REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

CTA CASE NOS. 9565, 9606 & 9645

Members:

- versus -

CASTAÑEDA, JR., *Chairperson,* *and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 12 2021 4:30 p.m.

x -x

RESOLUTION

CASTAÑEDA, J.:

Submitted before this Court is petitioner's **Motion for Partial Reconsideration (re: Decision dated 24 August 2020)** filed on September 14, 2020, without respondent's comment as per Records Verification dated October 14, 2010.

On August 24, 2020, this Court promulgated a Decision in the present consolidated cases denying petitioner's claims for refund in the aggregate amount of ₱65,202,458.00, representing the excise taxes it paid on the *alkylate* importations covered by Import Entry and Internal Revenue Declaration (IEIRD) Nos. 00381050670, 00382180473, and 00383756967, on various dates from April to September 2015, the dispositive portion of which reads as follows:

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

In its Motion, petitioner prays that the above Decision be reconsidered but only with regard to the findings that the *alkylate* importations are subject to excise taxes, and that there was no double taxation made in the present consolidated cases. Petitioner raises the following grounds in support of its arguments, *viz.*:

I. The Honorable Court violated the principle of construing tax laws strictly against the government and in favor of the taxpayer. The Commissioner of Internal Revenue had the burden to prove – by preponderance of evidence – that alkylate is a product of crude oil distillation.

II. Alkylate cannot be both produced by alkylation, as this Honorable Court found, and also be a 'similar product of distillation' simply because olefins and isobutane – its raw materials – *may* or could possibly be products of distillation. The nature of a part should not and cannot logically determine the nature of the whole. In ruling that alkylate is produced by alkylation and <u>not</u> distillation, this Honorable Court had already resolved the issue in favor of petitioner.

III. Excise taxes do not apply to alkylate becase it is not imported for domestic sale or consumption or for any other disposition. There was double taxation when alkylate was taxed twice – first upon importation, and then again, upon withdrawal of the finished petroleum products (which also includes alkylate as a blending component) from petitioner's refinery.

As to the first ground, petitioner claims that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports since tax statutes are construed *strictissimi juris* against the government. Petitioner insists that it is under no obligation to prove the non-taxibility of an article or commodity that is not specifically mentioned under a tax statute, conversely it is the government that bears the burden of proving that a specific article is subject to tax. According to petitioner, the Court has done the opposite as it placed the burden to petitioner in proving that alkylate is not subject to excise tax under Section 148(e) of the National Internal Revenue Code (NIRC) of 1997, as amended, instead of requiring respondent to prove that *alkylate* is subject to excise tax. Petitioner also cites the case of *Commissioner of Internal Revenue v.*

Fortune Tobacco,[1] wherein it claims that the doctrine of strict interpretation in the imposition of taxes was applied in the sense that there is no law, including Section 148(e) of the NIRC of 1997, as amended, which specifically names *alkylate* as an article subject to excise tax.

With regard to the second ground, petitioner reiterates that *alkylate* is not a product of distillation since it was not produced by distilling crude oil. According to petitioner, Section 148(e) does not tax articles or products "whose raw materials" are products of distillation since the provision taxes only naphtha, regular gasoline and other similar products of distillation. Thus, it would defy logic to extend Section 148(e) to products "whose raw materials are products of distillation" (or so-called "indirect" products of distillation). Petitioner further claims that *alkylate* is not similar in nature to naphtha and regular gasoline in use, purpose, or nature – clearly, *alkylate* cannot be considered as similar products of distillation under Section 148(e) of the NIRC of 1997, as amended. More so, petitioner continues that taxing articles based on their raw materials would set a dangerous precedent not only for petitioner, but for all taxpayers who are now at the mercy of respondent's interpretation of the NIRC of 1997, as amended.

Lastly, as to the third ground, petitioner points out that considering that the *alkylate* imported by petitioner is not removed from customs custody for domestic sale or consumption, but to be used merely as a blending component, the same should not therefore be subject to excise tax.

Accordingly, this Court finds petitioner's Motion for Partial Reconsideration bereft of merit.

At the outset, it must be emphasized that it was petitioner who brought the present consolidated cases to this Court in order to claim refund or issuance of tax credit certificate on its *alkylate* impotations based on allegedly erroneously, wrongfully, illegally and excessively imposed and collected excise taxes by respondent through the Bureau of Customs (BOC) Memorandum Circular No. 164-2012. Thus, between petitioner and respondent, it is the former that must substantiate its claim that a refund is justified under the law, after all, the Court recognizes, as it always has, that the burden of proof to

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

establish entitlement to refund falls on the taxpayer claimant.[2] In fact, 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.[3] The Court finds the case of *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue,*[4] instructive on the matter, to wit:

> "Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority; and **he who claims an exemption must be able to justify his claim by the clearest grant of statute**.
>
> In the instant case, petitioner seeks a refund. Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. x x x."

Evidently, taxation is the rule, exemption is the exception. Thus, it is incumbent upon petitioner to clearly show the legal basis for claiming that it is entitled to a tax refund, which as succinctly discussed in the assailed Decision, petitioner unfortunately failed to do so.

Similarly, this Court also does not agree with petitioner's claim that the Court should have applied the doctrine of strict interpretation in the imposition of taxes, pursuant to the case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation,*[5] *("Fortune Tobacco case" hereafter for brevity).* ✓

---

[2] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 168856, August 29, 2012.
[3] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.
[4] G.R. No. 133834, August 28, 2006.
[5] Supra Note 1.

Noticeably, in the *Fortune Tobacco case*, the Supreme Court categorically ruled that "[b]y **adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000**, Revenue Regulations No. 17-99 effectively imposes a tax which is the higher amount between the ad valorem tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph[s] (1)-(4), as increased by 12% — **a situation not supported by the plain wording of Section 145 of the Tax Code**." Conversely, however, in the present consolidated cases the basis used by this Court is duly supported by the plain language or wording of Section 148(e), which states that:

> "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**:
>
> x x x
>
> (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;" *(Emphases supplied)*

A closer look at the provisions of the said section readily shows that the word "distillation" is only found in the phrase "other similar products of distillation". There is nothing therein that suggests that distillation should be the **primary or direct process** through which the product is formed in order to fall within the scope of the proviso. The absence of such qualification leads to conclusion that so 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 under Section 148(e). As the legagl maxim goes, *ubi lex non distinguit nec nos distinguere debemus* (where the law does not distinguish, the Court should not distinguish).

Henceforth, there is no basis for petitioner to insist that the products subject to excise tax under Section 148 of the NIRC of 1997, as amended, should only be limited to distillation products primarily derived from distillation of crude oil like naptha and regular gasoline.

In the same vein, the Court also rejects petitioner's claim that *alkylate* is not a product of distillation since it was not produced by distilling crude oil.

As pointed out in the assailed Decision, it can be deduced from the testimonies of petitioner's witnesses that, while *alkylate* is not directly produced through the process of distillation but by alkylation, still, it 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.

More so, the Court emphasized that the process of distillation does not stop there, as *alkylate* product has to be recovered *via* a distillation process to improve its quality. In fact, petitioner's own expert witness, Dr. Joey D. Ocon, even stated that iso-butanes are typically supplied in excess relative, around six to ten times more than the olefins. Thus, they have to be recovered *via* a distillation process to recycle them back into the alkylation reactor for purposes of purifying and enhancing the quality of the produced *alkylates* or recycling excess raw materials.[6] Simply stated, the process of distillation is also employed after alkylation to improve the quality of produced *alkylates*.

Taking all of the foregoing into consideration, the Court concludes 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* in order for it to be fitted as fuel additives or blending components in the production of motor fuel or gasoline. As such, the Court considers *alkylate* as a product of distillation similar to naphtha and regular gasoline and, therefore, subject the same to excise tax under Section 148(e) of the NIRC of 1997, as amended.

Lastly, with regard to the third ground raised by petitioner, the Court is likewise not swayed. Incidentally, for double taxation in the objectionable or prohibited sense to exist, the same property must be taxed twice, when it should be taxed but once. Both taxes must be imposed on the same property or subject-matter, for the same purpose, by the same taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax.[7]

In the present consolidated cases, there is no double taxation in the prohibited sense as the taxes mentioned by petitioner are imposed on two (2) different subject matters – the subject matter of the tax imposed is on the importation of *alkylate*, while the excise tax imposed on the alleged use of *alkylate* as a blending component or raw material to produce another taxable article or goods.

Indeed, upon importation, an excise tax is imposed. When the imported goods go through reprocessing, an imposition of tax happens again. However, there is no double taxation in this case since one of its elements is lacking, *i.e.*, that the two taxes must be imposed on the same subject matter. This is so because the first imposition is upon the importation of goods, and the second, upon removal or reprocessed goods from production site. In other words, the first imposition is simply concerned with the importation of articles, while the subsequent imposition is on the manufacturing or

---

[6] Q-17, Exhibit "P-94", Docket (CTA Case No. 9565) – Vol. II, p. 526.

[7] *La Suerte Cigar and Cigarette Factory v. Court of Appeals, et al.*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 and 165499, November 11, 2014; citing the cases of *Procter & Gamble Philippine Manufacturing Corporation v. Municipality of Jagna*, 183 Phil. 453, 461 (1979) and *Villanueva vs. City of Iloilo*, 135 Phil. 572, 588 (1968).

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. As a result, no double taxation exists.

Accordingly, in view of the foregoing disquisitions, the Court finds no new matter or compelling reason to justify the reversal or modification of the assailed Decision.

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

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice