REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2615
(CTA Case No. 9512)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:

JUL 07 2023 2:50 p.m.

x - x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*,[1] which seeks to reverse and set aside the Decision dated September 16, 2021 (assailed Decision),[2] and the Resolution dated March 31, 2022 (assailed Resolution),[3] rendered by this Court's Third Division (Court in Division) in CTA Case No. 9512 entitled, "*Petron Corporation v. Commissioner of Internal Revenue*." The Court in Division denied petitioner's claim for refund or issuance of a tax credit certificate in the aggregate amount of ₱19,997,028.00, representing its alleged erroneously paid excise taxes on the importation of alkylate covered by Import Entry & Internal Revenue Declaration (IEIRD) No. 00379406065.

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[1] *En Banc (EB)* Docket, pp. 1-78.
[2] *EB* Docket, pp. 91-109.
[3] *EB* Docket, pp. 115-121.

The dispositive portions of the assailed Decision and Resolution read as follows:

Assailed Decision dated September 16, 2021:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Assailed Resolution dated March 31, 2022:

> **WHEREFORE**, in view of the foregoing considerations, petitioner's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED**.

THE FACTS AND THE PROCEEDINGS

The relevant facts,[4] as found by the Court in Division, remain undisputed, to wit:

> Petitioner is a corporation organized and existing under the laws of the Philippines, with principal office at San Miguel Corporation, Head Office Complex, 40 San Miguel Avenue, 1550 Mandaluyong City.
>
> Respondent is the chief of the Bureau of Internal Revenue (BIR) authorized to credit or refund taxes erroneously and illegally assessed and collected. He may be served with legal processes, orders and resolutions of this Court at the Office of the Commissioner, BIR National Office Bldg., BIR Road, Diliman, Quezon City, Metro Manila and/or through the Office of the Solicitor General, 134 Amorsolo Street, Legaspi Village, Makati, Metro Manila.
>
> On December 29, 2014 and April 8, 2015, petitioner paid the Bureau of Customs (BOC) excise taxes in the total amount of P19,997,028.00 for importing alkylate covered by IEIRD No. 00379406065.
>
> On December 15, 2016, petitioner filed its administrative claim with the BIR for the refund or issuance of tax credit certificate (TCC), representing the erroneously paid excise taxes arising from the aforesaid importation of alkylate.

[4] Assailed Decision, *EB* Docket, pp. 91-96.

Thereafter, on December 22, 2016, petitioner filed the instant *Petition for Review* docketed as CTA Case No. 9512.

Respondent filed his *Answer Ex-Abudanti Ad Cautelam* on February 27, 2017, interposing the following special and affirmative defenses, to wit:

1) The Court has no jurisdiction over the petition based on the following grounds:

   a) the instant petition is dismissible for its failure to state a cause of action and respondent is not the real party-in-interest;

   b) assuming *arguendo* but without conceding that respondent is the real party-in-interest, the petition is still dismissible for its subject matter is not within the jurisdiction of the Court;

   c) interpretative rulings issued by respondent are subject to review by the Secretary of Finance, and

   d) petitioner failed to exhaust administrative remedies.

2) Petitioner is liable to pay excise tax on its importation of alkylate based on the following:

   a) alkylate is a product of distillation similar to naphtha and regular gasoline, thus, it is subject to excise tax under Section 148 (e) of the Tax Code;

   b) excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported; and

   c) the imposition of excise tax on importation of alkylate does not amount to double taxation and does not violate any law.

On the same date, respondent also transmitted the *BIR Records* of this case.

After the Pre-Trial Conference held on May 30, 2017, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on June 8, 2017. Subsequently, the Pre-Trial Order dated June 30, 2017 was issued, and the Pre-Trial was deemed terminated.

During trial, petitioner presented the following witnesses, namely:

(1) Michael F. Manzano, its Commercial Service Manager;
(2) Atty. Ma. Clarissa C. Arguelles, its Tax Manager;
(3) Gardelio P. Malgapo, its Process Engineering Department Manager;
(4) July Ann D. Vivas, its Stock Accounting Supervisor;
(5) Cecilia N. Sengia, Accounting Superintendent of its Refinery Division;
(6) Simon Christopher Mulqueen, Director of Technical Services for Europe, Middle East, Africa and Asia Pacific for Innospec Fuel Specialties;
(7) Ian Ferdinand S. Bravo, Senior Science Research Specialist from the Department of Energy (DOE);
(8) Jonathan F. Del Rosario, the Manager of its Batangas Terminal;
(9) Madonna Mia S. Dayego, duly Court-commissioned ICPA;
(10) Ricardo S. Infante, Supervising Science Research Specialist from the DOE; and
(11) Dr. Joey D. Ocon, as an expert witness.

On April 8, 2019, petitioner filed its *Formal Offer of Exhibits*. Thereafter, respondent, through counsel, filed his *Comment with Manifestation (Re: Petitioner's Formal Offer of Evidence)* on April 30, 2019, stating, *inter alia*, that there is no report of investigation on petitioner's administrative claim for refund, and hence, he will no longer be presenting any documentary or testimonial evidence in this case.

Subsequently, petitioner filed on May 7, 2019, a *Motion for Leave of Court to Include Additional Evidence in the Formal Offer of Exhibits dated April 8, 2019*, praying for the inclusion of Exhibit "P-229" in its *Formal Offer of Exhibits*. In reply, on May 23, 2019, respondent submitted his *Opposition (Re: Motion for Leave of Court to Include Additional Evidence in the Formal Offer of Exhibits dated 07 May 2019)*.

In the Resolution dated August 22, 2019, the Court granted petitioner's *Motion for Leave*, and admitted petitioner's exhibits, except for Exhibits "P-234-6-1158", "P-234-7-750", "P-234-8-122", and "P-234-15-201", for not being found in the records. In the same Resolution, the Court further noted the manifestation of respondent that he will no longer present any documentary or testimonial evidence in this case.

> Petitioner thereafter filed its *Omnibus Motion To: I. Allow Submission of Scanned Copies of ICPA-Marked Exhibits and Admit Said Exhibits in Evidence; and II. Amend Captions, Submit Clearer Copies, and Submit Missing Pages of Admitted ICPA-Marked Exhibits* on September 26, 2019, praying for the following: (1) the admission of the scanned copies of Exhibits "P-234-6-1158", "P-234-7-750", "P-234-8-122", and "P-234-15-201"; (2) the amendment of its *Formal Offer of Exhibits* to reflect the correct captions for Exhibits "P-51-A", "P-219", "P-234-8", and "P-234-12"; and (3) the admission of clearer copies of certain exhibits and complete copies of Exhibits "P-221-1-12664", "P-221-1-15690", and "P-221-1-16195".
>
> In the Resolution dated December 26, 2019, the Court granted petitioner's *Omnibus Motion.*
>
> Respondent filed his *Memorandum* on October 17, 2019; while petitioner's *Memorandum for Petitioner* was filed on February 7, 2020. The instant case was submitted for decision on September 4, 2020. (*Citations omitted*)

On September 16, 2021, the Court in Division rendered the assailed Decision denying petitioner's *Petition for Review* for lack of merit. The Court in Division ruled that while alkylate is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutane, are distillation products. Alkylate first passes through the distillation process because it cannot come into existence without its raw material, isobutane. Otherwise stated, there can be no alkylate without isobutane, a distillation product. Hence, for the Court in Division, alkylate is still a product of distillation, which is like naphtha and regular gasoline, that is subject to excise tax under Section 148(e) of the National Internal Revenue Code (NIRC) of 1997, as amended. Correspondingly, excise tax payments cannot be deemed erroneous or illegal.

Not satisfied, petitioner moved for reconsideration but was denied in the equally assailed Resolution dated March 31, 2022.

Undeterred, petitioner elevated its case before the Court *En Banc via* the instant *Petition for Review* filed on May 11, 2022.

On June 15, 2022, the Court *En Banc* issued a Resolution[5] directing respondent to file his comment to the *Petition for Review* within ten (10) days from notice.

[5] *EB* Docket, pp. 1081-1082.

Respondent filed his *Comment (Re: Petition for Review)* on June 20, 2022, which the Court *En Banc* noted in the Resolution[6] dated July 13, 2022.

With the filing of respondent's *Comment (Re: Petition for Review)*, the instant case was submitted for decision on July 13, 2022.[7]

Hence, this Decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors[8] in the assailed Decision of the Court in Division, *viz.*:

I. Petron's claim for tax refund is based on the absence of a law imposing excise tax on alkylate, that is – Section 148(e) of the Tax Code does not impose excise tax on alkylate. Section 148(e) should therefore have been strictly construed against the government and liberally in favor of Petron.

A. Section 148(e) of the Tax Code does not "clearly," "expressly," or "unambiguously" cover alkylate.

B. Construed plainly, literally, logically, and "strictly against the government," the phrase "products of distillation" should apply only to direct products of distillation.

B.1. Read plainly and literally, the phrase "products of distillation" refers only to "products" which are themselves directly "produced" through "distillation."

B.2. The phrase "products of distillation" cannot logically apply to "indirect" products of distillation or products whose raw materials are products of distillation, without committing the fallacy of composition.

B.3. Applying ejusdem generis, the phrase "other similar products of distillation" should apply only to products of distillation which are "similar" to "naphtha" and "regular gasoline" which are both direct products of distillation.

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[6] *EB* Docket, pp. 1095-1096.
[7] Resolution dated July 13, 2022, *EB* Docket, pp. 1095-1096.
[8] Petition for Review, *EB* Docket, pp. 33-36.

B.4. Section 148(e) does not refer to products "directly or indirectly derived from distillation."

C. Since Section 148(e) of the Tax Code does not "clearly," "expressly," or "unambiguously" cover alkylate, the CIR had the burden of proving that the alkylate which Petron imported in this case is a direct "product of distillation" "similar" to "naphtha" and "regular gasoline." The CIR did not present any evidence and thus, failed to discharge its burden.

II. The alkylate which Petron imported on 29 December 2014 is not a "product of distillation" "similar" to "naphtha" or "regular gasoline."

A. Alkylate is not a direct product of distillation.

A.1. The Honorable Court in Division ruled that alkylate is not a "direct" product of distillation.

A.2. In its Answer, the CIR states that alkylate is produced by alkylation. Hence, the CIR does not consider alkylate as a "direct" product distillation.

A.3. Petron proved that alkylate is not a product of distillation, but of alkylation.

A.4. There is no evidence that the imported alkylate in this case (IEIRD No. 00379406065) is in fact an "indirect" product of distillation. There is no evidence that the raw materials (light olefins or isobutane) used to produce this specific batch of alkylate were, in fact, produced through distillation.

B. Alkylate is not "similar" to "naphtha" or "regular gasoline."

III. Any doubt about whether alkylate is covered by Section 148(e) of the Tax Code should be resolved against imposing any excise tax on alkylate.

IV. No excise taxes should have been imposed on Petron's imported alkylate because the alkylate was not imported for domestic sale or consumption or for any other disposition. There was double taxation when alkylate was taxed twice – first upon importation, and then again, upon withdrawal of the finished petroleum product (which includes alkylate as a blending component) from its refinery.

Based on the foregoing, the main issue submitted for the resolution of the Court *En Banc* in the instant case is whether the Court in Division erred in denying petitioner's claim for a refund or issuance of a tax credit certificate in the aggregate amount of ₱19,997,028.00 representing excise taxes erroneously paid for its importation of alkylate under IEIRD No. 00379406065.

Petitioner's Arguments:

Petitioner avers that in the assailed Decision, the Court in Division ruled that excise taxes were correctly imposed on petitioner's alkylate importation on December 29, 2014, covered by IEIRD No. 00379406065 pursuant to Section 148(e) of the NIRC of 1997, as amended. Allegedly, the Court in Division found that alkylate is supposedly a "product of distillation" similar to naphtha. And though the Court in Division ruled that "alkylate is not directly produced through the process of distillation but by alkylation," it nevertheless held that alkylate is still a product of distillation because one or more of its "raw materials" are supposedly products of distillation.

Petitioner submits the following reasons why the Court *En Banc* should reverse the ruling of the Court in Division.

First, petitioner contends that its claim for a tax refund is based on the absence of a law imposing an excise tax on alkylate. According to petitioner, Section 148(e) of the NIRC of 1997, as amended, does not impose an excise tax on alkylate; and Section 148(e) should therefore have been strictly construed against the government and liberally in favor of petitioner.

Second, petitioner contends that Section 148(e) does not expressly or unambiguously cover alkylate. However, in the assailed Decision, the Court in Division, relying on the phrase "other similar products of distillation" in Section 148(e), ruled that alkylate is a product of distillation. For petitioner, this is an erroneous construction of the phrase "products of distillation." Construed plainly, literally, logically, and strictly against the government, the phrase "other similar products of distillation" should apply only to *direct* products of distillation; and that to consider alkylate a "product of distillation," alkylate should itself be a direct product of distillation.

Petitioner asserts that the phrase "products of distillation" cannot logically apply to "products whose raw materials are products of distillation," without committing the fallacy of composition. According to petitioner, alkylate cannot logically be considered a "product of distillation" simply because its raw materials (light olefins and/or isobutane) are supposedly products of distillation.

Further, applying *ejusdem generis*, the phrase "other similar products of distillation" should apply only to products of distillation that are "similar" to "naphtha" and "regular gasoline" which are both "direct" and not "indirect" products of distillation. Thus, contrary to the Court in Division's ruling that Section 148(e) does not distinguish among "products of distillation," petitioner submits that Section 148(e) itself already distinguishes between "products of distillation" which are "similar" to "naphtha" and "regular gasoline," and "products of distillation" which are not similar to naphtha and regular gasoline.

And since Section 148(e) of the NIRC of 1997, as amended, does not expressly or unambiguously cover alkylate, respondent had the burden of proving that the alkylate imported by petitioner is a direct product of distillation similar to naphtha and regular gasoline. However, in the instant case, respondent did not present any evidence. Respondent did not bother to prove that alkylate is a product of distillation similar to naphtha and regular gasoline.

Third, petitioner submits that the alkylate imported on December 29, 2014, is not a "product of distillation" similar to "naphtha" or regular gasoline. According to petitioner, it presented uncontroverted expert testimony that alkylate was a product of alkylation, not distillation.

Petitioner also adds that there is no evidence that the imported alkylate in this case is, in fact, an "indirect" product of distillation as there was no evidence that the raw materials (light olefins or isobutane) used to produce this batch of alkylate were in fact produced through distillation. Petitioner points out that respondent's admissions and evidence on record prove that the raw materials of alkylate (light olefins and isobutane) are not necessarily products of distillation. Light olefins are not products of distillation. Isobutane, on the other hand, can come from various sources and processes. As petitioner's expert

witness, Mr. Simon Mulqueen, testified,[9] isobutane can either be (a) a component of natural gas, (b) a product of crude oil distillation, or (c) other "petroleum refinery steams that result from catalytic cracking, catalytic reforming." In other words, isobutane **may** be derived or produced from several sources/means, *i.e.*, (a) natural gas; (b) crude oil distillation; (c) catalytic cracking; or (d) catalytic reforming. Given the doubt about how isobutane is produced (because it can come from various sources and processes), this doubt should have been resolved in petitioner's favor.

Thus, petitioner insists that any doubt about whether alkylate is covered by Section 148(e) of the NIRC of 1997, as amended, should be resolved against imposing any excise tax on alkylate.

Finally, petitioner contends that no excise tax should have been imposed on its imported alkylate because said alkylate was not imported for domestic sale or consumption or for any other disposition; and that there was double taxation when alkylate was taxed twice, first upon importation, and then again, upon withdrawal of the finished petroleum product (which includes alkylate as a blending component) from its refinery.

Respondent's Arguments:

At the outset, respondent submits that since the issue in the instant case is petitioner's entitlement to a refund, and since it is settled that claims for refund, which are like tax exemptions, are construed in *strictissimi juris* against the claimant, petitioner must prove that it is entitled to the refund sought.

In the instant case, petitioner argues that its claim for refund is based on the absence of a law imposing an excise tax on alkylate, that is – Section 148(e) of the NIRC of 1997, as amended, does not impose an excise tax on alkylate. Thus, Section 148(e) should have been strictly construed against the government and liberally in favor of petitioner.

Respondent, however, disagrees. According to respondent, Section 148(e) of the Tax Code imposes an excise tax of four pesos and thirty-five (₱4.35) centavos for every liter volume capacity of naphtha, regular gasoline, and other similar products of distillation. For respondent, alkylate, which is

[9] Judicial Affidavit of Simon Mulqueen, Exhibit P-72, Division Docket, pp. 364-373.

allegedly a product of distillation similar to naphtha, is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended. As the Court in Division found in the assailed Decision of September 16, 2021, alkylate is still a distillation product. This is simply because while alkylate is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutane, are products of distillation.

Respondent likewise submits that the alkylate imported by petitioner and removed from customs custody, although alleged to have been used as a blending component, is still lawfully subject to the excise tax for being an article imported in accordance with Section 129[10] of the NIRC of 1997, as amended.

Contrary to petitioner's protestation that the imposition of excise tax on imported alkylate is tantamount to double taxation and is highly oppressive, arbitrary, and confiscatory, it is respondent's position that such allegations are erroneous conclusions or interpretations of fact and law. In the case at bar, the subject matter is not the same; the importation of alkylate is an entirely different subject from the other products subject to excise tax.

Further, petitioner's contentions that the excise tax on imported alkylate is a unilateral imposition, arbitrary and oppressive are also baseless. For respondent, his power to interpret the NIRC of 1997, as amended, and other tax laws is explicit under Section 4 of the NIRC of 1997, as amended. Respondent merely acted within the scope of his authority.

In closing, respondent argues that it is incumbent upon petitioner to prove that it is entitled to the refund sought, that failure to prove the same is fatal to its claim for refund, and that claims for refund are construed strictly against the claimant as they partake of the nature of an exemption from tax.

[10] Sec. 129. *Goods Subject to Excise Taxes.* — Excise taxes apply to goods manufactured or produces in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV. xxx

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is impressed with merit.

The Court En Banc has jurisdiction over the instant case.

We determine whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Records show that petitioner received the assailed Resolution on April 26, 2022. Thus, petitioner had fifteen (15) days from April 26, 2022, or until May 11, 2022, to file a *Petition for Review* before the Court *En Banc*.

On May 11, 2022, petitioner filed the instant Petition for Review on time.

Having settled that the instant *Petition for Review* was timely filed, *We* likewise rule that the CTA *En Banc* has validly acquired jurisdiction to take cognizance of this *Petition* under Section 2(a)(1), Rule 4[11] of the RRCTA.

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[11] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

Now, on the merits.

The crux of the controversy is petitioner's entitlement to a refund or issuance of a tax credit certificate in the aggregate amount of ₱19,997,028.00, representing excise taxes erroneously paid on the imported alkylate under IEIRD No. 00379406065.

In a claim for refund or credit of erroneously paid or illegally collected taxes, the taxpayer-claimant must comply with the requisites set forth under Sections 204(C) and 229 of the NIRC of 1997, as amended, which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis supplied*)
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment

> appears clearly to have been erroneously paid." (*Emphasis supplied*)

It is clear from the foregoing that Sections 204(C) and 229 govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally.[12] Section 204 (C) applies to administrative claims filed with the BIR, while Section 229 pertains to judicial claims. However, the settled rule is that both the claim for refund [or tax credit] with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within two years from the date of tax payment.[13]

Accordingly, to be entitled to a refund or credit of erroneously or illegally collected tax, the following requisites must be satisfied:

1. The tax must be erroneously or illegally collected, or the penalty must be collected without authority, and/or any sum must be excessively or in any manner wrongfully collected; and

2. The claim for refund or credit must be filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

In the instant case, it is undisputed that petitioner timely filed its administrative and judicial claims within two years from the date of payment of the excise taxes sought to be refunded.[14]

Hence, *We* determine whether the excise taxes sought to be refunded are erroneously or illegally collected.

Petitioner's payment of excise taxes on its alkylate importation is erroneous or illegal.

In support of its *Petition*, petitioner avers that in the assailed Decision, the Court in Division ruled that excise taxes were correctly imposed on petitioner's alkylate importation on

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[12] *Commissioner of Internal Revenue v. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue v. Insular Lumber Co., et al.*, G.R. No. L-24221, December 11, 1967.
[13] *Manila North Tollways Corporation v. Commissioner of Internal Revenue*, CTA *EB* No. 812 (CTA Case No. 7864), October 11, 2012.
[14] Assailed Decision of September 16, 2021, *EB* Docket, pp. 101-102.

December 29, 2014, pursuant to Section 148(e) of the NIRC of 1997, as amended. According to petitioner, the Court in Division essentially found that alkylate is supposedly a product of distillation similar to naphtha. Although the Court in Division ruled that alkylate is not directly produced through the process of distillation but by alkylation, it nevertheless held that alkylate is still a product of distillation because one or more of its raw materials are supposedly products of distillation.

Petitioner contends that its claim for refund is based on the absence of a law imposing excise tax on alkylate; that Section 148(e) of the NIRC of 1997, as amended, does not impose excise tax on alkylate; and that Section 148(e) should have been strictly construed against the government, and liberally in favor of petitioner.

Petitioner likewise contends that Section 148(e) does not, expressly, or unambiguously cover alkylate; that construed plainly, literally, logically, and strictly against the government, the phrase "other similar products of distillation" should apply only to direct products of distillation; and that to consider alkylate a product of distillation, alkylate should itself be a direct product of distillation. Allegedly, the phrase "products of distillation" cannot logically apply to "products whose raw materials are products of distillation" without committing the fallacy of composition.

Also, applying *ejusdem generis*, petitioner asserts that the phrase "other similar products of distillation" should apply only to distillation products which are similar to naphtha and regular gasoline, which are both direct products of distillation.

On the other hand, respondent essentially agrees with the Court in Division in holding that while alkylate is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutane, are products of distillation. Hence, alkylate is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

Considering the parties' arguments, it appears that the controversy lies in the proper interpretation/construction of Section 148(e) of the NIRC of 1997, as amended. Section 148(e) states:

> "SEC. 148. *Manufactured Oils and Other Fuels.* — There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> xxx xxx xxx
>
> (e) **Naphtha, regular gasoline and other similar products of distillation**, per liter of volume capacity, Four pesos and thirty-five centavos (P4.35): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, zero (P0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;" (*Boldfacing supplied*)

Thus, to resolve the issue of whether petitioner's payment of excise taxes on its imported alkylate is erroneously or illegally collected, it is indispensable for the Court *En Banc* to determine whether alkylate is considered a product of distillation similar to naphtha, regular gasoline, and other similar products of distillation, that is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

Relevantly, this issue has already been settled in the very recent case of *Petron Corporation v. Commissioner of Internal Revenue (Petron)*,[15] where the Supreme Court categorically declared that alkylate does not fall under the category of "other similar products of distillation" and hence, not subject to excise tax, *viz.*:

[15] G.R. No. 255961, March 20, 2023.

Alkylate does not fall under the category of "other similar products of distillation" subject to excise tax

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

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

xxx xxx xxx

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

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

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

Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to

include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned.

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

Indeed, following the declaration of the Supreme Court in the above-quoted case, the imposition of excise taxes on petitioner's alkylate importation on December 29, 2014, covered by IEIRD No. 00379406065, is erroneous.

Petitioner was able to prove its entitlement to a refund or issuance of a tax credit certificate.

Petitioner filed a claim for refund or tax credit of excise taxes paid on the importation of alkylate in the total amount of ₱19,997,028.00, as follows:

Vessel Name	Arrival Date	Excise Tax Paid	Date of Payment	BOC Customs Payment Receipt No.
Chembulk Kings Point	December 29, 2014	₱19,532,261.00 464,767.00	December 29, 2014 April 8, 2015	2014 R 472[16] 2015 R 78[17]
Total		₱19,997,028.00[18]		

To prove the fact of importation and the corresponding payment of duties and taxes through the e2m customs system, it is required that an importer-claimant presents, at the very least, **BOTH** the: (1) IEIRD/SAD, which must contain the necessary details and statements as required by law, rules, and regulations; and (2) Statement of Settlement of Duties and

[16] Exhibit P-9, Division Docket, p. 774.
[17] Exhibit P-10, Division Docket, p. 775.
[18] BOC Certification, Exhibit P-11, Division Docket, p. 776.

Taxes (SSDT) or any other document issued by the BOC evidencing payment of customs duties and taxes.

In the instant case, petitioner submitted, among others, documents such as a Bill of Lading,[19] Commercial Invoice,[20] Customs Payment Receipts,[21] BOC Certification,[22] Authority to Release Imported Goods,[23] BOC IEIRD No. 00379406065,[24] and Certificate of Independent Survey.[25] It is noted that even if petitioner did not offer in evidence the SSDTs, nevertheless, the Court *En Banc* finds that the Customs Payment Receipts, supported by the BOC Certification, are sufficient to establish the payment of duties and taxes.

Moreover, records reveal that petitioner offered convincing evidence that alkylate should not be considered "other similar products of distillation" under Section 148 (e) of the Tax Code.[26] The testimonies of petitioner's witnesses [27] sufficiently illustrated the significant differences between alkylate and "other similar products of distillation," thereby substantiating petitioner's claim that alkylate is not subject to excise tax.

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[19] Exhibit P-4, Division Docket, p. 756.
[20] Exhibit P-5, Division Docket, p. 757.
[21] Exhibits P-9 and P-10, Division Docket, pp. 774-775.
[22] Exhibit P-11, Division Docket, p. 776.
[23] Exhibit P-7, Division Docket, p. 772.
[24] Exhibit P-8, Division Docket, p.773.
[25] Exhibit P-6, Division Docket, pp. 758-771.
[26] Dissenting Opinion, Associate Justice Maria Rowena Modesto-San Pedro, *Petron Corp. v. Commissioner of Internal Revenue,* C.T.A. Case No. 9512, September 16, 2021.
[27] *Id.*

i. Mr. Gardelio P. Malgapo, petitioner's Process Engineering and Department Manager, testified that "naphtha can be recovered straight from the process of crude distillation or from other process, whereas alkylate cannot be recovered straight from crude distillation but only from the process of alkylation.;"

ii. Dr. Joey D. Ocon, petitioner's expert witness, testified that "Alkylate and naphtha are two entirely different chemicals with different properties. . . . alkylate is produced through the process of alkylation while naphtha is produced through distillation. The boiling range for alkylate is 40°C to 150°C compared to naphtha which has only 30°C to 100°C. I also noted that the olefins, aromatics, and sulfur contents of naphtha and alkylate are different. With naphtha, it 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 sulfur. It is also noteworthy to add that the drivability indices of naphtha and alkylate are different, with values of 1223 and 1134, respectively;"

iii. Dr. Joey D. Ocon then compared alkylates and regular gasoline as follows: "While alkylates have lower DI (drivability index) than FCC (fluid catalytic cracking) naphtha and reformate, gasoline should have the right blend between light and heavy components with different volatilities. Due to its mostly iso-paraffin content with a high boiling temperature, alkylates do not have the smooth distillation curve of regular gasoline for proper vehicle operation;" and

iv. Dr. Joey D. Ocon further testified that alkylate cannot be used as motor fuel: " . . . 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."

With the evidence presented, and as recently ruled by the Supreme Court in the *Petron* case involving herein petitioner, there is no reason why alkylate should be treated the same as naphtha and "other similar products of distillation" to subject it to excise taxes.

All told, the Court *En Banc* finds that petitioner was able to substantiate its claim for refund or issuance of a tax credit certificate.

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. The *Decision* dated September 16, 2021, and the *Resolution* dated March 31, 2022, of the Court's Third Division in CTA Case No. 9512 are **REVERSED** and **SET ASIDE**.

Accordingly, respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of Nineteen Million Nine Hundred Ninety-Seven Thousand Twenty-Eight Pesos (₱19,997,028.00), representing excise taxes erroneously paid for its importation of alkylate under Import Entry & Internal Revenue Declaration No. 00379406065.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice