REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION[1]

PETRON CORPORATION, Petitioner,	**CTA CASE NOS. 8914 & 8981**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Manahan,**[2] and, **Mindaro-Grulla,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 18 2018 1:05 p.m.

x--x

DECISION

CASTAÑEDA, JR., *J.*:

This is a consolidation of two (2) Petitions for Review filed by Petron Corporation to seek the refund or the issuance of tax credit certificate in the total amount of ₱219,153,851.00, allegedly representing excise taxes erroneously, wrongfully, illegally, and excessively imposed and collected by the Bureau of Internal Revenue (BIR) through the Bureau of Customs (BOC), broken down as follows:

CTA CASE NO.	PERIOD COVERED	AMOUNT OF CLAIM
8914	September 2012 to December 2012	₱ 148,546,113.00
8981	February 2013 to July 2013	70,607,738.00
TOTAL		**₱ 219,153,851.00**

---

[1] Section 1, Rule VIII of the Internal Rules of the Court of Tax Appeals: "Section 1. *Case assigned to a justice for study and report.* --- Every Division Case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division. The Justice, though transferred, shall write the report with the other members of the Division to which the case was originally submitted for decision. Their Division shall be called Special (No.) Division."

[2] Inhibited.

THE FACTS

Petitioner Petron Corporation 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, Mandaluyong City.[3] It is engaged in the business of manufacturing and marketing petroleum products.[4] Petitioner is also registered with the Bureau of Internal Revenue as evidenced by its Certificate of Registration No. OCN8RC0000057914.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 18, 2012, the Bureau of Customs issued Customs Memorandum Circular (CMC) No. 164-2012 implementing the Letter from the BIR dated June 29, 2012, which stated that "alkylate which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended".

In 2012, petitioner imported alkylate that was subjected to excise tax in the aggregate amount of ₱219,153,851.00, detailed as follows:

VESSEL NAME	ARRIVAL DATES	BILL OF LADING NO.	IEIRD NO.	EXCISE TAX PAID
M/T High Energy	July 22, 2012	ML-5918[6]	122844547[7]	₱ 55,945,089.00
M/T Golden Fortune	August 12, 2012	CTK 1985[8]	122773043[9]	14,662,649.00
M/T Sun Lilac	September 12, 2012	SLC12010-DSB01[10]	124315222[11]	35,089,705.00
M/T Polaris	October 6, 2012	POL12007-DSBT01[12]	125253615[13]	56,097,804.00

[3] Exhibits "P-79" and "P-80", CTA Case No. 8914, Docket, Vol. III, pp. 1183-1204.
[4] Q/A No. 7, Judicial Affidavit of Atty. Ma. Clarissa C. Arguelles dated May 8, 2015, CTA Case No. 8914, Docket, Vol. I p. 258.
[5] Exhibit "P-80", CTA Case No. 8914, Docket, Vol. III, p. 1204.
[6] Exhibit "P-4", CTA Case No. 8914, Docket, Vol. III, p. 1086.
[7] Exhibit "P-9", CTA Case No. 8914, Docket, Vol. III, p. 1096.
[8] Exhibit "P-13", CTA Case No. 8914, Docket, Vol. III, p. 1100.
[9] Exhibit "P-18", CTA Case No. 8914, Docket, Vol. III, p. 1110.
[10] Exhibit "P-22", CTA Case No. 8914, Docket, Vol. III, p. 1114.
[11] Exhibit "P-26", CTA Case No. 8914, Docket, Vol. III, p. 1122.
[12] Exhibit "P-30", CTA Case No. 8914, Docket, Vol. III, p. 1126.
[13] Exhibit "P-37", CTA Case No. 8914, Docket, Vol. III, p. 1137.

M/T No. 3 Heung – A Pioneer	November 6, 2012	HASL0941TACA251[14]	125644382[15]	57,358,604.00
TOTAL				**₱219,153,851.00**

Petitioner filed two administrative claims for refund of excise tax with the BIR allegedly representing excise taxes erroneously, wrongfully, illegally, and excessively imposed and collected by respondent through the Bureau of Customs per Customs Memorandum Circular No. 164-2012. The first administrative claim was filed on October 10, 2014 for the amount of ₱148,546,113.00, while the second administrative claim was filed on January 23, 2015 for the amount of ₱70,607,738.00, or a total of ₱219,153,851.00, summarized as follows:

VESSEL NAME	**DATE OF PAYMENT**	**EXCISE TAX PAID**	**DATE OF FILING THE ADMINISTRATIVE CLAIM**
M/T Sun Lilac	October 24, 2012[16]	₱ 35,089,705.00	October 10, 2014[17] (First)
M/T Polaris	November 9, 2012[18]	56,097,804.00	
M/T No. 3 Heung – A Pioneer	December 5, 2012[19]	57,358,604.00	
M/T High Energy	February 8, 2013[20]	55,945,089.00	January 23, 2015[21] (Second)
M/T Golden Fortune	July 23, 2013[22]	14,662,649.00	
TOTAL		₱219,153,851.00	

Petitioner filed before this Court the Petition for Review for the first administrative claim on October 23, 2014, docketed as CTA Case No. 8914; while the Petition for Review for the second administrative claim was filed on February 6, 2015, docketed as CTA Case No. 8981.[23]

On January 21, 2015, respondent filed his Answer[24] dated January 14, 2015 for CTA Case No. 8914, interposing the following special and affirmative defenses:

[14] Exhibit "P-39", CTA Case No. 8914, Docket, Vol. III, p. 1139.
[15] Exhibit "P-45", CTA Case No. 8914, Docket, Vol. III, p. 1149.
[16] Exhibit "P-28", CTA Case No. 8914, Docket, Vol. III, p. 1124.
[17] Exhibits "P-83" and "P-84", CTA Case No. 8914, Docket, Vol. III, pp. 1207 and 1208-1233.
[18] Exhibit "P-35", CTA Case No. 8914, Docket, Vol. III, p. 1135.
[19] Exhibit "P-44", CTA Case No. 8914, Docket, Vol. III, p. 1148.
[20] Exhibit "P-11", CTA Case No. 8914, Docket, Vol. III, p. 1098.
[21] Exhibits "P-85" and "P-86", CTA Case No. 8914, Docket, Vol. III, pp. 1234 and 1235-1253.
[22] Exhibit "P-20", CTA Case No. 8914, Docket, Vol. III, p. 1112.
[23] CTA Case No. 8914, Docket, Vol. I, p. 6; CTA Case No. 8981, Docket, p. 6.
[24] CTA Case No. 8914, Docket, Vol. I, pp. 139-146.

"**<u>Tax refunds, being in the form of an exemption, is strictly construed against the claimant</u>**

5. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered.

6. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

7. Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

8. Further, taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

9. In the case at hand, petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not ipso facto granted because respondent still has to investigate and ascertain the validity of the claim.

10. Moreover, it is incumbent upon petitioner to establish its right to refund and that it is indubitably entitled thereto; and failure to sustain such burden is fatal for this claim of refund.

11. Hence, there must be proof of compliance with the rules on tax recovery under Section 204(c) and Section 229 of the National Internal Revenue Code (NIRC).

<u>Alkylate is subject to excise tax under Section 148 of the NIRC as amended</u>

12. Petitioner contends that since alkylate is not among those enumerated under Section 148(e), it is not subject to excise tax.

13. Alkylate qualifies as a product similar to naphtha used as gasoline blending component. Naphtha is produced by (1) *ge*

fractional distillation of crude oil or (2) by 'other refinery process' and recovered from refinery streams by fractional distillation. Similarly, Alkylate produced by 'other refinery process' (which is Alkylation) is recovered also by fractional distillation. Alkylate is a very important blending component of today's reformulated motor gasoline because of its relatively low vapour pressure, high octane number, and near zero content of sulphur, aromatics and olefins.

14. In relation thereto. Section 148(e) of the National Internal Revenue Code of 1997, as amended, imposes an excise tax of four pesos and thirty five centavos (P4.35) for every liter of volume capacity of naphtha, regular gasoline and other similar products of distillation, to wit:

> **CHAPTER V - EXCISE TAX ON PETROLEUM PRODUCTS**
>
> **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:
>
> XXX
>
> (e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and eighty centavos (P4.80): 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;

15. Clearly, alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under section 148 (e) of the NIRC of 1997, as amended. ge

16. In a Memorandum dated June 19, 2012, issued by Ma. Lourdes Rosula R. Ramos, OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, it is stated, alkylate is a term used in the Petroleum industry to designate a branched-chain paraffin derived from an isoparaffin and an olefin, e.g., isobutene reacts with ethylene (with catalyst) to form 2,2-dimethylbutane (neohexane). The product is used as a high-octane blending component of aviation and civilian gasolines. It is branched paraffin compound formed by the catalytic reaction of isobutene with light olefins, such as ethylene, propylene, butylenes and amylenes. Alkylate is a desirable gasoline blending component due to its high octane and relatively low volatility properties. Alkylate is a very important blending component of todays reformulated motor gasoline because of its relatively low vapour pressure, high octane number, and near zero content of sulphur, aromatics and olefins. Alkylate's exceptional antiknock, low volatility and clean burning properties make it a premium gasoline blending stock.

17. Alkylate is formed by a chemical process in refinery, called Alkylation. It is a catalytic reaction that combines isobutene with light or low molecular weight olefins (double-bonded compounds of 3 to 5 carbon atoms), primarily propylene (C_3), butylenes (C_4), and amylenes or pentenes (C_5), with either sulphuric acid or hydrofluoric acid as catalyst.

18. The olefin feed, which typically comes from the catalytic cracking process, is usually not pure isobutylene (C_4) and may contain propylene, other isomers of butane, and isomers of pentene. Isobutylene reacted with isobutene in a presence of a strong acid yields higher molecular weight, higher boiling isoparaffins, mainly trimethylpentanes.

19. The various component of crude oil that differ in boiling temperature can be separated by means of fractional distillation. Some of the collected liquid fractions pass to condensers to cool them and then sent to storage tanks. Many of them, however, are sent to other units for further chemical processing to make other fractions. This is because very few of the fractions or components that can come out of the distillation column are ready for market. For example, oil companies chemically process some fractions to increase the yields of gasoline. One of the chemical processes employed by refineries to increase gasoline yield is Alkylation for which the product called Alkylate of gasoline boiling range, is used as gasoline blending component. The importance of Alkylate stems from the need to provide a high-octane, low density and low volatility gasoline blending component without sulphur and nitrogen.

20. The second definition of petroleum products includes gasoline blending components that cover both avgas and mogas blending components. The said definition categorized gasoline blending component as naphthas, for which alkylate is an example. Naphtha is a general term applied to refined, partly refined, or

unrefined petroleum products and is used in gasoline blending, refers to a petroleum fraction with volatility similar to gasoline. Naphtha is produced by fractional distillation of crude oil or by other refinery processes and recovered from refinery streams also by fractionation. Naphtha is one of the petroleum products covered by excise tax at a rate of P4.35 per liter under Section 148 (e) of the Tax Code of 1997, as amended. The said section does not distinguish the type of distillation process used and whether the Naphtha produced/recovered is refined, partly refined or unrefined. The use of naphtha covered by the same section is also immaterial except that which is used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fire-combined-cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, taxed at P0.00.

21. Petitioner further alleged that alkylate not being a product of distillation, the same is not subject to excise tax, lacks factual and legal bases.

22. Section 148 (e) of the NIRC does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. Gasoline is separated from crude oil through the process of distillation. After which it must first undergo other processes in order to meet the current PNS requirement for regular and premium gasoline. Just like alkylate it must undergo other processes to conform with PNS requirement.

23. As alleged by petitioner, alkylate is a product of alkylation. It is a process that occurs and is completed in refineries abroad. When petitioner imports the same to the Philippines it is already a finished product, as it already had undergone the process of alkylation.

24. In relation to the aforementioned provisions of law, petitioner must also comply with the requirements set forth under Revenue Memorandum Order (RMO) No. 19-2006, RMO No. 28-2006, and Revenue Memorandum Circular (RMC) No. 59-2005.

25. Moreover, the amount of One Hundred Forty Eight Million, Five Hundred Forty Six Thousand, One Hundred and Thirteen (PHP148,546,113.00) being claimed by petitioner arising from alleged excise taxes paid by petitioner on importation of alkylate covering the period July to December 2012 is not properly documented.

Final Discussions

26. It has been uniformly and consistently ruled by the Honorable Supreme Court that the taxpayer bears the burden of establishing the factual and legal basis of its claim for refund. In the case at hand, petitioner failed to present clear and convincing evidence to merit a tax refund.

27. The case of the Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation emphatically pointed out that:

> Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. **Upon the person claiming an exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed not be allowed solely on the ground of equity.** These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are lifeblood of the government. (**Emphasis Supplied**)."

Meanwhile, for CTA Case No. 8981, respondent alleged the following special and affirmative defenses in his Answer[25] filed on February 27, 2015:

"Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

The amount of P70,607,738.00 representing alleged excise taxes paid by petitioner on importation of alkylate for the period February to July 2013 was not properly documented.

In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

In accordance with Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, the Commissioner of Internal Revenue has two powers; quasi-legislative and quasi-judicial. The first is the power to interpret tax laws and second, to decide tax cases. Section 4 of the NIRC of 1997 provides:

> **Sec. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.**
>
> -The power to interpret the provision of this code and other tax laws shall under the exclusive and original

[25] CTA Case No. 8981, Docket, pp. 108-116.

> jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> -The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

When the Commissioner of Internal Revenue interprets provisions of the NIRC and other laws, she is doing so in the exercise of her quasi legislative function. Quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of power. Thus, when the Commissioner issues rulings, circulars or memoranda, she is performing a quasi-legislative function. Interpretation of tax laws rendered by the Commissioner is subject to review by the Secretary of Finance. Thus, the first paragraph of Section 4 of the NIRC deals with quasi-legislative functions.

On the other hand, the second paragraph of Section 4 of the NIRC enumerates the quasi-judicial functions of the Commissioner. Quasi-judicial power has been defined as the power of the administrative authorities to make determinations of facts in the performance of their official duties and to apply the law as they construe it to the facts so found. Thus, the second paragraph of Section 4 of the NIRC deals with the quasi-judicial function of the Commissioner. Verily, it is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

The core issue of the Petition for Review filed by petitioner is the interpretation of Section 148 (e) of the NIRC as embodied in **Customs Memorandum Circular (CMC) No. 164-2012** which implemented a **Letter** sent by the Commissioner of Internal Revenue to the Commissioner of Customs. Quoted hereunder is the body of CMC No. 164-2012:

> Please find attached the letter dated June 29, 2012 from the Bureau of Internal Revenue Commissioner Kim S. Jacinto-Henares stating that 'alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

The Letter sent by the Commissioner Internal Revenue is her interpretation of and position regarding Section 148 (e) of the NIRC in relation to a substance called alkylate. It states a rule that alkylate is subject to excise tax. Further CMC No. 164-2012 is a circular issued by the Commissioner of Customs to implement Section 148(e) of the

NIRC of 1997, as amended. Circulars refer to issuances prescribing policies, rules and regulations, and procedures promulgated pursuant to law, applicable to individuals and organizations outside the Government and designed to supplement provisions of the law or to provide means for carrying them out, including information relating thereto. In view of the foregoing CMC No. 164-2012 was likewise issued in the exercise of the quasi-legislative function of the Commissioner of Customs.

Indeed, the BIR letter issued by respondent Commissioner of Internal Revenue is her interpretation of Section 148 (e) of the NIRC which in turn, is the basis for respondent Commissioner of Customs in issuing **CMC No. 164-2012**.

As contained in the January 18, 2012 report of the OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, in terms of boiling range, volatility and recovery process, Alkylate qualifies as a product similar to naphtha used as gasoline blending component. Naphtha is produced by (1) fractional distillation of crude oil or (2) by 'other refinery process' and recovered from refinery streams by fractional distillation. Similarly, Alkylate produced by 'other refinery process' (which is Alkylation) is recovered also by fractional distillation. Alkylate is a very important blending component of today's reformulated motor gasoline because of its relatively low vapour pressure, high octane number, and near zero content of sulphur, aromatics and olefins.

In relation thereto, Section 148(e) of the National Internal Revenue Code of 1997, as amended, imposes an excise tax of four pesos and thirty five centavos (P4.35) for every liter of volume capacity of naphtha, regular gasoline and other similar products of distillation, to wit:

xxx xxx xxx

Clearly, alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under section 148 (e) of the NIRC of 1997, as amended.

In a Memorandum dated June 19, 2012, issued by Ma. Lourdes Rosula R. Ramos, OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, it is stated, alkylate is a term used in the Petroleum industry to designate a branched-chain paraffin derived from an isoparaffin and an olefin, e.g., isobutene reacts with ethylene (with catalyst) to form 2,2 dimethylbutane (neohexane). The product is used as a high-octane blending component of aviation and civilian gasolines. It is branched paraffin compound formed by the catalytic reaction of isobutene with light olefins, such as ethylene, propylene, butylenes and amylenes. Alkylate is a desirable gasoline blending component due to its high octane and relatively low volatility properties. Alkylate is a very important blending component of todays reformulated motor gasoline because of its relatively low vapour pressure, high octane number and near zero content of sulphur, aromatics and olefins. Alkylate's exceptional antiknock, low volatility and clean burning properties make it a premium gasoline blending stock.

Alkylate is formed by a chemical process in refinery, called Alkylation. It is a catalytic reaction that combines isobutene with light or low molecular weight olefins (double-bonded compounds of 3 to 5 carbon atoms), primarily propylene (C_3), butylenes (C_4), and amylenes or pentenes (C_5), with either sulphuric acid or hydrofluoric acid as catalyst.

The olefin feed, which typically comes from the catalytic cracking process, is usually not pure isobutylene (C_4) and may contain propylene, other isomers of butane, and isomers of pentene. Isobutylene reacted with isobutene in a presence of a strong acid yields higher molecular weight, higher boiling isoparaffins, mainly trimethylpentanes.

The various component of crude oil that differ in boiling temperature can be separated by means of fractional distillation. Some of the collected liquid fractions pass to condensers to cool them and then sent to storage tanks. Many of them, however, are sent to other units for further chemical processing to make other fractions. This is because very few of the fractions or components that can come out of the distillation column are ready for market. For example, oil companies chemically process some fractions to increase the yields of gasoline. One of the chemical processes employed by refineries to increase gasoline yield is Alkylation for which the product called Alkylate of gasoline boiling range, is used as gasoline blending component. The importance of Alkylate stems from the need to provide a high-octane, low density and low volatility gasoline blending component without sulphur and nitrogen.

The second definition of petroleum products includes gasoline blending components that cover both avgas and mogas blending components. The said definition categorized gasoline blending component as naphthas, for which alkylate is an example. Naphtha is a general term applied to refined, partly refined, or unrefined petroleum products and is used in gasoline blending, refers to a petroleum fraction with volatility similar to gasoline. Naphtha is produced by fractional distillation of crude oil or by other refinery processes and recovered from refinery streams also by fractionation. Naphtha is one of the petroleum products covered by excise tax at a rate of P4.35 per liter under Section 148 (e) of the Tax Code of 1997, as amended. The said section does not distinguish the type of distillation process used and whether the Naphtha produced/recovered is refined, partly refined or unrefined. The use of naphtha covered by the same section is also immaterial except that which is used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fire-combined-cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, taxed at P0.00.

Petitioner further alleged that alkylate not being a **Primary Product** of distillation, the same is not subject to excise tax, lacks factual and legal bases.

Section 148 (e) of the NIRC does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. Gasoline is separated from crude oil through the process of distillation. After which it must first undergo other processes in order to meet the current PNS requirement for regular and premium gasoline. Just like alkylate it must undergo other processes to conform with PNS requirement.

As alleged by petitioner, alkylate is a product of alkylation. It is a process that occurs and is completed in refineries abroad. When petitioner imports the same to the Philippines it is already a finished product, as it already had undergone the process of alkylation.

Petitioner alleges that the excise taxes cannot attach to items not for sale or consumption. It further alleges that since alkylate is a mere blending component and not for sale by itself, therefore it cannot be subject to excise taxes. Petitioner is wrong. Excise taxes apply to goods manufactured or produced in the Philippines or to imported goods for domestic sale or consumption or for any other disposition.

Section 129 of the NIRC gives a general view on what product shall be subjected to excise taxes. Section 129 states:

> **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 to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

Excise taxes are made to apply to goods manufactured or produced in the Philippines provided the such excisable product are removed from their place of production or from customs custody in the case of imported goods for domestic sale or consumption or for any other disposition.

The above stated provision provides qualifications regarding when excise taxes shall be levied. For imported goods, it must be either for sale, consumption or for any other disposition.

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people (***Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690***). Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames.

The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998)**.

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R. SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

A Notice of Pre-Trial Conference[26] was issued by the Court, setting the case for pre-trial conference on March 19, 2015.

On March 5, 2015, petitioner filed a Motion for Consolidation with Motion to Hold in Abeyance the Pre-Trial Conference[27], seeking to have CTA Case Nos. 8914 and 8981 consolidated, considering that the cases involve common questions of law and facts.

Petitioner filed a Motion for Postponement[28] on March 13, 2015, seeking to postpone the pre-trial on March 19, 2015 until the Motion for Consolidation has been resolved by the Court. The motion was granted by the Court in the Resolution[29] dated March 19, 2015.

---

[26] CTA Case No. 8914, Docket, Vol. I, p. 160.
[27] CTA Case No. 8914, Docket, Vol. I, pp. 161-165.
[28] CTA Case No. 8914, Docket, Vol. I, pp. 172-174.
[29] CTA Case No. 8914, Docket, Vol. I, pp. 198-199.

On March 31, 2015, the Court issued a Resolution[30] granting the Motion for Consolidation filed by petitioner, consolidating CTA Case No. 8981 with CTA Case No. 8914, the case bearing the lower docket number. In the same Resolution, the Court set the pre-trial of the consolidated cases on April 16, 2015.

On April 8, 2015, petitioner filed an Urgent Motion for Postponement and Deferment of Filing of Consolidated Pre-Trial Brief and Judicial Affidavits[31], requesting the resetting of the pre-trial. The Court granted the motion, resetting the pre-trial to May 14, 2015.[32]

Accordingly, respondent's Consolidated Pre-Trial Brief[33] was filed on May 8, 2015; while petitioner's Consolidated Pre-Trial Brief[34] was filed on May 11, 2015.

The pre-trial conference ensued.[35] The parties submitted their Joint Stipulation of Facts and Issue[36] on July 1, 2015. Thereafter, the Court issued a Pre-Trial Order[37] on July 10, 2015 and the pre-trial was deemed terminated.

However, on July 30, 2015, petitioner filed a Motion to Amend Pre-Trial Order and to Set Additional Hearing Date[38], to include the claim for refund or issuance of tax credit certificate covered by CTA Case No. 8981; to set an additional hearing date for the presentation of its witnesses; and to reset the hearing date for the presentation of its witness Mr. Ian Ferdinand S. Bravo. The motion was granted by the Court via Resolution[39] issued on August 5, 2015.

During the trial, upon petitioner's motion[40], Ms. Milagros F. Padernal was commissioned as Independent Certified Public Accountant (ICPA) on September 23, 2015 to render a report on the

---

[30] CTA Case No. 8914, Docket, Vol. I, pp. 203-204.
[31] CTA Case No. 8914, Docket, Vol. I, pp. 205-208.
[32] Order dated April 13, 2015, CTA Case No. 8914, Docket, Vol. I, p. 212.
[33] CTA Case No. 8914, Docket, Vol. I, pp. 213-220.
[34] CTA Case No. 8914, Docket, Vol. II, pp. 485-501.
[35] Minutes of the Hearing dated June 11, 2015, CTA Case No. 8914, Docket, Vol. II, p. 910.
[36] CTA Case No. 8914, Docket, Vol. II, pp. 916-928.
[37] CTA Case No. 8914, Docket, Vol. II, pp. 930-935.
[38] CTA Case No. 8914, Docket, Vol. II, pp. 936-941.
[39] CTA Case No. 8914, Docket, Vol. II, pp. 944-945.
[40] CTA Case No. 8914, Docket, Vol. III, pp. 947-951.

voluminous documents and long accounts of petitioner.[41] On November 9, 2015, the ICPA issued a report.[42]

Petitioner presented the testimonies of the following witnesses by way of Judicial Affidavits in lieu of direct examination: Jonathan F. Del Rosario[43] dated June 1, 2015; Ian Ferdinand S. Bravo[44] dated May 8, 2015; Cecilia N. Sengia[45] dated June 2, 2015; Monita A. Lopez[46] dated May 8, 2015; Michael F. Manzano[47] dated May 8, 2015; Ma. Clarissa C. Arguelles[48] dated May 8, 2015; Bayani I. Rodriguez, Jr.[49] dated May 8, 2015; Simon Christopher Mulqueen[50] dated May 8, 2015; and Ma. Milagros F. Padernal[51] dated November 12, 2015.

Petitioner filed its Formal Offer of Exhibits[52] on December 1, 2015.

In the Resolutions dated April 27, 2016[53] and February 17, 2017[54], the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", ""P-48 to P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", "P-84-A", "P-85", "P-86", "P-86-A", "P-87", "P-88", "P-89", "P-90", "P-91", "P-92", "P-93", "P-94", "P-95", "P-96 to P-98", "P-99", "P-100", "P-101", "P-102", "P-103", "P-104", "P-105", "P-106" to "P-119", "P-120", "P-121", "P-122", "P-123", "P-123-1", "P-123-1-1" to "P-123-1-82", inclusive of sub-markings, "P-124", "P-124-6" to "P-124-10", "P-125", "P-126", "P-127", "P-127-1 to P-127-11", "P-128", "P-128-1", "P-128-1-1" to "P-128-1-62", "P-129", "P-129-1", "P-129-1-1" to P-129-1-80", "P-129-1-81", "P-129-1-82" to"P-129-1-577", "P-130", "P-130-1", "P-130-1-1" to "P-130-1-411", "P-130-1-413"" to "P-130-1-1074", "P-131", "P-131-1", "P-131-1-1" to "P-131-1-231", "P-132", "P-132-1", "P-132-1-1" to "P-132-1-694", "P- Je

41 Minutes of the Hearing, September 23, 2015, CTA Case No. 8914, Docket, Vol. III, p. 966.
42 ICPA Report dated November 9, 2016; Exhibit "P-165".
43 CTA Case No. 8914, Docket, Vol. II, pp. 855-861.
44 CTA Case No. 8914, Docket, Vol. I, pp. 239-247.
45 CTA Case No. 8914, Docket, Vol. II, pp. 890-898.
46 CTA Case No. 8914, Docket, Vol. I, pp. 217-225.
47 CTA Case No. 8914, Docket, Vol. I, pp. 359-381.
48 CTA Case No. 8914, Docket, Vol. I, pp. 253-266.
49 CTA Case No. 8914, Docket, Vol. II, pp. 810-825.
50 CTA Case No. 8914, Docket, Vol. II, pp. 872-884.
51 CTA Case No. 8914, Docket, Vol. III, pp. 997-1006.
52 CTA Case No. 8914, Docket, Vol. III, pp. 1008-1082.
53 CTA Case No. 8914, Docket, Vol. III, pp. 1325-1327.
54 CTA Case No. 8914, Docket, Vol. III, pp. 1395-1397.

133", "P-133-1", "P-133-1-1" to "P-133-1-238", "P-134", "P-134-1", "P-134-2", "P-134-3", "P-134-4", "P-134-5", "P-134-6", "P-134-7", "P-134-8", "P-134-9", "P-134-10", "P-134-11", "P-134-12", "P-134a", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-140-1", "P-140-1-1" to "P-140-1-391", "P-141", "P-141-1", "P-141-1", "P-141-1-1" to "P-141-1-16211", "P-142", "P-142-1", "P-142-1-1" to "P-142-1-7387", "P-148", "P-148-1" to "P-148-587", "P-149", "P-149-1" to "P-149-10", "P-149-11" to "P-149-25", "P-150", "P-150-1" to "P-150-665", "P-151", "P-152", "P-153", "P-153-1", "P-153-1-1" to "P-153-1-382", "P-153-2", "P-153-3", "P-153-3-1" to "P-153-3-7174", "P-153-4", "P-153-4-1" to "P-153-4-9939", "P-153-5", P-153-5-1" to "P-153-5-90", "P-153-6", "P-153-6-1" to "P-153-6-58", "P-154", "P-155", "P-156", "P-156-1" to "P-156-2112", "P-157", "P-157-1" to "P-157-82", "P-158", "P-158-1" to "P-158-379", "P-159", "P-160", "P-161", "P-162", "P-163", "P-164", and "P-165" as petitioner's evidence. However, Exhibits "P-130-1-412" and "P-158-380" to "P-158-391" were denied admission.

On the other hand, respondent presented Revenue Officer Ma. Lourdes Rosula R. Ramos as his witness, who testified by way of Judicial Affidavit.[55]

During the hearing held on April 26, 2017,[56] petitioner manifested that it will be presenting rebuttal evidence, which the Court granted.[57]

Respondent filed his Formal Offer of Evidence[58] on May 8, 2017, consisting of Exhibits "R-1", "R-2", and "R-2-a". Subsequently, the Court admitted all of the enumerated exhibits as respondent's evidence through a Resolution[59] dated July 6, 2017.

During the hearings[60] held on August 7, 2017 and October 23, 2017, petitioner presented as rebuttal evidence the testimonies of Dr. Joey D. Ocon[61] dated August 2, 2017 and Atty. Ma. Clarissa C. Arguelles[62] dated October 20, 2017. Jr

[55] CTA Case No. 8914, Docket, Vol. III, pp. 1351-1359.
[56] Minutes of the Hearing, April 26, 2017, CTA Case No. 8914, Docket, Vol. III, p. 1404.
[57] TSN, April 26, 2017, p. 36.
[58] CTA Case No. 8914, Docket, Vol. III, pp. 1406-1408.
[59] CTA Case No. 8914, Docket, Vol. IV, pp. 1436-1437.
[60] Minutes of the Hearing, August 7, 2017 and October 23, 2017, CTA Case No. 8914, Docket, Vol. IV, pp. 1492 and 1523.
[61] CTA Case No. 8914, Docket, Vol. IV, pp. 1447-1458.
[62] CTA Case No. 8914, Docket, Vol. IV, pp. 1508-1514.

The Court declared the consolidated case submitted for decision on January 8, 2018,[63] considering petitioner's Memorandum[64] filed on November 22, 2017 and the Memorandum (For the Respondent)[65] filed on December 21, 2017.

THE ISSUES

The parties submitted the following issues[66] for the Court's resolution:

1. Whether or not petitioner is liable for excise tax on the importation of alkylate.

2. Whether or not petitioner is entitled to a tax refund or issuance of tax credit certificate to recover the aggregate amount of ₱219,153,851.00, representing:

   (a) the excise taxes paid for the period October 2012 to December 2012 in the amount of One Hundred Forty-Eight Million Five Hundred Forty-Six Thousand One Hundred Thirteen Pesos (₱148,546,113.00) on imported alkylate; and,

   (b) the excise taxes paid for the period February 2013 to July 2013 in the amount of Seventy Million Six Hundred Seven Thousand Seven Hundred Thirty-Eight Pesos (₱70,607,738.00) on imported alkylate.

Petitioner's Arguments[67]

Petitioner argues that alkylate is not subject to excise tax on the following grounds:

1. it is not among the petroleum products enumerated under Section 148 of the NIRC of 1997 as subject to excise tax since it cannot be considered as a motor fuel as it is not suitable

[63] Resolution dated January 8, 2017, CTA Case No. 8914, Docket, Vol. IV, p. 1634.
[64] CTA Case No. 8914, Docket, Vol. IV, pp. 1572-1617.
[65] CTA Case No. 8914, Docket, Vol. IV, pp. 1623-1632.
[66] CTA Case No. 8914, Docket, Vol. II, p. 917.
[67] CTA Case No. 8914, Docket, Vol. IV, pp. 1587-1608.

and practicable for operating motor vehicles due to certain specifications that render it unfit as motor fuel;

2. it is not a product of distillation as contemplated under the same provision, since distillation is merely a physical process whereby the different components of crude oil are separated into groups of common hydrocarbon molecules based on their differences in boiling points, and wherein the separated components have the same molecular characteristics as the crude processed, while alkylation is a chemical process for converting light olefins and isobutane into isoparaffin isomers of the correcting boiling range and octane numbers; and,

3. it is not for domestic sale or consumption as it is exclusively and solely intended for use as a raw material or blending component in the manufacture of unleaded premium gasoline to pass the Philippine National Standards (PNS) for Motor Gasoline pursuant to the Clean Air Act.

Petitioner further contends that there was double taxation considering that aside from excise tax on the subject imported alkylate, petitioner also paid another round of excise tax upon lifting from petitioner's refinery of the finished premium gasoline which contained the blended alkylate.

Respondent's Arguments[68]

Respondent maintains that petitioner is not entitled to tax refund or issuance of tax credit certificate on the basis that the subject imported alkylate is subject to excise tax as it qualifies as a product similar to naphtha used as gasoline blending component, pursuant to Section 148(e) of the NIRC of 1997, as amended.

Respondent contends that naphtha is produced by (1) fractional distillation of crude oil or (2) by "other refinery process" and recovered from refinery streams by fractional distillation. Similarly, alkylate produced by "other refinery process" (which is alkylation) is recovered also by fractional distillation. Clearly, alkylate, which is a product of distillation similar to that of naphtha, is subject to excise tax. *ge*

---

[68] CTA Case No. 8914, Docket, Vol. IV, pp. 1625-1630.

THE COURT'S RULING

The Court shall first determine the timeliness of the filing of the present case. Pertinent to the resolution of this matter are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide for the periods when to file the administrative claim for refund with the BIR and the judicial claim with the Court of Tax Appeals for recovery of tax erroneously or illegally collected, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (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." *(Emphasis supplied)*
>
> "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. *jc*

> **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." *(Emphasis supplied)*

The above-quoted provisions provide that a claim for refund of excessively or erroneously collected taxes should be made within two (2) years from the date the taxes are paid. Both the administrative and the judicial claims must be filed within the two-year prescriptive period.[69]

The following are the significant dates relative to the subject claim for refund:

<table>
<tr><th></th><th>DATE OF PAYMENT OF EXCISE TAX</th><th>LAST DAY OF THE 2-YEAR PRESCRIPTIVE PERIOD</th><th>DATE OF FILING OF ADMINISTRATIVE CLAIM</th><th>DATE OF FILING OF JUDICIAL CLAIM</th></tr>
<tr><td rowspan="3">First Administrative Claim</td><td>October 24, 2012</td><td>October 24, 2014</td><td rowspan="3">October 10, 2014</td><td rowspan="3">October 23, 2014</td></tr>
<tr><td>November 9, 2012</td><td>November 9, 2014</td></tr>
<tr><td>December 5, 2012</td><td>December 5, 2014</td></tr>
<tr><td rowspan="2">Second Administrative Claim</td><td>February 8, 2013</td><td>February 8, 2015</td><td rowspan="2">January 23, 2015</td><td rowspan="2">February 6, 2015</td></tr>
<tr><td>July 23, 2013</td><td>July 23, 2015</td></tr>
</table>

Given the above dates, the earliest last day to file the first administrative and judicial claims for refund for the period covering October 2012 to December 2012 is October 24, 2014; while the earliest last day to file the second administrative and judicial claims for refund for February and July 2013 is February 8, 2015. Since the first administrative claim was filed on October 10, 2014 and the judicial claim was filed on October 23, 2014, and the second administrative claim was filed on January 23, 2015 and the judicial claim was filed on February 6, 2015, both the first and the second claims for refund were timely filed within the two-year prescriptive period.

---

[69] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. Nos. 193383-84, January 14, 2015 *and Commissioner of Internal Revenue vs. CBK Power Company Limited,* G.R. Nos. 193407-08, January 14, 2015.

The Court will now determine whether petitioner is entitled to the refund of excise taxes. Relevant to the resolution of this issue is Section 129 of the NIRC of 1997, as amended, which states:

> "SEC. 129. *Goods Subject to Excise Taxes.* – 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. 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.'"

From the above provision, excise tax is imposed on goods manufactured, produced or imported in the Philippines for domestic sales or consumption or for any other disposition.

On imposing excise tax on manufactured oils and other fuels, Section 148(e) of the NIRC of 1997, as amended, provides:

> "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:
>
> xxx xxx xxx
>
> (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;"

Based on the afore-quoted law, excise tax shall attach to refined and manufactured mineral oils or motor fuels such as naphtha, regular gasoline, and other similar products of distillation, as soon as they come into existence.

Petitioner argues that alkylate is not a product of distillation as contemplated under Section 148(e) of the NIRC of 1997, as amended. Petitioner further asserts that alkylate is not in any way similar to naphtha or regular gasoline.

Petitioner presented witness Simon Christopher Mulqueen[70] to testify as to the nature of alkylate. Based on his testimony, the raw materials to produce alkylates are light olefins (C3-C5) and isobutane, which is a component of natural gas and can be a product of crude oil distillation – the basic material to produce transport fuel. Alkylate 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. He made the following statements in his Judicial Affidavit:

"Q-13 How is alkylate produced?

A-13 Alkylate is produced from the combination of light olefins (C3-C5) with isobutane in the presence of a strong acid catalyst. The process is known as alkylation.

xxx xxx xxx

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

A-15 Light C3-C5 olefins, e.g. isobutene and isobutane.

Q-16 How are these raw materials produced?

A-16 Light C3-C5 olefins are typically produced from a fluid catalytic cracker (FCC) unit and/or a coker unit.

---

[70] Judicial Affidavit of Simon Christopher Mulqueen, CTA Case No. 8914, Docket, Vol. II, pp. 876-884

Isobutane, on the other hand, is a component of natural gas. It can be a product of crude oil distillation or it can also be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.

Q-17 You mentioned that isobutane can be a product of crude oil distillation. What is crude oil?

A-17 xxx

Crude oil is the basic material to produce transport fuel.

xxx xxx xxx

Q-23 What is the purpose or use of alkylate?

A-23 Alkylate 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 e.g. distillation boiling range.

Q-24 How does alkylate affect the manufactured gasoline when blended together?

A-24 Alkylate typically increases the octane number of a straight run gasoline or naphtha." *(Emphasis supplied)*

During his cross-examination,[71] witness Mr. Mulqueen testified that alkylate is derived from a combination of a sulfonic petro-chemical fit stock with a gas. He further testified that olefin, one of the components of alkylate, is derived from crude oil fit stock, to wit:

"JUSTICE CASTAÑEDA:
I have a question. Where is alkylate derived?

MR. MULQUEEN:
Alkylate is derived from a combination of a sulfonic petro-chemical fit stock with a gas usually attributes to produce a branch paraffin that is over very specific octane quality hydrocarbon composition that gives it characteristics kind of alkylate. The process, the alkylation process is how it's given its name.

JUSTICE CASTAÑEDA: *h*

[71] Transcript of Stenographic Notes (TSN), September 23, 2015, pp. 19-20

So these materials that you mentioned, are they derived from crude oil?

MR. MULQUEEN:
The acid butane came from natural gas. The acid butylene sulfonic mixtures are taken from petro-chemical fit stock or a catalytic that is available out of refinery.

xxx xxx xxx

JUSTICE CASTAÑEDA:
So, ultimately, these are derived from crude oil?

MR. MULQUEEN:
The olefin is ultimately derived from crude oil fit stock, yes." (*Emphasis supplied*)

Witness Dr. Joey D. Ocon, in his Judicial Affidavit,[72] testified on the nature of alkylate, *i.e.*, alkylates are valuable fuel additives or blending component in the production of motor fuel or gasoline. However, during the hearing held on August 7, 2017, Dr. Ocon testified before the Court that the raw materials of alkylate, in essence, are petroleum.[73] Below are the clarifications made during the hearing:

"JUSTICE CASTAÑEDA:
My question is, what does the feedstock consist of?

WITNESS:
In the feedstock here, Your Honors, this consists actually of two (2) streams. **The first stream is an isobutane stream which is coming from another part of the refinery**.

JUSTICE CASTAÑEDA:
So, ultimately where does that come from? Does it come from petroleum?

WITNESS:
Yes, Your Honors.

JUSTICE CASTAÑEDA:
So what about the other?

WITNESS:

[72] Judicial Affidavit of Joey D. Ocon, August 2, 2017, CTA Case No. 8914, Vol. IV, pp. 1447-1458
[73] TSN, August 7, 2017, pp. 6-7

> **The other feedstock are the olefins.** Since a mixture of hydro carbons and the fluidize catalytic cracking unit comes from another unit of the refinery which is the fluidized catalytic cracking unit or FCCU.
>
> JUSTICE CASTAÑEDA:
> **Is that also derived from petroleum?**
>
> WITNESS:
> **Every product of the entire refinery, Your Honors, in this case, derived from petroleum.**
>
> JUSTICE CASTAÑEDA:
> **So, ultimately the raw materials are petroleum?**
>
> WITNESS:
> **Yes, Your Honors.**" (*Emphasis supplied*)

Petitioner also presented witness Ma. Clarissa C. Arguelles[74] who has custody of the Department of Energy (DOE) Letter dated July 24, 2017.[75] The said Letter expressed the opinion of the DOE, through OIC-Director of the Oil Industry Management Bureau (OIMB), regarding the nature of alkylate. The pertinent portion of the DOE Letter states:

> "Our own readings and research confirm with the details you were able to gather from your own research and interviews with experts on the field. Although we have a minor clarification with the second sentence of item 2.c. Probably, a better way of stating this sentence may be as follows:
>
> > *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."*

Based on the DOE Letter, distillation does not directly cause the production of alkylate but through alkylation, which is a chemical process utilizing products from distillation. By alkylation, the light olefins and isobutane are converted into isoparaffin isomers, which would produce alkylate.

---

[74] Exhibit "P-171", Judicial Affidavit dated October 20, 2017, CTA Case No. 8914, Docket, Vol. III, pp. 1511-1513.

[75] Exhibit "P-169", CTA Case No. 8914, Docket, Vol. IV, p. 1515.

During cross-examination,[76] Ms. Arguelles testified that the DOE did not confirm that alkylate cannot be produced from a distillation unit as proposed in item 2.c[77] of petitioner's Letter[78] dated June 28, 2017, thus:

"ATTY DORIA:
Did the Department of Energy confirm all the positions of petitioner in their Letter?

WITNESS:
Well, the Letter says confirmed with the details we were able to gather. Yes.

ATTY. DORIA:
They did not make any modifications as to the proposition of the petitioner?

WITNESS:
Well, they added the clarification in the second sentence of Item 2C.

xxx xxx xxx

ATTY. DORIA:
Thank you, Ms. Witness. Now would you agree with me that based on the Letter Reply of the Department of Energy it did not confirm that alkylate cannot be produced from a distillation unit. **It did not confirm 2.C of the proposition of the petitioner stating that alkylate cannot be produced from a distillation unit?** Ma'am, my question calls only for a yes or no answer.

WITNESS:
Yes." *(Emphasis supplied)*

From the testimonies of petitioner's witnesses, the raw materials used in producing alkylate, *i.e.*, light olefins and isobutane, are derived from petroleum. And based on the evidence presented, alkylate is a product of distillation. While it is not directly produced through the process of distillation but by alkylation, the raw materials, olefins and

---

[76] TSN, October 23, 2017, pp. 11-12.
[77] 2.c Alkylate cannot be produced from a distillation unit. The production of alkylate requires various other equipment such as a chiller, reactor, an acid separator and caustic wash and the introduction of an acid catalyst. Distillation does not cause the production of alkylate but it is the chemical process converting the light olefins and isobutane into isoparaffin isomers that produces alkylate.
[78] Exhibit "P-170", CTA Case No. 8914, Docket, Vol. III, pp. 1516-1517.

isobutane, are products of distillation. As such, it is obvious that alkylate first undergoes the process of distillation, because it cannot come into existence without its raw materials, olefins and isobutane. Since it can be considered a product of distillation similar to naphtha, alkylate is subject to excise tax, pursuant to Section 148(e) of the NIRC of 1997, as amended.

Similarly, in a previous case entitled *Petron Corporation vs. Commissioner of Internal Revenue,*[79] this Court found petitioner Petron Corporation liable for excise taxes. The significant parts of the case are quoted hereunder:

> "Based on the foregoing, the nature of alkylate can be summarized as follows:
>
> 1. Alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements.
>
> 2. It is impractical or uneconomical to import and sell alkylate as the 93 or 95 RON finished product itself. Conversely, alkylate may be sold as a finished product itself, although the same may be impractical or uneconomical.
>
> 3. It is produced from the combination of raw materials, *i.e.*, light olefins (C3-C5) with isobutane, which are products of crude oil — the basic material to produce transport fuel.
>
> 4. Isobutane, a raw material of alkylate, is produced from crude oil distillation.
>
> 5. It is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. It increases the octane number of a straight run gasoline or naphtha.
>
> 6. Alkylate is a gasoline component produced by combining two (2) gases using sulfuric acid, using reactor chillers.
>
> Thus, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state. *Jr*

[79] CTA Case No. 9111, October 26, 2017.

Applying Section 148 of the NIRC of 1997, as amended, the law does not qualify whether the mineral oil or motor fuel subject to excise tax could be commercially used. In fact, the law is categorical when it stated that there shall be collected on refined and manufactured mineral oils and motor fuels excise taxes which shall attach to the goods enumerated **as soon as they are in existence as such**. Therefore, whether alkylate is not a finished gasoline is immaterial, because excise tax attaches upon it as soon as it is in existence as such.

Furthermore, based on the evidence presented, the Court finds that alkylate is a product of distillation. True, it is alkylation, not distillation, that is required to produce the final alkylate product. However, it must be remembered that isobutane — one of the raw materials of alkylate, is a product of distillation. Simply put, there can be no alkylate without isobutane which is a product of distillation. As such, it is obvious that alkylate first passes through the process of distillation because it cannot come into existence without its raw material isobutane."

In sum, the Court finds petitioner's alkylate importations subject to excise tax. Hence, petitioner's refund claims must be denied.

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(*Inhibited*)
CATHERINE T. MANAHAN
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice