REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS AND THE BUREAU OF CUSTOMS,
Respondents.

CTA CASE NO. **8535**

Members:

BACORRO-VILLENA, *Acting Chairperson,*
MODESTO-SAN PEDRO*, *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 2 4 2023 3:49 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. "Motion for Partial Reconsideration (Re: Decision promulgated on 27 April 2023)"[1] (**MPR**) of the Court's Decision dated 27 April 2023 (**assailed Decision**) filed by respondent Commissioner of Internal Revenue (**respondent CIR**) on 12 May 2023; and,

2. "Motion for Reconsideration"[2] (**MR**) filed by respondent Collector of Customs of the Port of Batangas and the Bureau of

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* Designated as Special Member *per* Memorandum dated 18 April 2023.
1 Division Docket, Volume XLI, pp. 20810-20820.
2 Id., pp. 20822-20901, with annex.

Customs' (**respondent COC's**) *via* registered mail on 17 May 2023.[3]

On 01 June 2023, petitioner filed a "Consolidated Opposition [To the: *Motion for Reconsideration* dated 17 May 2023 of The Bureau of Customs and the Collector of Customs and the *Motion for Partial Reconsideration* dated 08 May 2023 of the Commissioner of Internal Revenue]"[4] (**Consolidated Opposition**).

In the present MPR, respondent CIR assails the Court's findings that: (1) respondent CIR violated petitioner's right to due process in the issuance of Document No. M-059-2012 dated 29 June 2012 (**Document No. M-059-2012**) — *first*, in giving effect to the same without first complying with the requirement of prior notice, hearing and publication considering that such issuance not only substantially increased petitioner's burden but it was issued to treat (for the first time) the importation of alkylate as subject to excise tax (although it is not among those enumerated in Title VI of the National Internal Revenue Code [**NIRC**] of 1997, as amended), and, *second*, in giving the same retroactive application to the prejudice of petitioner who relied in good faith on respondent CIR's previous issuances (*i.e.*, Authorities to Release Imported Goods [**ATRIGs**]) treating its past alkylate importations as exempt from excise tax, in violation of Section 246[5] of the NIRC of 1997, as amended; and, (2) the importation of alkylate is not subject to excise tax under Section 148(e)[6] of the NIRC of 1997, as amended, as alkylate is

3 Received by the Court on 25 May 2023.

4 Division Docket, Volume XLI, pp. 20907-20945.

5 **SEC. 246.** *Non- Retroactivity of Rulings.* — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith.

6 **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:
...
(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

not a product of distillation similar to naphtha and regular gasoline. Respondent CIR further asserts that a refund is in the nature of a tax exemption and thus should be construed *strictissimi juris* against the taxpayer-claimant.

Similarly, in the present MR, respondent COC alleges that this Court committed a grave error in finding that: (1) alkylate is not a "similar product of distillation" under Section 148(e)[7] of the NIRC of 1997, as amended; (2) Document No. M-059-2012, respondent CIR's interpretative issuance, requires prior notice, hearing and publication for its validity; and, (3) Document No. M-059-2012 may not be retroactively applied.

Respondent COC theorizes that since regular gasoline and alkylate are similar since both are "indirect" products of distillation, there is no reason why alkylate should be excluded from the coverage of Section 148(e) of the NIRC of 1997, as amended, which subjects regular gasoline to excise tax. According to respondent COC, when the law says "similar products of distillation", it is not limited to products directly produced through distillation but also those indirectly produced by distillation; hence, even alkylate.

As regards Document No. M-059-2012, respondent COC essentially submits that this Court incorrectly applied to the present case the Supreme Court's *ratio decidendi* in concluding "increase in burden" in *The Philippine Stock Exchange, Inc., et al. v. Secretary of Finance, et al.*[8] (**PSE**), *Commissioner of Internal Revenue v. Hon. Court of Appeals, Hon. Court of Tax Appeals and Fortune Tobacco Corporation*[9] (**Fortune Tobacco**), *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[10] (**PAL**) and *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*[11] (**M. Lhuillier**) — taking into consideration that the obligation to pay excise tax on alkylate, being a "similar product of distillation", allegedly had always existed under the Section 148(e)[12] of

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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[.]

7 Supra at note 6.
8 G.R. No. 213860, 05 July 2022.
9 G.R. No. 119761, 29 August 1996.
10 G.R. No. 180066, 07 July 2009.
11 G.R. No. 150947, 15 July 2003.
12 Supra at note 6.

the NIRC of 1997, as amended, without any need for subsequent administrative issuance.

Lastly, respondent COC insists that the issuance of Document No. M-059-2012 did not contravene Section 246[13] of the NIRC of 1997, as amended, as it is a mere interpretative ruling. Allegedly, there is no need to apply the same retroactively for petitioner to be liable for excise tax on alkylate importations made before it was issued, since the subject interpretation of Section 148(e) of the NIRC of 1997, as amended — that alkylate is a 'similar product of distillation' — was already in effect at the time of the first importation of alkylate in the Philippines.

In its Consolidated Opposition, petitioner puts forward the following counter-arguments:

1. It is improper for respondents to ask this Court to review, modify, reverse, and defy the Supreme Court's 20 March 2023 in *Petron Corporation v. Commissioner of Internal Revenue*[14] (**Petron 2023**), where it was already ruled that alkylate is "not" subject to excise tax.

2. Respondent COC's attempt to distinguish "direct" and "indirect" products of distillation is misleading considering that the Supreme Court itself held in *Petron 2023* that the subject of excise tax is the specific good itself produced by distillation and not the ingredients.

   2.a. Respondent COC's argument that regular gasoline is allegedly indirectly produced by distillation is baseless and misleading.

   2.b. There is no merit in respondent COC's argument that since regular gasoline is allegedly an indirect product of distillation, and alkylate is allegedly also indirectly produced by distillation, then alkylate is supposedly similar to regular gasoline that should be covered by Section 148(e)[15] of the NIRC of 1997, as amended.

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13 Supra at note 5.
14 G. R. No. 255961, 20 March 2023.
15 Supra at note 6.

3. As already settled in *Petron 2023*, to subject "other products of distillation" to excise tax under Section 148(e) of the NIRC of 1997, as amended, they must be similar to naphtha and regular gasoline as to the manner of production, nature and chemical properties, and purpose and use.

4. Contrary to respondent COC's alleged erroneous assertions, Document No. M-059-2012 is a Bureau of Internal Revenue (**BIR**) Ruling that increased petitioner's excise tax burden and, therefore, requires prior notice, hearing and publication for validity.

5. Contrary to respondent COC's alleged erroneous assertions, this Court correctly ruled that the subject BIR Ruling, *i.e.*, Document No. M-059-2012, which was made retroactive, violates petitioner's right to due process.

6. Contrary to respondent COC's alleged erroneous assertions, the instant dispute is about excise tax coverage and not excise tax exemption. Petitioner maintains its view that its alkylate importations are not covered by Section 148(e) of the NIRC of 1997, as amended, and that it never relied on a tax exemption. Therefore, the applicable rule is the well-settled doctrine of strict interpretation in the imposition of taxes against the government – a tax statute will not be construed as imposing a tax unless it does so clearly, expressly and unambiguously.

Furthermore, petitioner notes that despite the Supreme Court's clear finding that herein respondents are guilty of forum shopping in *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation*[16] promulgated on 15 March 2021 (**15 March 2021 Decision**), which is an offshoot of the instant case, respondent continues to appear and file pleadings separately. Thus, on this ground alone, petitioner claims that both respondent CIR's MPR and respondent COC's MR must be denied or stricken out from the records.

We resolve.

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16 G.R. No. 210501, 15 March 2021.

Before delving into the substantive issues raised by both parties in this case, We find it propitious to first discuss the merits of petitioner's allegation that herein respondents' filing of separate motions on the assailed Decision amounts to forum-shopping.

RESPONDENTS ARE NOT GUILTY OF FORUM SHOPPING.

In *Heirs of Marcelo Sotto, et al. v. Matilde S. Palicte*[17] (**Sotto**), the Supreme Court elucidated on what constitutes forum shopping and specified the different ways that it may be committed, to wit:

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> There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." **Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.**
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> The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.
> ...
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> The acts of a party or his counsel clearly constituting willful and deliberate forum shopping shall be ground for the summary dismissal of the case with prejudice, and shall constitute direct contempt, as well as be a cause for administrative sanctions against the lawyer. **Forum shopping can be committed in either of three ways, namely: (1) filing multiple cases based on the same cause of**

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[17] G.R. No. 159691, 17 February 2014; Citations omitted, italics in the original text and emphasis supplied.

> **action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); or (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).** If the forum shopping is not willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. But if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.
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> ...

Based on the foregoing, forum shopping typically refers to the improper filing of multiple cases in different courts or tribunals to secure a favorable decision or to cause delay in the resolution of the dispute. It is considered an unethical and prohibited practice as it involves manipulating the legal system to gain an unfair advantage.

However, the party's filing separate MRs for and within the same case is a different matter altogether. Respondents are entitled to file their respective MRs on the Court's decision or ruling. Each party has the right to protect its interests and seek the Court's review of a decision adverse to it. This is a legitimate legal recourse and is not considered forum shopping.

In the 15 March 2021 Decision, herein respondents were found guilty of forum shopping because they filed separate petitions before the Supreme Court, all originating from this case. "[T]he rights asserted and the relief prayed for by [respondent] CIR in **G.R. No. 210501**, *i.e.*, the dismissal of CTA Case No. 8535, is the **very same relief** sought by [respondents Bureau of Customs (**BOC**)] and the Collector in their Petition for Review before the CTA *En Banc*, from which [the petition] in **G.R. No. 211294** originated. Considering the same tenor of relief, a resolution in one would clearly constitute *res judicata* to the other (*i.e.*, the dismissal/non-dismissal of CTA Case No. 8535)." The Supreme Court further held that there is identity of parties in those cases since the functions of the BIR and the BOC overlap with respect to the assessment and collection of excise taxes for imported articles. Thus, as between G.R. Nos. 210501 and 211294, there is forum shopping.

The same conclusion cannot be made in this case precisely because respondent CIR's MPR and respondent COC's MR were filed within the same case. Unlike in the instances cited in *Sotto*, where cases are filed in multiple fora or that the causes of action are split, the instant case involves motions which parties (separately impleaded) may file. Likewise, while respondents have a shared identity of interest, they may legitimately pursue legal remedies separately, as long as such motions are filed within the same case and are not part of a scheme to manipulate the legal process or gain an unfair advantage.

Accordingly, there is no merit to petitioner's allegation that both respondent CIR's MPR and respondent COC's MR must be denied or stricken out from the records on the ground of forum-shopping.

We now proceed to resolve the arguments raised by both parties on the substantive issues.

ALKYLATE DOES NOT FALL UNDER THE CATEGORY OF "OTHER SIMILAR PRODUCTS OF DISTILLATION" SUBJECT TO EXCISE TAX.

Foremost, the Supreme Court has already settled the issue on the taxability of alkylate importation in the very recent case of *Petron 2023*[18], where it was categorically declared that alkylate does not fall under the category of "other similar products of distillation" and hence, not subject to excise tax, *viz*:

> ...
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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

[18] Supra at note 14; Citations omitted, italics in the original text and emphasis supplied.

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.

...

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.

...

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.
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> **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.**
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> **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.
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> ...

Indeed, following the Supreme Court's declaration above and as mentioned in the assailed Decision, it is now beyond dispute that alkylate is *not* a product of distillation similar to naphtha and regular gasoline; hence, *not* subject to excise tax under Section 148(e)[19] of the NIRC of 1997, as amended.

It is worth noting that, with the Supreme Court's unequivocal pronouncement that alkylate cannot be categorized as "other similar products of distillation" precisely because it is not a direct product of distillation, the logical interpretation would be that only "direct" products of distillation are subject to excise tax. Applying the statutory construction principle of *ejusdem generis*, the Supreme Court said that the phrase "other similar products of distillation" in Section 148(e) of the NIRC of 1997, as amended, 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). Therefore,

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19 Supra at note 6.

the absence of a distinction in the said provision, between "primary" and "secondary" or "direct" and "indirect" products of distillation should work in the taxpayer's favor, *i.e.*, the non-taxability of alkylate or all those which are not directly produced by distillation.

That being said, herein respondents' attempt to distinguish "direct" and "indirect" products of distillation to the extent of likening "alkylate" to "regular gasoline" in the sense that both are supposedly "indirect" products of distillation, becomes irrelevant and the assumptions drawn from such line of reasoning (*i.e.*, regular gasoline is indirectly produced by distillation, alkylate is indirectly produced by distillation, and alkylate is similar to regular gasoline) thus warrant scant consideration.

Incidentally, while it is true that the CIR's interpretation, being in charge of executing the NIRC of 1997, as amended, is an authoritative construction of great weight, such principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has issued an erroneous interpretation, the error must be corrected when the true construction is ascertained.[20]

With the Supreme Court's clear imprimatur on the aforesaid interpretation of the phrase "other similar products of distillation" in Section 148(e) of the NIRC of 1997, as amended, Document No. M-059-2012 should be declared null and void as respondent CIR's interpretation therein (as to the nature and taxability of alkylate) is patently erroneous for lack of both textual and non-textual support.

It is also propitious, at this point, to emphasize the legal principle that once the courts interpret or construe a law in a case, the same constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Supreme Court is overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith, in accordance therewith under the familiar rule of *lex prospicit, non respicit.*[21]

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20 *Banco De Oro, et al. v. Republic of the Philippines, et al.*, G.R. No. 198756, 13 January 2015.

21 See *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, 04 June 2014.

Considering that the non-taxability of alkylate or all those which are not directly produced by distillation was first settled in *Petron 2023*, the Supreme Court's interpretation being mandatory and jurisdictional in nature retroacts to the date the NIRC of 1997, as amended, was enacted. It cannot be applied prospectively as no old doctrine was overturned.

DOCUMENT NO. M-059-2012 IS A BUREAUE OF INTERNAL REVENUE (BIR) RULING THAT SUBSTANTIALLY INCREASES PETITIONER PILIPINAS SHELL PETROLEUM CORPORATION'S BURDEN; THUS, REQUIRING PRIOR NOTICE, HEARING, AND PUBLICATION FOR ITS VALIDITY.

As petitioner correctly pointed out, the Supreme Court, in its 15 March 2021 Decision, has already classified Document No. M-059-2012 as a BIR Ruling issued against petitioner. Administrative rulings, such as this one, are not issued in a vacuum. They are formulated to clarify and implement legislative enactments, but they can neither expand nor restrict the scope of the law they seek to apply. It is essential that when they materially affect the substantive rights of a taxpayer, procedural due process must be diligently observed.

In arguing that this Court incorrectly applied to the present case the Supreme Court's *ratio decidendi* in *PSE, Fortune Tobacco, PAL* and *M. Lhuillier, i.e.*, that, by way of exception to the general rule, a mere interpretative issuance must still comply with the due process requirements of prior notice, hearing, and publication (when it substantially increases the burden of the taxpayer), respondent COC anchors its claim on the interpretation that alkylate is within the coverage of Section 148(e) of the NIRC of 1997, as amended. However, having already established that alkylate is not an excisable article, petitioner's contention must necessary fall flat.

We reiterate, for emphasis, that in the recent case of *PSE*[22], the Supreme Court applied by way of exception to the general rule that if the interpretative regulation substantially increases the burden of those governed, public participation and publication are required, *viz:*

[22] Supra at note 8; Citations omitted and emphasis supplied.

> ...
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> Interpretative rules, however, are an exception from the requirement of public participation, or prior notice and hearing. When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. **But surely, if the interpretative regulation substantially increases the burden of those governed, public participation and publication are a must**, thus:
>
>> Accordingly, an administrative regulation can be construed as simply interpretative or internal in nature, dispensing with the requirement of publication, when its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, however, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter, to be duly informed, before that new issuance is given the force and effect of law.
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> **In fine, the gauge on determining if a regulation requires prior notice and hearing is its substance or content. Prior notice and hearing are required if the regulation substantially increases the burden of those governed, notwithstanding its nomenclature—despite the regulation being called or designated as interpretative.**

Thus, if the questioned regulations here in this case are legislative rules or substantially increase the burden of those governed, they should have undergone prior notice and hearing (which, in this case, are undisputedly absent) for their validity. If they are interpretative rules, prior notice and hearing are not essential for their validity.

Here, the Court finds that the questioned regulations are not mere interpretative issuances; they are legislative in nature that change, if not increase, the burden of those governed. Notice and hearing are thus required for their validity.

The questioned regulations, particularly SEC MC 10-2014, substantially changed the procedure currently observed by the market participants. The questioned regulations impose a new obligation—that is, the transmittal of the alphalist of payees to the listed companies—on the PDTC, their transfer agents and depository

> account holders. This obligation did not exist before because the practice then was the reporting of PCD Nominee as the payee in the alphalist. With the questioned regulations, there will be a significant change on how the parties involved, including the investors themselves, will make decisions and act. As aptly pointed out by Senior Associate Justice Leonen and Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier), **the questioned regulations upended long established practices and changed a long[-]standing rule in imposing this new burden.**
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> ...

A close and careful reading of Document No. M-059-2012 shows that it did not merely interpret Section 148(e)[23] of the NIRC of 1997, as amended, as it, in fact, substantially increases the tax burden of petitioner in imposing, for the first time, excise tax on its various importations of alkylate. This notwithstanding that petitioner has been importing alkylate since May 2010 and the Authorities to Release Imported Goods[24] (**ATRIGs**) issued therefor from May 2010 to August 2011 commonly stated that it is exempt from excise tax since it is not among those articles enumerated under Title VI of the NIRC of 1997 and *per* Laboratory Report dated 21 January 2009.

To be clear, however, the contention here centers on the excise tax coverage, not exemption. In line with prevailing jurisprudence, a tax statute will not be interpreted as imposing a tax unless such imposition is clear, express, and unambiguous.[25] The burden of proof rests on the taxing authority to show the clear applicability of a tax provision.[26] In this context, the Supreme Court's determination that alkylate does not fall within the purview of Section 148(e) of the NIRC of 1997, as amended, ultimately reinforced this Court's finding that Document No. M-059-2012 did not only substantially increase petitioner's burden but that it was likewise issued to treat alkylate as subject to excise tax. Consequently, before the promulgation of *Petron 2023*, such BIR Ruling should have undergone prior notice, hearing, and publication.

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23 Supra at note 6.

24 Exhibits "B-Motion for Suspension Order" to "B-29-Motion for Suspension Order", Division Docket, Volume II, pp. 631-660.

25 See *Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc., et al.*, G.R. No. 141658, 18 March 2005.

26 See *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, 21 July 2008.

APPLYING DOCUMENT NO. M-059-2012 RETROACTIVELY ALSO VIOLATED SECTION 246 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, AND INFRINGED ON PETITIONER PILIPINAS SHELL PETROLEUM CORPORATION'S RIGHT TO DUE PROCESS.

Furthermore, as regards the retroactive application of Document No. M-059-2012, Section 246[27] of the NIRC of 1997, as amended, expressly provides that any revocation, modification, or reversal of BIR rulings shall not be given retroactive application if it would be prejudicial to taxpayers. The retroactive application of a BIR ruling, which results in a taxpayer being deprived of his or her property without prior notice and hearing, represents an indubitable breach of the right to due process.

In this case, the retroactive application of Document No. M-059-2012 evidently prejudiced petitioner. Such retroactive imposition not only disrupted petitioner's reasonable expectation that its alkylate importations were not subject to excise tax, but also imposed upon it an additional financial burden it had not anticipated. It is important to note that due process, at its core, is the assurance that every taxpayer will be given a fair and reasonable treatment in the substantive and procedural aspects of the law. Certainly, deeming the petitioner liable for excise tax based on a newly introduced interpretation is inherently unfair.

Accordingly, this Court reaffirms its previous ruling that Document No. M-059-2012, in its nature and effect, necessitates adherence to the requisites of due process; particularly, prior notice, hearing, and publication, for its validity. Its retroactive application, bereft of these safeguards, clearly infringes on petitioner's fundamental right to due process.

In fine, this Court finds no cogent reason to reverse or modify the assailed Decision granting petitioner's Amended Petition for Review, nullifying Document No. M-059-2012 issued by respondent CIR and the

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[27] Supra at note 5.

Letter dated 01 October 2012 issued by respondent COC, and enjoining respondents from demanding or collecting, in any manner, excise tax and value-added tax on petitioner's alkylate importations.

WHEREFORE, premises considered, both respondent CIR's "Motion for Partial Reconsideration (Re: Decision promulgated on 27 April 2023)" and respondent COC's "Motion for Reconsideration" are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice