

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 2593

(CTA Case Nos. 9751,
9813 & 9848)

Present:

Del Rosario, P.J.,
Ringpis-Liban,

Manahan,

Bacorro-Villena,

Modesto-San Pedro,

Reyes-Fajardo,

Cui-David, *and*

Ferrer-Flores, JJ.

-versus-

PETRON CORPORATION,

Respondent.

Promulgated:

JUN 06 2023

x-----

x

DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review¹ appealing the Decision of the First Division of this Court (Court in Division), promulgated on June 21, 2021 in CTA Case Nos. 9751, 9813 and 9848 all entitled, "*Petron Corporation vs. Commissioner of Internal Revenue*," the dispositive portion thereof reads:

"WHEREFORE, premises considered, the Petitions for Review filed by petitioner Petron Corporation on January 12, 2018, April 13, 2018, and June 4, 2018 are **GRANTED**. Accordingly, respondent is ordered to **REFUND** and/or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Petron Corporation in the amounts of ₱20,956,877.00 in CTA Case No. 9751, ₱21,071,330.00 in CTA Case No. 9813 and ₱22,304,411.00 in CTA Case No. 9848, or a total of **₱64,332,618.00** representing

¹ Rollo, CTA EB No. 2593, pp. 1-18, with annexes.

its excise taxes paid in the year 2016 on the importation of alkylates per SAD Import Entry Nos. C2-16, C44-16 and C82-16.

SO ORDERED.”

and the Resolution dated March 31, 2022, the dispositive portion thereof reads:

“**WHEREFORE**, premises considered, respondent’s **Motion for Reconsideration (Decision promulgated 21 June 2021)** filed on July 8, 2021, and petitioner’s **Motion for Entry of Judgment** incorporated in petitioner’s Opposition (to: Respondent’s Motion for Reconsideration dated 5 July 2021) posted on October 4, 2021, are both **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR),² is the duly appointed Commissioner of Internal Revenue vested with 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.

Respondent Petron Corporation³ 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. It is engaged in the business of manufacturing and marketing petroleum products. It is registered with the Bureau of the Internal Revenue with Tax Identification Number (TIN) 000-168-801-00000.

THE FACTS

The relevant antecedents stated in the assailed Decision are as follows:

“[Respondent Petron Corporation] was accredited by the Bureau of Customs (BOC) as an importer from July 11, 2014 until July 11, 2017, as per Certification dated August 18, 2014.

In the year 2016, petitioner imported alkylate and paid the excise taxes thereon, details of which are shown below:

² Respondent Commissioner of Internal Revenue in CTA Case Nos. 9751, 9813, & 9848.

³ Petitioner Petron Corporation in CTA Case Nos. 9751, 9813, & 9848

Importation	Dates of Payment of Taxes	Taxes Paid
January 2016 importation, shipped through MT Oceanic Cerise	January 14, 2016 June 1, 2016	₱ 33, 560,181.00 <u>1, 721,741.00</u> ₱ 35,281,922.00 (₱20,956,877.00 pertains to payment of excise tax)
April 2016 importation, shipped through MT Alpine Mary	April 15, 2016 September 20, 2016	₱ 33, 765,995.00 <u>1,613,832.00</u> ₱ 35,379,827.00 (₱21,071,330.00 pertains to payment of excise tax)
July 2016 Importation, shipped through MT Altesse	July 8, 2016 October 4, 2016	₱ 34,795,643.00 <u>1,559,089.00</u> ₱ 36,354,732.00 (₱22,304,411.00 pertains to payment of excise tax)

Petitioner filed its administrative claims for refund of excise taxes on its aforesaid importations of alkylate in 2016, details of which are shown hereunder:

Administrative Claim	Date of Filing	Period Covered	Amount
Application for Tax Credits/Refunds (BIR Form No. 1914) and letter dated December 29, 2017	January 3, 2018	January 2016	₱20,956,877.00
Application for Tax Credits/Refunds (BIR Form No. 1914) and Letter dated March 23, 2018	March 23, 2018	April 2016	₱21,071,330.00
Application for Tax Credits/Refunds (BIR Form No. 1914) and Letter dated May 16, 2018	May 16, 2018	July 2016	₱21,071,330.00

Thereafter, petitioner filed three (3) separate judicial claims, to wit:

Case No.	Division	Date of Filing	Period Covered	Amount
9751	First Division	January 12, 2018	January 2016	₱20,956,877.00
9813	Third Division	April 13, 2018	April 2016	₱21,071,330.00
9848	First Division	June 4, 2018	July 2016	₱22,304,411.00

Eventually, CTA Case Nos. 9751, 9813 and 9848 were consolidated. ✓

Respondent filed his Answers in CTA Case Nos. 9751, 9813 and 9848 on April 13, 2018, June 27, 2018, and September 10, 2018, respectively. Respondent raised therein common Special and Affirmative Defenses, *viz.*:

1. The Court does not have jurisdiction over the present Petitions as the subject matter thereof does not fall under the special jurisdiction granted by statute to the Court of Tax Appeals. The core issue of the case at bar is the interpretation of Section 148(e) of the NIRC as embodied in Customs Memorandum Circular (CMC) No. 164-2012 which implemented the Letter of the CIR. CMC 164-2012 was issued in the exercise of the quasi-legislative function; thus, the Court has no jurisdiction to act on the present cases being a collateral attack on a validly issued circular;
2. The present Petitions were prematurely filed for failure to exhaust all available remedies with the administrative level in accordance with the Tariff and Customs Code of the Philippines (TCCP). A taxpayer's remedies arise only after the payment of duties and taxes, and, unless the tax is first paid, protested and decided [by the Collector], and appealed to the Commissioner of Customs, the CTA is without jurisdiction over the case. In filing the Petitions, petitioner made it appear that it was claiming refund of erroneously paid tax, but the truth of the matter is that petitioner is assailing the validity of CMC No. 164-2012 which implemented the Letter issued by the CIR. The subject matter of the Petitions is beyond the jurisdiction of the CTA;
3. Assuming a letter may be assailed in accordance with Section 4 of the NIRC, any interpretation made by the CIR is subject to the review of the Secretary of Finance;
4. Assuming the Court has jurisdiction, the excise tax paid by petitioner on its importation of Alkylate is neither erroneous nor illegal, and its reliance on Sections 204 and 229 of the NIRC of 1997, as amended, is misplaced; and
5. Assuming the Court has jurisdiction over the pending cases, petitioner is not entitled to the claimed refund as enunciated in the case of *Petron Corporation vs. CIR*, CTA Case No. 9111.²⁴

²⁴ Decision, pp. 2-4. Citations omitted

The Pre-Trial Conference of the case was held on December 6, 2018.⁵

On December 21, 2018, the parties filed their Joint Stipulation of Facts and Issues.⁶

In the Resolution dated January 11, 2019, the Court approved the Joint Stipulation of Facts and Issues and deemed the termination of the Pre-Trial Conference.⁷

The Pre-Trial Order was issued on March 6, 2019.⁸

In the Joint Stipulation of Facts and Issues, the parties agreed that the main issue to be resolved by the Court in Division was “Whether or not petitioner is entitled to a refund or issuance of a tax credit certificate representing excise taxes allegedly paid on importations of Alkylate on January 10, 2016, April 16, 2016, and July 6, 2016 in the amounts of P20,956,877.00, P21,071,330.00, and P22,304,411.00, respectively, or the aggregate amount of P64,332,618.00.”

After trial on the merits and upon submission of parties’ respective memoranda⁹, the case was submitted for decision on October 7, 2020.¹⁰

On June 21, 2021, the Court in Division rendered the questioned Decision.¹¹ On March 31, 2022, the Court in Division issued the assailed Resolution.¹²

Aggrieved, petitioner filed before the Court *En Banc* the instant Petition for Review.¹³

On May 2, 2022, the Court *En Banc* issued a Resolution¹⁴ ordering respondent to file its Comment on the Petition for Review, within ten (10) days from notice.

On May 13, 2022, respondent filed its “Motion for Extension of Time to File Comment,”¹⁵ praying that respondent be granted an extension of ten (10) days counted from May 15, 2022 or until May 25, 2022, to file its Comment. ✓

⁵ Ibid., pp. 619-622.

⁶ Ibid., pp. 634-647.

⁷ Ibid., pp. 661-662.

⁸ Ibid., pp. 743-763.

⁹ Docket, pp. 1322-1333 and 1337-1437.

¹⁰ Ibid., p. 1441.

¹¹ Ibid., pp. 1444-1469.

¹² Ibid., pp. 1572-1580.

¹³ Rollo, CTA CASE NO. 2593, pp. 1-18, with Annexes.

¹⁴ Ibid., pp. 60-61.

¹⁵ Ibid., pp. 62-65.

On May 25, 2022, respondent filed its Comment/Opposition (Re: Petition for Review dated 11 April 2022).¹⁶

On June 14, 2022, the Court *En Banc* issued a Resolution¹⁷ submitting this case for decision.

THE ISSUE

The Court *En Banc* is confronted with this main issue: ***“Whether the Court in Division erred in ruling that respondent is entitled to refund in the aggregate amount of ₱64,332,618.00 representing excise taxes paid in the year 2016 on the importation of alkylate per SAD Import Entry Nos. C2-16, C44-16 and C82-16.”***

THE ARGUMENTS OF THE PARTIES

Petitioner states that the fact that he did not present any evidence to refute the evidence presented by respondent does not *ipso facto* entitle respondent to its claim for refund; that alkylate, which is a product of distillation similar to naphtha is subject to excise tax; that alkylate, being similar to Light Catalytic Cracked Gasoline (LCCG) and Catalytic Cracked Gasoline (CCG), is a product of distillation, and falls within the category of naphtha, regular gasoline and other similar products of distillation, hence, subject to excise tax under Section 148 (e) of the NIRC of 1997, as amended; that claims for refund are strictly construed against the claimant; and that respondent failed to discharge its burden of establishing its claim for a tax refund or credit.

On the other hand, respondent counter-argues that the Petition for Review should be dismissed for having been filed out of time because the petitioner’s Motion for Reconsideration before the Court in Division is *pro forma*, hence, it did not toll the reglementary period to appeal; that the Petition for Review should be dismissed for failure to comply with the requirements for an appeal; that the Court in Division correctly ruled that respondent discharged its burden to prove its claim for refund when it pointed out that alkylate was not named in Section 148 (e) of the Tax Code; that the Court in Division correctly ruled that alkylate, was not a product of distillation and that alkylate cannot be classified as other similar products of distillation.

RULING OF THE COURT *EN BANC*

TIMELINESS OF THE PETITION FOR REVIEW

✓

¹⁶ Ibid. pp. 67-119.

¹⁷ Ibid. pp. 1304-1305.

The present Petition for Review before the Court *En Banc* was timely filed.

On June 29, 2021, petitioner received a copy of the Decision dated June 21, 2021. Then, within the period to file an appeal, petitioner filed a Motion for Reconsideration,¹⁸ which was eventually denied by the Court in Division in its Resolution dated March 31, 2022.¹⁹ The said Resolution was received by petitioner on April 5, 2022. Thus, petitioner had until April 20, 2022 within which to file the instant Petition for Review. On April 12, 2022, petitioner filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court in Division correctly ruled that petitioner’s Motion for Reconsideration is not *pro forma*. Although petitioner reiterated in his motion the arguments previously passed upon by the Court, the same cannot be considered as *pro forma*.

**WHETHER RESPONDENT IS ENTITLED
TO ITS CLAIM FOR REFUND**

The provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, pertinent to the subject of excise taxes and claims for refund of erroneously paid tax are Sections 129, 148, 204(C) and 229, which read as follows:

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

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit 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.’ xxx”

“SEC. 148. *Manufactured Oils and other Fuels.* – **There shall be collected on refined and manufactured mineral oils and motor fuel, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:**

xxx xxx xxx

✓

¹⁸ Docket, pp. 908-921.
¹⁹ Ibid., pp. 939-946.

(e) **Naphtha, regular gasoline and other similar products of distillation**, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.25): 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, liquified 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 byproducts 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;" (*Emphasis supplied*)

"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*)

"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*)

Pursuant to the above-mentioned provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with:

- (1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and
- (2) that the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

In the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*²⁰, the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the CIR.

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.²¹

The dates of the payment of the taxes and the dates for the deadline of payment as well as the period within which to file the claims for refund are illustrated below:

Case No.	Dates of Payment of Taxes	Deadline of the two-year prescriptive period	Dates of filing of Administrative Claims for Refund or TCC	Date Petition for Review was filed
CTA Case No. 9751	January 14, 2016 June 1, 2016	January 14, 2018 June 1, 2018	January 3, 2018	January 12, 2018
CTA Case No. 9813	April 15, 2016 September 20, 2016	April 15, 2018 September 20, 2018	March 28, 2018	April 13, 2018

²⁰ G.R. No. 216130, August 3, 2016.
²¹ *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.

CTA Case No. 9848	July 8, 2016 October 4, 2016	July 8, 2018 October 4, 2018	May 16, 2018	June 4, 2018
-------------------	---------------------------------	---------------------------------	--------------	--------------

Thus, the Court in Division correctly ruled that respondent was able to file its administrative claims for refund and its Petitions for Review before the Court in Division within the two-year prescriptive period reckoned from the payment of excise taxes.

Respondent’s importation of alkylate is not subject to excise tax

Under Section 148 (e) of the NIRC of 1997 as amended, excise tax shall apply, *inter alia*, to naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence. Therefore, in order to resolve whether the petitioner’s alkylate importations are subject to excise tax, it is crucial to determine whether alkylate is considered as a product of distillation similar to that of naphtha, regular gasoline and other similar products of distillation.

In the Judicial Affidavit of respondent’s witness, Simon Christopher Mulqueen, he testified as follows:

Q-12 Can you tell us what you know about Aklylate?
A-12 Alkylate is a branched chain paraffinic hydrocarbon blending component used in the manufacture of gasoline.

Alkylate is used by many countries as a blending component to produce high octane gasoline. It has no use as a product by itself as alkylate needs to be blended with other components for use in a standard gasoline engine.

Q-13 How is alkylate produced?
A-13 Alkylate is produced from the combination of light olefins (C3-C5) with isobutane in the presence of a strong acid catalyst. The chemical process is known as alkylation.

Q-14 What is alkylation?
A-14 Alkylation is the name of the chemical process that is meant to combine light olefins and isobutane, with the aid of a catalyst, to form isoparaffin isomers of the correct boiling range and octane numbers for use as a gasoline blending component. The gasoline blending component produced through alkylation is known as alkylate.

xxx xxx xxx

Q-15 What, if you know, are the raw materials or feedstock to produce alkylates?
A-15 Light C3-C5 olefins (such as isobutene) and isobutane.



Q-16 How are these raw materials produced?

A-16 Light C3-C5 olefins are typically produced from a fluid catalytic cracker (FCC) unit and/or a coker unit.

Isobutane, on the other hand, is a component of natural gas. It can be a product of crude oil distillation or it can also be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.

Q-17 You mentioned that isobutane can be a product of crude oil distillation. What is crude oil?

A-17 Crude oil is a complex mixture of organic compounds typically comprising paraffins, naphthene, aromatics and asphaltenes. Crude oil does not typically contain alefinic compounds. Typically, these compounds (i.e. paraffins, naphthenes, aromatics and asphaltenes are organic rich sediments formed from plant, vegetable and animal matter. High temperature and pressure, in the absence of air, converts these sediments into oil over millions of years.

Q-18 What is/are the use/s of crude oil?

A-18 Crude oil is the basic material for many products in the modern world. The components of crude oil, once separated through distillation and after undergoing further processing, can be used to produce transport fuel, plastics, synthetic fibres such as polyester, to name a few.

Q-19 What is distillation?

A-19 In general, distillation is the process of physically separating a mixture into its constituent parts with the use of heat. Each component of a mixture boils at a different boiling point and is condensed into a liquid and collected. In other words, distillation is a physical separation process for the purpose of extracting the different components of a compound.

xxx xxx xxx

The components of crude oil have different boiling points and this property is used to subsequently condense the gas and collect the separated components as liquids, typically known as distillates.

Q-20 Can you explain in simple terms the process of distillation of crude oil?

A-20 When crude oil undergoes distillation, the application of heat allows for each of its components to condense, depending on its boiling points. Each of the components,



otherwise known as distillates, is separately collected in a liquid state.

Simply put, distillation results in the **physical separation** of the components naturally found in crude oil, and does not involve a change in the chemical composition of each separate component.

Q-21 In the case of crude oil, what are the primary products upon its distillation?

A-21 The primary products of distillation can vary for each individual crude oil but are typically as follows:

1. Gas;
2. Light naphtha;
3. Heavy naphtha;
4. Kerosene;
5. Light gas oil;
6. Heavy gas oil;
7. Heavy fuel oil; and
8. Heavy residues.

Q-22 Based on the process you explained, is alkylate a product of distillation?

A-22 No. Even if one of its raw materials, isobutane, may be derived through the process of distillation, it is not correct to place alkylate under the group “similar products of distillation” on the sole basis that one of its raw materials is a distillate.

If products may be classified as “products of distillation” on the sole reason that one of its raw materials underwent distillation, then the classification would encompass a wide variety of common items, such as chewing gum, plastics, and polyester.

Q-23 Why do you say that alkylate is not a product of distillation?

A-23 Alkylate can only be produced through a process called alkylation. Alkylation is a very specific chemical process; it begins with two molecules that are fed to a reactor and **combined**, through a catalyst, to create a product entirely different from its raw materials.

In contrast, distillation starts off with a mixture containing two or more compounds. With the use of heat, the mixture is broken down or **physically separated** into its constituent parts.

✓

Given this difference, alkylate cannot be produced through distillation because alkylate only comes into existence after the combination of two components or raw materials (i.e., isobutane and olefins), and not the physical separation of a mixture.

Q-24 Is it correct to say that distillation is part of the process for the production of alkylate?

A-24 No, during the alkylation process, chemical reactions occur to combine starting materials into a single material known as alkylate. The heat and pressure in the reactor along with the acid catalyst forces the isobutane and olefins to combine. Distillation, in general terms, describes the separation of a mixture into its constituent parts and therefore the term distillation does not accurately describe the chemical process of alkylation.

Q-25. You mentioned that alkylation is necessary to produce alkylate. You also mentioned that isobutene, which is a raw material of alkylate, may result from the distillation of crude. Can you therefore say that alkylates are a product of distillation?

A-25 It would not be accurate to say that alkylate is a product of distillation as the fundamental process to produce alkylate is alkylation. While isobutene, a raw material of alkylate, results from distillation, to produce alkylate from isobutene involves various complex processes which require that it be combined with olefins through a chemical process which alters its chemical structure. To say that alkylate is a product of distillation is like saying polyester fabric or plastic is a product of distillation.”

xxx

xxx

xxx

Q-39 Given the characteristics of alkylate, can it on its own operate a motor vehicle?

A-39 No. Alkylate has no use as a product by itself. It does not have the necessary volatility to run an engine.

Q-40 You mentioned earlier that you have read through Section 148 of the NIRC. Is alkylate included among, or similar to, those listed or enumerated under Section 148 of the NIRC?

A-40 No. Section 148 of the NIRC imposes excise tax on refined and manufactured mineral oils and motor fuels produced through primary distillation of crude. As mentioned above, a motor fuel is a liquid mixture designed to be used in a transport vehicle typically equipped with an internal combustion engine of either a spark ignition (gasoline) engine or compression ignition (diesel) engine.



Alkylate, on the other hand, is a component which can be blended into finished gasoline to help meet the specification requirements, particularly those related to octane quality.

Q-41 Section 148(e) of the NIRC imposes excise tax on naphtha, regular gasoline and other similar products of distillation. Does alkylate fall under similar products of distillation?

A-41 No. As mentioned above, alkylate is a product of alkylation, which is a process entirely different from distillation. It does not fall under similar products of distillation such as naphtha and regular gasoline.

Also, alkylate is used merely as blending component and not as motor fuel. If alkylate is considered to fall under Section 148(e) as a product of distillation, it should be covered by the proviso stating that *'Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquified 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

xxx

xxx

Q-42. How is alkylate different from naphtha?

A-42. Alkylate is a gasoline blending component produced using a specific chemical process known as alkylation. Alkylate provides consistent product quality and ensures that important parameters, such as octane number, are controlled and of a consistently high value. Alkylate is used as a blending component for premium gasoline in order to provide high octane fuel. The term naphtha generally applies to a group of products which are derived from crude oil at a refinery by atmospheric or crude distillation. Depending on the distillation fraction, naphtha is often termed light or heavy naphtha. The properties of naphtha are dependent on the properties and source of crude oil whereas alkylate properties are controlled through specific alkylation reaction and process. If alkylate is distinguished by its high octane value, naphtha is distinct due to its boiling range.

Q-43. Is naphtha a product of distillation?

A-43. Yes, naphtha may be derived directly from distillation.

Q-44. How is alkylate different from regular gasoline?



A-44. The term regular gasoline typically applies to a motor fuel which is designed for general sale at a filling station. It is usually designed to meet the national specification of the country in which it is marketed. xxx Therefore, the main difference between regular gasoline and alkylate is that the term regular gasoline refers to a finished product suitable for general sale whereas alkylate is one of many blending components which can be used by a refiner to produce the finished gasoline product.²²

In *Pelizloy Realty Corporation vs. The Province of Benguet*,²³ the Supreme Court discussed the principle of *ejusdem generis*:

“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.’

The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas* as follows:

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.

Based on the principle of *ejusdem generis*, when the general words such as “*other similar products of distillation*” follow an enumeration of particular classes or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. Thus, it is proper to construe the phrase “*other similar products of distillation*”, in relation to the same class where “*naphtha*” and “*regular gasoline*” belong.

From the totality of the evidence presented by respondent, it was established that alkylate is not a primary product of distillation. Alkylate is not of the same class or kind as gasoline and naphtha and cannot be contemplated by the words “*other similar products of distillation*” under Section 148 (e) of the NIRC, of 1997, as amended. What is being taxed under Section 148 (e) of the

²² Judicial Affidavit of Simon Christopher Mulqueen, Exhibit “P-96,” pages 3-6, 9-10.

²³ G.R. No. 183137, April 10, 2013.

NIRC of 1997, as amended, are “naphtha, gasoline and other similar products of distillation” and not the ingredients or raw materials to produce them.

Accordingly, the Court *En Banc* agrees with the Court in Division when it ruled that respondent’s alkylate importations for the period of January 2016, April 2016 and July 2016 are not subject to excise tax pursuant to Section 148(e) of the NIRC of 1997, as amended.

As correctly ruled by the Court in Division in its Decision:

“More importantly, after a painstaking scrutiny of the case records of the present case, including the parties’ testimonial and documentary evidence, the Court finds the following:

- (i) Alkylate is used as blending component in motor or aviation gasoline in order to meet certain required characteristics such as octane number and volatility requirements, e.g. distillation boiling range;
- (ii) Alkylate is a product of alkylation reaction, a refining process for chemically combining isobutene with olefin hydrocarbons (e.g., propylene, butylene) through the control of temperature and pressure in the presence of an acid catalyst, usually sulfuric acid or hydrofluoric acid;
- (iii) **The raw materials to produce Alkylate are light olefins and isobutane;**
- (iv) Light olefins are typically produced from a fluid catalytic cracker unit and/or coker unit. Olefin is ultimately derived from crude oil feed stock. **It is not produced by distillation;**
- (v) Isobutane is a component of natural gas. Isobutane is the basic material to produce transport fuel. **Isobutane can be a product of crude oil distillation OR it can be recovered from other petroleum refinery streams that result from catalytic cracking, catalytic reforming.**

Alkylate in itself is not a product of distillation. Although one of the raw materials of Alkylate – Isobutane – can be a product of distillation, this does not justify the imposition of excise tax thereon. Section 148(e) of the NIRC of 1997, as amended, imposes tax on the following products: naphtha, regular gasoline and other similar products of distillation,” and **not on the ingredients or raw materials to come up with naphtha, regular gasoline and other similar products.** Stated otherwise, what is being subjected to 148(e) of the NIRC of 1997, as amended, are the aforesaid three (3) finished products, and not the ingredients used to produce them.

✓

XXX

XXX

XXX

Similarly, Alkylate does not come into existence by distillation just because one out of its two (2) basic ingredients is produced by distillation. Alkylate is undisputedly a product of alkylation.

In fine, Alkylate cannot be classified or embraced under the catch-all item – “*other similar products of distillation*” under Section 148(e) of the NIRC of 1997, as amended. Alkylate, whether or not used as raw materials, is not subject to excise tax because it is not specifically enumerated under Section 148(e) of the NIRC of 1997, as amended, as a raw material that is exciseable. Thus, petitioner’s payments of excise taxes in 2016 for its importation of alkylate are considered erroneous and can be the proper subject of refund.”²⁴

Respondent was able to prove its entitlement to refund

Based on the evidence presented, the Court *En Banc* finds that respondent was able to substantiate its claim for refund. The documents submitted by respondent are sufficient to prove its entitlement to refund.

We quote with approval the Decision of the Court in Division:

“To prove its claim, petitioner submitted documents for each of the three import entries it transacted with the BOC, such as Bills of Lading, Commercial Invoices, Single Administrative Documents (SADs), Customs Payment Receipts, BOC Form No. 38-A, BOC Certifications, Authority to Release Imported Goods, and Certificates of Independent Survey.

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

Petitioner submitted the SADs for the three importations. It is noted that even if petitioner did not offer in evidence the SSDTs, nevertheless, the Court finds that the Customs Payment Receipts

²⁴ Decision, pp. 20-22.

and BOC Form No. 38-A, supported by the BOC Certifications, are sufficient to establish payment of duties and taxes.

Perusal of the SADs reveals that petitioner initially declared and paid taxes and duties in the total amount of ₱102,121,819.00. Upon verification of the BOC, the duties and taxes imposable on the importations amounted to ₱107,016,481.00, leaving a difference of ₱4,894,662.00, xxx

xxx xxx xxx

Petitioner submitted in evidence copies of Customs Payment receipts (CPRs) and BOC From No. 38-A to show that the taxes and duties for the importations of alkylates subject of Import Entry Nos. C02-16, C44-16, and C82-16 in the amount of ₱353,281,922.00, ₱35,379,827.00 and ₱36,354,732.00, respectively or a total amount of ₱107,016,481.00, xxx

xxx xxx xxx

To show the breakdown of the total payments reflected in the CPRs and BOC Form No. 38-A, petitioner submitted in evidence BOC Certifications showing that the BOC received payment of the above customs duties and taxes, xxx

xxx xxx xxx

Based on the above table, the total excise taxes paid by petitioner and received by the BOC on the subject importations amounted to ₱64,332,618.00, as summarized below:²⁵

CTA Case No.	Amount of Excise Tax
9751	P 20,956,877.00
9813	21,071,330.00
9848	22, 304,411.00
Total	P 64,332,618.00

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.²⁶



²⁵ Decision, pp. 22-25.
²⁶ *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. vs. Court of Appeals*, G.R. No. 122605, April 30, 2001.

Hence, in the absence of any compelling evidence to the contrary, we sustain the findings of the Court in Division that respondent's importation is subject to refund.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.²⁷ In this case, respondent was able to prove that it is entitled to a refund or issuance of a TCC for its payment of excise taxes on its importation of alkylate for the period of January 2016, April 2016 and July 2016.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated June 21, 2021 and the assailed Resolution dated March 31, 2022 are **AFFIRMED**.

SO ORDERED.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

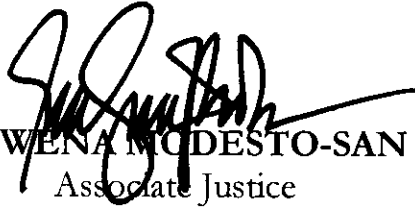
WE CONCUR:


I concur (consistent with GR 255961)
ROMAN G. DEL ROSARIO
Presiding Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice


I concur (& agrees with PJ re SC Case, GR 255961)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

²⁷ *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY R. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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