REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION, Petitioner,	**CTA EB No. 2072** (CTA Case Nos. 8914 and 8981)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 18 2021 4:15pm

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RESOLUTION

BACORRO-VILLENA, J.:

On 22 July 2020, the Court *En Banc* denied the Petition for Review filed by herein petitioner Petron Corporation (**petitioner**) for lack of merit. The dispositive portion of the 22 July 2020 Decision (**assailed Decision**) reads:

> ...
>
> **WHEREFORE**, the foregoing considered, the Petition for Review dated 29 May 2019 is **DENIED** for lack of merit. Accordingly, the Decision dated 18 December 2018 and the Resolution dated 30 April 2019, respectively, of the Special Second Division in the consolidated CTA Case Nos. 8914 and 8981, both entitled *Petron Corporation v. Commissioner of Internal Revenue*, are **AFFIRMED**.

SO ORDERED.

...

As can be recalled, the foregoing conclusion was based on the *ratio* that alkylate, while 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.

Moreover, the Court *En Banc* also accorded great respect to the ruling or interpretation made by the Bureau of Internal Revenue (**BIR**), the administrative agency tasked to implement the National Internal Revenue Code (**NIRC**) of 1997, as amended, as executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon.

Lastly, the Court *En Banc* also held that tax refunds, being in the nature of tax exemption, must be construed strictly against the taxpayer. As such, petitioner must clearly and distinctively state the basis for its claim and prove that it falls within the ambit of said exemption.

To the above conclusions reached in the 22 July 2020 Decision, petitioner filed a Motion for Reconsideration (**MR**) dated 17 September 2020[1], arguing that the Court *En Banc* violated the principle of construing tax laws strictly against the government and in favor of the taxpayer. Relatedly, petitioner contends that respondent had the burden to prove that alkylate is a product of crude oil distillation.

Petitioner likewise claims that alkylate cannot be a "similar product of distillation" simply because isobutane – one of its raw materials – may or could possibly be a product of distillation, as the nature of a part should not and cannot logically determine the nature of the whole.

Lastly, petitioner asserts that excise taxes should not have been imposed upon the alkylate subject of this case because it was not

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[1] *Rollo*, Volume II, pp. 869-902.

imported for domestic sale or consumption, or for any other disposition.

On the other hand, in respondent Commissioner of Internal Revenue's (**respondent**) Opposition (**Opposition**) dated 19 October 2020[2], he maintains that since the issue in the instant case is petitioner's entitlement to refund, it must prove that it is entitled to it given that claims for refund, which are in the nature of tax exemptions, are construed in *strictissimi juris* against the claimant.

In claiming that alkylate, like CCG[3] and LCCG[4], is a product of distillation and falls within the category of naphtha, regular gasoline and other similar products of distillation hence subject to excise tax under Section 148(e) of the NIRC of 1997, as amended, respondent cites BIR Letter dated 29 June 2012 and the Court *En Banc*'s ruling in *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs, et al.*[5]

Additionally, respondent asserts that excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported.

We shall proceed to discuss the parties' contrasting arguments.

Section 148(e) of the NIRC of 1997, as amended, does not expressly and specifically impose excise tax on alkylate. Rather, the basis for the Court *En Banc*'s previous determination that importation of alkylate is subject to excise tax is that it is considered as a product of distillation similar to naphtha and regular gasoline and is thus encompassed under the term "other similar products of distillation." Section 148(e) of the NIRC of 1997, as amended, reads:

> ...
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> **Sec. 148.** *Manufactured Oils and Other Fuels.* - There shall be collected on refined and manufactured mineral oils and motor fuels,

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2 Id., pp. 908-918.
3 Referring to Catalytic Cracked Gasoline.
4 Referring to Light Catalytic Cracked Gasoline.
5 CTA EB Nos. 1007 and 1003, 28 September 2015.

> the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
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> ...
>
> (e) **Naphtha, regular gasoline and other similar products of distillation**, per liter of volume capacity, Four pesos and thirty-five centavos (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, [Z]ero (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[.][6]
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> ...

Petitioner, however, strongly disagrees.

Of paramount consideration among the arguments raised by petitioner is the proper tool of statutory construction that must be applied in interpreting Section 148(e) of the NIRC of 1997, as amended. Particularly, petitioner insists that inasmuch as it does not rely on a tax exemption statute or clause, what must be applied is the strict interpretation of taxes against the government such that a tax statute will not be construed as imposing tax unless it does so clearly, expressly and unambiguously.

Petitioner further invokes the principle of *noscitur a sociis* which means that "where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its meaning may be made clear and specific by considering the company of the words in which it is found or with which it is associated".[7] According to petitioner,

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6 Emphasis supplied.

7 *Nixon T. Kua v. Robert Dean S. Barbers*, G.R. No. 159410, 28 January 2008.

Sections 141[8] and 144[9] should be read alongside Section 148(e) of the NIRC of 1997, as amended, such that if Congress intended to impose tax on alkylate as an indirect product of isobutane (or olefins), it could have imposed excise tax on "products of isobutane or olefins" (like it did for products of tobacco in Section 144) or it would have enumerated the raw materials of "other similar products of distillation" (in the same way it enumerated the raw materials of distilled spirits in Section 141).

Additionally, petitioner invokes the principle of *ejusdem generis* which means that "where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the state which would repel such inference".[10] Petitioner thus contends that the intended use or purpose of naphtha and regular gasoline differ from the intended use or purpose of alkylate and that alkylate is not of the same nature as regular gasoline.

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8 **Sec. 141.** *Distilled Spirits.* — On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:

(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane, provided such materials are produced commercially in the country where they are processed into distilled spirits, per proof liter, Eleven pesos and sixty-five centavos (P11.65);

(b) If produced from raw materials other than those enumerated in the preceding paragraph, the tax shall be in accordance with the net retail price per bottle of seven hundred fifty milliliter (750 ml.) volume capacity (excluding the excise tax and the value-added tax) as follows:

...

9 **Sec. 144.** *Tobacco Products.* — There shall be collected a tax of One peso (P1.00) on each kilogram of the following products of tobacco:

(a) Tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing;

(b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened except as otherwise provided hereunder; and

(c) Fine-cut shorts and refuse, scraps clippings, cuttings, stems and sweepings of tobacco except as otherwise provided hereunder.

Stemmed leaf tobacco, tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened, fine-cut shorts and refuse, scraps, clippings, cuttings, stems, midribs; and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco shall be transferred, disposed of, or otherwise sold, without any prepayment of the excise tax herein provided for, if the same are to be exported or to be used in the manufacture of cigars, cigarettes, or other tobacco products on which the excise tax will eventually be paid on the finished product, under such conditions as may be prescribed in the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, Seventy-nine centavos (P0.79).

...

10 *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit, et al.*, G.R. No. 150769, 31 August 2004.

Diametrically opposed are the legal arguments raised by respondent which are likewise of equal significance.

Respondent maintains that since the instant case involves refund, which is in the nature of tax exemptions, petitioner's claim must be construed *strictissimi juris* against it.

Not to be discounted likewise is the fact that the BIR has already issued an administrative interpretation on the taxability of alkylate, and the same is judicially recognized as one entitled to great respect and ordinarily controls the interpretation of the courts.

In view of the various overriding legal principles involved, not to mention the highly technical nature of the subject matter at hand as well as the novelty of the legal issues to be resolved, the Court *En Banc* deems it proper to revisit and take a second hard look on its earlier ruling in the assailed Decision. Verily, petitioner's amplified arguments *vis-à-vis* the pertinent jurisprudence relative to the proper interpretation of tax statutes warrant the re-examination by the Court *En Banc* of its earlier disposition.

To recall, the Court *En Banc* found that "alkylate, while not *directly* produced through the process of distillation, olefins and isobutane are nevertheless products of distillation and thus, alkylate first undergoes the process of distillation" hence properly subjected to excise tax.

The present impasse therefore revolves around the determination of whether alkylate, despite the Court *En Banc*'s finding that it is not *directly* produced by distillation, is nonetheless covered by the phrase "other similar products of distillation" considering that its raw materials, olefins and isobutane, are products of distillation. To answer this question, proper rules of statutory construction must be employed.

To determine the appropriate tool of statutory construction to be applied, the Court *En Banc* sees the need to first ascertain the nature of an excise tax.

In *Exxonmobil Petroleum and Chemical Holdings, Inc. - Philippine Branch v. Commissioner of Internal Revenue*[11], the Supreme Court enumerated the conditions for the imposition of excise tax as follows:

> ...
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> Excise taxes are imposed under Title VI of the NIRC. They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported. **In effect, these taxes are imposed when two conditions concur: *first*, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC**; and *second*, that said articles are for domestic sale or consumption, excluding those that are actually exported.
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> ...

Thus, to be imposed with excise tax, the article must belong to any of the categories of goods enumerated in Title VI of the NIRC of 1997, as amended. In other words, articles are not generally excisable unless it specifically belongs to any of the goods enumerated thereunder.

In the instant case, petitioner, in its claim for refund, did not rely on any tax exemption clause but on the fact that alkylate is not covered by Section 148(e) of the NIRC of 1997, as amended. Differently put, petitioner contends that it is entitled to refund not because a tax exemption clause exists in its favor but on the ground that the article it imported is, in the first place, not included in the articles subject to excise tax.

According to petitioner, since its basis for claim for refund is not on a tax exemption clause but on the ground that alkylate is not subject to excise tax, the rule that must be applied to its case is the strict interpretation in the imposition of taxes (and not the strict construction applied in claims for refund based on tax exemption clause).

After a second hard look at the parties' arguments and the relevant jurisprudence, some of the members of Court *En Banc* are convinced that the assailed Decision must be reconsidered.

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11 G.R. No. 180909, 19 January 2011; Citations omitted, italics in the original text and emphasis supplied.

As petitioner pointed out, not all claims for tax refund partakes the nature of a tax exemption and what may be applied in cases of claim for refund premised on erroneous payment of the tax is the doctrine of strict interpretation. Specifically, petitioner cited the Supreme Court ruling in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[12], where it was held that:

> ...
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> **Finally, the Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobacco[']s claim for refund is premised on its erroneous payment of the tax, or better still the government's exaction in the absence of a law.**
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> Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.
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> A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.
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> Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.
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> The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any

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12 G.R. Nos. 167274-75, 21 July 2008; Citations omitted, emphasis and underscoring supplied.

> unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.
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> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.
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> **<u>What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions</u>. The rule in the interpretation of tax laws is that <u>a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously</u>. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.**
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> ...

As petitioner anchors its claim for refund not on any tax exemption clause in the NIRC of 1997, as amended, but on the premise that alkylate is *not* covered by Section 148(e) of the said law, what applies to it is not the rule that tax refund partakes the nature of a tax exemption but the strict interpretation in the imposition of taxes.

With the application of strict interpretation in the imposition of taxes, it is therefore imperative to determine whether the subject provision **clearly, expressly and unambiguously** imposes excise tax on alkylate.

As found by the Special Second Division and affirmed by the Court *En Banc* in the now assailed Decision, alkylate is not *directly* produced by the process of distillation. In addition, petitioner's expert witness, Dr. Joey D. Ocon (**Dr. Ocon**), testified that "the unit process of alkylation is the primary process and is a requisite in the formation alkylates" while "the unit operation of distillation will not form the liquid-phase alkylates."[13] The same is likewise echoed by respondent's witness, Ma. Lourdes Rosula R. Ramos (**Ramos**), the Chief of the BIR Laboratory Section, when she confirmed during her cross examination that the process of distillation is not the primary process to produce alkylate but is that of alkylation.[14]

On the other hand, petitioner's witness, Bayani I. Rodriguez, Jr., testified that naphtha (straight-run gasoline) is a *primary* product of distillation of crude oil.[15] Similarly, respondent's witness, Ramos, stated in her report that "[n]aphtha is produced by fractional distillation of crude oil or by other refinery processes and recovered from refinery streams also by fractionation".[16]

Furthermore, in contrasting the two subjects, Dr. Ocon added that "alkylate and naphtha are two entirely different chemicals with different properties" and "alkylate is produced through alkylation while naphtha is produced through distillation".[17]

From the foregoing, it is evident that naphtha (to which respondent likens alkylate as a similar product of distillation[18]), is produced by distillation while alkylate is produced by alkylation and is not directly produced by distillation.

With the finding that alkylate is not *directly* produced by distillation but by alkylation, some of the members of the Court *En Banc* are of the opinion that the same is not subject to excise tax applying the rule of strict interpretation in the imposition of taxes. Since the Congress did not **clearly, expressly and unambiguously**

13 Question & Answer No. 23, Judicial Affidavit of Joey D. Ocon, Division Docket (CTA Case No. 8914), Volume IV, p. 1455.
14 TSN of 26 April 2017, p. 18.
15 Question and Answer No. 28, Judicial Affidavit of Bayani I. Rodriguez, Jr., Division Docket, Volume II, p. 749.
16 Exhibit "R-1", id., Volume III, p. 1364.
17 Question & Answer No. 25, Judicial Affidavit of Joey D. Ocon, id., Volume IV, p. 1456.
18 Supra at note 16.

impose tax on alkylate (or those which are not *directly* produced by distillation) under Section 148(e) of the NIRC of 1997, as amended, the same members of the Court *En Banc* believe that petitioner is correct in pointing out that the same should have been resolved in its favor.

To reiterate, "[t]he 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".[19]

Verily, the absence of distinction in Section 148(e) of the NIRC of 1997, as amended, between *primary and secondary* or *direct and indirect* products of distillation should work in petitioner's favor, following the rule on strict interpretation in the imposition of taxes.

In sum, since Section 148(e) of the NIRC of 1997, as amended, does not clearly, expressly and unambiguously cover alkylate (or other articles not *directly* produced by distillation for that matter), although its raw materials undergo the process of distillation, such lacuna must be strictly construed against the government and in favor of the taxpayer.

Additionally, even if alkylate were to be considered as other similar product of distillation since its raw materials nonetheless pass through such process, the application of another tool of statutory construction, particularly, the principle of *ejusdem generis,* would still prevent alkylate from being considered as a product of distillation similar to naphtha and regular gasoline.

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

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

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".[20]

Thus, in construing the phrase "other similar products of distillation", 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, that is, naphtha or regular gasoline.

Respondent draws analogy between alkylate and naphtha "in terms of boiling range, volatility and recovery process".[21] On that score, respondent ruled that alkylate is a product of distillation similar to naphtha and thus taxable under Section 148(e) of the NIRC of 1997, as amended.

On the other hand, petitioner argues that a closer examination of Section 148(e) of the NIRC of 1997, as amended, reveals that the same aims to tax the finished product intended for sale to customers. For instance, the "regular gasoline" refers to the finished product actually offered for sale to costumers while "naphtha" is distinguished between those offered for sale to customers as a finished product (in which case, it is taxable) or when it is used as a raw material in the production of petrochemical products or as replacement fuel for natural gas-fired-combined cycle power plant (in which case, ₱0.00 excise tax is imposed).

To recall, Dr. Ocon testified 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".[22]

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20 *Alta Vista Golf and Country Club v. The City of Cebu, et al.*, G.R. No. 180235, 20 January 2016 citing *Pelizloy Realty Corporation v. The Province of Benguet*, G.R. No. 183137, 10 April 2013.

21 Supra at note 16.

22 Question and Answer No. 21, Judicial Affidavit of Joey D. Ocon, Division Docket (CTA Case No. 8914), Volume IV, p. 1454.

Furthermore, in petitioner's letter to Department of Energy (**DOE**) dated 28 June 2017[23] which was confirmed by the latter in its letter dated 24 July 2017[24] (except item 2.c. of petitioner's letter[25]), the following can be deduced:

1. 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;
2. Alkylate and naphtha differ in boiling range, volatility and recovery process;
3. Alkylate and regular gasoline differ in boiling range, volatility and recovery process; and,
4. Alkylate cannot be used as a motor fuel without violating specific standards.

With the foregoing evidence presented by petitioner and confirmed by no less than the DOE, both of which respondent failed to sufficiently rebut, some of the members of the Court *En Banc* are of the opinion that alkylate cannot be considered similar to naphtha or regular gasoline pursuant to the principle of *ejusdem generis*.

In the assailed Decision, it has been held that the interpretation of an administrative agency which is tasked to implement a statute is accorded great respect and ordinarily controls the interpretation of laws by the courts.[26] However, it is equally true that the same can still be subjected to scrutiny and the courts will not hesitate to set aside an executive interpretation when it is clearly erroneous.[27]

Such order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, **unless such**

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23 Exhibit "P-170", id., pp. 1564-1569.

24 Exhibit "P-169", id., p. 1563.

25 In its letter dated 24 July 2017 (supra at note 24) the DOE stated that the better way of saying item 2.c. of petitioner's letter dated 28 June 2017 (supra at note 23) is "[d]istillation, 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."

26 *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, 18 September 2009.

27 *Commissioner of Internal Revenue v. Bicolandia Drug Corporation (Formerly known as Elmas Drug Co.)*, G.R. No. 148083, 21 July 2006.

construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws.[28]

Moreover, in *Banco De Oro, et al. v. Republic of the Philippines, et al.*[29], the Supreme Court ruled:

> ...
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> *...As a matter of power a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii)* ***go to the opposite extreme and substitute its judgment****; or (iii) give some intermediate degree of authoritative weight to the interpretative rule.*
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> ...

In the instant case, respondent's interpretation that alkylate is subject to excise tax, while based on a study[30] conducted by the Chief of Laboratory Section of BIR, is nevertheless erroneous and contrary to law considering that the application of proper rules of statutory construction (as discussed above) should have excluded alkylate from the term "other similar products of distillation" as appearing in Section 148(e) of the NIRC of 1997, as amended.

With the foregoing disquisitions, some of the members of the Court *En Banc* are one in the view that the importation of alkylate is not subject to excise tax under Section 148(e) of the NIRC of 1997, as amended. As such, the relative excise taxes imposed against petitioner were *erroneously* or *illegally collected,* warranting their refund to petitioner pursuant to Section 229[31] of the NIRC of 1997, as amended.

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28 *Senator Heherson T. Alvarez, et al. v. Hon. Teofisto T. Guingona, Jr., et al.*, G.R. No. 118303, 31 January 1996.

29 G.R. No. 198756, 13 January 2015, citing *Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, et al.*, G.R. No. 108524, 10 November 1994; Italics in the original text and emphasis supplied.

30 Supra at note 12.

31 **Sec. 229.** *Recovery of Tax Erroneously or Illegally Collected.*- no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor,

Our final resolution of petitioner's MR follows below.

During the deliberation of petitioner's MR, the members of the Court *En Banc* were equally divided in their votes.

Specifically, only Presiding Justice Roman G. Del Rosario and Associate Justice Maria Rowena Modesto-San Pedro concurred with the opinion of the ponente that petitioner's MR should be granted and accordingly remand the case to the Special Second Division for the determination of the amount refundable (to petitioner).

On the other hand, Associate Justice Juanito C. Castañeda, Jr. expressed his dissent to the foregoing opinion, which was concurred by Associate Justice Erlinda P. Uy and Associate Justice Ma. Belen M. Ringpis-Liban.

Lastly, Associate Justice Catherine T. Manahan took no part after inhibiting herself from the deliberations of this case when the same was still pending before the Special Second Division.

Section 2 of Republic Act (**RA**) No. 1125, as amended by RA 9503, provides:

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> **Section 2.** *Sitting En Banc or Division; Quorum; Proceedings.* -
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> ...
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> **The affirmative vote of five (5) members of the Court en banc shall be necessary to reverse a decision of a Division** but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level.[32]
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> ...

Similarly, Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) states that the presence at the deliberation and the affirmative votes of at least five (5) members of the Court *En Banc* shall be necessary to reverse a decision of a Division; and where the

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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.

32 Emphasis supplied.

necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed, to wit:

> ...
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> **Section 3.** *Court en banc; quorum and voting.* — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but only a simple majority of the justices present to promulgate a resolution or decision in all cases. **Where the necessary majority vote cannot be had**, the petition shall be dismissed; **in appealed cases, the judgment or order appealed from shall stand affirmed**; and on all incidental matters, the petition or motion shall be denied.[33]
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> ...

Since the number of the required votes could not be obtained herein, moreso considering that the Court is currently composed of the Presiding Justice and six (6) members – with one (1) member inhibiting, petitioner's MR must necessarily be denied. Consequently, the assailed Decision of the Court *En Banc* that upheld the Decision dated 18 December 2018 and the Resolution dated 30 April 2019, respectively, of the Special Second Division shall stand affirmed.

WHEREFORE, considering that the number of required affirmative votes was not obtained to modify, reverse or set aside the assailed Decision of the Special Second Division dated 18 December 2018, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals, petitioner Petron Corporation's Motion for Reconsideration, filed on 17 September 2020, is hereby **DENIED**. Accordingly, the Special Second Division Decision dated 18 December 2018, as upheld in the Court *En Banc* Decision dated 22 July 2020, shall stand **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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33 Emphasis supplied.

WE CONCUR:

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

I vote to affirm the Assailed Decision
Juanito C. Castañeda, Jr.
(Please see Separate Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I vote to affirm Assailed Decision)
ERLINDA P. UY
Associate Justice

(With due respect, I vote to affirm the Assailed Decision)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

(I concur with the Ponente)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION, *Petitioner,*	**CTA EB NO. 2072** (CTA Case Nos. 8914 & 8981)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTANEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 18 2021

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* of my esteemed colleague, Honorable Associate Justice Jean Marie A. Bacorro-Villena, which is consistent with the earlier position I have taken in my Dissenting Opinion on the Court *En Banc*'s Decision dated July 22, 2020.

With due respect, I wish to address the point raised by my learned colleague, Honorable Associate Justice Juanito C. Castañeda, Jr., in his Separate Opinion, pertinent portion of which reads:

> "Xxx. As gathered from petitioner's own witnesses, this Court's Special Second Division found that the raw materials used in producing alkylate (light olefins and isobutene) are derived from petroleum; **that alkylate, while not directly produced through the process of distillation, olefins and isobutene are nevertheless products of distillation and thus, alkylate first**

> **undergoes the process of distillation**." *(Boldfacing supplied)*

I humbly submit that the mere fact that alkylate's raw materials – light olefins and isobutene – are derived from petroleum and that the said raw materials are products of distillation, does not *ipso facto* make alkylate a product of distillation.

On this score, I reiterate the position I have taken in my aforesaid Dissenting Opinion on the Court *En Banc*'s original Decision dated July 22, 2020, *viz.*:

> "Xxx, a painstaking scrutiny of the case records of the present case, including the parties' testimonial and documentary evidence, and the reply of petitioner's expert witness to the clarificatory questions propounded by the Court, reveals the following:
>
> (i) Alkylate is used as blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements, e.g. distillation boiling range;
>
> (ii) Alkylate is a product of alkylation reaction, a refining process for chemically combining isobutene with olefin hydrocarbons (e.g., propylene, butylene) through the control of temperature and pressure in the presence of an acid catalyst, usually sulfuric acid or hydrofluoric acid;
>
> (iii) **The raw materials to produce Alkylate are (1) light olefins and (2) isobutene.** Light olefins are typically produced from a fluid catalytic cracker unit and/or a coker unit. Olefin is ultimately derived from crude oil feed stock. **It is not produced by distillation**, *viz.*:
>
> "Q-13 How is alkylate produced?

on

A-13 Alkylate is produced from the combination of **light olefins** (C_3-C_5) with **isobutene** in the presence of strong acid catalyst. The process is known as alkylation.

xxx xxx xxx

Q-15 What, if you know, are the raw materials or feedstock to produce alkylates?

A-15 Light C_3-C_5 **olefins**, e.g. isobutene and isobutene.

Q-16 **How are these raw materials produced**?

A-16 **Light C_3-C_5 are typically produced from a fluid catalytic cracker (FCC) unit and/or a coker unit**. Isobutane, on the other hand, is a component of natural gas. It can be a product of crude oil distillation or it can also be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.[1]" (Boldfacing supplied)

(iv) **Isobutane** is a component of natural gas. Isobutane is the basic material to produce transport fuel. **Isobutane can be a product of crude oil distillation OR it can be recovered from other petroleum refinery streams that result from catalytic cracking, ca[t]a[l]ytic reforming**.

Based on the foregoing, I find that **Alkylate in itself is not a product of distillation**.

Although one of the raw materials of Alkylate – Isobutane -- can be a product of distillation, this does not justify the imposition of excise tax thereon. Section 148(e) of the NIRC of 1997, as amended, **imposes tax on the following products: napht[h]a, regular gasoline and other similar products of distillation," and not on the ingredients or raw materials to come up with napht[h]a, regular gasoline and other similar products**. Stated otherwise, what is being subjected to 148(e) of the NIRC of 1997, as amended, are the aforesaid **three (3) finish[ed] products**, and not the ingredients used to produce them.

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[1] Pages 22 to 23 of the Assailed Decision.

For a better understanding of the process, I humbly opt to suggest common consumable household items which analogously illustrate the essence of how a "finish product" should be appreciated:

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

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

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

Similarly, Alkylate does not come into existence by distillation just because one out of its two (2) basic ingredients is produced by distillation. **Alkylate is undisputedly a product of alkylation.**

Not being a product of distillation, Alkylate, whether or not used as raw materials, is not subject to excise tax because it is not specifically enumerated under Section 148(e) of the NIRC of 1997, as amended, as a raw material that is exciseable." *(Additional boldfacing supplied)*

All told, I CONCUR in the *ponencia.*

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION,
Petitioner,

CTA EB NO. 2072
(CTA Case Nos. 8914 and 8981)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 1 8 2021 4:15pm

x---x

SEPARATE OPINION

CASTAÑEDA, JR., J.:

With all due respect, I dissent from the *ponencia* of my esteemed colleague, the Honorable Associate Justice Jean Marie A. Bacorro-Villena.

The *ponencia* agrees with petitioner that not all claims for refund partakes the nature of tax exemption and what may be applied in cases of claim for refund premised on erroneous payment of the tax is the doctrine of strict interpretation in the imposition of taxes. The *ponencia* pointed out that Congress did not clearly, expressly, and unambiguously impose tax on alkylate (or those which are not directly produced by distillation) under Section 148(e) of the National Internal Revenue Code of 1997, as amended (1997 NIRC). Given that alkylate, not being directly produced by distillation but by alkylation, the *ponencia* held that it should not be subject to excise tax.

The *ponencia* also added that the absence of distinction under the 1997 NIRC between *primary* and *secondary*, or *direct* and *indirect* products of distillation should work in petitioner's favor.

The *ponencia* likewise concludes that alkylate cannot be considered similar to naptha or regular gasoline pursuant to the principle of *ejusdem generis.*

The *ponencia* also stated that while it has been held that the interpretation of an administrative agency which is tasked to implement a statute is accorded great respect and ordinarily controls the interpretation of laws by the courts, it is equally true that the same can still be subjected to scrutiny and the courts will not hesitate to set aside an executive interpretation when it is clearly erroneous.

I disagree.

As duly noted by the Court *En Banc* in the Original Decision, the petitioner, although it maintains that alkylate is supposedly not a product of distillation, does not dispute the findings made by this Court's Special Second Division as to the nature of the raw materials of alkylate and the process by which the same goes through in order to become alkylate. As gathered from petitioner's own witnesses, this Court's Special Second Division found that the raw materials used in producing alkylate (light olefins and isobutane) are derived from petroleum; that alkylate, while not directly produced through the process of distillation, olefins and isobutane are nevertheless products of distillation and thus, alkylate first undergoes the process of distillation.

Alkylate simply cannot come into existence without its raw materials, olefins and isobutane. Since it is undisputed in the present case that alkylate's raw materials — light olefins and isobutane — are derived from petroleum and that the said raw materials are likewise products of distillation, it cannot be denied that alkylate is also a product of distillation similar to naphtha and regular gasoline. **From its inception up to the end of the process of alkylation, the process of distillation contributes to the production, purification and enhancement of alkylate for it to be fitted as fuel additives.**

As respondent correctly pointed out, Section 148 (e) of the NIRC of 1997 does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. **The absence of any qualification in the statutory provision inevitably leads to the conclusion that so long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation" that is subject to excise tax.** Likewise, as the

Special Second Division properly found, alkylate first undergo the process of distillation hence is subject to excise tax under Section 148(e) in relation to Section 129 of the 1997 NIRC. When the law does not distinguish, we must not distinguish.

It may not be amiss to point out that in the similar case of *Petron Corporation v. Commissioner of Internal Revenue*,[1] this Court held as follows:

> "As aptly found by the Court's Division, the nature of alkylate can be summarized as follows:
>
> 1. Alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements.
>
> 2. It is impractical or uneconomical to import and sell alkylate as the 93 or 95 RON finished product itself. Conversely, alkylate may be sold as a finished product itself, although the same may be impractical or uneconomical.
>
> 3. It is produced from the combination of raw materials, i.e., light olefins (C3-C5) with isobutane, which are products of crude oil — the basic material to produce transport fuel.
>
> 4. Isobutane, a raw material of alkylate, is produced from crude oil distillation.
>
> 5. It is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. It increases the octane number of a straight run gasoline or naphtha.
>
> 6. Alkylate is a gasoline component produced by combining two (2) gases using sulfuric acid, using reactor chillers.
>
> **From the foregoing, without the process of distillation, alkylates raw materials cannot come into existence without which, the process of alkylation and product of alkylates cannot be had. Likewise, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state.**" *(Emphasis supplied)*

Guided by the foregoing, I submit that petitioner is not entitled to the refund of excise tax paid inasmuch as it was not 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

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[1] CTA EB No. 1835, July 19, 2019.

having no authority to levy the tax, or one which is some other similar aspect is illegal.[2]

In view of the foregoing, I vote to **DENY** the present Motion for Reconsideration.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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