REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, AND BUREAU OF CUSTOMS, *Petitioner,* -versus- **PILIPINAS SHELL PETROLEUM CORPORATION,** *Respondent.*	**CTA EB NO. 2842** (CTA Case No. 8535 / G.R. Nos. 210501, 211294 & 212490)

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COMMISSIONER OF INTERNAL REVENUE, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS AND THE BUREAU OF CUSTOMS, *Petitioner,* -versus- **PILIPINAS SHELL PETROLEUM CORPORATION,** *Respondent.*	**CTA EB NO. 2844** (CTA Case No. 8535) Present: **RINGPIS-LIBAN,** *Acting P.J.* **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: NOV 05 2025 3:54 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court *En Banc* are consolidated *Petitions for Review*[1] filed by the respective parties under Rule 8 Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) assailing the April 27, 2023 Decision[2] and the October 24, 2023 Resolution[3] of the Special Second Division in CTA Case No. 8535 entitled *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, Collector of Customs of the Port of Batangas and the Bureau of Customs.*

The dispositive portion of the assailed decision reads:

> "**WHEREFORE**, in view of all the foregoing, petitioner Pilipinas Shell Petroleum Corporation's Amended Petition for Review is hereby **GRANTED**. Accordingly, Document No. M-059-2012, dated 29 June 2012, issued by respondent Commissioner of Internal Revenue and the Letter, dated 01 October 2012, issued by respondent Collector of Customs of the Port of Batangas are hereby **NULLIFIED**. Consequently, respondents Commissioner of Internal Revenue, Collector of Customs of the Port of Batangas and the Bureau of Customs, or any person acting on their behalf, are hereby **ENJOINED** from demanding or collecting, in any manner, excise tax and value-added tax thereon on petitioner Pilipinas Shell Petroleum Corporation's alkylate importations.
>
> **SO ORDERED**."

The dispositive portion of the assailed resolution reads:

> "**WHEREFORE**, premises considered, both respondent CIR's 'Motion for Partial Reconsideration (Re: Decision promulgated on 27 April 2023)' and respondent COC's 'Motion for Reconsideration' are hereby **DENIED** for lack of merit.
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> **SO ORDERED**."

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[1] *Rollo* (EB 2842), pp. 9-69 and *Rollo* (EB 2844), pp. 1-12.
[2] *Rollo* (EB 2842), pp. 103-145.
[3] *Id.*, pp. 154-169.

The Parties

Petitioner Commissioner of Internal Revenue (CIR) is vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds office at the BIR National Office Building, Diliman, Quezon City.[4]

Petitioner Bureau of Customs (BOC) is an agency of the government of the Republic of the Philippines, whose duties and functions include, among others, the assessment and collection of customs revenues from imported goods and other dues, fees, charges, fines, and penalties accruing under the tariff and customs laws.[5]

Petitioner Collector of Customs of the Port of Batangas (Collector) is the official head of the customs service at the Port of Batangas (Collection District No. IV), and has the duty, among others, to assess and collect duties, taxes and other charges on imported goods in his assigned Customs District. Petitioners BOC and Collector were the respondents in CTA Case No. 8535 and were impleaded as the collecting agents of the CIR for internal revenue taxes on imported goods, including excise tax and value-added tax (VAT) on importation.[6]

Finally, Pilipinas Shell Petroleum Corporation (PSPC / respondent) is a corporation engaged in the manufacture and distribution of petroleum products.[7]

The Facts

Antecedent Facts

As an integral part of PSPC's manufacturing process and to comply with Republic Act No. (RA) 8749, otherwise known as the "Philippine Clean Air Act of 1999" and the Philippine National Standards (PNS), PSPC started to import alkylate — a raw material and blending component to be mixed with other substances to produce petroleum products.[8]

Between May 2010 and August 2011, PSPC imported alkylate for which the Bureau of Internal Revenue (BIR) issued twenty-one (21) *Authorities to Release Imported Goods* (ATRIGs). The ATRIGs *all* stated that alkylate was *not* subject to excise tax considering that it is "not among those articles enumerated under Title VI of NIRC 1997."[9]

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[4] *Petition for Review, Rollo* (EB 2844), p. 2.
[5] *Petition for Review, Rollo* (EB 2842), p. 11.
[6] *Id.*
[7] *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division),* G.R. Nos. 210501, 211294 & 212490, March 15, 2021.
[8] *Id.*
[9] *Id.*

Subsequently, the BOC further conducted an independent/third-party test of the specifications of alkylate, which showed that alkylate was, in fact, *not* in the nature of premium plus, premium, or regular gasoline but a mere component additive, and hence, should *not* be subject to excise tax.[10]

Despite these findings, records show that the BIR, in September 2011, began inserting a *colatilla* in the ATRIGs it issued for PSPC's alkylate importations, stating that the BIR's tax assessments was "without prejudice to the collection of the corresponding excise taxes, penalties and interests depending on the final resolution of the Office of the Commissioner on the issue on whether this item is subject to the excise taxes under the NIRC of 1997, as amended." Since the ATRIGs were issued directly to the BOC, and not to PSPC, the latter only found out about the *colatilla* later in the proceedings. Further, around the same time (September 2011), the Collector also sent a request for a legal opinion to the Department of Energy (DOE) with respect to the nature of alkylate. In a letter dated June 27, 2012, the DOE likewise held that alkylate was *not* a finished product but an intermediate product; hence, *not* subject to excise tax.[11]

In spite of all the foregoing, the Collector still issued a *Memorandum* dated June 4, 2012 addressed to then Commissioner of Customs (COC) Rozzano Rufino Biazon (Commissioner Biazon) requesting for a formal legal opinion on whether it could collect excise taxes on PSPC's alkylate importations. Commissioner Biazon forwarded it to the BIR through a letter dated June 13, 2012 (June 13, 2012 Letter). In the meantime, PSPC discovered the *colatilla* in its ATRIGs; consequently, it filed a letter to the BIR Large Taxpayer Services (LTS), decrying violation of due process. The BIR-LTS, however, did *not* reply to this Letter.[12]

On June 29, 2012, the CIR issued *Document No. M-059-2012* in response to Commissioner Biazon's June 13, 2012 Letter. In this issuance, the CIR cited the report of the BIR Laboratory Section, Excise Taxpayers Regulatory Division, which found that alkylate was *similar to naphtha as a product of distillation*. Based on this, it opined that alkylate importations are subject to excise tax and corresponding value-added tax (VAT). Afterwards, Commissioner Biazon issued Customs Memorandum Circular (CMC) No. 164-2012 on July 18, 2012 directing the Collector to take "appropriate action" based on *Document No. M-059-2012*.[13]

Proceedings Before the CTA Division and the Supreme Court

Aggrieved, PSPC filed a *Petition for Review* with the CTA on August 24, 2012 assailing *Document No. M-059-2012*. It claimed that the said issuance was

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

actually an invalid BIR Ruling since it was issued without factual bases and in violation of its right to due process.[14]

In August 2012, the BIR began issuing ATRIGs assessing PSPC's alkylate importations for excise tax. As such, PSPC filed a *Verified Urgent Motion for the Issuance of a Suspension Order with a Prayer for Immediate Issuance of a Temporary Restraining Order* dated September 17, 2012 (September 17, 2012 Verified Urgent Motion) seeking to enjoin the Collector and the BIR from implementing *Document No. M-059-2012* for PSPC's subject and future alkylate importations. The BOC and the Collector opposed the same.[15]

On August 31, 2012, Commissioner Biazon sent a letter to the CIR requesting for assistance in the computation of deficiency excise taxes and applicable interests and penalties for PSPC's previous importations from 2010 to 2012. On September 5, 2012, the CIR issued a letter-reply containing the requested computation in the aggregate amount of ₱1,994,500,677.47. As a result, on October 1, 2012, the Collector sent a Demand Letter to PSPC for the deficiency excise taxes, inclusive of interest and penalties, as computed by the CIR in her September 5, 2012 letter-reply. Because of this development, PSPC amended its *Petition for Review* in CTA No. 8535 to include the October 1, 2012 *Demand Letter* (Amended Petition).[16]

On October 5, 2012, the CTA Second Division initially denied PSPC's September 17, 2012 *Urgent Verified Motion* on the ground that no assessment has yet been issued. However, on PSPC's *Motion for Reconsideration* and upon presenting the October 1, 2012 *Demand Letter*, the CTA reversed itself via a *Resolution* dated October 22, 2012, and issued a *Suspension Order* covering the ₱1,994,500,677.47 demand by the Collector (October 22, 2012 Suspension Order). The CTA clarified that it was granting a *Suspension Order* only on the amounts covered by the assessment contained in the *Demand Letter* which was for importations from January 2010 to June 2012, and *not* a general *Suspension Order* as to future or incoming shipments. Anent these future/incoming shipments, it held that it had no authority to enjoin the collection of taxes without an actual assessment. Notably, the October 22, 2012 *Resolution* did not rule on the PSPC's separate prayer (in the September 17, 2012 Verified Urgent Motion) for the issuance of a TRO/WPI to enjoin the implementation of *Document No. M-059-2012*.[17]

Thereafter, the CIR, BOC, and the Collector filed an *Omnibus Motion* to dismiss the case, to lift the October 22, 2012 *Suspension Order*, and to require PSPC to explain how it obtained *Document No. M-059-2012*. Essentially, they argued that: (a) The CTA has no jurisdiction over the case since *Document No. M-059-2012* was neither a ruling nor an adverse decision but a mere internal communication between the COC and the CIR; (b) PSPC failed to exhaust the protest procedure under the Tariff and Customs Code of the Philippines (TCCP)

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[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*

in order to properly contest the tax assessment in the October 1, 2012 *Demand Letter*, thus rendering the same final and executory; and, (c) PSPC failed to prove its entitlement to a suspension order. The *Omnibus Motion* was opposed by PSPC which maintained that *Document No. M-059-2012* was, in fact, a BIR Ruling and was issued by the CIR in the exercise of her quasi-judicial powers. In any event, it would fall under the "other matters" jurisdiction of the CTA.[18]

On November 19, 2012, the CIR filed a separate *Answer* in CTA Case No. 8535.[19] Specifically, the CIR raised the following affirmative defenses: (1) The Court has no jurisdiction over the case as the subject document is an internal letter between heads of government agencies; (2) Assuming that the subject document is a ruling, still, the Court has no jurisdiction as it does not fall under the special jurisdiction conferred upon it by law; (3) Assuming that the subject document is a ruling, still, PSPC failed to exhaust administrative remedies; (4) As the Court has no jurisdiction over the main action, it has no power to grant the ancillary remedy prayed for; and, (5) PSPC is liable to pay taxes on its alkylate importations.[20]

On December 26, 2012, PSPC filed a *Reply* to the CIR's *Answer* to refute the contentions therein.[21]

Prior to the resolution of the *Omnibus Motion* filed by the CIR, BOC, and the Collector, PSPC filed two (2) separate *Urgent Verified Motion for Suspension Orders* for its alkylate importations on November 5, 2012 and December 17, 2012. In a *Resolution* dated January 4, 2013, the CTA denied the December 17, 2012 motion on the ground that no assessment has yet been issued by the Collector for the alleged shipment.[22]

Meanwhile, in a *Resolution* dated January 28, 2013, the CTA Second Division denied the November 5, 2012 *Urgent Verified Motion* and the *Omnibus Motion*. With respect to the *Urgent Verified Motion*, the CTA reiterated its position in its January 4, 2013 *Resolution* that no *Suspension Order* could be issued *sans* an actual assessment. As to the *Omnibus Motion*, it held that it has jurisdiction over PSPC's petition since: (a) the assailed *Document No. M-059-2012* was actually in the nature of a BIR Ruling; and, (b) the assailed October 1, 2012 Demand Letter was a tax assessment given that the liability of the taxpayer was definitively determined. Finally, the CTA held that there was sufficient basis to maintain the *Suspension Order* over the ₱1,994,500,677.47 assessment in the October 1, 2012 *Demand Letter*.[23]

Unperturbed, the BOC and the Collector moved for reconsideration but was denied by the CTA First Division (not the Second Division due to a reorganization) in a *Resolution* dated June 24, 2013. The BOC and the Collector

[18] *Id.*
[19] *Id.*
[20] April 27, 2023 Decision, *Rollo* (EB 2842), p. 108.
[21] *Id.*, p. 109.
[22] *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, G.R. Nos. 210501, 211294 & 212490, March 15, 2021.
[23] *Id.*

then elevated this resolution to the CTA *En Banc* through a *Petition for Review*, docketed as CTA EB Case No. 1047. However, in a *Resolution* dated February 10, 2014, the CTA *En Banc* denied due course to their petition for being the wrong remedy to contest an interlocutory order of the CTA First Division. Undeterred, the BOC and the Collector filed their *Petition for Review on Certiorari* before the Supreme Court assailing the CTA *En Banc*'s *Resolution*, which was docketed as G.R. No. 211294.[24]

On June 17, 2013, PSPC filed yet another *Urgent Verified Motion for Suspension Order* for its alkylate importation, this time presenting the *Import Entry and Internal Revenue Declaration* (IEIRD) and the ATRIG corresponding to its importation to prove an existing assessment against it. This was opposed by the BOC and the Collector. On the other hand, the CIR filed a *Motion to Dismiss* reiterating the grounds raised in a separate Answer filed in CTA Case No. 8535.[25]

In a *Resolution* dated July 15, 2013, the CTA First Division denied the CIR's *Motion to Dismiss* on the ground that the CTA's jurisdiction over the case had already been settled through the CTA's *Resolutions* dated January 28, 2013 and June 24, 2013. Furthermore, it granted PSPC's June 17, 2013 *Urgent Verified Motion*, and issued a *Suspension Order* covering the excise taxes for PSPC's alkylate shipment under IEIRD Nos. C-1298-13 and C-1301-13. The CIR's *Motion for Reconsideration* was denied through a Resolution dated October 14, 2013, prompting it to file a *Petition for Certiorari* before the Supreme Court assailing these twin *Resolutions*, which was docketed as G.R. No. 210501.[26]

Meanwhile, on August 8, 2013, petitioners Collector and the BOC filed their *Answer/Comment* raising the following defenses: (1) The October 1, 2012 Demand Letter had already become final and executory; (2) PSPC is liable for the assessed excise taxes on its alkylate importations pursuant to Sections 129 and 131, in relation to Section 148 of the 1997 National Internal Revenue Code (NIRC), as amended; (3) There is no double taxation; (4) The government was greatly prejudiced by the non-payment of the excise taxes; and, (5) The issuance of the *Document No. M-059-2012* did not deny PSPC due process.[27]

Thereafter, PSPC filed several other *Urgent Verified Motions for Suspension Orders* for its *succeeding* alkylate importations from September 11, 2013 until February 26, 2014, but the same were withdrawn due to the CTA's inability to resolve the same within the fifteen (15)-day period under the TCCP.[28]

Subsequently, the separate *Pre-Trial Briefs* of the CIR, and the Collector and the BOC were filed on January 16, 2014 and February 11, 2014, respectively. On the other hand, PSPC's Pre-Trial Brief was filed on February 7, 2014.[29]

[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] April 27, 2023 Decision, *Rollo* (EB 2842), p. 109.
[28] *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, G.R. Nos. 210501, 211294 & 212490, March 15, 2021.
[29] April 27, 2023 Decision, *Rollo* (EB 2842), p. 109.

On March 19, 2014, PSPC filed its *Urgent Verified Motion for the Issuance of a Suspension Order Against the Collection of Excise Taxes and Value-Added Tax thereon on the Shipment of 80,162 Barrels of Alkylate as Delivered by the Vessel MT Marine Express.* However, this was denied by the CTA First Division in a *Resolution* dated April 2, 2014, opining that it has no jurisdiction to issue *Suspension Orders* on incoming alkylate importations because the same were not covered by the *Amended Petition for Review.* Furthermore, it held that the PSPC failed to initiate protest proceedings and that, in any event, jeopardy was not proven. Aggrieved, PSPC filed before the Supreme Court a *Petition for Certiorari* with an application for the issuance of a TRO and/or WPI assailing the April 2, 2014 Resolution of the CTA, which was docketed as G.R. No. 212490.[30]

The Supreme Court issued a *Notice of Resolution* dated July 30, 2014 confirming the *Temporary Restraining Order* it issued on July 7, 2014. The Collector and the BOC filed a *Motion for Reconsideration* on August 5, 2014, but the Supreme Court *denied* the same in its *Notice of Resolution* dated October 22, 2014.[31]

Dissatisfied, the Collector and the BOC filed with the Supreme Court a *Motion for Leave (to File a Second Motion for Reconsideration) and Second Motion for Reconsideration* on November 27, 2014 but they were denied in its April 8, 2015 Resolution.[32]

During the initial pre-trial conference on August 11, 2016, PSPC manifested that it will adopt the testimonies of its four (4) witnesses who already testified during the hearing for its motions for the issuance of suspension order, namely: (1) Nicasio Manuel (Manuel); (2) Shaiful Bahari Bin Zainuddin (Zainuddin); (3) Yuri S. Ladanga (Ladanga); and, (4) Rene Benavidez (Benavidez). Moreover, it also manifested that it will present eight (8) additional witnesses in support of the main case. Later, the parties filed their *Joint Stipulations* on November 11, 2016.[33]

On February 27, 2017, the court *a quo* issued the *Pre-Trial Order.* After PSPC filed its *Motion for Correction/Amendment [of the Pre-Trial Order dated 27 February 2014]* on March 6, 2017, the court *a quo* granted the same and ordered the issuance of an *Amended Pre-Trial Order.*[34]

Trial ensued.[35]

On June 27, 2017, PSPC presented its first witness, Cristino Q. Navarro (Navarro), who testified by direct examination through his Judicial Affidavit. Navarro's testimony was offered to prove, among others, that: (1) SGS (Subic Bay), Inc. (SGS), of which he is the Laboratory Manager, conducted an analysis of a sample of petitioner's alkylate importation; and, (2) SGS issued the results

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[30] *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division),* G.R. Nos. 210501, 211294 & 212490, March 15, 2021.
[31] April 27, 2023 Decision, *Rollo*, p. 109.
[32] *Id.*
[33] *Id.*, p. 110.
[34] *Id.*
[35] *Id.*

thereof under Certificate of Analysis SB11-00677.003 which revealed that alkylate is "neither regular, premium, or premium plus gasoline."[36]

On July 25, 2017, PSPC's second witness, Andres E. Landicho (Landicho), testified through his Judicial Affidavit. Landicho's testimony was offered to prove, among others, that all of petitioner's alkylate importations and those that will still be imported was and will be used as raw materials in the manufacture of legally saleable finished petroleum products in the Philippines.[37]

On August 29, 2017, PSPC presented its third witness, Maycel Barata (Barata), who testified through her Judicial Affidavit. Barata's testimony was offered to prove, among others, that PSPC has paid in full the excise taxes due on the entire volume of the finished petroleum products, which include the subject imported alkylate as blended, upon withdrawal from its Tabangao Refinery.[38]

On September 26, 2017, the fourth witness, Michelle C. Masinsin (Masinsin), also assumed the witness stand where, through her Judicial Affidavit, she testified that: (1) PSPC submits the Daily Product Delivery Report of Excise Tax Due on Petroleum Products (DPDR), the Daily Removal Report of Excise Tax Due on Petroleum Products (DRR) and the draft Withdrawal Certificates to the Bureau of Internal Revenue (BIR) Revenue Officer on Premise (ROOP); and, (2) the BIR ROOP reviews the documents and, thereafter, signs the Withdrawal Certificates.[39]

On October 24, 2017, PSPC presented its fifth witness, Claude A. Mallet (Mallet), who testified that: (1) He holds a Bachelor's degree in Analytical and Industrial Chemistry and a Master of Science degree in Analytical and Industrial Chemistry from Institute National Supérieur de Chimie Industrielle de Rouen (INSCIR), Rouen, France; (2) He had further training in petroleum laboratory techniques at the *Institut Francais de Pétrole* (IFP) in Rueil-Malmaison, Paris; (3) He is an expert in petroleum and a technical consultant in the oil and gas industry; (4) He provided independent technical expertise, advice and/or opinion on the specifications and quality of PSPC's alkylate shipments; (5) Alkylate is merely a blending component used in the production of finished grade motor gasoline and not a finished gasoline product for domestic sale or consumption; and, (6) Alkylate is *not* a product of distillation, nor is it similar to naphtha or regular gasoline.[40]

On March 16, 2018, PSPC filed a *Motion to Present Additional Witness and Request for Issuance of Subpoena Ad Testificandum Et Duces Tecum* which the Court denied in its Resolution dated May 9, 2018. On May 30, 2018, PSPC filed a *Motion*

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[36] *Id.*
[37] *Id.*
[38] *Id.*, p. 111.
[39] *Id.*
[40] *Id.*

for Reconsideration but the same was still denied in the court *a quo*'s October 15, 2018 *Resolution*.[41]

On March 20, 2018, PSPC presented Laila Mateo Acain (Acain) as its last witness who, through her *Judicial Affidavit*, declared that: (1) The BIR issued *Document No. M-059-2012* without notice to petitioner or any opportunity for it to be heard, in violation of its due process rights; (2) Petron Corporation (Petron) has been importing alkylate since 2003 but it was never assessed with excise taxes on its past importations of alkylate from 2003 to May 2012; and, (3) The CIR, Collector and BOC have been discriminating against PSPC instead of being treated similarly as Petron.[42]

On February 20, 2019, PSPC filed its *Formal Offer of Evidence* (FOE), with the CIR's *Comment* filed on February 21, 2019 and the Collector and the BOC's Comment filed on April 1, 2019. On April 5, 2019 and June 21, 2019, PSPC filed its replies to the separate comments of the CIR, the Collector and the BOC.[43]

On July 5, 2019, PSPC filed a *Motion to Inhibit* after learning of the Second Division's Decision in CTA Case Nos. 8914 & 8981 entitled *Petron Corporation v. Commissioner of Internal Revenue* (which similarly involves the issue of taxability of alkylate importations) as it believes that the Justices of the Second Division were already predisposed to rule against it. The CIR then filed *Opposition (Re: Motion to Inhibit)* on August 6, 2019 while the Collector and the BOC filed their *Opposition (to Petitioner's Motion for Inhibition dated 05 July 2019)* on August 15, 2019. PSPC filed a *Motion for Leave to File and Admit Consolidated Reply with the attached Consolidated Reply* on September 27, 2019, which the Court granted and admitted, respectively, in its *Resolution* dated October 9, 2019.[44]

On January 10, 2020, the court *a quo* resolved PSPC's FOE and admitted all of the latter's documentary evidence, except Exhibits "Y — Motion for Suspension Order" and "P-13-SO". In the same *Resolution*, the Court noted PSPC'S *Tender of Excluded Evidence* incorporated in its FOE and denied its *Motion to Inhibit*.[45]

On February 10, 2020, upon PSPC's *Motion for Partial Reconsideration*, the court *a quo* issued an *Order*, which reconsidered the denial of the documents and consequently admitted the same. It, however, refused to recuse from hearing the case in the absence of valid grounds to do so.[46]

On March 11, 2020, the CIR presented the lone witness, Ma. Lourdes Rosula R. Ramos (Ramos), who testified by direct examination, through her Judicial Affidavit. The testimony of Ramos was offered to prove, among others,

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[41] *Id.*, p. 112.
[42] *Id.*
[43] *Id.*
[44] *Id.*, pp. 112-3.
[45] *Id.*, p. 113.
[46] *Id.*

that alkylate is a product of distillation similar to naphtha and therefore, subject to excise tax under Section 148 (e) 58 of the 1997 NIRC, as amended.[47]

On September 2, 2020, the Collector and the BOC presented their lone witness, Ms. Rowena Matienzo (Matienzo), who testified that, as part of her official duties, she extracted the spreadsheet summary of PSPC's alkylate importations.[48]

On September 9, 2020, the CIR filed an FOE while the Collector and the BOC filed their *Respondents' Formal Offer of Evidence* on October 6, 2020. In response, PSPC filed its *Consolidated Comment/Opposition* thereto on October 20, 2020.[49]

On December 18, 2020, in its *Resolution* dated December 18, 2020, the court *a quo* resolved the separate FOEs of the CIR, the BOC, and the Collector and admitted all pieces of their documentary evidence, except the Collector's and BOC's Exhibit "R-1" and CIR's own Exhibit "R-1".[50]

On January 29, 2021, the CIR filed a *Memorandum* while the Collector and the BOC filed their own on February 4, 2021. On the other hand, petitioner filed its *Memorandum* on March 3, 2021.[51]

On March 15, 2021, the Supreme Court promulgated its *Decision* which, as aforementioned, sprang from the instant case. In the consolidated *Decision*, the Supreme Court held, among others, that: (1) The court *a quo* had jurisdiction over the subject matter of the instant case or over the challenges raised against BIR issuances including *Document No. M-059-2012* since it is a BIR ruling; (2) Although there was a violation of the doctrine of exhaustion of administrative remedies, exceptions apply, such as when the question involved was purely legal or the necessity of judicial intervention was shown; and, (3) The court *a quo* had jurisdiction over the Collector's October 1, 2012 Demand Letter.[52] However, the Supreme Court also ruled that the court *a quo* did not have jurisdiction to issue suspension orders over assessments against PSPC's alkylate importations beyond the period covered by its *Amended Petition for Review*. Consequently, the court *a quo* cannot issue a suspension order for the assessments against PSCP's subsequent and future alkylate importations.[53]

The Collector and the BOC filed a Motion for Reconsideration for the March 15, 2021 *Decision* of the Supreme Court.[54]

On July 30 2021, PSPC filed an *Urgent Verified Motion for the Issuance of a Temporary Restraining Order/Writ of Preliminary Injunction* dated July 29, 2021 (July

[47] *Id.*
[48] *Id.*, p. 114.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*, pp. 114-5.
[53] *Id.*, p. 115.
[54] *Id.*

29, 2021 Urgent Verified Motion) following the Supreme Court's remand of the case to the court *a quo* to resolve the issue on the propriety of issuing a TRO and/or Writ of Preliminary Injunction (WPI) to enjoin the implementation of *Document No. M-059-2012* (during the pendency of this case in accordance with the Supreme Court's March 15, 2021 *Decision*).[55]

In its *Manifestation with Urgent Motion to Set Hearing Through Videoconferencing* filed on September 14, 2021, PSPC manifested that subsequent to its filing of the above July 29, 2021 *Urgent Verified Motion*, a *Demand Letter* dated August 18, 2021 (August 18, 2021 Demand Letter) was issued by District Collector Atty. Ma. Rhea M. Gregorio (Atty. Gregorio) against PSPC relative to the subject excise taxes on its alkylate importations. PSPC thus prayed for the prompt resolution of its *Urgent Verified Supplemental Motion for the Issuance of a Writ of Preliminary Injunction and Suspension Order with a Prayer for the Immediate Ex Parte Issuance of a 60-Day Temporary Restraining Order* (Supplemental Motion) it filed on August 6, 2021.[56]

During the hearing on PSPC's *Urgent Verified Motion*, the Collector and the BOC manifested their objection to PSPC's application for suspension order and raised an issue on the court *a quo*'s jurisdiction prompting the court *a quo* to direct the parties to submit their respective memoranda on the matter.[57]

In compliance with the court *a quo*'s directive, PSPC and the Collector and the BOC filed their respective memoranda both on September 20, 2021. On the other hand, the CIR filed a *Manifestation* on October 14, 2021, stating that a memorandum will no longer be filed since it is the BOC's assessment which was involved in the TRO prayed for.[58]

In resolving the issue on jurisdiction, the court *a quo*, in its *Resolution* dated November 5, 2021, ruled that while it is not vested with jurisdiction to issue a suspension order and/or TRO/WPI on the August 18, 2021 Demand Letter, it has jurisdiction to hear the application for the TRO/WPI against *Document No. M-059-2012*. Thus, the court *a quo* set the case for hearing on the propriety of issuing a TRO/WPI to enjoin the implementation of said document.[59]

On November 22, 2021, the Collector and the BOC filed a Motion for Reconsideration, while PSPC filed an Opposition thereto on November 29, 2021.[60]

In the meantime, PSPC filed an *Extremely Urgent Motion to Resolve* as it again received another *Demand Letter* dated October 28, 2021 (October 28, 2021 Demand Letter) from Atty. Gregorio. The letter reiterated the demand for payment of the total amount of ₱3,491,629,824.00. Later, PSPC filed an *Urgent*

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[55] *Id.*
[56] *Id.*, pp. 115-6.
[57] *Id.*, p. 116.
[58] *Id.*
[59] *Id.*
[60] *Id.*

Motion for Earlier Setting on November 29, 2021 requesting that the hearing be set at a date earlier than the setting on January 26, 2022.[61]

On February 14, 2022, the court *a quo* issued a *Resolution* denying the Collector and the BOC's Motion for Reconsideration while rendering PSPC's *Urgent Motion for Earlier Setting of Hearing* moot.[62]

During the hearing on 02 March 2022, counsel for respondents Collector and BOC manifested that petitioner had paid the excise taxes under protest rendering thus the latter's prayer for issuance of TRO/WPI as moot.

On May 12, 2022, the court *a quo* received a *Notice of Resolution* dated February 23, 2022 from the Supreme Court denying the Collector and the BOC's *Motion for Reconsideration* with finality and directing the issuance of entry of judgment immediately.[63]

In its March 30, 2022 *Resolution*, the court *a quo* considered the case submitted for decision.[64]

On March 7, 2023, PSPC filed a *Manifestation* invoking the Supreme Court's ruling in *The Philippine Stock Exchange, Inc., et al. v. Secretary of Finance, et al.* (*Philippine Stock Exchange*, G.R. No. 213860, July 5, 2022) in further support of its petition.[65]

On April 27, 2023, the court *a quo* rendered a decision which *granted* PSPC's *Amended Petition for Review* and *nullified* both *Document No. M-059-2012* dated June 29, 2012, issued by the CIR and the Letter dated October 1, 2012 issued by the Collector.[66]

In a Resolution dated October 24, 2023, the court *a quo* denied the *Motion for Partial Reconsideration (Re: Decision promulgated on April 27, 2023)* of the CIR and the *Motion for Reconsideration* of the BOC and the Collector.[67]

Hence, the appeals before the Court *En Banc*.

Proceedings Before the CTA En Banc (EB 2842)

On December 15, 2023, the Collector and the BOC filed through the Office of the Solicitor General (OSG) a *Motion for Extension of Time to File Petition for Review*, which prayed for fifteen (15) days from December 18, 2023 or until January 2, 2024, within which to file and serve a *Petition for Review*.[68]

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[61] *Id.*, pp. 116-7.
[62] *Id.*, p. 117.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*, p. 144.
[67] *Id.*, pp. 154-69.
[68] *Rollo* (2842), pp. 1-5.

In a *Minute Resolution* dated December 18, 2025, the Court *En Banc* granted the Collector and the COC a non-extendible period of fifteen (15) days from December 16, 2023 or until December 31, 2023, within which to file a petition.[69]

On January 2, 2024, the Collector and the COC filed their *Petition for Review*.[70]

On January 3, 2024, the Collector and the COC filed a *Manifestation* and submitted a copy of the *Verification and Certification of Non-Forum Shopping*, which was left out during the filing of the petition.[71] This was noted by the Court in a *Minute Resolution* dated January 4, 2024.[72]

Proceedings Before the CTA En Banc (EB 2844)

On December 19, 2023, the CIR filed a *Petition for Review* with the Court *En Banc*.[73]

In a *Minute Resolution* dated January 4, 2024, the Court consolidated EB 2842 and 2844.[74]

Proceedings Before the CTA En Banc (EB 2842 & 2844)

On January 5, 2024, the BOC and the Collector filed a *Manifestation*, which stated that they learned that the CIR filed a petition with the Court docketed as CTA EB No. 2844 and are, thus, notifying the Court of the same although they did not cause said petition to be filed and neither were they parties to said petition.[75]

In a *Minute Resolution* dated March 27, 2024, the Court noted the January 5, 2024 *Manifestation* of the BOC and the Collector and directed them to submit original/certified true copies of the assailed *Decision* and *Resolution* and the *Special Power of Attorney* relative to the filing of the *Petition for Review* (EB 2842).[76]

On April 16, 2024, the BOC and the Collector filed a *Compliance with Manifestation and Motion* stating that they have submitted certified true copies of the assailed *Decision* and *Resolution* and the *Special Power of Attorney* executed by the Collector but would need additional five (5) days to comply with the submission of the *Special Power of Attorney* of the Commissioner of the BOC.[77]

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[69] *Id.*, p. 8.
[70] *Id.*, pp. 9-69.
[71] *Id.*, pp. 76-79.
[72] *Id.*, p. 84.
[73] *Rollo* (EB 2844), pp. 1-12.
[74] *Rollo* (EB 2842), p. 84.
[75] *Id.*, pp. 87-90.
[76] *Id.*, p. 93-A.
[77] *Id.*, pp. 94-97.

On April 18, 2024, the BOC and the Collector filed a *Compliance* submitting a copy of the *Special Power of Attorney* executed by the Commissioner of the BOC.[78]

On July 2, 2024, the Court issued a *Minute Resolution*, which noted the April 16, 2024 *Compliance with Manifestation and Motion* and the April 18, 2024 *Compliance;* granted the April 16, 2024 *Compliance with Manifestation and Motion*; and, directed PSPC to file a comment on the petitions filed in CTA EB Nos. 2842 & 2844.[79]

On July 15, 2024, PSPC filed its *Consolidated Comment [To the: (1) Petition for Review dated 15 December 2023 and (2) Petition for Review dated 28 December 2023].*[80]

In *Minute Resolution* dated August 21, 2024, the Court noted the filing of PSPC's *Consolidated Comment [To the: (1) Petition for Review dated 15 December 2023 and (2) Petition for Review dated 28 December 2023]* and submitted the case for decision.[81]

On August 22, 2025 PSPC filed a *Manifestation [Re: Court of Tax Appeals Decision in Commissioner of Internal Revenue v. Petron Corporation, CTA E.B. No. 2894 (CTA Case No. 9947)]*, which informed the Court that it categorically ruled that alkylate is not subject to tax under Section 148(e) of the NIRC.[82]

<u>The Issues</u>

In CTA EB No. 2842, petitioners BOC and the Collector raised the following issues:

1. Whether the Special Second Division of the Honorable Court of Tax Appeals gravely erred in ruling that the importation of Alkylate is *not* subject to excise tax;

2. Whether the Special Second Division of the Honorable Court of Tax Appeals gravely erred in ruling that *Document No. M-059-2012*, as a BIR Ruling, substantially increased respondent PSPC's burden, and as such, prior notice, hearing, and publication were required for its validity; *and*,

3. Whether the Special Second Division of the Honorable Court of Tax Appeals gravely erred when it ruled that the retroactive application of *Document No. M-059-2012* violated Section 246 of the NIRC and infringed upon PSPC's right to due process.[83]

[78] *Id.*, pp. 176-178.
[79] *Id.*, p. 185.
[80] *Id.*, pp. 186-274.
[81] *Id.*, p. 277.
[82] *Id.*
[83] *Petition for Review, Id.*, p. 22.

In CTA EB No. 2844, petitioner CIR raised one assignment of error:

"Whether or not the Special Second Division of the Honorable Court erred when it nullified *Document No. M-059-2012* dated 29 June 2012, issued by petitioner CIR and the Letter dated 01 October 2012, issued by the Collector or Customs of the Port of Batangas."[84]

The Arguments of the Parties

The Arguments of petitioners BOC, the Collector and the CIR

First, petitioners BOC and Collector state that the importation of Alkylate is subject to excise tax:

(1) For falling under "all things imported" under Section 129 of the NIRC, as amended. The fact of importation alone is sufficient for petitioners BOC and Collector to collect the excise taxes due on PSPC's importations of Alkylate. Furthermore, they are of the view that because the court *a quo* focused on the enumeration of the categories of goods in Title VI, particularly Section 148 of the NIRC, as amended, it overlooked the general, all-encompassing provision embodied in Section 129. They maintain that in determining the liability for excise tax, the two-pronged question that must successively be asked are: (a) Does the thing or good fall within the ambit of Section 129; *and*, (b) If it does, where will it fall in the succeeding provisions on the enumeration under Title VI of the NIRC, as amended, for purposes of fixing the applicable rate of excise tax;[85]

(2) Because it is a similar product of distillation under Section 148(E) of the NIRC, as amended;[86] *and*,

(3) The ruling of the Supreme Court in *Petron Corporation v. Commissioner of Internal Revenue* (G.R. No. 255961, March 20, 2023) cannot be blindly applied to the present case.[87]

Second, petitioners BOC and Collector contends that *Document No. M-059-2012*, as a BIR Ruling, did *not* substantially increase PSPC's burden, and as such, prior notice, hearing, and publication were *not* required for its validity;[88]

Third, petitioners BOC and Collector finally argue that Section 146 of the NIRC does not apply to *Document No. M-059-2012*;[89] *and*,

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[84] *Petition for Review, Rollo* (EB 2844), p. 3.
[85] *Petition for Review, Rollo* (EB 2842), pp. 23-30.
[86] *Id.*, pp. 30-42.
[87] *Id.*, pp. 42-47.
[88] *Id.*, pp. 47-63.
[89] *Id.*, pp. 64-67.

Fourth, petitioner CIR states that tax refund is in the nature of tax exemption which must be construed *strictissimi juris* against the taxpayer and cites *Petron Corporation v. Commissioner of Internal Revenue* (CTA EB No. 2425, June 28, 2022), which held that the importation of Alkylate is subject to excise tax.[90]

The arguments of respondent PSPC

In response to the petitions, PSPC *first* asserts that it is *not* liable for the alleged excise taxes because:

(1) The Supreme Court in *Petron Corporation v. Commissioner of Internal Revenue* (G.R. No. 255961, March 20, 2023) [2023 *Petron* case] clearly and unequivocally rules that Alkylate is not subject to excise tax under the NIRC;[91]

(2) Petitioners BOC's and Collector's argument that Section 129 mandates that "things imported" necessarily refer to "all things imported" is erroneous;[92]

(3) Petitioners BOC and Collector attempt at distinguishing between direct and indirect products of distillation in relation to regular gasoline is irrelevant and misleading where the 2023 *Petron* case already held that the subject of excise tax is the specific good itself produced by distillation and *not* the ingredients;[93]

(4) Consistent with the 2023 *Petron* case, the findings of the court *a quo* have shown that in order to subject "other products of distillation" to excise tax under Section 148(e) of the NIRC, they must be similar to naphtha and regular gasoline as to nature, manner of production, chemical properties, and purpose and use;[94] *and*,

(5) Contrary to the CIR's allegations, the instant dispute is about excise tax coverage and *not* excise tax exemption.[95]

Secondly, PSPC declares that the petitions should be denied because the court *a quo* correctly ruled that *Document No. M-059-2012* is *null and void*, in the absence of prior notice, hearing and publication and for contravening Section 246 of the NIRC.[96]

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[90] *Petition for Review, Rollo* (EB 2844), pp. 3-10.
[91] *Consolidated Comment, Rollo* (EB 2842), pp. 219-24.
[92] *Id.*, pp. 224-30.
[93] *Id.*, pp. 230-4.
[94] *Id.*, pp. 235-42.
[95] *Id.*, pp. 242-5.
[96] *Id.*, pp. 245-60.

Third, PSPC prays that the Court dismiss with prejudice the petitions which are trifling with judicial processes and continue to engage in forum shopping.[97]

The Ruling of the Court *En Banc*

The consolidated petitions are without merit.

***Petitioners failed to present convincing evidence and argument that would persuade the Court* En Banc *to disturb the factual findings of the court* a quo.**

Petitioners are adamant that the importation of alkylate by PSPC should be subject to excise tax because it is a product of distillation.

This contention is *unsupported* by the facts in the case below.

The Court *a quo* has, in fact, carefully considered the arguments of the petitioners, the relevant case law, the pieces of evidence offered to prove the facts. Specifically, the testimonies of the witnesses, who were considered experts in their fields, was studied by the court *a quo*. What is clear, based on a reading of the assailed decision, is that the court *a quo* concluded that alkylate *cannot* be a product of distillation based on the CIR's own evidence and, thus, *not* subject to excise tax:

> "Similarly evident from the said testimony is the fact that while there has to be distillation after the process of alkylation, the same is necessary only to recover the alkylate form[ed] or separate it from other compounds produced. *In other words*, distillation is not necessary for the alkylate's production (as it is already formed after the process of alkylation).
>
> In sum, the following conclusions can be deduced from respondent CIR's own evidence or own witness:
>
> 1. Alkylation is the process by which alkylate formed;
> 2. Alkylation and distillation are different processes;
> 3. There is no direct distillation of alkylate from crude oil; and,
> 4. The process of distillation is only for the recovery of the alkylate.
>
> In fact, even in the questioned *Document No. M-059-2012*, alkylate is similar to naphtha only 'in terms of boiling range, volatility and recovery process' — but not in how it is produced.

/V

[97] *Id.*, pp. 260-72.

> *En totale*, it cannot be said that alkylate is a product of distillation. Hence, its importation should not be subject to excise tax in the absence of a law which clearly, expressly and unambiguously impose such tax on the said article."[98] (*Underscoring supplied*)

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*,[99] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

In this case, petitioners failed to show how the court *a quo*'s appreciation of the facts presented during trial were tainted by grave abuse of discretion.

The Supreme Court in **Petron Corporation v. Commissioner of Internal Revenue** *(G.R. No. 255961, March 20, 2023) clearly and unequivocally ruled that alkylate is* not *subject to excise tax under the NIRC.*

In *Petron Corporation v. Commissioner of Internal Revenue*,[100] the Supreme Court finally settled the question of whether the importation of alkylate is subject to excise tax. The case involved Petron's request for refund of excise taxes it had paid in connection with its importation of alkylate on various dates in 2012. The Supreme Court ruled that alkylate is *not* a product of distillation, does *not* fall under the category of "other similar products of distillation" as contemplated in Sec. 148(e) of the 1997 NIRC, as amended and, thus, *not* subject to excise tax *in the absence of any legal basis therefor.*

> **"The rule applicable in this case is the doctrine of strict construction of tax laws in favor of the taxpayer**
>
> It bears to point out that petitioner does not seek to be exempt from excise taxes on its alkylate importations. Instead, petitioner anchors its claim for tax refund on the absence of a law that imposes excise tax on alkylate. Hence, the CTA incorrectly applied the rule on strict interpretation in construing tax exemptions since petitioner is not asking to be exempt from excise tax. To be precise, petitioner prays for the refund of the excise taxes

[98] Assailed Decision, *Rollo* (2842), p.137.
[99] G.R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.
[100] G.R. No. 255961, March 20, 2023.

erroneously assessed and illegally collected from it on the ground that there is no law that authorizes such exaction.

As correctly pointed out by petitioner, not all claims for tax refund partake the nature of a tax exemption such that the rule of strict interpretation against the taxpayer is always applicable. The Court has long settled that '[t]here is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute.' In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language.

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

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

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

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

> The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. **Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.** This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import. (Emphasis Ours)

Relatedly, Sec. 148 (e) of the 1997 NIRC, 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:
>
> x x x x
>
> (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;

Indeed, alkylate is not expressly mentioned in the above-quoted provision as one of the goods subject to excise tax. Neither does it tax 'products whose raw materials are products of distillation.' Rather, the provision plainly taxes only '[n]aphtha, regular gasoline and other similar products of distillation.' Hence, to be covered by the said provision, alkylate itself, rather than its 'raw materials,' must be the 'product of distillation.' Notably, it is undisputed that **alkylate is not produced by the process of distillation, but by alkylation**. This was confirmed by Dr. Ocon and echoed by no less than the BIR's own witness, Ma. Lourdes Rosula R. Ramos (Ramos), the Chief of the BIR Laboratory Section during her cross-examination. Even the CTA *En Banc* has concluded that alkylate is produced through the process of alkylation.

However, in ruling that alkylate should be taxed, the CTA Special Second Division as affirmed by the CTA *En Banc* declared that alkylate falls under the 'other similar products of distillation' clause of the above provision. The tax courts stressed that while alkylate is not directly produced through the process of distillation, its raw materials, olefins and isobutane, are nevertheless products of distillation and thus alkylate first undergoes the process of distillation.

This argument fails to persuade.

<u>Alkylate does not fall under the category of 'other similar products of distillation' subject to excise tax</u>

At this juncture, it should be clarified that between the two raw materials of alkylate, only isobutane is produced by distillation. In the Judicial Affidavit submitted by petitioner's witness, Simon Christopher Mulqueen (Mulqueen), Light C3-C5 Olefins are typically produced from a fluid catalytic cracker (FCC) and/or coker unit. Isobutane, on the other hand, can be a product of crude oil distillation or may be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.

Thus, it is incorrect to say that both raw materials utilized to produce alkylate are products of distillation, much more to declare alkylate as a product of distillation simply because its raw materials are produced through distillation. To be sure, Sec. 148 (e) of the 1997 NIRC, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production.

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

> 1. **Alkylate is not a finished product but an intermediate or raw gasoline component used as blend stock in the production of PNS-compliant unleaded gasoline consistent with requirements of the Philippine Clean Air Act.**
>
> 2. **<u>Alkylate is produced through alkylation</u>, a chemical process for converting light olefins and isobutane into isoparaffin isomers of the correct boiling range and octane numbers.**
>
> 3. **<u>Alkylation and distillation are different processes and are separate and distinct from one another</u>.**
>
> x x x x
>
> 4. **In terms of properties and recovery process, <u>alkylate is different from and cannot be placed in the same category as that of naphtha and regular gasoline</u>. Alkylate and naphtha differ in boiling range, volatility and recovery process.** [Naphtha's boiling point is 190°C maximum while alkylate's final boiling point is higher than 200°C. As to volatility, naphtha's vapor pressure is at 95kPa maximum while that of alkylate is less than 36kPa. On the recovery process, naphtha can be recovered straight from the process of crude distillation or from other processes. On the contrary, alkylate cannot be recovered straight from crude distillation but only from the process of alkylation.]

> 5. **Similarly, alkylate and regular gasoline differ in boiling range, volatility and recovery process.** [Regular gasoline distillation boiling point at 10% recovery (T-10) is 70°C maximum as specified in the (Philippine National Standards) while alkylate has a boiling point greater than 79°C, which does not meet the 70°C maximum specification for regular gasoline. In terms of volatility, regular gasoline vapor pressure can go as high as 68kPa while alkylate's vapor pressure is only at 25-36 kPa. As to recovery process, regular gasoline is produced through the blending of gasoline components that are derived directly from crude oil through distillation and those that are produced from special conversion/reactions processes. Alkylate, on the other hand, cannot be produced from crude oil distillation but only through alkylation process.]
>
> 6. **Alkylate cannot be used as a motor fuel without violating specific standards.** [Specifically, when alkylate is loaded into a vehicle's gas tank without any other component, it can cause poor starting and poor warm-up which can affect driveability and acceleration due to its low vapor pressure. More importantly, under Philippine laws, alkylate cannot be sold as a motor fuel suitable for operating motor vehicles because the specifications of alkylate render it unfit as a motor fuel. It does not conform to the specification of the PNS imposed by the Clean Air Act upon motor fuels since its distillation at 10% Volume (TIO) exceeds the 70°C maximum limit set by the PNS.]

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

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

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

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

unambiguously impose tax on alkylate (or those which are not directly produced by distillation).

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

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

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

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

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

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

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

In contrast, the expert witnesses presented by petitioner painstakingly described the difference between naphtha and alkylate insofar as boiling range, volatility, and recovery process are concerned. In particular, Dr. Ocon, a tenured professor at the Department of Chemical Engineering of the University of the Philippines, Diliman and the Head of the Laboratory of Electrochemical Engineering of the same university, and an experienced consultant,[56] made a detailed comparison between naphtha and alkylate. As to boiling range, alkylate ranges from 40°C to 150°C while naphtha is limited only to 30°C to 100°C. He also noted a variance on the olefins, aromatics, and sulfur contents of naphtha and alkylate. Naphtha has 20-30 vol% of olefins, 29 vol% of aromatics, and 800ppm of sulfur. On the other hand, alkylate has 0.5 vol% of olefins, 0 vol% of aromatics, and 16ppm of sulfur. In addition, the drivability indices of naphtha differ from alkylate in that naphtha values at 1223 while alkylate is at 1134.

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

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

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

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

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

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

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

> For this Court to subject alkylate to excise tax, the authority should be reasonably founded on the language of the statute. That language is wanting in this case. 'In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.' Here, We find that the CIR's interpretation as to the nature and taxability of alkylate is patently erroneous for lack of both textual and non-textual support.
>
> As previously pointed out, alkylate is not among the excisable articles enumerated in Sec. 148(e) of the 1997 NIRC, as amended. Neither can it be categorized as 'other similar products of distillation' precisely because it is *not a direct product of distillation.* Given this, the CTA's reliance on the CIR's administrative interpretation on the matter is utterly misplaced. To reiterate, administrative interpretations cannot go beyond or be inconsistent with the terms and provisions of the law it seeks to interpret or implement.
>
> All told, the Court finds that the CTA *En Banc* erred in denying petitioner's claim for tax refund or credit. To be clear, alkylate does not fall under the category of 'other similar products of distillation' as contemplated in Sec. 148(e) of the 1997 NIRC, as amended." (*Citations omitted; underscoring supplied*)

As can be read in *Petron*, it completely resolved the finer points covered by the issue on whether the importation of alkylate is subject to excise tax. The Court, therefore, need *not* dwell on them again which *Petron* itself addresses at length. Suffice it to state that Supreme Court decisions interpreting the laws become part of the law of the land.[101] *Petron*'s disposition of the first issue has a binding effect in accordance with the principle of *stare decisis et non quieta movere*.[102]

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 of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[103]

In short, *Petron* has become a judicial precedent which the Court must adhere to in applying the excise tax provisions of the NIRC to this case.

The court* a quo *correctly ruled that* Document No. M-059-2012 *is null and void, in the absence of prior notice, hearing

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[101] Article 8 of the Civil Code.
[102] *Buella y Abalain v. People*, G.R. No. 244027, April 11, 2023.
[103] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop Inc.*, G.R. No. 150947, July 15, 2003).

and publication and for contravening Section 246 of the NIRC.

Petitioners raised a common issue on whether the court *a quo* correctly nullified the BIR-issued *Document No. M-059-2012* for *due process* violation.

The facts are well-established and *not* disputed by petitioners.

It must be recalled that *prior* to the issuance of *Document No. M-059-2012*, the BIR issued twenty-one (21) ATRIGs, which stated that PSPC's alkylate importations were *not* subject to excise tax. Then, in a DOE opinion issued to the Collector, the DOE also confirmed that alkylate was *not* subject to excise tax. Later, however, the BIR *reversed* its view and issued *Document No. M-059-2012*, as a response to the written query of the COC. It 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."

Petitioners, while conceding that *Document No. M-059-2012* is a ruling, insist that the case law discussed by the court *a quo* are not applicable to this case. They state that *Document No. M-059-2012* as a ruling is "set apart" from the *other* BIR issuances because the ruling is *merely an interpretation* of whether alkylate can fall under the classification of "similar products of distillation" under Section 148(e) of the tax code. In addition, petitioners point out that the CIR was merely replying to the COC's query and the ruling did *not* substantially increase respondent PSPC's tax burden. In short, petitioners argue that *Document No. M-059-2012* is a *valid* issuance despite ignoring the notice and hearing requirements of due process.[104]

Surely, petitioners are splitting hair at the expense of justice.

In *Commissioner of Internal Revenue v. and Court of Tax Appeals (Second Division) and Pilipinas Shell Petroleum Corporation*,[105] another offshoot of the case appealed before the Court (CTA 8535), the Supreme Court *affirmed* that *Document No. M-059-2012* is indeed a BIR ruling:

> ***II. The CTA has jurisdiction over the subject matter of CTA Case No. 8535.***
>
> In order to resolve the issue of whether or not the CTA correctly assumed jurisdiction over the subject matter of CTA Case No. 8535, it is first necessary to determine the exact nature of the challenged issuances, *i.e.*, *Document No. M-059-2012* and the October 1, 2012 Demand Letter.
>
> ***a. Document No. M-059-2012 is a BIR Ruling.***

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[104] *Petition for Review, Rollo*, pp. 47-51.
[105] G.R. Nos. 210501, 211294 & 212490, March 15, 2021.

Much of the parties' arguments on the CTA's jurisdiction rest on whether *Document No. M-059-2012* should be classified as a BIR Ruling or a mere internal communication between the BIR and the BOC.

Preliminarily, it bears emphasizing that **BIR rulings 'are the official position of the Bureau to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws**. In this regard, the primary purpose of a BIR Ruling is simply to determine whether a certain transaction, under the law, is taxable or not based on the circumstances provided by the taxpayer.'

What sets apart BIR Rulings from other issuances of the BIR is that it relates to a particular taxpayer's set of facts and circumstances and a consequent determination of taxability or tax exemption, when applicable. In this regard, **it is readily apparent that the tenor and wording of *Document No. M-059-2012* qualify it as a BIR Ruling**. The pertinent portions thereof are herein reproduced for reference:

> Dear Commissioner Biazon:
>
> We refer to your letter dated 13 June 2012, forwarding the Memorandum dated 04 June 2012 of District Collector Rene M. Benavides of Collection District No. IV-Batangas, seeking our opinion/ruling on the propriety of the demand for payment of the unpaid excise tax and the corresponding Value-Added Tax (VAT) against Pilipinas Shell Petroleum Corporation (PSPC) amounting to Php1,384,721,993.00, on its various importations of Alkylate from the year 2010 up to present as declared in twenty eight (28) import entries.
>
> xxx xxx xxx
>
> **Ruling**
>
> The subject importations are subject to excise tax and the corresponding VAT on the said excise tax. Hence, we find no legal impediment on the issuance of the demand letter against PSPC for the collection of the excise tax and VAT amounting to Php1,384,721,993.00 on its various importations of Alkylate.
>
> xxx xxx xxx
>
> 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.
>
> In relation thereto, Section 148 (e) of the National Internal Revenue Code (NIRC) 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.

xxx xxx xxx

In view of all the foregoing, this Office is of the opinion that the importations of the subject article by PSPC are covered by excise tax at the rate of Php4.35 per liter under Section 148 (e) of the NIRC of 1997, as amended. Accordingly, PSPC should pay the amount of Php1,384,721,993.00 representing the unpaid excise taxes and the corresponding VAT, exclusive of increments, on the importations of Alkylate from 2010 up to the present as declared in the twenty eight (28) import entries.

Please be guided accordingly.

Very truly yours,

[SIGNED]
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

As may be gleaned from the first paragraphs of *Document No. M-059-2012,* the query relates to the particular transactions of PSPC and no other taxpayer, particularly with respect to its importations of alkylate from the year 2010 up to 2012. It also calls for an interpretation of whether alkylate can fall under the classification of 'similar products of distillation' under Section 148 (e) of the Tax Code. Finally, it concludes with a determination of the taxability of PSPC's importations.

Hence, although the query originated from the Collector and not the taxpayer in this case, the clarificatory/interpretative tenor of *Document No. M-059-2012* relative to the PSPC's excise tax liability remains. As such, *Document No. M-059-2012* is effectively a BIR Ruling issued against PSPC." (*Underscoring supplied; citations omitted*)

Because *Document No. M-059-2012* was declared a BIR ruling, which is an official act of a government administrative agency and which ruled on the tax obligation of a specific taxpayer, it must comply with the fundamental requirement of *due process.*

Due process is a limitation placed on the powers of government and is expressed in Article III, Section 1 of the 1987 Constitution:

"ARTICLE III
BILL OF RIGHTS

> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

The essence of *procedural due process* is embodied in the basic requirement of notice and a real opportunity to be heard.[106] As the Supreme Court held in *Bangko Sentral ng Pilipinas v. Commission on Audit*:

> "Due process in administrative proceedings does not require the submission of pleadings or a trial-type of hearing. <u>However, due process requires that a party is duly notified of the allegations against him or her and is given a chance to present his or her defense</u>."[107]

Procedural due process is met when one is given notice and the opportunity to be heard and explain their side. It gives a party the chance to seek reconsideration of an action or ruling unfavorable to them. A party is denied the opportunity to avail of the reliefs available to them if they are not notified of a decision involving them, especially one where they stand to lose their life, liberty, or property. Such is a violation of their due process.[108]

In *The Philippine Stock Exchange, Inc., et al. v. Secretary of Finance, et al.*,[109] the Supreme Court *En Banc* held that, *without notice and hearing*, the issuance of the questioned BIR regulations violated due process because they *imposed new obligations* upon the taxpayers. The BIR regulations were *voided*, as a result:

> ***"The issuance of the questioned regulations violated due process***
>
> <u>Petitioners allege that the Secretary of Finance and the CIR violated their right to due process when they did not send notice or conduct hearings to deliberate and discuss the provisions and requirements of the questioned regulations</u>. Respondents refute this argument by proffering that the Bureau of Internal Revenue (BIR), in the exercise of its legislative functions, had issued several BIR issuances to amend the reportorial requirements of the payor--corporations, which do not need to comply with the requirement of notice and hearing.
>
> This issue essentially boils down to the characterization of the questioned regulations: specifically whether they are legislative rules or interpretative rules.

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[106] *Incumbent and Former Employees of the National Economic and Development Authority Regional Office XIII v. Aguinaldo*, G.R. No. 261280, October 3, 2023.
[107] G.R. No. 213581, September 19, 2017, Supreme Court *En Banc*.
[108] *Villarete v. Commission on Audit*, G.R. No. 243818, April 26, 2022.
[109] G.R. No. 213860, July 5, 2022, Supreme Court *En Banc*.

The right to due process guaranteed by the Constitution encompasses substantive and procedural due process. Substantive due process pertains to government's denial or restriction on the right to life, liberty, or property; procedural due process pertains to the procedures that the government must follow before it deprives a person of life, liberty, or property. While the right has no exact definition, the standard in determining whether a person was accorded due process is whether the restriction on the person's life, liberty, or property is consistent with fairness, reason, and justice, and free from caprice and arbitrariness. As applied to procedural due process, the question to be asked is whether the person was given sufficient notice and opportunity to be heard. Then applying the concept of procedural process to the administrative issuances in this case, the inquiry pertains to whether the questioned regulations require prior notice and hearing for their validity.

But first, *Republic v. Drugmaker's Laboratories, Inc.* summarizes the different kinds of administrative regulations:

> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. Legislative rules are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, interpretative rules are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, contingent rules are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.

Legislative rules are a form of subordinate legislation where the agency is acting in a legislative capacity, supplementing the statute, filling in the details, pursuant to a specific delegation of legislative power. They implement a primary legislation by providing the details thereof. They impose additional obligations pursuant to authority from Congress and affect individual rights and obligations. Interpretative rules, on the other hand, are intended to interpret, clarify, or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute.

Then, the general rule is that administrative regulations must comply with the requirements of the Administrative Code of 1987 on prior notice, hearing, and publication for validity. Section 9, Chapter 2, Book VII of the Code provides for the requirement of notice and hearing when practicable if not required by law:

> Section 9. *Public Participation.* — (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties

the opportunity to submit their views prior to the adoption of any rule.

x x x x

Interpretative rules, however, are an exception from the requirement of public participation, or prior notice and hearing. When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. But surely, if the interpretative regulation substantially increases the burden of those governed, public participation and publication are a must, thus:

Accordingly, an administrative regulation can be construed as simply interpretative or internal in nature, dispensing with the requirement of publication, when its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, however, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter, to be duly informed, before that new issuance is given the force and effect of law.

In fine, the gauge on determining if a regulation requires prior notice and hearing is its substance or content. Prior notice and hearing are required if the regulation substantially increases the burden of those governed, notwithstanding its nomenclature—despite the regulation being called or designated as interpretative.

Thus, if the questioned regulations here in this case are legislative rules or substantially increase the burden of those governed, they should have undergone prior notice and hearing (which, in this case, are undisputedly absent) for their validity. If they are interpretative rules, prior notice and hearing are not essential for their validity.

Here, the Court finds that the questioned regulations are not mere interpretative issuances; they are legislative in nature that change, if not increase, the burden of those governed. Notice and hearing are thus required for their validity.

The questioned regulations, particularly SEC MC 10-2014, substantially changed the procedure currently observed by the market participants. The questioned regulations impose a new obligation—that is, the transmittal of the alphalist of payees to the listed companies—on the PDTC, their transfer agents and depository account holders. This obligation did not exist before because the practice then was the reporting of PCD Nominee as the payee in the alphalist. With the questioned regulations, there will be a significant change on how the parties involved, including the investors themselves, will make decisions and act. As aptly pointed out by Senior Associate Justice Leonen and Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier), the questioned regulations upended long established practices and changed a long standing rule in imposing this new burden.

Also, the questioned regulations impose penalties for non-compliance. The withholding agent may be penalized if it reported PCD Nominees in the alphalist, in addition to an invalid submission that may even result to failure to

> file the return, which is a completely different matter in itself. On the part of the PDTC and brokers, they may be penalized for failure to provide the listed companies with the information needed in the alphalist.
>
> It may be argued that this new burden is not substantial because the list of payees is available and can easily be submitted to the listed companies as withholding agents, given that the PSE Revised Trading Rules require participants to maintain a record of their clients.
>
> However, it is to be stressed that its submission to the listed companies is not previously required. Submission also means that data previously not available to the listed companies will be made available to them and eventually to the BIR. In this regard, there is a significant change in the expectation of privacy with regard to the data. As pointed out by Senior Associate Justice Leonen, the obligation of providing the list of payees produces the obligation to safekeep the information provided.
>
> Hence, these effects highlight the questioned regulations' imposition of substantial burden.
>
> Justice Lazaro-Javier also aptly stated that the prior conduct of public participation would have afforded the investors the opportunity to decide on whether to continue or withdraw with their investments to avoid the effects of the new regulations.
>
> In fine, the questioned regulations should have undergone notice and hearing prior to their enactment. They imposed **new and substantial burdens** on those governed. For failure to conduct notice and hearing prior to issuance and publication, the questioned regulations are therefore void." (*Citations omitted; underscoring and emphases supplied*)

In this case, *Document No. M-059-2012*, which reversed petitioners' previously-held stance on PSPC's importations of alkylate from 2010 to 2012, has *directly affected* the latter's property rights. It is *not* a "mere internal communication between the BIR and the BOC" which has absolutely no financial consequence to PSPC. It is *not* merely interpretative, which should have added nothing new to the existing rules on alkylate importation, as petitioners insist.

As the facts bear out, alkylate, whose importation was *at first* held to be outside the coverage of excise tax provisions of the NIRC *became* an excisable article because of *Document No. M-059-2012.* This reversal translated to a demand for payment of ₱1,994,500,677.47.[110] PSPC, as the taxpayer *specifically* singled out

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[110] On August 31, 2012, Commissioner Biazon sent a letter to the CIR requesting for assistance in the computation of deficiency excise taxes and applicable interests and penalties for PSPC's previous importations from 2010 to 2012. On September 5, 2012, the CIR issued a letter-reply containing the requested computation in the aggregate amount of ₱1,994,500,677.47. As a result, on October 1, 2012, the Collector sent a *Demand Letter* to PSPC for the deficiency excise taxes, inclusive of interest and penalties, as computed by the CIR in her September 5, 2012 letter-reply. Because of this development, PSPC amended its *Petition for Review* in CTA No. 8535 to include the October 1, 2012 *Demand Letter* (Amended Petition); please refer to the statement of facts, *supra*; *See* also the facts in *Commissioner of Internal Revenue v. and Court of Tax Appeals (Second Division) and Pilipinas Shell Petroleum Corporation,* G.R. Nos. 210501, 211294 & 212490, March 15, 2021.

in *Document No. M-059-2012* was, no doubt, saddled by a *new imposition not* previously contemplated by the government. It is *not* an innocent interpretation couched as a mere reply to the query of another government agency. When *Document No. M-059-2012* found "no legal impediment on the issuance of the demand letter against PSPC for the collection of excise tax and VAT amounting to ₱1,384,721,993.00 on its various importations of Alkylate"[111] this change led to the issuance of the demand letter and the insertion of the *colatilla adverse* to the property interests of PSPC. The *colatilla* petitioners added, it must be noted, was *not* found in their earlier ATRIGs numbering no less than twenty-one (21), all 21 of which cleared PSPC's importation of alkylates from the payment of excise taxes.

Surely, petitioners *cannot* deny that the ₱1,994,500,677.47 representing deficiency excise taxes and applicable interests and penalties for the alkylate importation is an added *burden*. In the language of *The Philippine Stock Exchange*, the ₱1,994,500,677.47 is a "new and substantial" burden to PSPC. The BIR ruling significantly increased PSPC's tax burden so much so that it was compelled to seek recourse from the courts.

More importantly, the creation of a tax obligation through *Document No. M-059-2012*, *without notice and hearing*, infringes upon the due process clause. When petitioners altered their so-called "interpretation" *without* prior notice to the taxpayers affected and *without* giving them the chance to mount an opposition, it shows patent disregard for fairness. It violates the fundamental right of PSPC guaranteed by the Constitution.

A party is denied the opportunity to avail of the reliefs available to it if it is *not* notified of a decision involving it, especially one where it stands to lose its life, liberty, or property. *Such is a violation of its due process.*[112]

Finally, the prohibition on the retroactive application of rulings is evident in Section 246 of the tax code:

> "**SEC. 246.** *Non-Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return orany document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

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[111] *See* Concurring Opinion of J. Lanee S. Cui-David, Rollo (2842), pp. 147-148.
[112] *Villarete v. Commission on Audit*, G.R. No. 243818, April 26, 2022.

(c) Where the taxpayer acted in bad faith."

Document No. M-059-2012 which resulted in a deficiency excise tax liability is unmistakably prejudicial to PSPC. It is a prohibited reversal covered by Section 246. Without evidence proving the presence of any of the exceptions under Section 246, petitioners cannot change their legal stance, which was previously relied upon by PSPC, and impose excise tax when there used to be none. More importantly, as innocuous as *Document No. M-059-2012* may be made to appear, because the ruling violates an express prohibition of law, it is *ultra vires* and must be struck down.

Acts executed against the provisions of mandatory or prohibitory laws shall be *void*, except when the law itself authorizes their validity.[113]

All told, the court *a quo* did *not* err when it ruled that *Document No. M-059-2012* is *null and void*, in the absence of prior notice, hearing and publication and for contravening Section 246 of the NIRC.

The text of Section 129 of the NIRC, however, does not impose excise tax on "all things imported".

Petitioners BOC and the Collector argue that the court *a quo* should have considered Section 129 of the NIRC, which imposes an excise tax on "all things imported" which includes the alkylate in this case.[114]

The text of Section 129 of the NIRC, however, does *not* impose excise tax on "all things imported":

> "**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.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit or 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'.*" (Underscoring supplied)

Clearly, a more nuanced reading of the text of Section 129 does *not* support petitioners' contention.

[113] Article 5, Civil Code of the Philippines.
[114] Petition for Review, Rollo (2842), pp. 23-30.

First, Article 8 of the Civil Code states: 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.' Thus:

> "The decision of the Supreme Court applying or interpreting a statute is controlling with respect to the interpretation of that statute and is of greater weight than that of an executive or administrative officer in the construction of other statutes of similar import. The reason is that the interpretation of a statute by the Supreme Court forms part of the statute itself and of the legal system and comes from that branch of government entrusted with the duty to construe or interpret the law."[115] (*Underscoring supplied*)

Accordingly, a ruling of the Supreme Court as to the construction of a law should be followed in subsequent cases involving similar questions.

Second, the landmark case of *Asiatic Petroleum Company v. Posadas*,[116] written by the Supreme Court *En Banc*, is still good and controlling case law in the interpretation of Section 129. *Asiatic* resolved whether the tax was due on an imported article that could *not* be used for domestic sale or consumption under Section 1478 of the Administrative Code which, historically, is a precursor to Section 129 of the NIRC.

In *Asiatic*, the taxpayer sought a refund of specific taxes it had previously paid for kerosene it had imported and for which a withdrawal permit was issued by the Collector of Customs. However, when the kerosene was released from bond and transferred to Asiatic's supply tank, they discovered that it was discolored and unfit for market or use in the Philippine Islands. Asiatic then applied for leave to the Collector of Customs, which the Collector granted, to re-export the discolored kerosene to its refinery in Singapore to make it suitable for the market once more. The case arose when the Collector of Customs refused to give a refund of the specific taxes Asiatic paid on the theory that the tax accrued upon the importation of the kerosene, and that it became due and payable upon its transfer from the bonded tank to the supply tank of Asiatic, and that it was actually put into the commerce and trade of the country by its removal from Asiatic's bonded tank to its supply tank, regardless of whether it was discolored.

Section 1478 of the Administrative Code provided:

> "SEC. 1478. Articles subject to specific tax. — Specific internal-revenue taxes apply to things manufactured or produced in the Philippine Islands for domestic sale or consumption and to things imported from the United States or foreign countries, but not to any thing produced or manufactured here which shall be removed for exportation and is actually

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[115] *Endencia v. David*, G.R. No. L-6355-56, August 31, 1953, Supreme Court *En Banc*.
[116] G.R. No. 30136, February 4, 1929, Supreme Court *En Banc*.

exported without returning to the Islands, whether so exported to its original state or as an ingredient or part of any manufactured article or product.

In case of importations the internal-revenue tax shall be in addition to the customs duties, if any.

No specific tax shall be collected on the any articles sold and delivered directly to the United States Army or Navy for actual use or issue by the Army or Navy, or on any article sold to the Bureau of Coast and Geodetic Survey, purchased with funds furnished by the Government of the United States, and any taxes which have been paid on articles so sold and delivered for such use or issue shall be refunded upon such sale and delivery." (*Emphasis supplied*)

The Supreme Court *En Banc* affirmed the decision of the trial court in favor of Asiatic and granted the refund:

"The very purpose and intent of the plaintiff herein removing the kerosene in question from the bonded warehouse to its supply tank was to place it on the market; otherwise, it would not have removed it or paid the tax, and the removal was made on the assumption that the kerosene was in a fit and suitable condition to sell to plaintiff's customers. At once upon the discovery that it was not, plaintiff called attention of that fact to the Collector of Customs and asked for and obtained a permit from him to ship the discolored kerosene out of the Philippine Islands to its plant in Singapore, to have it there refined and made suitable for the market. In the very nature of things, plaintiff would not want to sell the discolored kerosene in the Philippine Islands and could not do so without a substantial injury to its business reputation. It was for such reason that upon making the discovery, plaintiff applied for and obtained the permits and went to a large amount of trouble and expense in removing the kerosene from the Philippine Islands to its Singapore plant.

<u>The real purpose and intent of the law in question is to require the payment of the specific tax on things imported from foreign countries for the purpose of domestic sale or consumption in the Philippine Islands</u>. It is very apparent that the discolored kerosene in question was never imported by the plaintiff for domestic sale or consumption in the Philippine Islands; otherwise, it never would have gone to the trouble and heavy expense of removing it from the Islands to its Singapore plant for the purpose of having it refined and made suitable for the market. It never was the purpose or intent of the plaintiff to ship to the Philippine Islands discolored kerosene to be there sold and distributed to its customers, as there is no evidence that the plaintiff was ever engaged in the sale or distribution of colored kerosene. That is to say, <u>it was the purpose and intent of the plaintiff to import into the Philippine Islands kerosene which was fit and suitable for sale on the market</u>, and that it never was its intention to import discolored kerosene. That when it discovered that it had done so, it at once applied for and obtained a permit from the Government to reship it to its Singapore plant for refining purposes, which involved much trouble and a heavy expense, from all of which it is very apparent that the plaintiff never imported into the Philippine Islands discolored kerosene for domestic sale or consumption. If that it had been its purpose and intent, it never would have applied for and obtained a permit for its removal, and would never have reshipped the kerosene to its refining plant

> in Singapore, so as to have it refined and put in a fit and suitable condition for sale." (*Underscoring supplied*)

The landmark holding in *Asiatic* is consistent with *Asiatic Petroleum Co. v. Rafferty*[117] which ruled that unless exciseable products are placed in the market for domestic consumption by the public, the tax will *not* apply. In this 1918 case, Asiatic imported a shipment of mineral oils from another country. Asiatic entered the oils into a bonded warehouse of the CIR and gave bond for payment of all internal revenue taxes that might accrue upon the mineral oils. The CIR issued a permit for the discharge of the mineral oils from the ship into the bonded warehouse. During the removal of the oils from the ship to the bonded warehouse, several cases of the oils were totally destroyed by fire and never reached the bonded warehouse. The CIR still required payment of specific taxes thereon which Asiatic paid under protest, and thereafter asked for a refund. Supreme Court *En Banc* held that:

> "The theory of the law, with reference to the internal-revenue tax upon such merchandise, seems to be that the tax is not due and payable until it is about to be put into the commerce or trade of the country. The condition of the market at a particular time, or the situation in business generally, might cause the producer to withhold his merchandise and not allow it to be removed from the place of production for months, or even years; could he, under the above quoted provision of the law, be required to pay the internal revenue taxes until he saw fit to place his product upon the market?" *(Underscoring ours)*

To that question, the Supreme Court answered in the affirmative, ruling that "the payment of taxes cannot be enforced until they are due."[118] And when would they be due? When the product is fit to be placed upon the market. In other words, when it is a finished product suitable for consumption.

It is apparent that even more than a century ago, judicial construction of the phrase "*to things imported*" found in Section 129[119] meant that it was qualified by the phrase preceding it — "for domestic sale and consumption". The insertion of the phrase "or for any other disposition" in Section 129 certainly does *not* supersede the previous interpretation by no less than the Supreme Court *En Banc* that imported things must be "for domestic sale and consumption" in order to be excisable.

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[117] G.R. No. L-13051, August 10, 1918

[118] *Id.*

[119] "**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.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit or 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'." (*Underscoring supplied*)

A more recent jurisprudence, *Exxonmobile Petroleum and Chemical Holdings, Inc. — Philippine Branch v. Commissioner of Internal Revenue*[120] also expounds on the subject, thus:

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

Finally, a law, such as the 1997 NIRC as amended, will *not* be construed as imposing a tax unless it does so clearly and expressly. In case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. Taxes, as burdens that must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.[121] "Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided."[122]

ACCORDINGLY, the consolidated *Petitions for Review* are **DENIED** for lack of merit. The assailed *Decision* and *Resolution* of the court *a quo* are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

[120] G.R. Nos. 180909, January 19, 2011.
[121] *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 & 218924, January 15, 2020.
[122] *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222480, November 7, 2018.

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

See Separate Concurring Opinion
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Maria Ivy F Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, AND BUREAU OF CUSTOMS, *Petitioners,*	**CTA *EB* NO. 2842** (CTA Case Nos. 8535 / G.R. Nos. 210501, 211294, & 212490)
-versus-	
PILIPINAS SHELL PETROLEUM CORPORATION, *Respondent.*	
x---------------------------------------x	**CTA *EB* NO. 2844** (CTA Case No. 8535)
COMMISSIONER OF INTERNAL REVENUE, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS AND THE BUREAU OF CUSTOMS, *Petitioners,*	Present: **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
-versus-	
PILIPINAS SHELL PETROLEUM CORPORATION, *Respondent.*	Promulgated: NOV 05 2025 3:54 p.m.

x -- x

SEPARATE CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the result, considering that, in this case, there was no evidence to show that alkylate is a product of distillation.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice