REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION, *Petitioner,*	**CTA Case No. 9565, 9606 & 9645**
	Members:
	CASTAÑEDA, JR., *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 24 2020 1:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

These consolidated *Petitions for Review* filed on April 6, 2017, June 2, 2017, and August 8, 2017, respectively docketed as CTA Case Nos. 9565, 9645 and 9606, pray for the refund or issuance of tax credit certificates of petitioner's excise tax payment on the importation of *alkylate* covered by Import Entry and Internal Revenue Declaration (IEIRD) Nos. 00381050670, 00382180473 and 00383756967, in the amounts of ₱21,769,940.00, ₱22,197,558.00, and ₱21,234,960.00, respectively, or in the total amount of ₱65,202,458.00.[1]

THE PARTIES

Petitioner Petron Corporation is a corporation organized and existing under the laws of the Philippines, with principal office at San Miguel Corporation Head Office Complex, 40 San Miguel Avenue, 1550 Mandaluyong City.[2] It is registered as a taxpayer with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 000-168-801-00000.[3]

On the other hand, respondent Commissioner of Internal Revenue is the chief of the BIR, authorized to credit or refund taxes erroneously or illegally received, with office at the BIR National Office Bldg., BIR Road, Diliman, Quezon City, Metro Manila.[4]

THE FACTS

In the period from April to September 2015, petitioner made various *alkylate* importations, which were all subjected to excise taxes, the details of which are as follows:

Vessel name	Arrival dates	Excise Tax	Bill of Lading No.	IEIRD No.
M/T London Trader	April 7, 2015	₱21,769,940.00	LT1501-YP01[5]	00381050670[6]
M/T Pyxis Malou	June 4, 2015	₱22,197,558.00	PM-001[7]	00382180473[8]
M/T Golden Pioneer	September 22, 2015	₱21,234,960.00	SIN95T243900[9]	00383756967[10]

Petitioner paid, *inter alia*, the excise taxes thereon on the following dates:

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[1] Summary of the Case, Pre-Trial Order dated November 28, 2017, Docket (CTA Case No. 9565) – Vol. III, p. 963.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket (CTA Case No. 9565) – Vol. III, p. 930.
[3] Exhibit "P-41", Docket (CTA Case No. 9565) – Vol. III, pp. 1272 to 1273.
[4] Par. 2, Stipulation of Facts, JSFI, Docket (CTA Case No. 9565) – Vol. III, p. 929.
[5] Exhibit "P-1", Docket (CTA Case No. 9565) – Vol. III, p. 1112.
[6] Exhibit "P-5", Docket (CTA Case No. 9565) – Vol. III, p. 1127.
[7] Exhibit "P-9", Docket (CTA Case No. 9565) – Vol. III, p. 1133.
[8] Exhibit "P-13", Docket (CTA Case No. 9565) – Vol. III, p. 1148.
[9] Exhibit "P-17", Docket (CTA Case No. 9565) – Vol. III, p. 1152.
[10] Exhibit "P-21", Docket (CTA Case No. 9565) – Vol. III, p. 1167.

IEIRD No.	Date of Payment	Excise Tax Paid
00381050670	April 7, 2015[11]	₱21,769,940.00
00382180473	June 5, 2015[12]	₱22,197,558.00
	October 6, 2015[13]	
SIN95T243900	September 28, 2015[14]	₱21,234,960.00
	Total	**₱65,202,458.00**

On March 31, 2017, petitioner filed an application for tax credit or refund, seeking the recovery or refund of excise tax paid on the imported *alkylate* covered by IEIRD No. 00381050670, in the total amount of ₱21,769,940.00.[15]

Petitioner filed another application for tax credit or refund on May 30, 2017, covering the excise tax paid in the importation of *alkylate* under IEIRD No. 00382180473, in the total amount of ₱22,197,558.00.[16]

Thereafter, on July 28, 2017, petitioner likewise filed an application for tax credit or refund for the excise tax paid on the imported *alkylate* covered by IEIRD No. 00383756967, in the total amount of ₱21,234,960.00.[17]

Petitioner filed its *Petition for Review* on April 6, 2017,[18] praying for the refund of, or issuance of a tax credit certificate for, the aggregate amount of ₱21,769,940.00, allegedly representing the excise tax paid by it on the importation of *alkylate* covered by IEIRD No. 00381050670. The case was docketed CTA Case No. 9565.

On June 1, 2017, respondent filed his *Answer* (for CTA Case No. 9565),[19] interposing the following affirmative defenses, to wit:

"AFFIRMATIVE DEFENSES

I. THE HONORABLE COURT HAS NO

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[11] Exhibit "P-8", Docket (CTA Case No. 9565) – Vol. III, p. 1132.
[12] Exhibit "P-16", Docket (CTA Case No. 9565) – Vol. III, p. 1151.
[13] *Id.*
[14] Exhibit "P-24", Docket (CTA Case No. 9565) – Vol. III, p. 1172.
[15] Exhibits "P-47" to "P-48", Docket (CTA Case No. 9565) – Vol. III, pp. 1286 to 1298.
[16] Exhibits "P-25" to "P-26", Docket (CTA Case No. 9565) – Vol. III, pp. 1173 to 1185.
[17] Exhibits "P-27" to "P-28", Docket (CTA Case No. 9565) – Vol. III, pp. 1191 to 1203.
[18] Docket (CTA Case No. 9565) – Vol. I, pp. 10 to 36.
[19] Docket (CTA Case No. 9565) – Vol. I, pp. 93 to 105.

JURISDICTION OVER THE INSTANT PETITION

8. It is settled that what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.

8.1 A perusal of the instant would readily show that it is not a mere claim for refund or issuance of a tax credit for excise taxes paid on importations of alkylate, for it is in fact primarily questioning the validity of Customs Memorandum Circular No. 164-2012 (CMC No. 164-2012) and the Commissioner of Internal Revenue (CIR) letter dated June 29, 2012 (hereinafter referred to as 'BIR Letter').

8.2 This is confirmed by the fact that petitioner's main prayer is for a judgment that it be declared not liable for excise taxes on its importations of alkylate. In paragraph 67 of its Petition, petitioner likewise questioned the legal basis of the imposition of excise taxes on importations of alkylate. Undeniably, the core issue of the instant Petition is the validity of CMC No. 164-2012 and BIR Letter.

8.3 A reading of the BIR Letter reveals that it is an interpretation of Section 148(e) of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended. The BIR Letter is in the nature of a BIR Ruling considered as the present and official stand of the BIR to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws. These rules and regulations are presumed to be valid interpretation of the tax code until revoked by the Secretary of Finance himself.

8.4 Clearly, the BIR Letter was issued in the exercise of CIR's power to interpret tax laws as provided for in Section 4 of the NIRC of 1997, as amended; *viz:*

> '**Sec. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases**. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.'

8.5 When an administrative agency, such as the BIR, renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law. Thus, the BIR Letter falls under the quasi-legislative power of the CIR as provided for in the first paragraph of Section 4.

8.6 In *Petron Corporation vs. CIR,* this Court ruled that:

> 'Under the second paragraph of Section 4, respondent CIR has the power to decide on administrative cases which includes 'other matters'. These 'other matters' pertain to disputes

> such as the determination if the warrant of distraint and levy issued by the BIR is valid; if the Waiver of Statute of Limitations was validly effected and determination if the BIR's right to collect taxes has prescribed. With the nature of 'other matters' as previously enumerated, there is no way an action of the CIR through issuance of a BIR Ruling can be classified as 'other matters'. The BIR Ruling is simply an interpretation of a provision of tax code in the exercise of its quasi-legislative power. To classify the BIR Ruling as 'other matters' will render inoperative the first paragraph. (Emphasis supplied)

8.7 In *Philippine American Life and General Insurance Company vs. The Secretary of Finance and Commissioner of Internal Revenue*,[20] the Supreme Court ruled that it is now within the power of the CTA, through its power of certiorari to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. The Court further ruled that:

> 'Hence, it can now rule not only the propriety of an assessment of tax treatment of a transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.'

8.8 As applied to the case at hand, this means that the Court of Tax Appeals can

[20] G.R. No. 210987, November 24, 2014.

rule on the validity of the BIR Letter if it is in connection with an assessment.

8.9 In the instant petition, there is no showing that there was a final assessment issued. In the absence of an assessment, the Court lacks jurisdiction to rule upon the propriety of the BIR Letter and CMC No. 164-2012.

8.10 Considering the foregoing, the instant Petition should be dismissed for lack of jurisdiction.

II. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

9. Time and again, the Supreme Court consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.

9.1 As provided for in Section 4 of the NIRC of 1997, as amended, the power to review CIR rulings issued in relation to the CIR's power to interpret tax laws belong to the Secretary of Finance.

9.2 Moreover, in the recent case of *Commissioner of Internal Revenue vs. Court of Appeals and Petron Corporation*,[21] the Court expressly held that,

'... the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as

[21] G.R. No. 207843, July 15, 2015.

its resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148 (e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance and ultimately by the regular court.'

9.3 In the instant petition, petitioner did not appeal before the Secretary of Finance. Prior to elevating the case to this Court, petitioner should have questioned the subject BIR Letter before the Secretary of Finance. Only after the Secretary of Finance adversely ruled on its appeal can petitioner come to Court.

9.4 While it is true that the rule admits of exceptions, there is no showing in the instant petition that it falls in one of the exceptions.

9.5 Thus, when the law provides for a remedy against a certain action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all administrative remedies provided therein.

9.6 It is settled that the non-observance of the doctrine of exhaustion of administrative remedies result in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.

9.7 In view of petitioner's failure to exhaust administrative remedies when it directly elevated to the CTA the CIR Ruling before appealing it first to the Secretary of Finance, respondent respectfully submits that the instant Petition should be dismissed."

On June 2, 2017, petitioner filed another *Petition for Review*,[22] likewise praying for the refund of, or issuance of a tax credit certificate for, the aggregate amount of ₱22,197,558.00, allegedly representing the excise tax paid by it on the importation of alkalyte covered by IEIRD No. 00382180473. The case was docketed CTA Case No. 9606.

In his *Answer* filed on July 28, 2017 (for CTA Case No. 9606),[23] respondent interposed the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

A. <u>The instant petition is dismissible for its failure to state cause of action.</u>

4. The instant petition states no cause of action.

4.1 As defined, '[a] cause of action is an act or omission of one party the defendant in violation of the legal right of the other.' The elements of a cause of action are:

(1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

(2) an obligation on the part of the named defendant to respect or not to violate such right; and

(3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages. Je

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[22] Docket (CTA Case No. 9606), pp. 10 to 36.
[23] Docket (CTA Case No. 9606), pp. 98 to 117.

> A cause of action is sufficient if a valid judgment may be rendered thereon if the alleged facts were admitted or proved.'

4.2 In this case, the Commissioner of Internal Revenue (CIR) is not the real party in interest.

4.3 'The determination of who the real party-in-interest is requires going back to the elements of a cause of action. A cause of action involves the existence of a right and a violation of such right. Evidently, the owner of the right violated stands to be the real party in interest as plaintiff and the person responsible for the violation is the real party in interest as defendant.

4.4 Section 2, Rule 3 of the Rules of Court simply provides:

> 'A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real part in interest.'

4.5 Petitioner paid to the Bureau of Customs (BOC) excise taxes for its <u>importation</u> of alkylate in the aggregate amount of ₱22,197,558.00. It is the BOC who collected the excise taxes on importation of alkylate involved.

5. Petitioner is <u>primarily</u> seeking judgment from this Honorable Court to declare that petitioner is not liable for the excise taxes on its importation of alkylate. The alleged cause of action for refund of taxes <u>merely consequential</u> to remedy primarily sought.

5.1 Petitioner became liable for excise tax on its importation of alkylate on the basis Section 148 (e) of the NIRC as implemented by the Letter from the CIR dated 29 June 2012 (BIR Letter) through Customs Memorandum Circular No. 164-2012 (CMC 164-2012). Quoted hereunder is the body of CMC 164-2012.

> 'Please find attached the letter dated June 29, 2012 from the Bureau of Internal Revenue Commissioner Kim S. Jacinto-Henares stating that '**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.**'

5.2 Petitioner contends that since there is no basis for the imposition of excise tax on the importation of alkylate, it should be considered erroneously paid by or illegally collected from petitioner. However, <u>there is, in fact, a legal basis for such imposition of excise tax, that is, Section 148 (e) of the NIRC as implemented by the BIR Letter and CMC 164-2012</u>.

5.3 In view thereof, <u>whether the basis for the imposition of excise tax on importation of alkylate is valid and sufficient must first be determined before petitioner can claim for refund of alleged erroneous payment or illegal collection</u>. Absence of such determination of validity and applicability of the BIR Letter and CMC 164-2012 to the present case, petitioner's cause of action would have no leg to stand on.

5.4 Petitioner, in claiming refund, invoked Section 229 of the NIRC, to wit:

> '**SEC. 229. Recovery of Tax Erroneously or Illegally Collected**. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any other manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner; but

such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.'

5.5 In light of the foregoing, no claim for refund may be made by petitioner considering that there were no erroneous or illegal collections of excise taxes from petitioner, <u>there being legal basis for such collection, to wit, Section 148 (e) of the NIRC in relation to the BIR Letter and CMC 164-2012</u>.

5.6 The BIR Letter and CMC 164-2012 were issued in the performance of official functions of the CIR and Commissioner of Customs (COC), respectively. In the absence of proof of any irregularities in the performance of their official duties, such issuances will not be disturbed.

5.7 Verily, administrative issuances have the force and effect of law. They benefit from the presumption of validity and constitutionality enjoyed by the statutes. (Rufino O. Eslao vs. Commission on Audit, G.R. No. 108310, September 1, 1994.)

5.8 Thus, in the absence of any declaration rendering the BIR Letter and CMC 164-2012 illegal and void, such issuances shall be valid and applicable to the present case.

6. Section 4 of the NIRC states that:

'**Sec. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** – The power to interpret the provision of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance**.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals' (Emphases supplied)

6.1 Corollary thereto, Section 7 of R.A. 1125, as amended by R.A. 9282 and R.A. 9503 provides for the jurisdiction of the Court of Tax Appeals, to wit:

'**Sec. 7.Jurisdiction. — The CTA shall exercise**:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue;

xxx xxx

5. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties

imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs;

xxx xxx'

6.2 The BIR Letter sent by respondent to the COC which was implemented by CMC 164-2012 is clearly an interpretation of Section 148 (e) of the NIRC. Therefore, it was issued pursuant to the power of the Commissioner to interpret the provision of NIRC under the **first paragraph of Section 4 of the Tax Code**, and shall be subject to review by the **Secretary of Finance (SOF)**.

6.3 As held by the Supreme Court in 'The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue', G.R. No. 210987, November 24, 2014;

> 'Preliminarily, it bears stressing that there is no dispute that what is involved herein is the respondent Commissioner's exercise of power under the first paragraph of Sec. 4 of the NIRC — **the power to interpret tax laws**. This, in fact, was recognized by the appellate court itself, but **erroneously held that her action in the exercise of such power is appealable directly to the CTA**. As correctly pointed out by petitioner, Sec. 4 of the NIRC readily provides that the Commissioner's power to interpret the provisions of this Code and other tax laws is **subject to review by the Secretary of Finance**.' (Emphases supplied)

6.4 In a recent case of 'COMMISSIONER OF INTERNAL REVENUE v. COURT OF TAX APPEALS and PETRON CORPORATION', G.R. No. 207843, July 15, 2015, the Supreme Court held that:

> 'In this case, Petron's tax liability was premised on the COC's issuance of CMC No. 164-2012, which gave effect to the CIR's June

29, 2012 Letter interpreting Section 148 (e) of the NIRC as to include alkylate among the articles subject to customs duties, hence, **Petron's petition before the CTA ultimately challenging the legality and constitutionality of the CIR's aforesaid interpretation of a tax provision**. In line with the foregoing discussion, however, the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as its resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148 (e) of the NIRC, which is **subject to the exclusive review by the Secretary of Finance** and ultimately by the regular court.' (Emphasis supplied)

7. The doctrine of exhaustion of administrative remedies is expounded by the Supreme Court in Addition Hills G.R. No. 175039, April 18, 2012, to wit:

'We have consistently declared that the **doctrine of exhaustion of administrative remedies** is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

In the case of *Republic v. Lacap*, we expounded on the doctrine of exhaustion of administrative remedies and the related doctrine of primary jurisdiction in this wise:

The general rule is that before a party may seek the intervention of

> the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.
>
> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

It is true that the foregoing doctrine admits of exceptions, such that in *Lacap*, we also held:

> Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged

> administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings. x x x.

Upon careful consideration of the parties' contentions, we find that none of the aforementioned exceptions exist in the case at bar.' (Emphasis supplied)

7.1 Respondent submits that the exceptions to the doctrine as provided above do not exist in the present case. Therefore, petitioner should have complied with the doctrine of exhaustion of administrative remedies as provided by law.

7.2 Petitioner cannot invoke the urgency of judicial intervention; in fact, petitioner had ample time, even before August 2013, to raise the subject matter for review by the Secretary of Finance. Instead of bringing the matter before the Secretary of Finance for appropriate review, petitioner unjustifiably disregarded the doctrine. Clearly, petitioner slept on its right to have the interpretation of the CIR be reviewed and reversed by the Secretary of Finance. Thus, the exceptions to the doctrine are not available to petitioner.

7.3 The case of BELEN C. FIGUERRES vs. COURT OF APPEALS, CITY OF ASSESSORS OF MANDALUYONG CITY TREASURER OF MANDALUYONG, and SANGGUNIANG BAYAN OF MANDALUYONG, G.R. No. 119172, March 25, 1999, explains the effect of non-exhaustion of administrative remedies:

'Exhaustion of administrative remedies

In *Lopez v. City of Manila*, we recently held:

> . . . Therefore, where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. . . .
>
> With regard to questions on the legality of a tax ordinance, the remedies available to the taxpayer are provided under Sections 187, 226, and 252 of R.A. 7160.
>
> Sec. 187 of R.A. 7160 provides, that the taxpayer may question the constitutionality or legality of a tax ordinance on appeal within thirty (30) days from effectivity thereof, to the Secretary of Justice. The petitioner after finding that his assessment is unjust, confiscatory, or excessive, may bring the case before the Secretary of Justice for questions

> > of legality or constitutionality of the city ordinance.
> >
> > Under Section 226 of R.A. 7160, an owner of real property who is not satisfied with the assessment of his property may, within sixty (60) days from notice of assessment, appeal to the Board of Assessment Appeals.
> >
> > Should the taxpayer question the excessiveness of the amount of tax, he must first pay the amount due, in accordance with Section 252 of R.A. No. 7160. Then, he must request the annotation of the phrase 'paid under protest' and accordingly appeal to the Board of Assessment Appeals by filing a petition under oath together with copies of the tax declarations and affidavits or documents to support his appeal.
>
> Although cases raising purely legal questions are excepted from the rule requiring exhaustion of administrative remedies before a party may resort to the courts, in the case at bar, the legal questions raised by petitioner require, as will presently be shown, proof of facts for their resolution. Therefore, <u>the petitioner's action in the Court of Appeals was premature, and the appellate court correctly dismissed her action on the ground that she failed to exhaust available administrative remedies</u> as above stated. (Emphasis supplied)

7.4 Now, to emphasize that the dismissal of the case is proper for failure to exhaust administrative remedies, again, in 'Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation': Jc

'Verily, the fact that there is no decision by the COC to appeal from highlights Petron's failure to exhaust administrative remedies prescribed by law. Before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail of all administrative processes afforded him, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action. While there are exceptions to the principle of exhaustion of administrative remedies, it has not been sufficiently shown that the present case falls under any of the exceptions.' (Emphasis supplied)

7.5 From the foregoing, it is quite clear that the authority to determine the validity of the BIR Letter which pronounced the rule that alkylate is a substance subject to excise tax and which was implemented by CMC 164-2012 is vested with the SOF as provided by law. Such exhaustion of administrative remedies is a requirement which must be complied with before judicial intervention can be availed of.

7.6 Absent the declaration rendering the BIR Letter as implemented by CMC 164-2012 invalid or illegal, payments made by petitioner cannot be considered erroneously and illegally collected, thus, there is no legal basis for the claim of refund and/or issuance of tax credit certificate."

The *BIR Records* for CTA Case No. 9565 and CTA Case No. 9606 were submitted on June 8, 2017[24] and July 26, 2017,[25] respectively.

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[24] *Compliance* dated June 8, 2017, Docket (CTA Case No. 9565) – Vol. I, pp. 108 to 109.
[25] *Compliance* dated July 25, 2017, Docket (CTA Case No. 9606), pp. 121 to 122.

On August 8, 2017, petitioner again filed its *Petition for Review*,[26] praying for the refund of, or issuance of a tax credit certificate for, the aggregate amount of ₱21,234,960.00, allegedly representing the excise tax paid by it on the importation of alkalyte covered by IEIRD No. 00383756967. The case was docketed CTA Case No. 9645.

Respondent filed his *Answer* (for CTA Case No. 9645) on October 13, 2017,[27] interposing the following affirmative defenses, to wit:

"**AFFIRMATIVE DEFENSES**

I. THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION.

8. It is settled that what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.

8.1 A perusal of the instant petition would readily show that it is not a mere claim for refund or issuance of a tax credit for excise taxes paid on importations of alkylate, for it is in fact primarily questioning the validity of Customs Memorandum Circular No. 164-2012 (CMC No. 164-2012) and the Commissioner of Internal Revenue (CIR) letter dated June 29, 2012 (hereinafter referred to as 'BIR Letter').

8.2 This is confirmed by the fact that petitioner's main prayer is for a judgment that it be declared not liable for excise taxes on its importations of alkylate. In paragraph 67 of its Petition, petitioner likewise questioned the legal basis of the imposition of excise taxes on importations of alkylate. Undeniably, the core issue of the instant Petition is the validity of CMC No. 164-2012, and BIR Letter.

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[26] Docket (CTA Case No. 9645), pp. 10 to 36.
[27] Docket (CTA Case No. 9645).

8.3 A reading of the BIR Letter reveals that it is an interpretation of Section 148(e) of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended. The BIR Letter is in the nature of a BIR Ruling considered as the present and official stand of the BIR to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws. These rules and regulations are presumed to be valid interpretation of the tax code until revoked by the Secretary of Finance himself.

8.4 Clearly, the BIR Letter was issued in the exercise of CIR's power to interpret tax laws as provided for in Section 4 of the NIRC of 1997, as amended, *viz*:

> '**Sec. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** – The power to interpret the provision of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matter arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.'

8.5 When an administrative agency, such as the BIR, renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law. Thus, the BIR Letter falls under the quasi-legislative power of the CIR as provided for in the first paragraph of Section 4.

8.6 In *Petron Corporation vs. CIR,* this Court ruled that: *gr*

> 'Under the second paragraph of Section 4, respondent CIR has the power to decide on administrative tax cases which includes 'other matters'. These 'other matters' pertain to disputes such as the determination if the warrant of distraint and levy issued by the BIR is valid; if the Waiver of Statute of Limitations was validly effected and determination if the BIR's right to collect taxes has prescribed. <u>With the nature of 'other matters' as previously enumerated, there is no way an action of the CIR through issuance of a BIR Ruling can be classified as 'other matters'. The BIR Ruling is simply an interpretation of a provision of tax code in the exercise of its quasi-legislative power. To classify the BIR Ruling as 'other matters' will render inoperative the first paragraph</u>. (Emphasis supplied)

8.7 In *Philippine American Life and General Insurance Company vs. The Secretary of Finance and Commissioner of Internal Revenue*,[28] the Supreme Court ruled that it is now within the power of the CTA, through its power of certiorari to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. The Court further ruled that:

> 'Hence, it can now rule not only the propriety of an assessment of tax treatment of a transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.'

8.8 As applied to the case at hand, this means that the Court of Tax Appeals can rule on the validity of the BIR Letter if it is in connection with an assessment. *Je*

[28] G.R. No. 210987, November 24, 2014.

8.9 In the instant petition, there is no showing that there was a final assessment issued. In the absence of an assessment, the Court lacks jurisdiction to rule upon the propriety of the BIR Letter and CMC No. 164-2012.

8.10 Considering the foregoing, the instant Petition should be dismissed for lack of jurisdiction."

III. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

9. Time and again, the Supreme Court consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.

9.1 As provided for in Section 4 of the NIRC of 1997, as amended, the power to review CIR rulings issued in relation to the CIR's power to interpret tax laws belong to the Secretary of Finance.

9.2 Moreover, in the recent case of *Commissioner of Internal Revenue vs. Court of Appeals and Petron Corporation*, the Court expressly held that,

> '... the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as its resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148 (e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance and ultimately by the regular court.'

9.3 In the instant petition, petitioner did not appeal before the Secretary of Finance. Prior to elevating the case to this Court, petitioner should have questioned the subject Letter before the Secretary of Finance. Only after the Secretary of Finance adversely ruled on its appeal can petitioner come to Court.

9.4 While it is true that the rule admits of exceptions, there is no showing in the instant petition that it falls in one of the exceptions.

9.5 Thus, when the law provides for a remedy against a certain action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all administrative remedies provided therein.

9.6 It is settled that the non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.

9.7 In view of petitioner's failure to exhaust administrative remedies when it directly elevated to the CTA the CIR Ruling before appealing it first to the Secretary of Finance, respondent respectfully submits that the instant Petition should be dismissed.

9.8 The present case is not novel, as the Honorable Supreme Court in the case of CIR vs. Petron Corporation, G.R. No. 207843 dated July 15, 2015, already ruled in favor of respondent. Pertinent portion of which reads:

> 'As the CIR aptly pointed out, the phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase 'disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto' and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, *i.e.,* those controversies over which the CIR

had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.

In *Enrile v. Court of Appeals*, the Court, applying the statutory construction principle of *ejusdem generis*, explained the import of using the general clause 'other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs' in the enumeration of cases subject to the exclusive appellate jurisdiction of the CTA, saying that:

> [T]he 'other matters' that may come under the general clause should be <u>**of the same nature as those that have preceded them**</u> applying the rule of construction known as *ejusdem generis*. (Emphasis and underscoring supplied)

Hence, as the CIR's interpretation of a tax provision involves an exercise of her quasi-legislative functions, the proper recourse against the subject tax ruling expressed in CMC No. 164-2012 is a review by the Secretary of Finance and ultimately the regular courts. In *Commissioner of Customs v. Hypermix Feeds Corporation*, the Court has held that:

> The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. x x x.

Besides, Petron prematurely invoked the jurisdiction of the CTA. Under Section 7 of RA 1125, as amended by RA 9282, what is appealable to the CTA is the decision of the COC over a customs collector's adverse ruling on a taxpayer's protest:

SEC. 7. *Jurisdiction.* — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

x x x x

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Custom;

x x x x

Section 11 of the same law is no less categorical in stating that what may be the subject of an appeal to the CTA is a decision, ruling or inaction of the CIR or the COC, among others:

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the

Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

x x x x

In this case, there was even no tax assessment to speak of. While customs collector Federico Bulanhagui himself admitted during the CTA's November 8, 2012 hearing that the computation he had written at the back page of the IEIRD served as the final assessment imposing excise tax on Petron's importation of alkylate, the Court concurs with the CIR's stance that the subject IEIRD was not yet the customs collector's final assessment that could be the proper subject of review. And even if it were, the same should have been brought first for review before the COC and not directly to the CTA. It should be stressed that the CTA has no jurisdiction to review by appeal, decisions of the customs collector. The TCC prescribes that a party adversely affected by a ruling or decision of the customs collector may protest such ruling or decision upon payment of the amount due and, if aggrieved by the action of the customs collector on the matter under protest, may have the same reviewed by the COC. It is only after the COC shall have made an adverse ruling on the matter may the aggrieved party file an appeal to the CTA.

Notably, Petron admitted to not having filed a protest of the assessment before the customs collector and elevating a possible adverse ruling therein to the COC, reasoning that such a procedure would be costly and impractical, and would unjustly delay the resolution of the issues which, being purely legal in nature anyway, were also beyond the authority of the customs collector to resolve with finality. This admission is at once decisive of the issue of the CTA's jurisdiction over the petition. There being no protest ruling by the customs collector that was appealed to the COC, the filing of the petition before the CTA was premature as there was nothing yet to review.

Verily, the fact that there is no decision by the COC to appeal from highlights Petron's failure to exhaust administrative remedies prescribed by law. Before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail of all administrative processes afforded him, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action. While there are exceptions to the principle of exhaustion of administrative remedies, it has not been sufficiently shown that the present case falls under any of the exceptions.'

9.10. Petitioner in filing the present petition made it appear that it was claiming a refund of erroneously paid tax. The truth of the matter is that petitioner is assailing the validity of Customs Memorandum Circular (CMC) No. 164-2012 which implemented the Letter issued by the Commissioner of Internal Revenue. Clearly, the subject matter of the present petition is beyond the jurisdiction of the Honorable Court of Tax Appeals."

On August 24, 2017, petitioner filed a *Motion for Consolidation with Motion for Postponement [of the Presentation of Witnesses and Commissioning of Independent Certified Public Accountant],*[29] praying, *inter alia*, for the consolidation of CTA Case No. 9565, with CTA Case Nos. 9606 and 9645. The said *Motion for Consolidation* was granted at the hearing held on August 30, 2017.[30] Accordingly, the Pre-Trial Conference for the consolidated cases was set and held on October 26, 2017.[31] gz

[29] Docket (CTA Case No. 9565) – Vol. II, pp. 457 to 461.
[30] Minutes of the hearing held on, and Order dated, August 30, 2017, Docket (CTA Case No. 9565) – Vol. II, pp. 464 to 465.
[31] *Id.*; Minutes of the hearing held on, and Order dated, October 26, 2017, Docket (CTA Case No. 9565) – Vol. III, pp. 829 to 831.

In the meantime, the *Pre-Trial Brief for Petitioner* for the consolidated cases was filed on October 23, 2017,[32] while the *Consolidated Respondent's Pre-Trial Brief* was filed on October 23, 2017.[33]

On November 16, 2017, the parties filed their *Joint Stipulation of Facts and Issues*,[34] which was adopted by the Court in its Pre-Trial Order dated November 28, 2017,[35] thereby deeming the termination of the Pre-Trial.

Trial then ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. July Ann D. Vivas,[36] petitioner's Financial Accounting Manager; (2) Dr. Joey D. Ocon,[37] petitioner's expert witness; (3) Engr. Gardelio P. Malgapo,[38] petitioner's Process Engineering Department Manager; (4) Mr. Leopoldo G. Lorenzo,[39] Officer-in-Charge of petitioner's Limay Terminal; (5) Mr. Simon Christopher Mulqueen,[40] Director of Technical Services for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel Specialties; (6) Atty. Clarissa C. Arguelles,[41] petitioner's Tax Manager; (7) Michael F. Manzano,[42] petitioner's Commercial Services Manager; (8) Ms. Cecilia N. Sengia,[43] petitioner's Refinery Finance Department Manager; and

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[32] Docket (CTA Case No. 9565) – Vol. II, pp. 803 to 819.
[33] Docket (CTA Case No. 9565) – Vol. II, pp. 821 to 823.
[34] Docket (CTA Case No. 9565) – Vol. III, pp. 929 to 942.
[35] Docket (CTA Case No. 9565) – Vol. III, pp. 963 to 972.
[36] Exhibit "P-93", Docket (CTA Case No. 9565) – Vol. I, pp. 274 to 278; Minutes of the hearing held on, and Order dated, December 4, 2017, Docket (CTA Case No. 9565) – Vol. III, pp. 973 to 974.
[37] Exhibit "P-94", Docket (CTA Case No. 9565) – Vol. II, pp. 523 to 531; Minutes of the hearing held on, and Order dated, December 4, 2017, Docket (CTA Case No. 9565) – Vol. III, pp. 973 to 974; Minutes of the hearing held on, and Order dated, January 24, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1008 to 1011.
[38] Exhibit "P-96", Docket (CTA Case No. 9565) – Vol. III, pp. 903 to 913; Minutes of the hearing held on, and Order dated, January 24, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1008 to 1011.
[39] Exhibit "P-97", Docket (CTA Case No. 9565) – Vol. III, pp. 836 to 841; Minutes of the hearing held on, and Order dated, January 24, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1008 to 1011.
[40] Exhibit "P-98", Docket (CTA Case No. 9565) – Vol. II, pp. 506 to 515; Minutes of the hearing held on, and Order dated, February 26, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1013 to 1014.
[41] Exhibit "P-95", Docket (CTA Case No. 9565) – Vol. II, pp. 569 to 578; Minutes of the hearing held on, and Order dated, March 5, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1025 to 1027.
[42] Exhibit "P-99", Docket (CTA Case No. 9565) – Vol. II, pp. 697 to 709; Minutes of the hearing held on, and Order dated, March 5, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1025 to 1027.
[43] Exhibit "P-100", Docket (CTA Case No. 9565) – Vol. III, pp. 849 to 855; Minutes of the hearing held on, and Order dated, March 5, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1025 to 1027.

(9) Ms. Ma. Milagros F. Padernal,[44] the Court-commissioned Independent Certified Public Accountant (ICPA).[45]

On February 23, 2018, the *Report* of the ICPA was submitted.[46]

On March 26, 2018, petitioner filed its *Formal Offer of Exhibits [with Motion to Allow Adoption of Exhibits]*.[47] Respondent filed his *Comment/Opposition (on Petitioner's Formal Offer of Evidence)* on April 2, 2018.[48] Thus, in the Resolution dated February 11, 2019,[49] the Court admitted petitioner's Exhibits, *except* for Exhibits "P-224-1-18737" to "P-224-1-18745", and "P-241-10-2929", for not being found in the records.

In the meantime, on January 10, 2019, respondent submitted the *BIR Records* for CTA Case No. 9645.[50]

At the hearing held on March 6, 2019, the Court noted the manifestation of respondent's counsel that there is no report of investigation submitted by the Revenue Officers handling the administrative claim for refund, and that he will no longer present evidence in these cases.[51]

On March 7, 2019, petitioner filed a *Motion to Allow Submission [of Exhibits "P-224-1-18737" to "P-224-1-18745", and "P-241-10-2929"]*,[52] praying for the admission of the said denied Exhibits. No comment was, however, filed thereon by respondent.[53]

In the Resolution dated June 13, 2019,[54] the Court: (1) granted petitioner's *Motion to Allow Submission*; (2) admitted the Exhibits

[44] Exhibit "P-101", Docket (CTA Case No. 9565) – Vol. III, pp. 1018 to 1024; Minutes of the hearing held on, and Order dated, March 5, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1025 to 1027.
[45] *Oath of Commission* dated January 24, 2018, Docket – Vol. III, p. 1007; Minutes of the hearing held on, and Order dated, January 24, 2018, Docket (CTA Case No. 9565) – Vol. III, pp. 1008 to 1011.
[46] Docket (CTA Case No. 9565) – Vol. III, p. 1012.
[47] Docket (CTA Case No. 9565) – Vol. III, pp. 1039 to 1111.
[48] Docket (CTA Case No. 9565) – Vol. III, pp. 1359 to 1363.
[49] Docket (CTA Case No. 9565) – Vol. III, pp. 1377 to 1380.
[50] *Compliance,* Docket (CTA Case No. 9565) – Vol. III, pp. 1373 to 1375.
[51] Minutes of the hearing held on, and Order dated, March 6, 2019, Docket (CTA Case No. 9565) – Vol. IV, pp. 1381 to 1383.
[52] Docket (CTA Case No. 9565) – Vol. IV, pp. 1384 to 1389.
[53] Records Verification dated May 9, 2019, issued by the Judicial Records Division of this Court, Docket (CTA Case No. 9565) – Vol. IV, p. 1419.
[54] Docket (CTA Case No. 9565) – Vol. IV, p. 1421 to 1423.

subject of the said *Motion*; and (3) ordered the parties to submit their respective memorandum.

Petitioner filed its *Memorandum* on July 18, 2019,[55] while respondent submitted his *Memorandum* on August 20, 2019.[56]

The present case was considered submitted for decision on August 27, 2019.[57]

THE ISSUES

The parties submitted the following issues for the Court's resolution, to wit:

> "I. Whether or not the Court has jurisdiction over the instant petition[s];
>
> II. Whether petitioner is entitled to the refund of excise taxes paid on imported alkylates covered by IEIRD Nos. 00381050670, 00382180473, and 00383756967 on various dates from April 2015 to September 2015 in the aggregate amount of P65,202,458.00."[58]

Petitioner's arguments:

Petitioner, citing the case of *Banco de Oro, et al., vs. Republic of the Philippines, et al.* ("*Banco de Oro* case"),[59] argues that this Court can take cognizance of the present case; that *alkylate* should not be subject to excise tax because the same cannot be used as a "motor fuel" as contemplated in the opening paragraph of Section 148 of the 1997 National Internal Revenue Code (NIRC); that *alkylate* is not a product of distillation as contemplated under the same provision; that excise taxes apply only to goods manufactured or produced in the Philippines or to imported goods for domestic sale or consumption or for any other disposition; that the imposition of excise tax on imported *alkylate* is tantamount to double taxation, and is highly oppressive, arbitrary and confiscatory; that it timely filed its

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[55] Docket (CTA Case No. 9565) – Vol. IV, pp. 1429 to 1471.
[56] Docket (CTA Case No. 9565) – Vol. IV, pp. 1475 to 1489.
[57] Resolution dated August 27, 2019, Docket (CTA Case No. 9565) – Vol. IV, p. 1491.
[58] Stipulation of Issues, JSFI, Docket (CTA Case No. 9565) – Vol. III, p. 930.
[59] G.R. No. 198756, August 16, 2016.

claims for refund; and that it is entitled to its claim for refund of excise taxes paid on its importations of *alkylate* covered by IEIRD Nos. 00381050670, 00382180473, and 00383756967, in the aggregate amount of ₱65,202,458.00.

Respondent's counter-arguments:

Respondent counter-argues that this Court does not have jurisdiction over the present case; that petitioner is not entitled to the claim for refund of alleged erroneously paid excise taxes on its importation of *alkalyte*; that *alkalyte*, 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; that *alkalyte* imported by petitioner that is removed from the customhouse, whether removed for domestic sale/consumption or not, is legitimately subject to excise tax; that no double taxation exists, because the subject matters of taxation are different, and the importation of *alkalyte* is different from the motor fuel produced thereafter; and that since BIR letter dated June 29, 2012, and Customs Memorandum Circular (CMC) No. 164-2012, which implemented the latter, have not been set aside by any competent court, the same very much applies to the case at hand.

THE COURT'S RULING

The Court has jurisdiction to entertain the present consolidated Petitions for Review.

Respondent opines that this Court does not have jurisdiction over the present case. On the other hand, petitioner argues otherwise, invoking the *Banco de Oro* case.

We agree with petitioner.

The subject issue of jurisdiction is no longer novel. In fact, the Supreme Court has already specifically ruled on the whether this Court has jurisdiction to entertain a petition (filed by petitioner in an earlier case), which involved the determination of the validity of CMC

No. 164-2012, which gave effect to respondent's June 29, 2012 Letter, interpreting Section 148 (e) of the NIRC of 1997, as amended, as to include *alkylate* among the taxable articles.

In *Commissioner of Internal Revenue vs. Court of Tax Appeals, et al.* (G.R. No. 207843, July 15, 2015), the Supreme Court held:

> "The CIR asserts that the interpretation of the subject tax provision, *i.e.*, Section 148 (e) of the NIRC, embodied in CMC No. 164-2012, is an exercise of her quasi-legislative function which is reviewable by the Secretary of Finance, whose decision, in turn, is appealable to the Office of the President and, ultimately, to the regular courts, and that only her quasi-judicial functions or the authority to decide disputed assessments, refunds, penalties and the like are subject to the exclusive appellate jurisdiction of the CTA. xxx.
>
> The CIR's position is well-grounded.
>
> Section 4 of the NIRC confers upon the CIR both: (*a*) the power to interpret tax laws in the exercise of her quasi-legislative function; and (*b*) the power to decide tax cases in the exercise of her quasi-judicial function. It also delineates the jurisdictional authority to review the validity of the CIR's exercise of the said powers, thus:
>
>> SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The **power to interpret** the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance**.
>>
>> The **power to decide disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, **subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**. (Emphases and underscoring supplied) *gr*

The CTA is a court of special jurisdiction, with power to review by appeal decisions involving tax disputes rendered by either the CIR or the COC. Conversely, it has no jurisdiction to determine the validity of a ruling issued by the CIR or the COC in the exercise of their quasi-legislative powers to interpret tax laws. These observations may be deduced from a reading of Section 7 of RA 1125, as amended by RA 9282, entitled 'An Act Creating the Court of Tax Appeals,' enumerating the cases over which the CTA may exercise its jurisdiction:

> Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> **1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue.**
>
> xxx xxx xxx

In this case, Petron's tax liability was premised on the COC's issuance of CMC No. 164-2012, which gave effect to the CIR's June 29, 2012 Letter interpreting Section 148 (e) of the NIRC as to include alkylate among the articles subject to customs duties, hence, Petron's petition before the CTA ultimately challenging the legality and constitutionality of the CIR's aforesaid interpretation of a tax provision. In line with the foregoing discussion, however, the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as its resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148 (e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance and ultimately by the regular courts. In *British American*

Tobacco v. Camacho,[60] the Court ruled that the CTA's jurisdiction to resolve tax disputes excludes the power to rule on the constitutionality or validity of a law, rule or regulation, to wit:

> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include case where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. x x x.

In asserting its jurisdiction over the present case, the CTA explained that Petron's petition filed before it 'simply puts in question' the propriety or soundness of the CIR's interpretation and application of Section 148 (e) of the NIRC (as embodied in CMC No. 164-2012) 'in relation to' the imposition of excise tax on Petron's importation of alkylate; thus, the CTA posits that the case should be regarded as 'other matters arising under [the NIRC]' under the second paragraph of Section 4 of the NIRC, therefore falling within the CTA's jurisdiction:

xxx xxx xxx

The Court disagrees.

As the CIR aptly pointed out, the phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase 'disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto' and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, *i.e.,* those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed

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[60] 584 Phil 489 (2008).

assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.

In *Enrile v. Court of Appeals*,[61] the Court, applying the statutory construction principle of *ejusdem generis*, explained the import of using the general clause 'other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs' in the enumeration of cases subject to the exclusive appellate jurisdiction of the CTA, saying that:

> [T]he 'other matters' that may come under the general clause should be **<u>of the same nature as those that have preceded them</u>** applying the rule of construction known as ejusdem generis. (Emphasis and underscoring supplied)

Hence, as the CIR's interpretation of a tax provision involves an exercise of her quasi-legislative function, <u>the proper recourse against the subject tax ruling expressed in CMC No. 164-2012 is a review by the Secretary of Finance and ultimately the regular courts</u>. xxx.

xxx xxx xxx

WHEREFORE, the petition is **GRANTED**. The Resolution dated February 13, 2013 and May 8, 2013 of the Court of Tax Appeals (CTA), Second Division in CTA Case No. 8544 are hereby **REVERSED** and **SET ASIDE**. The petition for review filed by private respondent Petron Corporation before the CTA is **DISMISSED** **<u>for lack of jurisdiction</u>** and prematurity.

SO ORDERED." *(Emphases and underscoring ours)*

Based on the foregoing pronouncements, the Supreme Court has ruled that the proper recourse against the ruling expressed in CMC No. 164-2012 is a review by the Secretary of Finance and

[61] 140 Phil 199 (1969).

ultimately the regular courts. Correspondingly, the High Court dismissed the pertinent petition for review before the CTA on the ground, *inter alia*, for lack of jurisdiction.

However, in its Resolution dated February 14, 2018 for the same case (G.R. No. 207843), the Supreme Court reconsidered its ruling and declared that this Court has jurisdiction, and directed this Court to resolve the case with dispatch. It held:

> "At the onset, Petron insists that the CTA has jurisdiction to pass upon the validity of the CIR's interpretative ruling on *alkylate*, arguing that the CTA may rule on the validity of a revenue regulation, ruling, issuance or other matters arising under the NIRC and other tax laws administered by the Bureau of Internal Revenue (BIR). As basis, Petron cites for the first time in its motion for reconsideration the Court's ruling in *The Philippine American Life and General Insurance v. The Secretary of Finance and the Commissioner of Internal Revenue*[62] (*Philamlife*).
>
> *Philamlife* is a 2014 case decided by a Division of the Court, which controversy arose from an unfavorable ruling by the Secretary of Finance that affirmed, through its power of review under Section 4 of the NIRC, the CIR's denial of a request to be cleared of liability for donor's tax. Noting the absence of an express provision in the law concerning further appeals from the Secretary of Finance, the issue framed for resolution was – '*where does one seek immediate recourse from the adverse ruling of the Secretary of Finance in its exercise of its power of review under Sec. 4?*' Resolving this issue, the Court in *Philamlife* held that:
>
>> Admittedly, there is no provision of law that expressly provides where exactly the ruling of the Secretary of Finance under the adverted NIRC provision is appealable to. However, We find that Sec. 7(a)(1) of RA 1125, as amended, addresses the seeming gap in the law as it vests the CTA, albeit impliedly, with jurisdiction over the CA

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[62] 747 Phil. 811 (2014).

> petition as 'other matters' arising under the NIRC or other laws administered by the BIR. As stated:
>
> > Sec. 7. *Jurisdiction.* – The CTA shall exercise:
> >
> > b. Exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue. x x x
>
> Even though the provision suggests that it only covers rulings of the Commissioner, We hold that it is, nonetheless, sufficient enough to include appeals from the Secretary's review under Sec. 4 of the NIRC.

Corollary to this disposition, however, the Court's Third Division extended its discussion on the issue regarding the CTA's jurisdiction over the rulings of the CIR, *viz.*:

> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of *certiorari* by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment for a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.** yz

The foregoing remarks appear to be in direct opposition to the ruling in *British American Tobacco v. Camacho, et al.* [63] (*British American Tobacco*), which is a 2008 case decided by the Court *En Banc*, cited as basis by the Court in its July 15, 2015 Decision in this case regarding the issue of jurisdiction.

The apparent conflicting jurisprudence on the matter involving Court's 2008 *En Banc* ruling in *British American Tobacco* and the Court's Third Division Ruling in *Philamlife* has been seemingly settled in the 2016 *En Banc* case of *Banco De Oro v. Republic of the Philippines* [64] (*Banco De Oro*) wherein it was opined that:

> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.
>
> In other words, **within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should thus be filed before the Court of Tax Appeals.
>
> **Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local taxes, <u>actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals</u>.** Jr

[63] 584 Phil. 489 (2008).
[64] G.R. No. 198756, August 16, 2016.

> Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424. (Emphases supplied)

The *En Banc* ruling in *Banco De Oro* has since not been overturned and thus, stands as the prevailing jurisprudence on the matter. Accordingly, the Court is prompted to reconsider its ruling in this case with respect to the issue of jurisdiction.

xxx xxx xxx

xxx **<u>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*)</u>, 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.

SO ORDERED." *(Emphases and underscoring ours)* 9r

Thus, by virtue of the *Banco de Oro* case, the Supreme Court *En Banc* pronounced in no uncertain terms that this Court has jurisdiction to rule on the constitutionality of validity of a tax law or regulation or administrative issuance.[65] The *Banco de Oro* case further stressed that such undoubted jurisdiction is exclusively vested in this Court whether it is raised by the taxpayer directly or as a defense.[66]

Correspondingly, this Court has jurisdiction to entertain the present consolidated cases. Particularly, this Court, in determining the merit of petitioner's judicial claims for refund of excise tax imposed on the importation of *alkylate*, is likewise empowered to determine whether CMC No. 164-2012 and respondent's letter dated June 29, 2012 are valid.

The subject refund claims were timely made. However, petitioner's alkylate importations are subject to excise tax.

Pertinent to claiming a refund of illegally or erroneously paid tax are Sections 204(C) and 229 of the NIRC of 1997, which read as follows:

> "Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) **Credit or refund taxes erroneously or illegally received or penalties imposed without authority,** refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit**

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[65] *Bureau of Internal Revenue, et al. vs. First E-Bank Tower Condominium Corp., etseq.*, G.R. Nos. 215801 and 218924, January 15, 2020 (IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012 "CLARIFYING THE TAXABILITY OF ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS/CHARGES COLLECTED BY CONDOMINIUM CORPORATIONS").
[66] *Id.*

> **or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphases ours)*
>
> "Section 229. *Recovery of Tax Erroneously or Illegally Collected.* — **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax** or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis ours)*

The foregoing provisions allow the recovery of taxes erroneously or illegally collected within a period of two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after payment. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[67] *Jr*

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[67] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

The Court shall first determine whether petitioner timely filed its administrative and judicial claims.

Below are the material dates relevant to the subject claims for refund:

Amount of Refund Claim	Date of Payment	End of Two- Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
₱21,769,940.00	April 7, 2015[68]	April 7, 2017	March 31, 2017[69]	April 6, 2017[70]
₱22,197,558.00	June 5, 2015[71]	June 5, 2017	May 30, 2017[72]	June 2, 2017[73]
	October 6, 2015[74]	October 6, 2017		
₱21,234,960.00	September 28, 2015[75]	September 28, 2017	July 28, 2017[76]	August 8, 2017[77]

Evidently, the above table shows that petitioner timely filed its administrative and judicial claims for refund within two (2) years from date of payment of the excise tax imposed on the subject importations of *alkylate*, in accordance with Sections 204 (C) and 229 of the NIRC of 1997. Thus, the subject refund claims were timely made.

However, We find that petitioner's *alkylate* importations are subject to excise tax.

The relevant provisions of law in resolving the claim for refund of the alleged erroneous and illegally collected excise tax on the importation of *alkylate* are Sections 129, 131, and 148 (e) of the NIRC of 1997, as amended, which respectively provide:

> "SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and <u>to</u>** ✗

[68] Exhibit "P-8", Docket (CTA Case No. 9565) – Vol. III, p. 1132.
[69] Exhibits "P-47" to "P-48", Docket (CTA Case No. 9565) – Vol. III, pp. 1286 to 1298.
[70] Docket (CTA Case No. 9565) – Vol. I, pp. 10 to 36.
[71] Exhibit "P-16", Docket (CTA Case No. 9565) – Vol. III, p. 1151.
[72] Exhibits "P-25" to "P-26", Docket (CTA Case No. 9565) – Vol. III, pp. 1173 to 1185.
[73] Petition for Review, CTA Case No. 9906, Docket, pp. 10 to 36.
[74] Exhibit "P-16", Docket (CTA Case No. 9565) – Vol. III, p. 1151.
[75] Exhibit "P-24", Docket (CTA Case No. 9565) – Vol. III, p. 1172.
[76] Exhibits "P-27" to "P-28", Docket (CTA Case No. 9565) – Vol. III, pp. 1191 to 1203.
[77] CTA Case No. 9645, Docket – Vol. I, pp. 10 to 36.

things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'

xxx xxx xxx." *(Emphasis and underscoring ours)*

"SEC. 131. *Payment of Excise Taxes on Imported Articles.* — (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.'

xxx xxx xxx." *(Emphasis ours)*

"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**:

xxx xxx xxx

(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 foregoing provisions clearly state that excise tax shall attach, *inter alia*, to naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence.

In the present cases, however, petitioner claims that its *alkylate* importations should not be subject to excise tax on the ground that *alkylate* is not a product of distillation as contemplated under Section 148 of the NIRC of 1997, as amended. Thus, in order for the Court to verify such claim, it should look into the nature and composition of *alkylate*.

Petitioner's expert witnesses, Mr. Simon Christopher Mulqueen, testified, by way of Judicial Affidavit, that *alkylate* is a branched chain paraffinic hydrocarbon blending component used in the manufacture of gasoline, which is produced through the process of alkylation.[78] According to him, the process of alkylation is different from the process of distillation which is the subject matter of the aforequoted Section 148 (e). The former is a chemical reaction combining two (2) components to make a single different component, while the latter is a simple separation or fractionation process of a mixture containing two or more compounds into its constituent parts.[79] He also explained the nature and composition of *alkylate* in this wise:

"Q-13 How is alkylate produced?
A-13 Alkylate is produced from the combination of **light olefins (C3-C5) with isobutane in the presence of a strong acid catalyst. The process is known as alkylation.**

[78] A-12 and A-13, Exhibit "P-98", Docket (CTA Case No. 9565) – Vol. II, p. 508.
[79] A-22, Exhibit "P-98", Docket (CTA Case No. 9565) – Vol. II, pp. 509 to 510.

Q-14 What is alkylation?

A-14 Alkylation is the name of the chemical process converting the light olefins and isobutane into isoparaffin isomers of the correct boiling range and octane numbers for gasoline blending.

x x x

Q-15 What, if you know, are **the raw materials or feedstock to produce alkylates**?

A-15 **Light C3-C5 olefins, *e.g.,* isobutene and isobutane.**

Q-16 How are these raw materials produced?

A-16 **<u>Light C3-C5 olefins</u> are typically produced from a fluid catalytic cracker (FCC) unit and/or coker unit**.

<u>Isobutane</u>, on the other hand, is a component of natural gas. It can be a product of crude oil distillation or it can also be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.

Q-17 You mentioned that **isobutane can be a product of crude oil distillation**. **What is crude oil?**

A-17 Crude oil is a complex mixture of organic compounds typically comprising paraffins, naphthenes, aromatics and asphaltenes. Crude oil does not typically contain olefinic compounds. Typically, these compounds (i.e. paraffins, naphthenes, aromatics and asphaltenes) are organic rich sediments formed from plant, vegetable and animal matter. High temperature and pressure, in the absence of air, converts these sediments into oil over million of years.

x x x

Q-24 What is the purpose or use of alkylate?

A-24 Akylate 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 e.g. distillation boiling range."[80] *(Emphases and underscoring supplied)*

On clarificatory question of the Court, Mr. Mulqueen confirmed that one of the raw materials of *alkylate* is isobutene, which is a product of petrochemical, and its ultimate material is crude oil, to wit:

"JUSTICE CASTAÑEDA:

[80] Q-13 to Q-17 and Q-24, Exhibit "P-98", Docket (CTA Case No. 9565) – Vol. II, pp. 508 and 510.

You mentioned in your Affidavit, Mr. Mulqueen that basically the alkylate is a product of these two products, isobutane and isobutene? Now ultimately what is the raw material of isobutene?

WITNESS:
Isobutene is a olefinic stray from chemical production.

JUSTICE CASTAÑEDA:
Yes, but what is the raw material? Where does it come from?

WITNESS:
This comes from any chemical strained from the used to produce isobutene stray.

JUSTICE CASTAÑEDA:
After prochemical?

WITNESS:
Yes, Your Honors.

JUSTICE CASTAÑEDA:
Basically, if it is petrochemical the ultimate material is crude oil?

WITNESS:
Ultimately, yes.

JUSTICE CASTAÑEDA:
So, similarly with the isobutane

WITNESS:
Can be natural gas as well as crude oil."[81] *(Emphases supplied)*

Another expert witness of petitioner, Dr. Joey D. Ocon, explained the process of alkylation in the context of a petroleum refinery, as well as the nature of *alkylate*. He also corroborated Mr. Mulqueen's testimony that isobutane and olefins are raw materials needed in producing *alkylate*, and that isobutane is a product of distillation.[82] He testified as follows:

"Q-15 What do you know about the product alkylate?
A-15 In the context of petroleum refining, alkylate is the term used to refer to the products of alkylation units. It is a mixture of iso-paraffins that underwent the process of

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[81] Page 6 to 7, TSN dated February 26, 2018.
[82] Page 22, TSN dated January 24, 2018.

alkylation and have relatively high-octane numbers, rendering them valuable as fuel additives.

x x x x x x x x x

Q-17 x x x What is the process of alkylation?
A-17 Alkylation in general refers to chemical reactions that transfer one alkyl group from one compound to another or the introduction of an alkyl radical substitution or addition to an organic compound. The process involves the alteration of the participating molecules and forms basis for various commercial processes.

There are two main alkylation technologies currently in use today; these are the sulfuric acid alkylation and hydrogen fluoride alkylation. In all cases, **the use of a reactor is required in order to chemically change the <u>iso-butane</u> and <u>olefins</u> to the desired alkylate product**. xxx".[83] (Emphases and underscoring supplied)

Furthermore, petitioner's Process Engineering Department Manager, Engr. Gardelio P. Malgapo, explained during cross-examination, the nature of olefin and isobutane, which he also considered as raw materials of *alkylate*. He also testified that the ultimate source of olefin is crude oil. Pertinent portions of his testimony are herein quoted for ready reference:

"JUSTICE CASTAÑEDA:
Okay. So what is the ultimate source of this alkylate?

MR. MALGAPO:
Alkylate sir, there are two raw materials in producing alkylate; one is olefin and other is isobutane. <u>Olefin</u> may come from cracking of naphtha and fuel oil from crude, while <u>isobutane</u> may also come from the same source or may also come from natural gas.

JUSTICE CASTAÑEDA:
The ultimate source is what you call crude oil?

MR. MALGAPO:
The other parts, sir. I am referring to the olefin but for the isobutane, it may come from other source like natural gas which is not a crude oil."[84] Jr

[83] Q15 to Q-17, Exhibit "P-94", Docket (CTA Case No. 9565) – Vol. II, pp. 525 to 526.
[84] Page 7, TSN dated January 24, 2018.

Engr. Malgapo is, however, unsure as to whether the isobutane in the present cases came from natural gas as shown in his testimony, quoted below:

> "JUSTICE CASTAÑEDA:
> Did you check whether the isobutane here came from natural gas?
>
> MR. MALGAPO:
> A natural gas is a composition of different gases, hydrocarbon gases; methane, ethane, and isobutane, is also one of those gases including in natural gas.
>
> JUSTICE CASTAÑEDA:
> Yes but have you checked whether it really came from natural gas?
>
> MR. MALGAPO:
> Although... (interrupted)
>
> JUSTICE CASTAÑEDA:
> Because you mentioned it 'may' also come from crude oil?
>
> MR. MALGAPO:
> Well I cannot... Your Honors, I cannot really tell if a specific isobutane came from whatever source. But what I am saying Your Honors, is it may come from different sources."[85]

It can be deduced from the foregoing testimonies that while *alkylate* is not directly produced through the process of distillation but by alkylation, it still 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. Moreover, Dr. Ocon even mentioned in his Judicial Affidavit that distillation process is employed in the process of alkylation, "but this is merely for purposes of purifying the quality of the produced *alkylate* or recycling excess raw materials x x x Because iso-butanes are typically supplied in excess relative, around six to ten times more than the olefins, it has to be recovered via a distillation process to recycle them back into the alkylation reactor."[86] As such, there can be no doubt that, from its inception up to the end of the process of alkylation, the process of

[85] Pages 8 to 9, TSN dated January 24, 2018.
[86] Q-17, Exhibit "P-94", Docket (CTA Case No. 9565) – Vol. II, p. 526.

distillation contributes to the production, purification and enhancement of *alkylate* for it to be fitted as fuel additives.

Moreover, contrary to the claim of petitioner, nowhere in the Department of Energy's (DOE) letter dated July 24, 2017[87] was it shown that it categorically confirmed that *alkylate* cannot be produced from distillation, as shown below:

> "We acknowledge your letter dated June 28, 2017 requesting our position on matters regarding alkylates as detailed therein.
>
> Our own reading and research confirm with the details you were able to gather from your own research and interviews with experts on the field. Although we have a minor clarification with the second sentence of item 2.c. Probably, a better way of stating this sentence may be as follows:
>
> > **Distillation, a physical separation process, does not directly cause the production of alkylate. <u>Alkylation, a separate chemical process utilizing products from distillation, converts light olefins and isobutane into isoparaffin isomers that produces alkylates</u>.**" *(Emphasis and underscoring ours)*

Correspondingly, it is indubitable that the raw materials used in producing *alkylate, i.e.,* light olefins and isobutane, are derived from petroleum. However, the Court finds that *alkylate* is still a product of distillation. This is simply because while *alkylate* is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutane, 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 isobutane. In other words, while it is true that alkylation, not distillation, is required to produce *alkylate*, it is without doubt that isobutane — one of the raw materials of *alkylate*, is a product of

[87] Exhibit "P-30", Docket (CTA Case No. 9565) – Vol. III, p. 1217.

distillation. Simply put, there can be no *alkylate* without isobutane, which is a product of distillation.

Such being the case, *alkylate*, being a product of distillation, is subject to excise tax, pursuant to Section 148 (e) of the NIRC of 1997, as amended.

Finding petitioner's *alkylate* importations subject to excise tax, the Court cannot find any legal or factual basis to nullify respondent's letter dated June 29, 2012, and CMC No. 164-2012 which implemented the same.

There is no double taxation herein.

As a corollary, contrary to petitioner's averments, the Court likewise find that double taxation does not exist in this case.

According to petitioner, aside from the imposition of excise tax on the subject imported *alkylate*, the same was thereafter blended in the finished premium gasoline, and was also subjected to another round of excise taxes upon lifting from petitioner's refinery of the finished premium gasoline which contained the blended *alkylate*.

We disagree with petitioner.

Double taxation means taxing the same property twice when it should be taxed only once; that is, taxing the same person twice by the same jurisdiction for the same thing. It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as *"direct duplicate taxation"*, **the two taxes must be imposed on the same subject matter,** for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; **and they must be of the same kind or character.** [88]

In this case, the subject matter of the tax imposed is on the importation of *alkylate*. And it is already a different subject matter

[88] *Commissioner of Internal Revenue vs. Bank of Commerce*, G.R. No. 149636, June 8, 2005.

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.

In sum, the Court finds no merit on petitioner's prayer for the refund of, or issuance of tax credit certificates on, its excise tax payments on importations of *alkylate* covered by IEIRD Nos. 00381050670, 00382180473 and 00383756967, in the aggregate amount of ₱65,202,458.00, for the period from April to September 2015.

WHEREFORE, the present *Petitions for Review* are **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice