REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

PETRON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9512

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 16 2021
2:20 p.m.

x - x

DECISION

UY, *J.*:

Before this Court is a *Petition for Review* filed by Petron Corporation, petitioner, against the Commissioner of Internal Revenue, respondent, praying for the following: (1) to declare petitioner not liable for excise tax on its importations of alkylate; (2) to declare petitioner entitled to a refund of, or issuance of a tax credit certificate, the aggregate amount of ₱19,997,028.00, representing excise tax paid by petitioner on the importation of alkylate covered by Import Entry & Internal Revenue Declaration (IEIRD) No. 00379406065; and (3) to order respondent to grant petitioner a refund or tax credit in the amount of ₱19,997,028.00.

THE FACTS

Petitioner is a corporation organized and existing under the laws of the Philippines, with principal office at San Miguel

Corporation, Head Office Complex, 40 San Miguel Avenue, 1550 Mandaluyong City.[1]

Respondent is the chief of the Bureau of Internal Revenue (BIR) authorized to credit or refund taxes erroneously and illegally assessed and collected. He may be served with legal processes, orders and resolutions of this Court at the Office of the Commissioner, BIR National Office Bldg., BIR Road, Diliman, Quezon City, Metro Manila and/or through the Office of the Solicitor General, 134 Amorsolo Street, Legaspi Village, Makati, Metro Manila.[2]

On December 29, 2014 and April 8, 2015, petitioner paid the Bureau of Customs (BOC) excise taxes in the total amount of ₱19,997,028.00 for importing alkylate covered by IEIRD No. 00379406065.[3]

On December 15, 2016, petitioner filed its administrative claim with the BIR for the refund or issuance of tax credit certificate (TCC), representing the erroneously paid excise taxes arising from the aforesaid importation of alkylate.[4]

Thereafter, on December 22, 2016, petitioner filed the instant *Petition for Review*[5] docketed as CTA Case No. 9512.

Respondent filed his *Answer Ex-Abudanti Ad Cautelam* on February 27, 2017,[6] interposing the following special and affirmative defenses, to wit:

1) The Court has no jurisdiction over the petition based on the following grounds:

    a) the instant petition is dismissible for its failure to state a cause of action and respondent is not the real party-in-interest;

[1] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 407.
[2] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 407.
[3] Exhibit "P-11", Docket – Vol. 2, p. 776. Refer also to Exhibits "P-7" to "P-10", Docket – Vol. 2, pp. 772 to 775.
[4] Exhibits "P-50", "P-51", and "P-51-A, Docket – Vol. 2, pp. 842, 843 to 854.
[5] Docket – Vol. 1, pp. 10 to 32.
[6] Docket – Vol. 1, pp. 98 to 120.

b) assuming *arguendo* but without conceding that respondent is the real party-in-interest, the petition is still dismissible for its subject matter is not within the jurisdiction of the Court;
c) interpretative rulings issued by respondent are subject to review by the Secretary of Finance, and
d) petitioner failed to exhaust administrative remedies.

(2) Petitioner is liable to pay excise tax on its importation of alkylate based on the following:

a) alkylate is a product of distillation similar to naptha and regular gasoline, thus, it is subject to excise tax under Section 148(e) of the Tax Code;
b) excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported; and
c) the imposition of excise tax on importation of alkylate does not amount to double taxation and does not violate any law.

On the same date, respondent also transmitted the *BIR Records* of this case.[7]

After the Pre-Trial Conference held on May 30, 2017,[8] the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on June 8, 2017.[9] Subsequently, the Pre-Trial Order dated June 30, 2017 was issued,[10] and the Pre-Trial was deemed terminated.

During trial, petitioner presented the following witnesses, namely:

(1) Michael F. Manzano,[11] its Commercial Service Manager;
(2) Atty. Ma. Clarissa C. Arguelles,[12] its Tax Manager;

---

[7] Respondent's *Compliance* dated February 24, 2017, Docket – Vol. 1, pp. 122 to 124.
[8] *Notice of Pre-trial Conference* dated March 2, 2017, Docket – Vol. 1, pp. 127 to 128; Minutes of the hearing and Order dated May 30, 2017, Docket – Vol. 1, pp. 401 and 405 to 406, respectively.
[9] Docket – Vol. 1, pp. 407 to 419.
[10] Docket – Vol. 1, pp. 421 to 428.
[11] Exhibit "P-67", Docket – Vol. 1, pp. 297 to 306; Minutes of the hearing held on, and Order dated, August 29, 2017, Docket – Vol. 1, pp. 478 and 480, respectively.
[12] Exhibit "P-68", Docket – Vol. 1, pp. 235 to 241; Minutes of the hearing held on, and Order dated September 26, 2017, Docket – Vol. 1, pp. 481 to 482.

(3) Gardelio P. Malgapo,[13] its Process Engineering Department Manager;
(4) July Ann D. Vivas,[14] its Stock Accounting Supervisor;
(5) Cecilia N. Sengia,[15] Accounting Superintendent of its Refinery Division;
(6) Simon Christopher Mulqueen, Director of Technical Services for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel Specialties;[16]
(7) Ian Ferdinand S. Bravo,[17] Senior Science Research Specialist from the Department of Energy (DOE);
(8) Jonathan F. Del Rosario,[18] the Manager of its Batangas Terminal;
(9) Madonna Mia S. Dayego,[19] duly Court-commissioned ICPA;[20]
(10) Ricardo S. Infante,[21] Supervising Science Research Specialist from the DOE; and
(11) Dr. Joey D. Ocon, as an expert witness.[22]

On April 8, 2019, petitioner filed its *Formal Offer of Exhibits*.[23] Thereafter, respondent, through counsel, filed his *Comment with Manifestation (Re: Petitioner's Formal Offer of Evidence)* on April 30, 2019,[24] stating, *inter alia*, that there is no report of investigation on petitioner's administrative claim for refund, and hence, he will no

---

[13] Exhibit "P-69", Docket – Vol. 1, pp. 132 to 142; Minutes of the hearing held on, and Order dated September 26, 2017, Docket – Vol. 1, pp. 481 to 482.
[14] Exhibit "P-70", Docket – Vol. 1, pp. 184 to 188; Minutes of the hearing held on, and Order dated November 28, 2017, Docket – Vol. 2, pp. 556 to 557.
[15] Exhibit "P-71", Docket – Vol. 1, pp. 205 to 210; Minutes of the hearing held on, and Order dated November 28, 2017, Docket – Vol. 2, pp. 556 to 557.
[16] Exhibit "P-72", Docket – Vol. 1, pp. 364 to 373; Minutes of the hearing held on, and Order dated, January 16, 2018, Docket – Vol. 2, pp. 558 to 559.
[17] Exhibit "P-73", Docket – Vol. 1, pp. 161 to 165; Minutes of the hearing held on, and Order dated, January 16, 2018, Docket – Vol. 2, pp. 558 to 559.
[18] Exhibit "P-74", Docket – Vol. 1, pp. 172 to 176; Minutes of the hearing held on, and Order dated, February 19, 2018, Docket – Vol. 2, pp. 569 to 571.
[19] Exhibit "P-75", Docket – Vol. 2, pp. 563 to 567; Minutes of the hearing held on, and Order dated, February 19, 2018, Docket – Vol. 2, pp. 569 to 571.
[20] *Oath of Commission* dated August 29, 2017, Docket – Vol. 1, p. 479; Minutes of the hearing held on, and Order dated, August 29, 2017, Docket – Vol. 1, pp. 478 and 480, respectively.
[21] Exhibit "P-78", Docket – Vol. 2, pp. 585 to 589; Minutes of the hearing held on, and Order dated, April 23, 2018, Docket – Vol. 2, pp. 598 to 599.
[22] Exhibits "P-81" and "P-82", Docket – Vol. 2, pp. 611 to 620, and 682 to 688, respectively; Minutes of the hearing held on, and Order dated, March 7, 2019, Docket – Vol. 2, pp. 693 to 695.
[23] Docket – Vol. 2, pp. 696 to 752.
[24] Docket – Vol. 2, pp. 891 to 892.

longer be presenting any documentary or testimonial evidence in this case.

Subsequently, petitioner filed on May 7, 2019, a *Motion for Leave of Court to Include Additional Evidence in the Formal Offer of Exhibits dated April 8, 2019,*[25] praying for the inclusion of Exhibit "P-229" in its *Formal Offer of Exhibits.* In reply, on May 23, 2019, respondent submitted his *Opposition (Re: Motion for Leave of Court to Include Additional Evidence in the Formal Offer of Exhibits dated 07 May 2019).*[26]

In the Resolution dated August 22, 2019,[27] the Court granted petitioner's *Motion for Leave,* and admitted petitioner's exhibits, *except* for Exhibits "P-234-6-1158", "P-234-7-750", "P-234-8-122", and "P-234-15-201", for not being found in the records. In the same Resolution, the Court further noted the manifestation of respondent that he will no longer present any documentary or testimonial evidence in this case.

Petitioner thereafter filed its *Omnibus Motion To: I. Allow Submission of Scanned Copies of ICPA-Marked Exhibits and Admit Said Exhibits in Evidence; and II. Amend Captions, Submit Clearer Copies, and Submit Missing Pages of Admitted ICPA-Marked Exhibits* on September 26, 2019,[28] praying for the following: (1) the admission of the scanned copies of Exhibits "P-234-6-1158", "P-234-7-750", "P-234-8-122", and "P-234-15-201"; (2) the amendment of its *Formal Offer of Exhibits* to reflect the correct captions for Exhibits "P-51-A", "P-219", "P-234-8", and "P-234-12"; and (3) the admission of clearer copies of certain exhibits and complete copies of Exhibits "P-221-1-12664", "P-221-1-15690", and "P-221-1-16195".

In the Resolution dated December 26, 2019,[29] the Court granted petitioner's *Omnibus Motion.*

Respondent filed his *Memorandum* on October 17, 2019;[30] while petitioner's *Memorandum for Petitioner* was filed on February 7,

---

[25] Docket – Vol. 2, pp. 894 to 899.
[26] Docket – Vol. 2, pp. 903 to 906.
[27] Docket – Vol. 2, pp. 911 to 928.
[28] Docket – Vol. 2, pp. 932 to 939.
[29] Docket – Vol. 3, pp. 995 to 1005.
[30] Docket – Vol. 2, pp. 964 to 988.

2020.[31] The instant case was submitted for decision on September 4, 2020.[32] Hence, this Decision.

THE ISSUE

The parties stipulated a sole issue for this Court's resolution, to wit:

> "Whether petitioner is entitled to the refund of excise taxes paid on December 29, 2014 and April 8, 2015 for the imported alkylate covered by IERD no. 00379406065 in the aggregate amount of P19,997,028.00."[33]

Petitioner's arguments:

Petitioner argues that alkylate should not be subject to excise tax because it cannot be used as a "motor fuel" as contemplated in the opening paragraph of Section 148 of the National Internal Revenue Code (NIRC) of 1997; that under the said provision, excise tax can be imposed only on refined and manufactured mineral oils and motors fuels that are specifically enumerated therein; and that alkylate is not suitable or practicable for operating motor vehicles but rather it may be used solely as a blending component in the production of motor fuel.

Moreover, petitioner contends that alkylate is not in any way similar to naphtha or regular gasoline. Its specification and the manner by which it is produced are so distinct and different from naphtha and regular gasoline.

Allegedly, alkylate, unlike naphtha and regular gasoline, is not a finished gasoline product but is an intermediate or raw gasoline component. Therefore, alkylate is not a product derived from the primary distillation of crude oil, but rather is a product derived from alkylation. Neither is alkylate suitable for use as motor fuel. Accordingly, it does not fall within the meaning of the term "other products of distillation" similar to naphtha and regular gasoline.

---

[31] Docket – Vol. 3, pp. 1010 to 1053.
[32] Resolution dated September 4, 2020, Docket – Vol. 3, p. 1069.
[33] Stipulation of Issue, JSFI, Docket – Vol. 1, p. 408.

Petitioner claims that tax statutes are to be construed strictly against the government and liberally in favor of the taxpayer; that said rules is premised on the fact that taxes are imposed burden and, therefore, are not to be presumed beyond what the applicable statute expressly and clearly declares. Hence, since alkylate is not subject to excise tax under Section 148 of the NIRC of 1997, as amended, the importation thereof should not be subject to excise tax.

According to petitioner, excise taxes apply only to goods manufactured or produced in the Philippines or to imported goods for domestic sale or consumption or for any other disposition; and that the imposition of excise tax on imported alkylate is tantamount to double taxation and is highly oppressive, arbitrary and confiscatory.

Likewise, petitioner contends that it filed both the formal claims for refund with the BIR and the instant petition with this Court before the two-year prescriptive periods. Hence, petitioner's claims for refund falls within the two-year period prescribed under Section 229 of the NIRC of 1997.

Lastly, petitioner asserts that it is entitled to its claim for refund of excise taxes paid on its importation of alkylate covered by IEIRD No. 00379406065 in the amount of ₱19,997,028.00.

Respondent's counter-arguments:

Respondent counter-argues that the instant petition is dismissible for failure to state cause of action and that respondent is not the real party-in-interest considering that the amounts involved are collections of the BOC and are never transferred to the BIR.

Even assuming *arguendo* but without conceding respondent is the real party in interest, respondent contends that the instant case is still dismissible for the subject matter is not within the jurisdiction of this Court. Respondent avers that there were no erroneous or illegal collections of excise taxes from petitioner.

Furthermore, respondent argues that interpretative rulings issued by the CIR are subject to review by the Secretary of Finance and that petitioner failed to exhaust administrative remedies

Respondent submits that assuming for the sake of argument that the Court has jurisdiction, petitioner is still liable to pay excise tax on its importation of alkylate; that alkylate is a product of distillation, and falls within the category of naphtha and regular gasoline, and thus, subject to excise tax under Section 148(e) of the Tax Code.

In addition, respondent also argues that excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported; that the imposition of excise tax on importation of alkylate does not amount to double taxation and does not violate any law.

Finally, respondent maintains that claims for refund are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

THE COURT'S RULING

At the outset, the Court shall first address the issue raised by respondent that the instant Petition for Review is dismissible for failure to state a cause of action. Respondent insists that he is not the real party in interest, since it is the BOC who collected the excise taxes on the importation of alkylate involved and not him.

We do not agree.

Respondent is a real party interest in this case.

Contrary to respondent's assertion, the fact that the subject excise tax on importation of alkylate was collected by the BOC is of no moment. This is so because Section 12 of the NIRC of 1997 reads, in part, as follows:

> "SEC. 12. *Agents and Deputies for Collection of National Internal Revenue Taxes.* – **The following are hereby constituted agents of Commissioner:**
>
> (a) **<u>The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods</u>**;" *(Emphases and underscoring added)*

MO

Based on the foregoing provision, the Commissioner of Customs and his subordinates are constituted as agents of respondent with respect to the collection of internal revenue taxes on imported goods, which include excise taxes, pursuant to Section 21(e) of the NIRC of 1997.[34] Thus, when the said officials and/or employees of the BOC collected the subject excise tax, they are merely acting as agents of respondent.

Needless to state, in a contract of agency, a person, the agent, binds himself to represent another, the principal, with the latter's consent or authority. Thus, agency is based on representation, where the agent acts for and in behalf of the principal on matters within the scope of the authority conferred upon him. Such acts have the same legal effect as if they were personally done by the principal. By this legal fiction of representation, the actual or legal absence of the principal is converted into his legal or juridical presence.[35] Simply put, since the BOC merely acted as agent, it is as if respondent himself made the collection of the subject excise tax.

Being the principal, respondent is clearly a real party in interest in this case. Thus, petitioner's argument that the instant *Petition for Review* is dismissible for failure to state a cause of action is without merit.

Requisites for refund claim under Sections 204 (C) and 229 of the NIRC of 1997, as amended.

In a claim for tax refund of erroneously collected taxes, the taxpayer-claimant must comply with the requisites set forth under Sections 204(C) and 229 of the NIRC of 1997, as amended, which reads as follows:

[34] "SEC. 21. *Sources of Revenue.* – The following taxes, fees and charges are deemed to be national internal revenue taxes:

xxx xxx xxx

(e) Excise taxes;"

[35] *Country Bankers Insurance Corporation vs. Keppel Cebu Shipyard, et al.*, G.R. No. 166044, June 18, 2012.

"SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

Based on the aforequoted provisions, the following requisites must be established by the taxpayer, to wit:

1. There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. The claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. The suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

Moreover, an "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[36]

Thus, for the instant claim for refund to prosper, petitioner must not only establish that timely filed both its administrative and judicial refund claims, it must likewise prove that the subject excise tax paid is an "erroneous or illegal tax".

Petitioner timely filed its administrative and judicial claims.

For an orderly disposition of the case, the Court shall first discuss the *second* and *third* requisites which pertains to the timeliness of petitioner's claims at the administrative and judicial levels.

It is clear from the abovementioned provisions that the administrative claim for refund must precede the judicial refund claim. However, both claims must be filed within a two (2)-year reglementary period reckoned from the date of payment of tax or penalty. Timeliness of the filing of the claim is mandatory and

---

[36] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[37]

In the instant case, the following dates are significant in determining the timeliness of the instant refund claim, *viz*:

Dates of payment of excise tax [38]	***Date of filing of administrative claims***	***Date of filing of judicial claim***	***Last day of the two (2)-year prescriptive period***
December 29, 2014	December 15, 2016[39]	December 22, 2016[40]	December 29, 2016
April 8, 2015			April 8, 2017

From the foregoing, the payments of excise taxes on December 29, 2014 and April 8, 2015, the two (2)-year prescriptive period ended on December 29, 2016 and April 8, 2017, respectively. Considering that the administrative claim for both tax payments was filed on December 15, 2016, while the judicial claim was filed on December 22, 2016, the claim for refund was timely filed within the two-year prescriptive period.

Thus, this Court has jurisdiction to entertain the present appeal.

Petitioner's importation of alkylate is subject to excise tax.

The Court shall now determine whether the excise tax payments arising from the aforesaid importation of alkylate are illegal or erroneous.

Sections 129, 131, and 148 (e) of the NIRC of 1997, as amended, which respectively provide as follows, to wit:

> "SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and** <u>**to**</u>

/mf

---

[37] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[38] Refer to Exhibits "P-8" to "P-11", Docket – Vol. 2, pp. 773 to 776.
[39] Exhibits "P-50", "P-51", and "P-51-A, Docket – Vol. 2, pp. 842 to 854.
[40] Docket – Vol. 1, pp. 10 to 32.

<u>things imported</u>. 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.'

xxx xxx xxx." *(Emphasis and underscoring Ours)*

"SEC. 131. *Payment of Excise Taxes on Imported Articles.* — (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.'

xxx xxx xxx." *(Emphasis added)*

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

xxx xxx xxx

(e) **Naphtha, regular gasoline and other similar products of distillation**, per liter of volume capacity, Four pesos and 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;" *(Emphases added)*

Based on the foregoing provisions, excise tax shall apply, *inter alia*, to naphtha, regular gasoline and **other similar products of distillation, as soon as they come into existence.**

At this juncture, it is imperative for the Court to determine the nature of alkylate based on the pieces of evidence submitted by petitioner.

Petitioner argues that alkylate is not a product of distillation similar to naptha or regular gasoline. Further, petitioner claims that alkylate is only used as raw material or blending component for the production of unleaded gasoline. Hence, petitioner asserts that the imposition of excise tax on the importation of alkylate is patently illegal, erroneous and excessive.

The Court is not convinced.

To prove its allegations, petitioner presented the Letter dated July 24, 2017[41] issued by the Oil Industry Management Bureau (OIMB) of the DOE, stating:

> "Our own readings and research confirm with the details you were able to gather from your own research and interviews with experts on the field. Although we have a minor clarification with the second sentence of item 2.c. Probably, a better way of stating this sentence may be as follows:
>
> > *Distillation, a physical separation process, does not directly cause the production of alkylate. Alkylation, a separate chemical process utilizing products from distillation, converts light olefins and isobutene into isoparaffin isomers that produces alkylates."*

---

[41] Exhibit "P-76", Docket – Vol. 2, p. 882.

During cross-examination, petitioner's witness, Ricardo Infante, an employee of the OIMB of the DOE, confirmed and testified during the hearing the contents of the DOE Letter, as follows:[42]

"ATTY. VICENTE

Q Do you know the contents of this letter?

MR. INFANTE

A Yes, Sir.

ATTY. VICENTE

Q Kindly take a look at Exhibit 'P-76' particularly the second paragraph, you mentioned there and I quote 'Probably, a better way of stating this sentence may be as follows: Distillation, a physical separation process does not directly cause the production of alkylate. Alkylation, a separate chemical process utilizing products from distillation, converts light olefins and isobutance into isoparaffin isomers that produce alkylates'. Do you confirm that, Mr. Infante?

MR. INFANTE

A Yes, sir.

ATTY. VICENTE

Q My question is based on your expertise on this field of studies, is this product of distillation, you referred to as indispensable in the production of alkylates? Or there are other several raw materials in the production?

MR. INFANTE

A The materials used in the production of alkylates are from the distillation process.

ATTY. VICENTE

Q So, you would agree with me that in the production of alkylates, there must be a distillation before alkylate?

MR. INFANTE

---

[42] Transcript of Stenographic Notes (TSN) dated April 23, 2018, pp. 8 to 9.

A Yes"

Furthermore, this process of alkylation was also confirmed by petitioner's witness, Dr. Joey D. Ocon, who testified *via* Judicial Affidavit, stating the following:[43]

"Q-12 What do you know about the product alkylate?
A-12 In the context of petroleum refining alkylate is the term used to refer to the products of alkylation units. It is a mixture of iso-paraffins that underwent the process of alkylation and have relatively high octane numbers, rendering them valuable as fuel additives

Q-13 What, if you know, are the raw materials used to produce alkylate?
Q-13 The raw materials used to produce alkylate are olefins and iso-butane.

xxx xxx xxx

Q-19 What if you know is the purpose or use of alkylate?
A-19 Alkylate, due to its relatively high octane number, are valuable fuel additives or blending components in the production of motor fuel or gasoline."

Based on the testimonies of petitioner's witnesses and evidence presented, alkylate is a fuel additive or blending component in the production of motor fuel or gasoline. Hence, in order to produce alkylate, the products from distillation, *i.e.*, light olefins and isobutane, are utilized through alkylation to be converted to isoparaffin isomers that produce alkylates.

Such being the case, the Court finds that alkylate is still a product of distillation. This is simply because while alkylate is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutane, are products of distillation.

Clearly from the foregoing, alkylate first passes through the process of distillation because it cannot come into existence without its raw material isobutane. In other words, while it is true that

[43] Exhibit "P-81", Docket – Vol. 2, p. 613 and 615.

alkylation, not distillation, is required to produce alkylate, it is without doubt that isobutane — one of the raw materials of alkylate, is a product of distillation. Simply put, there can be no alkylate without isobutane, which is a product of distillation.

Hence, alkylate is subject to excise tax pursuant to Section 148 (e) of the NIRC of 1997, as amended. Correspondingly, the subject excise tax payments cannot be deemed as erroneous or illegal.

There is no double taxation in the instant case.

Petitioner argues that the imposition of excise tax on imported alkylate is tantamount to double taxation and is highly oppressive, arbitrary and confiscatory.

We do not agree.

Jurisprudence provides that double taxation means taxing the same property twice when it should be taxed only once; that is, 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.[44]

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

It bears emphasizing that the excise tax imposed on the importation of alkylate is a different subject matter from the excise tax imposed on the alleged use of alkylate as a blending component or raw material to produce another taxable article or goods. The first imposition of tax is upon the importation of goods, and the second, upon removal or reprocessed goods from production site. In other words, the first imposition is simply concerned with the importation of articles, while the subsequent imposition is on the manufacturing or

---

[44] *Commissioner of Internal Revenue vs. Bank of Commerce*, G.R. No. 149636, June 8, 2005.

production of goods in the Philippines for domestic sale or consumption or for any other disposition.

Such being the case, the imposition of excise tax is on two different subject matters. Hence, no double taxation or *"direct duplicate taxation"* exists.

With the foregoing, the Court finds no merit on petitioner's prayer for the refund or issuance of TCC of the amounts of ₱19,997,028.00 representing excise tax payments on importations of alkylate covered by IEIRD No. 00379406065.

Time and again, the Court has stated that taxation is the rule, exemption is the exception.[45] Tax refunds, being in the nature of tax exemption, must be construed strictly against the taxpayer. As such, petitioner must clearly and unequivocally prove that it falls within the ambit of said exemption.

To stress, actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[46]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

---

[45] *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005

[46] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

WE CONCUR:

MA. BELEN RINGPIS-LIBAN
Associate Justice

(With Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
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

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PETRON CORPORATION,
Petitioner,

CTA CASE NO. 9512

Members:

-versus-

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 16 2021
2:20 p.m.

x -- x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With utmost respect, I dissent from the *ponencia's* finding that petitioner's importation of alkylate is subject to excise tax pursuant to ***Section 148(e) of the National Internal Revenue Code of 1997 ("Tax Code")***.

The majority delved on the nature of alkylate to determine whether alkylate can be considered as "other similar products of distillation" subject to excise tax pursuant to ***Section 148(e) of the Tax Code***. From the testimonies of petitioner's witnesses and the evidence presented, the *ponencia* concluded that alkylate is a product of distillation by reasoning that while it is not directly produced through the process of distillation, being instead produced via alkylation, its raw materials are products of distillation.

Going through the evidence presented by the parties, I, however, find that petitioner had sufficiently established its position that alkylate is not a product of distillation. Indeed, petitioner's witnesses illustrated the differences of alkylate from naphtha (gasoline) and regular gasoline as follows:

i. Mr. Gardelio P. Malpago, petitioner's Process Engineering and Department Manager, testified that "naphtha can be recovered straight from the process of crude distillation or from other process, whereas alkylate cannot be recovered straight from crude distillation but only from the process of alkylation.";[1]

ii. Dr. Joey D. Ocon, petitioner's expert witness, testified that "Alkylate and naphtha are two entirely different chemicals with different properties. ... alkylate is produced through the process of alkylation while naphtha is produced through distillation. The boiling range for alkylate is 40°C to 150°C compared to naphtha which has only 30°C to 100°C. I also noted that the olefins, aromatics, and sulfur contents of naphtha and alkylate are different. With naphtha, it has 20-30 vol% of olefins, 29 vol% of aromatics, and 800ppm of sulfur. On the other hand, alkylate has 0.5 vol% of olefins, 0 vol% of aromatics, and 16ppm sulfur. It is also noteworthy to add that the drivability indices of naphtha and alkylate are different, with values of 1223 and 1134, respectively.";[2]

iii. Dr. Joey D. Ocon then compared alkylates and regular gasoline as follows: "While alkylates have lower DI (drivability index) than FCC (fluid catalytic cracking) naphtha and reformate, gasoline should have the right blend between light and heavy components with different volatilities. Due to its mostly iso-paraffin content with a high boiling temperature, alkylates do not have the smooth distillation curve of regular gasoline for proper vehicle operation.";[3] and

iv. Dr. Joey D. Ocon further testified that alkylate cannot be used as motor fuel: "...alkylate is not suitable for use as a motor fuel in the operation of vehicles because it does not possess the essential physical properties to ensure the effective operation of vehicles under different driving conditions. Likewise, alkylate, due to its high boiling point, and consequently, low volatility, may also cause spark plug fouling and increase combustion chamber deposits. More importantly, alkylate cannot be used in vehicles as substitute for motor fuel without violating environmental and legal standards."[4]

---

1 Answer No. 38, Judicial Affidavit of Gardelio P. Malgapo.
2 Answer No. 29, *id.*
3 Answer No. 31, *id.*
4 Answer No. 21, *id.*

Against these, respondent failed to offer sufficient controverting evidence.

As it stands, then, it is easy to see that that the evidence tilts in favor of petitioner.

Like any other ordinary civil case, a judicial claim for refund before the Court of Tax Appeals necessitates a mere of preponderance of evidence. This is in accordance with ***Section 1, Rule 133 of the Rules of Civil Procedure***, which suppletorily appl~~k~~ies to the ***Revised Rules of the Court of Tax Appeals***.[5]

The ruling of the Supreme Court in ***Commissioner of Internal Revenue v. Fortune Tobacco Corporation***[6] is also instructive, to wit:

> "The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. **And so, given its essence, a claim for tax refund <u>necessitates only preponderance of evidence</u> for its approbation like in any other ordinary civil case.**
>
> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.
>
> What is controlling in this case is the well-settled **doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions.** The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. **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. 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. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws."
> (Emphasis supplied.)

---

[5] Sec. 3, Rule 1, A.M. No. 05-11-07-CTA Revised Rules of the Court of Tax Appeals, as amended.
[6] G.R. Nos. 167274-75, 21 July 2008.

Relevant thereto, preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence."[7] It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[8]

To my mind, petitioner offered convincing evidence that alkylate should not be considered as "other similar products of distillation" under ***Section 148(e) of the Tax Code***. The testimonies of petitioner's witnesses sufficiently illustrated the significant differences between alkylate and "other similar products of distillation," thereby substantiating petitioner's claim that alkylate is not subject to excise tax.

With the evidence presented, I see no reason why alkylate should be treated the same as naphtha and "other similar products of distillation" as to subject it to excise taxes.

All told, I VOTE to grant petitioner's claim for tax refund of its erroneous or illegal payment of excise tax on its importation of alkylate subject to the determination of the refundable amount duly substantiated by relevant supporting documents.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

[7] Auro v. Yasis, G.R. No. 246674, 30 June 2020 *citing* Castillo v. Salvador, G.R. No. 191240, 30 July 2014 and Encinas v. National Bookstore, Inc. G.R. No. 162704, 19 November 2004.

[8] *Ibid.*