced by "other refinery process" (which is alkylation) is recovered also by fractional distillation.** Alkylate is a very important blending component of today's reformulated motor gasoline because of its relatively low vapour pressure, high octane number, and near-zero content of sulphur, aromatics, and olefins.

In relation thereto, Section 148(e) of the National Internal Revenue Code (NIRC) of 1997, as amended, imposes an excise tax of four pesos and thirty-five centavos (P4.35) for every liter of volume capacity of naphtha, regular gasoline, and other similar products of distillation, to wit:

xxx xxx xxx

Clearly, alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148(e) of the NIRC, as amended.

xxx xxx xxx

In view of all the foregoing, this Office is of the opinion that the importations of the subject article by PSPC are covered by excise tax at the rate of P4.35 per liter under Section 148(e) of the NIRC of 1997, as amended. Accordingly, PSPC should pay the amount of P1,384,721,993.00 representing the unpaid excise taxes and the corresponding VAT, exclusive of increments, on the importations of Alkylate from 2010 up to the present as declared in the twenty-eight (28) import entries.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

In the case of *Republic of the Philippines v. Drugmaker's Laboratories, Inc. et al.*,[2] the Supreme Court had the occasion to discuss the different kinds of administrative regulations and which type will need to comply with the requirements of prior notice, hearing, and publication, to wit:

> **An administrative regulation may be classified as a <u>legislative rule</u>, an <u>interpretative rule</u>, or a <u>contingent rule</u>**. Legislative rules are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, **interpretative rules are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules**. Finally, contingent rules are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.
>
> In general, an **administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding**, <u>**except when the same is merely an interpretative rule**</u>. **This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed**. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

[2] G.R. No. 190837, March 5, 2014.

Relatedly, in *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) et al.*,[3] an offshoot of the instant case, the Supreme Court declared that Document No. M-059-2012 is a BIR Ruling. In fact, in declaring Document No. M-059-2012 as a BIR Ruling, the Supreme Court stated thus:

> As may be gleaned from the first paragraphs of Document No. M-059-2012, **the query relates to the particular transactions of PSPC and no other taxpayer, particularly with respect to its importations of alkylate from the year 2010 up to 2012. <u>It also calls for an interpretation of whether alkylate can fall under the classification of "similar products of distillation" under Section 148 (e) of the Tax Code</u>**. Finally, it concludes with a determination of the taxability of PSPC's importations.
>
> Hence, although the query originated from the Collector and not the taxpayer in this case, the clarificatory/interpretative tenor of Document No. M-059-2012 relative to the PSPC's excise tax liability remains. As such, Document No. M-059-2012 is effectively a BIR Ruling issued against PSPC.

Clear from the foregoing that Document No. M-059-2012 is only an interpretative rule issued by the BIR on whether alkylate fall under the classification of "similar products of distillation" under Section 148(e) of the NIRC of 1997, as amended. It did nothing more than to interpret Section 148(e) of the NIRC of 1997, as amended, for the information and guidance of tax collectors. Thus, prior notice, hearing, and publication are not required. The additional burden being complained of is the deficiency excise tax being assessed against petitioner on its previous importations of alkylate. This is not the additional burden being contemplated to require prior notice, hearing, and publication for Document No. M-059-2012 to be effective.

When an administrative agency renders an opinion by means of circulars or memoranda, or a BIR Ruling, as in this case, they are to be treated as interpretative rules designed to provide guidelines to the law that the administrative agency is in charge of enforcing.[4] Document No. M-059-2012 was issued merely to construe whether alkylate falls under the

[3] G.R. Nos. 210501, 211294 & 212490, March 15, 2021.
[4] *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, et al.*, G.R. No. 108524, 10 November 1994.

classification of "similar products of distillation" under Section 148(e) of the NIRC of 1997, as amended. The same was not issued to impose additional tax burdens not otherwise found in Section 148(e) of the NIRC of 1997, as amended.

However, in the recent case of *Petron*, the Supreme Court had the opportunity to interpret Section 148(e) of the NIRC of 1997 as amended. In the said case, the Supreme Court categorically declared that **alkylate <u>does not</u> fall under the category of "other similar products of distillation" subject to excise tax**.

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. Any pronouncements made by the Supreme Court in its judicial decisions become part of the law of the land. Adherence to the principle of *stare decisis et non quieta movere* is mandated for all lower courts, including this Court. There is only one Supreme Court from whose decisions all other courts — including this court — should take their bearings.[5]

Hence, following the ruling of the Supreme Court in Petron, Document No. M-059-2012 should be reversed and set aside.

In addition, it is also my considered view that Document No. M-059-2012 did not violate Section 246 of the NIRC of 1997, as amended.

Section 246 of the NIRC of 1997, as amended, states:

> SEC. 246. *Non-Retroactivity of Rulings.* — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

[5] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

Based on the foregoing provision, it is a general rule that any revocation, modification, or reversal of any rules and regulations, rulings, or circulars promulgated by respondent shall not have a retroactive application if such revocation, modification, or reversal will be prejudicial to the taxpayers. Thus, to apply the non-retroactive application rule under Section 246 of the NIRC of 1997, there must be specific rules and regulations, rulings, or circulars promulgated by respondent CIR that are being revoked, modified, or reversed.

In this case, however, there is no indication that any rules and regulations, rulings, or circulars promulgated by respondent, are being revoked, modified, or reversed by Document No. M-059-2012. Correspondingly, the rule against the retroactive application under Section 246 of the NIRC of 1997 may not be applied in this case.

Even assuming there were rules, regulations, rulings, or circulars revoked, modified, or reversed by Document No. M-059-2012, its application to petitioner's importations of alkylate from May 2010 to June 2012 did not contravene Section 246 of the NIRC of 1997, as amended, as Document No. M-059-2012 merely interpreted Section 148(e) of the same Code, which was already in force before the subject importations.

All told, I vote to **GRANT** the instant Amended Petition for Review.

LANEE S. CUI-DAVID
Associate Justice