REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PETRON CORPORATION, Petitioner,	**CTA CASE NOS. 9327 and 9460**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 15 2021 4:0 p.m.

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AMENDED DECISION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Petron Corporation's (**petitioner's**) Motion for Partial Reconsideration (re: Decision dated 5 October 2020)[1] [**MPR**], filed on 21 October 2020, with respondent Commissioner of Internal Revenue's (**respondent/CIR's**) Opposition (Re: Motion for Partial Reconsideration)[2], filed on 10 November 2020.

In its bid to reverse the assailed Decision, petitioner puts forward the following arguments, to wit:

I.
THIS HONORABLE COURT VIOLATED THE PRINCIPLE OF CONSTRUING TAX LAWS STRICTLY AGAINST THE GOVERNMENT

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[1] Division Docket (CTA Case No. 9327), Volume III, pp. 1237-1265.
[2] Id., pp. 1268-1279.

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.

THE NATURE OF A PART DOES NOT NECESSARILY DETERMINE THE NATURE OF THE WHOLE. THERE IS NO BASIS TO RULE THAT ALKYLATE IS A "PRODUCT OF DISTILLATION" SIMPLY BECAUSE ISOBUTANE - ONE OF ITS RAW MATERIALS - MAY BE A PRODUCT OF DISTILLATION. IN RULING THAT ALKYLATE IS PRODUCED BY ALKYLATION AND NOT DISTILLATION, THIS HONORABLE COURT HAD ALREADY RESOLVED THE ISSUE IN FAVOR OF PETITIONER PETRON CORPORATION.

III.

EXCISE TAXES DO NOT APPLY TO ALKYLATE BECAUSE 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 PRODUCT (WHICH ALSO INCLUDES ALKYLATE AS A BLENDING COMPONENT) FROM ITS REFINERY.

First, petitioner contends that a tax statute will not be construed as imposing a tax unless it does so clearly, expressly and unambiguously. Stated differently, a taxpayer is under no obligation to prove the non-taxability of an article that is not specifically taxed under a tax statute. It points out that respondent, in imposing excise tax based on Section 148(e)[3] of the National Internal Revenue Code

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[3] **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 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, [Z]ero (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[.] *(Emphasis supplied)*

...

(**NIRC**) of 1997, as amended, did not dispute that the said provision did not clearly, expressly and unambiguously cover "alkylate" as it only mentions naphtha and regular gasoline.

Petitioner cites the Supreme Court ruling in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[4] (**Fortune**), where it was held that the strict construction (of tax exemptions) would not apply to a claim for refund premised on the erroneous payment of tax or the government's exaction of a tax in the absence of the law. Since its claim for refund is banked on the erroneous payment of tax in the absence of a law, the applicable rule is the *doctrine of strict interpretation* in the imposition of taxes against the government, and not the strict construction rule. Considering that there is doubt on whether alkylate is encompassed under Section 148(e) of the NIRC of 1997, as amended, petitioner contends that such ambiguity should have been resolved in petitioner's favor.

Second, petitioner claims that there is no evidence to prove how alkylate (assuming that it is a product of crude oil distillation) was similar to naphtha and regular gasoline. According to petitioner, there was a logical error when the Court ruled that alkylate was a product of alkylation but nonetheless subjected the same to excise tax just because its raw materials, olefins and isobutane, were products of distillation. Petitioner points out that Section 148(e) of the NIRC of 1997, as amended, does not tax products of olefins, isobutane or substances derived from products of distillation. Rather, the provision covers "naphtha, regular gasoline and other products of distillation." The provision clearly covers other products of distillation, not products which raw materials are products of distillation.

Even assuming alkylate is to be considered as a product of distillation, petitioner maintains that it is not similar to naphtha or regular gasoline. Alkylate will not be taxable under Section 148(e) of the NIRC of 1997, as amended, if the statutory construction principle of *ejusdem generis* will be applied. In cases where the principle of *ejusdem generis* was used in interpreting statutes, the Supreme Court has adopted the following criteria, namely: (1) the intended use or purpose of the article; and, (2) the nature of the particular terms.

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

As to the first criteria, petitioner states that Section 148(e) of the NIRC of 1997, as amended, refers to finished products intended for sale to consumers. Unlike naphtha and regular gasoline, 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. Alkylate has no use as a product by itself as it does not have the necessary volatility to run the engine. Hence, alkylate does not fall under the same criteria as naphtha and regular gasoline.

Petitioner adds that, in the same vein, alkylate is not of the same nature as naphtha or regular gasoline. Naphtha and gasoline are the end results from the fractional distillation of crude oil. Naphtha and gasoline come into existence immediately after heat is applied to crude oil. In contrast, alkylate will not be produced without the chemical process of alkylation. Given the difference in nature, alkylate then cannot be considered as "similar product of distillation".

Third, petitioner contends alkylate cannot be subject to excise tax because it is not imported for domestic sale or consumption or for any disposition. The accrual of the tax liability is contingent on the production, manufacture and importation of the taxable goods *and* the intention to have the goods sold or consumed or otherwise disposed of locally. Thus, considering that alkylate is merely used as a blending component and not removed from customs for domestic sale or consumption, the same should not be subject to excise tax. This construction is consistent with the prohibition on double taxation.

Petitioner submits that the imposition of excise tax on the importation of alkylate means that alkylate is taxed twice – first, upon importation, and second, upon withdrawal of the finished petroleum product from the refinery, which ultimately includes alkylate as a blending component.

On the opposing end, respondent avers that alkylate qualifies as a product similar to naphtha which is used as a gasoline blending component. Naphtha is produced either 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. 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.

Further, respondent invokes Section 131[5] of the NIRC, as amended, which imposes excise tax on imported articles. Relatedly, Section 129[6] of the same code provides that excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and *to things imported*. Since the phrase "things imported" was worded without qualification, the Court is duty-bound to apply strictly its literal meaning.

Lastly, contrary to petitioner's assertions, respondent insists that the imposition of excise tax on imported alkylate does not amount to double taxation. He maintains that importation of alkylate is a different subject from other products subject to excise tax.

We resolve.

After an assiduous review and a second hard look on the records of this case and the parties' expounded arguments *vis-à-vis* relevant jurisprudence, the Court is constrained to reconsider its earlier disquisitions articulated in the assailed Decision.

Petitioner essentially argues that alkylate is not covered by Section 148(e) of the NIRC of 1997, as amended, thus not subject to excise tax.

Section 148(e) of the NIRC of 1997, as amended, provides:

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[5] **Sec. 131**. *Payment of Excise Tax on Imported Articles.* –

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Custom Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

...

[6] **Sec. 129**. *Goods and Services Subject to Excise Taxes.* - Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported as well as services performed in the Philippines. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

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> ...
>
> **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 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[.][7]
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> ...

Indeed, alkylate is not expressly mentioned in the above-quoted provision, as petitioner claims. The crux of the present controversy, however, lies on whether alkylate is encompassed as "other products of distillation" subject to excise tax.

As can be recalled from the assailed Decision, the denial of petitioner's refund was essentially grounded on the *ratio* that alkylate, while not *directly* produced through the process of distillation, its raw materials, such as olefins and isobutane, are nevertheless products of distillation, without which alkylate cannot be formed.

Undoubtedly, as concluded by the Court, alkylate is produced through the process of alkylation. What are considered products of distillation are raw materials or blending components olefins and

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[7] Emphasis supplied.

isobutane. With this in mind, it is crucial to understand first the nature of excise tax before ascertaining that alkylate is subject thereto.

In *Exxonmobil Petroleum and Chemical Holdings, Inc. - Philippine Branch v. Commissioner of Internal Revenue*[8], the Supreme Court enumerated the conditions for the imposition of excise tax as follows:

> ...
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> Excise taxes are imposed under Title VI of the NIRC. They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported. **In effect, these taxes are imposed when two conditions concur: *first*, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC**; and *second*, that said articles are for domestic sale or consumption, excluding those that are actually exported.
>
> ...

It can be inferred from the above that for an article to be subject to excise tax, it must belong to any of the categories of goods enumerated in Title VI[9] of the NIRC of 1997, as amended. Therefore, goods are generally *not* subject to excise tax, unless otherwise provided.

As petitioner aptly pointed out, not all claims for tax refund partakes the nature of tax exemption. Rather, its claim for refund of erroneously paid taxes is premised on the *doctrine of strict interpretation*, which was applied by the Supreme Court in *Fortune*[10], to wit:

> ...
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> Finally, the Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, **Fortune Tobacco**[']**s claim for refund is premised on its erroneous payment of the**

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8 G.R. No. 180909, 19 January 2011; Citations omitted, emphasis supplied and italics in the original text.

9 EXCISE TAXES ON CERTAIN GOODS.

10 Supra at note 4; Citations omitted and emphasis supplied.

tax, or better still the government's exaction in the absence of a law.

Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.

A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.

Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, solutio indebiti, which covers not only mistake in fact but also mistake in law.

The Government is not exempt from the application of solutio indebiti. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.

Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.

What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in

> the interpretation of tax laws is that **a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously**. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.
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> ...

Applying the strict interpretation doctrine to the instant case *vis-à-vis* the Court's finding that alkylate is not a product of distillation, but of alkylation, the logical conclusion is that alkylate is not subject to excise tax. Since the Congress did not **clearly, expressly and unambiguously** impose tax on alkylate (or those which are not *directly* produced by distillation) under Section 148(e)[11] of the NIRC of 1997, as amended, petitioner's claim should have been resolved in its favor.

To reiterate, "[t]he rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. **Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.** This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import".[12]

Indeed, there must be a clear delineation between a claim for refund premised on a tax exemption under a statute and a claim for refund based on erroneous payment when the taxpayer or article, as the case may be, is *not* subject to tax. The former should be construed

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[11] Supra note 3.

[12] *Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc., et al.*, G.R. No. 141658, 18 March 2005; emphasis supplied.

against the claimant-taxpayer, whereas the latter should be construed against the government.

Petitioner's importation is placed under the second scenario, as it claims to be not subject to excise tax. We agree with petitioner for, insofar as excise tax is concerned, non-taxability is the rule, while taxability is the exception.

Verily, the absence of distinction in Section 148(e) of the NIRC of 1997, as amended, between *primary and secondary* or *direct and indirect* products of distillation should work in petitioner's favor, following the rule on strict interpretation in the imposition of taxes. To rule otherwise would be tantamount to overstretching the provision, an exercise of power which is clearly beyond the realms of judicial review.

In addition, the statutory construction principle of *ejusdem generis* is equally applicable in the instant case, thus removing alkylate from the ambit of "other products of distillation" for the sole reason that some of its raw materials undergo the process of distillation.

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".[13]

Therefore, in construing the phrase "other similar products of distillation," the same must only include or be restricted to things or cases akin to, resembling, or of the same kind or class as those specifically mentioned, that is, naphtha or regular gasoline.

Upon a careful review, We find merit in petitioner's argument that alkylate cannot be placed under the same category as naphtha and regular gasoline considering the intended purpose and nature of alkylate.

[13] *Alta Vista Golf and Country Club v. The City of Cebu, et al.*, G.R. No. 180235, 20 January 2016 citing *Pelizloy Realty Corporation v. The Province of Benguet*, G.R. No. 183137, 10 April 2013.

In sum, We find petitioner's importation of alkylate as *not* subject to excise tax under Section 148(e) of the NIRC of 1997, as amended. Consequently, petitioner is entitled to the refund of the excise taxes it paid relating to its importation of alkylate itemized as follows:

Import Entry & Internal Revenue Declaration (IEIRD) No.	Bill of Lading No.	Excise Tax Paid	Date of Payment	Authority to Release Imported Goods (ATRIG)
003744374468[14]	A-001[15]	₱26,580,431.00[16]	7 April 2014[17]	ATRIG dated 29 April 2014[18]
00376827474[19]	ML-8002[20]	₱28,236,198.00[21]	19 August 2014[22]	ATRIG dated 5 September 2014[23]

WHEREFORE, petitioner's Motion for Partial Reconsideration (re: Decision dated 5 October 2020) is hereby **GRANTED**. The dispositive portion of the Decision dated 05 October 2020 is hereby **AMENDED** to read as follows:

> **WHEREFORE**, the instant consolidated Petitions for Review docketed as CTA Case Nos. 9327 and 9460 are **GRANTED**. Accordingly, respondent is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner the amount of ₱54,816,629.00, representing the erroneously paid excise taxes on its importation of alkylate covered by Import Entry and Internal Revenue Declaration Nos. 00374437468 and 00376827474.
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> **SO ORDERED.**

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14 Exhibit "P-8", Division Docket (CTA Case No. 9327), Volume II, p. 902.
15 Exhibit "P-4", id., p. 893.
16 Exhibit "P-11", id., p. 905.
17 Exhibits "P-9" and "P-11", id., pp. 903 and 905.
18 Exhibit "P-7", id., p. 901.
19 Exhibit "P-16", id., p. 921.
20 Exhibit "P-12", id., p. 906.
21 Exhibit "P-19", id., p. 924.
22 Exhibits "P-17" and "P-19", id., pp. 922 and 924.
23 Exhibit "P-15", id., p. 920.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice/Special Member

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9327 & 9460

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 15 2021

4:00 p.m.

x---x

DISSENTING OPINION

CASTAÑEDA, JR., J.:

With all due respect, I dissent from the *ponencia* of my esteemed colleague, the Honorable Associate Justice Jean Marie A. Bacorro-Villena.

In granting the present Petition, the Amended Decision agrees with petitioner that not all claims for refund partakes the nature of tax exemption and what may be applied in cases of claim for refund premised on erroneous payment of the tax is the doctrine of strict interpretation in the imposition of taxes. The Amended Decision pointed out that Congress did not clearly, expressly, and unambiguously impose tax on alkylate (or those which are not directly produced by distillation) under Section 148(e) of the National Internal Revenue Code of 1997, as amended (1997 NIRC). Given that alkylate, not being directly produced by distillation but by alkylation, the Amended Decision held that it should not be subject to excise tax. The Amended Decision also added that the absence of distinction under the 1997 NIRC between *primary* and *secondary*, or *direct* and *indirect* products of distillation should work in petitioner's favor.

I disagree.

At the onset, it is worthy to note that the present consolidated cases are claims for refund for the excise taxes paid on petitioner's importation of alkylate. As such, that the burden of proof to establish entitlement to refund is on the claimant taxpayer.[1] 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.[2] Thus, it is incumbent upon petitioner to prove its entitlement for refund and that it has strictly complied with the conditions for the grant of the tax refund or credit.[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**.
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> 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."

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[1] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012.
[2] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.
[3] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.
[4] G.R. No. 133834, August 28, 2006.

Evidently, taxation is the rule, exemption is the exception. The law "does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[5]

In my view, the doctrine of strict interpretation in the imposition of taxes, pursuant to the *Fortune Tobacco case,* should not be applied in the present case.

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

[5] *Sea-Land Service, Inc. v. Court of Appeals, et al.,* G.R. No. 122605, April 30, 2001

> 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 above-quoted 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. As correctly held in the assailed Decision, to wit:

> "Based on the evidence presented, the Court finds that alkylate is a product of distillation.
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> It is indubitable that the raw materials used in producing alkylate, *i.e.*, light olefins and isobutene, are derived from petroleum. However, the Court finds that alkylate is still a product of distillation because while alkylate is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutene, 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 isobutene. In other words, while it is true that alkylation, not distillation, is required to produce alkylate, it is without doubt that isobutene – one of the raw materials of alkylate, is a product of distillation. Simply put, there can be no alkylate without isobutene, which is a product of distillation.
>
> Such being the case, alkylate, being a product of distillation, is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended."[6]

Evidently, 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.

With regard to the issue of double taxation, for it to be objectionable or prohibited, 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

[6] Decision, p. 22.
[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).

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 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. Therefore, no double taxation exists. As aptly held in the assailed Decision, to wit:

> "In this case, the subject matter of the tax imposed is on the importation of alkylate. And it is already a different subject matter when excise tax is imposed on the alleged use of alkylate as a blending component or raw material to produce another taxable article or goods. It must be noted that the law itself affirms this notion of two different subject matters arising from same imported article.
>
> To be sure, upon importation, there is an excise tax imposition. 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 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."[8]

In view of the foregoing, I vote to **DENY** the present Motion for Reconsideration for lack of merit.

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[8] Decision, p. 23.

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