Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PETRON CORPORATION, Petitioner,	**CTA EB NO. 1835** (CTA Case No. 9111)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 15 2020 1:12 p.m.

x---x

RESOLUTION

MINDARO-GRULLA, J.:

This resolves the petitioner's "Omnibus Motion for: I. Reconsideration of the Decision dated July 19, 2019; and II. Presentation of Additional Testimonial Evidence". The pertinent portion of the Court *En Banc's* July 19, 2019 Decision states:

> *"Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.*
>
> *In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.*
>
> ***WHEREFORE****, premises considered, the Petition for Review docketed as CTA EB No. 1835 is* ***DENIED*** *for lack of merit. Accordingly, the Decision dated October 26, 2017,*

*rendered by the Second Division of this Court in CTA Case No. 9111, and its Resolution dated March 27, 2018 are **AFFIRMED**. No pronouncement as to costs.*

SO ORDERED."

In assailing this Court's Decision, petitioner raised the following:

"GROUNDS

I. The principle that a tax refund partakes the nature of tax exemption and is subject to strict interpretation does not apply where the tax has clearly been erroneously imposed, there being no law imposing the tax sought to be refunded.
II. Alkylate is not among the products subject to excise tax enumerated in Section 148(e) of the National Internal Revenue Code of 1997 ("1997 NIRC"). Hence, in the absence of a clear, express and unambiguous statute imposing excise tax on alkylate, the taxation thereof cannot be presumed.
III. Petitioner had presented overwhelming evidence, which evidence remains uncontroverted, that alkylate is not similar to naphtha or regular gasoline with the technical specifications thereof being completely different.
IV. The clear intention of the law is to tax motor fuels only once as finished products. The imposition of excise tax on imported alkylate, when the finished gasoline was subjected to the same excise tax is contrary to the plain intent of the law, is tantamount to taxing the same product twice, and is highly oppressive, arbitrary and confiscatory."

Moreover, petitioner request for leave of court to present and admit additional clarificatory documentary and testimonial evidence on the nature and characteristics of alkylate.

We resolve to deny petitioner's "Omnibus Motion for: I. Motion for Reconsideration of the Decision dated July 19,

L

2019; and II. Presentation of Additional Testimonial Evidence".

According to petitioner, overwhelming evidence were presented and uncontroverted that an alkylate is not similar to naphtha or regular gasoline with the technical specifications thereof being completely different. Concomitantly, the request to present and admit additional documentary and testimonial evidence on the nature and characteristics of alkylate would only be redundant and would cause unwarranted delay in the disposition of the case.

As to the Motion for Reconsideration reiterating petitioner's assertion that an alkylate is not subject to excise tax under Section 148(e) of the National Internal Revenue Code of 1997, the Court finds that the arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Second Division's Decision dated October 26, 2017 and Resolution dated March 27, 2018 but also by this Court *En Banc's* Decision dated July 19, 2019. To reiterate:

> *As pointed out by petitioner, naphtha (either light or heavy naphtha) can be subjected to blending or further processing to produce PNS compliant finished gasoline products suitable and ready for public consumption, or be used as they are as blending components, additives, or as raw material for the production of finished gasoline or other products.*[1] *Similarly, an alkylate can be used as they are as blending components, additives, or as raw material for the production of finished gasoline or other products. Moreover, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state.*
>
> *As aptly found by the Court's Division, the nature of alkylate can be summarized as follows:*
>
> *1. Alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements.*
>
> *2. It is impractical or uneconomical to import and sell alkylate as the 93 or 95 RON finished product itself. Conversely, alkylate may be sold as a finished product itself, although the same may be impractical or uneconomical.*

[1] Petition, par. No 46-.47. p 12.

l

3. It is produced from the combination of raw materials, i.e., light olefins (C3-C5) with isobutane, which are products of crude oil- the basic material to produce transport fuel.

4. Isobutane, a raw material of alkylate, is produced from crude oil distillation.

5. It is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. It increases the octane number of a straight run gasoline or naphtha.

6. Alkylate is a gasoline component produced by combining two (2) gases using sulfuric acid, using reactor chillers.

From the foregoing, without the process of distillation, alkylates raw materials cannot come into existence without which, the process of alkylation and product of alkylates cannot be had. Likewise, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state. Thus, We find that alkylate fall within the category of naphtha, regular gasoline and other similar products of distillation under Sec. 148 (e) of the 1997 NIRC, the Court in Division correctly ruled as follows:

> *Petitioner presented witness Ian Ferdinand S. Bravo who has custody of the DOE Letter dated June 27, 2012. Said Letter expressed the opinion of the DOE, through Director Zenaida Y. Monsada of the OIMB, regarding the nature of Alkylate. The DOE Letter pertinently states:*
>
> > *"The DOE is of the position that Alkylate is not a finished product but* ***an intermediate or raw gasoline component*** *used as blendstock in the production of PNS-compliant unleaded gasoline consistent with requirements of the Philippine Clean Air Act. Xxx*
> >
> > *xxx xxx xxx.*
> >
> > ***While alkylate may have properties, especially octane and aromatics, that meet gasoline specifications,*** *alkylate is a high octane but low aromatic substance that makes it desirable as a blending component for*

L

> *gasoline production. These two essential properties (octane and aromatics) found in alkylate demand high price. For comparison, the 2010 average import price (Shell and Petron) of alkylate is $100,368, which is considerably much higher than the $90,236 average import price (Shell) of 95 Research Octane Number (RON) during the same period.* ***Hence, it would not obviously be practical and economical to import alkylate and sell it as the 93 or 95 RON finished product itself."*** *(Emphasis supplied)*

Based on the foregoing, alkylate is an intermediate or raw gasoline component that possesses properties, especially octane and aromatics, that meet gasoline requirements. Considering that octane and aromatics found in alkylate demand higher price, it is impractical or uneconomical to import and sell it as the 93 or 95 RON finished product itself.

Petitioner also presented witness Simon Christopher Mulqueen to testify as to the nature of Alkylate. Based on his testimony, alkylate is produced from the combination of raw materials, i.e., light olefins (C3-C5) with isobutene, which are products of crude oil -the / basic material to produce transport fuel. Alkylate is used as a blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements. xxx.

xxx xxx xxx.

During his cross-examination, witness Mr. Mulqueen testified that isobutane, a raw material for alkylate, is a product of crude oil distillation. Thus:

> *"Q You also mentioned that Isobutane, which is also a raw material for alkylate can be a product of crude oil distillation, am I correct?*
>
> *A As a result, Isobutane is a crude oil distillation."*

Finally, witness Bayani I. Rodriguez Jr. supported the testimonies of Mr. Mulqueen in his Judicial Affidavit, i.e., alkylate is a mere blending component. However, during the hearing held on March 30, 2016, Mr. Rodriguez testified before the

L

Court that alkylate is, in essence, a gasoline component. xxx.

xxx xxx xxx.

"Thus, alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state.

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

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

In sum, We find that no substantial argument was raised to merit reconsideration of our Decision promulgated on July 19, 2019.

WHEREFORE, the Omnibus Motion for: I. Reconsideration of the Decision dated July 19, 2019; and II. Presentation of Additional Testimonial Evidence" are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ON LEAVE
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Inhibited
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice