REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

PETRON CORPORATION,
Petitioner,

CTA EB NO. 2425
(CTA Case Nos. 9565, 9606 & 9645)

Present:

- versus -

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 2 1 2022 3:28 pm

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DECISION

UY, J.:

This is a *Petition for Review*[1] filed on February 4, 2021 by petitioner, Petron Corporation, against respondent, Commissioner of Internal Revenue, praying that the Decision dated August 24, 2020[2] and the Resolution dated January 12, 2021[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case Nos. 9565, 9606 and 9645, entitled *"Petron Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent",* be reversed and

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[1] EB Docket – Vol. 1, pp. 1 to 65.

[2] Penned by Associate Justice Juanito C. Castañeda, and concurred by Associate Justice Jean Marie A. Bacorro-Villena. EB Docket – Vol. 1, pp. 75 to 128.

[3] EB Docket – Vol. 1, pp. 129 to 136.

set aside. The dispositive portions thereof, respectively read as follows:

Decision dated August 24, 2020:

"**WHEREFORE**, the present *Petitions for Review* are **DENIED** for lack of merit.

SO ORDERED."

Resolution dated January 12, 2021:

"**WHEREFORE**, premises considered, petitioner's Motion for Partial Reconsideration (re: Decision dated 24 August 2020) is **DENIED** for lack of merit

SO ORDERED."

THE PARTIES

Petitioner Petron Corporation 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. It is registered as a taxpayer with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 000-168-801-00000.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the chief of the BIR, authorized to credit or refund taxes erroneously or illegally received, with office at the BIR National Office Bldg., BIR Road, Diliman, Quezon City, Metro Manila.

THE FACTS

During the period from April to September 2015, petitioner made various *alkylate* importations, which were all subjected to excise taxes, the details of which are as follows:

Vessel name	Arrival dates	Excise Tax	Bill of Lading No.	IEIRD No.
M/T London Trader	April 7, 2015	₱21,769,940.00	LT1501-YP01	00381050670
M/T Pyxis Malou	June 4, 2015	₱22,197,558.00	PM-001	00382180473
M/T Golden Pioneer	September 22, 2015	₱21,234,960.00	SIN95T243900	00383756967

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Petitioner paid, *inter alia*, the excise taxes thereon on the following dates:

IEIRD No.	Date of Payment	Excise Tax Paid
00381050670	April 7, 2015	₱21,769,940.00
00382180473	June 5, 2015	₱22,197,558.00
	October 6, 2015	
SIN95T243900	September 28, 2015	₱21,234,960.00
	TOTAL	**₱65,202,458.00**

On March 31, 2017, petitioner filed an application for tax credit or refund, seeking the recovery or refund of excise tax paid on the imported *alkylate* covered by IEIRD No. 00381050670, in the total amount of ₱21,769,940.00.

Petitioner filed another application for tax credit or refund on May 30, 2017, covering the excise tax paid in the importation of *alkylate* under IEIRD No. 00382180473, in the total amount of ₱22,197,558.00.

Thereafter, on July 28, 2017, petitioner likewise filed an application for tax credit or refund for the excise tax paid on the imported *alkylate* covered by IEIRD No. 00383756967, in the total amount of ₱21,234,960.00.

Petitioner filed its *Petition for Review* before the Court in Division on April 6, 2017, *"Petron Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent,"* and docketed as **CTA Case No. 9565**, praying for the refund or issuance of a tax credit certificate in the aggregate amount of ₱21,769,940.00, allegedly representing the excise tax paid by it on the importation of *alkylate* covered by IEIRD No. 00381050670.

On June 1, 2017, respondent filed his *Answer* (in **CTA Case No. 9565**), interposing the following special and affirmative defenses: that the Court has no jurisdiction; there is no showing that there was a final assessment issued; and that in the absence of an assessment, the Court lacks jurisdiction to rule upon the propriety of the Letter from the CIR dated June 29, 2012 (or the "BIR Letter") and Customs Memorandum Circular No. 164-2012 (CMC 164-2012). Respondent further claims that petitioner failed to exhaust administrative remedies. Allegedly, prior to elevating the case to this Court, petitioner should have questioned the subject BIR Letter before the Secretary of Finance. Only after the Secretary of Finance adversely ruled on its appeal can petitioner come to Court.

On June 2, 2017, petitioner filed another *Petition for Review*, docketed **CTA Case No. 9606**, praying for the refund or issuance of a tax credit certificate in the aggregate amount of ₱22,197,558.00, allegedly representing the excise tax paid by it on the importation of *alkylate* covered by IEIRD No. 00382180473.

On July 28, 2017, respondent filed his *Answer* (for **CTA Case No. 9606**) interposing the following special and affirmative defenses: that the *Petition for Review* states no cause of action; that petitioner became liable for excise tax on its importation of *alkylate* on the basis Section 148 (e) of the NIRC as implemented by the Letter from the CIR dated June 29, 2012 (BIR Letter) through CMC 164-2012; that whether the basis for the imposition of excise tax on importation of *alkylate* is valid and sufficient must first be determined before petitioner can claim for refund of alleged erroneous payment or illegal collection; and that absence of such determination of validity and applicability of the BIR Letter and CMC 164- 2012 to the present case, petitioner's cause of action would have no leg to stand on. Respondent likewise asserts that dismissal of the case is proper for failure of petitioner to exhaust administrative remedies.

On August 8, 2017, petitioner again filed a *Petition for Review,* docketed as **CTA Case No. 9645**, praying for the refund or issuance of a tax credit certificate in the aggregate amount of ₱21,234,960.00, allegedly representing the excise tax paid by it on the importation of *alkylate* covered by IEIRD No. 00383756967.

Respondent filed his *Answer* (for **CTA Case No. 9645**) on October 13, 2017, interposing the following affirmative defenses: that the court has no jurisdiction over the *Petition for Review* since there is no showing that there was a final assessment issued. Allegedly, in the absence of an assessment, the Court lacks jurisdiction to rule upon the propriety of the BIR Letter and CMC No. 164-2012. Respondent further posits that petitioner failed to exhaust administrative remedies. According to respondent, prior to elevating the case to this Court, petitioner should have questioned the subject Letter before the Secretary of Finance; and that only after the Secretary of Finance adversely ruled on its appeal can petitioner come to Court.

On August 24, 2017, petitioner filed a *Motion for Consolidation with Motion for Postponement [of the Presentation of Witnesses and Commissioning of Independent Certified Public Accountant]*, praying, *inter alia*, for the consolidation of CTA Case No. 9565, with CTA Case Nos. 9606 and 9645. The said *Motion for Consolidation* was granted during the hearing held on August 30, 2017. Accordingly, the Pre-Trial Conference for the consolidated cases was set and held on October 26, 2017.

On November 16, 2017, the parties filed their *Joint Stipulation of Facts and Issues*, which was adopted by the Court in Division in its Pre-Trial Order dated November 28, 2017.

Trial then ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following witnesses, namely: (1) July Ann D. Vivas, petitioner's Financial Accounting Manager; (2) Dr. Joey D. Ocon, petitioner's expert witness; (3) Engr. Gardelio P. Malgapo, petitioner's Process Engineering Department Manager; (4) Leopoldo G. Lorenzo, Officer-in-Charge of petitioner's Limay Terminal; (5) Simon Christopher Mulqueen, Director of Technical Services for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel Specialties; (6) Atty. Clarissa C. Arguelles, petitioner's Tax Manager; (7) Michael F. Manzano, petitioner's Commercial Services Manager; (8) Cecilia N. Sengia, petitioner's Refinery Finance Department Manager; and (9) Ma. Milagros F. Padernal, the Court-commissioned Independent Certified Public Accountant (ICPA).

On March 26, 2018, petitioner filed its *Formal Offer of Exhibits [with Motion to Allow Adoption of Exhibits*]. Respondent filed his *Comment/Opposition (on Petitioner's Formal Offer of Evidence)* on April 2, 2018. Thus, in the Resolution dated February 11, 2019, the Court in Division admitted petitioner's exhibits, except for Exhibits "P-224-1- 18737" to "P-224-1-18745", and "P-241-10-2929", for not being found in the records.

For his part, respondent's counsel manifested during the hearing held on March 6, 2019, that there is no report of investigation submitted by the revenue officers handling the administrative claim for refund, and that he will no longer present evidence in these cases.

On March 7, 2019, petitioner filed a *Motion to Allow Submission [of Exhibits "P-224-1-18737" to "P-224-1-18745'; and "P-241-10- 2929*'], praying for the admission of the said denied exhibits. No comment was, however, filed thereon by respondent.

In the Resolution dated June 13, 2019, the Courtin Division: (1) granted petitioner's *Motion to Allow Submission*; (2) admitted the exhibits subject of the said *Motion*; and (3) ordered the parties to submit their respective memoranda.

Considering the filing of petitioner's *Memorandum* on July 18, 2019, and respondent's *Memorandum* on August 20, 2019, the consolidated cases (CTA Case Nos. 9565, 9606 and 9645) were submitted for decision on August 27, 2019.

In the assailed Decision[4] dated August 24, 2020, the Court in Division denied the *Petitions for Review* in CTA Case Nos. 9565, 9606 and 9645, for lack of merit.

On September 14, 2020, petitioner filed its *Motion for Partial Reconsideration (re: Decision dated 24 August 2020)*[5]; while respondent failed to file his comment despite due notice.[6]

In the assailed Resolution[7] promulgated on January 12, 2021, the Court in Division denied petitioner's *Motion for Partial Reconsideration* for lack of merit.

On February 4, 2021, petitioner filed the instant *Petition for Review*[8] before the Court *En Banc*.

In the Resolution[9] dated March 1, 2021, the Court *En Banc* directed the CIR to file his comment on the instant *Petition for Review* within ten (10) days from notice.

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[4] Division Docket (CTA Case No. 9565) – Vol. IV, pp. 1505 to 1558; EB Docket – Vol. 1, pp. 75 to 128.
[5] Division Docket (CTA Case No. 9565) – Vol. IV, pp. 1559 to 1586.
[6] Division Docket (CTA Case No. 9565) – Vol. IV, p. 1590.
[7] EB Docket – Vol. 1, pp. 129 to 136. Division Docket (CTA Case No. 9565) – Vol. IV, pp. 1592 to 1599.
[8] EB Docket – Vol. 1, pp. 1 to 65.
[9] EB Docket – Vol. III, pp. 1394 to 1395.

On June 16, 2021 the Judicial Records Division of this Court issued a *Records Verification*[10] stating that respondent failed to file his comment.

In the Resolution[11] dated June 30, 2021, the Court *En Banc* submitted the instant case for decision. Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the resolution of the Court *En Banc:*

> "WHETHER PETITIONER IS ENTITLED TO THE REFUND OF EXCISE TAXES PAID ON IMPORTED ALKYLATE COVERED BY IEIRD NOS. 00381050670, 00382180473, AND 00383756967 ON VARIOUS DATES FROM APRIL 2015 TO SEPTEMBER 2015 IN THE AGGREGATE AMOUNT OF ₱65,202,458.00.
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> A.
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> WHETHER THE COURT IN DIVISION ERRED IN: (A) RULING THAT PETRON'S CLAIM FOR REFUND WAS BASED ON AN EXEMPTION; AND (B) APPLYING THE DOCTRINE OF STRICT CONSTRUCTION AGAINST PETRON.
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> A.1
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> Whether the Court in Division erred in not shifting the burden of evidence to the CIR to prove that Petron's three (3) alkylate importations are subject to excise tax under Sec. 148(e) or Sec. 148(f) of the Tax Code.
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> B.
>
> WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE IMPORTED ALKYLATE COVERED BY IEIRD NOS. 00381050670, 00382180473, AND 00383756967 ON VARIOUS DATES FROM APRIL 2015 TO SEPTEMBER 2015 WERE EXCISABLE ARTICLES.

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[10] EB Docket – Vol. III, p. 1369
[11] EB Docket – Vol. III, pp. 1398 to 1399.

B.1

Whether Petron's importations of alkylate on 7 April 2015, 4 June 2015, and 22 September 2015 are subject to excise tax under Sections 148 (e) and/or 148 (f) of the Tax Code

i. Whether alkylate is unleaded premium gasoline
ii. Whether alkylate is a product of crude oil distillation
iii. If alkylate is, indeed, a product of crude oil distillation, whether it is similar to naphtha and/or regular gasoline

B.2

Whether alkylate used by Petron solely as a blending component for the production of gasoline is subject to excise tax.

B.3

Whether the imposition of excise taxes on Petron's importation of alkylate resulted in double taxation

C.

Whether excise tax may be imposed on alkylate even if it is not imported for domestic sale of consumption, or for any other disposition."[12]

Petitioner's arguments:

Petitioner argues that the Court in Division erred in ruling that Petron's claim for refund was based on an exception. Contrary to the Court in Division's ruling, petitioner's request for refund is grounded on the absence of *alkylate* from the list of excisable articles under Sections 148 (e) and (f) of the NIRC of 1997, as amended. Allegedly, excise tax is being collected by the CIR on *alkylate* in the absence of any law imposing such tax.

Further, petitioner maintains that it has discharged its burden by pointing out that *alkylate* was not among the excisable articles enumerated in the Tax Code. Hence, the burden of evidence is

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[12] *Statement of the Issues/Assignment of Errors*, *Petition for Review*, EB Docket – Vol. I, pp. 22 to 24.

shifted to the CIR to present evidence sufficient to rebut a fact in issue. According to petitioner, the CIR should have presented evidence that Section 148 (e) or (f) of the NIRC of 1997, as amended, covers the *alkylates*.

It is petitioner's position that tax is never presumed and that since the CIR failed to present any evidence that *alkylate* and the imported *alkylate* in this case are products of crude oil distillation, no excise taxes should have been imposed and that it is entitled to refund.

Petitioner claims that *alkylate* is not produced by distillation but by alkylation and that there is no factual basis for the Court in Division to rule that *alkylate* is an indirect product of distillation.

Petitioner likewise contends that *alkylate* is not similar to naphtha and regular gasoline under Section 148 (e) of the NIRC of 1997, as amended. Allegedly, the intended use/purpose of naphtha and regular gasoline differ from the intended use/purpose of *alkylate* and that *alkylate* is not of the same nature as naphtha and regular gasoline.

Moreover, petitioner avers that *alkylate* is neither "leaded premium gasoline" or "unleaded premium gasoline" subject to excise taxes under Section 148 (f) of the NIRC of 1997, as amended.

Finally, petitioner posits that excise taxes do not apply to *alkylate* because it is not imported for domestic sale or consumption or for any other disposition and that doing so amounts to double taxation.

THE COURT *EN BANC'S* RULING

Timeliness of the instant Petition.

Under Section 3(b), Rule 8, of the Revised Rules of the Court of

Tax Appeals (RRCTA), as amended,[13] a party adversely affected by a decision or a resolution of the Court in Division on a motion for reconsideration or new trial, may file a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned decision or resolution.

In the instant case, records show that petitioner received the assailed Resolution dated January 12, 2021 on January 20, 2021[14]. Accordingly, petitioner had fifteen (15) days therefrom or until February 4, 2021, within which to file its appeal with the Court *En Banc*. Thus, the filing of the instant *Petition for Review* on February 4, 2021, vested this Court with jurisdiction over the present petition.

The Court shall now proceed to determine the merits of the instant *Petition for Review*.

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, this Court finds no legal basis to reverse the assailed Decision and Resolution of the Court in Division.

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

In the assailed Decision, the Court in Division held that petitioner's *alkylate* importations covered by IEIRD Nos. 00381050670, 00382180473, and 00383756967 are subject to excise tax pursuant to Section 148 (e) of the NIRC of 1997, as amended.

Petitioner, however, insists that *alkylate* is not taxable under the said provision since *alkylate* is not produced by distillation but by alkylation; and that it is not similar to naphtha and regular gasoline.

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[13] Section 3(b), Rule 8, of the RRCTA provides as follows:

"Section 3. *Who may appeal; period to file petition.-*

xxx xxx xxx

(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**."

[14] Division Docket (CTA Case No. 9565) – Vol. 4, p. 1591.

We sustain the Court in Division.

Pertinent provisions of Section 129 and 148 (e), of the NIRC of 1997, as amended, state 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 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.' xxx"
>
> "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 <u>other similar products of distillation</u>**, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35): 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 (₱0.00): 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

byproducts 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;" (*Emphasis supplied.*)

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

Thus, in resolving whether the petitioner's *alkylate* importations are subject to excise tax, it is crucial to determine whether *alkylate* is considered as a product of distillation similar to that of naphtha and regular gasoline

A perusal of the records show that during the cross examination of petitioner's expert witness, Dr. Joey D. Ocon, the latter testified that one of the raw materials of *alkylate* is a product of distillation. Pertinent portions of said testimony are quoted as follows:

"Atty. Guiling-Matanog:
Q: In your Affidavit, you mentioned of a technical study. Am I correct that this study was only made for the purpose of this case?

Dr. Ocon:
A. Yes, Ma'am.

Atty. Guiling-Matanog:
Q: And also in your Report, you mentioned that **isobutane is combined with light olefins to form isooctane and other branded paraffin compounds and this iso-paraffin compounds are called alkylates**, is that correct?

Dr. Ocon:
A. Yes, Ma'am.

Atty. Guiling-Matanog:
Q: So therefore, **isobutane is a raw material in the production of alkylates. Is it correct that isobutane is a product of distillation**?

Dr. Ocon:
A. Yes."[15] *(Emphasis and underscoring supplied.)*

Based on the foregoing, petitioner's expert witness confirmed that **<u>isobutane</u>,** a raw material in the production of *alkylate*, is a product of distillation. It is evident, therefore, that while *alkylate* is not directly produced through the process of distillation, one of its raw materials is a product of distillation.

As aptly found by the Court in Division, the ***process of distillation*** contributes to the production, purification and enhancement of *alkylate* for it to be fitted as fuel additives. We quote with approval the findings of the Court in Division in the assailed Decision dated August 24, 2020[16] as follows:

> "It can be deduced from the foregoing testimonies that while *alkylate* is not directly produced through the process of distillation but by alkylation, it still cannot be denied that its very existence was derived from the utilization of these two raw materials, namely, olefins and isobutane, which are both products of crude oil distillation. Thus, *alkylate* would not have come into existence without the presence of the said raw materials. Moreover, Dr. Ocon even mentioned in his Judicial Affidavit that distillation process is employed in the process of alkylation, 'but this is merely for purposes of purifying the quality of the produced *alkylate* or recycling excess raw materials x x x Because iso-butanes are typically supplied in excess relative, around six to ten times more than the olefins, it has to be recovered via a distillation process to recycle them back into the alkylation reactor.' <u>**As such, there can be no doubt that, from its inception up to the end of the process of alkylation, the process of distillation contributes to the production, purification and enhancement of *alkylate* for it to be fitted as fuel additives.**</u>
>
> Moreover, contrary to the claim of petitioner, nowhere in the Department of Energy's (DOE) letter dated July 24, 2017[17] was it shown that it categorically confirmed that alkylate cannot be produced from distillation, as shown below:

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[15] *Transcript of Stenographic Notes* (TSN) during the hearing held on January 24, 2018, p. 22.
[16] EB Docket – Vol. I, p. 124.
[17] Exhibit "P-30", Division Docket (CTA Case No. 9565) – Vol. III, p. 1217.

> 'We acknowledge your letter dated June 28, 2017 requesting our position on matters regarding alkylates as detailed therein.
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> Our own reading 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:
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> **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.**'

Correspondingly, it is indubitable that the raw materials used in producing alkylate, *i.e.,* light olefins and isobutane, are derived from petroleum. However, 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.

It is clear that 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 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." *(Emphasis and underscoring ours)*

Clearly, *alkylate* first passes through the process of distillation as the same cannot come into existence without its raw material isobutane. In other words, while it is true that alkylation, not distillation, is required to produce *alkylate*, it is without doubt that isobutane - one of the raw materials of *alkylate*, is a product of distillation. Simply put, there can be no *alkylate* without isobutane, which is a product of distillation.

Further, We agree with the Court in Division's observation 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. The absence of any qualification in the statutory provision inevitably leads to the conclusion that as long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "*other similar products of distillation*" that is subject to excise tax.

At this juncture, it must be stressed that the findings of fact by the Court in Division are **not** to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[18]

Hence, in the absence of any compelling evidence to the contrary, We sustain the findings of the Court in Division that *alkylate*, being a product of distillation 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.

Petitioner has the burden to prove its entitlement to refund.

Petitioner insists that the Court in Division erred in ruling that its claim for refund was based on an exception. According to petitioner, its request for refund is grounded on the absence of *alkylate* from the list of excisable articles under Sections 148 (e) and (f) of the NIRC of 1997, as amended; and that it has discharged its burden by pointing out that *alkylate* was not among the excisable articles enumerated under the said provisions. Hence, the burden of evidence is allegedly shifted to the CIR to present evidence that Section 148 (e) or (f) of the NIRC of 1997, as amended, cover *alkylates*.

We are not persuaded.

It is well settled that the party who alleges a fact has the burden of proving it.[19] In refund claims, the burden of proof to establish

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[18] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service, Inc.* v. *Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446. Refer also to *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018.

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

entitlement thereto rests on the claimant taxpayer.[20] Needless to state, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[21] Thus, between petitioner and respondent, it is the former, being the claimant, who has the burden of proving the veracity of its claim for refund. As discussed earlier, however, petitioner failed to substantiate its claim that *alkylate* is not among the excisable articles under Section 148 (e) of the NIRC of 1997, as amended.

Further, it bears noting that tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the state.[22] Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power.[23] Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption of words too plain to be mistaken and too categorical to be misinterpreted. [24]

Thus, in the absence of any clear and sufficient basis for tax exemption, the Court cannot grant the refund of excise taxes sought by petitioner inasmuch as the same are not erroneously assessed or collected.

There is no double taxation in the instant case.

Petitioner claims that the imposition of excise taxes to *alkylates* amounts to double taxation. Allegedly excise taxes do not apply to *alkylate* because it is not imported for domestic sale or consumption, but to be used merely as a blending component.

We disagree.

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

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

[22] *Gulf Air Company, Philippine Branch (GF) vs Commissioner of Internal Revenue,* G.R. No. 182045, September 19, 2012

[23] *Winebrenner & Iñigo Insurance Brokers, Inc. vs Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.

[24] *JAKA Investments Corp. vs. Commissioner of Internal Revenue*, G.R. No. 147629, July 28, 2010 citing *Compagnie Financiere Sucres Et Denrees vs. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006

In the case *Commissioner of Internal Revenue vs. Bank of Commerce*[25], 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**." (*Emphasis supplied.*)

Based on the foregoing, "*direct duplicate taxation*" applies when two taxes are imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.

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.

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

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

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[25] *Commissioner of Internal Revenue vs. Bank of Commerce*, G.R. No. 149636, June 8, 2005 citing *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. No. 148191, November 25, 2003.

In sum, the Court *En Banc* sustains the Court in Division's finding that petitioner is not entitled to the refund of the excise taxes paid on its *alkylate* importations.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 24, 2020 and Resolution dated January 12, 2021, both rendered by the Court in Division in CTA Cases No. 9565, 9606 and 9645 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With due respect, please see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join the Dissenting Opinion of Presiding Justice Del Rosario)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join the Dissenting Opinion of Presiding Justice Del Rosario)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

EN BANC

PETRON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2425
(CTA Case Nos. 9565, 9606 & 9645)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:
JUN 21 2022 3:28 p

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I withhold my assent to the *ponencia* which denies the Petition for Review and affirms the assailed Decision dated August 24, 2020 and Resolution dated January 12, 2021, both rendered by the Court in Division.

I submit that petitioner is not liable to pay excise tax on its importation of alkylate. Thus, petitioner's payment thereof is considered to be an "erroneous or illegal tax"[1] which may be refunded in its favor pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

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[1] 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 respect is illegal. *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

The crux of the controversy in the case at bar is the interpretation of Section 148(e) of the NIRC of 1997, as amended, which reads:

> "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:
>
> x x x x x x x x x
>
> (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 byproducts 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;" (*Boldfacing supplied*)

In *San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue*,[2] the Supreme Court elucidated on the rule of *expressio unius est exclusio alterius*, thus:

> "Where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from its effects all those not expressly mentioned. *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

[2] G.R. No. 147749, June 22, 2006.

> made specific enumerations in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned." (*Boldfacing supplied*)

Evidently, alkylate is not found in the enumeration provided for under Section 148(e) of the NIRC of 1997, as amended. Without the express mention of alkylate, there is no other conclusion than that the Legislature did not intend for such product to be taxed. In case of doubt, laws imposing taxes are strictly construed against the government and liberally in favor of the taxpayer. As held by the Supreme Court in *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*:[3]

> "x x x 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." (*Boldfacing supplied*)

The *ponencia* rules that alkylate falls under the phrase "other similar products of distillation" because one of the raw materials needed to create alkylate, **isobutane**, is a product of distillation. Affirming the findings of the Court in Division, the *ponencia* holds that "the process of distillation contributes to the production, purification and enhancement of alkylate for it to be fitted as fuel additives."

However, alkylate in itself is not a product of distillation but of alkylation, the latter being a separate and distinct process from the former. This is supported by the sworn statement of petitioner's expert witness, Simon Christopher Mulqueen, who holds a degree in Chemistry from the University of Newcastle Upon Tyne in the United Kingdom, and occupies the position of Director for Technical Services for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel Specialties, *viz.*:

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[3] G.R. Nos. 167274-75, July 21, 2008.

"Q-21 Based on the process you explained, is alkylate a product of distillation?

A-21 No.

Q-22 Why do you say that alkylate is not a product of distillation?

A-22 Alkylation is a chemical reaction combining two components to make a singly different component. Distillation, on the other hand, is a simple separation or fractionation process of a mixture containing two or more compounds into its constituent parts. Hence, alkylation and distillation are entirely different processes.

Q-23 Is it correct to say that distillation is part of the process for the production of alkylation?

A-23 No, during the alkylation processes chemical reactions occur to combine starting materials into a single material known as alkylate. Distillation in general terms describes the separation of a mixture into its constituent parts and therefore the term distillation does not accurately describe the chemical process of alkylation."[4]

Another expert witness, Joey D. Ocon, who holds a Bachelor's degree and Master's degree in Chemical Engineering from the University of the Philippines (UP), and a Doctorate degree in Environmental Science and Engineering from Gwangju Institute of Science and Technology in the Republic of Korea, and is a tenured Assistant Professor at the Department of Chemical Engineering of UP, testified that alkylate is **not** a by-product of distillation, to wit:

"Q-23 **Based on your findings in your Technical Report, is alkylate a by-product of distillation?**

A-23 **No**. As stated in page 16 of my Technical Report under the subheading "Summary", the unit process of alkylation is the primary process and is a requisite in the formation of alkylates.

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[4] Exhibit "P-98", Division Docket, Vol. II, pp. 509-510.

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As shown in Figures 2 and 3 of my Technical Report, alkylates are derived already after the feedstock are processed in the alkylation reactor.

The unit operation of distillation will not form the liquid-phase alkylates, but it is installed to mainly recover propane and excess iso-butane gases, where the latter is to be recycled back to the alkylation reactor.

Q-24 **Is it correct to say that distillation is a process necessary for the production of alkylate?**

A-24 **No**. Distillation merely involves the physical separation of the different components of a mixture. At least for the production of alkylate, distillation may even be replaced by other unit operations, such as crystallization, solvent extraction, and stripping.

For the production of alkylate, it is the process of alkylation that is absolutely necessary and this is employed further down the line in refineries. Distillation occurs after alkylation, but for the sole purpose of recycling back the excess raw materials (i.e. iso-butane) or to improve the quality of the alkylate produced.

x x x x x x x x x"[5]
(*Boldfacing supplied*)

Although isobutane can be a product of distillation, this does not justify the imposition of excise tax on alkylate. Section 148(e) of the NIRC of 1997, as amended, imposes excise tax on the following products: (a) naphtha; (b) regular gasoline; and (c) other similar products of distillation, and not on the ingredients or raw materials to come up with naphtha, regular gasoline and such 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, it is convenient to use common consumable household items which analogously illustrate the essence of how a "finished product" should be appreciated:

[5] Exhibit "P-94", Division Docket, Vol. II, p. 528.

(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?

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, isobutane, is produced by distillation. Alkylate is undisputedly a product of alkylation.

While the *ponencia* rules 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, such interpretation is not supported by the statutory construction rule of *ejusdem generis*. In *Pelizloy Realty Corporation vs. The Province of Benguet*,[6] the Supreme Court discussed the said rule, thus:

> "Under the principle of *ejusdem generis*, '**where a general word or phrase follows an enumeration of particular and specific words of the same class** or where the latter follow the former, **the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned**.'
>
> The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas* as follows:
>
> > The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by **treating the particular words as indicating the class and the general words as including all that is embraced in said class**, although not specifically named by the particular words. This is justified on the ground that if the law[-]making body intended the general terms to be used in their unrestricted sense, it

[6] G.R. No. 183137, April 10, 2013.

> would have not made an enumeration of particular subjects but would have used only general terms." (*Boldfacing supplied*)

It is evident that the phrase "other similar products of distillation" is preceded by "naphtha" and "regular gasoline". Under the principle of *ejusdem generis*, it is proper to construe the phrase "other similar products of distillation" in relation to the same class where "naphtha" and "regular gasoline" belong.

Naphtha and regular gasoline are the immediate or primary products of distillation. This is supported by the sworn statement of expert witness Mulqueen, *viz.*:

> "Q-20 In the case of crude oil, what are the primary products upon its distillation?
>
> A-20 The primary products of distillation can vary for each individual crude oil but typically range from light hydrocarbon such as propane and butane gas to light gasoline and naphtha components. Kerosene and gas oil fractions may also be produced followed by residual components i.e. atmospheric or vacuum residues, depending on the distillation process."[7]

Considering that naphtha and regular gasoline are the primary products of distillation, it must also be construed that "other similar products of distillation" refer to products which are primarily produced by distillation.

As discussed, alkylate is not a primary product of distillation but of alkylation. Only one of the raw materials necessary to make alkylate, isobutane, is a primary product of distillation.

In fine, alkylate cannot be classified or embraced under the catch-all item of "other similar products of distillation" under Section 148(e) of the NIRC of 1997, as amended. 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. Thus, petitioner's payments of excise taxes in 2015 for its importation of alkylate are considered erroneous and can be the proper subject of refund.

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[7] Exhibit "P-98", Division Docket, Vol. II, p. 509.

Petitioner claims refund of excise taxes paid on the importation of 14,989,071 liters of alkalyte in the total amount of ₱65,202,458.00, as shown below:

CTA Case No.	Import Entry No.	Vessel Name	Importation/ Arrival Date	Volume (in liters)	Date of Payments	Amount of Excise Taxes Paid (at ₱4.35 per liter)
9565	381050670[8]	M/T London Trader	04/07/2015	5,004,584	04/07/2015; 07/02/2015	₱ 21,769,940.00
9606	382180473[9]	M/T Pyxis Malou	06/04/2015	5,102,887	06/05/2015; 10/06/2015	22,197,558.00
9645	383756967[10]	M/T Golden Pioneer	09/22/2015	4,881,600	09/28/2015; 02/19/2016	21,234,960.00
Total				**14,989,071**		**₱ 65,202,458.00**

To prove its claim, petitioner submitted documents for each of the three import entries it transacted with the Bureau of Customs (BOC), such as Bills of Lading,[11] Commercial Invoices,[12] Customs Payment Receipts,[13] BOC Certifications,[14] Authority to Release Imported Goods,[15] and Certificates of Independent Survey[16].

To prove the fact of importation and the corresponding payment of duties and taxes through the electronic-to-mobile (e2m) customs system, it is required that an importer presents, at the very least, **BOTH** the: (1) Import Entry and Internal Revenue Declaration (IEIRD)/Single Administrative Document (SAD), which must contain the necessary details and statements as required by law, rules and regulations; and (2) Statement of Settlement of Duties and Taxes (SSDT) or any other document issued by the BOC evidencing payment of customs duties and taxes.

Petitioner submitted the IEIRDs for the three importations. It is noted that even if petitioner did not offer in evidence the SSDTs, nevertheless, the Customs Payment Receipts (CPRs), supported by BOC Certifications, are sufficient to establish payment of taxes and charges, and which were all issued by the BOC.

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[8] Exhibit "P-5" to "P-5-a", Division Docket, Vol. III, p. 1127.
[9] Exhibit "P-13" to "P-13-a", Division Docket, Vol. III, p. 1148.
[10] Exhibit "P-21" to "P-21-a", Division Docket, Vol. III, p. 1167.
[11] Exhibits "P-1", "P-9", "P-17", Division Docket, Vol. III, pp. 1112, 1133, 1152.
[12] Exhibits "P-2", "P-10" to "P-10-a", "P-18", Division Docket, Vol. III, pp. 1113, 1134-1135, 1153.
[13] Exhibits "P-6", "P-7", "P-14", "P-15", "P-22", "P-23", Division Docket, Vol. III, pp. 1128-1129, 1130-1131, 1149, 1150,1168-1169, 1170-1171.
[14] Exhibits "P-8", "P-16", "P-24", Division Docket, Vol. III, pp. 1132, 1151, 1172.
[15] Exhibits "P-4", "P-12, "P-20, Division Docket, Vol. III, pp. 1126, 1147, 1166.
[16] Exhibits "P-3", "P-11, "P-19, Division Docket, Vol. III, pp. 1114-1126, 1136-1146, 1154-1165.

Perusal of the IEIRDs reveals that petitioner initially declared and paid taxes and charges in the total amount of ₱114,170,341.00. Upon verification of the BOC, the taxes and charges imposable on the importations amounted to ₱121,928,929.00, leaving a difference of ₱7,758,587.00, as shown below:

Exhibit No.	Date	Taxes and Charges	Declaration	Findings	Differences
CTA Case No. 9565/IEIRD No. 381050670					
"P-5" to "P-5-a"	04/06/2015	VAT	₱ 16,888,906.00	₱ 18,396,238.00	₱ 1,507,332.00
		Excise Tax	21,769,940.00	21,769,940.00	-
		IPF	1,000.00	1,000.00	-
Total			**38,659,846.00**	**40,167,178.00**	**1,507,332.00**
CTA Case No. 9606/IEIRD No. 382180473					
"P-13" to "P-13-a"	Unreadable	VAT	15,836,174.00	19,268,408.00	3,432,234.00
		Excise Tax	22,156,977.00	22,197,558.00	40,581.00
		IPF	1,000.00	1,000.00	-
Total			**37,994,150.00**	**41,466,966.00**	**3,472,815.00**
CTA Case No. 9645/IEIRD No. 383756967					
"P-21" to "P-21-a"	09/25/2015	VAT	16,277,885.00	19,056,060.00	2,778,175.00
		Excise Tax	21,234,960.00	21,234,960.00	-
		IPF/CGL/DF	3,500.00	3,765.00	265.00
Total			**37,516,345.00**	**40,294,785.00**	**2,778,440.00**
Grand Total			**₱ 114,170,341.00**	**₱ 121,928,929.00**	**₱ 7,758,587.00**

Petitioner submitted in evidence copies of CPRs to show that the taxes and charges for the importations of alkylate subject of Import Entry Nos. 381050670, 382180473, and 383756967 in the amount of ₱40,167,178.00, ₱41,466,966.00 and ₱40,294,785.00, respectively, or a total amount of ₱121,928,929.00, as shown below, were paid:

Proof of Payment	Exhibit No.	Date	Amount
IEIRD No. 381050670			
Customs Payment Receipt No. 2015 R 64	"P-6"	04/07/2015	₱ 38,659,846.00
Customs Payment Receipt No. 2015 R 167	"P-7"	07/02/2015	1,507,332.00

(M)

Total Amount Paid			**40,167,178.00**
IEIRD No. 382180473			
Customs Payment Receipt No. 2015 R 144	"P-14"	06/05/2015	37,994,150.00
Customs Payment Receipt No. 2015 R 245	"P-15"	10/06/2015	3,472,816.00
Total Amount Paid			**41,466,966.00**
IEIRD No. 383756967			
Customs Payment Receipt No. 2015 R 235	"P-22"	09/28/2015	37,516,345.00
Customs Payment Receipt No. 2016 R 25	"P-23"	02/19/2016	2,778,440.00
Total Amount Paid			**40,294,785.00**
Grand Total			**₱ 121,928,929.00**

To show the breakdown of the total payments reflected in the CPRs, petitioner submitted in evidence BOC Certifications showing that the BOC received payment of the above taxes and charges, the breakdown of which are reflected as follows:

Exhibit No.	Date	Taxes and Charges	Amount
IEIRD No. 381050670			
"P-8"	08/19/2015	VAT	₱ 18,396,238.00
		Excise Tax	21,769,940.00
		IPF	1,000.00
Total Amount Paid			**40,167,178.00**
IEIRD No. 382180473			
"P-16"	09/27/2016	VAT	19,268,408.00
		Excise Tax	22,197,558.00
		IPF	1,000.00
Total Amount Paid			**41,466,966.00**
IEIRD No. 383756967			
"P-24"	03/07/2016	VAT	19,056,060.00
		Excise Tax	21,234,960.00
		SGL	2,500.00
		IPF	1,000.00
		D&F	265.00
Total Amount Paid			**40,294,785.00**
Grand Total			**₱ 121,928,929.00**

Based on the above table, the total excise taxes paid by petitioner and received by the BOC on the subject importations amounted to ₱65,202,458.00, as summarized below:

CTA Case No.	**Amount of Excise Tax**
9565	₱ 21,769,940.00
9606	22,197,558.00
9645	21,234,960.00
Total	**₱ 65,202,458.00**

Claims for refund are civil in nature and as such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash.[17] Verily, with petitioner having offered both testimonial and documentary evidence to prove its entitlement for refund, *sans* any contrary evidence offered by the respondent, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper.

ALL TOLD, I **VOTE** to:

(1) Grant the Petition for Review;

(2) Reverse and set aside the Decision dated August 24, 2020 and Resolution dated January 12, 2021, both rendered by the Court in Division; and

(3) Order respondent to refund and/or issue a tax credit certificate in favor of petitioner Petron Corporation in the amounts of ₱21,769,940.00 in CTA Case No. 9565, ₱22,197,558.00 in CTA Case No. 9606, and ₱21,234,960.00 in CTA Case No. 9645, or a total of ₱65,202,458.00, representing its excise taxes paid in the year 2015 on the importation of alkylate.

ROMAN G. DEL ROSARIO
Presiding Justice

[17] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.