REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PETRON CORPORATION,
Respondent.

CTA EB No. 2527
(CTA Case Nos. 9327 & 9460)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
APR 20 2023 4:30pm

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DECISION

REYES-FAJARDO, *J.*:

This is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) on October 28, 2021, praying for the reversal and setting aside of the Amended Decision[2] of the Second Division of this Court (Court in Division) promulgated on February 15, 2021 and Resolution[3] of the Court in Division promulgated on September 17,

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1 *Petition for Review, Rollo* (CTA EB No. 2527), pp. 1-18.

2 Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Juanito C. Castañeda, dissenting and Associate Justice Maria Rowena Modesto-San Pedro, concurring; *Rollo* (CTA EB No. 2527), pp. 27-46.

3 Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Juanito C. Castañeda, dissenting and Associate Justice Maria Rowena Modesto-San Pedro, concurring; *Rollo* (CTA EB No. 2527), pp. 47-51.

2021. The respective dispositive portions of the assailed Decision and Resolution read as follows:

Assailed Amended Decision

> **WHEREFORE,** petitioner's Motion for Partial Reconsideration (re: Decision dated 5 October 2020) is hereby **GRANTED.** The dispositive portion of the Decision dated 05 October 2020 is hereby **AMENDED** to read as follows:
>
> > **WHEREFORE,** the instant consolidated Petitions for Review docketed as CTA Case Nos. 9327 and 9460 are **GRANTED.** Accordingly, respondent is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner the amount of ₱54,816,629.00, representing the erroneously paid excise taxes on its importation of alkalyte covered by Import Entry and Internal Revenue Declaration Nos. 00374437468 and 00376827474.
> >
> > **SO ORDERED.**

Assailed Resolution

> Accordingly, there being no new matters raised that would have compelled this Court to revisit its prior ruling and/or reverse the same, respondent's "Motion for Reconsideration (Amended Decision promulgated 15 February 2021)" is **DENIED** for lack of merit.
>
> **SO ORDERED.**

FACTS

Petitioner CIR is the chief of the Bureau of Internal Revenue (BIR), a government agency tasked to, among others, assess and collect all national internal revenue taxes and charges, and enforce all forfeitures, penalties, and fines connected therewith.[4]

Respondent Petron Corporation is a corporation organized and existing under Philippines laws with principal office at San Miguel Corporation Head Office Complex, 40 San Miguel Avenue, 1550 Mandaluyong City.[5]

As found by the Court in Division,[6] the facts follow:

THE CASE

The consolidated *Petitions for Review* filed by [respondent] Petron Corporation against the [petitioner] Commissioner of Internal Revenue, seek for the refund or issuance of a tax credit certificate (TCC) of the amount ₱26,580,431.00, covering the period from April 1, 2014 to April 30, 2014 for CTA Case No. 9327, and of the amount of ₱28,236,198.00 for the period of August 19, 2014, for CTA Case No. 9460, representing excise tax allegedly paid by petitioner on the importation of alkylate.

...

ANTECEDENTS (ADMINISTRATIVE LEVEL)

[Respondent] made alkylate importations on two occasions where corresponding excise taxes were imposed, to wit:

Vessel Name	*Arrival Dates*	*Excise Tax*	*Bill of Lading No.*	*Import Entry & Internal Revenue Declaration (IEIRD)*
M/T Amorea	April 6, 2014	₱26,580,431.00	A-001	00374437468
M/T Great Lady	August 18-21, 2014	₱28,236,198.00	ML-8002	00376827474

Thus, [respondent] paid the imposed excise taxes, *viz:*

Bill of Lading No.	*Date of Payment*	*Excise Tax Paid*	*Authority to Release Imported Goods*
A-001	April 7, 2014	₱26,580,431.00	ATRIG dated April 29, 2014
ML-8002	August 19, 2014	₱28,236,198.00	ATRIG dated September 5, 2014

Upon removal of its finished petroleum products, [respondent] paid excise taxes on June 7, 2014.

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4 *Joint Stipulation of Facts and Issues [JSFI], Rollo* (CTA Case No. 9327), Vol. II, p. 589.

5 *Id.*

6 *Decision, Petron Corporation v. Commissioner of Internal Revenue [Petron v. CIR],* CTA Case Nos. 9327 & 9460, October 5, 2020, *Rollo* (CTA Case No. 9327), Vol. III, pp. 1212-1236.

Thereafter, [respondent] filed administrative claims for refund or issuance of TCC representing the erroneously paid excise taxes arising from the aforesaid importation of alkylate on March 31, 2016 and August 12, 2016.

PROCEEDINGS BEFORE THIS COURT

On April 6, 2016, [respondent] filed a *Petition for Review* praying, *inter alia,* for the refund or issuance of TCC in the amount of ₱26,580,431.00, allegedly representing excise tax paid by [respondent] in importation of alkylate covered by IEIRD No. 00374437468. The case was docketed as CTA Case No. 9327. This case was originally raffled to this Court's First Division.

On July 4, 2016, [petitioner] posted his *Answer* in CTA Case No. 9327, interposing the following special and affirmative defenses:

- The court does not have jurisdiction over the instant petition as the subject matter thereof does not fall under the special jurisdiction of the court provided for by law;

- The petition was prematurely filed for failure to exhaust all available remedies within the administrative level in accordance with the Tariff and Customs Code of the Philippines;

- The petition is dismissible for failure to state a cause of action; and,

- The excise tax paid by petitioner on its importation of alkylate is neither erroneous nor illegal, thus, its reliance on Sections 204 and 229 of the National Internal Revenue Code of 1997 (1997 NIRC) is misplaced.

On September 2, 2016, the Court received another *Petition for Review,* which was posted by [respondent] on August 19, 2016, praying, among others, for a refund or issuance of TCC in the amount of ₱28,236,198.00, allegedly representing excise tax paid by [respondent] on importation of alkylate covered by IEIRD No. 00376827474. This case was docketed as CTA Case No. 9460, and was also raffled to this Court's First Division.

The Pre-Trial Conference for CTA Case No. 9327 was initially scheduled on October 13, 2016.

On September 22, 2016, [respondent] filed its *Motion for Consolidation With Motion to Defer Pre-Trial Conference* in CTA Case

No. 9327, and *Motion for Consolidation* in CTA Case No. 9460, for the consolidation of the said cases, and for the deferment of the scheduled Pre-Trial Conference. In the Resolution dated September 30, 2016, the Court, *inter alia,* deferred the Pre-Trial Conference in CTA Case No. 9327.

[Petitioner], on the other hand, filed a *Manifestation with Motion to Defer Transmittal of BIR Records* on October 13, 2016. The said *Motion* was granted; and [petitioner's] manifestation that he had no objection to the consolidation of the said two cases, was noted.

[Petitioner] filed his *Answer (With express reservation on jurisdiction)* in CTA Case No. 9460 on November 16, 2016, raising the following special and affirmative defenses, to wit:

- The court has no jurisdiction over the instant petition, specifically:

  1. The petition is dismissible for failure to state its cause of action;

  2. Assuming arguendo that respondent is the real party in interest, it is still dismissible for its subject matter is not within the jurisdiction of the court;

  3. Interpretative rulings issued by the CIR are subject to review by the Secretary of Finance;

  4. [Respondent] failed to exhaust administrative remedies;

  5. Alkylate is a product of distillation similar to naptha and regular gasoline, thus, it is subject to excise tax under Section 148(e) of the Tax Code;

  6. Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported; and

  7. The imposition of excise tax on the importation of alkylate does not amount to double taxation and does not violate any law.

In the Resolution dated December 20, 2016, the Court granted [respondent's] *Motions for Consolidation;* and considered [petitioner's] reservation on jurisdiction expressed in the latter's *Answer* in CTA Case No. 9460 as a *Motion to Dismiss;* and thus, [respondent] was directed to comment thereon. In compliance, [respondent] filed its

Reply and Comment/Opposition (To Respondent's Express Reservation on Jurisdiction in His Answer dated November 7, 2016) on January 13, 2017.

Thereafter, in the Resolution dated August 15, 2017, the Court denied [petitioner's] prayer for dismissal in his *Answer (With express reservation on jurisdiction)* filed in CTA Case No. 9460.

After the consolidation of CTA Case Nos. 9327 and 9460, the Pre-Trial Conference of the same was subsequently scheduled and held on December 7, 2017. In the meantime, *[Petitioner's] Pre-Trial Brief* was filed on December 1, 2017, while the Court received the *Pre-Trial Brief for [Respondent]* on December 4, 2017.

On January 5, 2018, the parties submitted to this Court their *Joint Stipulation of Facts and Issues* (JSFI). In the Resolution dated January 17, 2018, the Court approved the said JSFI, and deemed the termination of the Pre-Trial. The Pre-Trial Order was issued on March 19, 2018.

As trial ensued, [respondent] presented its testimonial and documentary evidence. [Respondent] offered the testimonies of the following individuals, namely: (1) Simon Christopher Mulqueen, Director of Technical Services for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel Specialties; (2) Jonathan F. Del Rosario, Terminal Manager of [respondent's] Batangas Terminal; (3) Ricardo S. Infante, Supervising Science Research Specialist of the Oil Industry Management Bureau (OIMB) of the Department of Energy (DOE); (4) Michael F. Manzaon, [respondent's] Commercial Services Manager; (5) July Ann D. Vivas, [respondent's] Financial Accounting Manager; (6) Gardeliio P. Malagpo, [respondent's] Process Engineering Department Manager; (7) Ma. Clarissa C. Arguelles, petitioner's Tax Manager; (8) Cecilia N. Sengia, [respondent's] Refinery Finance Department Manager; (9) Dr. Joey D. Ocon, a Chemical Engineer and consultant of [respondent]; and (10) Ma. Milagros F. Padernal, the duly Court-commissioned Independent Certified Public Accountant (ICPA) for the instant consolidated cases.

The ICPA submitted her *Report* on May 24, 2018.

Pursuant to the Court's Order dated September 26, 2018, these cases were transferred to this Court's Second Division.

[Petitioner] transmitted the *BIR Records* of these cases on February 26, 2019.

On April 15, 2019, [respondent] filed its *Formal Offer of Exhibits [Ad Cautelam]* on April 22, 2019.

> In the Resolution dated October 1, 2019, the Court admitted [respondent's] exhibits, except for the following: (1) Exhibits "P-20" to "P-50", for failure to present originals for comparison; and (2) Exhibits "P-74", "P-83", "P-96" to "P-199", and "P-203-1-3" to "P-203-1-4", for not being found in the records.
>
> As a result, [respondent] filed its *I. Tender of Excluded Evidence [marked as Exhibits "P-2-" to "P-50"] and II. Manifestation on Exhibit References Not Used [Re: Exhibits "P-74", "P-83" to "P-89", "P-96" to "P-199", and "P-203-1-3" to "P-203-1-4"]*, which tendered the excluded evidence, specifically, Exhibits "P-20" to "P-50", and manifested that Exhibits "P-74", "P-83" to "P-89", "P-96" to "P-199", and "P-203-1-3" to "P-203-1-4" do not correspond or refer to any documentary evidence of [respondent], and hence, not formally offered. Accordingly, the Court noted the same, in the Resolution dated November 18, 2019.
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> At the hearing held on October 23, 2019, [petitioner's] counsel manifested that [petitioner] has no witness to present in these cases; and upon motion of the counsels for both parties, the Court granted the parties thirty (30) days from the said date to file their memoranda.
>
> On November 22, 2019, [respondent] and [petitioner] respectively filed their *Memoranda.*
>
> These consolidated cases were considered submitted for decision on December 2, 2019.

On October 5, 2020, the Court in Division rendered a Decision denying the consolidated Petitions for Review.[7]

On October 21, 2020, respondent filed a *Motion for Partial Reconsideration (re: Decision dated 5 October 2020)* with the Court in Division.[8]

On November 10, 2020, petitioner filed an *Opposition (Re: Motion for Partial Reconsideration)* with the Court in Division.[9]

On November 15, 2021, the Court in Division rendered the assailed Amended Decision granting the consolidated Petitions for

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7 *Id.*

8 *Motion for Partial Reconsideration (re: Decision dated 5 October 2020), Rollo* (CTA Case No. 9327), Vol. III, pp. 1237-1264.

9 *Opposition (Re: Motion for Partial Reconsideration), Rollo* (CTA Case No. 9327), Vol. III, pp. 1268-1278.

Review and thereby granting the refund or issuance of TCC in favor of petitioner in the amount of ₱54,816,629.00, representing the erroneously paid excise taxes on its importation of alkylate covered by Import Entry and Internal Revenue Declaration Nos. 00374437468 and 00376827474.[10]

On March 5, 2021, petitioner filed a *Motion for Reconsideration (Amended Decision promulgated 15 February 2021)* with the Court in Division.[11]

On March 25, 2021, respondent filed an *Opposition (to Motion for Reconsideration dated 2 March 2021)* with the Court in Division, and was received on May 17, 2021.[12]

On September 17, 2021, the Court in Division rendered the assailed Resolution denying petitioner's motion for reconsideration for lack of merit.[13]

On October 28, 2021, petitioner filed a *Petition for Review* with the Court *En Banc.*[14]

On February 10, 2022, respondent filed a *Comment / Opposition (Re: Petition for Review dated 7 October 2021)* with the Court *En Banc.*[15]

On April 5, 2022, the Court *En Banc* issued a Resolution submitting the case for decision.

Petitioner's Arguments

Petitioner asserts that alkylate, which is a product of distillation similar to naphtha, regular gasoline, and other similar products of distillation, is subject to excise tax under Section 148 (e) of the NIRC, as amended.

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10 *Amended Decision, Petron v. CIR,* CTA Case Nos. 9327 & 9460, February 15, 2021, *Rollo* (CTA Case No. 9327), Vol. III, pp. 1281-1293.

11 *Motion for Reconsideration (Amended Decision promulgated 15 February 2021), Rollo* (CTA Case No. 9327), Vol. III, pp. 1301-1314.

12 *Opposition (to Motion for Reconsideration dated 2 March 2021), Rollo* (CTA Case No. 9327), Vol. III, pp. 1319-1335.

13 *Resolution, Petron v. CIR,* CTA Case Nos. 9327 & 9460, September 17, 2021, *Rollo* (CTA Case No. 9327), Vol. III, pp. 1342-1346.

14 *Petition for Review, Rollo* (CTA EB No. 2527), pp. 1-18.

15 *Comment / Opposition (Re: Petition for Review dated 7 October 2021), Rollo* (CTA EB No. 2527), pp. 55-108.

Petitioner adds that the alkylate imported by respondent and removed from customs custody, although alleged to have been used as a blending component, is subject to excise tax for being a thing imported pursuant to Section 129 of the NIRC, as amended.

Lastly, petitioner argues that the imposition of excise tax on alkylate is not tantamount to double taxation since the succeeding round of taxation is on a whole new excisable product.

Respondent's Arguments

Respondent contends that alkylate is not covered by Section 148 (e) of the NIRC, as amended, which imposes excise tax only on naphtha, regular gasoline, and other similar products of distillation. It argues that since tax laws are strictly construed against the government and in favor of the taxpayer, petitioner failed to discharge the burden to prove that alkylate is a product of crude oil distillation when it did not present any evidence.

RULING

The Petition for Review is denied.

At the outset, the Court finds no new and compelling arguments raised by petitioner. The arguments raised are mere rehash of previous arguments and were sufficiently acted upon in the assailed Amended Decision and Resolution. Nevertheless, petitioner's arguments shall be discussed to bolster the assailed Amended Decision and Resolution of the Court in Division.

Respondent's claim for refund or tax credit is anchored on Sections 204 and 229 of the NIRC, as amended, to wit:

> SEC. 204. - *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> ...
>
> (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 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.
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> 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, 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 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.[16]

To be entitled to a refund or erroneously or illegally collected taxes, the following requisites must be satisfied:[17]

1. There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. The claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. The suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

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[16] Boldfacing supplied.

[17] *Commissioner of Internal Revenue v. San Miguel Corporation,* G.R. Nos. 180740 & 180910, November 11, 2019; *Pilipinas Shell Petroleum v. Commissioner of Internal Revenue,* CTA EB No. 1078 (CTA Case No. 8049), July 27, 2015.

The administrative and judicial claims were timely filed.

As found by the Court in Division in its Decision[18], below are the dates relevant to respondent's claims:

	Date of payment of excise tax	Last day of the 2-year prescriptive period	Date of filing of administrative claim	Date of filing of judicial claim
First claim	April 7, 2014	April 7, 2016	March 31, 2016	April 6, 2016
Second claim	August 19, 2014	August 19, 2016	August 12, 2016	August 19, 2016

Considering the above relevant dates, respondent timely filed the administrative and judicial claims for refund or issuance of tax credit certificate within the two (2)-year prescriptive period prescribed by law.

There was an erroneous collection of tax.

Petitioner argues that respondent's importation of alkylate is subject to excise tax as contemplated in Section 148 (e) of the NIRC, as amended, which imposes an excise tax of ₱4.35 per liter of volume capacity on naphtha, regular gasoline, and **other similar products of distillation.**

Petitioner claims that it is basic information in the petroleum manufacturing industry that crude oil is a mixture of hydrocarbons with different boiling temperature and can be separated into different fraction or groups through distillation. It adds that every refinery begins with the separation of crude oil into different fractions by distillation which are further treated through various methods such as cracking, reforming, alkylation, polymerization, and isomerization. Olefins such as propylene and butylene are produced by catalytic and thermal cracking. Alkylation refers to the chemical bonding of these light molecules with isobutene to form larger branched-chain molecules that make high octane petrol. Thus, petitioner posits 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, as amended.[19]

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[18] *Decision, Petron v. CIR,* CTA Case Nos. 9327 & 9460, October 5, 2020, *Rollo* (CTA Case No. 9327), Vol. III, p. 15.

[19] *Petition for Review, Rollo* (CTA EB No. 2527), p. 6.

To support its position, petitioner referred to a certain BIR Letter dated June 29, 2012 or an *"Annex "C" attached to the Petition for Review dated 7 August 2015,"* which cannot be found in the records of the case for lack of a Petition for Review dated August 7, 2015.[20] In said BIR Letter, petitioner points out that alkylate with AHTN [ASEAN Harmonized Tariff Nomenclature] Code No. 2710.11.16B is classified under the same heading with premium leaded, premium unleaded, regular leaded, regular unleaded, other leaded and other unleaded, which leads to its conclusion that alkylate is classified under the same heading with premium leaded, premium unleaded, regular leaded, regular unleaded gasoline. Petitioner likewise referred to a January 18, 2012 report of the BIR Laboratory Section, Excise Taxpayers Regulatory Division which allegedly contains information regarding how alkylate qualifies as a product similar to naphtha in terms of boiling range, volatility, and recover process.[21] However, the same cannot be found in the records of the case.

Respondent, on the other hand, argues that there is no clear basis under the law for the imposition of excise tax on alkylate.[22]

Alkylate is not contemplated under Section 148 (e) of the NIRC, as amended.

Section 148 (e) of the NIRC, as amended, provides:

> SEC. 148. **Manufactured Oils and Other Fuels. -** There shall be collected on refined and manufactures mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> ...
>
> (e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35): *Provided, however,* That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined-cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance,

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20 *Id.* at p. 5.
21 *Id.* at p. 6
22 *Comment / Opposition (Re: Petition for Review dated 7 October 2021), Rollo* (CTA EB No. 2527), p. 56.

> 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:
>
> ...

The bone of contention in the present case is the construction of the phrase "other similar products of distillation" under Section 148 (e) of the NIRC, as amended, and if alkylate is under its purview.

Respondent premises the refund on an erroneous payment of the excise tax or the government's exaction in the absence of a law.

Respondent's claim for refund or tax credit being anchored on its alleged erroneous payment of tax; Section 148 (e) of the NIRC, as amended, should be construed strictly against the government and in favor of the taxpayer. As cited in the assailed Decision, the case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation,*[23] distinguished between tax refund based on a statute granting tax exemption and a tax refund based on erroneous payment of tax and that in case of the former, the rule of strict interpretation in the imposition of tax against the taxpayer is applicable:

> ...There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobacco[']s claim for refund is premised on its erroneous payment of the tax, or better still the government's exaction in the absence of a law.
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> Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.

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[23] G.R. Nos. 167274-75, July 21, 2008 as cited in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.

Tax refunds (or tax credits), on the other hand, are not found principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.

The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.

Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.

What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statues, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens,

taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.[24]

From a plain reading of Section 148 (e) of the NIRC, as amended, alkylate is not found in the enumeration. To recall, a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously.[25]

According to the principle of *ejusdem generis,* when general words such as in this case, *"other similar products of distillation,"* follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are to be construed in their widest extent, but are held to be applying only to persons or things of the same kind or class as those specifically mentioned.[26] Respondent has sufficiently established that alkylate is not of the same kind or class as the enumeration in Section 148 (e) of the NIRC, as amended, i.e., gasoline and naphtha.

Alkylate is not the same kind or class as gasoline and naphtha.

Gardelio P. Malgapo, respondent's Process Engineering Department Manager, testified by way of Judicial Affidavit,[27] a comparison[28] of the essential properties of gasoline and naphtha as compared to alkylate, to wit:

	Regular	**Premium**	**Premium Plus**	**Euro 4 - PH Gasoline**	Alkylate					
					Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12
Density @ 15° C, kg/L	0.725 - 0.783	0.725 - 0.783	0.725 - 0.783	0.725 - 0.783	706.5	706.8	704	703.8	703.7	703.5
RON, min (Anti-knock Index)	91	95 (AKI 87.5)	97	91/95/97	96.6	96.3	95.5	95.3	95.7	96.2
Vapor Pressure	68	62	62	68 (RON 91) 62 (RON 95/97)	26	25.493	35.828	33.761	33.072	33.072
T10, °C max	70	70	70	70	91.5	90.1	79	80	80	81
T50, °C max	70-110	70-110	70-110	70-110	106.7	106	105	106	106	106
T90, °C max	180	180	180	180	117.9	116.8	134	134	130	130
End Point, °C max	215	215	215	215	187.8	181.7	204	211	204	202
Distillation Residue %vol max	2	2	2	2	1.2	1	2	1.2	1	1
Aromatics, %vol max	35	35	35	35	0.09	Not detected	2	1.9	1.9	2
Benzene, %vol max	2	2	2	2	0.09	Not detected	0	0	0	0

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24 Boldfacing supplied. Citations omitted.

25 *Commissioner of Internal Revenue v. Fortune Tobacco Corporation,* G.R. Nos. 167274-75, July 21, 2008 as cited in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

26 *Commissioner of Internal Revenue v. Court of Tax Appeals,* G.R. No. 207843, July 15, 2015.

27 "P-93", *Judicial Affidavit of Gardelio P. Malgapo, Rollo* (CTA Case No. 9327), Vol. I, pp. 334-344.

28 "P-71", *Rollo* (CTA Case No. 9327), Vol. III, pp. 1058-1059.

Joey D. Ocon,[29] respondent's witness, a tenured Assistant Professor of the Department of Chemical Engineering, University of the Philippines and the Head of the Laboratory of Electrochemical Engineering, also testified by way of Judicial Affidavit on the differences between the processes of distillation and alkylation and that alkylate is produced through the process of alkylation and not distillation,[30] to wit:

> Q-14 In your answer to a previous question, you referred to a process called "alkylation." What is the process of alkylation?
>
> A-14 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 iso-butane and olefins to the desired alkylate product. A separation process through distillation is employed but this is merely for purposes of purifying and enhancing the quality of the produced alkylate or recycling excess raw materials. Thus, alkylates are actually produced mainly by unit process, with unit operations serving an auxiliary role.
>
> After reacting the iso-butanes with olefins in the presence of an acid, such as sulfuric or hydrogen fluoride, in the alkylation reactor, alkylates are already formed even without the need for a distillation unit. 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.
>
> ...
>
> Q-16 What if you know is the purpose or use of alkylate?
>
> A-16 Alkylate, due to its relatively high octane numbers, are valuable fuel additives or blending component in the production of motor fuel or gasoline.
>
> Q-17 What if you know is motor fuel or gasoline?

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29 "P-75", *Rollo* (CTA Case No. 9327), Vol. III, pp. 1062-1076..

30 "P-92", *Judicial Affidavit of Joey D. Ocon, Rollo* (CTA Case No. 9327), Vol. I, pp. 497-503.

A-17 Motor fuel or gasoline is a blended product in a liquid stated intended for use in a vehicle equipped with an internal combustion engine. It is produced through the blending of various hydrocarbon components.

Q-18 Can alkylate be used as a motor fuel or gasoline?

Ocon further testified that alkylate is a fuel additive or blending component in the production of motor fuel or gasoline and that unlike motor fuel or gasoline which is a blended product for use in a vehicle, alkylate is not suitable for use as a motor fuel in the operation of a vehicle, to wit:

Q-19 You also referred earlier to the process of separation through distillation. What is distillation?

A-19 Distillation, in general, is the separation of a mixture into several components into different sections through a distillation column. The distillation column works essentially through the application of heat and, in the case of crude oil, for example, the different components are boiled into different sections of the column to allow for recovery of purified fractions. Different temperatures inside an atmospheric distillation column yield purified fractions, as illustrated in Figure 6 of my Technical Report attached to this affidavit.

Q-20 Based on your findings stated in your Technical Report, is alkylate a by-product of distillation?

A-20 No. As stated in page 16 of my Technical Report under the subheading "Summary," the unit process of alkylation is the primary process and is a requisite in the formation of alkylates.

As shown in Figures 2 and 3 of my Technical Report, alkylates are derived already after the feedstock are processed in the alkylation reactor.

The unit operation of distillation will not form the liquid-phase alkylates, but it is installed to mainly recover propane and excess iso-butane gases, where the latter is to be recycled back to the alkylation reactor.

Q-21 Is it correct to say that distillation is a process necessary for the production of alkylate?

A-21 No. **Distillation merely involves the physical separation of the different components of a mixture. At least for the production of alkylate, distillation may even be replaced by other unit operations, such as crystallization, solvent extraction, and stripping.**

For the production of alkylate, it is the process of alkylation that is absolutely necessary and this is employed further down the line in refineries. Distillation occurs after alkylation, but for the sole purpose of recycling back the excess raw materials (i.e., iso-butane) or to improve the quality of alkylate produced.

I came across a combination of a unit operation and a unit process in one apparatus related to alkylation referred to as reactive distillation. It is the process by which catalytic chemical reactions and distillations occur in a single apparatus. Within the apparatus, the primary process through which the product is formed is still the chemical reaction or alkylation.

As testified by Ocon, the different components of crude oil are boiled into different sections of the distillation column to allow for recovery of purified fractions,[31] thereby producing the following products of distillation:[32]

- Fuel Gas;
- Propane;
- Butane(s);
- Light Naphtha;
- Heavy Naphtha;
- Gasoline;
- Kerosene;
- Stove Oil;
- Light Gas Oil;
- Heavy Gas Oil;
- Lubricating Oil;
- Vacuum Gas Oil; and
- Residuum.

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31 *Id.* at 591.

32 "P-76", *Technical Report on the Alkylation Process in the Petroleum Industry Prepared by: Prof. Joey D. Ocon, Ph.D,* Table 4. Boiling Fractions of Petroleum, *Rollo* (CTA Case No. 9327), Vol. III, pp. 1077-1093.

Considering the above, alkylate is not a primary product of distillation unlike in the case of gasoline and naphtha and the other products above-enumerated.

It has also been proven that alkylate is not of same kind or class as gasoline and naphtha and cannot be contemplated by the words "other similar products of distillation," under Section 148 of the NIRC, as amended.

By preponderance of evidence, petitioner's payments of excise taxes under IEIRD Nos. 00374437468 and 00376827474 are considered erroneous and can be the proper subject of refund or issuance of tax credit certificate.

Since claims for refund are civil in nature, a claimant need only prove preponderance of evidence in order to be entitled to its claim for refund.[33] Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[34]

Respondent's claim for refund or issuance of tax credit certificate is summarized below:

Import Entry & Internal Revenue Declaration (IEIRD) No.	Bill of Lading No.	Excise Tax Paid	Date of Payment	Authority to Release Imported Goods (ATRIG)
00374437468[35]	A-001[36]	₱26,580,431.00[37]	April 7, 2014[38]	ATRIG dated April 29, 2014[39]
00376827474[40]	ML-8002[41]	₱28,236,198.00[42]	August 19, 2014[43]	ATRIG dated September 5, 2014[44]

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33 *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015 as cited in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 2166 (CTA Case No. 9435), December 11, 2020.
34 *Id.* citing *Peñalber v. Ramos,* G.R. No. 178645, January 30, 2009.
35 "P-8", "P-8-a", *Rollo* (CTA Case No. 9327), Vol. III, p. 902.
36 "P-4", *Rollo* (CTA Case No. 9327), Vol. III, p. 893.
37 "P-11", *Rollo* (CTA Case No. 9327), Vol. III, p. 905.
38 "P-9" and "P-11", *Rollo* (CTA Case No. 9327), Vol. III, pp. 903 and 905.
39 "P-7", *Rollo* (CTA Case No. 9327), Vol. III, p. 901.
40 "P-16", "P-16-a", *Rollo* (CTA Case No. 9327), Vol. III, p. 921.
41 "P-12", *Rollo* (CTA Case No. 9327), Vol. III, p. 906.
42 "P-19", *Rollo* (CTA Case No. 9327), Vol. III, p. 924.
43 "P-17" and "P-19", *Rollo* (CTA Case No. 9327), Vol. III, pp. 922 and 924.
44 "P-15", *Rollo* (CTA Case No. 9327), p. 920.

The first importation covered by IEIRD No. 00374437468 was supported by respondent with the following documentary evidence:

1. IEIRD No. 00374437468 showing the importation of 38,002 BBL of alkylate through the vessel M/T Amorea; the filing of the final entry and declaration of the subject alkylate; the final assessment and liquidation of fees and taxes, which includes an assessment of excise tax amounting to ₱26,580,431.00;[45]
2. Customs Payment Receipt No. 2014 R 118[46] and Customs Payment Receipt No. 2014 R 212[47] totaling ₱56,130,728, inclusive of excise tax amounting to ₱26,580,431.00 as evidenced by the Bureau of Customs Certification dated March 10, 2015;[48]
3. Bill of Lading No. A-001 indicating shipment of 38,002 BBL of alkylate through the vessel M/T Amorea;[49]
4. Invoice No. 1000000761 dated April 4, 2014 issued by Petron Singapore Trading Pte Ltd to respondent for 38,002 BBL of alkylate;[50]
5. Certificate of Independent Survey with Job Reference No. PH-1400670 dated April 10, 2014;[51]
6. ATRIG No. ELTRDOIL23303 dated April 29, 2014.[52]

The second importation covered by IEIRD No. 00376827474 was supported by respondent with the following documentary evidence:

1. IEIRD No. 00376827474 showing the importation of 39,994 BBL of alkylate through the vessel M/T Great Lady; the filing of the final entry and declaration of the subject alkylate; the final assessment and liquidation of fees and taxes, which includes an assessment of excise tax amounting to ₱28,236,198.00;[53]
2. Customs Payment Receipt No. 2014 R 340[54] and Customs Payment Receipt No. 2014 R 448[55] totaling ₱56,130,728, inclusive of excise tax amounting to ₱57,707,279.00 as

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45 "P-8", "P-8-a", *Rollo* (CTA Case No. 9327), Vol. III, p. 902.
46 "P-9", *Rollo* (CTA Case No. 9327), Vol. III, p. 903.
47 "P-10", *Rollo* (CTA Case No. 9327), Vol. III, p. 904.
48 "P-11", *Rollo* (CTA Case No. 9327), Vol. III, p. 905.
49 "P-4", *Rollo* (CTA Case No. 9327), Vol. III, p. 893.
50 "P-5", *Rollo* (CTA Case No. 9327), Vol. III, p. 894.
51 "P-6", *Rollo* (CTA Case No. 9327), Vol. I, pp. 247-252.
52 "P-15", *Rollo* (CTA Case No. 9327), p. 920.
53 "P-16", "P-16-a", *Rollo* (CTA Case No. 9327), Vol. III, p. 921.
54 "P-17", *Rollo* (CTA Case No. 9327), p. 922.
55 "P-18", *Rollo* (CTA Case No. 9327), p. 923.

evidenced by the Bureau of Customs Certification dated May 14, 2015;[56]

3. Bill of Lading No. ML-8002 indicating shipment of 39,994 BBL of alkylate through the vessel M/T Great Lady;[57]
4. Invoice No. 1000000884 dated August 26, 2014 issued by Petron Singapore Trading Pte Ltd to respondent for 39,994 BBL of alkylate;[58]
5. Certificate of Independent Survey with Job Reference No. PH-1401509 dated August 29, 2014;[59] and
6. ATRIG No. ELTRDOIL29953 dated September 5, 2014.[60]

In sum, We find respondent's importation of alkylate as not subject to excise tax under Section 148 (e) of the NIRC, as amended. Respondent is therefore entitled to the refund or issuance of tax credit certificate of the excise taxes it erroneously paid under IEIRD Nos. 00374437468 and 00376827474.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Amended Decision dated February 15, 2021 and Resolution dated September 17, 2021, both rendered by the Second Division of this Court in CTA Case Nos. 9327 and 9460 are **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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56 "P-19", *Rollo* (CTA Case No. 9327), p. 924.
57 "P-12", *Rollo* (CTA Case No. 9327), p. 906.
58 "P-13", *Rollo* (CTA Case No. 9327), p. 907.
59 "P-14", *Rollo* (CTA Case No. 9327), pp. 908-919.
60 "P-15", *Rollo* (CTA Case No. 9327), p. 920.

(With due respect, see Dissenting Opinion)
ERLINDA P. UY
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice Uy)
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2527** (CTA Case Nos. 9327 & 9460)
- versus -	Present: **DEL ROSARIO**, P.J., **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, and **FERRER-FLORES**, JJ.
PETRON CORPORATION, Respondent.	Promulgated: APR 20 2023 4:20pm

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CONCURRING OPINION

***DEL ROSARIO, P.J.*:**

I concur in the *ponencia* of my esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo, which denied the Petition for Review, and affirmed the assailed Amended Decision dated February 15, 2021 and Resolution dated September 17, 2021, both rendered by the Court in Division.

I write this Concurring Opinion to elucidate further on why alkylate is not subject to excise tax under Section 148(e) of the National Internal Revenue Code (NIRC) of 1997, as amended. The said provision reads:

> "SEC. 148. *Manufactured Oils and Other Fuels.* - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

x x x x x x x x x

> (e) **Naphtha, regular gasoline and other similar products of distillation**, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35): *Provided, however*, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, zero (P0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such byproducts 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;" (*Boldfacing supplied*)

In *San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue*,[1] the Supreme Court discussed the rule of *expressio unius est exclusio alterius*, thus:

> "Where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from its effects all those not expressly mentioned. *Expressio unius est exclusio alterius.* **Anything that is not included in the enumeration is excluded therefrom and a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein**. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned." (*Boldfacing supplied*)

Evidently, alkylate is not found in the enumeration provided for under Section 148(e) of the NIRC of 1997, as amended. Without the express mention of alkylate, there is no other conclusion than that the Legislature did not intend for such product to be taxed. In case of doubt, laws imposing taxes are strictly construed against the government and liberally in favor of the taxpayer. As held by the Supreme Court in *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*:[2]

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[1] G.R. No. 147749, June 22, 2006.
[2] G.R. Nos. 167274-75, July 21, 2008.

> "x x x The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. **A tax cannot be imposed without clear and express words for that purpose**. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, **such statutes are to be construed most strongly against the government and in favor of the subjects or citizens** because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws." (*Boldfacing supplied*)

Likewise, alkylate does not fall under the phrase "other similar products of distillation", considering that it is a product of alkylation and not of distillation, the former being a separate and distinct chemical process from the latter. This is supported by the sworn statement of petitioner's expert witness, Joey D. Ocon, a tenured Assistant Professor of the Department of Chemical Engineering at the University of the Philippines, embodied in pages 16 to 18 of the *ponencia*.

The Dissenting Opinion of Associate Justice Juanito C. Castañeda, Jr. to the assailed Amended Decision states that "while alkylate is not directly produced through the process of distillation but by alkylation, still, it 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."[3]

Section 148(e) of the NIRC of 1997, as amended, imposes excise tax on the following products: (a) naphtha; (b) regular gasoline; and (c) other similar products of distillation, and not on the ingredients or raw materials to come up with naphtha, regular gasoline and such other similar products. **Stated otherwise, what is being subjected to Section 148(e) of the NIRC of 1997, as amended, are the aforesaid three (3) finished products, and not the ingredients used to produce them**.

For a better understanding of the process, it is convenient to use common consumable household items which analogously illustrate the essence of how a "finished product" should be appreciated:

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[3] EB Docket, Vol. I, p. 44.

(i) Coffee drink: supposed **distilled** water is used in brewing coffee beans, could it be said that coffee drink is a product of distillation?

(ii) Egg tart: supposed **condensed** milk is added to egg yolk and other basic ingredients and thereafter baked, should the egg tart be considered as product of condensation?

In both instances, it is obvious that the finished products are not *per se* products of the "process by which the ingredients were made" but by the process necessary to produce the end products themselves. For the coffee drink, it can easily be said that it is a product of brewing, and for the egg tart, a product of baking.

Alkylate does not come into existence by distillation just because its two (2) basic ingredients, olefins and isobutane, are produced by distillation. Alkylate is undisputedly a product of alkylation.

As held in the assailed Amended Decision, Section 148(e) of the NIRC of 1997, as amended, qualifies that only those primary or direct products of distillation are taxable. Such interpretation is supported by the statutory construction rule of *ejusdem generis*. In *Pelizloy Realty Corporation vs. The Province of Benguet*,[4] the Supreme Court discussed the said rule, thus:

> "Under the principle of *ejusdem generis*, '**where a general word or phrase follows an enumeration of particular and specific words of the same class** or where the latter follow the former, **the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned**.'
>
> The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas* as follows:
>
>> The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by **treating the particular words as indicating the class and the general words as including all that is embraced in said class**, although not specifically named by the particular words. This is justified on the ground that if the law[-]making body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular

[4] G.R. No. 183137, April 10, 2013.

> subjects but would have used only general terms." (*Boldfacing supplied*)

The phrase "other similar products of distillation" is preceded by "naphtha" and "regular gasoline". Under the principle of *ejusdem generis*, it is proper to construe the phrase "other similar products of distillation" in relation to the same class where "naphtha" and "regular gasoline" belong.

Naphtha and regular gasoline are the immediate or primary products of distillation. As held in the assailed Amended Decision, "alkylate cannot be placed under the same category as naphtha and regular gasoline considering the intended purpose and nature of alkylate"[5] – that is, as a fuel additive or blending component in the production of motor fuel, and not suitable for use as motor fuel in itself.

Considering that naphtha and regular gasoline are the primary products of distillation, it must also be construed that "other similar products of distillation" refer to finished products which are produced by distillation. As discussed, alkylate is not a primary product of distillation but of alkylation. The raw materials necessary to make alkylate are the primary products of distillation, and not alkylate itself.

Importantly, in the recent case of *Petron Corporation vs. Commissioner of Internal Revenue*,[6] the Supreme Court ruled that alkylate is not an excisable article under Section 148(e) of the NIRC of 1997, as amended. This pronouncement by the highest court of the land should write finis as to the proper interpretation of Section 148(e).

In fine, alkylate, whether or not used as raw materials, is not subject to excise tax because it is not specifically enumerated under Section 148(e) of the NIRC of 1997, as amended. Petitioner's payments of excise taxes for its importation of alkylate are erroneous thus, are proper subject of refund, which, after all, was proven by preponderant evidence.

ALL TOLD, I *CONCUR* in the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] EB Docket, Vol. I, p. 36.
[6] G.R. No. 255961, March 20, 2023.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2527** (CTA Case Nos. 9327 & 9460)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, and FERRER-FLORES,** JJ.
PETRON CORPORATION, Respondent.	***Promulgated:*** APR 20 2023 4:30pm

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DISSENTING OPINION

UY, J.:

With all due respect, I withhold my assent with the view of the *ponencia* of my esteemed colleague, the Honorable Associate Justice Marian Ivy F. Reyes-Fajardo in denying the above-captioned Petition for Review, and affirming the assailed Amended Decision dated February 15, 2021 and Resolution dated September 17, 2021 in CTA Case Nos. 9327 & 9460.

I submit that the Petition for Review is meritorious and thus should be granted on the basis that respondent's importation of alkylate is subject to excise tax because of its nature as established in the original Decision dated October 5, 2020 in CTA Case Nos. 9327 & 9460.

Section 129 of the National Internal Revenue Code (NIRC) of 1997, as amended,[1] provides that excise tax is imposed on goods manufactured, produced or imported in the Philippines for domestic sales or consumption or for any other disposition.

Relative thereto, Section 148(e) of the NIRC of 1997, as amended, provides for the imposition of excise tax on manufactured oils and other fuels, to wit:

> "SEC. 148. *Manufactured Oils and Other Fuels.* – There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> 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

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[1] "**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 to 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'.

subject to excise tax under this Section;" *(Emphases added)*

Based on the foregoing, excise tax shall attach to mineral oils or motor fuels, *i.e.,* naphtha, regular gasoline and other similar products of distillation, as soon as they are in existence as such.

In the *Original* Decision dated October 5, 2020, the Court in Division held that based on the pieces of evidence submitted by petitioner shows that alkylate is produced from the raw materials of light olefins (C3-C5) with isobutane through the process of alkylation; that isobutane, a raw material for alkylate, is a product of crude oil distillation; and that alkylates are valuable fuel additives or blending component in the production of motor fuel or gasoline.

Such being the case, I submit that alkylate is still a product of distillation and thus covered by the imposition of excise tax under Section 148 (e) of the NIRC of 1997, as amended. This is simply because while akylate is not directly produced through the process of distillation but by alkylation, however, its raw materials used in producing alkylate, such as light olefins and isobutane, are products of distillation.

Logically, alkylate is a by-product of its raw materials. While it is true that alkylation, not distillation, is the process which produce alkylate, however, it is also true that isobutane – one of the raw materials of alkylate, is a product of distillation. In other words, alkylate cannot be produced without isobutane, which is a product of distillation. Hence, alkylate is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended. Correspondingly, the subject excise tax payments cannot be deemed as erroneous or illegal.

In light of the foregoing discussions, I vote to **GRANT** the Petition for Review in CTA EB No. 2527.

ERLINDA P. UY
Associate Justice