

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

CTA CASE NO. 8544

Members:

- versus -

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

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

Promulgated:

JUL 19 2021

x-----x

1:20 p.m.

AMENDED DECISION

BACORRO-VILLENA, L.:

For the Court's resolution is petitioner Petron Corporation's (**petitioner's**) Motion for Partial Reconsideration (MPR), filed on 10 November 2020, without respondent Commissioner of Internal Revenue's (**respondent's/CIR's**) comment.¹ The said MPR seeks the partial reversal of the Court's Amended Decision promulgated on 21 October 2020² (**assailed Amended Decision**). The dispositive portion of the assailed Amended Decision reads:

* Designated as Special Member *per* Memorandum dated 16 June 2021.

¹ *Per* Records Verification dated 19 February 2021, Division Docket, Volume VI, p. 3048.

² Id., pp. 2990-3012.

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...

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

...

In its bid to have the assailed Amended Decision partially reversed, petitioner raises the following grounds for reconsideration:

I.

BECAUSE ALKYLATE IS NOT AMONG THE EXCISABLE ARTICLES ENUMERATED IN SECTION 148[E] OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, THE COMMISSIONER OF INTERNAL REVENUE HAD THE BURDEN TO PROVE – BY PREPONDERANCE OF EVIDENCE – THAT ALKYLATE IS A PRODUCT OF CRUDE OIL DISTILLATION. IT FAILED TO DO SO. IN FINDING THAT ALKYLATE IS SUBJECT TO EXCISE TAX, NOTWITHSTANDING THE LACK OF ANY BASIS, THIS HONORABLE COURT’S AMENDED DECISION [DATED 21 OCTOBER 2020] CONTRAVENES THE PRINCIPLE OF CONSTRUING TAX LAWS STRICTLY AGAINST THE GOVERNMENT AND IN FAVOR OF THE TAXPAYER.

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 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.

In support of the above, petitioner puts forward the following arguments.



First, petitioner contends that it is erroneous for the Court to apply the rule on strict construction of tax exemptions against it merely because the instant case involves a claim for refund.

In support of the above argument, petitioner cites the Supreme Court ruling in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*³ (**Fortune**), where it was held that the 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. On the other hand, the same rule would not apply to a claim for refund premised on the erroneous payment of tax or the government's exaction of tax in the absence of a law. In the latter case, the applicable rule is the well-settled doctrine of strict interpretation in the imposition of taxes against the government. Pursuant to this rule, a tax statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. In case of doubt, a tax statute must be construed "most strongly" against the government and in favor of the taxpayer.

According to petitioner, this rule is squarely applicable to its claim for refund, which is premised on the "absence of a law" that imposes an excise tax on alkylate. Petitioner's argument is that alkylate is not covered by Section 148(e)⁴ of the National Internal Revenue Code (NIRC) of 1997, as amended, and it is not relying (and has never relied) on a so-called "tax exemption statute" or "tax refund statute". ↗

³ G.R. Nos. 167274-75, 21 July 2008.

⁴ **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, [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[.]

...

Second, petitioner argues that there is an even more compelling ground for reversal and that is, the Court, in the assailed Amended Decision, ruled that alkylate was not directly produced by distillation but by alkylation. Petitioner further argues that Section 148(e) of the NIRC of 1997, as amended, does not tax “products whose raw materials are products of distillation”, or “substances derived from products of distillation”, or “products of olefins or isobutane”, or “substances from olefins or isobutane”. Rather, the provision plainly taxes only “[n]aphtha, regular gasoline and other similar products of distillation.” Thus, to be covered by the said provision, alkylate itself, rather than its “raw materials”, must be the “product of distillation”.

Moreover, it is petitioner’s position that it is absurd to extend the coverage of Section 148(e) of the NIRC of 1997, as amended, to products which “raw materials are products of distillation”. Logically, the nature of a part is not necessarily the nature of the whole. In fact, the Court’s categorical finding that alkylate was produced by alkylation and not distillation should have barred any conclusion that alkylate is a product of distillation.

Petitioner maintains that, even if alkylate is considered as a product of distillation, it is not similar to naphtha or regular gasoline. As such, alkylate should not be taxable under Section 148(e) of the NIRC of 1997, as amended, applying the principle of *ejusdem generis*. In cases where the principle of *ejusdem generis* was used in interpreting tax statutes, the Supreme Court has adopted the following criteria, namely: (1) the intended use or purpose of the article⁵; and, (2) the nature of the particular terms.⁶

Petitioner further claims 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 exclusively as a raw material or blending component for the manufacture of a gasoline blend which will be further blended with 10% ethanol. Alkylate has no use as a product by itself as it does not have the necessary volatility to run the engine. Since the intended use

⁵ *Philippine Basketball Association v. Court of Appeals, et al.*, G.R. No. 119122, 08 August 2000; *Pelizloy Realty Corporation v. The Province of Benguet*, G.R. No. 183137, 10 April 2013; *Alta Vista Golf and Country Club v. City of Cebu, et al.*, G.R. No. 180235, 20 January 2016.

⁶ *Murphy, Morris & Co. v. The Collector of Customs*, G.R. No. L-4608, 16 October 1908.

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or purpose of naphtha and regular gasoline differ from that of alkylate, the latter does not fall under the same criteria as the former.

Petitioner adds that alkylate is not of the same nature as naphtha or regular gasoline. Naphtha is a product of primary distillation of crude oil while alkylate is produced from alkylation and is a petrochemical derivative.⁷ In the same vein, regular gasoline, which is finished gasoline, is a specific motor fuel designed for a spark-ignition gasoline engine which must meet the volatility and octane requirements of a gasoline engine design⁸, while alkylate is a component that can be blended into finished gasoline to help meet the specification requirements, particularly those related to octane quality.⁹

Third, petitioner contends that alkylate cannot be the subject of an 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 imported by petitioner is not removed from customs custody for domestic sale or consumption but is merely used as a blending component, the same should not be subject to excise tax. According to petitioner, this interpretation 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.

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

⁷ Question and Answer No. 13, Judicial Affidavit of Mr. Ronald Q. Chiong, Division Docket, Volume IV, p. 2106.

⁸ Q&A No. 31, Judicial Affidavit of Simon Christopher Mulqueen, *id.*, Volume III, p. 1515.

⁹ *Id.*

jurisprudence, the Court is constrained to reconsider its earlier disquisitions articulated in the assailed Amended 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:

...

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[.]¹⁰

...

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

As can be recalled from the assailed Amended 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.¹¹ It was further opined that there is nothing in Section 148(e) of the NIRC of 1997, as amended, which 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*. Thus, as long as the process of distillation was employed, the resulting product thereon may fall within the ambit of "other similar products of distillation", subject to excise tax.¹²

Undoubtedly, as concluded by the Court, alkylate is produced through the process of alkylation. What are considered products of distillation are its raw materials or blending components – olefins and 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*¹³, the Supreme Court enumerated the conditions for the imposition of excise tax as follows:

...

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 VI¹⁴ of the NIRC of 1997, as amended. Therefore,

¹¹ Division Docket, Volume VI, pp. 3008-3009.

¹² Id., p. 3006.

¹³ G.R. No. 180909, 19 January 2011; Citations omitted, emphasis supplied and italics in the original text.

¹⁴ EXCISE TAXES ON CERTAIN GOODS.

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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 a 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*¹⁵, to wit:

...

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 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. 

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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.

...

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 an excise tax on alkylate (or those which are not *directly* produced by distillation) under Section 148(e)¹⁶ of the NIRC of 1997, as amended, petitioner is thus correct that its claim for refund should have been resolved in its favor. 

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It is noteworthy that the assailed Amended Decision used the word “may” in ruling that alkylate is subject to excise tax as falling within the ambit of “other products of distillation”.¹⁷ This only bolsters the fact that alkylate cannot be certainly categorized as “other products of distillation”, precisely because it is *not a direct* product of distillation.

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”.¹⁸

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 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 a 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 subject provision, an exercise of power which is clearly beyond the realms of judicial review.

¹⁷ Supra at note 12.

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

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”, even if 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”.¹⁹

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.

As petitioner’s witnesses testified, naphtha is a product of primary distillation of crude oil²⁰ while regular gasoline is a specific motor fuel designed for a spark-ignition gasoline engine which must meet the volatility and octane requirements of a gasoline engine design.²¹ On the other hand, alkylate is a mere component which can be blended into finished gasoline to help meet the specification requirements, particularly those related to octane quality.²²

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 tax it paid relating to its importation of alkylate, itemized as follows:

¹⁹ *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.

²⁰ *Supra* at note 7.

²¹ *Supra* at note 8.

²² *Id.*

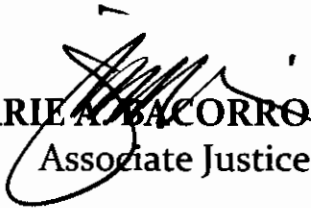
Import Entry & Internal Revenue Declaration (IEIRD) No.	Bill of Lading No.	Excise Tax Paid	Date of Payment	Authority to Release Imported Goods (ATRIG)
122406532 ²³	ML-5886 ²⁴	₱55,691,571.00 ²⁵	29 November 2012 ²⁶	ATRIG dated 23 July 2012 ²⁷

WHEREFORE, petitioner Petron Corporation’s Motion for Partial Reconsideration (re: Amended Decision dated 21 October 2020) dated 10 November 2020 is hereby **GRANTED**. The dispositive portion of the Amended Decision dated 21 October 2020 is hereby further **AMENDED** to read as follows:

WHEREFORE, the instant Petition for Review dated 24 September 2012 and Supplemental Petition for Review dated 24 January 2014 are **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Petron Corporation in the amount of ₱55,691,571.00, representing the erroneously paid excise tax on its importation of alkylate covered by Import Entry and Internal Revenue Declaration No. 122406532.

SO ORDERED.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

²³ Exhibit “P-8”, Division Docket, Volume IV, p. 1886.
²⁴ Exhibit “P-1”, id., p. 1875.
²⁵ Dorsal portion of Exhibit “P-8”, id., p. 1886. The amount of ₱55,691,571.00 is included in the total amount paid of ₱66,904,456.00.
²⁶ Exhibit “P-9”, id., p. 1887.
²⁷ Exhibit “P-5”, id., p. 1883.

AMENDED DECISION

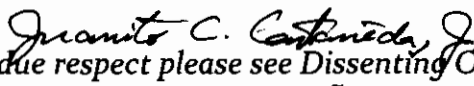
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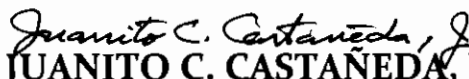
WE CONCUR:


(With due respect please see Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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 case was 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,

CTA CASE NO. 8544

Members:

- versus -

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),**

Promulgated:

Respondents.

JUL 19 2021

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DISSENTING OPINION

CASTAÑEDA, JR., J.:

Respectfully, reiterated below are the points of my dissenting opinion.

Submitted before this Court is petitioner's **Motion for Partial Reconsideration (re: Amended Decision dated October 21, 2020)** filed through registered mail on November 10, 2020, and received by the Court on November 25, 2020, without respondents' comment as per Records Verification dated February 19, 2021.

On October 21, 2020, the Court promulgated an Amended Decision denying petitioner's refund claim of erroneously paid excise taxes on its alkylate importations, the dispositive portion of which is quoted as follows: *Je*

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"WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED."

In its Motion, petitioner raises the following grounds to support its arguments, *viz.*:

- I. Because alkylate is not among the excisable articles enumerated in Section 148(e) of the Tax Code, the Commissioner of Internal Revenue has the burden to prove – by preponderance of evidence – that alkylate is a product of crude oil distillation. It failed to do so. In finding that alkylate is subject to excise tax, notwithstanding the lack of any basis, this Honorable Court's Amended Decision contravenes the principle of construing tax laws strictly against the government and in favor of the taxpayer.
- 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 not distillation, this Honorable Court had already resolved the issue in favor of petitioner.
- III. Excise taxes do not apply to alkylate because it is not imported for domestic sale or consumption or for any other disposition.

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 continues that the government bears the burden of proving that a specific article is subject to tax and that the taxpayer is under no obligation to prove the non-taxability of an article that is not specifically mentioned under a tax statute. *pe*

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To bolster its claim, petitioner cites the case of *Commissioner of Internal Revenue v. Fortune Tobacco* (Fortune Tobacco),¹ where the Supreme Court held that the rule on strict construction would apply only if a claim for refund were based on a tax exemption or tax refund statute, and conversely the rule would not apply if the claim for refund were premised on an erroneous payment of tax or the government's exaction of a tax in the absence of a law. Moreover, petitioner states that in case of erroneous payment, the applicable rule is the well-settled doctrine of strict interpretation in the imposition of taxes against the government. As such, petitioner asserts that Section 148(e) of the National Internal Revenue Code (NIRC) of 1997, as amended, which does not clearly, expressly, and unambiguously cover alkylate, should have been construed strictly against respondents and liberally in favor of petitioner. However, petitioner argues that the Court seems to have done the opposite as it placed the burden upon the petitioner to prove that alkylate is not subject to excise tax under the same provision instead of requiring respondent to prove that alkylate is subject to excise tax.

As to the second ground, petitioner insists that alkylate is not a product of distillation since it was not produced by distilling crude oil. Petitioner asserts that Section 148(e) the NIRC of 1997, as amended, does not tax "products whose raw materials are products of distillation" or "products of olefins or isobutane", or "substances derived from olefins or isobutene", instead the provision taxes only naphtha, regular gasoline and other similar products of distillation. Petitioner continues that to be covered by the provision, alkylate itself rather than its "raw materials" must be the "product of distillation". In short, the provision does not cover "indirect products" of distillation. According to petitioner, it would defy logic to extend the provision to products "whose raw materials are products of distillation" (or so-called "indirect" products of distillation). Petitioner further claims 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 construction of the NIRC of 1997, as amended. Petitioner also maintains that it is a principle in logic that the nature of a part is not necessarily the nature of whole, as such, it claims that alkylate and its raw materials (olefins and isobutane), one being the whole and the other its parts, possess their own unique and distinguishable characteristics.

Lastly, with regard to the third ground, petitioner argues that there is no evidence that the olefin and isobutane used to produce *je*

¹ G.R. Nos. 167274-75, July 21, 2008.

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alkylate in this case were in fact produced through crude oil distillation. It claims that the fact that alkylate is enhanced or purified *via* distillation does not make it a product of distillation. Petitioner likewise asserts that alkylate is not similar in nature to naphtha and regular gasoline in use, purpose, or nature, hence, alkylate cannot be considered as similar products of distillation under Section 148(e) of the NIRC of 1997, as amended.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

Notably, the petitioner's arguments are a rehash of its previous arguments that have already been considered, weighed upon, and resolved by the Court in the assailed Amended Decision.

To emphasize, the present case is a claim for refund or issuance of tax credit certificate of the alleged erroneous, wrongful, illegal, and excessive imposition and collection of excise taxes by respondent on petitioner's alkylate importations. It is a settled rule that the party who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. Mere allegation is not evidence.² The burden of proof to establish entitlement to refund is on the claimant taxpayer. 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. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.³

In the present case, petitioner claims that the Court should have applied the doctrine of strict interpretation in the imposition of taxes, pursuant to the *Fortune Tobacco* case.

I disagree.

In the *Fortune Tobacco*, 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)- *pc*

² *Dionarto Q. Noblejas v. Italian Maritime Academy Phil., Inc., et al.*, G.R. No. 207888, June 9, 2014.

³ *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

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year transition period and the specific tax under paragraph C, subparagraph[s] (1)-(4), as increased by 12% - **a situation not supported by the plain wording of Section 145 of the Tax Code.**"

Unlike the finding in *Fortune Tobacco*, however, the plain language of the law applicable in this case supports the imposition of excise tax. Section 148(e) of the NIRC of 1997, as amended, provides clearly 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:

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(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*)

The provision above readily shows that the word "distillation" can only be 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 for it to fall within the scope of the proviso. The text of the provision does *not* qualify whether the items subject to excise tax is a primary

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or secondary product of distillation. The *absence of such qualification* leads to the conclusion that so long as the process of distillation is employed, *whether directly or indirectly*, the resulting product thereof may fall within the ambit of "other similar products of distillation," that is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended. *Ubi lex non distinguit, nec nos distinguere debemus*. This legal maxim, which states that when the law does not distinguish, the Court should not distinguish, applies in this case and should guide the *correct* interpretation of the law.

Accordingly, 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 products primarily derived from distillation of crude oil like naphtha and regular gasoline.

I also find as *erroneous* petitioner's claim that alkylate is *not* a product of distillation because it was not produced by distilling crude oil.

It is significant to note that petitioner, while maintaining that alkylate is not a product of distillation, does *not* dispute the findings made by the Court as to the nature of the raw materials of alkylate and the process through which the same raw materials undergo in order to become alkylate. As the Amended Decision points out, it can be deduced from petitioner's witnesses that, while alkylate, as product of alkylation, is *not directly* produced from the process of distillation, nonetheless, it remains undisputed that its very existence was derived from the utilization of two (2) raw materials, namely olefins and isobutane, both of which are products of crude oil distillation. Thus, alkylate simply cannot come into existence without its raw materials, olefins and isobutane.

It also bears stressing that distillation does not end once the alkylate's raw materials, olefins and isobutane, are manufactured. Distillation is also used to recycle these excess raw materials and to improve the quality of the product alkylate. In fact, petitioner's own expert witness, Dr. Joey D. Ocon, even stated that isobutanes are typically supplied in excess, approximately six to ten times more than the olefins. To recover the excess isobutanes, the distillation process is used to recycle them back into the alkylation reactor for purposes of purifying and enhancing the quality of the produced alkylates and recycling the excess raw materials. Clearly, as its own witness 

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explained, petitioner also employs *distillation* to manufacture the alkylates.

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 considered fit to be used as fuel additives or blending components in the production of motor fuel or gasoline.

Without doubt, the Amended Decision *correctly* considered alkylate as a product of distillation similar to naphtha and regular gasoline and, thus, subject the same to excise tax under Section 148(e) of the NIRC of 1997, as amended.

Petitioner's argument that, considering the imported alkylate was not removed from customs custody for domestic sale or consumption but to be used merely as a blending component, the same should *not* be subject to excise tax, is also *untenable*.

Petitioner insists that the imposition of taxes on importation of alkylate means that alkylate is 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. This, it claims, amounts to double taxation, which is unjust, oppressive, confiscatory and punitive.

To review this legal concept, there is double taxation when the same taxpayer is taxed twice when he should be taxed only once for the *same purpose* by the *same taxing authority* within the *same jurisdiction* during the *same taxing period*, and the taxes are of the *same kind or character*. Double taxation is obnoxious.⁴

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

⁴ *Nursery Care Corporation, et al. v. Anthony Acevedo, et al.*, G.R. No. 180651, July 30, 2014.

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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 since one of its elements is lacking, *i.e., that the two taxes must be imposed on the same subject matter*. The *first* imposition of excise tax occurs upon the importation of goods, and the *second*, upon removal of the reprocessed goods from the production site. In other words, the first imposition is on 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*. To repeat, the excise tax covers *two different subject matters*. Consequently, no double taxation exists.

Time and again, it has been held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

Taxation is the rule and exemptions are the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.⁵

Accordingly, it is incumbent upon petitioner to clearly show the legal basis for claiming that it is entitled to a tax refund which, as discussed in the assailed Amended Decision, it failed to do so.

In view of the foregoing, I find no compelling reason that would justify the reversal or modification of the Amended Decision assailed by petitioner. *rc*

⁵ *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue (BIR), et al.*, G.R. No. 172087, March 15, 2011.

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I vote to **DENY** petitioner's Motion for Partial Reconsideration (re: Amended Decision dated October 21, 2020) for lack of merit.

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