REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

CTA CASE NO. 9111

Members:

- versus -

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 2 7 2018 9:50 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution is petitioner's **Motion for Partial Reconsideration [of the Decision dated October 26, 2017]**, filed on November 10, 2017, with respondent's **Opposition Re: Petitioner's Motion for Reconsideration**, filed on December 8, 2017.

Petitioner seeks reconsideration of the Court's Decision promulgated on October 26, 2017 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In the instant motion, petitioner raises the following errors: (1) the Court erred in finding that alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state and is therefore subject to excise tax; and (2) the Court erred in finding that alkylate is a product of distillation that is subject to excise tax.

To establish these, petitioner asserts the following arguments: (1) that alkylate does not possess all the essential and key properties and specifications to warrant the conclusion that it is similar to, or can be considered, gasoline; (2) that alkylate comes into existence only through the process of alkylation and not through distillation; and (3) alkylate is not among the products enumerated in Section 148 of Republic Act No. 8424, as amended, and hence, is not subject to excise tax.

Petitioner presented data showing that alkylate is not similar to or considered as gasoline. Allegedly, the aromatics content of gasoline reached 35% vol, while alkylate has aromatics that range from 0.09 to 2% vol. Likewise, the Research Octane Numbers (RON) of gasoline allegedly ranges from 91 to 97 depending on the type thereof. On the other hand, the RON of alkylate is claimed to be somewhere in between 95 to 96. Also, alkylate and gasoline allegedly differ in terms of boiling range, volatility, and recovery process.

In addition, petitioner strongly manifests that alkylate cannot be used as a motor fuel or gasoline without violating both specific and legal standards. Its witnesses testified that alkylate is not comparable to motor fuel or finished gasoline, as the former is a component which can be blended into specification requirements, particularly those related to octane quality. Whereas, motor fuel is a generic term used in an internal combustion engine which provides propulsion, while finished gasoline is a specific motor fuel design for spark ignition gasoline engine which must meet the volatility and octane requirements of the gasoline engine design.

Further, it highlights the testimony of its witness, Mr. Simon Christopher Mulqueen, stating that alkylate is a raw material used as a blending component in the manufacturing of gasoline to satisfy certain required parameters, such as octane number and volatility requirements and cannot be considered as or is similar to gasoline.

Petitioner likewise cites relevant definition of "motor fuel" as the general concept to which finished gasoline belongs, as a term commonly referred to in the petroleum industry as well as in some foreign statutes as all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles.

Petitioner also maintains its position that alkylate is not a product of distillation. It asserts that, while it may be true that isobutene, which is one of the raw materials of alkylate, is a produced through distillation, the fact remains that distillation is not the process that produced alkylate. Rather, it is through alkylation that alkylate comes into existence.

According to petitioner, alkylation is 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. Alkylate is an isoparaffin and has high octane value. It is so distinct from naphtha and regular gasoline in that alkylate has to undergo various complex processes before it is produced.

Petitioner argues that the assailed Decision has stretched the interpretation of the phrase "products of distillation" in Section 148(e) of the National Internal Revenue Code (NIRC) of 1997, as amended, to mean all goods or materials that may later come into existence from any of the primary products of distillation. Petitioner maintains that such interpretation will lead to dire consequences. A common example of such result would be to include plastic in the enumeration, which is manufactured through further processing of certain products of distillations, and is clearly not subject to excise tax under the present statutes.

Also, petitioner avers that since alkylate is not among the products enumerated in Section 148 of the NIRC of 1997, as amended, the same should not subject to excise tax. Petitioner emphasizes that a simple reading of Section 148 of the NIRC of 1997, as amended, shows that there is nothing in the provision which imposes excise tax on alkylate. Moreover, the enumeration of mineral oils and motor fuels does not include alkylate. Neither is alkylate a product of distillation similar to naphtha and regular gasoline. Thus, following the rule in statutory construction, "expressio unius est exclusion alterius", which means that where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from the effects all those not expressly mentioned. Accordingly, petitioner maintains that alkylate should not be subject to excise tax.

Respondent, in his opposition, contends that alkylate cannot be produced without the process of distillation of crude oil. It further reiterates the findings as stated in the BIR Letter dated June 29, 2012, stating that:

> "It is basic information in petroleum manufacturing industry that crude oil is a mixture of hydrocarbons with different boiling temperature, it can be separated into different fraction/groups of hydrocarbons that boil between two specified boiling points by distillation. Every refinery begins with the separation of crude oil into different fractions by distillation. The fractions are further treated to convert them into mixtures of more useful saleable products by various methods such as cracking, reforming, alkylation, polymerization and isomerization. Olefins such as propylene and butylene are produced by catalytic and thermal cracking. Alkylation refers to the chemical bonding of these light molecules with isobutene to form larger branched-chain molecules (isoparaffins) that make high octane petrol.
>
> 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 process' (which is alkylation) is recovered also by fractional distillation. Alkylate is a very important blending component of today's reformulated motor gasoline because of its relatively low vapour pressure, high octane number and near-zero content of sulphur, aromatics and olefins.
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> xxx xxx xxx

Clearly, alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended."

Also, respondent reiterates that the importation of alkylate and being removed from customs custody, although alleged to have been used as a blending component, is still lawfully subject to excise tax for being a thing imported in accordance with Section 129 of the NIRC of 1997, as amended.

The Court finds that the arguments raised by petitioner in the instant motion are mere rehash of the same facts and issues which have already been passed upon in the assailed Decision.

The assailed Decision has already considered the evidence and testimonies presented by the petitioner which led to the finding that:

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 isobutene, 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.

6. Alkylate is a gasoline component produced by combining 2 gasses using sulfuric acid, using reactor chillers. ju

To reiterate, Section 148(e) of the NIRC of 1997, as amended, provides that an excise tax shall attach to mineral oils or motor fuels, *i.e.* naphtha, regular gasoline and other similar products of distillation, as soon as they are in existence as such. The assailed Decision has already tackled that based on the evidence presented during trial, this Court found that alkylate possess properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state.

Furthermore, this Court has already found that 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, one of its raw materials, isobutene, is a product of distillation. As such, it is obvious that alkylate first undergoes the process of distillation because it cannot come into existence without its raw material isobutene.

Lastly, the Court disagrees with petitioner's claim that alkylate is not subject to excise tax, not being among the products enumerated in Section 148 of the NIRC of 1997, as amended, which provides:

> "**SECTION 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 eighty centavos (P4.80): 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;"

It must be noted that although the not specifically mentioned, Section 148(e) of the NIRC of 1997, as amended, provides for "other similar products of distillation", which includes alkylate.

Basic are the statutory construction principles, "ubi lex non distinguit, nec nos distinguere debemus", which means "where the law does not distinguish, we should not distinguish", and "ejusdem generis", which means "of the same kind or specie". Said principles are to be applied by this Court in interpreting Section 148(e) of the NIRC of 1997, as amended.

Since Section 148(e) of the NIRC of 1997, as amended, used the term "other similar products of distillation" without qualification, it must be taken to mean as encompassing within its terms both to include those that are produced directly and indirectly from said process. Thus, where the law does not distinguish, we should also not distinguish. This Court, hence, interprets such provision to include alkylate, which has a raw material that is produced through distillation.

However, such inclusion is not without limitation. Contrary to petitioner's allegation that such interpretation would include plastic, which is not subject to excise tax, the inclusion of alkylate in Section 148(e) as a similar product of distillation, should be in accordance with the principle of *ejusdem generis*. Under this principle, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned.[1] Hence, when the term "other similar products of distillation" was interpreted, it only means to include similar products of distillation in relation to naphtha and regular gasoline. In determining the meaning of the phrase "other similar products of distillation", one must refer to the prior enumeration of oils/fuels. Plastic does not fall under the same category of mineral oils or motor fuels. *gr*

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[1] *Philippine Basketball Association vs. Court of Appeals*, G.R. No. 119122, August 8, 2000.

Finding no cogent reason to reverse the assailed Decision, the Court finds that the denial of Petition for Review filed by Petron Corporation should be affirmed.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration [of the Decision dated October 26, 2017]** is hereby **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice