REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 3000** (CTA Case Nos. 10073, 10120, & 10205)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
PETRON CORPORATION, Respondent.	Promulgated: JAN 20 2026 3:55 PM

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DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review** filed on September 25, 2024 by the **Commissioner of Internal Revenue (CIR/petitioner)** against **Petron Corporation (Petron/respondent)** appealing the Decision dated March 7, 2024 (assailed Decision)[1] and Resolution September 5, 2024 (assailed Resolution)[2] rendered by the Special Second Division of this Court.

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

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[1] Penned by Associate Justice Jean Marie A. Bacorro-Villena, with the concurrence of Associate Justice Lanne S. Cui-David; *Rollo*, pp. 21 to 79.

[2] *Rollo*, pp. 81 to 88.

Assailed Decision

> **WHEREFORE**, with the foregoing premises, the consolidated Petitions for Review filed by petitioner Petron Corporation on 16 April 2019, 18 July 2019, and 29 October 2019, respectively, are hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the total amount of ₱67,991,825.00, representing the erroneously paid excise taxes on its importations of alkylate covered by Single Administrative Document (SAD) Reference Nos. 6WOA1700179, 6WOA1700404 and 6WOA1700590.
>
> **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 (Re: Decision promulgated [0]7 March 2024)," filed on 20 March 2024, is hereby **DENIED** for lack of merit and for being *pro forma*.
>
> **SO ORDERED.**

THE PARTIES[3]

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws.

Respondent Petron is a corporation organized and existing under the laws of the Philippines.

THE ANTECEDENT FACTS

As found by the Court in Division, the facts are as follows:[4]

> **FACTS OF THE CASE**
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> On 18 July 2012, the BOC issued Customs Memorandum Circular **(CMC)** No. 164-2012 implementing the BIR Letter dated 29 June 2012

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[3] *Parties, Petition For Review, Rollo*, p. 2.
[4] *Facts*, assailed Decision, *Rollo*, pp. 23 to 26; citations omitted.

(BIR Letter), 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 National Internal Revenue Code **(NIRC)** of 1997, as amended."

In April, July and November 2017, [Petron] imported a total of 14,789,108 liters of alkylate, as follows:

Vessel Name	Arrival Date	Quantity (in L at Air)	Bill of Lading (BL) No.	BOC SAD No.
M/T Maersk Tangier	16-Apr-17	5,624,347	GASC17MT041102	6WOA1700179
M/T Songa Topaz	21-Jul-17	5,124,065	TRASSSST17071602	6WOA1700404
M/T STI Expedite	2-Nov-17	4,871,124	LGT2/1017/0223	6WOA1700590

The above alkylate importations were imposed an excise tax in the total amount of ₱67,991,825.00, pursuant to Section 148 (e) of the NIRC of 1997, as amended, on the ground that alkylate is supposedly a product of distillation similar to naphtha.

To summarize, [Petron] paid the excise taxes on the above alkylate importations on the following dates:

SAD No.	Date of Payment	Excise Tax Paid
6WOA1700179	17 April 2017	₱24,465,909.00
	31 May 2017	
6WOA1700404	21 July 2017	22,289,682.00
	31 August 2017	
6WOA1700590	30 October 2017	21,236,234.00
	Total	**₱67,991,825.00**

[Petron] thereafter filed letter-applications or administrative claims for refund or tax credit of excise taxes paid on the foregoing importations of alkylate alleged to have been erroneously or illegally paid, together with the Applications for Tax Credits/Refunds (BIR Form No. 1914), to wit:

SAD No.	Date of Filing	Excise Tax
6WOA1700179	05 April 2019	₱24,465,909.00
6WOA1700404	15 July 2019	22,289,682.00
6WOA1700590	22 October 2019	21,236,234.00

Considering [the CIR's] inaction on its administrative claims for refund or tax credit and since the two (2)-year period under Section 229 of the NIRC of 1997, as amended, was about to lapse, [Petron] filed the instant Petitions for Review with this Court on 16 April 2019, 18 July 2019, and 29 October 2019, respectively.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

As detailed in the assailed Decision, the proceedings before the Court in Division are as follows:[5]

[5] *Proceedings Before the Court*, assailed Decision, *Rollo*, pp. 26 to 48; citations omitted.

CTA CASE NO. 10073

Alleging [the CIR's] inaction on its claim for refund or issuance of TCC, on 16 April 2019, [Petron] filed its Petition for Review, praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for, the aggregate amount of P24,465,909.00, representing excise tax paid by [Petron] on importation of alkylate on 16 April 2017. The case was docketed as CTA Case No. 10073 and raffled to this Court's Third Division.

On 30 April 2019, the Third Division issued Summons to [the CIR].

After the Third Division twice granted an extension of time, [the CIR] filed his or her "Answer (to the Petition for Review dated 12 April 2019)" **(Answer)** on 17 July 2019. [xxx]

On 19 July 2019, the Third Division issued a Notice of Pre-Trial Conference and set the case for pre-trial on 15 October 2019. In compliance with the Court's order therein, [the CIR] filed his or her Pre-Trial Brief on 08 October 2019. The Third Division noted the same in a Minute Resolution dated 09 October 2019.

Likewise, on 19 July 2019, [the CIR] transmitted to the Third Division the BIR Records for CTA Case No. 10073, consisting of one (1) folder with twenty (20) pages. The Third Division noted the same in a Minute Resolution dated 24 July 2019.

Meanwhile, on 02 October 2019, [Petron] filed a "Motion for Consolidation with Motion for Postponement [of the Pre-Trial Conference set on October 15, 2019]" **(First Motion for Consolidation)**, praying, among others, for the consolidation of CTA Case No. 10073 with CTA Case No. 10120 (pending before the Second Division).

In the Resolution dated 08 October 2019, the Third Division ordered [the CIR] to comment on [Petron's] Motion for Consolidation and cancelled the Pre-Trial Conference earlier set on 15 October 2019 until further orders. However, [the CIR] failed to comment despite due notice.

In another Resolution dated 03 December 2019, the Third Division noted with conformity the Resolution dated 20 November 2019 of the Second Division granting the consolidation of CTA Case No. 10120 with CTA Case No. 10073 and, thus, granted [Petron's] Motion for Consolidation.

Thereafter, on 10 February 2020, [Petron] filed an "Entry of Appearance with Motion for Consolidation," praying for the consolidation of CTA Case No. 10205 with CTA Case Nos. 10073 and 10120. In the Resolution dated 07 July 2020, the Third Division noted with conformity the Resolution dated 22 June 2020 of the Second Division granting the consolidation of CTA Case No. 10205 with CTA Case Nos. 10073 and 10120, and thus, ordered the consolidation of these cases. In the same Resolution, the Third Division set the Pre-Trial Conference of these three (3) consolidated cases on 10 September 2020.

CTA CASE NO. 10120

Again, claiming inaction on [the CIR's] part, on 18 July 2019, petitioner filed a Petition for Review, praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for, the aggregate amount of ₱22,289,682.00, representing excise tax paid by [Petron] on importation of alkylate on 21 July 2017. The case was docketed CTA Case No. 10120 and raffled to this Court's Second Division.

On 22 July 2019, the Second Division issued Summons to [the CIR].

After the Second Division twice granted an extension of time, [the CIR] filed his or her Answer on 14 October 2019. xxx

On 21 October 2019, the Second Division issued a Notice of Pre-Trial Conference and set the case for Pre-Trial Conference on 21 November 2019.

On 23 October 2019, [the CIR] transmitted to the Second Division the BIR Records in CTA Case No. 10120, consisting of one (1) folder with thirty-five (35) pages. The Second Division noted the same in the Order dated 04 November 2019.

[Petron] filed a "Motion for Consolidation" **(Second Motion for Consolidation)** and an "Urgent Motion to Resolve Motion for Consolidation [With Motion to Defer Pre-Trial Conference]" on 02 October 2019 and 15 November 2019, respectively, praying for the consolidation of CTA Case No. 10120 with CTA Case No. 10073 (pending before the Third Division). [The CIR] also failed to file a comment thereon despite due notice of the Second Division's directive.

In the Resolution dated 20 November 2019, the Second Division granted [Petron's] Second Motion for Consolidation and thereby, consolidated CTA Case No. 10120 with CTA Case No. 10073, the case bearing the lower docket number, subject to the conformity of the Third Division, and cancelled the Pre-Trial Conference previously set on 21 November 2019.

CTA CASE NO. 10205

On 29 October 2019, [Petron] again filed a Petition for Review, praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for, the aggregate amount of P21,236,234.00, representing excise tax paid by petitioner on importation of alkylate on 02 November 2017. The case was docketed CTA Case No. 10205 and likewise raffled to this Court's Second Division.

On 04 November 2019, the Second Division issued Summons to [the CIR].

After the Second Division twice granted an extension of time, respondent filed his or her Answer on 20 January 2020. xxx

On 23 January 2020, the Second Division issued a Notice of Pre-Trial Conference and set the case for Pre-Trial Conference on 27 February 2020.

On 30 January 2020, [the CIR] transmitted to the Second Division the BIR Records for CTA Case No. 10205, consisting of one (1) folder with twenty-nine (29) pages. The Second Division noted the same in a Minute Resolution dated 31 January 2020.

Prior to the Pre-Trial Conference, [the CIR] filed his or her Pre-Trial Brief on 20 February 2020, while [Petron] filed its Pre-Trial Brief on 24 February 2020.

Meanwhile, on 10 February 2020, [Petron] filed a "Entry of Appearance with Motion for Consolidation" **(Third Motion for Consolidation)**, praying for the consolidation of CTA Case No. 10205 with CTA Case Nos. 10073 and 10120 (pending before the Third and Second Divisions, respectively). The Second Division thus cancelled the Pre-Trial Conference previously set on 27 February 2020 until further orders and directed [the CIR] to comment on [Petron's] Third Motion for Consolidation. [The CIR], however, failed to file a comment thereon despite due notice.

In the Resolution dated 22 June 2020, the Second Division granted [Petron's] Third Motion for Consolidation and thereby, consolidated CTA Case No. 10205 with CTA Case Nos. 10073 and 10120, the cases bearing the lower docket numbers, subject to the conformity of the Third Division.

CONSOLIDATED CASES

In the Resolution dated 07 July 2020, the Third Division set the Pre-Trial Conference of the three (3) consolidated cases on 10 September 2020. Prior thereto, [the CIR] filed his or her "Consolidated Respondent's Pre-Trial Brief" for CTA Case Nos. 10073 and 10120 on 11 March 2020, while [Petron] submitted its "Consolidated Pre-Trial Brief for Petitioner Petron Corporation" for CTA Case Nos. 10073, 10120 and 10205 on 07 September 2020.

During the 10 September 2020 Pre-Trial Conference, the Third Division granted the parties a period of twenty (20) days, or until 30 September 2020, to file their Joint Stipulation of Facts and Issues **(JSFI)**.

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On 13 October 2020, the parties filed *via* email their JSFI. The hard copy thereof was submitted on 14 October 2020, which the Third Division admitted and approved in the Resolution dated 21 October 2020. Later, the pre-trial was terminated and, on 10 November 2020, the Third Division issued the corresponding Pre-Trial Order.

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In the trial that ensued thereafter, [Petron] presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: **(1)** Atty. Ma. Clarissa C. Arguelles **(Atty. Arguelles)**, [Petron's] Tax Manager; **(2)** Michael F. Manzano **(Manzano)**, [Petron's] Commercial

Services Manager; **(3)** Ryan Kris B. Rebong **(Rebong)**, [Petron's] Stock and Depot Finance Supervisor; **(4)** Cecilia N. Sengia **(Sengia)**, [Petron's] Refinery Finance Manager; **(5)** Elgo R. Lagyap **(Lagyap)**, Terminal Manager of [Petron's] Limay Terminal; **(6)** Engr. Jurrel D. Pumatong **(Engr. Pumatong)**, [Petron's] Process Engineering Manager; **(7)** Dr. Joey D. Ocon **(Dr. Ocon)**, Associate Professor of the Department of Chemical Engineering, University of the Philippines, Diliman; **(8)** Atty. Conrado M. Briones, the Court-commissioned Independent Certified Public Accountant **(ICPA Briones)**; and, **(9)** Simon Christopher Mulqueen **(Mulqueen)**, Technical Consultant of Innospec Fuel Specialties.

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After the Third Division twice granted an extension of time, [Petron] filed its "Formal Offer of Evidence with Motion to Correct Marking of Exhibits" **(FOE with Motion to Correct Marking of Exhibits)** on 12 April 2022. [The CIR] filed his or her "Comment (Re: Formal Offer of Evidence)" on 27 April 2022.

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In the Resolution dated 05 December 2022 **(FOE Resolution)**, the Court admitted [Petron's] exhibits, xxx xxx xxx Moreover, considering [the CIR's] manifestation that he or she will not present any evidence in these consolidated cases, the Second Division gave the parties a period of thirty (30) days to file their respective memoranda.

On 27 December 2022, [Petron] filed a "Motion for Partial Reconsideration (Re: Resolution dated 5 December 2022)" **(MPR on the FOE Resolution)**. [The CIR] failed to file comment thereon despite due notice. Later, on 18 January 2023, [Petron] filed a Submission, attaching a copy of the marked Exhibit "P-25", which forms part of the records of these consolidated cases.

Meanwhile, in compliance with the Second Division's directive in its FOE Resolution, [the CIR] filed his or her Memorandum on 22 December 2022, while [Petron] filed its Memorandum on 26 January 2023. The Second Division noted the parties' memoranda in the Resolution dated 15 February 2023.

In the Resolution dated 07 March 2023, the Second Division admitted Exhibits "P-22", "P-25", and "P-49", but still denied the admission of Exhibit "P-26", for failure to present originals for comparison. In the same Resolution, the Second Division considered the case submitted for decision.

On 28 April 2023, petitioner filed a "Manifestation (Re: Supreme Court Decision dated 20 March 2023 in G.R. No. 255961)" **(Manifestation)**, stating that a new development has arisen which may impact the Court's determination of the merits of the instant petitions. Whereas, on 17 May 2023, [the CIR] submitted a "Counter Manifestation," stating that the Office of the Solicitor General **(OSG)** has filed a Motion for Reconsideration **(MR)** of the Supreme Court's Decision in *Petron Corporation v. Commissioner of Internal Revenue* **(2023 Petron)**; hence, the same has not yet attained finality. The Special Second Division noted these manifestations in the Resolution dated 19 June 2023.

On March 7, 2024, the Court in Division promulgated the assailed Decision,[6] granting Petron's *Petition for Review* finding that alkylate does not fall under the category of "other similar products of distillation" subject to excise tax; thus, Petron is entitled to the refund or credit of the erroneously or illegally collected excise taxes on importations of alkylate.

Unsatisfied, the CIR filed his *Motion for Reconsideration (Re: Decision promulgated 7 March 2024)*[7] on March 20, 2024, with Petron's *Opposition (to Motion for Reconsideration dated 11 March 2024*[8] filed on April 17, 2024.

On September 5, 2024, the Court in Division rendered the assailed Resolution[9] denying the CIR's motion for reconsideration for lack of merit.

Hence, the instant *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On September 25, 2024, the CIR filed the instant *Petition for Review*,[10] assailing the Court in Division's Decision dated March 7, 2024 and Resolution dated September 5, 2024.

Petron then filed its *Comment/Opposition (Re: Petition for Review dated 11 September 2024)* on December 9, 2024.[11]

On January 20, 2025, the Court submitted the case for decision.[12]

THE ISSUE

In the CIR's *Petition for Review*, the sole issue raised is whether the Court in Division erred in ruling that Petron's importation of alkylate is not

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6 *Rollo*, pp. 21 to 79.
7 Division Docket (CTA Case No. 10073) - Vol. V, pp. 2535 to 2544.
8 *Id.*, pp. 2547 to 2560.
9 *Rollo*, pp. 81 to 88.
10 *Rollo*, pp. 1 to 12.
11 *Rollo*, pp. 91 to 150.
12 *Rollo*, p. 158.

subject to excise tax under Section 148(e) of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE ARGUMENTS

The CIR's Arguments

In arguing that the Court in Division erred in the assailed Decision, the CIR heavily relies on the discussion of the Court and a dissenting opinion in a different case[13] involving the similar issue of whether alkylate is subject to excise tax, where it was held that alkylate was a product of distillation, hence, subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

Petron's Arguments

Petron avers that the *Petition for Review* was filed out of time, considering that the CIR's *Motion for Reconsideration* was *pro forma* and, thus, did not toll the reglementary period to appeal. Secondly, the petition is also not compliant with the requirements for an appeal. Moreover, the petition lacks merit for the applicable rule to the case is the doctrine of strict construction pursuant to *Petron Corporation vs. Commissioner of Internal Revenue.*[14] To Petron, the Court in Division correctly ruled that Petron is entitled to the refund or issuance of a TCC for its erroneously paid excise tax.

THE RULING OF THE COURT *EN BANC*

The *Petition for Review* must be dismissed for being filed out of time.

Section 11 of Republic Act (R.A.) No. 1125,[15] as amended by R.A. No. 9282,[16] provides that "[a] party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*".

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), which implements the above Section, provides: M

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[13] *Petron Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 2425, June 28, 2022.
[14] G.R. No. 255961, March 20, 2023.
[15] An Act Creating the Court of Tax Appeals (June 16, 1954).
[16] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes (March 30, 2004).

> Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Emphasis supplied)*

Based on the foregoing, the CIR had 15 days from receipt of the assailed Resolution within which to file its Petition for Review.

In his *Petition for Review*, the CIR reckoned the 15-day period to file the said petition from the receipt of the assailed Resolution by the BIR Legal Division, on **September 10, 2024**.[17] A scrutiny of the records would show, however, that the Office of the Solicitor General (OSG) received the assailed Resolution on **September 9, 2024**.[18] A question now arises on whether the 15-day period should be reckoned from the receipt of the BIR Legal Division or the OSG.

In *National Power Corp. vs. National Labor Relations Commission*,[19] the Supreme Court clarified that the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG. The Supreme Court further held that the OSG, the principal counsel therein, remains to be the principal counsel and the service of legal processes to it is decisive. In the recent case of *Claudine Monette Baldovino-Torres vs. Jasper A. Torres*,[20] the Supreme Court reiterated these rulings, viz.:

> The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.
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> In the case of *National Power Corporation v. National Labor Relations Commission* (NAPOCOR), the Court held that **the proper basis**

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[17] Timeliness of the Petition, *Petition for Review, Rollo*, pp. 1 to 2.
[18] *Notice of Resolution*, Division Docket (CTA Case No. 10073) – Vol. V, p. 2569.
[19] *National Power Corp. vs. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997.
[20] G.R. No. 248675, July 20, 2022, citing the cases of *National Power Corp. vs. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997 and *Commissioner of Customs vs. Court of Tax Appeals*, G.R. No. 132929, March 27, 2000.

> **for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG**. In holding so, the Court emphasized **that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer**. As a consequence, **copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are <u>not</u> binding until they are actually received by the latter**.
>
> The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**
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> In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017**. Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. The **counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG and not by the public prosecutor**. This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former. *(Emphasis and underscoring supplied; citations omitted)*

Based on the foregoing jurisprudential pronouncements, when the party is represented by several counsels, such as when the principal counsel (e.g., the OSG), deputizes another lawyer from the government agency it represents, it is the receipt of the principal counsel that is binding and the date from which the 15-day period is counted.

As earlier pointed out the assailed Resolution of the Court in Division was received by the CIR, through its principal counsel—the OSG—on September 9, 2024;[21] thus, the CIR had 15 days therefrom, or until **September 24, 2024**, to file his Petition for Review. As such, the instant *Petition* was belatedly filed on **September 25, 2024**.

In this regard, the assailed Resolution has already attained finality. Consequently, the assailed Decision likewise has become final and unappealable.

A decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and

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[21] *Notice of Resolution*, Division Docket (CTA Case No. 10073) – Vol. V, p. 2569.

whether it was made by the court that rendered it or by the highest court of the land.[22]

Clearly, the present *Petition* is already beyond the jurisdiction of this Court.

At any rate, even if We find justification in relaxing the technical rules, the *Petition* will still be denied for lack of merit. If only to put the issues to rest, the Court shall again briefly address the issue raised to demonstrate the futility of the CIR's *Petition*.

The CIR insists that alkylate, being a product of distillation, is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended, which provides that an excise tax shall be imposed on naphtha, regular gasoline and other similar products of distillation, to wit:

> **SECTION 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:
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> (e) **Naphtha, regular gasoline and other similar products of distillation,** per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35): 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 (₱0.00): 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; xxx *(Emphasis supplied)*

As aptly found by the Court in Division, alkylate is not subject to excise tax under the foregoing provision. The Court *En Banc* reiterates that, in *Petron Corporation vs. Commissioner of Internal Revenue*,[23] the Supreme

[22] *Roberto A. Torres, et al. vs. Antonia F. Aruego*, G.R. No. 201271, September 20, 2017.
[23] G.R. No. 255961, March 20, 2023.

Court has categorically ruled that alkylate is **not** a product of distillation. We quote:

> **Alkylate does not fall under the category of "other similar products of distillation" subject to excise tax**
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> At this juncture, it should be clarified that between the two raw materials of alkylate, only isobutane is produced by distillation. In the Judicial Affidavit submitted by petitioner's witness, Simon Christopher Mulqueen (Mulqueen), Light C3-C5 Olefins are typically produced from a fluid catalytic cracker (FCC) and/or coker unit. Isobutane, on the other hand, can be a product of crude oil distillation or may be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.
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> Thus, **it is incorrect to say that both raw materials utilized to produce alkylate are products of distillation, much more to declare alkylate as a product of distillation simply because its raw materials are produced through distillation. To be sure, Sec. 148 (e) of the 1997 NIRC, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production.**
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> From the foregoing, it is clear that alkylate is a mere component which can be blended into finished gasoline to help meet the specification requirements, particularly those related to octane quality and volatility. As aptly pointed out by petitioner, alkylate is exclusively intended for use solely as a raw material or blending component in the manufacture of unleaded premium gasoline. Alkylate has no use as a product by itself as it does not possess the necessary volatility to run a vehicle's engine. This position has been maintained by the experts presented by petitioner during trial and affirmed by DOE OIC Director Obillo. **Considering the intended purpose and nature of alkylate, it certainly cannot be placed under the same category as naphtha and regular gasoline.**
>
> Consequently, the **payment of excise taxes by petitioner upon its importation of alkylate is deemed illegal and erroneous in the absence of a specific provision of law that distinctly and categorically imposes tax thereon.** As discussed earlier, the rule that tax laws must be construed *strictissimi juris* against the government and in favor of the taxpayer applies herein since Sec. 148 (e) of the 1997 NIRC, as amended, did not clearly, expressly, and unambiguously impose tax on alkylate (or those which are not directly produced by distillation).
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> **Corollary to the above rule, the absence of a distinction in Sec. 148 (e) of the 1997 NIRC, as amended, between *primary and secondary or direct and indirect* products of distillation should work in petitioner's favor.**

> Additionally, We agree with petitioner's position that the statutory construction **principle of *ejusdem generis* is equally applicable in the instant case, thus removing alkylate from the ambit of "other products of distillation," even if some of its raw materials undergo the process of distillation.**
>
> Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."
>
> Therefore, in construing the phrase "other similar products of distillation" as stated in Sec. 148 (e) of the 1997 NIRC, as amended, the same must only include or be restricted to things or cases akin to, resembling, or of the same kind or class as those specifically mentioned, (*i.e.*, naphtha and regular gasoline). **In light of the Court's determination that alkylate does not belong to the same category as naphtha and regular gasoline, the same should not be subjected to excise tax.**" *(Emphasis supplied)*

Based on the foregoing, it is clear that alkylate is not similar to naphtha or regular gasoline nor is it a product of distillation; thus, it is not subject to excise tax. Consequently, the subject excise tax was indeed erroneously paid, thereby, entitling Petron to its claim for refund.

In fine, even if the Court *En Banc* can take cognizance over the present *Petition*, We still find no compelling reason to reverse the Court in Division's assailed Decision and Resolution.

ACCORDINGLY, premises considered, the **Petition for Review** is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With Separate Concurring Opinion
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 3000** *(CTA Case Nos.10073, 10120 and 10205)*
- versus -	
PETRON CORPORATION, *Respondent.*	Promulgated: JAN 20 2026 3:55pm

x - x

SEPARATE CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

I respectfully join my esteemed colleague's conclusion in dismissing the Petition for Review in this case for lack of jurisdiction. However, it bears pointing out that petitioner failed to present evidence that alkylate is a product of distillation for it to be excisable under *Section 148(e) of the National Internal Revenue Code of 1997, as amended*, ("*the Tax Code*") while, on the other hand, respondent Petron Corporation ("Petron") sufficiently presented evidence that it is not.

As the party alleging taxability of a particular article, petitioner has the burden of proving that alkylate, the subject article herein, is indeed subject to excise tax in accordance with *Section 148(e) of the Tax Code*, in particular, that it is a "product of distillation". However, it failed to dispense with this burden and even failed to rebut – testimonial, documentary or otherwise – respondent Petron's evidence pointing to the non-taxability of alkylate.

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.[1]

In this case, where it his highly disputed whether alkylate is a "product of distillation" for it to be subject to excise tax under *Section 148(e) of the Tax Code*, it is the burden of the taxing authorities to prove the matter and doubts should be resolved in favor of respondent-taxpayer Petron.

Further, it is basic in the rule of evidence that the one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[2] Verily, the burden of proof rests upon the party who asserts the affirmative of an issue and not upon he who denies it.[3]

Accordingly, the grant of refund was proper.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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1 *SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014, citing *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008.

2 *Lavarez v. Guevarra*, G.R. No. 206103, March 29, 2017.

3 *Cacdac v. Mercado*, G.R. No. 242731, June 14, 2021.