REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PETRON CORPORATION,
Respondent.

CTA EB NO. 2643
(CTA Case No. 8544)

Present:

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

Promulgated:

JAN 12 2024 4:10 pm

x - x

DECISION

***FERRER-FLORES, J.*:**

Before this Court is a Petition for Review filed on June 29, 2022 by the Commissioner of Internal Revenue **(CIR/petitioner)** against Petron Corporation **(Petron/respondent)** appealing the *Amended Decision dated July 19, 2021* (**assailed Amended Decision**)[1] and *Resolution dated June 9, 2022* (**assailed Resolution**)[2] rendered by the Second Division of this Court.

---

[1] Penned by Associate Justice Jean Marie A. Bacorro-Villena, with Associate Justice Juanito C. Castañeda, Jr., dissenting, and Associate Justice Maria Rowena Modesto-San Pedro, concurring; *Rollo* – Vol. I, pp. 24 to 45.

[2] *Rollo* – Vol. I, pp. 47 to 55.

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

Assailed Amended Decision

> "**WHEREFORE,** petitioner Petron Corporation's Motion for Partial Reconsideration (re: Amended Decision dated 21 October 2020) dated 10 November 2020 is hereby **GRANTED**. The dispositive portion of the Amended Decision dated 21 October 2020 is hereby further **AMENDED** to read as follows:
>
> > **WHEREFORE**, the instant Petition for Review dated 24 September 2012 and Supplemental Petition for Review dated 24 January 2014 are **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Petron Corporation in the amount of ₱55,691,571.00, representing the erroneously paid excise tax on its importation of alkylate covered by Import Entry and Internal Revenue Declaration No. 122406532.
> >
> > **SO ORDERED.**
>
> **SO ORDERED.**"

Assailed Resolution

> **"WHEREFORE**, respondent's 'Motion for Reconsideration Re: Amended Decision dated 19 July 2021' filed on 26 October 2021 and petitioner's Motion for Entry of Judgment filed on 15 November 2021 are both **DENIED** for lack of merit.
>
> **SO ORDERED."**

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue 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.[3]

Respondent Petron, on the other hand, 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.

---

[3] *Parties, Petition For Review, Rollo* – Vol. I, p. 2.

THE ANTECEDENT FACTS

As found by the Court in Division, the facts are as follows:[4]

"THE FACTS

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

> 'Petron, which is engaged in the manufacture and marketing of petroleum products, imports alkylate as a raw material or blending component for the manufacture of ethanol-blended motor gasoline. For the period January 2009 to August 2011, as well as for the month of April 2012, Petron transacted an aggregate of 22 separate importations for which petitioner[,] the Commissioner of Internal Revenue (CIR)[,] issued Authorities to Release Imported Goods (ATRIGs), categorically stating that Petron's importation of alkylate is exempt from the payment of the excise tax because it was not among those articles enumerated as subject to excise tax under Title VI of Republic Act No. (RA) 8424, as amended, or the 1997 National Internal Revenue Code (NIRC). With respect, however, to Petron's alkylate importations covering the period September 2011 to June 2012 (excluding April 2012), the CIR inserted, without prior notice, a reservation for all ATRIGs issued, stating that:
>
> > This is without prejudice to the collection of the corresponding excise taxes, penalties and interest depending on the final resolution of the Office of the Commissioner on the issue of whether this item is subject to the excise taxes under the National Internal Revenue Code of 1997, as amended.
>
> In June 2012, Petron imported 12,802,660 liters of alkylate and paid value-added tax (VAT) in the total amount of ₱41,657,533.00 as evidenced by Import Entry and Internal Revenue Declaration (IEIRD) No. SN 122406532. Based on the Final Computation, said importation was subjected by the Collector of Customs of Port Limay, Bataan, upon instructions of the Commissioner of Customs (COC), to excise taxes of ₱4.35 per liter, or in the aggregate amount of ₱55,691,571.00, and consequently, to an additional VAT of 12% on the imposed excise tax in the amount of ₱6,682,989.00. The imposition of the excise tax was supposedly premised on Customs Memorandum

---

[4] *Facts, Amended Decision* dated October 21, 2020, Docket – Vol. VI, pp. 2991 to 2998; citations omitted.

Circular (CMC) No. 164-2012 dated July 18, 2012, implementing the Letter dated June 29, 2012 issued by the CIR, which states that:

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

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

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

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

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

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

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

> Corporation before the CTA is **DISMISSED** for lack of jurisdiction and prematurity.
>
> **SO ORDERED.**'

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

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

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

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

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

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

> 'Significantly, this Court, on May 3, 2018, was furnished with a copy of the Resolution dated February 14, 2018, issued by the Supreme Court in the *Certiorari* Case filed before it granting petitioner's Motion for Reconsideration of the Decision dated July 15, 2015 and declaring the *Petition for Review* filed with the Court in Division docketed as CTA Case No. 8544 to be within the jurisdiction of the Court. The Supreme Court further directed the Court in Division to resolve the case with dispatch. The dispositive portion of the Resolution is hereby quoted for ready reference:
>
> > **WHEREFORE**, the motion for reconsideration is **GRANTED**. Respondent Petron Corporation's petition for review docketed as CTA Case No. 8544 is hereby **DECLARED** to be within the jurisdiction of the Court of Tax Appeals, which is **DIRECTED** to resolve the case with dispatch.

SO ORDERED.

The Supreme Court has spoken on the present controversy. And this Court needs only to comply.

It must be emphasized that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts shall take their bearings. Thus, the Court En Banc cannot on the matter in any other way.

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

SO ORDERED.'

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

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

SO ORDERED.'

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

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

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

On August 1, 2019, petitioner filed through registered mail an *Omnibus Motion [For Additional Hearing Date and Extension of Time to File Judicial Affidavit]*, praying that the August 27, 2019 be set as an additional hearing date for the presentation of Mr. Ricardo S. Infante; and for the Court to allow petitioner to submit the Judicial Affidavit of Mr.

Infante, not later than five (5) days before proposed hearing date, or until August 22, 2019.

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

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

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

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

On December 10, 2019, respondent CIR filed his *Memorandum*; while petitioner submitted its *Supplemental Memorandum* on December 20, 2019. No memorandum was filed by respondents COC and Collector of Customs.

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

On October 21, 2020, the Court in Division rendered the Amended Decision ("First Amended Decision") denying the *Petition for Review* for lack of merit.[5]

Aggrieved, Petron filed *via* registered mail its *Motion for Partial Reconsideration* on November 10, 2020,[6] *sans* comment of the CIR, Commissioner of Customs (COC), and Collector of Customs, Limay, Bataan.[7]

On July 19, 2021, the Court in Division promulgated the assailed Amended Decision, granting Petron's motion for partial reconsideration and amending the First Amended Decision.[8]

---

[5] Docket – Vol. VI, pp. 2990 to 3012.

[6] *Id.*, pp. 3013 to 3043.

[7] Records Verification dated February 19, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. VI, p. 3048.

[8] *Rollo* – Vol. I, pp. 24 to 36.

Unsatisfied, the CIR filed his *Motion for Reconsideration Re: Amended Decision dated 19 July 2021* on October 26, 2021,[9] with *Petron's Opposition [to the Motion for Reconsideration dated 21 October 2021] with Motion for Entry of Judgment*, filed *via* registered mail on November 15, 2021.[10]

Thereafter, the CIR belatedly filed his *Comment*[11] on Petron's motion without justifiable reason; hence, the same was denied admission by the Court in Division in the Resolution dated March 10, 2022.[12] In the same resolution, the CIR's *Motion for Reconsideration* was submitted for resolution.

On June 9, 2022, the Court in Division rendered the assailed Resolution denying the CIR's motion for reconsideration for lack of merit.

Hence, the instant Petition for Review.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 29, 2022, the CIR filed the instant *Petition for Review*, assailing the Second Division's Amended Decision dated July 19, 2021 and Resolution dated June 9, 2022.

Petron then filed its *Comment (Re: Petition for Review dated 29 June 2022)* on October 28, 2022.[13]

On January 12, 2023, this Court admitted Petron's *Comment/Opposition (Re: Petition for Review dated 29 June 2022)* and submitted the case for decision.[14]

THE ISSUE

In the CIR's Petition for Review, the sole issue raised is whether the Second Division of this Court erred in ruling that Petron is entitled to refund or issuance of tax credit certificate (TCC) in the amount of ₱55,691,571.00

---

[9] Docket – Vol. VI, pp. 3075 to 3092.

[10] Docket – Vol. VI, pp. 3095 to 3114.

[11] Attached to CIR's *Motion to Admit Attached Comment* filed on February 28, 2022.

[12] Docket – Vol. VI, pp. 3137 to 3138.

[13] Petron filed a *Motion for Extension of Time to File Comment* on October 7, 2022, requesting an additional ten (10) days from the original deadline of October 8, 2022, or until October 18, 2022, to file its Comment. Thereafter, Petron filed its *Motion for Additional Time to File Comment* on October 18, 2022, praying that Petron be granted an additional ten (10) days from October 18, 2022, or until October 28, 2022, to file its Comment. *Rollo* – Vol. I, pp.59 to 61 and 68 to 70.

[14] *Rollo* – Vol. III, pp. 1382 to 1384.

representing the erroneously paid excise tax on its importation of alkylate covered by Import Entry and Internal Revenue Declaration (IEIRD) No. 122406523.

THE ARGUMENTS

The CIR's Arguments

The CIR argues that the excise tax paid by Petron on its importation of alkylate is neither erroneous nor illegal; thus, its reliance on Sections 204 and 209 *[sic]* of National Internal Revenue Code (NIRC) of 1997, as amended is misplaced. Section 148(e) of the NIRC of 1997, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation. Said section does not qualify whether the items subject to excise tax are primary or secondary products of distillation. Alkylate, being a product of distillation similar to naphtha, is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended, which is confirmed by Customs Memorandum Circular (CMC) No. 164-2012 issued by the COC.

The CIR also insists that it is incumbent upon Petron to prove that it is entitled to the refund sought and that failure to prove so is fatal to its claim. The CIR invokes the well-settled principle that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax.

Petron's Arguments

Respondent Petron argues that the Petition for Review was filed out of time, considering that the CIR's *Motion for Reconsideration* was *pro forma* and, thus, did not toll the reglementary period to appeal. Secondly, the petition is also not compliant with the requirements for an appeal. Moreover, the petition lacks merit for the applicable rule to the case is the doctrine of strict construction pursuant to the *Commissioner of Internal Revenue (CIR) vs. Fortune Tobacco*[15] as correctly applied by the Court in Division. To Petron, the Court in Division correctly ruled that Petron is entitled to the refund or issuance of a TCC for its erroneously paid excise tax.

[15] G.R. Nos. 167274-75, July 21, 2008.

THE RULING OF THE COURT *EN BANC*

The Petition for Review lacks merit.

The instant Petition for Review was timely filed.

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

> "Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx
>
> (b) **A party adversely 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." *(Emphasis supplied)*

Based on the foregoing, the CIR had fifteen (15) days from receipt of the assailed Resolution within which to file his Petition for Review.

Records show that, on June 17, 2022, the CIR received the assailed Resolution of the Court in Division.[16] The CIR, thus, had fifteen (15) days from such receipt, or until **July 2, 2022**, to file his Petition for Review. As such, the instant petition was timely filed on **June 29, 2022**.

As regards Petron's argument that the CIR's motion for reconsideration was *pro forma* and, thus, did not toll the reglementary period to appeal, the Court *En Banc* finds that the Court in Division is correct in finding that the motion for reconsideration was not *pro forma* as the CIR argued therein the substantive aspect of the case, that is, whether the alkylate imported by Petron is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended.

That having been settled, the Court shall now proceed to the merits of the case.

[16] *Notice of Resolution,* Docket – Vol. VI, p. 3139.

Petron is entitled to the refund or issuance of tax credit certificate (TCC) of the erroneously paid excise tax on its alkylate importation

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the refund of erroneously or illegally collected taxes, *viz.:*

> "**SECTION 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may –
>
> 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.
>
> xxx
>
> **SECTION 229**. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the above provisions, the following are the requisites for the entitlement to refund of erroneously or illegally collected tax:

(1) A national internal revenue tax has been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessively or in any manner wrongfully collected; and,

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

In relation to the second requirement, the Supreme Court held in *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*[17] that both the administrative and judicial claims for refund or credit must be filed within the two (2)-year period provided in Section 229 of the NIRC of 1997, to wit:

> "Section 204 refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.
>
> Section 229, on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.
>
> Reading the two provisions together, **both administrative and judicial claims must be filed within the two-year period**. Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that "[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time." *(Emphasis supplied)*

Based on the foregoing, both the administrative and judicial claims for refund or credit of erroneously collected tax should be filed within two (2) years from the date of payment of the tax.

Petron timely filed its administrative and judicial claims for refund within two (2) years from the date of payment of the tax.

A perusal of the records reveals that, after Petron's payment of excise tax on its alkylate importation, it filed the administrative and judicial claims for refund as shown below:

[17] G.R. No. 226592, July 27, 2021.

Date of Payment of Excise Tax	Last day to file claim for refund under Section 229 of the NIRC	Date of filing	
		Administrative Claim (BIR)	Judicial Claim (CTA)
November 29, 2012[18]	November 29, 2014	November 21, 2013[19]	January 28, 2014[20]

From the foregoing, it is clear that Petron timely filed its administrative and judicial claims for refund within the two (2)-year period prescribed under Section 229 of the NIRC of 1997, as amended.

Petron's alkylate importation is not subject to excise tax; thus, there was erroneously or illegally collected tax.

Section 148(e) of the NIRC of 1997, as amended, provides that an excise tax shall be imposed on naphtha, regular gasoline and other similar products of distillation, to wit:

> "**SECTION 148.** *Manufactured Oils and Other Fuels.* — There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> xxx
>
> (e) **Naphtha, regular gasoline and other similar products of distillation,** per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35): 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 (₱0.00): 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; xxx" *(Emphasis supplied)*

[18] *Customs Payment Receipt No. 2012 R 217,* Exhibit "P-9", Docket – Vol. IV, p. 1887.

[19] BIR stamp receipt on the face of the Letter dated November 19, 2013, Exhibit "P-46", Docket – Vol. IV, p. 1948.

[20] *Supplemental Petition for* Review filed to include the refund of erroneously paid excise tax, Docket – Vol. II, pp. 897-947.

In relation to the above provision, the CIR contends that 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 NIRC of 1997, as amended.

On the other hand, Petron argues that Section 148(e) of the NIRC of 1997, as amended, does not clearly, expressly or unambiguously cover "alkylate", a product nowhere mentioned in the law itself. As such, the burden of evidence is shifted to the CIR to prove that alkylate is indeed a product of distillation similar to naphtha and regular gasoline. The CIR, however, failed to discharge his burden of proving that alkylate is covered by Section 148(e) of the NIRC of 1997, as amended.

It becomes apparent that the issue lies in the interpretation of Section 148(e) of the NIRC of 1997, as amended, in order to determine whether alkylate is subject to excise tax or not.

From the aforecited provision, it is observed that there was no express mention of the term "alkylate" therein. The crux of the controversy lies in whether alkylate may fall under the category of "other product of distillation" which will place it within the ambit of the said section.

In the recent case of *Petron Corporation vs. Commissioner of Internal Revenue*,[21] the Supreme Court has settled the said controversy and categorically ruled that alkylate is **not** a product of distillation. We quote:

> "**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,**

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

and other similar products of distillation only, and not on the raw materials or ingredients used for their production.

xxx

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.**

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.**" *(Emphasis supplied)*

Based on the foregoing, it is clear that alkylate is not similar to naphtha or regular gasoline nor is it a product of distillation; thus, it is not subject to excise tax.

Since Petron paid the excise tax on the subject alkylate importation, notwithstanding the absence of a specific provision of law that distinctly and categorically imposes excise tax thereon, there was indeed an erroneous or illegal collection of tax.

With regard to the fact of alkylate importation and the payment of excise tax imposed thereon, an examination of the records shows that Petron was able to substantiate the same through the presentation of the following pieces of evidence:

1. *Bill of Lading (B/L) No. ML-5886* dated June 23, 2012 covering shipment of 79,231,000 barrels / 12,802,660 liters of alkylate[22]
2. *Tax Invoice No. S121268* dated July 11, 2012[23]
3. *Certificate of Independent Survey* dated June 28, 2012[24]
4. *Authority to Release Imported Goods (ATRIG)* dated July 23, 2012 covering B/L No. ML-5886 dated 6-23-12;[25]
5. *IEIRD No. 122406532* covering AWB/BL No. ML5886 for 12,802,660 liters at air of alkylate;[26] and,
6. *Customs Payment Receipt Number 2012 R 217* issued on November 29, 2012[27] for the payment of ₱66,904,956.00, which includes excise tax of ₱55,691,571.00, as indicated in the breakdown at the dorsal portion of IEIRD No. 122406532.[28]

Clearly, Petron was able to prove by preponderance of evidence that it is entitled to the claim for refund or issuance of a TCC for the amount of ₱55,691,571.00 representing erroneously or illegally paid excise tax on the subject alkylate importation.

In light of the foregoing discussions and recent pronouncement of the Supreme Court, the Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Amended Decision and Resolution.

---

[22] Exhibit "P-1", Docket – Vol. IV, p. 1875.
[23] Exhibit "P-2", *id.*, p. 1876.
[24] Exhibit "P-4", *id.*, pp. 1877 to 1882.
[25] Exhibit "P-5", *id.*, p. 1883.
[26] Exhibit "P-8", *id.*, p. 1886.
[27] Exhibit "P-9", *id.*, p. 1887.
[28] Exhibit "P-11-b", *id.*, p. 1892.

WHEREFORE, premised considered, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Amended Decision dated July 19, 2021, and assailed Resolution dated June 9, 2022 in CTA Case No. 8544 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
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

LANEE S. CUI-DAVID
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice