REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION, Petitioner,	**CTA EB No. 2072** (CTA Case Nos. 8914 and 8981)
- versus -	Present: **DEL ROSARIO,** ***P.J.,*** **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 22 2020 2:45pm

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by Petron Corporation **(Petron/petitioner)** pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals **(RRCTA)**. It seeks the

[1] Dated 29 May 2019, *Rollo*, Volume I, pp. 1-37.

[2] **SEC. 3**. *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

reversal of the Decision dated 18 December 2018[3] and the Resolution dated 30 April 2019[4] of the Court's Special Second Division in the consolidated CTA Case Nos. 8914 and 8981, similarly entitled *Petron Corporation v. Commissioner of Internal Revenue*. The Special Second Division denied petitioner's prior Petition for Review and a Motion for Reconsideration (**MR**) for such denial.

FACTS OF THE CASE

On 18 July 2012, the Bureau of Customs (**BOC**) issued Customs Memorandum Circular (**CMC**) No. 164-2012[5] implementing the Letter[6] from the Bureau of Internal Revenue (**BIR**) dated 29 June 2012, which stated that "alkylate which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148(e) of the National Internal Revenue Code [**NIRC**] of 1997, as amended".[7]

In 2012, petitioner imported alkylate that was subjected to excise tax in the aggregate amount of ₱219,153,851.00, detailed as follows:

VESSEL NAME	ARRIVAL DATES	BILL OF LADING NO.	IEIRD NO.	EXCISE TAX PAID
M/T High Energy	22 July 2012	ML-5918	122844547[8]	₱ 55,945,089.00
M/T Golden Fortune	12 August 2012	CTK 1985	122773043[9]	14,662,649.00
M/T Sun Lilac	12 September 2012	SLC12010-DSB01	124315222[10]	35,089,705.00
M/T Polaris	06 October 2012	POL12007-DSBT01	125253615[11]	56,097,804.00
M/T No. 3 Heung-A Pioneer	06 November 2012	HASL0941TACA251	125644382[12]	57,358,604.00
Total				**₱ 219,153,851.00**

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3 Division Docket (CTA Case No. 8914), Volume IV, pp. 1640-1668.
4 Id., pp. 1727-1733.
5 Annex "C" of Petition for Review dated 14 October 2013 (sic) [with Verification and Certification dated 14 October 2014 and filed with the Court on the same day], id., Volume I, p. 66.
6 Annex "D" of Petition for Review dated 14 October 2013, id., pp. 67-71.
7 Joint Stipulation of Facts and Issue (JSFI) dated 30 June 2015, id., Volume II, p. 917.
8 Exhibit "P-9", id., Volume III, p. 1096.
9 Exhibit "P-18", id., p. 1110.
10 Exhibit "P-26", id., p. 1122.
11 Exhibit "P-37", id., p. 1137.
12 Exhibit "P-45", id., p. 1149.

Thereafter, petitioner filed two separate administrative claims for refund of excise tax with the BIR allegedly representing excise taxes erroneously, wrongfully, illegally, and excessively imposed and collected by respondent, through the BOC, *per* CMC No. 164-2012.

With respect to its first administrative claim, petitioner filed an Application for Tax Credits/Refunds[13] (BIR Form No. 1914) on 10 October 2014 and sent a Letter[14] of even date, requesting for refund of the aggregate amount of ₱148,546,113.00. The amount pertained to excise taxes paid on importation of alkylate covered by IEIRD Nos. SN 124315222, SN 125253615 and SN 125644382.

On 23 January 2015, petitioner filed its second Application for Tax Credits/Refunds[15] (BIR Form No. 1914) and a Letter[16] of the same date, yet again requesting for refund of the aggregate amount of ₱70,607,738.00. The same represented excise taxes paid on importation of alkylate covered by IEIRD Nos. SN 122844547 and SN 122773043.

Respondent did not act on both claims for refund.

On 23 October 2014[17] and 06 February 2015[18], respectively, petitioner filed two (2) separate Petitions for Review before this Court (CTA Case No. 8981 and CTA Case No. 8914). Both sought the refund or issuance of tax credit certificates for the amounts of ₱148,546,113.00 and ₱70,607,738.00, respectively, representing excise taxes paid on its importation of alkylate.

PROCEEDINGS BEFORE THE SPECIAL SECOND DIVISION

In a Resolution[19] dated 31 March 2015, the Court ordered the consolidation of CTA Case No. 8981 with CTA Case No. 8914, the case bearing the lower docket number.

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13 Exhibit "P-83", id., p. 1207.
14 Exhibit "P-84", id., pp. 1208-1218.
15 Exhibit "P-85", id., p. 1234.
16 Exhibit "P-86", id., pp. 1235-1245.
17 Id., Volume I, pp. 6-29.
18 Division Docket (CTA Case No. 8981), pp. 6-30.
19 Division Docket (CTA Case No. 8914), Volume I, pp. 203-204.

During the trial, both parties presented their respective testimonial and documentary evidence. Thereafter, petitioner further presented rebuttal evidence.

As found by the Court's Special Second Division, the material portions of the testimonies of petitioner's witnesses are as follows:

> ...
>
> Petitioner presented witness Simon Christopher Mulqueen to testify as to the nature of alkylate. Based on his testimony, the raw materials to produce alkylates are light olefins (C3-C5) and isobutane, which is a component of natural gas and can be a product of crude oil distillation - the basic material to produce transport fuel. Alkylate is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. He made the following statements in his Judicial Affidavit:
>
> "Q-13 How is alkylate produced?
>
> A-13 Alkylate is produced from the combination of light olefins (C3- C5) with isobutane in the presence of a strong acid catalyst. The process is known as alkylation.
>
> xxx xxx xxx
>
> Q-15 What, if you know, are the raw materials or feedstock to produce alkylates?
>
> A-15 Light C3-C5 olefins, e.g. isobutene and isobutane.
>
> Q-16 How are these raw materials produced?
>
> A-16 Light C3-C5 olefins are typically produced from a fluid catalytic cracker (FCC) unit and/or a coker unit. Isobutane, on the other hand, is a component of natural gas. It can be a product of crude oil distillation or it can also be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.
>
> Q-17 You mentioned that isobutane can be a product of crude oil distillation. What is crude oil?
>
> A-17 xxx
>
> Crude oil is the basic material to produce transport fuel.

xxx xxx xxx

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

A-23 Alkylate is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements e.g. distillation boiling range.

Q-24 How does alkylate affect the manufactured gasoline when blended together?

A-24 Alkylate typically increases the octane number of a straight run gasoline or naphtha."

During his cross-examination, witness Mr. Mulqueen testified that alkylate is derived from a combination of a sulfonic petro-chemical fit stock with a gas. He further testified that olefin, one of the components of alkylate, is derived from crude oil fit stock, to wit:

"JUSTICE CASTAÑEDA:

I have a question. Where is alkylate derived?

MR. MULQUEEN:

Alkylate is derived from a combination of a sulfonic petro-chemical fit stock with a gas usually attributes to produce a branch paraffin that is over very specific octane quality hydrocarbon composition that gives it characteristics kind of alkylate. The process, the alkylation process is how it's given its name.

JUSTICE CASTAÑEDA:

So these materials that you mentioned, are they derived from crude oil?

MR. MULQUEEN:

The acid butane came from natural gas. The acid butylene sulfonic mixtures are taken from petro-chemical fit stock or a catalytic that is available out of refinery.

xxx xxx xxx

JUSTICE CASTAÑEDA:

So, ultimately, these are derived from crude oil?

MR. MULQUEEN:

The olefin is ultimately derived from crude oil fit stock, yes."

Witness Dr. Joey D. Ocon, in his Judicial Affidavit, testified on the nature of alkylate, *i.e.*, alkylates are valuable fuel additives or blending component in the production of motor fuel or gasoline. However, during the hearing held on August 7, 2017, Dr. Ocon testified before the Court that the raw materials of alkylate, in essence, are petroleum. Below are the clarifications made during the hearing:

"JUSTICE CASTAÑEDA:
My question is, what does the feedstock consist of?

WITNESS:
In the feedstock here, Your Honors, this consists actually of two (2) streams. **The first stream is an isobutane stream which is coming from another part of the refinery.**

JUSTICE CASTAÑEDA:
So, ultimately where does that come from? Does it come from petroleum?

WITNESS:
Yes, Your Honors.

JUSTICE CASTAÑEDA:
So what about the other?

WITNESS:
The other feedstock are the olefins. Since a mixture of hydro carbons and the fluidize catalytic cracking unit comes from another unit of the refinery which is the fluidized catalytic cracking unit or FCCU.

JUSTICE CASTAÑEDA:
Is that also derived from petroleum?

WITNESS:
Every product of the entire refinery, Your Honors, in this case, derived from petroleum.

JUSTICE CASTAÑEDA:
So, ultimately the raw materials are petroleum?

WITNESS:
Yes, Your Honors."

Petitioner also presented witness Ma. Clarissa C. Arguelles who has custody of the Department of Energy (DOE) Letter dated July 24, 2017. The said Letter expressed the opinion of the DOE, through OIC-Director of the Oil Industry Management Bureau

(OIMB), regarding the nature of alkylate. The pertinent portion of the DOE Letter states:

> "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 isobutane into isoparaffin isomers that produces alkylates."*

Based on the DOE Letter, distillation does not directly cause the production of alkylate but through alkylation, which is a chemical process utilizing products from distillation. By alkylation, the light olefins and isobutane are converted into isoparaffin isomers, which would produce alkylate.

During cross-examination, Ms. Arguelles testified that the DOE did not confirm that alkylate cannot be produced from a distillation unit as proposed in item 2.c of petitioner's Letter dated June 28, 2017, thus:

"ATTY DORIA:

Did the Department of Energy confirm all the positions of petitioner in their Letter?

WITNESS:

Well, the Letter says confirmed with the details we were able to gather. Yes.

ATTY. DORIA:

They did not make any modifications as to the proposition of the petitioner?

WITNESS:

Well, they added the clarification in the second sentence of Item 2C.

xxx xxx xxx

ATTY. DORIA:

Thank you, Ms. Witness. Now would you agree with me that based on the Letter Reply of the Department of Energy it did not confirm that alkylate cannot be produced from a distillation unit. **It did not confirm 2.C of the proposition of the petitioner stating that alkylate cannot be produced from a distillation unit?** Ma'am, my question calls only for a yes or no answer.

WITNESS:

Yes."[20]

...

The Court's Special Second Division thus ruled that:

...

From the testimonies of petitioner's witnesses, the raw materials used in producing alkylate, *i.e.*, light olefins and isobutane, are derived from petroleum. And based on the evidence presented, alkylate is a product of distillation. While it is not directly produced through the process of distillation but by alkylation, the raw materials, olefins and isobutane, are products of distillation. As such, it is obvious that alkylate first undergoes the process of distillation, because it cannot come into existence without its raw materials, olefins and isobutane. Since it can be considered a product of distillation similar to naphtha, alkylate is subject to excise tax, pursuant to Section 148(e) of the NIRC of 1997, as amended.[21]

...

Consequently, this Court's Special Second Division denied petitioner's claims for refund as its importations of alkylate are subject to excise tax. The dispositive portion of the assailed Decision[22] reads:

...

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED** for lack of merit.

SO ORDERED.

...

20 Id., Volume IV, pp. 1661-1665; Emphasis in the original text.
21 Id., pp. 1665-1666.
22 Id., pp. 1640-1668.

Petitioner filed its MR but it was likewise denied in the assailed Resolution,[23] the dispositive portion of which states:

> ...
>
> **WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration (of the Decision dated December 18, 2018)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

PROCEEDINGS BEFORE THE COURT *EN BANC*

Undaunted, on 30 May 2019, petitioner filed the present Petition for Review[24] challenging before the Court *En Banc* the Special Second Division's actions on its Petitions for Review.

In its Resolution[25] dated 05 July 2019, the Court *En Banc* ordered respondent to file his Comment within ten (10) days from receipt. On 01 August 2019, respondent filed his Comment[26] dated 30 July 2019, after requesting an additional period of ten (10) days to file the same.[27]

On 04 September 2019, the Court *En Banc* submitted the instant case for decision.[28]

ISSUES

In its bid to reverse the assailed Decision and Resolution, both denying its claims for refund, petitioner submits the following issues for the Court *En Banc*'s resolution:

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23 Id., pp. 1727-1733.
24 *Rollo*, Volume I, pp. 1-37.
25 Id., Volume II, pp. 714-715.
26 Id., pp. 721-728.
27 Id., pp. 716-719.
28 See Resolution, id., pp. 731-732.

I.
WHETHER PETITIONER IS LIABLE FOR EXCISE TAX ON THE IMPORTATION OF ALKYLATE.

II.
WHETHER PETITIONER IS ENTITLED TO A TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE TO RECOVER THE AGGREGATE AMOUNT OF ₱219,153,851.00, REPRESENTING: *(1)* THE EXCISE TAXES PAID FOR THE PERIOD OCTOBER 2012 TO DECEMBER 2012 IN THE AMOUNT OF ONE HUNDRED FORTY-EIGHT MILLION FIVE HUNDRED FORTY-SIX THOUSAND ONE HUNDRED THIRTEEN PESOS (₱148,546,113.00) ON IMPORTED ALKYLATE; AND, *(2)* THE EXCISE TAXES PAID FOR THE PERIOD FEBRUARY 2013 TO JULY 2013 IN THE AMOUNT OF SEVENTY MILLION SIX HUNDRED SEVEN THOUSAND SEVEN HUNDRED THIRTY-EIGHT PESOS (₱70,607,738.00) ON IMPORTED ALKYLATE.

ARGUMENTS IN SUPPORT OF THE ISSUES

First, petitioner insists that there is nothing in Section 148[29] of the National Internal Revenue Code **(NIRC)** of 1997, as amended, that subjects alkylate to excise tax.

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29 **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:

(a) Lubricating oils and greases, including but not limited to, basestock for lube oils and greases, high vacuum distillates, aromatic extracts, and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram respectively, of volume capacity or weight, Four pesos and fifty centavos (P4.50): *Provided, however,* That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: *Provided, further,* That lubricating oils and greases produced from basestocks and additives on which the excise tax has already been paid shall no longer be subject to excise tax: *Provided, finally,* That locally produced or imported oils previously taxed as such but are subsequently reprocessed, re-refined or recycled shall likewise be subject to the tax imposed under this Section.

(b) Processed gas, per liter of volume capacity, Five centavos (P0.05);

(c) Waxes and petrolatum, per kilogram, Three pesos and fifty centavos (P3.50);

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five centavos (P0.05): *Provided,* That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol

Second, petitioner argues that this Court's Special Second Division stretched the coverage of Section 148(e) of the NIRC of 1997, as amended, to include alkylate as a product of distillation supposedly similar to naphtha and regular gasoline simply because its raw materials could not have been produced without distillation.

Lastly, petitioner contends that the clear intention of the law is to tax motor fuels only once as finished products. As such, the imposition of excise tax on imported alkylate (when the finished gasoline to which the alkylate had been blended is also subjected to the same excise tax) is allegedly tantamount to taxing the same product twice and is highly oppressive, arbitrary and confiscatory.

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content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent [90%] absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;

(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;

(f) Leaded premium gasoline, per liter of volume capacity, Five pesos and thirty-five centavos (P5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35);

(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (P3.67);

(h) Kerosene, per liter of volume capacity, Zero (P0.00): *Provided,* That kerosene, when used as aviation fuel, shall be subject to the same tax on aviation turbo jet fuel under the preceding paragraph (g), such tax to be assessed on the user thereof;

(i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, One peso and zero (P0.00);

(j) Liquefied petroleum gas, per liter, Zero (P0.00): *Provided,* That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;

(k) Asphalts, per kilogram, Fifty-six centavos (P0.56); and

(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Zero (P0.00).

On the other hand, respondent claims that the instant Petition for Review failed to raise valid and substantial grounds to warrant the reversal of the assailed Decision and Resolution.

In addition, respondent reiterates his claim that Section 148(e) of the NIRC of 1997, as amended, does not qualify whether the items subject to excise tax is a primary or secondary product of distillation.

Finally, respondent contends that CM No. 164-2012[30] was issued in the exercise of the Commissioner of Customs' quasi-legislative function and thus, carries with it the force and effect of law. Respondent adds further that, unless and until the same is declared null and void, petitioner cannot claim that the excise tax paid on its importation of alkylate is illegal and erroneous.

RULING OF THE COURT *EN BANC*

After a thorough review of the records, the Court *En Banc* is constrained to deny petitioner's bid for reversal of the assailed Decision and Resolution of this Court's Special Second Division.

In the subject Petition for Review, it is significant to note that petitioner, although it maintains that alkylate is supposedly not a product of distillation, does not dispute the findings made by this Court's Special Second Division as to the nature of the raw materials of alkylate and the process by which the same goes through in order to become alkylate. Particularly, as culled from petitioner's own witnesses, this Court's Special Second Division found[31] that the raw materials used in producing alkylate (light olefins and isobutane) are derived from petroleum; that alkylate, while not *directly* produced through the process of distillation, olefins and isobutane are nevertheless products of distillation and thus, alkylate first undergoes the process of distillation.

30 Supra at note 5.
31 Division Docket (CTA Case No. 8914), Volume IV, pp. 1665-1666.

In essence, the only question left for the Court *En Banc* to decide is whether alkylate is considered as a product of distillation similar to that of naphtha and regular gasoline such that its importation would be subject to excise tax imposed under Section 148(e), in relation to Section 129 of the NIRC of 1997, as amended. The said provisions of law, as amended by Republic Act No. 9337[32], read as follows:

> ...
>
> **SEC. 129.** *Goods subject to Excise Taxes.* - Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as '***specific tax***' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as '***ad valorem tax***.'
>
> ...
>
> **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, 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

[32] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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[.]
>
> ...

Since it is undisputed in the instant case that alkylate's raw materials – light olefins and isobutane – are derived from petroleum and that the said raw materials are likewise products of distillation, it cannot be denied that alkylate is also a product of distillation similar to naphtha and regular gasoline.

In addition, the findings of OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, cited in the Letter[33] dated 29 June 2012 issued by then Commissioner of Internal Revenue Kim S. Jacinto-Henares **(Commissioner Henares)** addressed to then Commissioner Rozanno Rufino B. Biazon of the BOC with the subject "Importation of Alkylate by PILIPINAS SHELL PETROLEUM CORPORATION", likewise attested that alkylate qualifies as a product similar to naphtha used as gasoline blending component, *viz*:

> ...
>
> 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 processes" and recovered from refinery streams by fractional distillation. Similarly, Alkylate produced by "other refinery processes" (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.
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> ...

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33 Annex "D" of Petition for Review dated 14 October 2013, Division Docket (CTA Case No. 8914), Volume I, pp. 67-71.

> **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 of 1997, as amended.**[34]
>
> ...

As respondent correctly pointed out[35], Section 148(e) of the NIRC of 1997, as amended, does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. Likewise, as the Special Second Division properly found, alkylate (a product that qualifies as one similar to naphtha) first undergo the process of distillation hence is subject to excise tax under Section 148(e) in relation to Section 129 of the NIRC of 1997, as amended. Petitioner then is not entitled to the refund of excise tax paid inasmuch as the same was *not* erroneously or illegally collected.

At any rate, it is settled that tax refunds, being in the nature of tax exemption, must be construed strictly against the taxpayer. As such, petitioner, the taxpayer herein, must clearly and distinctively state the basis for its claim and prove that it falls within the ambit of said exemption. As held in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*:[36]

> ...
>
> **Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted,** it is never presumed nor be allowed solely on the ground of equity. **These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.** Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[37]
>
> ...

Incidentally, there is more reason to apply the *strict* construction of the rule on tax refund claims when administrative agencies (tasked to implement the law) interpret the same contrary to the taxpayer

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34 Emphasis supplied.
35 Comment dated 30 July 2019, *Rollo*, Volume II, p. 722.
36 G.R. No. 188497, 25 April 2012.
37 Emphasis supplied.

claiming it. In the same Letter of Commissioner Henares, it was opined that:

> ...
>
> **In view of all of the foregoing, this Office is of the opinion that the importation 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 1,384,721,933.00 representing the unpaid excise taxes and the corresponding VAT, exclusive of increments, on the importation of Alkylate from 2010 up to the present as declared in the twenty eight (28) import entries.[38]
>
> ...

Thus, unless and until such ruling or administrative interpretation is subsequently reversed or declared invalid or unconstitutional, courts should accord great respect to such ruling or interpretation. In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue,* the Supreme Court affirmed this well-settled rule, to wit:[39]

> ...
>
> **It is well-settled that the interpretation of an administrative agency which is tasked to implement a statute is accorded great respect and ordinarily controls the interpretation of laws by the courts.** The reason behind this rule was explained in *Nestle Philippines, Inc. v. Court of Appeals*:
>
>> The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; **it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.** In *Asturias Sugar Central, Inc. vs. Commissioner of Customs,* **the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to**

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38 Emphasis supplied.
39 G.R. No. 167330, 18 September 2009.

> **the government agency officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret.**[40]

...

Therefore, on the basis of this administrative interpretation, petitioner's contentions that there is nothing in Section 148(e) of the NIRC of 1997, as amended, that subjects alkylate to excise tax and that this Court's Special Second Division stretched the coverage of the said provision to include alkylate as a product of distillation are clearly bereft of merit.

At this juncture, perhaps it is propitious to point out that the Court *En Banc,* in the similar case of *Petron Corporation v. Commissioner of Internal Revenue,* ruled:[41]

> ...
>
> As aptly found by the Court's Division, the nature of alkylate can be summarized as follows:
>
> 1. Alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements.
>
> 2. It is impractical or uneconomical to import and sell alkylate as the 93 or 95 RON finished product itself. Conversely, alkylate may be sold as a finished product itself, although the same may be impractical or uneconomical.
>
> 3. It is produced from the combination of raw materials, i.e., light olefins (C3-C5) with isobutane, which are products of crude oil- the basic material to produce transport fuel.
>
> 4. Isobutane, a raw material of alkylate, is produced from crude oil distillation.
>
> 5. It is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. It increases the octane number of a straight run gasoline or naphtha.

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[40] Citations omitted and emphasis supplied.

[41] CTA EB No. 1835, dated 19 July 2019 and affirmed in Resolution dated 15 January 2020.

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

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

...

As to petitioner's claim of double taxation (on the premise that the law intends to tax motor fuels only once as a finished product), the Court *En Banc* has aptly held in the same case[42] that:

...

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

In the case *Commissioner of Internal Revenue vs. Bank of Commerce,* citing *Commissioner of Internal Revenue vs. Solidbank Corporation*, double taxation is defined 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.**

The subject matter of the tax imposed herein is on the importation of alkylate, while the subject matter of the excise tax on the alleged use of an alkylate as a blending component or raw material to produce another product is a different subject matter. The first imposition is concerned on the importation of articles while the alleged subsequent

42 *Petron Corporation v. Commissioner of Internal Revenue*, supra.

> **imposition is on the manufacturing or production of goods in the Philippines for domestic sale or consumption or for any other disposition. Notably, the law itself affirms this theory of two different subject matters arising from same imported article. When imported goods go through reprocessing, the imposition of tax happens twice. The first imposition is upon importation of goods, and second, upon removal or reprocessed goods from production site.**
>
> **Evidently, there is no double taxation when one of its elements is absent. Here, the imposition of tax is on two different subject matters. Hence, the element "same subject matter" is wanting.**[43]
>
> ...

On a final note, it is worthwhile to reiterate the doctrine laid down by the Supreme Court in *Commissioner of Internal Revenue v. Solidbank Corporation*[44], *viz*:

> ...
>
> **The right of taxation will not be surrendered, except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty -- its most essential power of taxation -- by vague or ambiguous language.** Since tax refunds are in the nature of tax exemptions, these are deemed to be "in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption."
>
> **No less than our 1987 Constitution provides for the mechanism for granting tax exemptions. They certainly cannot be granted by implication** or mere administrative regulation. **Thus, when an exemption is claimed, it must indubitably be shown to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim...**[45]
>
> ...

With the above disquisitions, the Court *En Banc* fails to find any cogent reason to reverse the assailed Decision dated 18 December 2018 and Resolution dated 30 April 2019.

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43 Citations omitted and emphasis supplied.
44 G.R. No. 148191, 25 November 2003.
45 Emphasis supplied.

WHEREFORE, the foregoing considered, the Petition for Review dated 29 May 2019 is **DENIED** for lack of merit. Accordingly, the Decision dated 18 December 2018 and the Resolution dated 30 April 2019, respectively, of the Special Second Division in the consolidated CTA Case Nos. 8914 and 8981, both entitled *Petron Corporation v. Commissioner of Internal Revenue*, are **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2072
(CTA Case Nos. 8914 & 8981)

Present:

DEL ROSARIO, *P.J.*,
CASTANEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 22 2020 2:45PM

x - x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I am constrained to withhold my assent on the *ponencia* which denies the Petition for Review and affirms the assailed Decision dated December 18, 2018 and Resolution dated April 30, 2019 rendered by the Court in Division in CTA Case Nos. 8914 and 8981.

The *ponencia* in *esse* declares that, in the present case, it is undisputed that alkylate's raw materials – light olefins and isobutene – are derived from petroleum and that the said raw materials are products of distillation, thus, it cannot be denied that alkylate is also a product of distillation similar to naptha and regular gasoline which is subject to excise tax pursuant to Section 148 (e) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Under Section 148 (e) of the National Internal Revenue Code (NIRC) of 1997, as amended, naphtha, regular gasoline and other **similar products of distillation** are subject to excise tax at the rate of P4.35 per liter of volume capacity. 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**, shall be subject to P0.00 excise tax, per liter of volume capacity.

In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs / Commissioner of Customs vs. Pilipinas Shell Petroleum Corporation,*[1] the Court *En Banc* held that:

(i) Importations of Catalytic Cracked Gasoline (CCG) and Light Catalytic Cracked Gasoline (LCCG) are subject to excise tax under Sections 129 and 148 of the National Internal Revenue Code (NIRC) of 1997, as amended;

(ii) CCG and LCCG are "other similar products of distillation" under Sec. 148 (e) and based on the following: (a) Department of Energy (DOE) Opinion dated December 4, 2003 which stated that LCCG may generally be considered to have undergone a process of distillation at some point in its production, but such is the case with all petroleum products; and, (b) unrebutted Sworn Statement dated February 15, 2012 55 of PSPC's petroleum expert, Mr. Claude A. Mallet, who confirmed that CCG and LCCG, although not considered finished products, are called gasoline;

(iii) Section 148 of the NIRC of 1997, as amended, laid down the tax treatment of specific petroleum products used as raw materials. However, there is nothing in Sec. 148 that exempts imported CCG and LCCG from excise tax when used as raw materials;

(iv) Tax exemptions are *construed strictissimi juris* against the taxpayer. A claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.

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[1] CTA EB Nos. 1007 and 1003, dated September 28, 2015.

In *Petron Corporation vs. Commissioner of Internal Revenue,*[2] the Court *En Banc* held that:

(i) Alkylate can be used as blending components, additives, or as raw material for the production of finished gasoline or other products. Moreover, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state. Thus, the nature of alkylate was summarized as follows:

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

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

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

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

e. It is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number;

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

(ii) Without the process of distillation, alkylate cannot come into existence; the process of alkylation and product of alkylates cannot be had;

(iii) Alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state;

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[2] CTA EB No. 1835, July 19, 2019.

(iv) Alkylate falls within the category of naphtha, regular gasoline and other similar products of distillation under Sec. 148 (e) of the NIRC of 1997, as amended, as evinced by the DOE Letter dated June 27, 2012. Said Letter expressed the opinion that alkylate is not a finished product but an intermediate or raw gasoline component;

(v) Imported alkylates are taxed only once, that is, upon their importation in relation to Sections 129, 131 and 148 (e) of the NIRC of 1997, as amended. The subject matter of the tax imposed herein is on the importation of alkylate, while the subject matter of the excise tax on the alleged use of an alkylate as a blending component or raw material to produce another product is a different subject matter; and,

(vi) Only naphtha, when used as a raw material, is subject to Php 0.00 (zero) excise tax under Section 148 (e) of the NIRC of 1997, as amended. There is nothing in the provision that expressly subject alkylate to Php0.00 excise tax when used as a raw material.

In *Shell* and *Petron*, the importation of CCG, LCCG and Alkylate were subjected to excise tax under Section 148 (e) of the NIRC of 1997, as amended, in view of the **Court *En Banc*'s findings that CCG, LCCG and Alkylate are products of distillation**.

The above notwithstanding, CCG, LCCG and Alkylate would not be subjected to excise tax under Section 148 (e) of the NIRC of 1997, as amended, if it is established by clear, convincing and preponderant evidence that these materials are not among those articles or raw materials that are specifically enumerated as exciseable. Specifically, it is imperative to prove that these materials do not fall under the category of "other products of distillation".

It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. *Expressio unius est exclusio alterius.* Anything that is not included in the enumeration is excluded therefrom and a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned.[3]

In contrast to the aforementioned *Shell* and *Petron* cases, a painstaking scrutiny of the case records of the present case, including the parties' testimonial and documentary evidence, and the reply of petitioner's expert witness to the clarificatory questions propounded by the Court, reveals the following:

(i) Alkylate is used as blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements, e.g. distillation boiling range;

(ii) Alkylate is a product of alkylation reaction, a refining process for chemically combining isobutene with olefin hydrocarbons (e.g., propylene, butylene) through the control of temperature and pressure in the presence of an acid catalyst, usually sulfuric acid or hydrofluoric acid;

(iii) **The raw materials to produce Alkylate are (1) light olefins and (2) isobutene.** Light olefins are typically produced from a fluid catalytic cracker unit and/or a coker unit. Olefin is ultimately derived from crude oil feed stock. **It is not produced by distillation**, *viz.*:

"Q-13 How is alkylate produced?

A-13 Alkylate is produced from the combination of **light olefins** (C_3-C_5) with **isobutene** in the presence of strong acid catalyst. The process is known as alkylation.

xxx xxx xxx

Q-15 What, if you know, are the raw materials or feedstock to produce alkylates?
A-15 Light C_3-C_5 **olefins**, e.g. isobutene and isobutene.

Q-16 **How are these raw materials produced**?

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[3] San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue, G.R. No. 147749, June 22, 2006.

> A-16 **Light C_3-C_5 are typically produced from a fluid catalytic cracker (FCC) unit and/or a coker unit**. Isobutane, on the other hand, is a component of natural gas. It can be a product of crude oil distillation or it can also be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming. [4] " (Boldfacing supplied)

(iv) Isobutane is a component of natural gas. Isobutane is the basic material to produce transport fuel. **Isobutane can be a product of crude oil distillation OR it can be recovered from other petroleum refinery streams that result from catalytic cracking, calatytic reforming**.

Based on the foregoing, I find that **Alkylate in itself is not a product of distillation**.

Although one of the raw materials of Alkylate -- Isobutane -- can be a product of distillation, this does not justify the imposition of excise tax on Alkylate itself. Section 148(e) of the NIRC of 1997, as amended, imposes tax on the following products: naphta, regular gasoline and other similar products of distillation," and not on the ingredients or raw materials to come up with naphta, regular gasoline and other similar products. Stated otherwise, what is being subjected to Section 148(e) of the NIRC of 1997, as amended, are the aforesaid three (3) finished products, and not the ingredients used to produce them.

For a better understanding of the process, I humbly opt to suggest common consumable household items which analogously illustrate the essence of how a "finished product" should be appreciated:

(i) Coffee drink: supposed distilled water is used in brewing coffee beans, could it be said that coffee drink is a product of distillation?

(ii) Egg tart: supposed condensed milk is added to egg yolk and other basic ingredients and thereafter baked, should the egg tart be considered as product of condensation?

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[4] Pages 22 to 23 of the Assailed Decision.

In both instances, it is obvious that the finished products are not *per se* products of the "process by which the ingredients were made" but by the process necessary to produce the end products themselves. For the coffee drink, it can easily be said that it is a product of brewing, and for the egg tart -- a product of baking.

Similarly, Alkylate does not come into existence by distillation just because one out of its two (2) basic ingredients is produced by distillation. Alkylate is undisputedly a product of alkylation.

Not being a product of distillation, Alkylate, whether or not used as raw materials, is not subject to excise tax because it is not specifically enumerated under Section 148(e) of the NIRC of 1997, as amended, as a raw material that is exciseable.

All told, I VOTE to: (i) GRANT the Petition for Review filed by Petron Corporation; (ii) REVERSE and SET ASIDE the assailed Decision dated December 18, 2018 and Resolution dated April 30, 2019 rendered by the Court in Division in CTA Case Nos. 8914 and 8981; and, (iii) REMAND the case to the Court in Division for the determination of the amount that is refundable to Petron Corporation for excise taxes it paid on its importation of Alkylate covered by Import Entry and Internal Revenue Declaration Nos. 122844547, 122773043, 124315222, 125253615, and 125644382.

ROMAN G. DEL ROSARIO
Presiding Justice