REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PETRON CORPORATION, Petitioner,	**CTA CASE NOS. 8914 & 8981**
	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson,* **MINDARO-GRULLA**, and **MANAHAN**[1], *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 3 0 2019 4:13 PM

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is petitioner's **Motion for Partial Reconsideration (of the Decision dated December 18, 2018)**, filed on January 4, 2019, with respondent's **Opposition [Re: Petitioner's Motion for Partial Reconsideration (of the Decision dated 18 December 2018) dated 04 January 2019]**, filed on February 8, 2019.

Petitioner moves for reconsideration of the Court's Decision (assailed Decision) dated December 18, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **DENIED** for lack of merit.
>
> **SO ORDERED**."

[1] Inhibited.

In the instant motion, petitioner argues that the Court erred in finding that alkylate is subject to excise tax under Section 148 (e) of the 1997 National Internal Revenue Code (NIRC) simply because its raw materials, olefins and isobutane, are derived from petroleum through the process of distillation.

To support this, petitioner presents the following arguments: (1) to consider alkylate a product of distillation simply because its raw materials could not have been produced without distillation erroneously and baselessly stretches the coverage of Section 148(e) of the NIRC of 1997; (2) alkylate cannot be used as a "motor fuel" as contemplated in the opening paragraph of Section 148 of the NIRC of 1997; (3) petitioner's imported alkylate is not intended to be used as a finished product or for domestic consumption by the public; (4) the imposition of excise tax on imported alkylate, when the finished gasoline to which the alkylate is blended is also subjected to excise tax, is tantamount to taxing the same product twice and is highly oppressive, arbitrary and confiscatory; and (5) there is nothing in Section 148(e) of the NIRC of 1997 that expressly subjects alkylate to excise tax; thus, no excise tax should be imposed on the importation thereof.

Petitioner asserts that the articles enumerated and taxed under Section 148 of the NIRC of 1997 are all end products, as opposed to by-products, derivatives or intermediate goods, primarily, derived from crude oil distillation used or intended to be used as motor fuel. Arguing on the basis of *ejusdem generis*, it avers that since Section 148 of the NIRC of 1997 imposes taxes on end products primarily derived from crude oil distillation used or intended to be used as motor fuel, the phrase "other similar products of distillation" must be interpreted in the context of the particular subsection where it is found, that is, a product akin to naphtha and regular gasoline as end products primarily derived from distillation of petroleum or crude oil intended to be used as motor fuel.

Citing *BIR Ruling No. DA-181-03 dated June 5, 2003*, petitioner contends that the BIR had occasion to discuss what the term "*other similar products of distillation*" in Section 148(e) of the NIRC of 1997 contemplates. The BIR said that the term "other *similar products of distillation*" contemplates products generally used as fuel. The ruling involved SBP 80/100 and Pegasol 3040, articles used as solvent which were found to be mainly composed of naphtha, a petroleum-derived compound. While the SBP 80/100 and Pegasol 3040 are composed mainly of naphtha, the BIR excluded the said articles from the coverage of excise tax as they did not constitute fuel. Similarly, as found by the Court that it is composed of olefins and isobutane, alkylate is not fuel. It must accordingly be excluded from the coverage of the excise tax imposed under Section 148(e) of the NIRC of 1997. Thus, imposing excise tax on alkylate supposedly as a product of distillation similar to naphtha simply because its raw material could not have been produced without distillation erroneously extends the coverage of Section 148(e) of the NIRC of 1997 beyond what the provision expressly stipulates and contemplates.

Petitioner further argues that alkylate cannot be used as a "motor fuel" as contemplated in the opening paragraph of Section 148 of the NIRC of 1997, which states that excise tax can be imposed only on refined and manufactured mineral oils and motor fuels that are specifically enumerated therein. Since the NIRC of 1997 and its implementing regulations do not define the term "motor fuel", said term should be given its commonly accepted meaning following the rule in statutory construction that words do not acquire a peculiar and different meaning when used in a statute.

Petitioner maintains that alkylate is not a "motor fuel" as it is not suitable and practicable for operating motor vehicles due to certain specifications that render it unfit as motor fuel. Further, petitioner reasons that vehicle fueled by alkylate will have difficulty starting since the fuel is not that volatile. It claims that this is consistent with the position of Director Monsada of the Oil Industry Management Bureau (OIMB) of the Department of Energy (DOE) in her letter dated June 27, 2012.

Moreover, based on the testimonies of petitioner's witnesses, alkylate has been repeatedly and consistently described as a blending component used for the production of gasoline with no use as a finished product in itself. In the letter dated July 24, 2017 from the DOE, it confirmed petitioner's letter dated June 28, 2017 that alkylate is produced through alkylation; alkylation and distillation are different processes and are separate and distinct from each other; alkylate is different from and cannot be placed in the same category as that of naphtha and regular gasoline; and alkylate cannot be used as a motor fuel without violating specific standards.

According to petitioner, alkylate is not in any way similar to naphtha or regular gasoline which are motor fuels. Its specifications and the manner by which it is produced are distinct and different from naphtha and regular gasoline. It enumerates the differences between naphtha and alkylate.

Furthermore, petitioner argues that based on the Technical Report prepared by Dr. Ocon, naphtha and gasoline, which is among the "products of distillation" enumerated in the said report, are grouped together in the same excise tax bracket because technically, both can already be used as motor fuel although the need for further processing exists to conform to the Clean Air Act and PNS. Thus, petitioner submits that the "other similar products of distillation" contemplated by Section 148(e) are suitable or practicable for use of motor fuel.

Petitioner avers that the imported alkylate is not intended to be used as a finished product or for domestic consumption by the public. It contends that excise tax only attaches to finished goods imported or removed for domestic sale or consumption to the public. Since alkylate is not imported or removed for domestic sale or consumption but to be used as a blending component in the production of finished gasoline, no excise tax is due on the importation of alkylate.

Moreover, petitioner claims that as a result of taxing alkylate, it is constrained to pay excise tax twice. An excisable product under Section 148 of the NIRC of 1997 should be subject to excise tax only once.

On a final note, petitioner maintains that there is nothing in Section 148(e) of the NIRC of 1997 that expressly subject alkylate to excise tax. It asserts that taxation is intended to be specific and should not go beyond the metes and bounds of law. Without a clear, express and unambiguous provision of law subjecting alkylate to excise tax, the importation of alkylate, which is subsequently blended to produce finished gasoline cannot and should not be subject to a separate excise tax, particularly, when the finished gasoline to which the alkylate is blended is already subjected to excise tax.

In its opposition, respondent counters that the basis for the imposition of excise tax on alkylate is Section 148(e) of the NIRC of 1997, as amended and the same was confirmed by CMC No. 164-2012 issued by the Commissioner of Customs. The provision does not qualify whether the items subject to excise tax is primary or secondary product of distillation.

Further, respondent asserts that the CMC No. 164-2012 was issued in the exercise of quasi-legislative function of the Commissioner of Customs. The same was issued within the confines of his power, thus, it carries the force and effect of a law. Unless and until the same is declared null and void, petitioner cannot allege that the excise tax paid on its importation of alkylate is illegal and erroneous.

Respondent further argues that the Court has reiterated its ruling in *Petron Corporation vs. CIR*, CTA Case No. 9111, that alkylate possesses the properties and characteristics similar to that of gasoline or is considered as gasoline although not in its finished state and applying Section 148 of the NIRC of 1997, as amended, the law does not qualify whether the mineral oil or motor fuel subject to excise tax could be commercially used.

The Court finds the instant motion without merit.

The arguments raised by the petitioner are mere rehash of the same facts and issues which have already been passed upon in the assailed Decision.

As provided under Section 148(e) of the NIRC of 1997, naphtha, regular gasoline and other similar products of distillation, as soon as they are in existence, are subject to excise tax. As ruled by the Court, based on the evidence presented, alkylate is similar to naphtha as its raw materials, *i.e.*, light olefins and isobutane, are products of distillation. Reasonably, before alkylate comes into existence, it undergoes the process of distillation through its raw materials.

The relevant portion of the assailed Decision states:

> "From the testimonies of petitioner's witnesses, the raw materials used in producing alkylate, i.e., light olefins and isobutane, are derived from petroleum. And based on the evidence presented, alkylate is a product of distillation. While it is not directly produced through the process of distillation but by alkylation, the raw materials, olefins and isobutane, are products of distillation. As such, it is obvious that alkylate first undergoes the process of distillation, because it cannot come into existence without its raw materials, olefins and isobutane.

Since it can be considered a product of distillation similar to naphtha, alkylate is subject to excise tax, pursuant to Section 148(e) of the NIRC of 1997, as amended."

Further, in the case of *Petron Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 9111[2], the Court has already ruled that alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state, based on the following findings:

"Based on the foregoing, the nature of alkylate can be summarized as follows:

1. Alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements.

2. It is impractical or uneconomical to import and sell alkylate as the 93 or 95 RON finished product itself. Conversely, alkylate may be sold as a finished product itself, although the same may be impractical or uneconomical.

3. It is produced from the combination of raw materials, i.e., light olefins (C3-C5) with isobutane, which are products of crude oil- the basic material to produce transport fuel.

4. Isobutane, a raw material of alkylate, is produced from crude oil distillation.

5. It 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. It increases the octane number of a straight run gasoline or naphtha.

6. Alkylate is a gasoline component produced by combining two (2) gases using sulfuric acid, using reactor chillers." gr

[2] October 26, 2017

Furthermore, the Court agrees with the petitioner that, based on the principle of *ejusdem generis*, the phrase "other similar products of distillation" must be interpreted in the context of the particular subsection where it is found. However, the Court disagrees that it should be interpreted to include only products akin to naphtha and regular gasoline as end products primarily derived from distillation of petroleum or crude oil intended to be used as motor fuel.

Section 148(e) of the NIRC of 1997 used the term "other similar products of distillation" without qualification. Applying the principle of "*ubi lex non distinguit, nec nos distinguere debemus*", which means "where the law does not distinguish, we should not distinguish", the said term should be taken to include those products that are directly or indirectly derived from distillation. Hence, alkylate is within the coverage of the term, as its raw materials are produced through the process of distillation.

Finding no cogent reason to reverse the ruling in the assailed Decision, the denial of the Petition for Review filed by Petron Corporation is affirmed.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (of the Decision dated December 18, 2018)** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla	(*Inhibited*)
CIELITO N. MINDARO-GRULLA	**CATHERINE T. MANAHAN**
Associate Justice	Associate Justice