REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

CTA CASE NO. **8544**

- versus -

Members:

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

COMMISSIONER OF INTERNAL REVENUE, COMMISSIONER OF CUSTOMS AND COLLECTOR OF CUSTOMS (PORT OF LIMAY, BATAAN),
Respondents.

Promulgated: JUN 09 2022 2:06 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Respondent Commissioner of Internal Revenue's (**CIR**'s) "Motion for Reconsideration Re: Amended Decision dated 19 July 2021"[1] (**MR**) filed on 26 October 2021, with petitioner Petron Corporation's (**Petron**'s) Opposition[2] filed on 15 November 2021[3]; and,

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* Designated as Special Member *per* Memorandum dated 16 June 2021.
[1] Division Docket, Volume VI, pp. 3075-3092.
[2] Id., pp. 3095-3114.
[3] Received by the Court on 23 November 2021.

2. Petron's Motion for Entry of Judgment filed together with the said Opposition, without the CIR's comment.[4]

In the MR, the CIR mainly contends that the Court has no jurisdiction over the case due to Petron's failure to exhaust all remedies available to it in the administrative level prior to the filing of the instant case.

The CIR explains that at the time of the filing of Petron's Petition for Review, there was neither a decision nor an assessment from the CIR. According to him, the assessment was issued only by respondent Collector of Customs (**Collector**) and the decision of the Collector is not appealable to this Court.

The CIR adds that since the original petition was filed on 26 September 2012 while Petron paid the value-added tax (**VAT**) and excise tax on its importation of alkylate only on 29 November 2012 (which payment made under protest is merely the preliminary step in assailing the validity of the assessment in the administrative level), it is evident that this Court has no jurisdiction when the original petition was filed.

According to the CIR, there being no cause of action at the inception of the case, a supplemental petition cannot introduce a cause of action which was not yet in existence at the time when the original petition was filed.

Moreover, the CIR contends that there is no inaction that can be attributed to him as the amount sought to be refunded was assessed and paid to the Collector at Port of Limay, Bataan. Relatedly, claims for refund involving customs duties must be filed with the Collector and not with the CIR.

Lastly, the CIR maintains that the excise tax paid is neither erroneous nor illegal since Section 148(e)[5] of the National Internal

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[4] The CIR's Motion to Admit Attached Comment was denied in the Resolution dated 10 March 2022.

[5] **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:

...

Revenue Code (**NIRC**) of 1997, as amended, does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. Such imposition of excise tax on alkylate is confirmed by the issuance of Customs Memorandum Circular (**CMC**) No. 164-2012[6], which was issued in the exercise of quasi-legislative function of respondent Commissioner of Customs (**COC**). Thus, unless and until the same has been declared null and void, Petron cannot contend that the excise tax paid on alkylate is illegal or erroneous.

On the other hand, in its Opposition with Motion for Entry of Judgment, Petron contends that the CIR's MR is *pro forma* which did not toll the reglementary period for the latter to appeal the assailed Amended Decision dated 19 July 2021[7] (**assailed Amended Decision**).

Specifically, the CIR's MR does not contain reference to any specific findings or conclusions in the assailed Amended Decision alleged to be contrary to law or not supported by evidence, as required by the rules. A perusal thereof reveals that only three (3) paragraphs out of the entire MR, particularly the first 3 paragraphs in page 15 thereof, are actually about the assailed Amended Decision. In fact, the issues on the Court's jurisdiction and whether Petron has a cause of action were not even discussed in the Amended Decision.

Since the filing of the *pro forma* MR did not toll the running of the reglementary period, the assailed Amended Decision should already be considered final and executory as of 02 November 2021.

(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, [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[.]

...

6 Exhibit "C(S.O.)", Division Docket, Volume I, pp. 90-94.

7 Id., Volume VI, pp. 3053-3065.

Petron further asserts that the issue of jurisdiction has long been settled and the CIR's arguments, which completely ignore the fact that the same have been laid to rest by no less than the Supreme Court, must be rejected outright.

Petron insists that the Supreme Court ruled the supervening events have already mooted the issue of prematurity. Thus, a further litigation on the question of the jurisdiction of the Court is now barred by the principle of *law of the case*.

Petron also reiterates that alkylate is not among the products taxable under Section 148(e)[8] of the NIRC of 1997, as amended.

For Petron, the CIR's assertion that the aforementioned provision does not distinguish between primary and secondary products of distillation must fail because it disregards the fact that the said provision imposes taxes only on substances similar to gasoline and naphtha, which are primary or direct products of distillation. In addition, the intended purpose and nature of alkylate are also different from those of naphtha and gasoline. Thus, following the principle of *ejusdem generis*, the generic words "other similar products of distillation" shall be limited to those of similar nature as naphtha and regular gasoline.

Petron adds that to allow the CIR's proposition that even secondary products of distillation are covered by Section 148(e) of the NIRC of 1997, as amended, is dangerous and may open the floodgates to indiscriminate taxation. If the law does not distinguish between primary and secondary products of distillation, neither does it distinguish between tertiary, quaternary, quinary, senary, etc. products of distillation. Such dangerous and illogical expansion of Section 148(e) of the NIRC of 1997, as amended, goes against the principle of strict construction of tax laws.

We resolve.

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8 Supra at note 5.

PETRON CORPORATION'S MOTION
FOR ENTRY OF JUDGMENT

In the Motion for Entry of Judgment, Petron contends that the CIR's MR does not contain reference to any specific findings or conclusions in the assailed Amended Decision alleged to be contrary to law or not supported by evidence. As the said MR is *pro forma* and did not toll the reglementary period for appeal, the assailed Amended Decision should already be considered final and executory and must be entered into the books of entries of judgment.

We do not agree.

A perusal of the said MR would reveal that while only briefly discussed, the CIR nevertheless argued on the substantive aspect of the case, that is, whether the alkylate imported by Petron is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

At any rate, in *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*[9], where the Supreme Court observed that the MR subject thereof lacks the required notice of hearing (which would also make such motion *pro forma*), it was nonetheless held that procedural rules may be relaxed when its stringent application would hinder rather than serve the demands of substantial justice, *viz*:

> ...
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> The importance of notice of hearing cannot be overemphasized. It is intended to "prevent surprise and to afford the adverse party a chance to be heard before the motion is resolved by the court." This is in keeping with the fundamental principle of procedural due process. "Where a motion has no notice of hearing, it is considered *pro forma* and does not affect the reglementary period for the filing of the requisite pleading."
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> **Nevertheless, it is also well-settled that procedural rules may be relaxed when a "stringent application of [the same] would hinder rather than serve the demands of substantial justice." This is because "rules of procedure must be viewed as mere tools designed to facilitate the attainment of justice."** "Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must be avoided."
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> ...

9 G.R. No. 205466, 11 January 2021; Citations omitted and emphasis supplied.

Considering the novelty of the substantive issues raised in this case, the Court deems it proper to relax the stringent application of the rules of procedure and to decide the instant MR on the merits.

COMMISSIONER OF INTERNAL
REVENUE'S MOTION
FOR RECONSIDERATION

As to the CIR's arguments on the supposed lack of jurisdiction of this Court over the case and that no cause of action exists at the time of the filing of the original petition, it must be emphasized that such issues have been laid to rest by the Supreme Court in *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*[10] which arose from this very case, to wit:

> ...
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> Nevertheless, Petron has presently manifested that it had already complied with the protest procedure prescribed under the NIRC, and later on, filed an administrative claim for refund and/or tax credit with the BIR on November 21, 2013. Records are bereft of any showing that the CIR had already acted on its claim and hence, Petron filed before the CTA a Supplemental Petition for Review to include a claim for refund and/or tax credit of the excise tax that was levied on its *alkylate* importation. The CTA then gave due course to the petition and, as per Petron's manifestation, the parties have already been undergoing trial. Consequently, considering that the CTA had taken cognizance of Petron's claim for judicial refund of tax which, under Section 7(a)(1) of RA 1125, is within its jurisdiction, the Court finds that these supervening circumstances have already mooted the issue of prematurity. Thus, in conjunction with the *Banco De Oro* ruling that the CTA has jurisdiction to resolve *all tax matters* (which includes the validity of the CIR's interpretation and consequent imposition of excise tax on *alkylate*), the Court finds it proper to reconsider its decision.
>
> **WHEREFORE**, the motion for reconsideration is **GRANTED**. Respondent Petron Corporation's petition for review docketed as CTA Case No. 8544 is hereby **DECLARED** to be within the jurisdiction of the Court of Tax Appeals, which is **DIRECTED** to resolve the case with dispatch.
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> **SO ORDERED.**
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> ...

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[10] G.R. No. 207843, February 14, 2018; Citations omitted and emphasis in the original text.

From the foregoing, it is clear that the Supreme Court has already ruled that this Court has jurisdiction over the instant petition and that the supervening circumstances in this case have already mooted the issue of prematurity. Said Resolution of the Supreme Court has already been recorded in the Book of Entries of Judgments on 27 March 2019.[11]

As to the substantive aspect of the case, the Court finds that the CIR failed to raise any new matter which has not yet been passed upon by this Court in the assailed Amended Decision.

The CIR's main contention is that Section 148(e) of the NIRC of 1997, as amended, does not qualify whether the goods subject to excise tax under the said provision is primary or secondary product of distillation and that CMC No. 164-2012 confirms the taxability of alkylate under the said provision.

We do not agree.

The fact that Section 148(e) of the NIRC of 1997, as amended, does not qualify whether the goods subject to excise tax thereunder is primary or secondary product of distillation should work in Petron's favor for at least two (2) reasons.

First, what is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes. It must be noted that Congress did not **clearly, expressly and unambiguously** impose an excise tax on alkylate (or those which are not *directly* produced by distillation) under Section 148(e)[12] of the NIRC of 1997, as amended. Thus, the said provision (which imposes tax as opposed to providing tax exemption) must be strictly construed against the government and liberally in favor of the taxpayer.

As held in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[13]:

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11 Division Docket, Volume VI, pp. 2957-2958.
12 Supra at note 5.
13 G.R. Nos. 167274-75, 21 July 2008; Citations omitted.

> ...
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> **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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> ...

Second, following the principle of *ejusdem generis*, the phrase "other similar products of distillation," 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. Considering that the intended purpose and nature of alkylate is different from that of naphtha and regular gasoline, as discussed in the assailed Amended Decision, We so hold that alkylate cannot be considered as encompassed under the term "other similar products of distillation".

In sum, We find no adequate reason to disturb the assailed Amended Decision.

WHEREFORE, respondent's "Motion for Reconsideration Re: Amended Decision dated 19 July 2021" filed on 26 October 2021 and petitioner's Motion for Entry of Judgment filed on 15 November 2021 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(With due respect, I reiterate my D.O.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice/Special Member