REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

CTA Case No. 8544

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE, COMMISSIONER OF CUSTOMS AND COLLECTOR OF CUSTOMS (PORT OF LIMAY, BATAAN)
Respondents.

Promulgated:

OCT 21 2020
9:00 a.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This case is remanded to the Second Division of this Court, for disposition on the merits, by this Court *En Banc*, pursuant to its Decision dated June 14, 2018 in CTA EB No. 1499,[1] the dispositive portion of which reads:

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[1] Docket – Vol. V, pp. 2591 to 2601.

> "**WHEREFORE**, petitioner's *Petition for Review* is hereby **GRANTED**. Accordingly, the case is **REMANDED** to the Court in Division for disposition on the merits.
>
> **SO ORDERED.**"

THE PARTIES

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, 1550 Mandaluyong City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the chief 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.[3]

Respondent Commissioner of Customs is the chief of the Bureau of Customs, a government agency tasked to, among others, collect customs duties, taxes and other charges on imported goods on behalf of respondent CIR, pursuant to Section 12(a) of the National Internal Revenue Code (NIRC) of 1997, as amended.[4]

Respondent Collector of Customs is the District Collector of the collection district at the Port of Limay, Bataan, tasked to, among others, collect customs duties, taxes and other charges on imported goods on behalf of respondent CIR, pursuant to the same Section 12(a).[5]

THE FACTS

For brevity, part of the antecedents of this case may be lifted from that stated in the Supreme Court case of *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division), et al.* ("*Petron* case"), [6] to wit: ge

[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1562.
[3] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1562.
[4] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1563.
[5] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1563.
[6] G.R. No. 207843, July 15, 2015.

"Petron, which is engaged in the manufacture and marketing of petroleum products,[7] imports alkylate as a raw material or blending component for the manufacture of ethanol-blended motor gasoline. For the period January 2009 to August 2011, as well as for the month of April 2012, Petron transacted an aggregate of 22 separate importations for which petitioner[,] the Commissioner of Internal Revenue (CIR)[,] issued Authorities to Release Imported Goods (ATRIGs), categorically stating that Petron's importation of alkylate is exempt from the payment of the excise tax because it was not among those articles enumerated as subject to excise tax under Title VI of Republic Act No. (RA) 8424, as amended, or the 1997 National Internal Revenue Code (NIRC). With respect, however, to Petron's alkylate importations covering the period September 2011 to June 2012 (excluding April 2012), the CIR inserted, without prior notice, a reservation for all ATRIGs issued, stating that:

> This is without prejudice to the collection of the corresponding excise taxes, penalties and interest depending on the final resolution of the Office of the Commissioner on the issue of whether this item is subject to the excise taxes under the National Internal Revenue Code of 1997, as amended.

In June 2012, Petron imported 12,802,660 liters of alkylate and paid value-added tax (VAT) in the total amount of ₱41,657,533.00 as evidenced by Import Entry and Internal Revenue Declaration (IEIRD) No. SN 122406532. Based on the Final Computation, said importation was subjected by the Collector of Customs of Port Limay, Bataan, upon instructions of the Commissioner of Customs (COC), to excise taxes of ₱4.35 per liter, or in the aggregate amount of ₱55,691,571.00, and consequently, to an additional VAT of 12% on the imposed excise tax in the amount of ₱6,682,989.00. The imposition of the excise tax was supposedly premised on Customs Memorandum Circular (CMC) No. 164-2012

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[7] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1563.

dated July 18, 2012, implementing the Letter dated June 29, 2012 issued by the CIR, which states that:

> [A]lkylate which is a product of distillation similar to that of naphta, is subject to excise tax under Section 148(e) of the National Internal Revenue Code (NIRC) of 1997.

In view of the CIR's assessment, Petron filed before the CTA a petition for review, docketed as CTA Case No. 8544, raising the issue of whether its importation of alkylate as a blending component is subject to excise tax as contemplated under Section 148 (e) of the NIRC.

On October 5, 2012, the CIR filed a motion to dismiss on the grounds of lack of jurisdiction and prematurity.

Initially, in a Resolution dated November 15, 2012, the CTA granted the CIR's motion and dismissed the case. However, on Petron's motion for reconsideration, it reversed its earlier disposition in a Resolution dated February 13, 2013, and eventually denied the CIR's motion for reconsideration therefrom in a Resolution dated May 8, 2013. In effect, the CTA gave due course to Petron's petition, finding that: (a) the controversy was not essentially for the determination of the constitutionality, legality or validity of a law, rule or regulation but a question on the propriety or soundness of the CIR's interpretation of Section 148 (e) of the NIRC which falls within the exclusive jurisdiction of the CTA under Section 4 thereof, particularly under the phrase 'other matters arising under [the NIRC]'; and (b) there are attending circumstances that exempt the case from the rule on non-exhaustion of administrative remedies, such as the great irreparable damage that may be suffered by Petron from the CIR's final assessment of excise tax on its importation.

Aggrieved, the CIR sought immediate recourse to the Court, through the instant petition, alleging that the CTA committed grave abuse of discretion when it assumed authority to take cognizance of the case despite its lack of jurisdiction to do so." ge

In the *Petron* case, the Supreme Court, on July 15, 2015, initially rendered judgment as follows:

> "**WHEREFORE**, the petition is **GRANTED**. The Resolutions dated February 13, 2013 and May 8, 2013 of the Court of Tax Appeals (CTA), Second Division in CTA Case No. 8544 are hereby **REVERSED** and **SET ASIDE**. The petition for review filed by private respondent Petron Corporation before the CTA is **DISMISSED** for lack of jurisdiction and prematurity.
>
> **SO ORDERED**."

Notwithstanding the pendency of, and the foregoing disposition in, the *Petron* case, the trial for the present case independently proceeded, and this Court declared that it has no jurisdiction thereover via its Decision dated May 17, 2016,[8] the dispositive portion of which reads:

> "**WHEREFORE,** in view thereof, the Petition for Review and the Supplemental Petition for Review are **DENIED,** for lack of jurisdiction.
>
> **SO ORDERED.**"

Thereafter, upon the filing of petitioner's *Motion for Reconsideration [of the Decision dated May 17, 2016]* on June 1, 2016,[9] and respondent's *Comment Re: Petitioner's Motion for Reconsideration* on June 20, 2016,[10] this Court issued the Resolution dated July 21, 2016,[11] the dispositive portion of which states:

> "**WHEREFORE,** in view thereof, the instant Motion for Reconsideration [of the Decision dated May 17, 2016] is **DENIED**, for lack of merit.
>
> **SO ORDERED.**" gr

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[8] Docket – Vol. V, pp. 2316 to 2333.
[9] Docket – Vol. V, pp. 2334 to 2357.
[10] Docket – Vol. V, pp. 2363 to 2370.
[11] Docket – Vol. V, pp. 2374 to 2380.

Unfazed, petitioner filed its *Petition for Review* with this Court *En Banc* on August 23, 2016.[12] The case was docketed ad CTA EB No. 1499.

In its Decision dated June 14, 2018,[13] this Court *En Banc* disposed the said case in this wise:

> "Significantly, this Court, on May 3, 2018, was furnished with a copy of the Resolution dated February 14, 2018,[14] issued by the Supreme Court in the Certiorari Case filed before it granting petitioner's Motion for Reconsideration of the Decision dated July 15, 2015 and declaring the *Petition for Review* filed with the Court in Division docketed as CTA Case No. 8544 to be within the jurisdiction of the Court. The Supreme Court further directed the Court in Division to resolve the case with dispatch. The dispositive portion of the Resolution is hereby quoted for ready reference:
>
> > **WHEREFORE,** the motion for reconsideration is **GRANTED**. Respondent Petron Corporation's petition for review docketed as CTA Case No. 8544 is hereby **DECLARED** to be within the jurisdiction of the Court of Tax Appeals, which is **DIRECTED** to resolve the case with dispatch.
> >
> > **SO ORDERED**.
>
> The Supreme Court has spoken on the present controversy. And this Court needs only to comply.
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> It must be emphasized that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter or any justiciable controversy. There is only one Supreme Court from whose decisions all other courts shall take their bearings. Thus, the Court En Banc cannot on the matter in any other way.

[12] Docket – Vol. V, pp. 2514 to 2551.
[13] Docket – Vol. V, pp. 2558 to 2561.
[14] Docket – Vol. V, pp. 2591 to 2601.

> **WHEREFORE**, petitioner's *Petition for Review* is hereby **GRANTED**. Accordingly, the case is REMANDED to the Court in Division for disposition on the merits.
>
> **SO ORDERED.**"

Subsequently, on July 6, 2018, respondent CIR filed his *Motion for Reconsideration Re: Decision dated June 14, 2018* of the said Decision of this Court *En Banc*.[15] However, this Court *En Banc* denied the said *Motion* in its Resolution dated November 13, 2018,[16] the dispositive portion of which reads:

> "**WHEREFORE,** the instant Motion for Reconsideration Re Decision dated June 14, 2014 filed by respondent Commissioner of Internal Revenue on July 6, 2018 is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**"

Thereafter, an *Entry of Judgment* was issued by this Court *En Banc* on March 28, 2019, stating that the Decision dated June 14, 2018 has already become final and executory on January 7, 2019.[17]

In the Resolution dated May 16, 2019,[18] the Court gave the parties a period of fifteen (15) days from receipt thereof to file a written manifestation alleging any supervening event that may have transpired in this case which the parties would want to present before this Court for its consideration.

On June 4, 2019, petitioner filed a *Manifestation [with Motion to Set Additional Hearing Date]*,[19] praying that it be allowed to present additional pieces of documentary evidence; and to set a hearing on August 7, 2019 for the presentation of its witnesses. Thus, in the Resolution dated June 7, 2019,[20] the Court set the hearing for the presentation of petitioner's additional evidence on August 7, 2019.

[15] Docket – Vol. V, pp. 2602 to 2620.
[16] Docket – Vol. V, pp. 2657 to 2660.
[17] Docket – Vol. V, pp. 2661 to 2662.
[18] Docket – Vol. V, pp. 2664 to 2667.
[19] Docket – Vol. V, pp. 2668 to 2673.
[20] Docket – Vol. V, p. 2701.

On August 1, 2019, petitioner filed through registered mail an *Omnibus Motion [For Additional Hearing Date and Extension of Time to File Judicial Affidavit],*[21] praying that the August 27, 2019 be set as an additional hearing date for the presentation of Mr. Ricardo S. Infante; and for the Court to allow petitioner to submit the Judicial Affidavit of Mr. Infante, not later than five (5) days before proposed hearing date, or until August 22, 2019.

At the hearing held on August 7, 2019, petitioner presented Dr. Joey D. Ocon, a Chemical Engineer as its expert witness.[22] Upon motion of petitioner's counsel therein, the Court set the presentation of petitioner's additional witness on September 4, 2019.

During the hearing held on September 4, 2014, petitioner presented Mr. Ricardo S. Infante,[23] Supervising Science Research Specialist of the Oil Industry Management Bureau (OIMB) of the Department of Energy (DOE), as its last witness.

Thereafter, petitioner filed its *Supplemental Formal Offer of Exhibits* on September 19, 2019.[24] No comment was, however, filed thereon by respondents.[25] In the Resolution dated October 24, 2019,[26] the Court admitted petitioner's Exhibits "P-150", "P-151", "P-152", "P-152-A", "P-153", "P-154", "P-155", "P-156", "P-157" and "P-157-A".

At the hearing held on November 20, 2019, respondent CIR's counsel manifested that he would no longer present evidence, as this case has no report of investigation. Upon motion, the parties were given thirty (30) days from the said hearing to submit their memoranda.[27]

On December 10, 2019, respondent CIR filed his *Memorandum;*[28] while petitioner submitted its *Supplemental* Jc

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[21] Docket – Vol. V, pp. 2702 to 2707.
[22] Exhibit "P-152", Docket – Vol. V, pp. 2713 to 2723; Minutes of the hearing held on, and Order dated, August 7, 2019, Docket – Vol. V, pp. 2756 to 2757.
[23] Exhibit "P-157", Docket – Vol. V, pp. 2763 to 2770; Minutes of the hearing held on, and Order dated, September 4, 2019, Docket – Vol. VI, pp. 2795 to 2795-A.
[24] Docket – Vol. VI, pp. 2800 to 2808.
[25] Records Verification dated October 4, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. VI, p. 2877.
[26] Docket – Vol. VI, pp. 2879 to 2880.
[27] Minutes of the hearing held, and Order dated, November 20, 2019, Docket – Vol. VI, pp. 2881 to 2882.
[28] Docket – Vol. VI, pp. 2883 to 2899.

Memorandum on December 20, 2019.[29] No memorandum was filed by respondents COC and Collector of Customs.[30]

In the Resolution dated January 15, 2020,[31] the present case was considered submitted for decision.

THE ISSUES

The parties submitted the following issues for the Court's resolution, to wit:

> "A. **WHETHER OR NOT PETITIONER IS LIABLE FOR EXCISE TAX ON THE IMPORTATION OF ALKYLATE.**
>
> B. **WHETHER OR NOT PETITIONER IS ENTITLED TO THE RECOVERY OF THE ALLEGED EXCISE TAXES PAID ON IMPORTED ALKYLATE COVERED BY IMPORT ENTRY AND INTERNAL REVENUE DECLARATION ('IEIRD') NO. SN 122406532 IN THE AMOUNT OF P55,691,571.00.**
>
> C. **WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE INITIAL CASE FILED BY PETITIONER AND SUBSEQUENT AMENDMENT THERETO.**"[32]

Petitioner's arguments:

Petitioner argues that alkylate should not be subject to excise tax because the same cannot be used as a "motor fuel" as contemplated in the opening paragraph of Section 148 of the National Internal Revenue Code (NIRC) of 1997; that alkylate is not a product of distillation as contemplated under the said provision; that excise taxes apply only to goods manufactured or produced in the Philippines or to imported goods for domestic sale or consumption or

[29] Docket – Vol. VI, pp. 2901 to 2950.
[30] Records Verification dated January 7, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. VI, p. 2952.
[31] Docket – Vol. VI, p. 2953.
[32] Stipulation of Issues, JSFI, Docket – Vol. III, pp. 1563.

for any other disposition; that the imposition of excise tax on imported alkylate is tantamount to double taxation and is highly oppressive, arbitrary and confiscatory; and that the imposition of excise tax on alkylate will unduly burden the consumers as excise tax is, in reality, an indirect tax passed on to the end consumer as part of the transfer value or selling price of the goods sold.

Moreover, petitioner claims that both its administrative and judicial claims were filed within two (2) years from the date of payment of the subject excise tax, pursuant to Sections 204 and 229 of the NIRC of 1997; and that it is entitled to its claim for refund of excise taxes paid on its importation of alkylate covered by IEIRD No. SN122406532, in the amount of ₱55,691,571.00.

Respondent CIR's counter-arguments:

Respondent CIR counter-argues that this Court is without jurisdiction over the present case for failure of petitioner to exhaust all remedies available in the administrative level prior to the filing thereof; that since at the inception, petitioner has no cause of action, any amendment thereto to introduce a cause of action should not be allowed; that the *Supplemental Petition* should not be used to introduce a cause of action which had no existence when the action was commenced; that the filing of a claim for refund with the BIR is not the proper remedy in assailing the decision or action of the respondent Collector of Customs; and that the excise tax paid by petitioner on its imported of alkylate is neither erroneous nor illegal and thus, the its reliance on the provisions of Sections 204 and 209 is misplaced.

THE COURT'S RULING

The present *Petition for Review* and *Supplemental Petition for Review* must be denied.

The Court has jurisdiction to entertain the present case.

At the outset, it must be emphasized that this Court's jurisdiction over the present case has already been settled by no less than the Supreme Court in its Resolution dated February 14, 2018 in the *Petron* case,[33] in this wise:

> "x x x Petron has presently manifested that it had already complied with the protest procedure prescribed under the NIRC, and later on, filed an administrative claim for refund and/or tax credit with the BIR on November 21, 2013. Records are bereft of any showing that the CIR had already acted on its claim and hence, Petron filed before the CTA a Supplemental Petition for Review to include a claim for refund and/or tax credit of the excise tax that was levied on its *alkylate* importation. The CTA then gave due course to the petition and, as per Petron's manifestation, the parties have already been undergoing trial. Consequently, considering that the CTA had taken cognizance of Petron's claim for judicial refund of tax which, under Section 7 (a)(1) of RA 1125, is within its jurisdiction, the Court finds that these supervening circumstances have already mooted the issue of prematurity. Thus, in conjunction with the *Banco De Oro* ruling that the CTA has jurisdiction to resolve *all tax matters* (which includes the validity of the CIR's interpretation and consequent imposition of excise tax on *alkylate*), the Court finds it proper to reconsider its decision.
>
> **WHEREFORE**, the motion for reconsideration is **GRANTED**. Respondent Petron Corporation's petition for review docketed as CTA Case No. 8544 is hereby **DECLARED** to be within the jurisdiction of the Court of Tax Appeals, which is **DIRECTED** to resolve the case with dispatch.
>
> **SO ORDERED.**" *(Underscoring added)*

Moreover, in view of the Supreme Court's finding that this Court has jurisdiction over the present case, the same has become the law of the case. It must be remembered that *"law of the case"* is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision

[33] Docket – Vol. V, pp. 2558 to 2561.

between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[34]

Since the Supreme Court has already passed on the question of jurisdiction of this Court and, in effect, remands the present case for further proceedings, the determination that this Court has jurisdiction is already the controlling legal rule. We see no reason not to apply the principle of the *"law of the case"* here because the facts upon the said ruling were predicated continue to be the facts before this Court.

Hence, respondent's claim that the present *Petition for Review* should have been dismissed for being premature and for lack of cause of action has no leg to stand on.

The Court's jurisdiction over the present case is further fortified by the fact that petitioner timely filed both its administrative and judicial claims for refund, pursuant to Section 229 of the NIRC of 1997, as amended, in relation to Section 204 (C) of the same Code, which are herein below, respectively, quoted, to wit:

> "Section 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)*

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[34] *Lopez, et al. vs. Esquivel, Jr., et al.*, G.R. Nos. 168734 and 170621, April 24, 2009.

"Section 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." *(Emphasis supplied)*

The foregoing provisions allow the recovery of taxes erroneously or illegally collected within a period of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. 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.[35]

Records reveal that the subject excise tax, in the amount of ₱55,691,671.00, was paid by petitioner on November 29, 2012.[36] Counting two (2) years from the said date of payment, petitioner had until November 29, 2014,[37] within which to file both its administrative and judicial claims for refund.

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[35] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[36] Exhibit "P-9", Docket – Vol. IV, p. 1887; the amount of ₱66,904,456.00 is inclusive of the excise tax paid by petitioner in the amount of ₱55,691,671.00.
[37] Exhibits "P-82" and "P-83", Binder No. 1; Par. e, Exhibit "P-110", Docket – Vol. IV, p. 2031.

By filing its administrative claim on November 21, 2013,[38] and its *Supplemental Petition for Review* before this Court on January 28, 2014,[39] petitioner timely filed its administrative and judicial claims for refund within two (2) years from date of payment of tax, in accordance with Sections 204 (C) and 229 of the NIRC of 1997, as amended. Thus, the Court validly acquired jurisdiction over the present case.

That having been settled, this Court shall now proceed to determine the merit of petitioner's claim.

Petitioner's alkylate importation is subject to excise tax. Thus, petitioner is not entitled to refund in the amount of ₱55,691,671.00.

The relevant provisions of law in resolving the claim for refund of the alleged erroneous and illegally collected excise tax on the importation of alkylate are Sections 129, 131, and 148 (e) of the NIRC of 1997, as amended, which respectively, provide:

> "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."
>
> "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

[38] Exhibit "P-45", Docket – Vol. IV, pp. 1948 to 1958.
[39] Docket – Vol. II, pp. 922 to 931.

to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption."

"SEC. 148. *Manufactured Oils and Other Fuels.* — **There shall be collected on refined and manufactured mineral oils and motor fuel, 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 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;" *(Emphases supplied)*

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

To recall, the imposition of excise tax was premised on Customs Memorandum Circular No. 164-2012,[40] which implemented the letter dated June 29, 2012,[41] issued by then Commissioner of Internal Revenue, Kim S. Jacinto-Henares. For reference, relevant portions of respondent CIR's letter are quoted hereunder:

> "It is basic information in petroleum manufacturing industry that crude oil is a mixture of hydrocarbons with different boiling temperature, it can be separated into different fractions/groups of hydrocarbons that boil between two specified boiling points by **distillation**. **Every refinery begins with the separation of crude oil into different fractions by distillation. The fractions are further treated to convert them into mixtures of more useful saleable products by various methods such as cracking, reforming, alkylation, polymerisation and isomerisation.** Olefins such as propylene and butylene are produced by catalytic and thermal cracking. Alkylation refers to the chemical bonding of these light molecules with isobutene to form larger branched-chain molecules (isoparaffins) that make high octane petrol.
>
> 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 processes' 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." *(Emphases supplied)*

In contesting the imposition of excise tax on its imported alkylate, petitioner mainly argues that the products subject to excise tax under Section 148 of the NIRC of 1997, as amended, are limited

[40] Exhibit "B(S.O.)", Docket – Vol. I, p. 89.
[41] Exhibit "C(S.O.)", Docket – Vol. I, pp. 90 to 94.

to fractions or distillation products primarily derived from distillation of crude oil; and thus, the subject alkylate which is not produced by the primary distillation of crude oil, but by the primary process of alkylation, should not be included in the category of "other similar products of distillation."

However, the plain language of Section 148(e) reveals that the law does not support petitioner's proposed interpretation. A closer look at the provisions of the said Section readily shows that the word "distillation" is only found in the phrase "other similar products of distillation". There is nothing therein that suggests that distillation should be the primary or direct process through which the product is formed in order to fall within the scope of the proviso. The absence of such qualification leads to the conclusion that so long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation", subject to excise tax under Section 148(e). *Ubi lex non distinguit nec nos distinguere debemos.* Where the law does not distinguish, the Court should not distinguish.

Thus, to resolve the present controversy, the Court deems it prudent to look into the nature and composition of alkylate.

Petitioner's expert witness, Mr. Simon Christopher Mulqueen, testified, by way of Judicial Affidavit, that alkylate is a branched chain paraffinic hydrocarbon blending component used in the manufacture of gasoline, which is produced through the process of alkylation.[42] He said that 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.[43] He also distinguished the process of alkylation from distillation — the former is a chemical reaction combining two components to make a single different component, while the latter is a simple separation or fractionation process of a mixture containing two or more compounds into its constituent parts.[44] Mr. Mulqueen also enumerated the raw materials or feedstock needed in producing alkylate, and explained how the said raw materials come into existence, to wit:

"Q-15 **What, if you know, are the raw materials or**

[42] Q-12&A and Q-13&A, Judicial Affidavit of Simon Christopher Mulqueen, Docket – Vol. III, p. 1511.
[43] Q-23&A, Judicial Affidavit of Simon Christopher Mulqueen, Docket – Vol. III, p. 1513.
[44] A-22&A, Judicial Affidavit of Simon Christopher Mulqueen, Docket – Vol. III, p. 1513.

feedstock to produce alkylates?

A-15 **Light C3-C5 olefins, e.g. <u>isobutene</u> and <u>iso butane</u>**

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.

<u>Isobutane</u>, 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 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 Crude oil is a complex mixture of organic compounds typically comprising paraffins, naphthenes, aromatics and asphaltenes. Crude oil does not typically contain olefinic compounds. Typically, these compounds (i.e. paraffins, naphthenes, aromatics and asphaltenes) are organic rich sediments formed from plant, vegetable and animal matter. High temperature and pressure, in the absence of air, coverts these sediments into oil over millions of years.

Crude oil is the basic material to produce transport fuel."[45] *(Emphasis and underscoring supplied)*

Another expert witness of petitioner, Dr. Joey D. Ocon, confirmed Mr. Mulqueen's testimony that the raw materials needed in producing alkylate are olefins and iso-butane.[46] When Dr. Ocon was asked as to what could be the ultimate raw material of the alkylate, he answered that "(t)he context of the petroleum refinery is crude oil."[47] In addition, Dr. Ocon explained the recovery process used in producing the said raw materials[48] in this wise:

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[45] Q-15&A to Q-17&A, Judicial Affidavit of Mr. Simon Christopher Mulqueen, Docket – Vol. III, p. 1512.
[46] Q-13&A, Exhibit "P-152", Docket – Vol. V, p. 2715.
[47] Transcript of Stenographic Notes (TSN) dated August 7, 2019, p. 8.
[48] Q-15&A, Exhibit "P-152", Docket – Vol. V, p. 2716.

"Q-15 **What is the recovery process used to produce these raw materials?**

A-15 **<u>Iso-butane</u> can be directly produced through the main distillation column.** On the other hand, **other raw materials/components have to undergo fluid catalytic cracking ('FCC') or other units after primary distillation in order to produce <u>olefin</u>.**

x x x x x x x x x."
(Emphasis and underscoring supplied)

Similarly, during the clarificatory question of the Court, Mr. Infante mentioned that alkylate's raw materials came from the distillation of crude oil. Pertinent portions of his testimony are herein below quoted for ready reference:[49]

"JUSTICE CASTAÑEDA:
Question, Mr. Infante.

Q: What is the basic raw materials for the alkylate?

A: **The basic raw materials for the production of alkylate are light olefins and isobutane** (interrupted)

Q: Where is that derive from crude oil?

A: Alkylates, your Honors, is produced by two (2) raw materials.

Q: **Where did those two (2) raw materials come from**?

A: **These raw materials comes from the distillation of crude oil?**" *(Emphases supplied)*

It then can be deduced from the foregoing testimonies that while alkylate is not directly produced through the process of distillation but by alkylation, it cannot be denied that its very existence was derived from the utilization of these two raw materials,

[49] TSN dated September 4, 2019, pp. 8 to 9.

namely, olefins and isobutane, which are both products of crude oil distillation. Thus, alkylate would not have come into existence without the presence of the said raw materials.

It is also worth mentioning that the process of distillation does stop there, as alkylate product has to be recovered *via* a distillation process to improve its quality. According to Dr. Ocon, iso-butanes are typically supplied in excess relative, around six to ten times more than the olefins. Thus, they have to be recovered *via* a distillation process to recycle them back into the alkylation reactor for purposes of purifying and enhancing the quality of the produced alkylates or recycling excess raw materials.[50] In other words, the process of distillation is also employed after alkylation to improve the quality of produced alkylates.

Moreover, the foregoing conclusion of the Court is congruent with the findings of the DOE in its letter dated July 24, 2017[51] where it categorically states that while distillation does not directly cause the production of alkylate, alkylation is a separate chemical process utilizing products from distillation, as shown below:

> "We acknowledge your letter dated June 28, 2017 requesting our position on matters regarding alkylates as detailed therein.
>
> Our own reading 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, coverts light olefins and isobutane into isoparaffin isomers that produces alkylates.**" *(Emphases ours)*

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[50] Q-17&A, Exhibit "P-152", Docket – Vol. V, pp. 2716 to 2717.
[51] Exhibit "P-153", Docket – Vol. VI, p. 2841.

Taking all of these into consideration, it is beyond doubt that, from its inception up to the end of the process of alkylation, the process of distillation contributes to the production, purification and enhancement of alkylate in order for it to be fitted as fuel additives or blending components in the production of motor fuel or gasoline.

It bears stressing that this Court has consistently ruled that alkylate is considered a product of distillation similar to naphtha and regular gasoline and, thus, subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

There is no double taxation.

Anent petitioner's claim that the imposition of excise tax on the subject imported alkylate and upon lifting of the PNS-complaint motor gasoline to which such alkylate was blended is tantamount to double taxation is likewise devoid of merit.

Jurisprudence provides that for double taxation in the objectionable or prohibited sense to exist, the same property must be taxed twice, when it should be taxed but once. Both taxes must be imposed on the same property or subject-matter, for the same purpose, by the same taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax.[52]

Using the aforementioned test, the Court finds that there is no double taxation in the prohibited sense in this case as the taxes mentioned by petitioner are imposed on two (2) different subject matters. The subject matter of the tax imposed in this case is on the importation of alkylate; while the excise tax imposed on the alleged use of alkylate as a blending component or raw material to produce another taxable article or goods is a different subject matter altogether. It must be noted that the law itself affirms this notion of two different subject matters arising from same imported article.

To be sure, upon importation, there is an excise tax imposition. When the imported goods go through reprocessing, an imposition of tax happens again. However, there is no double taxation in this case

[52] *La Suerte Cigar and Cigarette Factory vs. Court of Appeals*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 and 165499, November 11, 2014, citing the cases of *Procter & Gamble Philippine Manufacturing Corporation vs. Municipality of Jagna*, 183 Phil. 453, 461 (1979) and *Villanueva vs. City of Iloilo*, 135 Phil. 572, 588 (1968).

since one of its elements is lacking, *i.e.*, that the two taxes must be imposed on the same subject matter. This is so because the first imposition is upon the importation of goods, and the second, upon removal or reprocessed goods from production site. In other words, the first imposition is simply concerned with the importation of articles, while the subsequent imposition is on the manufacturing or production of goods in the Philippines for domestic sale or consumption or for any other disposition.

Such being the case, the imposition of excise tax is on two different subject matters. Hence, no double taxation exists.

Finding petitioner's alkylate importation subject to excise tax, the Court hereby denies its prayer for the refund or issuance of tax credit certificate of its excise tax payment on importation of alkylate covered by IEIRD SN 122406532 in the amount of ₱55,691,571.00 for June 2012.

The Court stresses that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.[53]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

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

[53] *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, citing *Commissioner of Internal Revenue vs. Solidbank Corporation*, 462 Phil. 96, 131-132 (2003).

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

ROMAN G. DEL ROSARIO
Presiding Justice