REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PETRON CORPORATION,
Petitioner,

CTA Case Nos. **10073**, **10120** and **10205**

Members:

- versus -

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 05 2024 8:39 AM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision promulgated [0]7 March 2024)"[1] (**MR**), filed on 20 March 2024, with petitioner Petron Corporation's (**petitioner**'s/**Petron**'s) "Opposition (to Motion for Reconsideration dated 11 March 2024)"[2] (**Opposition**), filed on 17 April 2024.

Respondent seeks the reversal and setting aside of this Court's Decision[3] promulgated on 07 March 2024 (**assailed Decision**) in the above-captioned cases, which granted the instant Petitions for Review[4] and ordered respondent to refund or issue a tax credit certificate (**TCC**)

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1 Division Docket, Volume V, pp. 2535-2544.
2 Id., pp. 2547-2560.
3 Id., pp. 2476-2534.
4 Division Docket (CTA Case No. 10073), Volume I, pp. 10-40; Division Docket (CTA Case No. 10120), Volume I, pp. 10-39; Division Docket (CTA Case No. 10205), Volume I, pp. 6-35.

in favor of petitioner in the total amount of ₱67,991,825.00, representing the erroneously paid excise taxes on its importations of alkylate covered by Single Administrative Document (**SAD**) Reference Nos. 6WOA1700179, 6WOA1700404 and 6WOA1700590.

In the instant MR[5], respondent assails the Court's ruling finding petitioner entitled to a refund of ₱67,991,825.00, representing erroneously paid excise taxes on petitioner's importation of alkylate.

In support of its position, respondent once again cites the Court *En Banc*'s ruling in *Petron Corporation v. Commissioner of Internal Revenue*[6], which upheld the Court in Division's finding that Petron's alkylate importations are subject to excise under Section 148(e)[7] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, imposing an excise tax of ₱4.35 *per* liter of volume capacity of naphtha, regular gasoline and other similar products of distillation.

Respondent also cites the dissent of Associate Justice Erlinda P. Uy (Ret.) in the earlier case of *Commissioner of Internal Revenue v. Petron Corporation*[8], stating that alkylate is a product of distillation and is thus subject to the imposition of excise tax under Section 148(e) of the NIRC of 1997, as amended. Although alkylate is not directly produced through the process of distillation but rather by alkylation, its raw materials, such as light olefins and isobutane, are products of distillation.

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5 Supra at note **Error! Bookmark not defined.**.

6 CTA EB Case No. 2425 (CTA Case Nos. 9565, 9606 and 9645), 21 June 2022.

7 **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[.]

...

8 CTA EB Case No. 2527 (CTA Case Nos. 9327 and 9460), 20 April 2023.

On the other hand, in its Opposition, petitioner echoes this Court's findings in the assailed Decision. Specifically, petitioner puts forward the following countervailing arguments:

1. The instant MR should be denied outright for being *pro forma* as it failed to comply with the requirements for an MR under Section 2[9], Rule 37 of the Rules of Court, as amended, and respondent's sole argument is a mere rehash of his or her argument that has already been passed upon and rejected by this Court.

    1.a The instant MR failed to comply with Section 2, Rule 37 of the Rules of Court, as amended, as it does not point out specifically the findings or conclusions in the assailed Decision which are purportedly not supported by the evidence, or which are contrary to law. Neither does it make express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to this Court's such findings or conclusions.

    1.b Respondent has the burden of presenting matters substantially plausible or compellingly persuasive to warrant reconsideration.

    1.c The instant MR essentially raises a single ground for the reversal of the assailed Decision—that alkylate is a product of distillation because its raw materials are supposedly products of distillation—which this Court has already passed upon and rejected in the assailed Decision.

    1.d Respondent does not address any of this Court's findings and conclusions in the assailed Decision. Instead, he or she merely quotes, without explanation or context, the Court *En*

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9 Sec. 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

...

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making **express reference to the testimonial or documentary evidence or to the provisions of law** alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal. (Emphasis supplied)

Banc's Decision in CTA EB Case No. 2425 and the dissent of Associate Justice Erlinda P. Uy (Ret.) in CTA EB Case No. 2527.

2. Respondent no longer disputes the applicable rule of statutory construction that Section 148(e)[10] of the NIRC of 1997, as amended, shall be construed strictly against the government and liberally in favor of the taxpayer. Therefore, for such a provision to apply, it should "clearly, expressly, and unambiguously" cover alkylate. If there is any doubt about whether it covers alkylate, such doubt should be resolved in petitioner's favor.

   2.a As held in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[11], the rule on strict interpretation in the imposition of taxes applies to a claim for refund premised on the erroneous payment of tax or the government's exaction of a tax in the absence of a law. Accordingly, in case of doubt, a tax statute must be construed "most strongly" against the government and in favor of the taxpayer. The rule on strict construction of tax exemptions would apply only if a claim for refund is based on a tax exemption statute or a tax refund statute.

   2.b A plain reading of Section 148(e)[12] of the NIRC of 1997, as amended, shows that alkylate is not found in the enumeration of excisable articles as it only imposes excise tax on (a) regular gasoline, (b) naphtha, and (c) other similar products of distillation. Applying the principle of *expressio unius est exclusio alterius*, the exclusion of 'alkylate' from Section 148(e) is Congress' refusal to "clearly, expressly, and unambiguously" impose any excise tax thereon.

   2.c Assuming there is any doubt about whether Section 148(e) of the NIRC of 1997, as amended, covers alkylate, such doubt would have to be resolved in petitioner's favor.

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[10] Supra at note 7.
[11] G.R. Nos. 167274-75, 21 July 2008.
[12] Supra at note 7.

3. This Court correctly ruled that alkylate is not a product of distillation and is not similar to naphtha or regular gasoline.

3.a. The case records are replete with evidence supporting this Court's ruling that alkylate is not a product of distillation. It can only be produced by alkylation, and distillation is not a part of the process to produce alkylate.

3.b. Respondent's theory that alkylate is still a product of distillation because its raw materials are supposedly products of distillation, without pointing to any documentary or testimonial evidence to support such a position, is untenable. This is because the applicable rule of construction is the strict interpretation of tax laws against the government.

3.c The Supreme Court categorically held in *Petron Corporation v. Commissioner of Internal Revenue*[13] (**Petron**) that "it is incorrect to say that both raw materials [*i.e.*, olefins and isobutane] utilized to produce alkylate are products of distillation, much more to declare alkylate as a product of distillation simply because its raw materials are produced through distillation. To be sure, [Section 148(e)[14] of the NIRC of 1997, as amended], imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production".

3.d Respondent failed to refute petitioner's evidence that alkylate differs from naphtha and regular gasoline in terms of (**a**) their nature or properties and (**b**) their intended use or purpose.

3.e The Supreme Court has also declared in *Petron* that "[c]onsidering the intended purpose and nature of alkylate, it certainly cannot be placed under the same category as naphtha and regular gasoline".

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13 G.R. No. 255961, 20 March 2023.
14 Supra at note 7.

Petitioner also notes that while the Supreme Court's decision in *Petron* has yet to attain finality, it should nonetheless be given great persuasive value since it was rendered by the Highest Court of the Land. Under Section 1[15], Rule 129 of the Revised Rules on Evidence, as amended, this Court is mandated to take judicial notice of *Petron*, it being an official act of the judiciary.

We resolve.

A simple cursory of respondent's MR immediately reveals that it merely rehashed the previous argument that this Court has already exhaustively considered and passed upon in its assailed Decision. Considering that respondent forwards a similar issue already resolved, We deem that respondent's MR deserves scant consideration.

In *Shangri-la International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[16], the Supreme Court made clear that it is incumbent upon the respondent-movant to raise substantially plausible matters to warrant the relief sought, thus:

> ...
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired cause of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.
> ...

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15 Sec. 1. *Judicial notice, when mandatory.* — **A court shall take judicial notice, without the introduction of evidence,** of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **the official acts of the legislative, executive and judicial departments of the Philippines**, the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

16 G.R. No. 159938, 22 January 2007; Citation omitted.

Further, as correctly pointed out by petitioner, the instant MR should be denied outright for being *pro forma* as it lacks compliance with Section 2[17], Rule 37 of the Rules of Court, as amended. Indeed, it does not specify the findings or conclusions in the assailed Decision that lack evidence or contradict the law, nor does it reference evidence or laws contrary to this Court's findings. Respondent's burden to present compelling reasons for reconsideration has not been met. Additionally, the instant MR essentially reiterates an argument already addressed and dismissed by the Court.

It is also worth noting that the Supreme Court's decision in *Petron*, though not final, indeed carries significant persuasive value and should be considered as an official act of the judiciary. That being said, this Court, is bound to take mandatory judicial notice of the same in the resolution of the case, pursuant to Section 1[18], Rule 129 of the Revised Rules on Evidence, as amended.

Clearly from the Supreme Court's ruling in *Petron* and the testimonies of petitioner's expert witnesses, alkylate is not among the articles covered by Section 148(e)[19] of the NIRC of 1997, as amended, as it does not fall under the category of "other similar products of distillation" subject to excise tax. Moreover, Section 148(e) of the NIRC of 1997, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production. Hence, petitioner's excise tax payments upon its importation of alkylate are deemed illegal and erroneous.

ACCORDINGLY, there being no new matters raised that would have compelled this Court to revisit its prior ruling and/or reverse the same, respondent's "Motion for Reconsideration (Re: Decision promulgated [0]7 March 2024)", filed on 20 March 2024, is hereby **DENIED** for lack of merit and for being *pro forma*.

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17 Supra at note 9.
18 Supra at note 155.
19 Supra at note 7.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice