REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PETRON CORPORATION,
Respondent.

CTA *EB* NO. 2894
(CTA Case No. 9947)

Present:
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
AUG 01 2025
3:25pm

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed on April 11, 2024,[1] with respondents' **COMMENT/OPPOSITION (Re: *Petition for Review* dated 11 April 2024) ("Comment")**, filed on June 6, 2024.[2]

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[1] Records, Vol. 1, pp. 7-63.
[2] Records, Vols. 1-2, pp. 65-974.

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** ("CIR") is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the *National Internal Revenue Code, as amended, ("NIRC")* or other laws or portions thereof administered by the BIR. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **PETRON CORPORATION** is a duly registered domestic corporation engaged in the business of manufacturing and distributing petroleum products. As part of its business, respondent manufactures and sells gasoline products.[3]

The Facts

The following are the undisputed facts as found by the Court in Division:[4]

On July 18, 2012, the Bureau of Customs ("BOC") issued Customs Memorandum Circular (CMC) No. 164-2012 implementing the BIR Letter dated June 29, 2012, 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, as amended ("NIRC")] ".

In October 2016 and January 2017, respondent imported a total of 9,774,282 liters of alkylate, as follows:

Vessel Name	**Arrival Date**	**Quantity (in liters)**	**Bill of Lading No.**	**BOC Single Administrative Document ("SAD")**
M/T OC Grande	October 11, 2016	5,066,832	DSNOCG1619B	6WOA1600662
M/T Iver Experience	January 1, 2017	4,707,450	GASC161E121901	6WOA1600772

[3] Comment, Records, Vol. 1, p. 68.
[4] Assailed Decision, dated September 27, 2023, Annex "A", Petition, *id.*, pp. 31-39.

The above alkylate importations were imposed with an excise tax in the amount of Php4.35 per liter, or for a total amount of Php43,912,370.00, pursuant to *Section 148(e) of the NIRC* on the ground that alkylate is supposedly a product of distillation.

On October 8, 2018, petitioner filed with the BIR Excise Large Taxpayers Audit Division II its administrative claim for refund of excise taxes paid on the subject importations of alkylate. Considering petitioner's inaction and since the two-year period under *Section 229 of the NIRC* was about to lapse, respondent filed the Petition for Review with the Court in Division on October 12, 2018.

On September 27, 2023, the Court in Division rendered the Assailed Decision, the dispositive portion of which provides:[5]

> **WHEREFORE,** with the foregoing premises, the Petition for Review filed by petitioner Petron Corporation on 12 October 2018 is 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 Php43,912,370.00, representing the erroneously paid excise taxes on its importation of alkylate covered by Single Administrative Document (SAD) Reference Nos. 6WOA1600662 and 6WOA1600772.
>
> **SO ORDERED.**

On October 17, 2023, petitioner filed his Motion for Reconsideration (Re: Decision promulgated [27 September] 2023), which was denied for lack of merit by the Court in Division in the Assailed Resolution, dated March 5, 2024.[6]

On March 25, 2024, petitioner filed a Motion for Extension to File Petition for Review,[7] which this Court *En Banc* granted through a Resolution, dated March 27, 2024.[8]

On April 11, 2024, petitioner filed the instant **Petition.**

Afterwards, this Court *En Banc* issued a Resolution, dated May 17, 2024, requiring respondent to file a Comment on the Petition,[9] which was complied with by respondent when it filed the **Comment** on June 6, 2024.

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5 Annex "A", Petition, *id.*, p. 53.
6 Assailed Resolution, dated March 5, 2024, Annex "B", Petition, *id.*, pp. 56-63.
7 *Id.*, pp. 1-5.
8 *Id.*, p. 6.
9 *Id.*, p. 64.

On July 3, 2024, the Court *En Banc* issued a Resolution submitting the instant case for Decision.[10] On July 11, 2024, respondent filed a Manifestation (Re: Supreme Court Resolution dated 24 January 2024 in G.R. 255961).

Hence, this Decision.

The Assigned Errors

Petitioner posits that the Court in Division erred in ruling that respondent is entitled to refund in the aggregate amount of Php43,912,370.00 representing excise taxes paid on importation of alkylate covered by Single Administrative Document ("SAD") Reference Nos. 6WOA16000662 and 6WOA16000772.[11]

Arguments of the Parties

Petitioner argues as follows:[12]

1. In the Assailed Decision, the Court in Division ruled, among others, that the expert witness' opinion that "alkylate is not a product of distillation, but a product of alkylation" is acceptable; and this being so, absent any contrary evidence of petitioner, who opted not to present any evidence during trial, the Court in Division saw no reason not to give effect to the said expert opinion. Petitioner begs to differ on this conclusion made by the Court in Division. The fact that petitioner failed to present any evidence or to refute the evidence presented by respondent does not ipso facto entitle respondent to a tax refund. The taxpayer must still present substantial evidence to prove his claim for refund. There is no automatic grant of a tax refund.

2. *Section 148 (e) of the NIRC* imposes an excise tax of Php4.35 for every liter of volume capacity of naphtha, regular gasoline and other similar products of distillation. In the BIR Letter, dated June 29, 2012, it was stated that Alkylate is considered as a motor spirit. The Webster Dictionary considers motor spirit, petrol and gasoline as nomenclatures given for the same product. Gasoline is defined as a mixture of volatile hydrocarbons suitable for use in spark-ignited internal combustion engines and having octane number of at least 60.

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[10] Records, Vol. 2, p. 976.
[11] Records, Vol. 1, p. 9.
[12] *Id.*, pp. 9-21.

3. It is basic information in the petroleum manufacturing industry that crude oil is a mixture of hydrocarbons with different boiling temperature, and it can be separated into different fraction/groups of hydrocarbons that boil between two specified boiling points by distillation. Every refinery begins with the separation of crude oil into different fractions by distillation. The fractions are further treated to convert them into mixtures of more useful saleable products by 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 (isoparaffins) that make high octane petrol. As contained in the January 18, 2012 report of the OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, in terms of boiling range, volatility and recovery process, Alkylate qualifies as a product similar to naphtha used as gasoline blending component. Naphtha is produced by (1.) fractional distillation of crude oil or (2.) by "other refinery processes" and recovered from refinery streams by fractional distillation. Similarly, Alkylate produced by "other refinery process" (which is alkylation) is recovered also by fractional distillation. Alkylate is a very important blending component of today's reformulated motor gasoline because of its relatively low vapour pressure, high octane number, and near-zero content of sulphur, aromatics, and olefins. Clearly, alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148 (e) of the NIRC.

4. Moreover, in the case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*,[13] all petroleum products result from some form of distillation. Distillation is the process of driving off gas or vapor from liquids or solids by heating (as in a still or retort) and condensing to liquid products, such processes being used especially for purification, fractionation, or the formation of new substances by decomposition. Alkylate is a product of distillation and falls within the category of naphtha, regular gasoline and other similar products of distillation, hence, subject to excise tax under *Section 148 (e) of the NIRC*.

5. A closer look at the provisions of *Section 148 (e) of the NIRC* readily shows that the word "distillation" is only found in the phrase "other similar products of distillation". There is nothing therein that suggests that distillation should be the primary or direct process through which the product is formed in order to fall within the scope of the proviso. The absence of such qualification leads to conclusion that so long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar

[13] CTA *EB* No. 1007 and 1003, September 28, 2015.

products of distillation", that is subject to excise tax under Section 148 (e) of the NIRC. Hence, respondent has no basis to insist that the products subject of excise tax under Section 148 (e) of the NIRC should only be limited to distillation products primarily derived from distillation of crude oil like naphtha and regular gasoline.

6. Evidently, 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 isobutene, which are both products of crude oil distillation. Thus, alkylate would not have come into existence without the presence of the said raw materials. And said raw materials are undoubtedly products of distillation.

7. With regard to the issue of double taxation, for it to be objectionable or prohibited, the same property must be taxed twice, when it should be taxed but once. Both taxes must be imposed on the same property or subject-matter, for the same purpose, by the same taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax. There is no double taxation in the case at bar since the taxes mentioned by respondent are imposed on two different subject matters – the subject matter of the tax imposed is on the importation of alkylate, while the excise tax imposed on the alleged use of alkylate as a blending component or raw material to produce another taxable article or goods. Indeed, upon importation, an excise tax is imposed. When the imported goods go through reprocessing, an imposition of tax happens again. However, there is no double taxation in this case since one of its elements is lacking, *i.e.,* that the two taxes must be imposed on the same subject matter. This is so because the first imposition is upon the importation of goods, and the second, upon removal or reprocessing of goods from the production site. Such being the case, the imposition of excise tax is on two different subject matters, therefore, no double taxation occurs.

In its **Comment,** respondent counter-alleges as follows:[14]

1. The Petition should be dismissed for having been filed out of time. Petitioner's Motion for Reconsideration, dated October 17, 2023, did not toll the reglementary period to appeal because it failed to comply with the requirements of Section 2, Rule 37 of the Rules of Court.

[14] Records, Vol. 2, pp. 83-121.

2. The Petition should be dismissed for failure to comply with the requirements for an appeal. It does not contain a concise statement of facts and is not accompanied by the material portions of the record that would supposedly support its allegations.

3. The Court in Division correctly ruled that respondent is entitled to a refund of, or issuance of a tax credit certificate for, the amount of Php43,912,370.00, representing the erroneously paid excise taxes on its importation of alkylate covered by SAD Reference Nos. 6WOA1600662 and 6WOA1600772. Petitioner had the burden to prove – by a preponderance of evidence – that alkylate is a product of crude oil distillation, thus subject to excise tax under Section 148 (e) of the NIRC. It failed to discharge this burden when it did not present any evidence in the case a *quo.* The Court in Division correctly ruled that alkylate is not subject to excise tax under Section 148 (e) of the NIRC because it does not fall under "other similar products of distillation".

The Ruling of the Court *En Banc*

This Court resolves to **DENY** the **Petition** for lack of merit.

The Court *En Banc* has jurisdiction over the present Petition.

Jurisdiction by the Court *En Banc* is shown under *Section 2 (a) (2), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),* to wit:

> SEC. 2. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
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> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

As clearly provided above, this Court has exclusive appellate jurisdiction over decisions or resolutions by the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from the BIR. In the present Petition, petitioner is appealing the Assailed Resolution and Assailed Decision promulgated by the Court in Division which found that respondent is entitled to a refund or an issuance of a tax credit certificate in the total amount of Php43,912,370.00, representing the erroneously paid excise taxes on its importation of alkylate. Certainly, both the Assailed Resolution and Assailed Decisions are decisions or resolutions of the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from the BIR (in particular, for this case, tax refund). Accordingly, the Court *En Banc* has exclusive appellate jurisdiction over such Assailed Resolution and Assailed Decision subject of the instant Petition.

Now, the question that should be determined is whether petitioner timely filed the instant Petition. It has been shown that petitioner received the Assailed Resolution on March 11, 2024.[15]

Under *Section 3 (b), Rule 8 of the RRCTA,* "[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."

Accordingly, petitioner had 15 days from March 11, 2024, or until March 26, 2024, within which to file a Petition for Review before the Court *En Banc.* On March 25, 2024, petitioner filed a Motion for Extension to File Petition for Review requesting for a 15 day extension to file a Petition for Review.[16] In a Resolution, dated March 27, 2024, the said Motion was granted by this Court *En Banc.*[17] Thus, when the instant **Petition** was filed on April 11, 2024, the Court *En Banc* properly assumed jurisdiction over the instant case considering that April 10, 2024 was declared a regular holiday in observance of Eid'l Fitr.[18]

[15] Assailed Resolution, Records, Vol. 1, p. 55.
[16] *Id.,* pp. 1-2.
[17] *Id.,* p. 6.
[18] Presidential Proclamation No. 514.

The Supreme Court has already ruled that alkylate is not subject to excise tax under Section 148 (e) of the NIRC.

In *Petron Corporation v. Commissioner of Internal Revenue*,[19] which has already become final and executory,[20] the Supreme Court ruled that respondent is entitled to a refund of excise tax it had paid in connection with its importation of alkylate on various dates from July 22, 2012 to November 6, 2012 considering that there is no law subjecting alkylate to excise tax as Section 148 (e) of the NIRC does not subject alkylate to excise tax, *viz.*:

> The rule applicable in this case is the doctrine of strict construction of tax laws in favor of the taxpayer
>
> It bears to point out that petitioner does not seek to be exempt from excise taxes on its alkylate importations. Instead, petitioner anchors its claim for tax refund on the absence of a law that imposes excise tax on alkylate. Hence, the CTA incorrectly applied the rule on strict interpretation in construing tax exemptions since petitioner is not asking to be exempt from excise tax. To be precise, petitioner prays for the refund of the excise taxes erroneously assessed and illegally collected from it on the ground that there is no law that authorizes such exaction.
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> As correctly pointed out by petitioner, not all claims for tax refund partake the nature of a tax exemption such that the rule of strict interpretation against the taxpayer is always applicable. The Court has long settled that '[t]here 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.' 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.
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> However, when the claim for tax refund is premised on the taxpayer's erroneous payment of the tax or the government's exaction in the absence of a law, the rule to be applied must be the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions.
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> In the case at bar, petitioner's claim for tax refund is not founded on any tax exemption law but on the government's erroneous assessment and collection of excise taxes on its alkylate importations, without clear legal basis therefor. Otherwise stated, petitioner's entitlement to a tax refund is not based on the existence of a tax exemption clause in its favor but premised on its claim that alkylate is not subject to excise tax under Art. 148 (e) of the 1997 NIRC, as amended. Thus, the CTA Special Second Division

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[19] G.R. No. 255961, March 20, 2023.

[20] Resolution, dated January 24, 2024, Annex "A", respondent's Manifestation (Re: Supreme Court Resolution dated 24 January 2024 in G.R. 255961).

erroneously applied the doctrine of strict construction against the taxpayer in this case.

Verily, since petitioner's claim for tax refund is not in the nature of a tax exemption, it is not burdened to prove that the legislature intended to exempt it from tax clearly and distinctly, contrary to the CTA Special Second Division's ratiocination. To reiterate, alkylate is not among the articles covered by Sec. 148 (e) of the 1997 NIRC, as amended. Thus, in the absence of a law expressly and unambiguously imposing excise tax on alkylate, the appropriate rule to be applied is the strict interpretation in the imposition of taxes such that the statute must be construed most strongly against the government and in favor of the taxpayer. Simply put, insofar as excise tax is concerned, non-taxability is the rule, while taxability is the exception. Verily, since alkylate is not categorically covered by Sec. 148 (e) of the 1997 NIRC, as amended, the doubt should be resolved in petitioner's favor. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.

Apropos in this regard is the Court's pronouncement in Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc.:

> The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import.

Relatedly, Sec. 148 (e) of the 1997 N1RC, provides:

> Sec. 148. Manufactured Oils and Other Fuels. - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
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> . . . .
>
> (e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and eighty centavos (P4.80): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non- availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (P0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same

> generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;

Indeed, alkylate is not expressly mentioned in the above-quoted provision as one of the goods subject to excise tax. Neither does it tax 'products whose raw materials are products of distillation.' Rather, the provision plainly taxes only '[n]aphtha, regular gasoline and other similar products of distillation.' Hence, to be covered by the said provision, alkylate itself, rather than its 'raw materials,' must be the 'product of distillation.' Notably, it is undisputed that alkylate is not produced by the process of distillation, but by alkylation. This was confirmed by Dr. Ocon and echoed by no less than the BIR's own witness, Ma. Lourdes Rosula R. Ramos (Ramos), the Chief of the BIR Laboratory Section during her cross-examination. Even the CTA En Banc has concluded that alkylate is produced through the process of alkylation.

However, in ruling that alkylate should be taxed, the CTA Special Second Division as affirmed by the CTA En Banc declared that alkylate falls under the 'other similar products of distillation' clause of the above provision. The tax courts stressed that while alkylate is not directly produced through the process of distillation, its raw materials, olefins and isobutane, are nevertheless products of distillation and thus alkylate first undergoes the process of distillation.

This argument fails to persuade.

Alkylate does not fall under the category of 'other similar products of distillation' subject to excise tax

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.

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.

Moreover, it is significant to note that the Officer-In Charge Director of the Oil Industry Management Bureau of the DOE, Melita V. Obillo (Obillo), in a July 24, 2017 letter-reply to petitioner's Tax Manager, Ma. Clarissa C. Arguelles (Arguelles), confirmed the details contained in the June 28, 2017 letter of Arguelles addressed to Obillo. Inferred from the said letter are the following important points:

> 1. Alkylate is not a finished product but an intermediate or raw gasoline component used as blend stock in the production of PNS-compliant unleaded gasoline consistent with requirements of the Philippine Clean Air Act.
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> 2. Alkylate is produced through alkylation, a chemical process for converting light olefins and isobutane into isoparaffin isomers of the correct boiling range and octane numbers.
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> 3. Alkylation and distillation are different processes and are separate and distinct from one another.
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> . . . .
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> 4. In terms of properties and recovery process, alkylate is different from and cannot be placed in the same category as that of naphtha and regular gasoline. Alkylate and naphtha differ in boiling range, volatility and recovery process. [Naphtha's boiling point is 190°C maximum while alkylate's final boiling point is higher than 200°C. As to volatility, naphtha's vapor pressure is at 95kPa maximum while that of alkylate is less than 36kPa. On the recovery process, naphtha can be recovered straight from the process of crude distillation or from other processes. On the contrary, alkylate cannot be recovered straight from crude distillation but only from the process of alkylation.]
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> 5. Similarly, alkylate and regular gasoline differ in boiling range, volatility and recovery process. [Regular gasoline distillation boiling point at 10% recovery (T-10) is 70°C maximum as specified in the (Philippine National Standards) while alkylate has a boiling point greater than 79°C, which does not meet the 70°C maximum specification for regular gasoline. In terms of volatility, regular gasoline vapor pressure can go as high as 68kPa while alkylate's vapor pressure is only at 25-36 kPa. As to recovery process, regular gasoline is produced through the blending of gasoline components that are derived directly from crude oil through distillation and those that are produced from special conversion/reactions processes. Alkylate, on the other hand, cannot be produced from crude oil distillation but only through alkylation process.]
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> 6. Alkylate cannot be used as a motor fuel without violating specific standards. [Specifically, when alkylate is loaded into a vehicle's gas tank without any other component, it can cause poor starting and poor warm-up which can affect driveability and acceleration due to its low vapor pressure. More importantly, under Philippine laws, alkylate cannot be sold as a motor fuel suitable for operating motor vehicles because the specifications of alkylate render it unfit as a motor fuel. It does not conform to the specification of the

> PNS imposed by the Clean Air Act upon motor fuels since its distillation at 10% Volume (TIO) exceeds the 70°C maximum limit set by the PNS.]

Significantly, the above contents of Arguelles' letter were validated by Obillo in a July 24, 2017 letter. She further proposed that item 2.c of Arguelles letter be re-stated in this wise:

> Distillation, a physical separation process, does not directly cause the production of alkylate. Alkylation, a separate chemical process utilizing products from distillation, converts light olefins and isobutane into isoparaffin isomers that produces alkylates.

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).

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.

The CIR's interpretation should not override, supplant, or modify the law

The CTA relied heavily on the CIR's interpretation and position regarding Sec. 148 (e) of the 1997 NIRC, as amended, in relation to the nature of alkylate. To recall, former Commissioner Henares adopted the stance of Ramos, the OIC-Chief of the BIR Laboratory Section that alkylate qualifies as a product similar to naphtha used as gasoline blending component.

However, a careful examination of the records reveal that the report of Ramos was based merely on definitions of the relevant scientific terms from reference materials such as books and the internet, and not on actual testing and experience. According to her, in terms of boiling range, volatility and recovery process, alkylate qualifies as a product similar to naphtha. However, she did not give specific details regarding the boiling range and volatility of either naphtha or alkylate to justify her conclusion. Moreover, Ramos herself conceded that the process of distillation is not the primary process to produce alkylate but the process of alkylation.

In contrast, the expert witnesses presented by petitioner painstakingly described the difference between naphtha and alkylate insofar as boiling range, volatility, and recovery process are concerned. In particular, Dr. Ocon, a tenured professor at the Department of Chemical Engineering of the University of the Philippines, Diliman and the Head of the Laboratory of Electrochemical Engineering of the same university, and an experienced consultant, made a detailed comparison between naphtha and alkylate. As to boiling range, alkylate ranges from 40°C to 150°C while naphtha is limited only to 30°C to 100°C. He also noted a variance on the olefins, aromatics, and sulfur contents of naphtha and alkylate. Naphtha has 20-30 vol% of olefins, 29 vol% of aromatics, and 800ppm of sulfur. On the other hand, alkylate has 0.5 vol% of olefins, 0 vol% of aromatics, and 16ppm of sulfur. In addition, the drivability indices of naphtha differ from alkylate in that naphtha values at 1223 while alkylate is at 1134.

Evidently, substantial distinctions exist between alkylate and naphtha which compel the Court to invalidate the conclusion reached by Ramos that alkylate is similar to naphtha.

The dissimilarities noted above were echoed and supported by Mulqueen, the Technical Manager of Innospec Fuel Specialties for Europe, Middle East and Africa, who has actual laboratory experience in petroleum and fuel production and is exposed in the field of trial and laboratory testing, and Bayani I. Rodriguez (Rodriguez), petitioner's Process Engineering Department Head, who is in charge in monitoring the production of gasoline and other petroleum products of petitioner to ensure that the gasoline components meet the desired quality in accordance with the Philippine National Standards (PNS).

In addition, Rodriguez categorically testified that under the Philippine laws and PNS specification PNS/DOE QS 008:2012 ICS 75.160.20, alkylate cannot be considered or sold as a motor fuel because its properties are not suitable for operating motor vehicles. It does not conform to the PNS imposed by the Clean Air Act. Moreover, alkylate is more expensive than

> premium motor gasoline such that it is more costly to import the same. Hence, it can only be used as a mere blending component.
>
> Mulqueen added that alkylate is used by many countries to blend high octane gasoline. It has no use as a product by itself since it needs to be blended with other components to form a standard gasoline.
>
> Similarly, Dr. Ocon stated that alkylate is not suitable for use as a motor fuel in the operation of vehicles because it does not possess the essential physical properties to ensure the effective operation of vehicles under different driving conditions. Likewise, alkylate, due to its high boiling point, and consequently, low volatility, may also cause spark plug fouling and increase combustion chamber deposits. More importantly, alkylate cannot be used in vehicles as substitute for motor fuel without violating environmental and legal standards.
>
> The foregoing testimonies of these experts are too substantial to be ignored. Indeed, the CTA erred in giving more weight to the testimony of Ramos over the combined testimonies of Dr. Ocon, Mulqueen and Rodriguez, who are all experts in the field of fuel and petroleum, and whose experience cannot be ignored. Not to mention, both Mulqueen and Dr. Ocon are impartial witnesses as they are not in any way connected with petitioner.
>
> On this score, it is settled that the Court is not bound by the administrative interpretations or rulings of executive officers. As We have consistently ruled, interpretations placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.
>
> For this Court to subject alkylate to excise tax, the authority should be reasonably founded on the language of the statute. That language is wanting in this case. 'In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.' Here, We find that the CIR's interpretation as to the nature and taxability of alkylate is patently erroneous for lack of both textual and non-textual support.
>
> As previously pointed out, alkylate is not among the excisable articles enumerated in Sec. 148 (e) of the 1997 NIRC, as amended. Neither can it be categorized as 'other similar products of distillation' precisely because it is not a direct product of distillation. Given this, the CTA's reliance on the CIR's administrative interpretation on the matter is utterly misplaced. To reiterate, administrative interpretations cannot go beyond or be inconsistent with the terms and provisions of the law it seeks to interpret or implement.

Clearly, from the above quoted ruling, the Supreme Court has made the following pronouncements which should be binding on both petitioner and respondent as they are the very same parties involved in the above cited case:

1. "Alkylate is not among the excisable articles enumerated in Sec. 148 (e) of the [NIRC]. Neither can it be categorized as 'other similar products of distillation' precisely because it is not a direct product of distillation."

2. "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."

3. Because of alkylate's nature and intended purpose as a blending component to make finished gasoline and that alkylate has "no use as a product by itself," alkylate "cannot be placed under the same category as naphtha and regular gasoline." Hence, applying the principle of *ejusdem generis,* alkylate cannot be considered as "other similar products of distillation" as contemplated in *Section 148 (e) of the NIRC.*

4. Petitioner's interpretation as to the nature and taxability of alkylate is "patently erroneous for lack of both textual and non-textual support" and cannot "override, supplant, or modify the law."

5. "Sec. 148 (e) of the [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."

These definitive pronouncements by the Supreme Court address each point raised by petitioner in the instant Petition. Thus, the same must fail.

Indeed, alkylate is not subject to excise tax under *Section 148 (e) of the NIRC.* It is neither naphtha nor regular gasoline and does not fall under "other similar products of distillation" which are the subjects of taxation under the aforementioned provision.

It must be emphasized that alkylate is produced by alkylation and not by distillation. It is erroneous to declare that alkylate is a product of distillation simply because both its raw materials are products of distillation. More importantly, under the principle of *ejusdem generis,* alkylate cannot be considered as "other similar products of distillation" considering that it is not on the same category as naphtha and regular gasoline. It is merely used as a blending component to make finished gasoline.

Given the foregoing, there was erroneous payment of tax when excise tax was collected from respondent upon its importation of alkylate as there is no law authorizing such exaction. Thus, respondent is entitled to a refund of erroneously paid excise tax.

After a circumspect review of the records, this Court *En Banc* finds that respondent complied with the requisites set forth under *Sections 204 (C) and 229 of the NIRC* in relation to tax refund claims of erroneously paid taxes, wherein it was shown that both administrative refund claim and judicial refund claim were filed within the two-year prescriptive period counted from the date of payment, and that the administrative refund claim preceded the judicial refund claim, *viz*:[21]

SAD Reference No.	Date of Payment	Amount of Excise Tax Paid	Two-Year Prescriptive Period	Date of Admin. Claim	Date of Judicial Claim
6WOA1600662	October 12, 2016	Php21,956,185.00	October 12, 2018	October 8, 2018	October 12, 2018
6WOA1600772	December 28, 2016	21,956,185.00	December 28, 2016		
TOTAL		Php43,912,370.00			

As such, there is no other recourse but for the Court *En Banc* to order the refund to respondent of the total amount of Php43,912,370.00 representing erroneously paid excise tax upon the importation by respondent of alkylate, a non-excisable item.

ACCORDINGLY, the instant Petition is hereby **DENIED** for lack of merit. The Assailed Decision, dated September 27, 2023, and Assailed Resolution, dated March 5, 2024, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

With Separate Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[21] Exhibits "P-202-1" to "P-202-5", USB filed on December 19, 2019; Exhibits "P-8" and "P-8-A", Division Docket, Volume III, pp. 992-1001.

Inhibited.
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

C E R T I F I C A T I O N

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. 2894** (CTA Case No. 9947)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.***, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
PETRON CORPORATION, Respondent.	Promulgated: AUG 01 2025 3:27 pm

x- -x

SEPARATE OPINION

DEL ROSARIO, P.J.:

I am of the view that the Petition for Review filed by respondent Commissioner of Internal Revenue (CIR) should be dismissed for being filed out of time.

A review of the case records revealed that petitioner's Motion for Extension to File Petition for Review, was filed two (2) days late on March 25, 2024. An examination of the Notice of Resolution dated March 5, 2024[1] shows that a copy of the Resolution dated March 5, 2024 was received by the Office of the Solicitor General (OSG) on March 8, 2024 and by the Bureau of Internal Revenue (BIR) on March 11, 2024.

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[1] CTA Case No. 9947 Docket, Vol. IV, p. 1858.

In *Republic of the Philippines, represented by the Land Registration Authority vs. Raymundo Viaje, et al.*,[2] the Supreme Court clarified that although there are deputized lawyers to represent the government in legal proceedings, the OSG remains to be the principal counsel (for the government agency) that is entitled to be furnished with copies of all court orders, notices, and decisions. Additionally, the Supreme Court ruled that the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.

This was reiterated in *Claudine Monette Baldovino-Torres vs. Jasper A. Torres and the Republic of the Philippines*,[3] *viz.*:

> "In the case of *National Power Corporation v. National Labor Relations Commission (NAPOCOR),* the Court held **that the proper basis 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 not 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**." *(Boldfacing supplied)*

Based on the foregoing pronouncements of the Supreme Court, it is the service to the OSG that is decisive. Counting fifteen (15) days from receipt of the assailed Resolution by the OSG on **March 8, 2024**, petitioner had until **March 23, 2025** within which to file his Petition for Review with the CTA *En Banc*. Thus, the Motion for Extension to File Petition for Review[4] filed on **March 25, 2024**, was filed beyond the reglementary period.

It is a basic rule that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The Court's discretion to grant a motion for extension is conditioned upon the timeliness of the motion, the expiration of which renders the court powerless to entertain or grant it. Since the motion

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[2] G.R. No. 180993, January 27, 2016.
[3] G.R. No. 248675, July 20, 2022.
[4] EB Docket, pp. 1-4.

for extension was filed after the lapse of the prescribed period, there was no more period to extend.[5]

Considering that no period was extended, the Petition for Review filed on **April 11, 2024** was necessarily filed beyond the reglementary period to appeal. Consequently, the assailed Decision and Resolution of the CTA Special Second Division in CTA Case No. 9947 automatically became final and executory.

Judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected.[6]

All told, I VOTE for the Court *En Banc* to DISMISS CIR's present Petition for Review for being filed out of time.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] *Philippine National Bank vs. Deang Marketing Corporation and Berlita Deang,* G.R. No. 177931, December 8, 2008.
[6] *Barrio Fiesta Restaurant, et al. vs. Helen C. Beronia*, G.R. No. 206690, July 11, 2016.