REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PETRON CORPORATION,
Respondent.

CTA EB No. 3035
(CTA Case Nos. 10252 and 10297)

Present:

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

Promulgated:
JAN 28 2026 4:20

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) pursuant to Rule 43[2] of the Rules of Court, as amended[3], in accordance

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[1] Filed on 29 November 2024, *Rollo,* pp. 1-34.
[2] *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*
[3] A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

with Rule 8[4], Sections 3(b)[5] and 4(b)[6] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal of the Decision dated 14 August 2024[7] (**assailed Decision**) and the Resolution dated 11 November 2024[8] (**assailed Resolution**) of the Court's Second Division in the consolidated CTA Case Nos. 10252 and 10297, both entitled *Petron Corporation v. Commissioner of Internal Revenue.*

The Second Division granted respondent Petron Corporation's (**respondent**'s/**Petron**'s) prior Petition for Review[9] and thereby ordered the refund or issuance of a tax credit certificate (**TCC**) to respondent in the following aggregate amounts: (1) ₱34,536,789.00, representing excise taxes erroneously paid by respondent on importations of alkylate covered by Bureau of Customs (**BOC**) Single Administrative Document (**SAD**) No. 6WOA1800019[10] on 30 January 2018 and 04 April 2018; and (2) ₱35,046,886.00, representing excise tax erroneously paid by respondent on importation of alkylate covered by BOC SAD Reference No. 6WOA1800100[11] on 02 May 2018 and 13 July 2018.

PARTIES TO THE CASE

Petitioner is the duly appointed CIR vested with the authority to act as such, including, *inter alia*, the power to decide disputed

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4 *Procedure in Civil Cases.*

5 **SEC. 3.** *Who may appeal; period to file petition.* —

...

(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)

6 **SEC. 4.** *Where to appeal; mode of appeal.* —

...

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by **petition for review as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal. (Emphasis supplied)

7 Division Docket (CTA Case No. 10252), Volume V, pp. 2162-2175. Penned by Associate Justice Maria Rowena Modesto-San Pedro, concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Corazon G. Ferrer-Flores.

8 Id., pp. 2208-2209.

9 Id., Volume I, pp. 7-112, with annexes.

10 See Exhibits "P-5", "P-9", "P-9-A" and "P-9-B", id., Volume IV, pp. 1640-1641, 1646, 1647-1648, and 1649-1650, respectively; see also Exhibits "P-49-1" to "P-49-2," "P-49-3" to "P-49-4," and "P-49-7", USB.

11 See Exhibits "P-6", "P-10-A", "P-10-B" and "P-10", id., Volume IV, pp. 1642-1643, 1652, 1653, and 1651, respectively; see also Exhibits "P-49-1" to "P-49-2," "P-49-5" to "P-49-6," and "P-49-8", USB.

assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He or she holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road (now, Senator Miriam P. Defensor-Santiago Avenue), Diliman, Quezon City.[12]

Respondent, on the other hand, is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at San Miguel Head Office Complex, 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[13] It is also registered with the BIR as a value-added tax (**VAT**) taxpayer with Certificate of Registration (**COR**) No. OCN 8RC0000559947[14] issued by the Large Taxpayers Service (**LTS**), Revenue District Office (**RDO**) No. 124 – Excise LT Division II.

FACTS OF THE CASE

On 18 July 2012, the BOC issued Customs Memorandum Circular (**CMC**) No. 164-2012[15] (implementing the Letter[16] from then BIR Commissioner Kim S. Jacinto-Henares dated 29 June 2012), which stated that "alkylate, which is a product of distillation similar to that of naphtha[,] is subject to excise tax under Section 148(e)[17] of the [National Internal Revenue Code (**NIRC**)] of 1997, as amended."

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12 PARTIES, Petition for Review, supra at note 1, p. 2.

13 See Petron's Amended Articles of Incorporation (**AOI**) dated 06 July 2015 issued by the Securities and Exchange Commission (**SEC**), Exhibit "P-1", Division Docket (CTA Case No. 10252), Volume IV, pp. 1603-1621.

14 Bureau of Internal Revenue (**BIR**) Certificate of Registration (**COR**) for Petitioner's Head Office, Exhibit "P-2", id., pp. 1622-1623.

15 Annex "E" of Petition for Review dated 30 January 2020, supra at note 9, p. 71.

16 Annex "E-1" of Petition for Review dated 30 January 2020, supra at note 9, pp. 72-76.

17 **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, pyrolysis gasoline and other similar products of distillation, per liter of volume capacity, Seven pesos (P7.00): *Provided, however*, That naphtha and pyrolysis gasoline, when used as a raw material in the production of petrochemical products, or in the refining of petroleum 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 Finance, per liter of volume capacity, zero (P0.00): *Provided, further,* That the production of petroleum products, whether or not they are classified as products of distillation and for use solely for the production of gasoline shall be exempt from excise tax: *Provided, finally*, 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[.]

In February and May 2018, respondent imported alkylate that was subjected to excise tax in the aggregate amount of ₱69,583,675.00, detailed as follows:

Vessel Name	Arrival Date	Bill of Lading (BL) No.	BOC SAD Reference No.	Excise Tax Paid
M/T Pavino	01 February 2018	JNJSSSPV18012601	6WOA1800019[18]	₱20,886,738.00
				13,650,051.00
M/T Champion Pleasure	02 May 2018	SITK180427DDCP02	6WOA1800100[19]	35,046,886.00
Total				₱69,583,675.00

Thereafter, respondent filed two (2) separate administrative claims for refund of excise tax with the BIR. Respondent alleged that petitioner, through the BOC, erroneously, wrongfully, illegally, and excessively imposed and collected excise taxes pursuant to CMC No. 164-2012.[20]

With respect to its first administrative claim filed on 23 January 2020, respondent transmitted an Application for Tax Credits/Refunds[21] (BIR Form No. 1914) and sent a Letter[22] of even date, requesting for a refund of the aggregate amount of ₱34,536,789.00. This amount pertained to excise taxes paid on importation of alkylate covered by BOC SAD Reference No. 6WOA1800019.

On 24 April 2020, respondent filed its second administrative claim, consisting of an Application for Tax Credits/Refunds[23] (BIR Form No. 1914) and a Letter[24] of the same date, yet again requesting for a refund of the aggregate amount of ₱35,046,886.00. This amount represented excise taxes paid on importation of alkylate covered by BOC SAD Reference No. 6WOA1800100.

Petitioner did not act on both claims for refund.

18 Exhibit "P-5", supra at note 10.
19 Exhibit "P-6", supra at note 11.
20 Supra at note 15.
21 Exhibit "P-15", Division Docket (CTA Case No. 10252), Volume IV, p. 1684.
22 Exhibit "P-14", id., pp. 1663-1683, with annexes.
23 Exhibit "P-17", id., p. 1706.
24 Exhibit "P-16", id., pp. 1686-1705, with annexes.

PROCEEDINGS BEFORE THE THIRD DIVISION

On 30 January 2020[25] and 01 July 2020[26], respondent filed two (2) separate Petitions for Review before the Third Division[27], docketed as CTA Case Nos. 10252 and 10297, respectively. Both sought the refund or issuance of TCCs for the amounts of ₱34,536,789.00 and ₱35,046,886.00, respectively, representing excise taxes paid on its importation of alkylate.

On 12 February 2020, in CTA Case No. 10252, the Third Division issued Summons.[28] In a separate proceeding, on 13 July 2020, the Third Division also issued Summons[29] in CTA Case No. 10297. Both Summonses directed petitioner to file an Answer, albeit within different periods: fifteen (15) days from service in CTA Case No. 10252, and thirty (30) days from service in CTA Case No. 10297. Petitioner received the respective Summonses on 13 February 2020 and 22 July 2020.[30]

In CTA Case No. 10252, petitioner filed the required Answer[31] on 27 February 2020. There, petitioner primarily raised a special and affirmative defense that alkylate constitutes a product of "distillation" and falls within the category of naphtha, regular gasoline, and other similar products of "distillation". Accordingly, petitioner asserted that alkylate is subject to excise tax under Section 148(e)[32] of the NIRC of 1997, as amended.

On the other hand, in CTA Case No. 10297, after the Third Division granted an extension of time to petitioner[33], the Answer[34] was filed *via* registered mail on 18 September 2020. Petitioner similarly raised a special and affirmative defense that alkylate is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

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25 Id., Volume I, pp. 7-112, with annexes.

26 Division Docket (CTA Case No. 10297), pp. 6-353, with exhibits.

27 The Third Division was then composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, as Members.

28 Division Docket (CTA Case No. 10252), Volume I, p. 113.

29 Division Docket (CTA Case No. 10297), p. 354.

30 Supra at notes 28 and 29.

31 Division Docket (CTA Case No. 10252), Volume I, pp. 114-125.

32 Supra at note 17.

33 See Resolution dated 15 September 2020, Division Docket (CTA Case No. 10297), p. 363.

34 Id., pp. 364-378; Received on 29 September 2020.

In CTA Case No. 10252, on 02 March 2020, the Third Division issued a Notice of Pre-Trial Conference[35] and scheduled the case for pre-trial on 02 June 2020. The pre-trial was later rescheduled to 01 October 2020[36] and eventually cancelled until further notice in view of respondent's "Motion for Consolidation with Prayer to Defer Pre-Trial Conference"[37] (**Motion for Consolidation**). In compliance with the Court's order, petitioner filed his or her Pre-Trial Brief[38] on 15 June 2020.

On the other hand, in CTA Case No. 10297, the Third Division issued a Notice of Pre-Trial Conference[39] on 05 October 2020 and scheduled the case for pre-trial on 09 March 2021. However, the Third Division later cancelled the scheduled pre-trial in the Resolution dated 20 January 2021.[40]

Meanwhile, in the Resolution dated 14 January 2021[41], the Third Division ordered the consolidation of CTA Case No. 10297 with CTA Case No. 10252, which bore the lower docket number. In the same Resolution, the Third Division also set the pre-trial for the consolidated cases on 18 May 2021. It later ordered that the pre-trial be heard *via* videoconference on even date.[42]

Accordingly, petitioner filed a Consolidated Pre-Trial Brief[43] on 29 January 2021, while respondent filed its Consolidated Pre-Trial Brief[44] on 18 May 2021. The Third Division noted these submissions in its Minute Resolutions dated 01 February 2021[45] and 24 May 2021[46], respectively.

Before the cases were consolidated, petitioner forwarded to the Third Division the entire BIR Records for CTA Case No. 10252, consisting of twenty-three (23) pages compiled in one (1) folder[47], and the BIR Records for CTA Case No. 10297, consisting of twenty-five (25) pages

35 Division Docket (CTA Case No. 10252), Volume I, pp. 127-128.
36 See Notice of Resetting dated 11 June 2020, id., p. 130.
37 Id., pp. 141-145.
38 Id., pp. 131-134.
39 Division Docket (CTA Case No. 10297), pp. 381-382.
40 Division Docket (CTA Case No. 10252), Volume I, pp. 156-157.
41 Id., pp. 152-153.
42 See Notice of Hearing *via* Video Conference dated 11 May 2021, id., pp. 164-165.
43 Id., pp. 158-161.
44 Id., pp. 166-496 (Volume I) and 497-801 (Volume II), with attached Judicial Affidavits.
45 Id., p. 163.
46 Id., Volume II, p. 806.
47 See Compliance filed on 15 June 2020, id., Volume I, pp. 136-138.

likewise compiled in one (1) folder[48]. The Third Division noted these submissions in its Minute Resolutions dated 16 June 2020[49] and 11 November 2020[50], respectively.

During the 18 May 2021 videoconference of the pre-trial, the Third Division granted both parties 30 days, or until 17 June 2021, within which to file their Joint Stipulations of Fact and Issues (**JSFI**), among other directives.[51] On 18 June 2021, the parties submitted their JSFI.[52]

On 31 May 2021, respondent filed *via* registered mail its "Motion for Appointment of Independent Certified Public Accountant [**ICPA**]"[53], requesting the appointment of Atty. Conrado M. Briones (**Atty. Briones**) as ICPA for the consolidated cases. In the Resolution dated 21 June 2021, the Third Division noted the filing of the said motion and set the hearing thereon for 29 July 2021.[54] It, thereafter, ordered that the said commissioning be heard *via* videoconference.[55] After the hearing, the Third Division granted the requested commissioning of Atty. Briones as ICPA for the consolidated cases.[56]

In the Resolution dated 28 June 2021[57], the Third Division approved the parties' JSFI, declared the pre-trial terminated, and set the initial presentation of respondent's evidence on 29 July 2021. Subsequently, on 30 July 2021, the Third Division issued a Pre-Trial Order[58], again confirming its approval of the JSFI and formally declaring the pre-trial proceedings terminated.

In the trial that ensued, respondent presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Atty. Ma. Clarissa C. Arguelles (**Atty. Arguelles**), respondent's Tax Manager; (2) Marissa U. Viray (**Viray**), respondent's

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48 See Compliance filed on 09 November 2020, Division Docket (CTA Case No. 10297), pp. 383-385.
49 Division Docket (CTA Case No. 10252), Volume I, p. 140.
50 Division Docket (CTA Case No. 10297), p. 387.
51 See Minutes of the Hearing and Order, both dated 18 May 2021, Division Docket (CTA Case No. 10252), Volume II, pp. 802 and 803-805, respectively.
52 Id., pp. 859-883.
53 Id., pp. 831-849, with attached exhibit; Received by the Court on 08 June 2021.
54 Id., pp. 886-887.
55 See Resolution dated 28 June 2021 and Notice of Hearing *via* Video Conference dated 26 July 2021, id., pp. 894-895 and 896-897, respectively.
56 See Minutes of the Hearing and Order, both dated 29 July 2021, id., Volume III, pp. 1167 and 1168-1169, respectively.
57 Supra at note 55.
58 Division Docket (CTA Case No. 10252), Volume III, pp. 1173-1183.

Operations Finance Manager from 2016 to 2021; (3) Cecilia N. Sengia (**Sengia**), respondent's Refinery Finance Manager; (4) Elgo R. Lagyap (**Lagyap**), respondent's Terminal Manager at the Limay Terminal in Bataan; (5) Engr. Jurrel D. Pumatong (**Engr. Pumatong**), respondent's Process Engineering Manager; (6) Michael F. Manzano (**Manzano**), respondent's Commercial Services Manager; (7) Dr. Joey D. Ocon (**Dr. Ocon**), Associate Professor of the Department of Chemical Engineering, University of the Philippines, Diliman; (8) Atty. Briones, the Court-commissioned[59] ICPA; and (9) Simon Christopher Mulqueen (**Mulqueen**), Technical Consultant of Innospec Fuel Specialties.

During the 29 July 2021 videoconference hearing, respondent presented the testimonies of its witnesses, Atty. Arguelles and Viray.[60]

Atty. Arguelles' testimony was offered to prove that: (1) she is respondent's Tax Manager, with responsibilities that included monitoring and ensuring compliance with tax rules and regulations and filing claims for tax refund or credit when appropriate; (2) respondent is a duly organized and established corporation engaged in the manufacturing and distribution of petroleum products; (3) respondent imports alkylate to be used exclusively as a raw material or blending component in the production of gasoline; (4) in February 2018, respondent imported alkylate, covered by BOC SAD Reference No. 6WOA1800019[61], and was assessed excise taxes in the amount of ₱34,536,789.00; (5) respondent paid under protest the said amount of excise taxes; (6) on 23 January 2020, respondent filed an administrative claim for refund or tax credit for erroneously or illegally paid excise taxes on its importation of alkylate in February 2018 with the BIR; (7) in May 2018, respondent imported alkylate, covered by BOC SAD Reference No. 6WOA1800100[62], and was assessed excise taxes in the amount of ₱35,046,886.00; (8) respondent likewise paid under protest the said amount of excise taxes; and (9) on 24 April 2020, respondent filed an administrative claim with the BIR for its May 2018 alkylate importation.[63]

59 Supra at note 56.
60 See Minutes of the Hearing and Order, both dated 29 July 2021, supra at note 56.
61 See Exhibits "P-5", "P-9", "P-9-A" and "P-9-B", supra at note 10.
62 See Exhibits "P-6", "P-10-A", "P-10-B" and "P-10", supra at note 11.
63 See Judicial Affidavit dated 12 May 2021, Exhibit "P-34", Division Docket (CTA Case No. 10252), Volume II, pp. 694-801, with attached exhibits.

Petitioner did not conduct any cross-examination.[64]

In response to the Court's query, Atty. Arguelles stated that based on her understanding of the processes involved (as the technical personnel and expert witnesses had relayed to her), and although she could not confirm these matters with certainty, "alkylation" makes up a process distinct from "distillation". She further stated that she recalled a 2017 letter from Department of Energy (**DOE**), prepared by Director Monsada and addressed to BOC District Collector Rene Buenavidez of Batangas, which discussed the distinction between "alkylation" and "distillation". She specifically recalled that said letter stated that alkylate does not constitute unleaded premium gasoline. She added that respondent's external counsel provided a copy of said letter.[65]

Respondent's next witness, Viray, declared on the witness stand that: (1) she served as respondent's Accounting Services Manager from April 2021 and previously held the positions of Stock and Depot Finance Supervisor from September 2015 to August 2016 and Operations Finance Manager from September 2016 to March 2021; (2) in her capacity as Operations Finance Manager, her duties and responsibilities covered monitoring the volume of fuel products lifted from respondent's terminals, including the Bataan Refinery, verifying the computation and payment of excise taxes due on fuel products lifted from the Bataan Refinery, reviewing the accuracy of respondent's Excise Tax Returns, and ensuring the timely preparation of said returns and payment of excise taxes; (3) respondent lifted fuel products from its Bataan Refinery and paid excise taxes thereon, which included alkylate used as a blending component; and (4) respondent paid excise taxes twice —*first*, upon importation of alkylate, and *second*, upon lifting the same from the refinery as part of finished gasoline, where alkylate was used merely as a blending component.[66]

Although petitioner did not also conduct any cross-examination[67], Viray responded to the Court's queries and stated that, in her capacity as Operations Finance Manager, she holds office at the San Miguel Head Office in Ortigas, maintains direct access to documents through a

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64 TSN dated 29 July 2021, p. 9.
65 Id., pp. 9-14.
66 See Judicial Affidavit dated 11 May 2021, Exhibit "P-35", Division Docket (CTA Case No. 10252), Volume I, pp. 426-496, with attached exhibits.
67 TSN dated 29 July 2021, p. 30.

sub-system, and regularly goes to the refinery to attend to other matters, including the verification of withdrawals of finished product inventory.[68]

During the 28 October 2021 videoconference hearing, respondent presented the testimonies of its witnesses, Sengia, Engr. Pumatong and Lagyap.[69]

Sengia testified that: (1) she is respondent's Refinery Finance Manager; (2) she is assigned to respondent's Refinery Finance Department in Bataan; (3) the Bataan Oil Refinery Plant processes crude oil into various petroleum and petrochemical products like gasoline, diesel, kerosene and liquefied petroleum gas (**LPG**); (4) respondent imported alkylate in February and May 2018; (5) the Refinery Finance Department tracks the movement of imported alkylate from receipt by the refinery to its use as blending component in the production of gasoline products; (6) respondent monitors the lifting of finished motor gasoline products from its refinery; and (7) respondent prepares various documents and reports to monitor the movement of imported alkylate and the lifting of finished gasoline products.[70]

Petitioner did not conduct any cross-examination.[71]

In response to the Court's question, Sengia clarified that the accounting group to which she belongs monitors only inventory records, while a separate group handles the physical movement of tanks. Upon receipt of importations, whether raw materials, blending components, or finished products, her group records inventory entries and tracks consumption or issuance for production up to lifting.[72]

Engr. Pumatong testified next. He declared on the witness stand that: (1) he is respondent's Process Engineering Manager; (2) he is assigned at respondent's Bataan Refinery; (3) respondent's Bataan Refinery processes crude oil needed for petroleum products like

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68 Id., pp. 30-31.
69 Minutes of the Hearing and Order, both dated 28 October 2021, Division Docket (CTA Case No. 10252), Volume III, pp. 1219 and 1220-1221, respectively.
70 See Judicial Affidavit dated 11 May 2021, Exhibit "P-36", id., Volume II, pp. 497-539, with attached exhibits.
71 TSN dated 28 October 2021, p. 8.
72 Id., pp. 8-9.

gasoline, diesel, kerosene and LPG; (4) alkylate is a product of alkylation, which is a chemical process wholly distinct from crude oil distillation; (5) alkylate is a product different from crude oil distillates; (6) alkylate is not unleaded premium gasoline; (7) respondent uses alkylate solely as a blending component to make gasoline; (8) respondent does not sell alkylate as a product to the public at large; (9) unleaded premium gasoline is produced through the physical process of distillation; and (10) alkylate is produced through a chemical process called alkylation.[73]

On cross-examination, Engr. Pumatong confirmed that another group handles the physical operations of the distillation unit. He further stated that his team performs day-to-day monitoring of the distillation unit to optimize yields from crude oil distillation.[74]

Respondent did not conduct any redirect examination.[75]

When the Court inquired whether he appeared as an expert witness, Engr. Pumatong explained that he belongs to the process engineering group and receives training to monitor and understand involved processes. He clarified that, although his team does not directly operate production units, they possess working knowledge of processes involved, including distillation. Based on his expertise as a licensed chemical engineer, he confirmed that crude oil distillation never produces alkylate.[76]

As to the distinction between "distillation" and "alkylation", Engr. Pumatong testified that "distillation" involves mere separation, while "alkylation" involves a chemical reaction. He further illustrated that "distillation" separates components such as isobutane and olefins through a distillation column, whereas "alkylation" combines these same components in a reactor to produce alkylate.[77]

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73 See Judicial Affidavit dated 12 May 2021, Exhibit "P-39", Division Docket (CTA Case No. 10252), Volume II, pp. 620-649, with attached exhibits.
74 TSN dated 28 October 2021, pp. 16-17.
75 Id., p. 17.
76 Id., pp. 18-19.
77 Id., pp. 20-22.

Engr. Pumatong also confirmed that respondent's Bataan Refinery processes crude oil, and that the initial step in such processing involves "distillation" of crude oil to separate its components into different hydrocarbon cuts with distinct molecular compositions. He further explained that the production of alkylate requires a different process — distinct from "distillation" — namely, "alkylation", which involves reacting components such as isobutane and olefins. He clarified that respondent does not operate an alkylation unit. He likewise noted that isobutane may be derived from crude oil or from other sources such as natural gas, while olefins can only be produced through cracking. In respondent's case, it merely imports alkylate, as it does not maintain any processing facility for alkylate production.[78]

As its last witness during the 28 October 2021 videoconference hearing, respondent likewise presented Lagyap who testified, among others, that: (1) he is the Terminal Manager of respondent's Limay Terminal in Bataan; (2) respondent lifts finished fuel products, including diesel and gasoline products, from its Limay Terminal in Bataan; and (3) respondent does not lift alkylate from its refinery.[79]

Petitioner did not conduct any cross-examination.[80]

After the Third Division granted two (2) extensions of time[81], ICPA Briones submitted his Report dated 11 October 2021[82], with one (1) USB[83], on 29 October 2021. The Third Division noted the same in its Minute Resolution dated 04 November 2021.[84]

On 07 December 2021, respondent filed a "Motion to Amend Pre-Trial Order with Reply (To: Comment/Opposition dated 4 August 2021)"[85] (**Motion to Amend**), seeking admission of the facts stated in its previously filed Request for Admission[86] and incorporation

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78 Id., pp. 23-26.
79 See Judicial Affidavit dated 11 May 2021, Exhibit "P-37", Division Docket (CTA Case No. 10252), Volume II, pp. 540-551, with attached exhibit.
80 TSN dated 28 October 2021, p. 30.
81 See Resolutions dated 11 October 2021 and 27 October 2021, Division Docket (CTA Case No. 10252), Volume III, pp. 1199 and 1218, respectively.
82 Exhibit "P-87", id., pp. 1228-1274.
83 Exhibit "P-88".
84 Division Docket (CTA Case No. 10252), Volume III, p. 1289.
85 Id., pp. 1319-1347, with annex.
86 Id., pp. 898-999 (Volume II) and 1000-1166 (Volume III), with attached exhibits.

of the same into the Pre-Trial Order dated 30 July 2021.[87] Petitioner, through registered mail, filed his or her Comment dated 31 January 2022[88] thereto on 02 February 2022. Subsequently, on 23 February 2022, respondent filed a "Motion to Admit Reply with Reply (To: Comment dated 31 January 2022)"[89] (**Motion to Admit**).

In the Resolution dated 23 March 2022[90], the Third Division granted respondent's Motion to Admit, noted and admitted the Reply as part of the case records, sustained petitioner's admissions and denials in his or her "Comment/Opposition (Request for Admission)"[91] (**Comment/Opposition**), and, accordingly, granted respondent's Motion to Amend to incorporate the statements admitted by petitioner in said Comment/Opposition.

Meanwhile, during the 23 February 2022 videoconference hearing, respondent presented the testimonies of its witnesses, ICPA Briones and Dr. Ocon.[92]

As for the Court-appointed ICPA (Briones), he attested to the performance of his functions as an officer of the Court appointed to conduct an audit examination in relation to these consolidated cases, pursuant to Section 5, Rule 12 and Rule 13 of the RRCTA. He also testified on his findings and the summary of the documents he examined, as reflected in the ICPA Report dated 11 October 2021[93], which he submitted before the Third Division.[94]

On cross-examination, ICPA Briones confirmed that, based on the results of his examination, respondent is entitled to the full amount of the subject refund claims in the amount of ₱69,583,675.00.[95]

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87 Supra at note 58.
88 Division Docket (CTA Case No. 10252), Volume III, pp. 1376-1378.
89 Id., pp. 1354-1358.
90 Id., pp. 1388-1394.
91 Id., pp. 1201-1206.
92 Minutes of the Hearing and Order, both dated 23 February 2022, id., pp. 1373 and 1374-1375, respectively.
93 Exhibit "P-87", supra at note 82.
94 See Judicial Affidavit dated 02 November 2021, Exhibit "P-89", Division Docket (CTA Case No. 10252), Volume III, pp. 1278-1285.
95 TSN dated 23 February 2022, pp. 14-15.

Respondent did not conduct any redirect examination.[96]

As for Dr. Ocon, he essentially declared[97] that: (1) crude oil distillation is a physical process which results in the separation of the different constituent substances of crude oil (or crude oil distillates), through the application of heat or through boiling; (2) crude oil distillation does not produce alkylate; (3) alkylate is not a product of crude oil distillation, and it is not a crude oil distillate; (4) alkylate is a product of alkylation, which is a chemical process wholly distinct from crude oil distillation; (5) alkylate is a product different from crude oil distillates; and (6) alkylate is not unleaded premium gasoline. He also presented his credentials to qualify as an expert witness.

On cross-examination, Dr. Ocon stated that raw materials used to produce molecules that make up alkylate consist primarily of olefins, particularly butylenes, and isoparaffins, particularly isobutanes. In explaining why isobutane does not arise from primary distillation in a refinery, he noted that refineries mainly source isobutane from catalytic butane isomerization. He further explained that olefins, specifically butylenes, usually originate from fluidized catalytic cracking units, which convert low-value and heavier distillates obtained from primary distillation into lighter components.[98]

Dr. Ocon likewise confirmed that no amount of crude oil distillation can ever produce alkylate because alkylate does not form part of crude oil and never exists as one of its inherent components. When asked about the purpose of alkylate, he explained that refiners use it because of its favorable characteristics, including high octane rating, low sulfur content, and absence of aromatics, making it suitable as a blending component in gasoline production. He further clarified that, after "alkylation" occurs in the reactor, separation units remove unreacted components and purify alkylate stream. Although these separation units may include distillation columns within a refinery setup, alkylate already forms upon exit from the reactor, even before any subsequent distillation process.[99]

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96 Id., p. 15.
97 See Judicial Affidavit dated 12 May 2021, Exhibit "P-38", Division Docket (CTA Case No. 10252), Volume II, pp. 553-619, with attached exhibits.
98 TSN dated 23 February 2022, p. 19.
99 Id., p. 20.

Respondent did not conduct any redirect examination.[100]

In response to the Court's clarificatory questions, Dr. Ocon confirmed that alkylate constitutes a chemically formed mixture of isoparaffins used as a blending component in finished gasoline and that it does not serve as an indispensable ingredient, as refiners can produce gasoline without it. He clarified, however, that this characterization does not apply to naphtha, which also serves as an additive to gasoline but constitutes a significantly larger component thereof. According to Dr. Ocon, unlike alkylate, which functions merely as a blending component, naphtha ranks among main components or key ingredients of gasoline. He further explained that properties of finished gasoline primarily derive from naphtha, while blending components such as alkylate improve gasoline properties to enable compliance with environmental and other standards set by the Philippine National Standards (**PNS**).[101]

Regarding the Court's question on whether alkylate can be likened to naphtha, in the sense that both are raw materials used in fuel production, he explained that naphtha has two (2) types: *first*, naphtha that is a product of distillation; and, *second*, the Fluid Catalytic Cracking (**FCC**) naphtha, which is a main component of gasoline. He then clarified that naphtha is different from alkylate; the former is a product of distillation, while the latter is not.[102]

Dr. Ocon informed the Court that his role is to elucidate on the technical aspects of how various raw materials and products are generated and processed within a refinery. He emphasized the importance of distinguishing between the distillation process, which merely separates already-formed components of crude oil, and the alkylation process, which involves chemical reactions and requires raw materials not present in distillation products. He also emphasized that alkylate is merely a blending component, accounting for only 10% of the global pool for gasoline manufacture, whereas other components, such as naphtha, constitute a majority of gasoline. Therefore, alkylate is a specialty blending component used to further enhance the properties of gasoline, which is the finished product sold in the market.[103]

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100 Id.
101 Id., pp. 21-23.
102 Id., pp. 23-28.
103 Id.

In another videoconference hearing held on 17 May 2022, respondent presented the testimonies of its witnesses, Manzano and Mulqueen.[104]

Manzano's testimony, as contained in his Judicial Affidavit dated 12 May 2021[105], corroborated Atty. Arguelles' testimony on material points.

Petitioner did not conduct any cross-examination.[106]

Mulqueen was the last to take the witness stand. His testimony was offered to prove: (1) his qualifications as an expert witness in the field of transport fuels and fuel additive production; (2) the nature of alkylate and how it is produced; (3) that alkylate is not produced by distillation; (4) that alkylate is a product of alkylation; (5) that alkylate is solely used as a blending component to increase the octane level in finished gasoline; and (6) that alkylate is not similar to naphtha and regular gasoline.[107]

On cross-examination, Mulqueen testified, in his capacity as an expert witness, that alkylate serves as a blending component in gasoline production. He explained that alkylate functions primarily as a high-octane blending component, making it a valuable stream used in producing premium, high-octane gasoline. He clarified that "alkylation" constitutes a chemical process, distinct from distillation, and results from a chemical reaction between two (2) components that produces a new chemical product known as alkylate.[108]

When asked whether "distillation" must occur to produce alkylate, Mulqueen answered in the negative. He explained that "alkylation" involves pre-treatment of raw materials, followed by a chemical reaction that yields a mixture of alkylates, as no chemical reaction achieves 100% completion. He further stated that purification of alkylate through separation processes may follow the reaction, but

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104 Minutes of the Hearing and Order, both dated 17 May 2022, Division Docket (CTA Case No. 10252), Volume IV, pp. 1506 and 1507-1508, respectively.

105 Exhibit "P-40", id., Volume II, pp. 650-693, with attached exhibits.

106 TSN dated 17 May 2022, p. 7.

107 See Judicial Affidavit dated 19 July 2021, Exhibit "P-90", Division Docket (CTA Case No. 10252), Volume IV, pp. 1484-1503, with attached exhibit.

108 TSN dated 17 May 2022, pp. 12-13.

such purification does not form an essential part of chemical alkylation itself.[109]

Mulqueen also testified that raw materials used to produce alkylate consist of isobutane and olefins, which do not originate from distillation. He explained that olefins typically derive from conversion units within a refinery, such as FCC units, while isobutane may originate from several sources, including catalytic cracking units or natural gas processing. Accordingly, he emphasized that refineries may source isobutane from various processes, but not typically from crude oil distillation.[110]

Respondent did not conduct any redirect examination.[111]

Addressing the Court's clarificatory question, Mulqueen confirmed that the production of alkylate does not involve "distillation" because alkylate results from a chemical process. He explained that "distillation" may occur only after alkylate formation as a purification or cleaning step, which refineries may even omit if alkylate already meets performance requirements as an enhancer. He emphasized that purification serves commercial considerations rather than technical chemical necessity. Although he could not confirm whether alkylate used by respondent underwent "distillation" to remove impurities, he acknowledged that such treatment remains possible.[112]

Mulqueen further attested that, although alkylate constitutes a component or ingredient of gasoline, it does not qualify as indispensable because refiners can produce gasoline without it. He distinguished naphtha as a more appropriate "constituent" derived from "distillation", noting that approximately 99% of gasoline contains naphtha. In contrast, alkylate generally accounts for no more than 10% of gasoline and does not always appear in blends due to its relatively high cost.[113]

Upon further questioning, Mulqueen stated that, because respondent does not operate an alkylation unit, it procured finished

[109] Id., p. 13.
[110] Id., p. 14.
[111] Id.
[112] Id., pp. 15-16.
[113] Id., pp. 16-18.

alkylate from external sources. Although the actual process used to produce such finished alkylate procured by respondent is not known, he explained that, under ideal conditions, suppliers would have already removed impurities prior to delivery.[114]

On 06 June 2022, after completing the presentation of its testimonial evidence, respondent filed its "Formal Offer of Evidence with Motion to Correct Marking of Exhibits"[115] (**FOE**) consisting of Exhibits "P-1" to "P-91", inclusive of sub-markings. Petitioner filed his or her Comment[116] thereto on 10 June 2022. Before resolving respondent's FOE, the Third Division granted the motion to correct the marking of exhibits and set a Commissioner's Hearing for remarking.[117]

In the Resolution dated 19 January 2023[118] (**FOE Resolution**), the Third Division admitted respondent's exhibits, *except* the following: (1) Exhibits "P-56-1-85", "P-56-1-305", "P-56-1-614", "P-57-1-2", "P-57-1-25", "P-57-1-37", "P-57-1-51", "P-57-1-99", "P-66-1-209", "P-66-1-285", "P-66-1-538", "P-67-1-4634", "P-67-12850", "P-67-1-13927", "P-67-1-14632", "P-76-159", "P-76-800", "P-76-944", "P-76-1006", "P-76-1106", "P-76-1485", "P-76-1922", "P-76-2015", "P-78-20", "P-78-27", "P-81-3-2716", "P-81-5-2747", "P-81-5-2892", "P-81-6-1862", "P-81-6-2618", "P-81-10-2780", "P-81-11-77" and "P-84-86"[119], for not being found in the records; and (2) Exhibit "P-33"[120], for failure to identify (collectively, "**Denied Exhibits**"). The Third Division also set the presentation of respondent's evidence to 30 March 2023.

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114 Id., pp. 19-20.

115 Division Docket (CTA Case No. 10252), Volume IV, pp. 1546-1602.

116 Id., pp. 1509-1511.

117 See Resolution dated 21 July 2022, id., pp. 1537-1539.

118 Id., pp. 1930-1934.

119

Exhibit No.	Description
"P-56-1-85", "P-56-1-305", "P-56-1-614", "P-57-1-2", "P-57-1-25", "P-57-1-37", "P-57-1-51", "P-57-1-99", "P-66-1-209", "P-66-1-285", "P-66-1-538", "P-67-1-4634", "P-67-12850", "P-67-1-13927" and "P-67-1-14632"	PBR's SAP-PMMT journal entry printouts.
"P-76-159", "P-76-800", "P-76-944", "P-76-1006", "P-76-1106", "P-76-1485", "P-76-1922" and "P-76-2015"	Withdrawal Certificates.
"P-78-20" and "P-78-27"	Cargo Outturn Certificates.
"P-81-3-2716", "P-81-5-2747", "P-81-5-2892", "P-81-6-1862", "P-81-6-2618", "P-81-10-2780" and "P-81-11-77"	Delivery Notes.
"P-84-86"	Excise Tax Return.

120 BIR Letter dated 29 June 2012 of the Bureau of Internal Revenue (**BIR**) addressed to the Bureau of Customs (**BOC**).

On 17 February 2023, respondent filed a "Motion for Partial Reconsideration"[121] (**MPR**) on the FOE Resolution. Petitioner failed to comment thereon despite due notice.[122]

Petitioner, on the other hand, filed a Manifestation[123], stating that he or she would no longer present any witness in the consolidated cases. Accordingly, in a Minute Resolution dated 29 March 2023[124], the Third Division noted petitioner's Manifestation, cancelled the initial presentation of petitioner's evidence previously scheduled for 30 March 2023, and granted the parties a period of 30 days to file their respective memoranda.

Subsequently, in view of the reorganization of the Court's three (3) divisions, this case was transferred to the Second Division[125] in accordance with Administrative Circular No. 01-2023 dated 23 May 2023.

PROCEEDINGS BEFORE THE SECOND DIVISION

In the Resolution dated 29 June 2023[126], the Second Division partially granted respondent's MPR[127] and thus admitted most of the Denied Exhibits, while still denying Exhibits "P-67-1-4634", "P-67-12850", "P-67-1-13927" and "P-67-1-14632".[128] In the same Resolution, the Second Division also noted respondent's "Manifestation (Re: Supreme Court Decision dated 20 March 2023 in G.R. No. 255961)"[129] filed on 28 April 2023, as well as petitioner's "Counter Manifestation"[130] filed on 17 May 2023.

In compliance with the Court's directive, petitioner filed his or her Memorandum[131] on 28 April 2023, while respondent filed its

121 Division Docket (CTA Case No. 10252), Volume IV, pp. 1936-2025, with attached exhibits.
122 See Records Verification dated 03 April 2023, id., Volume V, p. 2035.
123 Id., pp. 2027-2029.
124 Id., p. 2034.
125 The Second Division was then composed of Associate Justice Ma. Belen M. Ringpis-Liban, as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.
126 Division Docket (CTA Case No. 10252), Volume V, pp. 2086-2090.
127 Supra at note 121.
128 Supra at note 119.
129 Division Docket (CTA Case No. 10252), Volume V, pp. 2043-2067, with annex.
130 Id., pp. 2081-2083.
131 Id., pp. 2068-2079.

Memorandum[132] on 04 August 2023. Accordingly, on 15 August 2023, the Second Division considered the case submitted for decision.[133]

In the now assailed Decision of 14 August 2024[134], the Second Division granted respondent's prior Petition for Review.[135] The dispositive portion thereof reads:

> ...
>
> **ACCORDINGLY**, the instant Petitions for Review are hereby **GRANTED**. Respondent is **ORDERED** to refund or issue tax credit certificates to petitioner, in the following aggregate amounts:
>
> (a) **₱34,536,789.00**, representing excise taxes erroneously paid by petitioner on importations of alkylate covered by BOC SAD No. 6WOA1800019 on January 30, 2018 and April 4, 2018; and
>
> (b) **₱35,046,886.00**, representing excise tax erroneously paid by petitioner on importation of alkylate covered by BOC SAD No. 6WOA1800100 on May 2, 2018 and July 13, 2018.
>
> **SO ORDERED.**
>
> ...

In granting respondent's prior Petition for Review, the Second Division ruled that respondent's importations of alkylate are not subject to excise tax. The Second Division anchored this ruling on the Supreme Court's pronouncement in *Petron Corporation v. Commissioner of Internal Revenue*[136] (**2023 Petron Case**), which involved the same parties and the same legal issue.

On 04 September 2024, petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 14 August 2024)"[137] (**MR**). Respondent filed its Opposition[138] thereto on 30 September 2024. In the similarly assailed Resolution of 11 November 2024[139], the Second Division

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[132] Id., pp. 2091-2152.
[133] See Minute Resolution dated 15 August 2023, id., p. 2153.
[134] Supra at note 7.
[135] Supra at note 9.
[136] G.R No. 255961, 20 March 2023.
[137] Division Docket (CTA Case No. 10252), Volume V, pp. 2177-2186.
[138] Id., pp. 2192-2205.
[139] Supra at note 8.

denied petitioner's MR for lack of merit. The dispositive portion of which states:

> ...
>
> **ACCORDINGLY**, respondent's *Motion for Reconsideration (Re: Decision promulgated 14 August 2024)* is hereby **DENIED** for lack of merit. The Decision, dated August 14, 2024, is hereby **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following the Office of the Solicitor General's (**OSG's**) receipt of a copy of the assailed Resolution on 15 November 2024[140], petitioner filed the present Petition for Review[141] seeking the reversal of the Second Division's assailed Decision[142] and Resolution.[143]

In a Minute Resolution dated 13 December 2024[144], the Court *En Banc* ordered respondent to file a comment within ten (10) days from receipt. After the Court *En Banc* twice granted an extension of time[145], respondent filed its Comment/Opposition[146] on 14 January 2025.

On 30 January 2025, the Court *En Banc* submitted the instant case for decision.[147]

ISSUE

In the present Petition for Review before the Court *En Banc*, petitioner assigns a lone issue for Our resolution —

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140 See Notice of Resolution dated 11 November 2024, Division Docket (CTA Case No. 10252), Volume V, p. 2207.
141 Supra at note 1.
142 Supra at note 7.
143 Supra at note 8.
144 *Rollo*, p. 36.
145 See Minute Resolutions dated 03 January 2025 and 30 January 2025, id., pp. 43 and 123, respectively.
146 Id., pp. 57-120, with List of Annexes.
147 See Minute Resolution dated 30 January 2025, supra at note 145, p. 123.

WHETHER THE COURT'S SECOND DIVISION ERRED IN RULING THAT RESPONDENT PETRON CORPORATION'S IMPORTATIONS OF ALKYLATE ARE NOT SUBJECT TO EXCISE TAX UNDER SECTION 148(e) OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

ARGUMENTS

Petitioner maintains that respondent's importations of alkylate are subject to excise tax under Section 148(e)[148] of the NIRC of 1997, as amended. Petitioner anchors this position on the Court *En Banc*'s earlier ruling in CTA EB No. 2425 (CTA Case Nos. 9565, 9606 & 9645) and (Ret.) Associate Justice Juanito C. Castañeda, Jr.'s Dissenting Opinion in CTA Case Nos. 9327 & 9460, both cases entitled *Petron Corporation v. Commissioner of Internal Revenue*.

Respondent, on the other hand, *first* argues that the present Petition for Review was filed out of time because petitioner's MR of the assailed Decision failed to comply with the requirements of Section 2[149], Rule 37 of the Rules of Court (**ROC**), as amended. Respondent asserts that petitioner's MR did not specifically identify findings or conclusions in the assailed Decision that lacked evidentiary support or ran contrary to law. Respondent further maintains that petitioner's MR failed to cite any testimonial or documentary evidence, or any provision of law, that contradicted the Court's findings or conclusions. On this basis, respondent characterizes petitioner's MR as *pro forma* and contends that it did not toll the reglementary period to appeal.

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[148] Supra at note 17.

[149] Sec. 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal. (Emphasis supplied)

Second, respondent contends that the present *Petition for Review* failed to comply with requirements for an appeal because it lacks a concise statement of facts and does not attach material portions of the record that would support its allegations.

Third, respondent insists that the Court's Second Division correctly ruled that respondent's alkylate importations are not subject to excise tax. Section 148(e)[150] of the NIRC of 1997, as amended, imposes excise tax only on "naphtha," "regular gasoline," and "other similar products of distillation," and does not include alkylate within its coverage. Because the subject refund claims rest on erroneous payment or collection of tax in the absence of statutory authority, the Court's Second Division correctly applied the doctrine of strict construction of tax statutes against government, consistent with the ruling in the *2023 Petron Case*. Thus, the burden rests on petitioner to establish, by a preponderance of evidence, that alkylate constitutes a product of crude oil distillation similar to naphtha and regular gasoline. Petitioner, however, failed to discharge this burden when it chose not to present any evidence in the consolidated cases.

Respondent adds that neither logic nor law supports a conclusion that alkylate qualifies as a product of "distillation" merely because isobutane — one of its raw materials — may originate from a distillation process. In any event, no evidence shows that imported alkylate subject of the consolidated cases was "indirectly" produced through crude oil distillation. Moreover, undisputed evidence establishes that the purpose and nature of alkylate differ from those of naphtha and regular gasoline.

<u>RULING OF THE COURT *EN BANC*</u>

After an assiduous review, the Court *En Banc* finds the present Petition for Review procedurally infirm and, even assuming procedural compliance, devoid of merit.

PETITIONER'S MOTION FOR RECONSIDERATION (MR) IS *PRO FORMA* AND, THUS, DID NOT TOLL THE REGLEMENTARY PERIOD OF APPEAL. HENCE, THE SECOND

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150 Supra at note 17.

DIVISION'S ASSAILED DECISION HAD ALREADY BECOME FINAL AND EXECUTORY.

Respondent points out that the present Petition for Review should be denied perfunctorily since petitioner's MR[151] of the assailed Decision[152] did not suspend the running of the period to appeal and the assailed Decision had already attained finality.

We agree with respondent.

Section 2, Rule 37 of the ROC, as amended, pertinently provides:

> ...
>
> Sec. 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.
>
> ...
>
> **A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.**
>
> A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.[153]
>
> ...

In *Valencia (Bukidnon) Farmers Cooperative Marketing Association, Inc. v. Heirs of Amante P. Cabotaje, et al.*[154], citing *Teodulo M. Coquilla v. The Hon. Commission on Elections and Mr. Neil M. Alvarez*[155], the Supreme Court enumerated the instances where MRs were held to be *pro forma*. These include cases wherein the MR: (1) was a second MR; (2) **did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law**

[151] Supra at note 137.
[152] Supra at note 7.
[153] Emphasis supplied and italics in the original text.
[154] G.R. No. 219984 (Resolution), 03 April 2019.
[155] G.R. No. 151914, 31 July 2002.

or not supported by the evidence; (3) failed to substantiate the alleged errors; (4) merely alleged that the decision in question was contrary to law; or (5) the adverse party was not given notice thereof.

A perusal of the present Petition for Review reveals that petitioner merely reiterated the arguments and authorities already raised in his or her prior submissions. As respondent correctly observed, petitioner did not identify specific findings or conclusions in the assailed Decision[156] that allegedly lacked evidentiary support or ran contrary to law. Petitioner likewise failed to cite any testimonial or documentary evidence, or any statutory provision, that contradicted the Second Division's factual or legal conclusions.

Such omission rendered petitioner's MR[157] *pro forma*. A *pro forma* MR does not suspend or interrupt the reglementary period to appeal. Consequently, petitioner's filing of the present Petition for Review fell outside allowable period and warrants outright dismissal.

Nonetheless, as stated, even assuming procedural compliance, the present Petition for Review still lacks merit.

RESPONDENT IS ENTITLED TO THE REFUND OR CREDIT OF THE ERRONEOUSLY OR ILLEGALLY COLLECTED EXCISE TAXES ON IMPORTATIONS OF ALKYLATE.

Both Sections 204(C) and 229 of the NIRC of 1997, as amended, deal with the refund of erroneously or illegally collected taxes. Particularly, Section 204(C) applies to administrative claims, while Section 229 to judicial claims.[158] Section 204(C) of the NIRC of 1997, as amended, provides:

> ...
>
> SEC. 204. ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may –
>
> ...

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156 Supra at note 7.

157 Supra at note 137.

158 See *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84 & 193407-08, 14 January 2015.

> (c) Credit or refund taxes **erroneously or illegally** received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, reads:

> ...
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause** that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[159]
>
> ...

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[160], the Supreme Court ruled as follows:

> ...
>
> Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-

159 Emphasis supplied and italics in the original text.

160 G.R. No. 226592, 27 July 2021; Citation omitted and italics in the original text.

> year period, there is no legal impediment to the judicial claim for refund.
>
> Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.
>
> ...

The afore-quoted provisions are clear. Within two (2) years from the date of payment of the tax or penalty, the taxpayer-claimant must first file an administrative claim with petitioner before filing a judicial claim before this Court. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional; hence, this Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[161] Thus, so long as the judicial claim was filed within two (2) years from the date of payment of the tax or penalty, and within such period, an administrative claim was filed before filing such judicial claim, this Court has jurisdiction to entertain the latter.

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[162]

Thus, for the subject claims for refund to prosper, respondent must not only establish that it has timely filed its refund claim, but it must also prove that the subject excise tax paid is an "erroneous or illegal tax."

RESPONDENT TIMELY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS.

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161 *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. No. 180740 & 180910, 11 November 2019.

162 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

The following dates are significant in determining the timeliness of the present refund claims, *viz*:

BOC SAD Reference No.	Date of Payment	Amount of Excise Tax Paid	End of Two (2)-Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
6WOA1800019[163]	30 January 2018[164]	₱34,536,789.00	30 January 2020	23 January 2020[165]	30 January 2020[166]
	04 April 2018[167]		04 April 2020		
6WOA1800100[168]	02 May 2018[169]	₱35,046,886.00	02 May 2020	24 April 2020[170]	01 July 2020[171]
	13 July 2018[172]		13 July 2020		
	Total	**₱69,583,675.00**			

Based on the foregoing, respondent timely filed its administrative and judicial claims for refund within two (2) years from date of payment of the excise tax imposed on the subject importations of alkylate, in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended. Thus, the subject refund claims were timely filed.

RESPONDENT'S ALKYLATE IMPORTATIONS ARE NOT SUBJECT TO EXCISE TAX.

We shall now determine whether the excise tax payments arising from the aforesaid importations of alkylate are illegal or erroneous.

163 Exhibit "P-5", supra at note 10.

164 See Certification dated 18 April 2018 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2018 R 25 dated 30 January 2018 issued by the BOC, Exhibits "P-9" and "P-9-A", respectively, supra at note 10.

165 Exhibits "P-15" and "P-14", supra at notes 21 and 22.

166 Supra at note 25.

167 See Certification dated 18 April 2018 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2018 R 70 dated 04 April 2018 issued by the BOC, Exhibits "P-9" and "P-9-B", respectively, supra at note 10.

168 Exhibit "P-6", supra at note 11.

169 See Certification dated 08 October 2018 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2018 R 95 dated 02 May 2018 issued by the BOC, Exhibits "P-10" and "P-10-A", respectively, supra at note 11.

170 Exhibits "P-17" and "P-16", supra at notes 23 and 24.

171 Supra at note 26.

172 See Certification dated 08 October 2018 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2018 R 153 dated 13 July 2018 issued by the BOC, Exhibits "P-10" and "P-10-B", respectively, supra at note 11.

The relevant provisions of law are Sections 129, 131, and 148(e) of the NIRC of 1997, as amended, which read as follows:

...

SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and <u>to things imported</u>.** The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'

...

SEC. 131. *Payment of Excise Taxes on Imported Articles.* —

(A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

...

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 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[.][173]

...

The foregoing provisions clearly state that excise tax shall attach, *inter alia*, to **naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence**.

However, in the *2023 Petron Case*[174], the Supreme Court categorically held that 'alkylate' is not among the articles covered by Section 148(e)[175] of the NIRC of 1997, as amended, as it does not fall under the category of "other similar products of distillation" subject to excise tax, extensively explaining said ruling as follows:

...

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.

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,

173 Italics in the original text, emphasis and underscoring supplied.
174 Supra at note 136; Citations omitted, italics and emphasis in the original text and supplied.
175 Supra at note 17.

which cannot be allowed unless granted in the most explicit and categorical language.

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.**

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 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 NIRC, provides:

...

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. T**o 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.**

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.**

3. **Alkylation and distillation are different processes and are separate and distinct from one another.**

   ...

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.]

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.]
>
> 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 (T10) 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.

All told, the Court finds that the CTA *En Banc* erred in denying petitioner's claim for tax refund or credit. To be clear, **alkylate does not fall under the category of "other similar products of**

> **distillation" as contemplated in Sec. 148(e) of the 1997 NIRC, as amended.**
>
> ...

As in the afore-quoted case, **the pieces of evidence for respondent, including the testimonies of expert witnesses, which petitioner failed or did not even attempt to rebut, clearly established that alkylate is produced through the process of "alkylation" and *not* "distillation", and that alkylate does *not* belong to the same category as naphtha and regular gasoline; hence, not subject to excise tax.**

Specifically, Engr. Pumatong, respondent's Process Engineering Manager, explained that alkylate is not a product of crude oil distillation (as it can only be produced by "alkylation") and that crude oil distillation is not part of the process to produce alkylate, to wit:

> ...
>
> 42. Q: As you know, these cases involve Petron's claim for refund for the excise taxes it paid on the importation of alkylate. One of the bases cited by the Bureau of Internal Revenue ("BIR") for subjecting alkylate to excise tax is that it is a product of distillation. Is alkylate a product of crude oil distillation?
>
> A: No.
>
> 43. Q: Why do you say that alkylate is not a product of crude oil distillation?
>
> A: Alkylate does not fall under any of the seven types or categories of crude oil distillates I mentioned earlier. It is not a crude oil distillates and thus, not a product of crude oil distillation. Another way to put it is, **the distillation of crude oil would never produce alkylate.**
>
> 44. Q: Why do you say that crude oil distillation would never produce alkylate?
>
> A: Distillation, as I mentioned earlier, is simply a process through which substances already present in crude oil, are separated from each other. **Alkylate, as a substance or as a molecule, cannot be found in crude oil. Since it cannot be found in crude oil,**

alkylate cannot possibly be distilled or separated from other substances found in crude oil.

45. Q: How is alkylate produced?

A: **Alkylate is produced through alkylation. Alkylation is a chemical, as opposed to a "physical", process through which isobutane and olefin hydrocarbons are combined, instead of separated, with the aid of a catalyst.** The catalyst can either be sulfuric acid or hydrofluoric acid. Alkylation alters the molecular structure of isobutane and the olefin hydrocarbons by combining them.

46. Q: How is alkylation different from crude oil distillation?

A: As I mentioned earlier, **distillation is a physical process, whereas alkylation is a chemical process.**

Alkylation combines substances through the aid of catalyst, whereas distillation separates substances.

Alkylation alters the molecular structure of substances, whereas distillation does no such thing.

In (sic) crude oil is the raw material for crude oil distillation. Crude oil is not a raw material in the alkylation process.

47. Q: How is alkylate different from a crude oil distillate?

A: **Alkylate is a product of alkylation, whereas the crude oil distillates are produced through distillation. Thus, alkylate is a product of a chemical process, whereas crude oil distillates are products of a physical process. To repeat, alkylate is not found in crude oil, whereas crude oil distillates are substances found in crude oil.**[176]

...

Dr. Ocon similarly testified that alkylate does not form part of crude oil and can never result from crude oil distillation. He explained that "distillation" merely constitutes a unit operation that physically separates substances already present in crude oil without altering their

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176 See Judicial Affidavit of Engr. Jurrel D. Pumatong dated 12 May 2021, Exhibit "P-39", supra at note 73; Emphasis supplied.

chemical structure, whereas alkylate arises solely from "alkylation", a distinct unit process that chemically combines olefins and isobutane through an acidic catalyst. Because alkylate does not belong to crude oil's already-formed components and requires a chemical reaction for its creation, no amount of crude oil distillation can ever produce it. Dr. Ocon further clarified that alkylate functions only as a blendstock for gasoline and cannot qualify as "unleaded premium gasoline," as it lacks essential physical, environmental, and operational properties required of motor fuel, *viz*:

> ...
>
> 35. Q: What are these "already-formed" components of crude oil?
>
> A: These are the molecules that make up fuel gas, propane, butane, light naphtha, heavy naphtha, gasoline, kerosene, stove oil, light gas oil, heavy gas oil, lubricating oil, vacuum gas oil, and residuum. These molecules are "already-formed" in crude oil.
>
> 36. Q: Is it possible to distill a substance from crude oil that was not an "already-formed" component of crude oil?
>
> A: No, that is not possible.
>
> 37. Q: Is alkylate among the "already-formed" components of crude oil?
>
> A: No.
>
> 38. Q: Is it possible to distill alkylate from crude oil?
>
> A: No.
>
> 39. Q: Why is it not possible to distill alkylate from crude oil?
>
> A: I mentioned earlier that crude oil distillation is a unit operation where components which already form part of crude oil (or what I referred to as "already-formed" components) are simply physically separated from each other normally through the application of heat.
>
> **Alkylate is not among the "already-formed" components of crude oil. Therefore, alkylate cannot possibly be separated or distilled from crude oil.**

40. Q: How is alkylate produced?

A: **Alkylate is produced through alkylation.**

41. Q: What is alkylation?
A. **Alkylation is a unit process (as opposed to a unit operation) that combines or unites olefins and iso-butane usually through an acidic catalyst.**

42. Q: How does alkylation differ from distillation?

A: Alkylation is a unit process while distillation is a unit operation. Consequently, distillation does not alter the chemical properties or molecular structure of participating molecules. On the other hand, alkylation, because it is a unit process, involves a chemical change or reaction to the processed materials (olefins and iso-butane feedstock).

Distillation — which is a unit operation — involves the physical separation or splitting of already-formed substances. Alkylation is the polar opposite since it combines or unites (not separate) substances.

Unlike alkylation, distillation does not involve the use of an acid catalyst (such as hydrofluoric acid or sulfuric acid). Alkylation does not use crude oil as a raw material. For crude distillation, crude oil is necessarily the raw material.

Lastly, **alkylate is a product of alkylation. In contrast, no amount of distillation of crude oil will ever produce alkylate. This is because alkylate is not (and will never be) among the components that already form part of crude oil.**

...

49. Q: You mentioned that the conclusion you reached in your Technical Report is that alkylate is not a product of distillation? Why do you say so?

A: **Alkylate is a product of alkylation, and alkylation is a procedure in a chemical process that is totally distinct from distillation.** If I could summarize:

1. Alkylation is a unit process involving the combination of substances which results in chemical changes to those substances.

2. Distillation is a unit operation involving the physical separation of substances without any chemical changes to those substances.

Distillation separates crude oil into crude oil distillates. Alkylate is not, and will never be, among those crude oil distillates because alkylate is, and will never be, among the components already forming part of crude oil.

50. Q: To your knowledge, how is alkylate used?

A: Alkylate is used as a blendstock or a blending feedstock to enable blended gasoline to meet the technical and environmental specifications for it to become a marketable product.

...

61. Q: Is it possible to consider alkylate as 'unleaded premium gasoline'?

A: No, alkylate cannot be considered as 'unleaded premium gasoline.'

62. Q: Why not?

A: **Looking at their properties, alkylate cannot be used as a motor fuel unlike unleaded premium gasoline. Alkylate does not have the essential physical properties to effectively operate a motor engine. Because of its high boiling point and low volatility, alkylates cause spark plug fouling and can damage an engine. Alkylates also do not meet the environmental and legal standards for 'unleaded premium gasoline'.**

Alkylate is also a product of alkylation (a unit process) and 'unleaded premium gasoline' is produced by physically blending additives with "LSR" (a unit operation).

Alkylate also lacks the right blend between light and heavy components with different volatilities (unlike regular and premium gasoline, for example). Because it is composed mostly of iso-paraffin with a high boiling temperature, alkylates do not have the smooth distillation curve of regular and premium gasoline for proper vehicle operation.[177]

...

Mulqueen, respondent's expert witness, corroborates the testimonies of Engr. Pumatong and Dr. Ocon. He further sheds light on the nature of alkylate and how the process of "alkylation" differs from the process of "distillation", as follows:

...

27. Q: What is alkylate?

A: Alkylate is a type of hydrocarbon. It is a branched chain paraffinic hydrocarbon, which is used as a blending component to produce finished gasoline by raising its octane level. The advantage of using alkylate, as opposed to other blending components, is that alkylate is very stable and does not degrade as readily as other components. However, the main advantage of using alkylate is its high-octane number that allows it to increase gasoline's octane rating.

28. Q: What is the purpose of alkylate?

A: Alkylate is used by many refineries all over the world precisely as a blending component to produce high octane gasoline, as I explained. Alkylate allows the gasoline to meet certain characteristics required by law, such as octane number and volatility requirements (including distillation and boiling range). Alkylate has little use by itself as an independent component.

29. Q: How is alkylate produced?

A: **Alkylate can be produced only through alkylation. Alkylation is a chemical process that involves combining light olefins (C3 to C5 molecules) with isobutane in the presence of a strong acid catalyst (which could either be a sulfuric acid or hydrofluoric acid).**

To produce alkylate, a refinery would need an alkylation unit. The alkylation process can take place only within an alkylation unit, and nowhere else. Alkylate cannot possibly be produced or derived as a by-product of other

[177] See Judicial Affidavit of Dr. Joey D. Ocon dated 12 May 2021, Exhibit "P-38", supra at note 97; Emphasis supplied.

kinds of processes that take place within the refinery or elsewhere.

...

39. Q: How is distillation different from alkylation?

A: Distillation is a process that physically separates components found in a mixture (such as crude oil). Alkylation, on the other hand, involves combining components rather than separating them, through the use of a catalyst.

Alkylation alters the molecular structure of components such that the product which results from alkylation (i.e., alkylate) has a molecular structure totally different from the components or raw materials that were used to produce it. Unlike alkylation, distillation does not involve a change in the chemical composition or structure of its constituents. It is simply a separation process.

...

46. Q: You mentioned that the raw materials that are used to produce alkylate are light olefins and isobutane. You also mentioned that isobutane may come from many sources, one of which is from distilling crude oil. How, if any, does the possibility that isobutane may be sourced from crude oil distillation, affect your conclusion that alkylate is not a product of distillation?

A: It does not affect my conclusion. **I maintain that alkylate would still be a product of alkylation, and not of crude oil distillation, even though one of alkylate's raw materials (isobutane) may possibly have come from crude oil distillation. Only the alkylation process (which takes place in the alkylation unit) ultimately causes alkylate to come into existence. The distillation of crude oil simply cannot produce alkylate or make alkylate come into existence.**

47. Q: Are you familiar with a product called naphtha?

A: Yes. Naphtha is a constituent component or distillate of crude oil which typically has a low octane rating and boils within the gasoline fraction. It is thus blended with other components to increase its (naphtha's) octane rating. Naphtha, however, has the correct boiling range, the correct volatility that allows it to theoretically be sold as gasoline.

48. Q: How is naphtha produced?

A: Naphtha is produced by distilling crude oil. It is a product of distillation.

49. Q: Based on your experience as a Technical Consultant and previously a Director of Technical Services of Innospec, kindly compare and contrast alkylate with naphtha.

A: Naphtha and alkylate are similar in the limited sense that that they may each be blended with gasoline to produce finished gasoline. However, naphtha is very different from alkylate for many reasons.

Naphtha is a low-octane component of finished gasoline, whereas alkylate is a high-octane component.

Naphtha is produced by distilling crude oil (and not through alkylation), whereas alkylate is produced by alkylation (and not through crude oil distillation).

Naphtha as a blending component is not used to increase octane-rating, but it possesses other key characteristics such as vapor pressure, density, and volatility that are important gasoline specification parameters. Alkylate, on the other hand, is used as a blending component mainly to increase a gasoline's octane rating.

50. Q: Are you familiar with the term 'regular gasoline'?

A: Yes. The term 'regular gasoline' applies to motor fuel that is for general sale at a filling station. It is designed to meet the national specifications for 'regular gasoline' in the country where it is marketed. 'Regular gasoline' is a blend of several components and additives, potentially including alkylate, to allow it to comply with these national specifications.

51. Q: Can alkylate be used as a motor fuel, like regular gasoline?

A: No.

52. Q: Why not?

A: If you fueled the engine of a vehicle with alkylate it would likely have difficulty starting under cold conditions. Alkylate has minimal use by itself as an [*sic*] single component. It is mainly used as a blending component to produce finished gasoline.

53. Q: Is it possible to consider alkylate as "regular gasoline"?

A: No.

54. Q: Why not?

A: Alkylate will in all likelihood not satisfy the specification requirements of 'regular gasoline.'

The purpose of alkylate is that of a blending component useful for the production [of] finished gasoline, such as 'regular gasoline.' Regular gasoline is not a blending component to produce finished gasoline. Regular gasoline *is* finished gasoline.

Simply put, **alkylate is an ingredient of regular automotive gasoline**. Regular gasoline is the finished product.

Moreover, **alkylate alone (unlike regular gasoline) cannot be used as a motor fuel. Alkylate lacks the necessary physical properties to ensure a vehicle will operate in all driving conditions.**

In summary, **alkylate cannot properly fuel a motor vehicle**. Regular gasoline blends are carefully prepared to fuel motor vehicles and operate across all likely driving conditions.[178]

...

Clearly from the Supreme Court's ruling in the *2023 Petron Case* and the foregoing testimonies of expert witnesses, alkylate is ***not*** among the articles covered by Section 148(e)[179] of the NIRC of 1997, as amended, as it does not fall under the category of "other similar products of distillation" subject to excise tax. Moreover, Section 148(e) of the NIRC of 1997, 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. Hence, respondent's

[178] See Judicial Affidavit of Simon Christopher Mulqueen dated 19 July 2021, Exhibit "P-90", supra at note 107; Emphasis supplied.

[179] Supra at note 17.

excise tax payments upon its importation of alkylate are deemed illegal and erroneous.

We shall now proceed to rule on whether the claims for refund of, or issuance of a TCC, in the aggregate amount of ₱69,583,675.00, represents erroneous or illegal excise taxes paid by respondent on alkylate importations in February and May 2018.

THE AMOUNT OF ₱69,583,675.00 REPRESENTS ERRONEOUS OR ILLEGAL EXCISE TAXES PAID BY RESPONDENT.

To prove that the subject excise taxes pertain to importations of alkylate, respondent proffered as evidence, among others, the following: (1) BOC SADs[180]; (2) Customs Payment Receipts (**CPRs**)[181]; (3) Certifications issued by the BOC Port of Limay[182]; and (4) Authorities to Release Imported Goods (**ATRIGs**).[183]

An examination of the BOC SADs discloses that the following value-added tax (**VAT**), excise taxes, other fees and charges due, totaling ₱114,666,337.00, were imposed on respondent's importations of 9,940,525 liters of alkylate:

	Calculation of Taxes, Other BOC Fees and Charges *per* BOC SAD				
Exhibit No.	**Imported Alkylate Volume in Liters at Air**	**VAT**	**Excise Tax (₱7.00/liter)**	**Other BOC Fees and Charges**	**Total**
"P-5"	4,933,827	₱16,197,823.00	₱20,886,738.00	₱3,765.00	₱37,088,326.00
		4,982,375.00	13,650,051.00	-	18,632,426.00
"P-6"	5,006,698	₱18,045,344.00	₱35,046,886.00	₱3,765.00	₱53,095,995.00
		5,849,590.00	-	-	5,849,590.00
Total	**9,940,525**	**₱45,075,132.00**	**₱69,583,675.00**	**₱7,530.00**	**₱114,666,337.00**

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[180] Exhibits "P-5" to "P-6", supra at notes 10 and 11.
[181] Exhibits "P-9-A", "P-9-B", "P-10-A" and "P-10-B", supra at notes 10 and 11.
[182] Exhibits "P-9" and "P-10", supra at notes 10 and 11.
[183] Exhibits "P-7" and "P-8", Division Docket (CTA Case No. 10252), Volume IV, pp. 1644 and 1645, respectively.

Total taxes, other fees and charges due in the amount of ₱114,666,337.00, as reflected in the BOC SADs[184], exactly match total payments shown in the CPRs. The BOC likewise certified that this total amount included excise tax payments amounting to ₱69,583,675.00, broken down as follows:

Total Taxes, Other Fees & Charges Due *per* SAD	Total Amount Paid *per* CPR			Excise Tax Payment included in the Total Payment *per* CPR as certified by the BOC	Exhibit No.
	Date	Amount	Exhibit No.		
₱37,088,326.00	30 January 2018	₱37,088,326.00	"P-9-A"		
18,632,426.00	04 April 2018	18,632,426.00	"P-9-B"		
₱55,720,752.00		₱55,720,752.00		₱34,536,789.00	"P-9"
₱53,095,995.00	02 May 2018	₱53,095,995.00	"P-10-A"		
5,849,590.00	13 July 2018	5,849,590.00	"P-10-B"		
₱58,945,585.00		₱58,945,585.00		35,046,886.00	"P-10"
₱114,666,337.00		**₱114,666,337.00**		**₱69,583,675.00**	

The foregoing sufficiently proves that the excise taxes paid by respondent, totalling ₱69,583,675.00 for its importations of alkylate on 30 January 2018, 04 April 2018, 02 May 2018 and 13 July 2018, are erroneous and refundable under Sections 204(C) and 229 of the NIRC of 1997, as amended.

Substantial justice dictates that the government should not keep money that does not belong to it.[185] Taking all the above circumstances together, it is evident that respondent was able to sufficiently establish, by preponderance of evidence, that it is entitled to the refund or credit of the total amount of ₱69,583,675.00, representing the erroneously or illegally paid excise taxes on importations of alkylate.

ACCORDINGLY, the foregoing considered, the Petition for Review, filed on 29 November 2024, is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 14 August 2024 and the Resolution dated 11 November 2024 of the Second Division in the consolidated CTA Case Nos. 10252 and 10297, both entitled *Petron Corporation v. Commissioner of Internal Revenue*, are **AFFIRMED.**

184 Exhibits "P-5" to "P-6", supra at notes 10 and 11.
185 See *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*, G.R. No. 122480, 12 April 2000.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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 cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice