REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PETRON CORPORATION,
Petitioner,

CTA Case No. 9947

Present:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: SEP 27 2023

x - x
3:10 p.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Petron Corporation (**petitioner/Petron**) pursuant to Section 3(a)[2], Rule 8, in relation to Section 3(a)(2)[3], Rule 4, of the Revised Rules of the Court of

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1 Filed on 12 October 2018, Division Docket, Volume I, pp. 10-39.

2 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...

Tax Appeals[4] (**RRCTA**). It seeks a declaration from the Court that petitioner is not liable for excise tax on its importations of alkylate and that an order be issued directing respondent Commissioner of Internal Revenue (**respondent/CIR**) to refund or issue a tax credit certificate (**TCC**) in petitioner's favor in the aggregate amount of ₱43,912,370.00, representing the erroneously or illegally collected excise tax.

PARTIES TO THE CASE

Petitioner is a corporation organized and existing under the laws of the Philippines with principal office at San Miguel Corporation Head Office Complex, 40 San Miguel Avenue, 1150 Mandaluyong City.[5]

Respondent, on the other hand, is the head of the Bureau of Internal Revenue (**BIR**), a government agency tasked to, among others, assess and collect all national internal revenue taxes and charges, and enforce all forfeitures, penalties, and fines connected therewith.[6]

FACTS OF THE CASE

Petitioner is engaged in the business of manufacturing and marketing petroleum products.[7] On 18 July 2012, the Bureau of Customs (**BOC**) issued Customs Memorandum Circular (**CMC**) No. 164-2012[8]

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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

...

4 A.M. No. 05-11-07-CTA dated 22 November 2005.
5 Paragraph 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 539.
6 Par. 6, id., p. 540.
7 Par. 2, id., p. 539.
8 Excise Tax on Alkylate Importations.

implementing the BIR Letter dated 29 June 2012, stating that "alkylate[,] which is a product of distillation similar to that of naphtha, is subject to excise tax under Section 148(e) of the National Internal Revenue Code (**NIRC**) of 1997, as amended".[9]

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

Vessel Name	**Arrival Date**	**Quantity (in liters)**	**Bill of Lading No.**	**BOC Single Administrative Document (SAD)**
M/T OC Grande	11 October 2016	5,066,832	DSNOCG1619B	6WOA1600662
M/T Iver Experience	01 January 2017	4,707,450	GASC161E121901	6WOA1600772

The above alkylate importations were imposed with an excise tax in the amount of ₱4.35 *per* liter[10], or for a total amount of ₱43,912,370.00, pursuant to Section 148(e)[11] of the NIRC of 1997, as amended, on the ground that alkylate is supposedly a product of distillation.[12]

On 08 October 2018, petitioner filed with the BIR Excise Large Taxpayers Audit Division II its administrative claim for refund of excise taxes paid on the subject importations of alkylate.[13] Considering respondent's inaction and since the two (2)-year period under

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9 Par. 7, id., p. 540.

10 Par. 3, id., p. 539.

11 **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[.]

12 Par. 8, JSFI, Division Docket, Volume II, p. 540.

13 Pars. 4 and 5, id., pp. 539-540.

Section 229[14] of the NIRC of 1997, as amended, was about to lapse, petitioner filed the instant Petition for Review[15] with this Court on 12 October 2018.

On 08 January 2019, respondent filed his or her Answer[16], interposing the following defenses: (1) the Court has no jurisdiction over the instant Petition as respondent is not a real party in interest and that it paid the excise taxes to the BOC and not to the BIR, thus he or she should not have been made a party to the case; (2) assuming that respondent is a real party in interest, the petition is still dismissible since the subject matter does not fall within the Court's jurisdiction; (3) respondent's interpretative rulings are subject to review by the Secretary of Finance (**SOF**); (4) petitioner failed to exhaust administrative remedies in urgently seeking judicial intervention instead of raising the matter for the SOF's review; (5) petitioner is liable to pay excise taxes since alkylate is a product of distillation similar to naphtha and regular gasoline; (6) 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; and, (7) the imposition of excise taxes on importations of alkylate does not amount to double taxation and does not violate any law.

On 07 March 2019, respondent transmitted to the Court the BIR Records (of the case) consisting of twenty-three (23) pages.[17] On 15 April 2019, both "Respondent's Pre-Trial Brief"[18] and "Pre-Trial Brief for Petitioner"[19] were filed.

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14 **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.

15 Supra at note 1.

16 Division Docket, Volume I, pp. 113-135.

17 See Compliance filed by petitioner on 07 March 2019 and Notice of Minute Resolution dated 08 March 2019, id., pp. 147-149 and 151, respectively.

18 Id., pp. 178-181.

19 Id., pp. 294-310.

In compliance with the Court's directive during the initial Pre-Trial Conference on 01 August 2019, the parties also submitted their Joint Stipulation of Facts and Issues[20] (**JSFI**) on 02 September 2019. Subsequently, on 25 September 2019, the Court issued the Pre-Trial Order.[21]

On 05 November 2019, petitioner caused the commissioning of the Independent Certified Public Accountant (**ICPA**), Madonna Mia S. Dayego (**Dayego**) and presented its Commercial Services Manager, Michael F. Manzano (**Manzano**), as its first witness.[22]

Manzano's testimony, as contained in his Judicial Affidavit[23], was offered to prove: (1) petitioner's general procedure and documentation relative to the importations of alkylate; (2) petitioner's purpose for importing alkylate; (3) the issuance of Authorities to Release Imported Goods (**ATRIGs**) for petitioner's importations of alkylate covering the period January 2009 to August 2011 and the period September 2011 to June 2012; (4) petitioner's importations of alkylate on 11 October 2016 and 01 January 2017 covered by BOC SAD Nos. 6WOA1600662 and 6WOA1600772; (5) the said importations were subjected to excise taxes of ₱4.35 *per* liter in a total of ₱43,912,370.00; (6) the imposition of excise tax on the importations of alkylate was premised on CMC No. 164-2012[24], which implemented the letter issued by respondent stating that "alkylate which is a product of distillation similar to that of naphtha, is subject to excise tax under Section 148(e) of the [NIRC of 1997, as amended]"; and, (7) petitioner was constrained to pay excise taxes on the importations of alkylate covered by BOC SAD Nos. 6WOA1600662 and 6WOA1600772. Respondent did not conduct any cross-examination.[25]

On 26 November 2019[26], petitioner presented the testimony of its Tax Manager, Ma. Clarissa C. Arguelles (**Arguelles**), through her Judicial Affidavit.[27] Aside from corroborating Manzano's testimony on material points, Arguelles' testimony was offered to prove:

[20] Id., Volume II, pp. 538-552.
[21] Id., pp. 593-601.
[22] See Order dated 05 November 2019, id., pp. 636-637.
[23] Exhibit "P-101", id., Volume I, pp. 333-343.
[24] Supra at note 8.
[25] TSN dated 05 November 2019, p. 21.
[26] See Order dated 26 November 2019, Division Docket, Volume II, p. 639.
[27] Exhibit "P-102", id., Volume I, pp. 227-235.

(1) petitioner's corporate existence, business activities and places of business; (2) the imposition of excise tax on alkylate resulted in the payment of excise taxes on alkylate twice - as a raw material or blending component for the production of gasoline and again as part of the finished or end-product motor gasoline; (3) within the two (2)-year reglementary period, petitioner filed an administrative claim for refund or tax credit of the erroneously paid excise taxes with the BIR's Large Taxpayers Excise Audit Division II relative to the importations of alkylate covered by BOC SAD Nos. 6WOA1600662 and 6WOA1600772; and, (4) petitioner received a letter from the Department of Energy (**DOE**) dated 24 July 2017, replying to petitioner's letter request dated 28 June 2017 regarding alkylate's properties and recovery process.

On 21 January 2020[28], petitioner presented the testimonies of Ricardo S. Infante (**Infante**), Supervising Science Research Specialist of the DOE's Oil Industry Manager Bureau (**OIMB**), and Engr. Jurrel D. Pumatong (**Engr. Pumatong**), petitioner's Acting Process Engineering Manager, through their respective Judicial Affidavits.[29]

Petitioner offered Infante's testimony to prove the DOE's position with respect to alkylate's nature, characteristics, and properties. No cross-examination was conducted.[30]

On the other hand, petitioner offered Engr. Pumatong's testimony to prove, among others, that: (1) petitioner imports alkylate in order to produce petroleum products compliant with the Clean Air Act; (2) petitioner imports alkylate to be used exclusively as a raw material or blending component for the manufacture of gasoline compliant with the Philippine National Standards (**PNS**); (3) alkylate's nature, specification, and characteristics as well as its uses and the limitations for its use; (4) alkylate is not produced by the process of distillation but rather, a product of alkylation reaction; (5) alkylate is not a product of distillation nor is it similar to naphtha or regular gasoline; and, (6) petitioner imports alkylate not for domestic sale or consumption, but rather for use as a raw material or blending component for the manufacture of motor gasoline.

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28 See Order dated 21 January 2020, id, Volume II, pp. 734-735.
29 Exhibits "P-103" and "P-104", id., Volume I, pp. 413-419 and 442-452, respectively.
30 TSN dated 21 January 2020, p. 5.

On cross-examination, Engr. Pumatong further testified that: (1) theoretically, if an engine is designed for a specific substance (for example, alkylate) to run, maybe it can run[31]; (2) considering the properties of alkylate, the present engines available in the market would not run or even start on alkylate.[32] No redirect examination was conducted.[33]

On 18 February 2020[34], petitioner presented the testimonies of its Refinery Finance Department Manager, Cecilia N. Sengia (**Sengia**), and its Terminal Manager for Limay Terminal, Leopoldo G. Lorenzo (**Lorenzo**), through their respective Judicial Affidavits.[35]

Sengia's testimony was offered mainly to prove the receipt of alkylate imported on 11 October 2016 and 01 January 2017, respectively, by petitioner's Bataan Refinery and its utilization as a blending component for the production of finished motor gasoline. No cross-examination was conducted.[36]

On the other hand, Lorenzo's testimony was offered essentially to establish the volume of motor gasoline lifted from the Limay Terminal inside petitioner's Bataaan Refinery to tank trucks to be sold as finished product. Similarly, no cross-examination was conducted.[37]

On 09 September 2020, petitioner presented the testimonies of Marissa U. Viray (**Viray**), its Operations Finance Manager, and Simon Christopher Mulqueen (**Mulqueen**), an expert in fuel products, through their respective Judicial Affidavits.[38]

Viray's testimony was offered to prove, among others, that: (1) the volume of motor gasoline lifted out of petitioner's Bataan Refinery as finished product; (2) the payment of excise tax on the motor gasoline as finished product; and, (3) the payment of excise taxes on alkylate twice

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31 Id., p. 9.
32 Id., p. 10.
33 Id.
34 See Order dated 18 February 2020, Division Docket, Volume II, pp. 737-738.
35 Exhibits "P-105" and "P-106", id., Volume I, pp. 186-192 and 481-485, respectively.
36 TSN dated 18 February 2020, p. 6.
37 Id., p. 9.
38 Exhibits "P-107" and "P-108", Division Docket, Volume I, pp. 315-320 and Volume II, pp. 565-576, respectively.

- as a raw material or blending component for the production of gasoline and again as part of the finished or end-product motor gasoline.

On cross-examination, Viray also testified that she is not aware if the excise taxes paid on alkylate form part of the cost of the motor gasoline being sold since the Pricing Group handles the same.[39] Petitioner did not conduct any redirect examination.

Subsequently, Mulqueen testified on the following: (1) he is an expert in fuel products, having a degree in chemistry from The University of Newcastle Upon Tyne and having attended a number of specific technical training courses related to the production and application of transport fuels and fuel additive production; (2) the nature of motor fuel and the processes to produce it; (3) the nature of alkylate and how the same is produced; (4) alkylate is not produced by the process of distillation, but rather is a product of alkylation reaction; (5) in comparison with alkylate, the nature of naphtha, regular gasoline and motor fuels and how the same are produced; (6) alkylate is not a product of distillation nor is it similar to naphtha or regular gasoline; (7) the general uses of alkylate; (8) alkylate is not a motor fuel suitable or practicable for operating motor vehicles; (9) alkylate as a blending component for the manufacture of motor gasoline; (10) alkylate is a component blended into finished gasoline to help meet specification requirements; and, (11) the availability of alkylate or any alternative in the local market.

On cross-examination, Mulqueen declared that crude oil could also be a source of isobutane.[40] On redirect examination, he clarified that isobutane could also be sourced from natural gas and could be recovered from other petroleum refineries streams, such as catalytic cracking and catalytic reforming.[41]

On 25 November 2020[42], petitioner presented its last witness, the Court-commissioned ICPA, who testified by direct examination through her Judicial Affidavit.[43] Dayego's testimony was offered to prove: (1) her performance of the functions of an officer of the Court appointed to

39 TSN dated 09 September 2020, p. 9.
40 Id., p. 19.
41 Id., pp. 19-20.
42 See Order dated 25 November 2020, Division Docket, Volume II, pp. 881-882.
43 Exhibit "P-109", id., pp. 855-862.

conduct an audit examination in relation to this case, pursuant to Section 5[44], Rule 12 of the RRCTA; and, (2) her findings and the summary of the documents she examined as contained in the Report dated 05 December 2019[45] submitted to the Court.

On cross-examination, ICPA Dayego testified that the excise taxes paid on the importations of alkylate did not form part of the cost of the finished gasoline.[46] No redirect examination was conducted.[47] Thereafter, respondent manifested that he or she will not be presenting countervailing evidence in this case.[48]

On 11 December 2020, petitioner filed its "Formal Offer of Evidence with Motion to Set Commissioner's Hearing for Permanent Marking of Exhibits"[49] (**FOE**), without any comment from respondent.[50]

After the permanent marking of petitioner's exhibits on 09 March 2021[51], the Court issued a Resolution dated 16 September 2021[52], resolving petitioner's FOE. Upon petitioner's Motion for Partial Reconsideration[53] (**MPR**) filed on 16 December 2021 and after its Compliance[54] with the Court's Resolution dated 28 July 2022[55], all of petitioner's documentary evidence were admitted, *except* Exhibits "P-234-17-2904", "P-234-17-2905" and "P-234-17-2906[56] for being unreadable.[57]

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44 **SEC. 5**. *Presentation of voluminous documents or long accounts.* — ...
45 Exhibit "P-250", Division Docket, Volume II, pp. 640-712.
46 TSN dated 25 November 2020, p. 8.
47 Id.
48 Order dated 25 November 2020, supra at note 42.
49 Division Docket, Volume III, pp. 883-951.
50 *Per* Records Verification dated 14 January 2021, id., p. 1110.
51 Commissioner's Report dated 09 March 2021, id., pp. 1118-1123.
52 Id., pp. 1163-1174.
53 Id., pp. 1178-1191.
54 Id., Volume IV, pp. 1757-1759.
55 Id., pp. 1752-1756.
56

Exhibit	Description
P-234-17-2904	Delivery Notes
P-234-17-2905	Delivery Notes
P-234-17-2906	Delivery Notes

57 See Resolution dated 28 September 2022, Division Docket, Volume IV, pp. 1766-1768.

In the meantime, on 02 December 2021, respondent filed a Manifestation[58] adopting his or her arguments in the Answer[59] as his or her memorandum while petitioner filed its Memorandum[60] on 02 February 2022. In a Resolution dated 28 September 2022, the Court submitted the case for decision.[61]

On 28 April 2023, petitioner filed another Manifestation[62] relative to the Supreme Court's Decision in G.R. No. 255961 dated 20 March 2023, entitled *Petron Corporation v. Commissioner of Internal Revenue,* which the Court noted through a Resolution dated 06 June 2023.[63]

ISSUES

As the parties so stipulated in their JSFI[64], the issues to be resolved are:

> I.
> WHETHER THE COURT HAS JURISDICTION OVER THE INSTANT PETITION; AND,
>
> II.
> WHETHER PETITIONER PETRON CORPORATION IS ENTITLED TO A REFUND OR TAX CREDIT IN THE AMOUNT OF ₱43,912,370.00 ON THE EXCISE TAX ALLEGED TO BE ERRONEOUSLY PAID BY PETITIONER ON IMPORTATIONS OF ALKYLATE ON 11 OCTOBER 2016 AND 01 JANUARY 2017.

ARGUMENTS

After having filed an administrative claim for refund on 08 October 2018, petitioner argues that this Court has jurisdiction over the instant petition. As respondent did not act on the said claim, petitioner, on 12 October 2018 or prior to the lapse of the two (2)-year period, filed its judicial claim *via* the instant petition.

58 Id., Volume III, pp. 1175-1176.
59 Supra at note 16.
60 Division Docket, Volume IV, pp. 1685-1742.
61 Supra at note 57.
62 Division Docket, Volume IV, pp. 1769-1776.
63 Id., p. 1795.
64 Id., Volume II, p. 540.

Petitioner also contends that its importations of alkylate are not subject to excise tax under Section 148(e)[65] of the NIRC of 1997, as amended. Since respondent imposed excise taxes on alkylate even if it was not enumerated as a taxable article in the said provision, respondent has the burden of proving that the law covers alkylate.

Petitioner further claims that Section 148(e)[66] of the NIRC of 1997, as amended, does not impose excise taxes on products where the raw materials are supposedly products of distillation. Neither does it impose excise taxes on so-called "indirect" products of distillation. Also, respondent's interpretation of the phrase "products of distillation" violates the principle of *ejudem generis*.

Petitioner argues that even assuming alkylate could be considered a product of crude oil distillation, it is not similar to naphtha and regular gasoline.

On the other hand, respondent reiterates that the Court has no jurisdiction over the instant petition as respondent is not a real party in interest considering that the latter paid the excise taxes to the BOC and not to the BIR. Even assuming that respondent is a real party in interest, the subject petition is still dismissible since interpretative rulings issued by respondent are subject to the SOF's review and not by this Court.

Respondent further maintains that petitioner is liable to pay excise taxes since alkylate is a product of distillation similar to naphtha and regular gasoline and that the imposition of excise taxes on importations of alkylate does not amount to double taxation.

<u>RULING OF THE COURT</u>

RESPONDENT IS A REAL PARTY
IN INTEREST.

At the outset, the Court shall address the issue raised by respondent that the instant Petition for Review is dismissible as the BOC

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[65] Supra at note 11.
[66] Supra at note 11.

or the agency that collected the excise taxes on the importations of alkylate was not impleaded. Conversely put, respondent claims that since the real party in interest was not impleaded, petitioner failed to state a cause of action.

We do not agree with respondent.

Respondent is still a real party in interest even if it was the BOC that collected the alleged erroneous excise taxes. Section 12 of the NIRC of 1997, as amended, is instructive:

> ...
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> SEC. 12. *Agents and Deputies for Collection of National Internal Revenue Taxes.* - The following are hereby constituted **agents of the Commissioner**:
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> a) **The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods**;
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> b) The head of the appropriate government office and his subordinates with respect to the collection of energy tax; and
>
> c) Banks duly accredited by the Commissioner with respect to receipt of payments internal revenue taxes authorized to be made thru banks.
>
> Any officer or employee of an authorized agent bank assigned to receive internal revenue tax payments and transmit tax returns or documents to the Bureau of Internal Revenue shall be subject to the same sanctions and penalties prescribed in Sections 269 and 270 of this Code.[67]
>
> ...

It is a cardinal rule that every action must be prosecuted or defended in the name of the real party in interest.[68] A real party in interest is defined as the party who stands to be benefited or injured by the judgment in the suit, or the other party entitled to the avails of the suit.[69] Being the BOC's principal and the primary agency tasked to collect all national internal revenue taxes, including excise taxes,

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67 Emphasis and underscoring supplied.
68 See Rules of Court, Section 2, Rule 3.
69 Id.

respondent is a real party in interest in the suit for recovery of erroneously collected excise taxes, such as the instant case.

THE COURT HAS JURISDICTION OVER
THE SUBJECT PETITION.

In another effort to prevent this Court from taking cognizance of the case, respondent also attacks its jurisdiction, citing *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation* (**2015 Petron**).[70] Respondent posits that since the instant case is ultimately challenging the legality and constitutionality of CMC No. 164-2012[71], interpreting Section 148(e)[72] of the NIRC of 1997, as amended, it should have been brought before the SOF and not before the Court.

Again, We do not share respondent's stance for the following reasons:

Firstly, the *2015 Petron* case was eventually reversed and set aside. It is noted that, in 2018, the Supreme Court, in resolving the Motion for Reconsideration (**MR**) filed on the *2015 Petron* Decision, it categorically held:[73]

> ...
>
> However, the Court had also dismissed Petron's petition for review before the CTA on the ground of prematurity. Unlike in *Philamlife* where the petition for review was filed before the Secretary of Finance, Petron in this case directly elevated for review to the CTA *the customs collector's computation or assessment*, which is not a proper subject of appeal. To reiterate the Court's decision in the main:
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>> xxx *The [Tariff and Customs Code] prescribes that a party adversely affected by a ruling or decision of the customs collector may protest such ruling or decision upon payment of the amount due and, if aggrieved by the action of the customs collector on the matter under protest, may have the same*

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70 G.R. No. 207843, 15 July 2015.
71 Supra at note 8.
72 Supra at note 11.
73 *Commissioner of Internal Revenue v. Court of Tax Appeal and Petron Corporation*, G.R. No. 207843 (Resolution), 14 February 2018; Citations omitted, emphasis and italics in the original text and underscoring supplied.

> *reviewed by the COC. It is only after the COC shall have made an adverse ruling on the matter may the aggrieved [party] file an appeal to the CTA.*
>
> xxx *There being no protest ruling by the customs collector that was appealed to the COC,* ***the filing of the petition before the CTA was premature as there was nothing yet to review.***
>
> Nevertheless, Petron has presently manifested that it had already complied with the protest procedure prescribed under the NIRC, and later on, filed an administrative claim for refund and/or tax credit with the BIR on November 21, 2013. Records are bereft of any showing that the CIR had already acted on its claim and hence, Petron filed before the CTA a Supplemental Petition for Review to include a claim for refund and/or tax credit of the excise tax that was levied on its *alkylate* importation. The CTA then gave due course to the petition and, as per Petron's manifestation, the parties have already been undergoing trial. Consequently, considering that the CTA had taken cognizance of Petron's claim for judicial refund of tax which, under Section 7(a)(1) of RA 1125, is within its jurisdiction, the Court finds that these supervening circumstances have already mooted the issue of prematurity. Thus, in conjunction with the *Banco De Oro* ruling that the CTA has jurisdiction to resolve *all tax matters* (which includes the validity of the CIR's interpretation and consequent imposition of excise tax on *alkylate*), the Court finds it proper to reconsider its decision.
>
> ...

Similarly herein, petitioner has already filed an administrative claim for refund or tax credit in 2018. However, since the two (2)-year period provided in Section 229[74] of the NIRC of 1997, as amended, was already about to lapse, petitioner filed its judicial claim within the said two (2)-year period without waiting for respondent's decision.

Secondly, the instant petition is within the ambit of Section 7(a)(2)[75] of Republic Act (**RA**) No. 1125[76], as amended by

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[74] Supra at note 14.

[75] **SEC.** 7. *Jurisdiction.* — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
...
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]

[76] AN ACT CREATING THE COURT OF TAX APPEALS.

RA 9282[77], which refers to this Court's jurisdiction over an appeal as a result of respondent's inaction on petitioner's claim for refund.

Lastly, this present case is one of the jurisprudentially-recognized exceptions on the doctrine of exhaustion of administrative remedies, *i.e.*, where insistence on its observance would result in the nullification of the claim being asserted.[78] Settled is the rule that in cases of recovery of erroneously paid or illegally collected tax under Section 229[79] of the NIRC of 1997, as amended, both the administrative claim for refund and the filing of the suit in Court should be made before the expiration of two (2) years from the date of payment **regardless of any supervening cause that may arise after payment.**

Thus, even if petitioner would raise the matter before the SOF, the latter's resolution of the issue would still be meaningless for petitioner considering that any supervening cause (*i.e.*, the SOF's favorable ruling) could no longer extend the two (2)-year period provided in Section 229 of the NIRC of 1997, as amended. Therefore, given the limited time frame remaining for petitioner to file its judicial claim, appealing CMC No. 164-2012[80] with the SOF may result in the nullification petitioner's claim for refund; thus, direct recourse to this Court is understandable and warranted.

PETITIONER IS ENTITLED TO THE REFUND OR CREDIT OF THE ERRONEOUSLY OR ILLEGALLY COLLECTED EXCISE TAXES ON THE 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

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77 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

78 See *The Diocese of Bacolod, et al. v. Commission on Elections, et al.*, G.R. No. 205728, 21 January 2015; *Hon. Lourdes R. Quisumbing, et al. v. Hon. Manuel Luis Gumban, et al.*, G.R. No. 85156, 05 February 1991; *Solano Laganapan v. Mayor Elpidio Asedillo, et al.*, G.R. No. L-28353, 30 September 1987.

79 Supra at note 14.

80 Supra at note 8.

Section 229 to judicial claims.[81] 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 -
>
> ...
>
> (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.[82]
>
> ...

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81 See *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, 14 January 2015; Emphasis supplied.

82 Emphasis supplied.

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[83], 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-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.
>
> ...

Thus, both petitioner's administrative and judicial claims were timely filed pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, as shown by the table below:

SAD Reference No.	Date of Payment	Amount of Excise Tax Paid	Two (2)-Year Prescriptive Period	Date of Admin. Claim[84]	Date of Judicial Claim[85]
6WOA1600662[86]	12 October 2016[87]	₱21,956,185.00	12 October 2018	08 October 2018	12 October 2018
8WOA1600772[88]	28 December 2016[89]	21,956,185.00	28 December 20018		
	Total	**₱43,912,370.00**			

As to the substantive aspect of the claim, petitioner asserts that alkylate does not fall under the category of "other similar products of

83 G.R. No. 226592, 27 July 2021; Citation omitted.
84 Exhibits "P-8" and "P-8-A", Division Docket, Volume III, pp. 992-1001.
85 Division Docket, Volume I, p. 10.
86 Exhibit "P-202-1", USB filed on 19 December 2019.
87 Exhibit "P-202-2", id.
88 Exhibit "P-202-3", id.
89 Exhibit "P-202-5", id.

distillation" under Section 148(e) of the NIRC of 1997, as amended[90], which reads as follows:

> ...
>
> **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[.][91]
>
> ...

Respondent, on the other hand, claims that alkylate is a product of distillation similar to naphtha which is also used as gasoline blending component.

The Court finds for petitioner.

The pieces of evidence for petitioner, including the testimony of an expert, which respondent failed or did not even attempt to rebut, clearly established that alkylate is not a product of distillation; hence, not subject to excise tax.

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90 Prior to the changes brought about by Republic Act No. 10963 otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN).

91 Emphasis supplied.

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

> ...
>
> Q-24 Based on your explanation of the distillation process, can you say that alkylate, which is imported by Petitioner as blending component, is a product of distillation?
>
> A-24 No. Distillation cannot produce alkylate because alkylate requires the **chemical combination** of raw materials isobutane and olefin. At a minimum, the production of alkylate requires a catalyst and acid settler, which are not present in the process of distillation. Distillation is only capable of **physically separating** the different hydrocarbon components of crude oil.
>
> By way of analogy, distillation is like placing a basket of different fruits in a device that would separate the fruits based on weight, kind, or color. In the same way that the kind of fruits will not change even after being subjected to this process, chemical properties of distillates will not change.
>
> Q-25 How is alkylation different from distillation?
>
> A-25 For ease of reference, the comparison of distillation and alkylation can be presented as:
>
> 1. *In terms of process*, distillation involves **physical separation** while alkylation involves **chemical combination**.
>
> 2. *In terms of temperature/environment*, distillation requires the use of **heat at temperatures ranging from 345 to 360 degC** while alkylation occurs under varying **environments with operating temperatures around 50 degC**.
>
> 3. Distillation happens with the evaporation of the fractionates applying only heat while alkylation happens with the use of a catalyst (e.g., sulfuric or hydrofluoric).
>
> In my earlier analogy, distillation is likened to sorting fruits based on certain categories, such as weight, kind, or color. In alkylation, the fruit is subjected to further processing such as peeling, slicing, seasoning, and baking. If we consider an apple, alkylation will turn the apples and other raw materials into an apple pie, such that the resulting product has properties not present in regular apples. In alkylation, the

> resulting product is different from the feedstock, both in molecular structure and properties.
>
> In distillation, apples separated from the mixture of fruits will remain as apples, while in alkylation, the apple will be combined with other ingredients to become an apple pie.
>
> To illustrate the process of alkylation, attached to this affidavit, marked as **Exhibit "P-60"** is a graphic representation of the alkylation process using hydrofluoric acid.[92]
>
> ...

On the other hand, Mulqueen, petitioner's expert witness, corroborates Engr. Pumatong's testimony and further sheds light on the nature of alkylate and how alkylation is different from distillation, to wit:

> ...
>
> Q-23 Based on the process you explained, is alkylate a product of distillation?
>
> A-23 No. Even if one of its raw materials, isobutane, may be derived through the process of distillation, it is not correct to place alkylate under the group "similar products of distillation" on the sole basis that one of its raw materials is a distillate.
>
> If products may be classified as "products of distillation" on the sole reason that one of its raw materials underwent distillation, then the classification would encompass a wide variety of common items, such as chewing gum, plastics, and polyester.
>
> Q-24 Why do you say that alkylate is not a product of distillation?
>
> A-24 Alkylate can only be produced through a process called alkylation. Alkylation is a very specific chemical process; it begins with two molecules that are fed to a reactor and **combined**, through a catalyst, to create a product entirely different from its raw materials.
>
> In contrast, distillation starts off with a mixture containing two or more compounds. With the use of heat, the mixture is broken down or **physically separated** into its constituent parts.

[92] Division Docket, Volume I, pp. 447-448; Emphasis and italics in the original text.

> Given this difference, alkylate cannot be produced through distillation because alkylate only comes into existence after the combination of two components or raw materials (i.e., isobutane and olefins), and not the physical separation of a mixture.
>
> Q-25 Is it correct to say that distillation is part of the process for the production of alkylate?
>
> A-25 No, during the alkylation process, chemical reactions occur to combine starting materials into a single material known as alkylate. The heat and pressure in the reactor along with the acid catalyst forces the isobutane and olefins to combine. Distillation, in general terms, describes the separation of a mixture into its constituent parts and therefore the term distillation does not accurately describe the chemical process of alkylation.[93]
>
> ...

Based on petitioner's evidence that respondent failed to rebut and disprove, the Court is convinced that alkylate is indeed not a product of distillation but of alkylation.

In fact, in the subsequent case of *Petron Corporation v. Commissioner of Internal Revenue*[94] (**2023 Petron**), the Supreme Court has already categorically and unequivocally declared that alkylate does not fall under the category of "other similar products of distillation" subject to excise tax, to wit:

> ...
>
> 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.

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93 Id., Volume II, pp. 569-570; Emphasis and underscoring in the original text.

94 G.R. No. 255961, 20 March 2023; Citation omitted, emphasis and italics in the original text.

> 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.
>
> ...

Considering the foregoing, it is now beyond dispute that alkylate is **not** a product of distillation similar to naphtha and regular gasoline; hence, **not** subject to excise tax under Section 148(e)[95] of the NIRC of 1997, as amended.

To prove that the subject excise taxes pertain to importations of alkylate, petitioner proffered as evidence the following: Bills of Lading[96],

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[95] Supra at p. 18.
[96] Exhibits "P-201-3" to "P-201-4", USB filed on 19 December 2019.

Vendors' Invoices[97], SADs[98], Customs Payment Receipts (**CPR**)[99], BOC Form No. 38-A[100], BOC Certifications[101], ATRIGs[102] and Certificates of Independent Survey (**CIS**)[103] and Statement of Settlement of Duties and Taxes (**SSDT**).[104]

The Bill of Lading is a sufficient evidence of the quantity and description of the goods shipped.[105] Conversely, the SAD serves as the declaration of the goods to be imported.[106] Additionally, an ATRIG is considered a *prima facie* evidence of payment of excise taxes since under Section 131[107] of the NIRC of 1997, as amended, excise taxes on imported goods should be paid before the release of such articles from the customhouse. Furthermore, the SSDT and CPR also carry evidentiary weight to prove payment of relevant excise taxes on imported articles.

An examination of the aforesaid documents reveals that petitioner has sufficiently established its payment of excise taxes totalling ₱43,912,370.00 on the subject importations, as shown below:

Reference No.	Bill of Lading		SAD[108]		SSDT	CPR	BOC Certifications[109]	With ATRIG?
	B/L No.	Commodity	Amount of Excise Tax	Entry No.	Amount of Excise Tax	Amount Paid	Amount of Excise Tax	
6WOA1600662	DSNOCG1619B	Alkylate	₱21,956,185.00	C106-16	₱21,956,185.00	₱-	₱21,956,185.00	Yes
6WOA1600772	GASC16IE121901	Alkylate	21,956,185.00	C128-16	-	36,823,046.00[110]	21,956,185.00	Yes
Total			₱43,912,370.00				₱43,912,370.00	

97 Exhibits "P-201-1" to "P-201-2", id.
98 Exhibits "202-1" to "P-202-2", id.
99 Exhibits "202-5" to "P-202-6", id.
100 Exhibit "202-4", id.
101 Exhibits "202-7" to "P-202-8", id.
102 Exhibits "202-9" to "P-202-10", id.
103 Exhibits "202-11" to "P-202-12", id.
104 Exhibit "202-3", id.
105 See *Aniceto G. Saludo, Jr., et al. v. Hon. Court of Appeals, et al.*, G.R. No. 95536, 23 March 1992.
106 See Customs Administrative Order (CAO) No. 011-19 dated 23 July 2019.
107 **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 customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
...
108 Supra at note 98.
109 Supra at note 101.
110 Amount indicated in the CPR (inclusive of excise tax and other charges) ties up with the Total Assessment *per* SAD.

Substantial justice dictates that the government should not keep money that does not belong to it.[111] Taking all the above circumstances together, it is evident that petitioner was able to sufficiently establish, by preponderance of evidence, that it is entitled to the refund or credit of the total amount of ₱43,912,370.00, representing the erroneously or illegally paid excise taxes on importations of alkylate.

WHEREFORE, with the foregoing premises, the Petition for Review filed by petitioner Petron Corporation on 12 October 2018 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the total amount of ₱43,912,370.00, representing the erroneously paid excise taxes on its importations of alkylate covered by Single Administrative Document (SAD) Reference Nos. 6WOA1600662 and 6WOA1600772.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

[111] See *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*, G.R. No. 122480, 12 April 2000.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice