REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PETRON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. **10073, 10120 and 10205**

Present:

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

Promulgated: MAR 07 2024

x - x

1:10 p.m.

DECISION

BACORRO-VILLENA, J.:

Before the Court are the consolidated Petitions for Review filed by petitioner Petron Corporation (**petitioner/Petron**) pursuant to Section 3(a)[1], Rule 8, in relation to Section 3(a)(2)[2], Rule 4, of the Revised Rules

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1 **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. (Emphasis and underscoring supplied)

2 **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:
...

of the Court of Tax Appeals[3] (**RRCTA**). They seek a declaration from the Court that petitioner is not liable for excise tax on its different 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 **₱67,991,825.00**, representing the erroneously or illegally collected excise tax. The petitions have been previously separately and respectively docketed as CTA Case Nos. 10073[4], 10120[5], and 10205.[6]

In **CTA Case No. 10073**, petitioner seeks to be entitled to a refund of or issuance of a TCC in the amount of ₱24,465,909.00, representing the excise tax it allegedly erroneously paid to respondent on importation of alkylate on 16 April 2017, covered by Bureau of Customs (**BOC**) Single Administrative Document (**SAD**) No. 6WOA1700179.[7] It also prays for respondent to be ordered to grant petitioner a refund or tax credit in the said amount of ₱24,465,909.00.

In **CTA Case No. 10120**, petitioner prays that it be entitled to a refund of or issuance of a TCC in the amount of ₱22,289,682.00, representing the excise tax it allegedly erroneously paid to respondent on importation of alkylate on 21 July 2017, covered by BOC SAD No. 6WOA1700404.[8] It also asks for the Court to order respondent to grant petitioner a refund or tax credit in the said amount of ₱22,289,682.00.

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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[.] (Emphasis and underscoring supplied)

...

[3] A.M. No. 05-11-07-CTA dated 22 November 2005.
[4] Filed on 16 April 2019, Division Docket (CTA Case No. 10073), Volume I, pp. 10-40.
[5] Filed on 18 July 2019, Division Docket (CTA Case No. 10120), Volume I, pp. 10-39.
[6] Filed on 29 October 2019, Division Docket (CTA Case No. 10205), Volume I, pp. 6-35.
[7] Exhibit "P-8", Division Docket (CTA Case No. 10073), Volume IV, pp. 1858-1859.
[8] Exhibit "P-9", id., pp. 1860-1861.

In **CTA Case No. 10205**, petitioner asks for a refund of or issuance of a TCC in the amount of ₱21,236,234.00, representing the excise tax on importation of alkylate on 02 November 2017, covered by BOC SAD No. 6WOA1700590[9], which it also claimed to have erroneously been paid to respondent. It also seeks for the Court to order respondent to grant petitioner a refund or tax credit in the said amount of ₱21,236,234.00.

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, 1550 Mandaluyong City.[10] It is a domestic corporation registered with the Securities and Exchange Commission (**SEC**) under Company Registration No. 31171 and is engaged in the business of manufacturing and marketing petroleum products.[11] It is also a registered taxpayer with Taxpayer Identification No. (**TIN**) 000-168-801-00000.[12]

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.[13]

FACTS OF THE CASE

On 18 July 2012, the BOC issued Customs Memorandum Circular (**CMC**) No. 164-2012[14] implementing the BIR Letter dated 29 June 2012 (**BIR Letter**), stating that "alkylate[,] which is a product of distillation similar to that of naphtha, is subject to excise tax under Section 148(e)[15] of the National Internal Revenue Code (**NIRC**) of 1997, as amended".

9 Exhibit "P-10", id., pp. 1862-1863.
10 Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 961.
11 Par. 1.1, id.; Exhibit "P-1", id., Volume IV, pp. 1819-1837.
12 Par. 1.2, id., p. 962; Exhibit "P-2", id., pp. 1838-1839.
13 Par. 2, id., p. 962.
14 Excise Tax on Alkylate Importations.
15 **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

In April, July and November 2017, petitioner imported a total of 14,789,108 liters of alkylate, as follows:

Vessel Name	Arrival Date	Quantity (in L at Air)	Bill of Lading (BL) No.	BOC SAD No.
M/T Maersk Tangier	16 April 2017	5,624,347[16]	GASC17MT041102[17]	6WOA1700179[18]
M/T Songa Topaz	21 July 2017	5,124,065[19]	TRASSSST17071602[20]	6WOA1700404[21]
M/T STI Expedite	02 November 2017	4,871,124[22]	LGT2/1017/0223[23]	6WOA1700590[24]

The above alkylate importations were imposed an excise tax in the total amount of ₱67,991,825.00, pursuant to Section 148(e)[25] of the NIRC of 1997, as amended, on the ground that alkylate is supposedly a product of distillation similar to naphtha.

To summarize, petitioner paid the excise taxes on the above alkylate importations on the following dates:

SAD No.	Date of Payment	Excise Tax Paid
6WOA1700179	17 April 2017[26]	₱24,465,909.00

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[.]

16 See Independent Surveyor's Report dated 02 May 2017, Exhibit "P-36", Division Docket (CTA Case No. 10073), Volume IV, pp. 2080-2090.

17 Exhibit "P-42", id., p. 2118.

18 Exhibit "P-8", supra at note 7.

19 See Independent Surveyor's Report dated 02 August 2017, Exhibit "P-37", Division Docket (CTA Case No. 10073), Volume IV, pp. 2091-2102.

20 Exhibit "P-44", id., p. 2120.

21 Exhibit "P-9", supra at note 8.

22 See Independent Surveyor's Report dated 10 November 2017, Exhibit "P-38", Division Docket (CTA Case No. 10073), Volume IV, pp. 2103-2114.

23 Exhibit "P-46", id., p. 2121.

24 Exhibit "P-10", supra at note 9.

25 Supra at note 15.

26 See Certification dated 18 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 79 dated 17 April 2017 issued by the BOC, Exhibits "P-11" and "P-14", Division Docket (CTA Case No. 10073), Volume IV, pp. 1864 and 1867, respectively.

SAD No.	Date of Payment	Excise Tax Paid
	31 May 2017[27]	
6WOA1700404	21 July 2017[28]	22,289,682.00
	31 August 2017[29]	
6WOA1700590	30 October 2017[30]	21,236,234.00
	Total	**₱67,991,825.00**

Petitioner thereafter filed letter-applications or administrative claims for refund or tax credit of excise taxes paid on the foregoing importations of alkylate alleged to have been erroneously or illegally paid, together with the Applications for Tax Credits/Refunds (BIR Form No. 1914), to wit:

SAD No.	Date of Filing	Excise Tax
6WOA1700179	05 April 2019[31]	₱24,465,909.00
6WOA1700404	15 July 2019[32]	22,289,682.00
6WOA1700590	22 October 2019[33]	21,236,234.00

Considering respondent's inaction on its administrative claims for refund or tax credit and since the two (2)-year period under Section 229[34] of the NIRC of 1997, as amended, was about to lapse, petitioner

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27 See Certification dated 18 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 121 dated 31 May 2017 issued by the BOC, Exhibits "P-11" and "P-15", id., pp. 1864 and 1868-1869, respectively.

28 See Certification dated 27 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 168 dated 21 July 2017 issued by the BOC, Exhibits "P-12" and "P-16", id., pp. 1865 and 1870-1871, respectively.

29 See Certification dated 27 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 204 dated 31 August 2017 issued by the BOC, Exhibits "P-12" and "P-17", id., pp. 1865 and 1872, respectively.

30 See Certification dated 28 December 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 254 dated 30 October 2017 issued by the BOC, Exhibits "P-13" and "P-18", id., pp. 1866 and 1873-1874, respectively.

31 Exhibits "P-20" and "P-23", id., pp. 2024-2038 and 2053, respectively.

32 Exhibits "P-21" and "P-24", id., pp. 2039-2052 and 2054 respectively; Par. 3.1, Stipulation of Facts, JSFI, id., Volume II, p. 962.

33 Exhibits "P-22" and "P-25", BIR Records (CTA Case No. 10205), pp. 15-28 and 29, respectively.

34 **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.

filed the instant Petitions for Review with this Court on 16 April 2019[35], 18 July 2019[36], and 29 October 2019[37], respectively.

PROCEEDINGS BEFORE THE COURT

CTA CASE NO. 10073

Alleging respondent's inaction on its claim for refund or issuance of TCC, on 16 April 2019, petitioner filed its Petition for Review, praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for, the aggregate amount of ₱24,465,909.00, representing excise tax paid by petitioner on importation of alkylate on 16 April 2017.[38] The case was docketed as CTA Case No. 10073 and raffled to this Court's Third Division.[39]

On 30 April 2019, the Third Division issued Summons[40] to respondent.

After the Third Division twice granted an extension of time[41], respondent filed his or her "Answer (to the Petition for Review dated 12 April 2019)"[42] (**Answer**) on 17 July 2019. There, respondent cited the following special and affirmative defenses: (1) the Court lacks jurisdiction over CTA Case No. 10073 because the case primarily challenges the validity of CMC No. 164-2012[43] and the BIR Letter, and allegedly, without any evidence of a final assessment having been issued; (2) the Court is not authorized to rule upon the propriety of CMC No. 164-2012 and the BIR Letter; (3) petitioner failed to exhaust administrative remedies in urgently seeking judicial intervention

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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.

35 Supra at note 4.
36 Supra at note 5.
37 Supra at note 6.
38 See BOC SAD No. 6WOA1700179, Exhibit "P-8", supra at note 7.
39 The Third Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, as Members.
40 Division Docket (CTA Case No. 10073), Volume I, p. 112.
41 See Resolutions dated 21 May 2019 and 18 June 2019, id., pp. 119 and 125, respectively.
42 Id., pp. 126-137.
43 Supra at note 14.

instead of raising the matter for the Secretary of Finance's (**SOF's**) review; (4) petitioner is liable to pay excise taxes since alkylate is a product of distillation similar to naphtha; (5) the alkylate imported by petitioner that is removed from the customhouse, whether removed for domestic sale or consumption or not, is legitimately subject to excise tax; and, (6) the imposition of excise taxes on importations of alkylate does not amount to double taxation.

On 19 July 2019, the Third Division issued a Notice of Pre-Trial Conference[44] and set the case for pre-trial on 15 October 2019. In compliance with the Court's order therein, respondent filed his or her Pre-Trial Brief[45] on 08 October 2019. The Third Division noted the same in a Minute Resolution dated 09 October 2019.[46]

Likewise, on 19 July 2019, respondent transmitted to the Third Division the BIR Records for CTA Case No. 10073, consisting of one (1) folder with twenty (20) pages.[47] The Third Division noted the same in a Minute Resolution dated 24 July 2019.[48]

Meanwhile, on 02 October 2019, petitioner filed a "Motion for Consolidation with Motion for Postponement [of the Pre-Trial Conference set on October 15, 2019]"[49] (**First Motion for Consolidation**), praying, among others, for the consolidation of CTA Case No. 10073 with CTA Case No. 10120 (pending before the Second Division).

In the Resolution dated 08 October 2019[50], the Third Division ordered respondent to comment on petitioner's Motion for Consolidation and cancelled the Pre-Trial Conference earlier set on 15 October 2019 until further orders. However, respondent failed to comment despite due notice.[51]

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44 Division Docket (CTA Case No. 10073), Volume I, pp. 139-140.
45 Id., pp. 153-155.
46 Id., p. 158.
47 See Compliance filed by respondent on 19 July 2019, id., pp. 141-142.
48 Id., p. 144.
49 Id., pp. 145-149.
50 Id., p. 152.
51 *Per* Records Verification dated 12 November 2019, id., p. 160.

In another Resolution dated 03 December 2019[52], the Third Division noted with conformity the Resolution dated 20 November 2019[53] of the Second Division[54] granting the consolidation of CTA Case No. 10120 with CTA Case No. 10073 and, thus, granted petitioner's Motion for Consolidation.

Thereafter, on 10 February 2020, petitioner filed an "Entry of Appearance with Motion for Consolidation"[55], praying for the consolidation of CTA Case No. 10205 with CTA Case Nos. 10073 and 10120. In the Resolution dated 07 July 2020[56], the Third Division noted with conformity the Resolution dated 22 June 2020[57] of the Second Division granting the consolidation of CTA Case No. 10205 with CTA Case Nos. 10073 and 10120, and thus, ordered the consolidation of these cases. In the same Resolution, the Third Division set the Pre-Trial Conference of these three (3) consolidated cases on 10 September 2020.

CTA CASE NO. 10120

Again, claiming inaction on respondent's part, on 18 July 2019, petitioner filed a Petition for Review[58], praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for, the aggregate amount of ₱22,289,682.00, representing excise tax paid by petitioner on importation of alkylate on 21 July 2017.[59] The case was docketed CTA Case No. 10120 and raffled to this Court's Second Division.

On 22 July 2019, the Second Division issued Summons[60] to respondent.

52 Id., pp. 164-166.
53 Division Docket (CTA Case No. 10120), p. 175.
54 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, Associate Justice Cielito N. Mindaro-Grulla (Ret.) and Associate Justice Jean Marie A. Bacorro-Villena, as Members.
55 Division Docket (CTA Case No. 10073), Volume I, pp. 171-176.
56 Id., pp. 200-201.
57 Division Docket (CTA Case No. 10205), p. 183.
58 Supra at note 5.
59 See BOC SAD No. 6WOA1700404, Exhibit "P-9", supra at note 8.
60 Division Docket (CTA Case No. 10120), p. 111.

After the Second Division twice granted an extension of time[61], respondent filed his or her Answer[62] on 14 October 2019. There, respondent cited the following special and affirmative defenses: (1) the Court has no jurisdiction over CTA Case No. 10120 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 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 21 October 2019, the Second Division issued a Notice of Pre-Trial Conference[63] and set the case for Pre-Trial Conference on 21 November 2019.

On 23 October 2019, respondent transmitted to the Second Division the BIR Records in CTA Case No. 10120, consisting of one (1) folder with thirty-five (35) pages.[64] The Second Division noted the same in the Order dated 04 November 2019.[65]

Petitioner filed a "Motion for Consolidation"[66] (**Second Motion for Consolidation**) and an "Urgent Motion to Resolve Motion for Consolidation [With Motion to Defer Pre-Trial Conference]"[67] on 02 October 2019 and 15 November 2019, respectively, praying for the consolidation of CTA Case No. 10120 with CTA Case No. 10073 (pending

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61 See Orders dated 16 August 2019 and 17 September 2019, id., pp. 117 and 122, respectively.
62 Id., pp. 134-154.
63 Id., pp. 156-157.
64 See Compliance filed by respondent on 23 October 2019, id., pp. 158-159.
65 Id., p. 165.
66 Id., pp. 126-130.
67 Id., pp. 166-170.

before the Third Division). Respondent also failed to file a comment thereon despite due notice[68] of the Second Division's directive.[69]

In the Resolution dated 20 November 2019[70], the Second Division granted petitioner's Second Motion for Consolidation and thereby, consolidated CTA Case No. 10120 with CTA Case No. 10073, the case bearing the lower docket number, subject to the conformity of the Third Division, and cancelled the Pre-Trial Conference previously set on 21 November 2019.

<u>CTA CASE NO. 10205</u>

On 29 October 2019, petitioner again filed a Petition for Review[71], praying, among others, that judgment be rendered declaring it entitled to a refund of, or issuance of a TCC for, the aggregate amount of ₱21,236,234.00, representing excise tax paid by petitioner on importation of alkylate on 02 November 2017.[72] The case was docketed CTA Case No. 10205 and likewise raffled to this Court's Second Division.

On 04 November 2019, the Second Division issued Summons[73] to respondent.

After the Second Division twice granted an extension of time[74], respondent filed his or her Answer[75] on 20 January 2020. There, respondent cited the same special and affirmative defenses raised in CTA Case No. 10120, except for the defense that the Court has no jurisdiction over the petition, and with additional special and affirmative defenses, namely, this Court has already ruled in the earlier case of *Petron Corporation v. Commissioner of Internal Revenue* (CTA Case No. 9111, 26 October 2017) that petitioner's importation of alkylates is subject to excise tax under Section 148(e)[76] of the NIRC of 1997, as amended, as alkylate is a product of distillation given its nature, as follows: (1) alkylate is an intermediate or raw gasoline component that

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68 *Per* Records Verification dated 13 November 2019, id., p. 176.
69 See Resolution dated 09 October 2019, id., p. 133.
70 Supra at note 53.
71 Supra at note 6.
72 See BOC SAD No. 6WOA1700590, Exhibit "P-10", supra at note 9.
73 Division Docket (CTA Case No. 10205), p. 101.
74 See Orders dated 26 November 2019 and 27 December 2019, id., pp. 106 and 114, respectively.
75 Id., pp. 115-129.
76 Supra at note 15.

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 Research Octane Number (**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, that is, it increases the octane number of a straight run gasoline or naphtha; and, (6) alkylate is a gasoline component produced by combining two (2) gases using sulfuric acid, using reactor chillers.

On 23 January 2020, the Second Division issued a Notice of Pre-Trial Conference[77] and set the case for Pre-Trial Conference on 27 February 2020.

On 30 January 2020, respondent transmitted to the Second Division the BIR Records for CTA Case No. 10205, consisting of one (1) folder with twenty-nine (29) pages.[78] The Second Division noted the same in a Minute Resolution dated 31 January 2020.[79]

Prior to the Pre-Trial Conference, respondent filed his or her Pre-Trial Brief[80] on 20 February 2020, while petitioner filed its Pre-Trial Brief[81] on 24 February 2020.

Meanwhile, on 10 February 2020, petitioner filed a "Entry of Appearance with Motion for Consolidation"[82] (**Third Motion for Consolidation**), praying for the consolidation of CTA Case No. 10205 with CTA Case Nos. 10073 and 10120 (pending before the Third and Second Divisions, respectively). The Second Division thus cancelled the Pre-Trial Conference previously set on 27 February 2020 until further orders and directed respondent to comment on petitioner's Third

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77 Division Docket (CTA Case No. 10073), Volume I, pp. 131-132.
78 See Compliance filed by respondent on 30 January 2020, id., pp. 133-135.
79 Id., p. 137.
80 Id., pp. 156-159.
81 Id., pp. 161-175.
82 Id., pp. 142-147.

Motion for Consolidation.[83] Respondent, however, failed to file a comment thereon despite due notice.[84]

In the Resolution dated 22 June 2020[85], the Second Division granted petitioner's Third Motion for Consolidation and thereby, consolidated CTA Case No. 10205 with CTA Case Nos. 10073 and 10120, the cases bearing the lower docket numbers, subject to the conformity of the Third Division.

CONSOLIDATED CASES

In the Resolution dated 07 July 2020, the Third Division set the Pre-Trial Conference of the three (3) consolidated cases on 10 September 2020.[86] Prior thereto, respondent filed his or her "Consolidated Respondent's Pre-Trial Brief"[87] for CTA Case Nos. 10073 and 10120 on 11 March 2020, while petitioner submitted its "Consolidated Pre-Trial Brief for Petitioner Petron Corporation"[88] for CTA Case Nos. 10073, 10120 and 10205 on 07 September 2020.

During the 10 September 2020 Pre-Trial Conference[89], the Third Division granted the parties a period of twenty (20) days, or until 30 September 2020, to file their Joint Stipulation of Facts and Issues (**JSFI**).

On 12 October 2020, petitioner filed a "Motion for Production of Documents (Under Rule 27 of the Rules of Court)"[90] (**Motion for Production of Documents**), asking the Third Division to order respondent to produce and permit the inspection and copying or photographing, by or on behalf of petitioner, or confirm the non-existence of the requested documents. In the Resolution dated 03 March 2021[91], the Court partially granted petitioner's Motion for Production of Documents. However, on 26 May 2021, respondent filed a

83 See Resolution dated 19 February 2020, id., pp. 154-155.
84 *Per* Records Verification dated 18 June 2020, id., p. 181.
85 Supra at note 57.
86 Division Docket (CTA Case No. 10073), Volume I, pp. 200-201.
87 Id., pp. 189-191.
88 Id., pp. 350-385.
89 See Minutes of the Hearing and Order, both dated 10 September 2020, id., Volume II, pp. 788 and 789-790, respectively.
90 Id., pp. 874-880.
91 Id., Volume IV, pp. 1612-1618.

Manifestation[92] stating the difficulty of locating the requested documents, as the internal retention period had lapsed. Although respondent's counsel exerted diligent efforts to locate the requested documents, he was unsuccessful.

Moreover, on 15 October 2020, petitioner filed a "Request for Admission"[93], which the Court noted in the Resolution dated 21 October 2020.[94] Then, in the Resolution dated 27 January 2021[95], the Third Division deemed admitted the facts in petitioner's Request for Admission considering that it was served on respondent on 15 October 2020 and that respondent did not object (nor did he or she respond to it) within the period provided under Section 2[96], Rule 26[97] of the Rules of Court, as amended.[98]

On 13 October 2020, the parties filed *via* email[99] their JSFI. The hard copy thereof was submitted on 14 October 2020[100], which the Third Division admitted and approved in the Resolution dated 21 October 2020.[101] Later, the pre-trial was terminated and, on 10 November 2020, the Third Division issued the corresponding Pre-Trial Order.[102]

On 16 November 2020, filed a "Motion to Amend Pre-Trial Order dated 10 November 2020"[103] (**Motion to Amend**), praying that the facts set forth in petitioner's Request for Admission dated 12 October 2020[104] be included and that the typographical error appearing on Exhibit "P-44" be corrected.[105] On 21 December 2020, respondent filed his or her

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92 Id., pp. 1647-1649.
93 Id., Volumes II and III, pp. 1070-1101 and 1102-1104, respectively.
94 Id., Volume III, pp. 1409-1410.
95 Pars. 5 to 8, Statement of Facts and Issues, Amended Pre-Trial Order, incorporated in the Resolution dated 27 January 2021, id., pp. 1507-1508.
96 SEC. 2. *Implied Admission.* — **Each of the matters of which an admission is requested shall be deemed admitted** unless, **within a period designated in the request, which shall not be less than fifteen (15) calendar days after service thereof**, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny those matters. (Emphasis supplied)
97 *Admission by Adverse Party.*
98 2019 Amendments to the 1997 Rules of Civil Procedure, A.M. No. 19-10-20-SC, 15 October 2019.
99 Division Docket (CTA Case No. 10073), Volume II, pp. 961-991.
100 Id., pp. 1002-1032.
101 Id., Volume III, pp. 1409-1410.
102 Id., pp. 1451-1462.
103 Id., pp. 1484-1487.
104 Supra at note 93.
105 Requested Correction: Bill of Lading Number TRASSSST170771602.

Comment[106] to the said motion. In the Resolution dated 27 January 2021[107], the Third Division granted petitioner's Motion to Amend and thereby, issued an Amended Pre-Trial Order.

In the trial that ensued thereafter, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Atty. Ma. Clarissa C. Arguelles (**Atty. Arguelles**), petitioner's Tax Manager; (2) Michael F. Manzano (**Manzano**), petitioner's Commercial Services Manager; (3) Ryan Kris B. Rebong (**Rebong**), petitioner's Stock and Depot Finance Supervisor; (4) Cecilia N. Sengia (**Sengia**), petitioner's Refinery Finance Manager; (5) Elgo R. Lagyap (**Lagyap**), Terminal Manager of petitioner's Limay Terminal; (6) Engr. Jurrel D. Pumatong (**Engr. Pumatong**), petitioner's Process Engineering Manager; (7) Dr. Joey D. Ocon (**Dr. Ocon**), Associate Professor of the Department of Chemical Engineering, University of the Philippines, Diliman; (8) Atty. Conrado M. Briones, the Court-commissioned[108] Independent Certified Public Accountant (**ICPA Briones**); and, (9) Simon Christopher Mulqueen (**Mulqueen**), Technical Consultant of Innospec Fuel Specialties.

On 04 February 2021, petitioner presented the testimonies of its witnesses, Atty. Arguelles and Manzano.[109]

Atty. Arguelles' testimony, as contained in her Judicial Affidavit dated 03 September 2020[110], was offered to prove that: (1) she is petitioner's Tax Manager, with responsibilities that included monitoring and ensuring compliance with tax rules and regulations and filing claims for tax refund or credit when appropriate; (2) petitioner is a duly organized and established corporation engaged in the manufacturing and distribution of petroleum products; (3) petitioner imports alkylate to be used exclusively as a raw material or blending component in the production of gasoline; (4) in April 2017, petitioner imported alkylate, covered by BOC SAD Reference No. 6WOA1700179[111], and was assessed excise taxes in the amount of ₱24,465,909.00;

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106 Division Docket (CTA Case No. 10073), Volume III, pp. 1498-1499.
107 Id., pp. 1504-1517.
108 Oath of Commission, Minutes of the Hearing, and Order, all dated 11 November 2020, id., pp. 1468, 1467 and 1465-1466, respectively.
109 Minutes of the Hearing and Order, both dated 04 February 2021, id., Volume III, pp. 1519 and 1520-1521, respectively.
110 Exhibit "P-52", id., Volume I, pp. 209-233.
111 Exhibit "P-8", supra at note 7.

(**5**) petitioner paid under protest the said excise taxes in the amount of ₱24,465,909.00; (**6**) on 05 April 2019, petitioner filed an administrative claim for refund or tax credit for erroneously or illegally paid excise taxes on its importation of alkylate in April 2017 with the BIR; (**7**) in July 2017, petitioner imported alkylate, covered by BOC SAD Reference No. 6WOA1700404[112], and was assessed excise taxes in the amount of ₱22,289,682.00; (**8**) petitioner paid under protest the said excise taxes in the amount of ₱22,289,682.00; (**9**) on 15 July 2019, petitioner filed an administrative claim on its importation of alkylate in July 2017 with the BIR; (**10**) in November 2017, petitioner imported alkylate and BOC SAD Reference No. 6WOA1700590[113] covered this importation, and it was assessed with excise taxes in the amount of ₱21,236,234.00; (**11**) petitioner paid these assessed excised taxes under protest; and, (**12**) on 22 October 2019, petitioner filed an administrative claim with the BIR for its November 2017 alkylate importation.

Respondent did not conduct any cross-examination.[114]

In response to the Court's question, Atty. Arguelles confirmed that petitioner filed the consolidated petitions following respondent's inaction on its administrative claims. She then admitted that petitioner did not question or challenge the BIR Letter before the SOF. Lastly, she stated that the payments of excise taxes for all the subject importations were made to the BOC, and a protest was also filed with the BOC.[115]

Manzano's testimony, on the other hand, as contained in his Judicial Affidavit dated 03 September 2020[116], corroborated Atty. Arguelles' testimony on material points.

While respondent did not also conduct any cross-examination[117], Manzano replied to the Court's query and declared that petitioner also exports petrochemicals that are manufactured in the Philippines.[118]

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112 Exhibit "P-9", supra at note 8.
113 Exhibit "P-10", supra at note 9.
114 TSN dated 04 February 2021, pp. 10-11.
115 Id., pp. 11-13.
116 Exhibit "P-58", Division Docket (CTA Case No. 10073), Volume I, pp. 495-551, with attached exhibits.
117 TSN dated 04 February 2021, p. 16.
118 Id., pp. 16-17.

On 09 February 2021, ICPA Briones submitted four (4) sets of his Report, with Transmittal Letter and one (1) USB.[119] The Third Division noted the same in its Minute Resolution dated 10 February 2021.[120]

On 04 March 2021[121], petitioner presented witness Rebong, whose testimony, as contained in his Judicial Affidavit dated 04 September 2020[122], was offered to prove, among others, that: (1) he is petitioner's Stock and Depot Finance Supervisor; (2) petitioner lifted fuel products from its refinery, which products included alkylate as a blending component; (3) petitioner paid excise taxes for fuel products lifted from its refinery, which products included alkylate as a blending component; and, (4) petitioner paid excise taxes on alkylate twice—first, upon its importation and second, upon lifting from the refinery as part of the finished gasoline (for which it is used as a mere blending component).

Respondent did not conduct any cross-examination.[123]

During the 04 May 2021 videoconference hearing, petitioner presented the testimonies of its witnesses, Sengia, Lagyap and Engr. Pumatong.[124]

Sengia declared, through her Judicial Affidavit dated 04 September 2020[125], that: (1) she is petitioner's Refinery Finance Manager; (2) she is assigned to petitioner's Refinery Division in Bataan; (3) the Bataan Oil Refinery Plant processes crude oil into various petroleum and petrochemical products like gasoline, diesel, kerosene and liquefied petroleum gas (**LPG**); (4) petitioner imported alkylate in April, July and November 2017; (5) Refinery Finance tracks the movement of imported alkylate from receipt by the refinery to its use as blending component in the production of gasoline products; (6) petitioner monitors the lifting of finished motor gasoline products from its refinery; and, (7) petitioner prepares various documents and

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119 Exhibit "P-240", Division Docket (CTA Case No. 10073), Volume III, pp. 1524-1581.
120 Id., p. 1582.
121 Minutes of the Hearing and Order, both dated 04 March 2021, id., Volume IV, pp. 1619 and 1620-1621, respectively.
122 Exhibit "P-53", Division Docket (CTA Case No. 10073), Volume I, pp. 552-600, with attached exhibits.
123 TSN dated 04 March 2021, p. 4.
124 Minutes of the Hearing and Order, both dated 04 May 2021, Division Docket (CTA Case No. 10073), Volume III, pp. 1637 and 1638-1639, respectively.
125 Exhibit "P-54", id., Volume II, pp. 729-783, with attached exhibits.

reports to monitor the movement of imported alkylate and the lifting of finished gasoline products.

Respondent did not conduct any cross-examination.[126]

In response to the Court's question, Sengia confirmed that there have been around twenty-five (25) alkylate importations for which petitioner has requested a refund of excise taxes. However, she was unable to provide the status of all such refund cases filed with the CTA at that time. When asked about the storage of the alkylate importations, she explained that petitioner has a dedicated tank marked 'alkylate,' where the importations are discharged. Moreover, she noted that the alkylate tanks are located within the refinery, where the blending process occurs. She further confirmed that the terminals, from which the finished products are lifted or removed, are separate from the refinery. She elaborated that the refinery does the blending, resulting in petitioner's tanks containing finished products, component products, and blending components. The refinery is the production site, and the volume lifted or removed refers to the finished product. She also clarified that these cases concern not only the importations but also the liftings or removals of the finished product. However, she did confirm that petitioner does not sell alkylate as a finished product.[127]

Lagyap testified next. In his Judicial Affidavit dated 04 September 2020[128], he declared, among others, that: (1) he is the Terminal Manager of petitioner's Limay Terminal in Bataan; (2) petitioner lifts finished fuel products, including diesel and gasoline products, from its Limay Terminal; and, (3) petitioner does not lift alkylate from its refinery.

Respondent did not conduct any cross-examination.[129]

In response to the Court's clarificatory question, Lagyap confirmed that alkylate is not a product lifted from petitioner's terminals and that it is not sold to customers or dealers. When asked to expound on his statement in his Judicial Affidavit—where he declared having no knowledge whatsoever about alkylate—he attested to the

126 TSN dated 04 May 2021, p. 5.
127 Id., pp. 5-8.
128 Exhibit "P-55", Division Docket (CTA Case No. 10073), Volume I, pp. 394-405.
129 TSN dated 04 May 2021, pp. 10-11.

Court's understanding that alkylate is never stored at the terminal where he was assigned and that he has never encountered this substance in any capacity during his employment with petitioner.[130]

Petitioner also presented Engr. Pumatong as its last witness. *Via* his Judicial Affidavit dated 04 September 2020[131], he testified that: (1) he is petitioner's Process Engineering Manager; (2) he is assigned at petitioner's Bataan Refinery; (3) petitioner's Bataan Refinery processes crude oil needed for petroleum products like gasoline, diesel, kerosene and LPG; (4) alkylate is a product of alkylation, which is a chemical process wholly distinct from crude oil distillation; (5) alkylate is a product different from crude oil distillates; (6) alkylate is not unleaded premium gasoline; (7) petitioner uses alkylate solely as a blending component to make gasoline; (8) petitioner does not sell alkylate as a product to the public at large; (9) unleaded premium gasoline is produced through a physical process; and, (10) alkylate is produced through a chemical process called alkylation.

Respondent did not conduct any cross-examination.[132]

When the Court inquired about other locally available substances that could serve the same function as alkylate in enhancing the quality of fuel, Engr. Pumatong responded that he is unaware of any suitable local substitutes for alkylate. He affirmed that alkylate acts as a raw material, utilized primarily as a blending component to produce the finished product, *i.e.*, unleaded fuel. He further testified that petitioner does not sell alkylate as an independent product.

Still in response to the Court's question regarding the similarity between alkylate and naphtha, Engr. Pumatong explained that although both serve as raw materials in fuel production, they differ significantly. Unlike naphtha, which is a product of distillation requiring further processing to be used as a blending component, alkylate is used directly as a blending component. He also stated that alkylate is not sold as a finished product in the local market.[133]

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130 Id., p. 11.

131 Exhibit "P-57", Division Docket (CTA Case No. 10073), Volume I, pp. 472-494, with attached exhibit; see also Order dated 04 May 2021.

132 TSN dated 04 May 2021, p. 14.

133 Id., pp. 14-17.

On 08 June 2021, petitioner presented the testimonies of its witnesses, Dr. Ocon and ICPA Briones.[134]

As an expert witness, Dr. Ocon essentially declared in his Judicial Affidavit dated 04 September 2020[135] that: (1) crude oil distillation is a physical process which results in the separation of the different constituent substances of crude oil (or crude oil distillates), through the application of heat or through boiling; (2) crude oil distillation does not produce alkylate; (3) alkylate is not a product of crude oil distillation, and it is not a crude oil distillate; (4) alkylate is a product of alkylation, which is a chemical process wholly distinct from crude oil distillation; (5) alkylate is a product different from crude oil distillates; and, (6) alkylate is not unleaded premium gasoline. He also presented his credentials to qualify as an expert witness.

Again, while no cross-examination[136] was conducted, Dr. Ocon went on to elaborate, upon the Court's query, that he is unaware of any other locally available chemical that could substitute for alkylate, a raw material in the production of petitioner's finished product, *i.e.*, unleaded fuel. He clarified that alkylate is not a finished product in itself but is used merely as an additive because it enables the finished product to meet the environmental and technical specifications set by the Philippine National Standards (**PNS**). He also confirmed that alkylate is not sold to the public.[137]

Regarding the Court's question on whether alkylate can be likened to naphtha, in the sense that both are raw materials used fuel production, he explained that naphtha has two (2) types: *first*, naphtha that is a product of distillation; and, *second*, the Fluid Catalytic Cracking (**FCC**) naphtha, which is a main component of gasoline. He then clarified that naphtha is different from alkylate; the former is a product of distillation, while the latter is not.[138]

Dr. Ocon informed the Court that his role is to elucidate on the technical aspects of how various raw materials and products are

[134] Minutes of the Hearing and Order, both dated 08 June 2021, Division Docket (CTA Case No. 10073), Volume IV, pp. 1660 and 1661-1662, respectively.
[135] Exhibit "P-56", id., Volume I, pp. 406-471, with attached exhibits.
[136] TSN dated 08 June 2021, pp. 8-9.
[137] Id., pp. 9-10.
[138] Id., pp. 10-12.

generated and processed within a refinery. He emphasized the importance of distinguishing between the distillation process, which merely separates already-formed components of crude oil, and the alkylation process, which involves chemical reactions and requires raw materials not present in distillation products. He also noted that alkylate is merely a blending component, accounting for only 10% of the global pool for gasoline manufacture, whereas other components, such as naphtha, constitute a majority of gasoline. Therefore, alkylate is a specialty blending component used to further enhance the properties of gasoline, which is the finished product sold in the market.[139]

As for ICPA Briones, as contained in his Judicial Affidavit dated 09 March 2021[140], he testified: (1) to the performance of his functions as an officer of the Court appointed to conduct an audit examination in relation to these consolidated cases, pursuant to Section 5, Rule 12 and Rule 13 of the RRCTA; and, (2) on his findings and the summary of the documents he examined as contained in the ICPA Report dated 09 February 2021[141] submitted to this Court.

Respondent did not conduct any cross-examination.[142]

In response to the Court's clarificatory question, ICPA Briones confirmed that the basis of petitioner's claim is that alkylate is merely a blending component. Approximately 4.1 million liters of the total 15 million liters, for which excise taxes were paid, are unaccounted for (as stated in his Report dated 09 February 2021). In this regard, he explained that he reported the same to be unaccounted for since the documents, supporting that those volumes were removed from petitioner's refinery, were not available at the time of his examination. As a result, he thus could not determine whether the unaccounted 4.1 million liters were actually used as a blending component.[143]

ICPA Briones continued to explain that, despite approximately one-third of the total volume being unaccounted for, he recommended the full refund of the excise taxes paid on the 15 million liters of alkylate importations in these consolidated cases. He argued that the imposition

139 Id., pp. 13-15.
140 Exhibit "P-66", Division Docket (CTA Case No. 10073), Volume IV, pp. 1624-1632.
141 Exhibit "P-240", supra at note 119.
142 TSN dated 08 June 2021, pp. 28.
143 Id., pp. 28-29.

of excise tax on alkylate is based on an erroneous interpretation of Section 148(e)[144] of the NIRC of 1997, as amended, and asserts that alkylate should not be subjected to excise tax, whether used as a blending component or not.[145]

Upon further query from the Court and after being reminded that he was engaged to ascertain the volume of alkylate importations subjected to excise tax for the present consolidated refund claims, ICPA Briones admitted that he did not deduct the portion corresponding to the unaccounted volume of alkylate.[146] Also, when asked whether he found any evidence that petitioner sold alkylate independently, he responded that the documents he examined were limited to importation documents and evidence that alkylate was blended with other components as raw materials.[147]

In another videoconference hearing[148], petitioner presented witness Mulqueen, whose testimony, as contained in his Judicial Affidavit dated 19 July 2021[149], was offered to prove: (1) his qualifications as an expert witness in the field of transport fuels and fuel additive production; (2) the nature of alkylate and how it is produced; (3) that alkylate is not produced by distillation; (3) that alkylate is a product of alkylation; (4) that alkylate is solely used as a blending component to increase the octane level in finished gasoline; and, (5) that alkylate is not similar to naphtha and regular gasoline.

Respondent did not conduct any cross-examination.[150]

Addressing the Court's clarificatory question, Mulqueen clarified that alkylate is an 'ingredient' or blending component, present at levels of 5%, 10%, or 15%, rather than merely an additive (which would be at less than 1% or even at parts *per* million levels). He also confirmed that alkylate is not an indispensable ingredient, meaning gasoline can be produced without it. Regarding fuel production stages, he clarified that distillation refers to the separation process, while alkylation involves

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144 Supra at note 15.
145 TSN dated 08 June 2021, pp. 29-32.
146 Id., pp. 32-34.
147 Id., p. 34.
148 Minutes of the Hearing and Order, both dated 22 July 2021, Division Docket (CTA Case No. 10073), Volume IV, pp. 1702 and 1703-1704, respectively.
149 Exhibit "P-67", id., pp. 1711-1728.
150 TSN dated 22 July 2021, p. 6.

only a chemical reaction process and does not include any form of distillation at any stage. Additionally, he distinguished naphtha from alkylate, explaining that naphtha, a product of distillation, is used by refineries primarily to expand the available volume of gasoline to maintain satisfactory economics. In contrast, alkylate is used primarily to increase the octane level of the finished gasoline. Naphtha has a very low octane level; hence, it cannot serve the same purpose as alkylate, although both are useful components in gasoline blending.[151]

Upon the Court's request, Mulqueen explained the Schematic Diagram of the alkylation process. He clarified that the section labeled 'distillation' actually refers to the purification process that results from the chemical reaction, given that alkylate is produced in the reactor unit. He noted that chemical reactions may produce by-products, and the purification process ensures that alkylate is the end product.[152]

Mulqueen described the fractionation process, where alkylate, along with isobutane feed, is introduced into a distillation column. This process eventually results in the production of isobutane before alkylate is obtained as a bottom product during the chemical reaction phase. Upon further clarification, he confirmed that the fractionation, involving distillation or, more accurately, purification, could be omitted if the desired alkylate does not require high octane properties. However, while it is theoretically possible to produce alkylate without a distillation column or distillation train, he recommended purification and the retrieval of by-products, especially for alkylate intended as an ingredient to produce higher quality gasoline.[153]

After the Third Division twice granted an extension of time[154], petitioner filed its "Formal Offer of Evidence with Motion to Correct Marking of Exhibits"[155] (**FOE with Motion to Correct Marking of Exhibits**) on 12 April 2022. Respondent filed his or her "Comment (Re: Formal Offer of Evidence)" on 27 April 2022.[156]

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151 Id., pp. 7-9.
152 Id., pp. 10-12.
153 Id., pp. 13-16.
154 See Resolutions dated 30 March 2022 and 18 April 2022, Division Docket (CTA Case No. 10073), Volume IV, pp. 1744 and 2187, respectively.
155 Id., pp. 1749-1817.
156 Id., pp. 2189-2191.

In the Resolution dated 07 June 2022[157], the Third Division granted petitioner's Motion to Correct Marking of Exhibits, setting a Commissioner's Hearing for the remarking of certain exhibits on 30 June 2022.

Meanwhile, in the Order dated 29 June 2022[158], the consolidated cases were transferred to the Second Division[159] pursuant to CTA Administrative Circular No. 01-2022 dated 21 June 2022.[160] In the same Order, the Commissioner's Hearing, previously set on 30 June 2022, was cancelled until further notice. Thereafter, in the Resolution dated 28 July 2022[161], the Second Division rescheduled the Commissioner's Hearing for 29 August 2022. This setting was later reset to 14 September 2022, considering that 29 August 2022 was declared a regular holiday.[162]

In the Resolution dated 05 December 2022[163] (**FOE Resolution**), the Court admitted petitioner's exhibits, *except* for (1) Exhibits "P-26" and "P-49"[164], for failure to present the original for comparison; (2) Exhibits "P-22" and "P-25"[165], for failure to submit the duly marked exhibits; (3) Exhibits "P-219-1-268", "P-219-1-292", "P-219-1-530", "P-219-1-623" to "P-219-1-632", "P-219-1-846", "P-219-1-1021", "P-219-1-3774" to "P-219-1-3777", "P-219-1-5149", "P-219-1-9214", "P-219-1-12106", "P-219-1-12924", "P-219-1-20904", "P-219-1-27078", "P-219-1-27800", "P-220-1-317", "P-220-1-818", "P-220-1-5636", "P-220-1-5645", "P-220-1-5712", "P-220-1-5736", "P-220-1-5967", "P-220-1-5970", "P-220-1-5972", "P-220-1-6057",

157 Id., pp. 2196-2198.
158 Id., p. 2203.
159 The Second Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
160 Reorganizing the Second and Third Divisions of the Court.
161 Division Docket (CTA Case No. 10073), Volume IV, p. 2205.
162 See Notice of Resetting dated 25 August 2022, id., Volume V, p. 2206.
163 Id., pp. 2211-2222.
164

Exhibit No.	Description
"P-26"	Letter dated 27 June 2012 by Director Zenaida Y. Monsada of the Department of Energy (DOE) – Oil Industry Management Bureau to BOC.
"P-49"	Tax Subsidy Availment Certificate.

165

Exhibit No.	Description
"P-22"	Letter dated 22 October 2019 re: Application for Refund or Tax Credit of Erroneously or Illegally Paid Excise Taxes on Importation of Alkylate on 02 November 2017.
"P-25"	Application for Tax Credits/Refunds (BIR Form No. 1914) dated 22 October 2019.

"P-220-1-6094", "P-220-1-6648", "P-220-1-6747", "P-220-1-13072", "P-220-1-13113", "P-220-1-13122", "P-220-1-13506", "P-220-1-14197", "P-220-1-14198", "P-220-1-14753", "P-220-1-15462", "P-220-1-15463", "P-220-1-15465", "P-220-1-15466", "P-220-1-15499", "P-220-1-15502", "P-220-1-15909", "P-220-1-20942", "P-220-1-21039", "P-220-1-25293", "P-220-1-25846", "P-220-1-26577", "P-220-1-26954", "P-220-1-26977", "P-220-1-26982", "P-220-1-26983", "P-220-1-26986", "P-220-1-27001", "P-220-1-27020", "P-220-1-27024", "P-220-1-27031", "P-220-1-27035", "P-220-1-27036", "P-220-1-27039", "P-220-1-27054", "P-220-1-27056", "P-220-1-27059", "P-220-1-27065 to P-220-1-27068", "P-220-1-27080", "P-220-1-27108", "P-220-1-27558", "P-220-1-28037", "P-220-1-28743", "P-220-1-30157", "P-220-1-30226", "P-228-2", "P-228-180", "P-228-683" to "P-228-700", "P-231-45", "P-231-109", "P-231-173", "P-234-2-1932", "P-234-2-2797", "P-234-2-2848" to "P-234-2-2885", "P-234-3-2763" to "P-234-3-2789", "P-234-4-44", "P-234-4-342", "P-234-4-490", "P-234-4-496", "P-234-4-523", "P-234-4-627", "P-234-4-1129", "P-234-4-1149", "P-234-4-1194", "P-234-4-1427", "P-234-4-1645" to "P-234-4-1647", "P-234-4-1653", "P-234-4-1754", "P-234-4-2360", "P-234-4-2530" to "P-234-4-2533", "P-234-4-2600" to "P-234-4-2609", "P-234-5-2831", "P-234-5-2969" to "P-234-5-3004", "P-234-6-1068", "P-234-6-2691", "P-234-7-1291" to "P-234-7-1293", "P-234-7-3106" to "P-234-7-3138", "P-234-8-1157", "P-234-8-1158", "P-234-8-1206", "P-234-8-2232", "P-234-8-2233", "P-234-8-2252", "P-234-8-2999" to "P-234-8-3027", "P-234-9-3629" to "P-234-9-3670", "P-234-10-2573", "P-234-10-2878", "P-234-10-2885", "P-234-10-2888", "P-234-10-2894", "P-234-10-2895", "P-234-10-2900", "P-234-10-2902", "P-234-11-2721" to "P-234-11-3060", "P-234-12-17", "P-234-12-35", "P-234-12-133", "P-234-12-163", "P-234-12-175", "P-234-12-218", "P-234-12-297", "P-234-12-305", "P-234-12-576", "P-234-12-583", "P-234-12-590", "P-234-12-604", "P-234-12-694", "P-234-12-750", "P-234-12-759", "P-234-12-780", "P-234-12-817", "P-234-12-839", "P-234-12-860", "P-234-12-891", "P-234-12-994", "P-234-12-1009", "P-234-12-1034", "P-234-12-1102", "P-234-12-1559", "P-234-12-2327", "P-234-12-2616", "P-234-12-2618", "P-234-13-33", "P-234-13-2010", "P-234-13-2084", "P-234-14-2997", "P-234-15-1534" to "P-234-15-1538", "P-234-15-1625" to "P-234-15-1629", "P-234-16-3316" to "P-234-16-3335", "P-234-20-162", "P-234-21-153" to "P-234-21-160", "P-234-22-5", "P-237-1194", "P-237-1321" and "P-237-1431"[166], for not being found in the records

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166

Exhibit Nos.	Description
"P-219-1-268", "P-219-1-292", "P-219-1-530", "P-219-1-623" to "P-219-1-632", "P-219-1-846" and "P-219-1-1021"	PBR's SAP PMMT Journal Entry (JE) Print-outs – Receipts (re: Material Code – 1682).

"P-219-1-3774" to "P-219-1-3777", "P-219-1-5149", "P-219-1-9214", "P-219-1-12106", "P-219-1-12924", "P-219-1-20904", "P-219-1-27078" and "P-219-1-27800"	PBR's SAP PMMT Journal Entry (JE) Print-outs – Issuances (re: Material Code – 1682).
"P-220-1-317" and "P-220-1-818"	PBR's SAP PMMT Journal Entry (JE) Print-outs – Receipts (re: Material Code – 2791).
"P-220-1-5636", "P-220-1-5645", "P-220-1-5712", "P-220-1-5736", "P-220-1-5967", "P-220-1-5970", "P-220-1-5972", "P-220-1-6057", "P-220-1-6094", "P-220-1-6648", "P-220-1-6747", "P-220-1-13072", "P-220-1-13113", "P-220-1-13122", "P-220-1-13506", "P-220-1-14197", "P-220-1-14198", "P-220-1-14753", "P-220-1-15462", "P-220-1-15463", "P-220-1-15465", "P-220-1-15466", "P-220-1-15499", "P-220-1-15502", "P-220-1-15909", "P-220-1-20942", "P-220-1-21039", "P-220-1-25293", "P-220-1-25846", "P-220-1-26577", "P-220-1-26954", "P-220-1-26977", "P-220-1-26982", "P-220-1-26983", "P-220-1-26986", "P-220-1-27001", "P-220-1-27020", "P-220-1-27024", "P-220-1-27031", "P-220-1-27035", "P-220-1-27036", "P-220-1-27039", "P-220-1-27054", "P-220-1-27056", "P-220-1-27059", "P-220-1-27065 to P-220-1-27068", "P-220-1-27080", "P-220-1-27108", "P-220-1-27558", "P-220-1-28037", "P-220-1-28743", "P-220-1-30157" and "P-220-1-30226"	PBR's SAP PMMT Journal Entry (JE) Print-outs – Issuances (re: Material Code – 2791).
"P-228-2", "P-228-180" and "P-228-683" to "P-228-700"	Withdrawal Certificates.
"P-231-45", "P-231-109" and "P-231-173"	Cargo Outturn Certificates.
"P-234-2-1932", "P-234-2-2797" and "P-234-2-2848" to "P-234-2-2885"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 2383/2821/1682) for the Month of May 2017].
"P-234-3-2763" to "P-234-3-2789"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 2383/2821/1682) for the Month of June 2017].
"P-234-4-44", "P-234-4-342", "P-234-4-490", "P-234-4-496", "P-234-4-523", "P-234-4-627", "P-234-4-1129", "P-234-4-1149", "P-234-4-1194", "P-234-4-1427", "P-234-4-1645" to "P-234-4-1647", "P-234-4-1653", "P-234-4-1754", "P-234-4-2360", "P-234-4-2530" to "P-234-4-2533" and "P-234-4-2600" to "P-234-4-2609"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 2383/2821/1682) for the Month of July 2017].
"P-234-5-2831" and "P-234-5-2969" to "P-234-5-3004"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 1666/1682/1823/2383/2821) for the Month of August 2017].
"P-234-6-1068" and "P-234-6-2691"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 1666/1682/2383/2821) for the Month of September 2017].
"P-234-7-1291" to "P-234-7-1293" and "P-234-7-3106" to "P-234-7-3138"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 1666/1682/2383/2821) for the Month of October 2017].

of these consolidated cases; (4) Exhibits "P-234-1-2827" to "P-234-1-2829"[167], for failure of the documents offered to correspond with the documents marked; and, (5) Exhibit "P-239", for failure to describe the document being offered. Moreover, considering respondent's

"P-234-8-1157", "P-234-8-1158", "P-234-8-1206", "P-234-8-2232", "P-234-8-2233", "P-234-8-2252" and "P-234-8-2999" to "P-234-8-3027"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 1666/1682/2383/2821) for the Month of November 2017].
"P-234-9-3629" to "P-234-9-3670"	Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 1666/1682/2383/2821) for the Month of December 2017].
"P-234-10-2573", "P-234-10-2878", "P-234-10-2885", "P-234-10-2888", "P-234-10-2894", "P-234-10-2895", "P-234-10-2900" and "P-234-10-2902"	Delivery Notes [re: Summary of DN of R92 Base Gasoline (XCS Plus) - (Material Code – 2521/2791) for the Month of April 2017].
"P-234-11-2721" to "P-234-11-3060"	Delivery Notes [re: Summary of DN of R92 Base Gasoline (XCS Plus) - (Material Code – 2521/2791) for the Month of May 2017].
"P-234-12-17", "P-234-12-35", "P-234-12-133", "P-234-12-163", "P-234-12-175", "P-234-12-218", "P-234-12-297", "P-234-12-305", "P-234-12-576", "P-234-12-583", "P-234-12-590", "P-234-12-604", "P-234-12-694", "P-234-12-750", "P-234-12-759", "P-234-12-780", "P-234-12-817", "P-234-12-839", "P-234-12-860", "P-234-12-891", "P-234-12-994", "P-234-12-1009", "P-234-12-1034", "P-234-12-1102", "P-234-12-1559", "P-234-12-2327", "P-234-12-2616" and "P-234-12-2618"	Delivery Notes [re: Summary of DN of R92 Base Gasoline (XCS Plus) - (Material Code – 2521/2791) for the Month of June 2017].
"P-234-13-33", "P-234-13-2010" and "P-234-13-2084"	Delivery Notes [re: Summary of DN of R92 Base Gasoline (XCS Plus) - (Material Code – 2521/2791) for the Month of July 2017].
"P-234-14-2997"	Delivery Notes [re: Summary of DN of R92 Base Gasoline (XCS Plus) - (Material Code – 2521/2791) for the Month of August 2017].
"P-234-15-1534" to "P-234-15-1538" and "P-234-15-1625" to "P-234-15-1629"	Delivery Notes [re: Summary of DN of R92 Base Gasoline (XCS Plus) - (Material Code – 2521/2791/1667) for the Month of September 2017].
"P-234-16-3316" to "P-234-16-3335"	Delivery Notes [re: Summary of DN of R92 Base Gasoline (XCS Plus) - (Material Code – 2521/2791) for the Month of October 2017].
"P-234-20-162"	Delivery Notes [re: Summary of RDN of R87 Gasoline (Material Code – 1682) for the Period April to December 2017].
"P-234-21-153" to "P-234-21-160"	Delivery Notes [re: Summary of RDN of R92 Base Gasoline (XCS Plus) - (Material Code – 2791) for the Period April to December 2017].
"P-234-22-5"	Returns of Delivery Notes [re: Summary of RDN of Blaze 100 (X100) Euro Gasoline - (Material Code – 2881) for the Period April to December 2017].
"P-237-1194", "P-237-1321", and "P-237-1431"	Excise Tax Returns.

167 Delivery Notes [re: Summary of DN of R87 Gasoline (Material Code – 2383/2821/1682) for the Month of April 2017].

manifestation that he or she will not present any evidence in these consolidated cases[168], the Second Division gave the parties a period of thirty (30) days to file their respective memoranda.

On 27 December 2022, petitioner filed a "Motion for Partial Reconsideration (Re: Resolution dated 5 December 2022)"[169] (**MPR on the FOE Resolution**). Respondent failed to file comment thereon despite due notice.[170] Later, on 18 January 2023, petitioner filed a Submission[171], attaching a copy of the marked Exhibit "P-25", which forms part of the records of these consolidated cases.

Meanwhile, in compliance with the Second Division's directive in its FOE Resolution[172], respondent filed his or her Memorandum[173] on 22 December 2022, while petitioner filed its Memorandum on 26 January 2023.[174] The Second Division noted the parties' memoranda in the Resolution dated 15 February 2023.[175]

In the Resolution dated 07 March 2023[176], the Second Division admitted Exhibits "P-22", "P-25", and "P-49", but still denied the admission of Exhibit "P-26", for failure to present originals for comparison. In the same Resolution, the Second Division considered the case submitted for decision.

On 28 April 2023, petitioner filed a "Manifestation (Re: Supreme Court Decision dated 20 March 2023 in G.R. No. 255961)"[177] (**Manifestation**), stating that a new development has arisen which may impact the Court's determination of the merits of the instant petitions. Whereas, on 17 May 2023, respondent submitted a "Counter Manifestation"[178], stating that the Office of the Solicitor General (**OSG**) has filed a Motion for Reconsideration (**MR**) of the Supreme Court's Decision in *Petron Corporation v. Commissioner of Internal Revenue*[179]

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168 TSN dated 22 July 2021, pp. 18-19.
169 Division Docket (CTA Case No. 10073), Volume V, pp. 2272-2293, with attached exhibit.
170 *Per* Records Verification dated 06 February 2023, id., p. 2432.
171 Id., pp. 2298-2302, with attached exhibit.
172 Supra at note 163.
173 Division Docket (CTA Case No. 10073), Volume V, pp. 2223-2234.
174 Id., pp. 2372-2429.
175 Id., p. 2434.
176 Id., pp. 2436-2441.
177 Id., pp. 2442-2466, with annex.
178 Id., pp. 2467-2469.
179 G.R. No. 255961, 20 March 2023.

(**2023 Petron**); hence, the same has not yet attained finality. The Special Second Division[180] noted these manifestations in the Resolution dated 19 June 2023.[181]

ISSUES

Based on the pleadings and as the parties so stipulated in their JSFI[182], the issues to be resolved are —

I.
WHETHER THE COURT HAS JURISDICTION OVER THE INSTANT PETITIONS FOR REVIEW; AND,

II.
WHETHER PETITIONER PETRON CORPORATION IS ENTITLED TO A REFUND OR TAX CREDIT ON THE EXCISE TAX ALLEGED TO BE ERRONEOUSLY PAID BY PETITIONER ON IMPORTATIONS OF ALKYLATE ON 16 APRIL 2017, 21 JULY 2017 AND 02 NOVEMBER 2017 COVERED BY BUREAU OF CUSTOMS (BOC) SINGLE ADMINISTRATIVE DOCUMENT (SAD) NOS. 6WOA1700179, 6WOA1700404 AND 6WOA1700590, RESPECTIVELY, IN THE AMOUNTS OF ₱24,465,909.00, ₱22,289,682.00, AND ₱21,236,234.00, RESPECTIVELY, OR IN THE AGGREGATE AMOUNT OF ₱67,991,825.00.

ARGUMENTS

After having filed administrative claims for refund on 05 April 2019[183], 15 July 2019[184] and 22 October 2019[185], petitioner argues that this Court has jurisdiction over the instant petitions. As respondent did not act on the said claims, petitioner, on 16 April 2019[186], 18 July 2019[187], and 29 October 2019[188], or prior to the lapse of the two (2)-year

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180 The Special Second Division is composed of Associate Justice Jean Marie A. Bacorro-Villena, as Acting Chairperson, and Associate Justice Lanee S. Cui-David, as Member.
181 Division Docket (CTA Case No. 10073), Volume V, pp. 2473.
182 II. Stipulation of Issues, JSFI, supra at note 100, pp. 1003-1004.
183 Supra at note 31.
184 Supra at note 32.
185 Supra at note 33.
186 Supra at note 4.
187 Supra at note 5.
188 Supra at note 6.

period under Section 229[189] of the NIRC of 1997, as amended, timely filed its judicial claims *via* the instant Petitions for Review.

Petitioner also contends that its importations of alkylate are not subject to excise tax under Section 148(e)[190] of the NIRC of 1997, as amended. Since respondent had imposed excise taxes on alkylate even if it was not enumerated as a taxable article in the said provision, respondent carries the burden of proving that the law covers alkylate as tax laws should be strictly construed against the Government and in favor of the taxpayer.

Petitioner further asserts that respondent failed to discharge his or her burden to prove that alkylate is an excisable article under the NIRC of 1997, as amended. It maintains that alkylate is neither "leaded premium gasoline" nor "unleaded premium gasoline" subject to excise taxes under Section 148(f)[191] of the NIRC of 1997, as amended. Additionally, petitioner argues that alkylate is not taxable under Section 148(e)[192] of the NIRC of 1997, as amended, because it is not a product of crude oil distillation as it was not produced by the distillation of crude oil.

Furthermore, petitioner claims that alkylate cannot be considered an "indirect" product of distillation, as there are no "indirect" products of distillation defined in the NIRC of 1997, as amended. Even if alkylate could be considered a product of crude oil distillation, petitioner argues that it is not similar to naphtha and regular gasoline, given that the intended use or purpose and nature of naphtha and regular gasoline differs from that of alkylate. Thus, petitioner insists that there is no basis to consider alkylate as a "similar product of distillation."

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189 Supra at note 34.

190 Supra at note 15.

191 **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:

...

(f) Leaded premium gasoline, per liter of volume capacity, Five pesos and thirty-five centavos (P5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35)[.]

192 Supra at note 15.

On the other hand, respondent reiterates that the Court has no jurisdiction over the instant petitions as respondent is not a real party in interest (as 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 petitions are still dismissible since respondent's interpretative rulings are subject to the SOF's review and not this Court's.

Respondent further maintains that petitioner is liable to pay excise taxes since alkylate is a product of distillation, and falls within the category of naphtha, regular gasoline and other similar products of distillation; hence, subject to excise tax under Section 148(e) of the NIRC of 1997, as amended; and that claims for refund are strictly construed against the claimant, for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

<u>RULING OF THE COURT</u>

RESPONDENT IS A REAL PARTY
IN INTEREST.

At the outset, the Court shall address the issue raised insistently by respondent that the instant Petitions for Review are dismissible as the BOC 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:

> ...
>
> **SEC. 12.** *Agents and Deputies for Collection of National Internal Revenue Taxes.* - The following are hereby constituted **<u>agents</u> of the Commissioner:**

a) **The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods**;

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.[193]

...

It is a cardinal rule that every action must be prosecuted or defended in the name of the real party in interest.[194] 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.[195] Being the BOC's principal and the primary agency tasked to collect all national internal revenue taxes, including excise taxes, 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 PETITIONS.

In another effort to prevent this Court from taking cognizance of these consolidated cases, respondent also attacks its jurisdiction, citing *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation* (**2015 Petron**).[196] Respondent posits that since the instant cases are ultimately challenging the legality and constitutionality of CMC No. 164-2012[197], interpreting Section 148(e)[198] of the NIRC of 1997, as amended, it should have been brought before the SOF and not before the Court.

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[193] Emphasis and underscoring supplied.
[194] See Rules of Court, Rule 3, Section 2.
[195] Id.
[196] G.R. No. 207843, 15 July 2015.
[197] Supra at note 14.
[198] Supra at note 15.

Again, We do not share respondent's stance for the reasons essayed below, in *seriatim*.

Firstly, the *2015 Petron* case was eventually reversed and set aside. It is noted that, in 2018, the Supreme Court, in resolving the MR filed on the *2015 Petron* Decision, it categorically held:[199]

> ...
>
> 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:
>
>> 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 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

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[199] *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.

> 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 administrative claims for refund or tax credit in 2019. However, since the two (2)-year period provided in Section 229[200] of the NIRC of 1997, as amended, was already about to lapse, petitioner filed its judicial claims within the said two (2)-year period without waiting for respondent's decision.

Secondly, the instant petitions are within the ambit of Section 7(a)(2)[201] of Republic Act (**RA**) No. 1125[202], as amended by RA 9282[203], which refers to this Court's jurisdiction over an appeal as a result of respondent's inaction on petitioner's claims for refund.

Lastly, the present consolidated cases fall under 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.[204] Settled is the rule that in cases of recovery of erroneously paid or illegally collected tax under Section 229[205] 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.**

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200 Supra at note 34.

201 **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[.]

202 AN ACT CREATING THE COURT OF TAX APPEALS.

203 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.

204 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.

205 Supra at note 34.

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 claims, appealing CMC No. 164-2012[206] with the SOF may result in the nullification petitioner's claims 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 IMPORTATIONS OF ALKYLATE.

Both Sections 204(C) and 229 of the NIRC of 1997, as amended, deal with the refund of erroneously or illegally collected taxes. Particularly, Section 204(C) applies to administrative claims, while Section 229 to judicial claims.[207] 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.
>
> ...

206 Supra at note 14.
207 See *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, 14 January 2015; Emphasis and italics in the original text and supplied.

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.[208]
>
> ...

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[209], 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.
>
> ...

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208 Emphasis supplied.
209 G.R. No. 226592, 27 July 2021; Citation omitted.

The afore-quoted provisions are clear. Within two (2) years from the date of payment of the tax or penalty, the taxpayer-claimant must first file an administrative claim with respondent before filing a judicial claim before this Court. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional; hence, this Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[210] Thus, so long as the judicial claim was filed within two (2) years from the date of payment of the tax or penalty, and within such period, an administrative claim was filed before filing such judicial claim, this Court has jurisdiction to entertain the latter.

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[211]

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

PETITIONER TIMELY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS.

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

SAD Reference No.	Date of Payment	Amount of Excise Tax Paid	End of Two (2)-Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
6WOA1700179[212]	17 April 2017[213]	₱24,465,909.00	17 April 2019		

[210] *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. No. 180740, 11 November 2019.
[211] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[212] Exhibit "P-8", supra at note 7.
[213] See Certification dated 18 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 79 dated 17 April 2017 issued by the BOC, Exhibits "P-11" and "P-14", respectively, supra at note 26.

SAD Reference No.	Date of Payment	Amount of Excise Tax Paid	End of Two (2)-Year Prescriptive Period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim
	31 May 2017[216]		31 May 2019	05 April 2019[214]	16 April 2019[215]
6WOA1700404[217]	21 July 2017[218]	22,289,682.00	21 July 2019	15 July 2019[219]	18 July 2019[220]
	31 August 2017[221]		31 August 2019		
6WOA1700590[222]	30 October 2017[223]	21,236,234.00	30 October 2019	22 October 2019[224]	29 October 2019[225]
	Total	₱67,991,825.00			

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

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

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

216 See Certification dated 18 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 121 dated 31 May 2017 issued by the BOC, Exhibits "P-11" and "P-15", respectively, supra at note 27.

214 Exhibits "P-20" and "P-23", supra at note 31.

215 Supra at note 4.

217 Exhibit "P-9", supra at note 8.

218 See Certification dated 27 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 168 dated 21 July 2017 issued by the BOC, Exhibits "P-12" and "P-16", respectively, supra at note 28.

219 Exhibits "P-21" and "P-24", supra at note 32.

220 Supra at note 5.

221 See Certification dated 27 October 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 204 dated 31 August 2017 issued by the BOC, Exhibits "P-12" and "P-17", respectively, supra at note 29.

222 Exhibit "P-10", supra at note 9.

223 See Certification dated 28 December 2017 issued by the BOC Port of Limay and Customs Payment Receipt with Reference No. 2017 R 254 dated 30 October 2017 issued by the BOC, Exhibits "P-13" and "P-18", respectively, supra at note 30.

224 Exhibits "P-22" and "P-25", supra at note 33.

225 Supra at note 6.

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

> ...
>
> SEC. 129. *Goods Subject to Excise Taxes.* — **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and <u>to things imported</u>**. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'
>
> ...
>
> SEC. 131. *Payment of Excise Taxes on Imported Articles.* —
>
> (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse**, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> ...
>
> SEC. 148. *Manufactured Oils and Other Fuels.* - There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> ...
>
> (e) **Naphtha, regular gasoline and other similar products of distillation**, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35): *Provided, however*, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, zero (P0.00): *Provided, further*, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of

> naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section[.][226]
>
> ...

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

However, in 2023 *Petron*[227], the Supreme Court <u>categorically</u> held that <u>'alkylate' is not among the articles covered by Section 148(e) of the NIRC of 1997, as amended, as it does not fall under the category of "other similar products of distillation" subject to excise tax</u>, extensively explaining said ruling as follows:

> ...
>
> **The rule applicable in this case is the doctrine of strict construction of tax laws in favor of the taxpayer**
>
> It bears to point out that petitioner does not seek to be exempt from excise taxes on its alkylate importations. Instead, petitioner anchors its claim for tax refund on the absence of a law that imposes excise tax on alkylate. Hence, the CTA incorrectly applied the rule on strict interpretation in construing tax exemptions since petitioner is not asking to be exempt from excise tax. To be precise, petitioner prays for the refund of the excise taxes erroneously assessed and illegally collected from it on the ground that there is no law that authorizes such exaction.
>
> As correctly pointed out by petitioner, not all claims for tax refund partake the nature of a tax exemption such that the rule of strict interpretation against the taxpayer is always applicable. The Court has long settled that "[t]here is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute." In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace,

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226 Emphasis and underscoring supplied.

227 Supra at note 179; Citations omitted, italics and emphasis in the original text and supplied.

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

However, **when the claim for tax refund is premised on the taxpayer's erroneous payment of the tax or the government's exaction in the absence of a law, the rule to be applied must be the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions.**

In the case at bar, **petitioner's claim for tax refund is not founded on any tax exemption law but on the government's erroneous assessment and collection of excise taxes on its alkylate importations, without clear legal basis therefor.** Otherwise stated, **petitioner's entitlement to a tax refund is not based on the existence of a tax exemption clause in its favor but premised on its claim that alkylate is not subject to excise tax under Art. 148(e) of the 1997 NIRC, as amended.** Thus, the CTA Special Second Division erroneously applied the doctrine of strict construction against the taxpayer in this case.

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

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

> The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. **Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the**

> **taxpayer**. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import.
>
> Relatedly, Sec. 148(e) of the 1997 NIRC, provides:
>
> ...
>
> Indeed, **alkylate is not expressly mentioned in the above-quoted provision as one of the goods subject to excise tax. Neither does it tax "products whose raw materials are products of distillation." Rather, the provision plainly taxes only "[n]aphtha, regular gasoline and other similar products of distillation." Hence, to be covered by the said provision, alkylate itself, rather than its "raw materials," must be the "product of distillation." Notably, it is undisputed that alkylate is not produced by the process of distillation, but by alkylation.** This was confirmed by Dr. Ocon and echoed by no less than the BIR's own witness, Ma. Lourdes Rosula R. Ramos (Ramos), the Chief of the BIR Laboratory Section during her cross-examination. Even the CTA *En Banc* has concluded that alkylate is produced through the process of alkylation.
>
> However, in ruling that alkylate should be taxed, the CTA Special Second Division as affirmed by the CTA *En Banc* declared that alkylate falls under the "other similar products of distillation" clause of the above provision. The tax courts stressed that while alkylate is not directly produced through the process of distillation, its raw materials, olefins and isobutane, are nevertheless products of distillation and thus alkylate first undergoes the process of distillation.
>
> This argument fails to persuade.
>
> **Alkylate does not fall under the category of "other similar products of distillation" subject to excise tax**
>
> At this juncture, it should be clarified that between the two raw materials of alkylate, only isobutane is produced by distillation. In the Judicial Affidavit submitted by petitioner's witness, Simon Christopher Mulqueen (Mulqueen), Light C3-C5 Olefins are typically produced from a fluid catalytic cracker (FCC) and/or coker unit. Isobutane, on the other hand, can be a product of crude oil distillation or may be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.
>
> Thus, it is incorrect to say that both raw materials utilized to produce alkylate are products of distillation, much more to declare alkylate as a product of distillation simply because its raw materials

are produced through distillation. **To be sure, Sec. 148(e) of the 1997 NIRC, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production.**

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

1. **Alkylate is not a finished product but an intermediate or raw gasoline component used as blend stock in the production of PNS-compliant unleaded gasoline consistent with requirements of the Philippine Clean Air Act.**

2. **Alkylate is produced through alkylation, a chemical process for converting light olefins and isobutane into isoparaffin isomers of the correct boiling range and octane numbers.**

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

   ...

4. **In terms of properties and recovery process, alkylate is different from and cannot be placed in the same category as that of naphtha and regular gasoline. Alkylate and naphtha differ in boiling range, volatility and recovery process.** [Naphtha's boiling point is 190°C maximum while alkylate's final boiling point is higher than 200°C. As to volatility, naphtha's vapor pressure is at 95kPa maximum while that of alkylate is less than 36kPa. On the recovery process, naphtha can be recovered straight from the process of crude distillation or from other processes. On the contrary, alkylate cannot be recovered straight from crude distillation but only from the process of alkylation.]

5. **Similarly, alkylate and regular gasoline differ in boiling range, volatility and recovery process.** [Regular gasoline distillation boiling point at 10% recovery (T-10) is 70°C maximum as specified in the (Philippine National Standards) while alkylate has a boiling point greater than 79°C, which does not meet the 70°C maximum specification for regular gasoline. In terms of volatility, regular gasoline vapor pressure can go as high as 68kPa while alkylate's vapor pressure is only at 25-36 kPa. As to recovery process, regular gasoline is produced through the blending of gasoline components that are

derived directly from crude oil through distillation and those that are produced from special conversion/reactions processes. Alkylate, on the other hand, cannot be produced from crude oil distillation but only through alkylation process.]

6. **Alkylate cannot be used as a motor fuel without violating specific standards**. [Specifically, when alkylate is loaded into a vehicle's gas tank without any other component, it can cause poor starting and poor warm-up which can affect driveability and acceleration due to its low vapor pressure. More importantly, under Philippine laws, alkylate cannot be sold as a motor fuel suitable for operating motor vehicles because the specifications of alkylate render it unfit as a motor fuel. It does not conform to the specification of the PNS imposed by the Clean Air Act upon motor fuels since its distillation at 10% Volume (T10) exceeds the 70°C maximum limit set by the PNS.]

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

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

From the foregoing, it is clear that alkylate is a mere component which can be blended into finished gasoline to help meet the specification requirements, particularly those related to octane quality and volatility. As aptly pointed out by petitioner, alkylate is exclusively intended for use solely as a raw material or blending component in the manufacture of unleaded premium gasoline. Alkylate has no use as a product by itself as it does not possess the necessary volatility to run a vehicle's engine. This position has been maintained by the experts presented by petitioner during trial and affirmed by DOE OIC Director Obillo. Considering the intended purpose and nature of alkylate, it certainly cannot be placed under the same category as naphtha and regular gasoline.

Consequently, **the payment of excise taxes by petitioner upon its importation of alkylate is deemed illegal and erroneous in the absence of a specific provision of law that distinctly and categorically imposes tax thereon**. As discussed earlier, the rule that tax laws must be construed *strictissimi juris* against the government and in favor of the taxpayer applies herein since Sec. 148(e) of the 1997 NIRC, as amended, did not clearly, expressly, and unambiguously impose tax on alkylate (or those which are not directly produced by distillation).

Corollary to the above rule, the absence of a distinction in Sec. 148(e) of the 1997 NIRC, as amended, between *primary and secondary or direct and indirect* products of distillation should work in petitioner's favor.

Additionally, We agree with petitioner's position that the statutory construction principle of *ejusdem generis* is equally applicable in the instant case, thus removing alkylate from the ambit of "other products of distillation," even if some of its raw materials undergo the process of distillation.

Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."

Therefore, in construing the phrase "other similar products of distillation" as stated in Sec. 148(e) of the 1997 NIRC, as amended, the same must only include or be restricted to things or cases akin to, resembling, or of the same kind or class as those specifically mentioned, (*i.e.*, naphtha and regular gasoline). **In light of the Court's determination that alkylate does not belong to the same category as naphtha and regular gasoline, the same should not be subjected to excise tax.**

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

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

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

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

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

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

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

Mulqueen added that alkylate is used by many countries to blend high octane gasoline. It has no use as a product by itself since it needs to be blended with other components to form a standard gasoline.

Similarly, Dr. Ocon stated that alkylate is not suitable for use as a motor fuel in the operation of vehicles because it does not possess the essential physical properties to ensure the effective operation of vehicles under different driving conditions. Likewise, alkylate, due to its high boiling point, and consequently, low volatility, may also cause spark plug fouling and increase combustion chamber deposits. More importantly, alkylate cannot be used in vehicles as substitute for motor fuel without violating environmental and legal standards.

The foregoing testimonies of these experts are too substantial to be ignored. Indeed, the CTA erred in giving more weight to the testimony of Ramos over the combined testimonies of Dr. Ocon, Mulqueen and Rodriguez, who are all experts in the field of fuel and petroleum, and whose experience cannot be ignored. Not to mention, both Mulqueen and Dr. Ocon are impartial witnesses as they are not in any way connected with petitioner.

On this score, it is settled that the Court is not bound by the administrative interpretations or rulings of executive officers. As We have consistently ruled, interpretations placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.

For this Court to subject alkylate to excise tax, the authority should be reasonably founded on the language of the statute. That language is wanting in this case. 'In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.' Here, We find that the CIR's interpretation as to the nature and taxability of alkylate is patently erroneous for lack of both textual and non-textual support.

As previously pointed out, **alkylate is not among the excisable articles enumerated in Sec. 148(e) of the 1997** NIRC, **as amended. Neither can it be categorized as "other similar products of distillation" precisely because it is *not a direct product of distillation*.** Given this, the CTA's reliance on the CIR's administrative interpretation on the matter is utterly misplaced. To reiterate, administrative interpretations cannot go beyond or be inconsistent with the terms and provisions of the law it seeks to interpret or implement.

> All told, the Court finds that the CTA *En Banc* erred in denying petitioner's claim for tax refund or credit. To be clear, **alkylate does not fall under the category of "other similar products of distillation" as contemplated in Sec. 148(e) of the 1997 NIRC, as amended.**
>
> ...

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

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

> ...
>
> 26. Q: Is alkylate a product of crude oil distillation?
>
> A: No.
>
> 27. Q: Why do you say that alkylate is not a product of crude oil distillation?
>
> A: As I mentioned earlier, there are only seven (7) general categories of crude oil distillates or products of distillation. Alkylate does not fall under any of these seven categories and is therefore not a crude oil distillate. **Crude oil distillation would never produce alkylate.**
>
> 28. Q: Why do you say that crude oil distillation would never produce alkylate?
>
> A: **The alkylate substance or the alkylate molecule is not found in crude oil at all. Unlike gas oils (vacuum gas oil slop, heavy and light vacuum gas oils), diesel, kerosene, naphtha, and LPG, alkylate is simply not a constituent substance of crude oil. Therefore, alkylate could not possibly be separated from crude oil through distillation, or otherwise. No matter how much heat is applied to crude oil**

through distillation, alkylate would never be produced. To repeat, distillation is merely a process to separate matter - it cannot create a new molecule. Thus, alkylate could never be a crude oil distillate.

29. Q: How is alkylate produced?

A: **Alkylate is produced through a chemical process called alkylation.** In alkylation, isobutane and olefin hydrocarbons (e.g. substances called propylene and butylene) are combined with the aid of a catalyst (e.g. sulfuric acid or hydrofluoric acid) to produce alkylate. The alkylation process, as a chemical process, alters the molecular structure of isobutane and the olefin hydrocarbons by combining them. The resulting substance is called alkylate.

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

A: **Alkylation is a chemical process, while distillation is a physical process**, as I mentioned earlier.

Distillation does not alter the molecular structure of a substance, but alkylation does.

While distillation involves the separation of matter, alkylation combines matter through an acid catalyst.

Finally, unlike crude oil distillation, crude oil is not involved, as a raw material or otherwise, in the alkylation process.

31. Q: How would you compare alkylate to isobutane or other raw materials of alkylate?

A: Alkylate is a unique substance in that it has a molecular structure totally distinct and different from isobutane and other raw materials used to produce alkylate.

32. Q: What would be needed to produce alkylate?

A: **To produce alkylate, one would need a new plant or special equipment.**

33. Q: Does Petron have the capacity to produce alkylate?

A: No.

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

A: Among other reasons, **alkylate is produced through a chemical process called alkylation, whereas a crude oil distillate, like naphtha, is a product of a physical process called crude oil distillation.**

Alkylate is not a constituent or component substance of crude oil, whereas crude oil distillates (like naphtha) are necessarily constituent substances of crude oil (which is why they can be separated from crude oil through crude oil distillation in the first place).

As I discussed earlier, **no amount of crude oil distillation will ever produce alkylate.** In the same vein, **no amount of alkylation will ever produce crude oil distillates.**[228]

...

Dr. Ocon similarly testified that alkylate is produced through alkylation—a chemical process that combines olefins and isobutane using an acidic catalyst, differing from distillation which physically separates substances without altering their chemical properties; thus, making alkylate unsuitable for use as 'unleaded premium gasoline' due to its lack of essential properties for motor fuel, *viz*:

...

42. Q: What is alkylate?

A: Alkylate is a chemically formed mixture of iso-paraffins. Alkylate is used as blending component for finished gasoline because of its high-octane rating.

...

46. Q: How is alkylate produced?

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

47. Q: What is alkylation?

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

[228] See Judicial Affidavit of Engr. Jurrel D. Pumatong dated 04 September 2020, Exhibit "P-57", supra at note 131; Emphasis supplied.

48. Q: How does alkylation differ from distillation?

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

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

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

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

...

55. Q: Is alkylate a product of distillation?

A: No.

56. Q: Why do you say so?

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

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

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

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

57. Q: What is the use of alkylate?

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

...

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

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

62. Q: Why not?

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

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

Alkylate also lacks the right blend between light and heavy components with different volatilities (unlike regular and premium gasoline, for example). Because it is composed mostly of iso-paraffin with a high boiling temperature, alkylates do not have the smooth distillation curve of regular and premium gasoline for proper vehicle operation.[229]

...

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

---

[229] See Judicial Affidavit of Dr. Joey D. Ocon dated 04 September 2020, Exhibit "P-56", supra at note 135; Emphasis supplied.

...

27. Q: What is alkylate?

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

28. Q: What is the purpose of alkylate?

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

29. Q: How is alkylate produced?

A: **Alkylate can be produced only through alkylation. Alkylation is a chemical process that involves combining light olefins (C_3 to C_5 molecules) with isobutane in the presence of a strong acid catalyst (which could either be a sulfuric acid or hydrofluoric acid).**

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

...

39. Q: How is distillation different from alkylation?

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

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

...

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

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

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

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

48. Q: How is naphtha produced?

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

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

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

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

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

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

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

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

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

A: No.

52. Q: Why not?

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

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

A: No.

54. Q: Why not?

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

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

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

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

In summary, **alkylate cannot properly fuel a motor vehicle**. Regular gasoline blends are carefully prepared to fuel motor vehicles and operate across all likely driving conditions.[230]

...

Clearly from the Supreme Court's ruling in *2023 Petron* and the foregoing testimonies of expert witnesses, alkylate is not among the articles covered by Section 148(e) of the NIRC of 1997, as amended, as it does not fall under the category of "other similar products of distillation" subject to excise tax. Moreover, Section 148(e) of the NIRC of 1997, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production. Hence, petitioner's excise tax payments upon its importation of alkylate is deemed illegal and erroneous.

This Court shall now proceed to rule on whether the claims for refund of, or issuance of a TCC, in the aggregate amount of ₱67,991,825.00, represents erroneous or illegal excise taxes paid by petitioner on alkylate importations in 2017.

230 See Judicial Affidavit of Simon Christopher Mulqueen dated 04 September 2020, Exhibit "P-67", supra at note 149; Emphasis supplied.

THE AMOUNT OF ₱67,991,825.00 REPRESENTS ERRONEOUS OR ILLEGAL EXCISE TAXES PAID BY PETITIONER.

To prove that the subject excise taxes pertain to importations of alkylate, petitioner proffered as evidence, among others, the following: (1) BOC SADs[231]; (2) Customs Payment Receipts (**CPRs**)[232]; (3) Certifications issued by the BOC Port of Limay[233]; and, (4) Authorities to Release Imported Goods (**ATRIGs**).[234]

An examination of the BOC SADs discloses that the following value-added tax (**VAT**), excise taxes, other fees and charges due, totaling ₱124,174,418.00, were imposed on petitioner's importations of 15,630,305 liters of alkylate:

	Calculation of Taxes, Other BOC Fees and Charges Per BOC SAD				
Exhibit No.	Imported Alkylate Volume in Liters	VAT	Excise Tax (₱4.35/liter)	Other BOC Fees and Charges	Total
"P-8"	5,561,371	₱16,608,644.00	₱24,191,963.00	₱3,765.00	₱40,804,372.00
	62,976	3,228,068.00	273,946.00	-	3,502,014.00
	5,624,347	₱19,836,712.00	₱24,465,909.00	₱3,765.00	₱44,306,386.00
"P-9"	5,088,151	₱13,549,457.00	₱22,133,456.00	₱3,765.00	₱35,686,678.00
	35,914	3,130,068.00	156,226.00	-	3,286,294.00
	5,124,065	₱16,679,525.00	₱22,289,682.00	₱3,765.00	₱38,972,972.00
"P-10"	4,881,893	₱13,906,371.00	₱21,236,234.00	₱3,765.00	₱35,146,370.00
		5,748,690.00	-	-	5,748,690.00
	4,881,893	₱19,655,061.00	₱21,236,234.00	₱3,765.00	₱40,895,060.00
Total	15,630,305	**₱56,171,298.00**	**₱67,991,825.00**	**₱11,295.00**	**₱124,174,418.00**

While there is a minimal ₱1.00 difference between the total taxes, other fees and charges due of ₱124,174,418.00, as reflected in the BOC SADs, and the total payment of ₱124,174,417.00, as shown in the CPRs,

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231 Exhibits "P-8" to "P-10", supra at notes 7-9.
232 Exhibits "P-14" to "P-18", supra at notes 26-30.
233 Exhibits "P-11" to "P-13", supra at notes 26, 28 and 30.
234 Exhibits "P-5" to "P-7", Docket (CTA Case No. 10073), Volume IV, pp. 1855-1857.

the BOC nonetheless certified that the latter figure included excise tax payments amounting to ₱67,991,825.00, broken down as follows:

Total Taxes, Other Fees & Charges Due *per* SAD	Total Amount Paid *Per* CPR			Excise Tax Payment included in the Total Payment per CPR as certified by the BOC	Exhibit No.
	Date	Amount	Exhibit No.		
₱40,804,372.00	17 April 2017	₱40,804,372.00	"P-14"		
3,502,014.00	31 May 2017	3,502,013.00	"P-15"		
₱44,306,386.00		₱44,306,385.00		₱24,465,909.00	"P-11"
₱35,686,678.00	21 July 2017	₱35,686,678.00	"P-16"		
3,286,294.00	31 August 2017	3,286,294.00	"P-17"		
₱38,972,972.00		₱38,972,972.00		22,289,682.00	"P-12"
₱35,146,370.00	30 October 2017	₱35,146,370.00	"P-18"		
5,748,690.00	29 November 2017	5,748,690.00	"P-202-9"		
₱40,895,060.00		₱40,895,060.00		21,236,234.00	"P-13"
₱124,174,418.00		**₱124,174,417.00**		**₱67,991,825.00**	

The foregoing sufficiently proves that the excise taxes paid by petitioner, totalling ₱67,991,825.00 for its importations of alkylate on 16 April 2017, 21 July 2017 and 02 November 2017, are erroneous and refundable under Sections 204(C) and 229 of the NIRC of 1997, as amended.

It is of no moment that, as ICPA Briones has admitted, approximately 4.1 million liters of the total volume of the subject alkylate importations (for which excise taxes were paid) are unaccounted for due to the lack of supporting documents proving that such volume was removed from petitioner's refinery. What is crucial is that petitioner successfully established the fact of its importations of alkylate and the corresponding payments of excise taxes, which are herein deemed illegal and erroneous.

Substantial justice dictates that the government should not keep money that does not belong to it.[235] Taking all the above circumstances together, it is evident that petitioner was able to sufficiently establish,

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

by preponderance of evidence, that it is entitled to the refund or credit of the total amount of ₱67,991,825.00, representing the erroneously or illegally paid excise taxes on importations of alkylate.

WHEREFORE, with the foregoing premises, the consolidated Petitions for Review filed by petitioner Petron Corporation on 16 April 2019, 18 July 2019, and 29 October 2019, respectively, are 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 ₱67,991,825.00, representing the erroneously paid excise taxes on its importations of alkylate covered by Single Administrative Document (SAD) Reference Nos. 6WOA1700179, 6WOA1700404 and 6WOA1700590.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

ROMAN G. DEL ROSARIO
Presiding Justice