REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioners,

- versus -

BOEHRINGER INGELHEIM (PHILIPPINES), INC.,
Respondents.

CTA EB NO. 3126
(CTA Case No. 10854)

Present:

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

Promulgated:
JUL 28 2026 10:40am

x - x

DECISION

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

Before the Court *En Banc* is the **Petition for Review** filed by **Commissioner of Internal Revenue** against **Boehringer Ingelheim (Philippines), Inc.** on April 25, 2025, assailing the Decision dated December 17, 2024 (assailed Decision)[1] and the Resolution dated March 25, 2025 (assailed Resolution),[2] promulgated by the Court of Tax Appeals (CTA) First Division (Court in Division).[3]

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1 *Rollo,* pp. 30 to 51. Penned by Associate Justice Lanee S. Cui-David and concurred in by (Ret.) Presiding Justice Roman G. Del Rosario and. Associate Justice Jean Marie A. Bacorro-Villena.

2 *Rollo,* pp. 53 to 56. Penned by Associate Justice Lanee S. Cui-David and concurred in by (Ret.) Presiding Justice Roman G. Del Rosario and Associate Justice Jean Marie A. Bacorro-Villena.

3 Composed of (Ret.) Presiding Justice Roman G. Del Rosario, Associate Justice Jean Marie A. Bacorro-Villena, and Associate Justice Lanee S. Cui-David.

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

Assailed Decision:

> **WHEREFORE,** the present Petition for Review is **PARTIALLY GANTED.**
>
> Accordingly, respondent is ordered to refund in favor of petitioner the amount of **₱104,126,887.43,** representing VAT erroneously paid on the importation of prescription drugs and medicines for diabetes, high cholesterol and hypertension for the period from July 1, 2020 to November 30, 2020.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE,** premises considered, the *Motion for Partial Reconsideration (Re: Decision promulgated on 17 December 2024)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

In the instant *Petition for Review*, petitioner prays for the Court to set aside and cancel the assailed Decision and the assailed Resolution and a new one be rendered dismissing respondent's *Petition for Review* before the Court in Division for lack of merit.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law with the authority to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as related statutes and their implementing regulations. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

Respondent is a domestic corporation with principal office located at 23rd Floor, BDO Towers (formerly Citibank Tower), Valero Building, 8741 Paseo De Roxas, Bel-Air, Makati City, Philippines.[5]

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[4] Par. 3, Decision dated December 17, 2024, *Rollo*, pp. 30 to 31.
[5] Par. 2, Decision dated December 17, 2024, *Rollo*, p. 30.

THE FACTS

The facts as found by the Court in Division are as follows:

On January 22, 2020, the President of the Philippines approved Republic Act (RA) No. 11467, amending specific provisions of the National Internal Revenue Code (NIRC), as amended.

Section 15 of RA No. 11467 states that the said law shall "*take effect on January 1, 2020 after its complete publication either in the Official Gazette or in a newspaper of general circulation.*"

On June 8, 2020, respondent [herein petitioner] issued Revenue Memorandum Circular (RMC) No. 62-2020, publishing the full text of the letter from the Food and Drug Administration (FDA) of the Department of Health (DOH), which enumerated prescription drugs and medicines exempt from VAT under RA No. 11467. The RMC stated that the listed medicines are exempt from VAT beginning January 27, 2020.

On June 26, 2020, the Secretary of Finance issued Revenue Regulations (RR) No. 18-2020, implementing RA No. 18-2020, implementing RA No. 11467. Subsequently, on October 14, 2020, respondent issued RMC No. 113-2020, amending RMC No. 65-2020, and published the full text of a letter from the Department of Finance clarifying that the effectivity of date of RA No, 11467 was January 23, 2020, rather than January 27, 2020, based on its publication in the Office Gazette website on the earlier date.

While the list of VAT-exempt prescription drugs and medicines pursuant to RA No. 11467 was published by the BIR in June 2020, petitioner was constrained to pay VAT to facilitate the release of its imported products from the Bureau of Customs (BOC) to address the high demand in the Philippine market during the pandemic, given the issues encountered in obtaining the Authority to Release Imported Goods (ATRIG).

On July 15, 2020, the BIR issued Revenue Memorandum Order (RMO) No. 23-2020, outlining the guidelines for issuing ATRIGs for VAT-exempt prescription drugs and medicines under RA No. 11467 as implemented by RR No. 18-2020. This issuance was later amended by RMO No. 25-2020 on July 29, 2020, which provides that the ATRIG shall be issued by the Revenue District Office (RDO) having jurisdiction over the port of entry, instead of being processed by RDO No. 33 (Intramuros-Ermita-Malate) only.

On October 15, 2020, respondent [herein petitioner] issued RMO No. 36-2020, laying down the guidelines and procedures for claiming refunds for erroneously paid VAT on imported prescription drugs pursuant to RR No. 18-2020 and Section 204(c) of the Tax Code.

On September 3, 2021, petitioner [herein respondent] filed an administrative claim for a refund amounting to ₱104,126,921.78 with the LTAD 1 of the BIR via an Application for Tax Credits/Refunds (BIR Form No. 1914), and a letter dated September 2, 2020. The claim covered VAT erroneously paid on the importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension which were exempt from VAT under RA No. 11467.

On September 28, 2021, petitioner [herein respondent] received a Tax Verification Notice dated September 20, 2021 issued by the BIR's Large Taxpayers Service, authorizing Revenue Officer (RO) Ron Ace A. Valenzuela to examine the supporting documents for the refund claim.

On April 4, 2022, petitioner [herein respondent] received a letter dated March 10, 2022, denying the claim for refund in full.

On May 4, 2022, petitioner [herein respondent] filed the present *Petition for Review*, initially raffled to this Court's Second Division.

On July 7, 2022, respondent [herein petitioner] filed an *Answer (Re: Petition for Review dated 02 May 2022)*, interposing special and affirmative defenses.

On July 26, 2022, respondent [herein petitioner] transmitted the BIR Records for this case, consisting of 88 pages, in one folder. The Pre-Trial Conference, initially set for September 19, 022, was rescheduled to September 22, 2022. Respondent's Pre-Trial Brief was filed on July 29, 2022, while petitioner's Pre-Trial Brief was submitted on September 19, 2022.

On October 24, 2022, the parties submitted their Joint Stipulation of Facts and Issues, which was admitted and approved by the Court in a Resolution dated October 27, 2022. The Pre-Trial Order dated November 22, 2022, was then issued.

Trial ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

Petitioner [herein respondent] presented the following witnesses: (1) Mr. Ermel N. Teodoro, head of Finance and Administration; (2) Mr. Marlon L. Sesante, Commercial Supply Chain Lead; (3) Ms. Mylene P. Salindong-Vicmundo, Central Accounting Manager; and (4) Mr. Caezar M. Nicolas, the Court-commissioned Independent Certified Public Accountant (ICPA).

On March 3, 2023, the ICPA Report was submitted.

On April 11, 2023, petitioner [herein respondent] filed its Offer of Documentary Evidence, to which respondent submitted his Comment (Re: Offer of Documentary Evidence dated 11 April 2023) on April 14, 2023. The Court admitted petitioner's offered exhibits in the Resolution dated May 5, 2023. Thereafter, the present case was transferred to the First Division on May 29, 2023.

Respondent [herein petitioner] presented RO Ron Ace A. Valenzuela as a witness. On November 14, 2023, respondent [herein petitioner] filed his Formal Offer of Evidence, to which petitioner filed its Comment/Opposition (to respondent's Formal Offer of Evidence dated November 14, 2023) on November 24, 2023. The Court admitted respondent's offered evidence in the Resolution dated January 25, 2024.

> On February 29, 2024, petitioner [herein respondent] filed its Memorandum. On March 1, 2024, respondent [herein petitioner] submitted a Manifestation that he is adopting the arguments raised in his Answer dated July 7, 2022, as his Memorandum.
>
> The case was submitted for decision on March 12, 2024.

On December 17, 2024, the Court in Division promulgated the assailed Decision. Petitioner, thereafter, filed his *Motion for Partial Reconsideration (Re: Decision promulgated on 17 December 2024)*,[6] which the Court in Division denied for lack of merit in the assailed Resolution dated March 25, 2025.[7]

On April 14, 2025, petitioner filed a *Motion for Extension to File Petition for Review*[8] praying that he be given until May 2, 2025 to file his Petition for Review.

The *Motion for Extension to file Petition for Review* was granted by the Court in the Minute Resolution dated April 15, 2025.[9]

Petitioner filed the present *Petition for Review* within the extension granted by the Court.

Thereafter, respondent filed its *Comment (on Petition for Review dated April 25, 2025)*.[10]

The present case was submitted for decision on July 8, 2025.[11]

THE ISSUE

The lone issue submitted for the Court's resolution is whether the Court in Division erred in ruling that respondent is partially entitled to the refund sought.

THE ARGUMENTS

Petitioner contends that respondent failed to prove its entitlement to the claimed refund, as the supporting documents it submitted were allegedly non-compliant with the requirements prescribed by law. Accordingly, petitioner

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6 Division Docket, Vol. III, pp. 1331 to 1338.
7 *Rollo*, pp.53 to 56.
8 *Rollo*, pp. 1 to 4.
9 *Rollo*, p. 9.
10 *Rollo*, pp. 59 to 79.
11 *Rollo*, p. 83.

asserts that the VAT paid by respondent was lawfully and validly collected, and that respondent was properly liable therefor.

Petitioner further argues that respondent failed to prove that it had submitted valid and acceptable supporting documents to substantiate its administrative claim for refund. Such being the case, petitioner has the burden of proof to refute the findings at the administrative level before it can be entitled to the refund being claimed.

Respondent, on the other hand, argues that petitioner's arguments are a mere rehash of his arguments in the *Motion for Partial Reconsideration* dated January 14, 2024 which were already passed upon by the Court in Division in the assailed Resolution.

Respondent further maintains that it was able to prove its entitlement to the refund claimed and that the Court in Division did not err in partially granting its claim for refund.

THE COURT EN BANC'S RULING

The *Petition for Review* lacks merit.

Timeliness of the Petition for Review

Records show that petitioner received the assailed Resolution on April 2, 2025. Counting 15 days therefrom, petitioner had until April 17, 2025 within which to file its Petition for Review before the Court *En Banc*. On April 14, 2025, petitioner filed a *Motion for Extension to File Petition for Review*[12] requesting for an additional period of 15 days within which to file its *Petition for Review*. The Court granted the said *Motion for Extension* in a Minute Resolution dated April 15, 2025.[13] On April 2, 2025, petitioner timely filed the instant *Petition for Review*.

The BIR Special Counsel's lack of authority to file the instant case

Section 35 of the Administrative Code of 1987 provides:

> SECTION 35. Powers and Functions. – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding,

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[12] *Rollo*, pp. 1 to 4.
[13] *Rollo*, p. 9.

> investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:
>
> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.**[14] (Emphasis added)

From the foregoing, it is clear that the Office of the Solicitor General (OSG) is primarily responsible for representing the Government in any proceeding in which the latter is involved.

While Section 220 of the NIRC of 1997, as amended, provides that civil and criminal actions and proceedings instituted in behalf of the Government under the authority of the said law shall be conducted by legal officers of the BIR, the Supreme Court has already explained that Section 220 must not be understood as overturning the long-settled rule that the OSG is the Government's principal legal representative and counsel.

This was explained by the Court in the case of *Civil Service Commission, et al. vs. Nimfa P. Asensi*,[15] to wit:

> Moreover, the Court has already ruled on a similar argument before in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*, which was previously cited in the assailed Resolution. In that case, the Commissioner of Internal Revenue invoked Section 220 of the Tax Reform Act of 1997 in asserting that its legal officers were allowed to institute civil and criminal actions and proceedings in behalf of the government before the Supreme Court. The Court disagreed, stating that "Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic." The Court again cited *Gonzales v. Chavez* in holding that "from the historical and statutory perspectives, the Solicitor General is the principal law officer and legal defender of the government." Strikingly, the Tax Reform Act was a law enacted subsequent to the Administrative Code of 1987 and is more specific in application to tax cases. **Yet these considerations were not sufficient for the Court to consider the powers granted to BIR legal officers under Section 220 of the Tax Reform Act as superseding those vested to the Solicitor General under the Administrative Code. All the more reason for this Court to assert the primacy of the OSG's mandate over the claimed prerogative of the Office of Legal Affairs.** (Emphasis added)

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14 Section 35, Chapter 12, Title III, Book IV.
15 G.R. No. 160657 (Resolution), December 17, 2004.

From the foregoing, it is clear that the OSG still has control over the conduct of a case. The deputized counsel merely acts as agent or representative of the OSG and possesses no independent authority to determine whether an appeal should be pursued.

Revenue Memorandum Circular (RMC) No. 25-2010,[16] embodying the Memorandum of Agreement (MOA) between the OSG and the BIR, delineates the respective duties and responsibilities of the OSG and the BIR in the preparation and prosecution of tax cases. Notably, it expressly provides that, with respect to appeals before the Court of Tax Appeals *En Banc*, the OSG deputizes BIR handling lawyers to continue the prosecution and litigation of such cases. Nevertheless, while the OSG may deputize BIR lawyers to appear and litigate on its behalf, such deputation does not divest the OSG of its supervisory authority and control over the conduct of the case. RMC No. 25-2010 likewise requires the BIR to periodically submit to the OSG a roster of handling lawyers who may be deputized for this purpose, viz:

> REVENUE MEMORANDUM CIRCULAR NO. 25-2010
>
> xxx xxx xxx
>
> "MEMORANDUM OF AGREEMENT"
>
> xxx xxx xxx
>
> WHEREAS, in the Resolution promulgated on 04 July 2002 in G.R. No. 144942 entitled *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory*, the Supreme Court En Banc ruled that *"it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings."*
>
> xxx xxx xxx
>
> B. HANDLING CASES
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> xxx xxx xxx
>
> 2. Cases appealed before the Regional Trial Courts, Court of Appeals, and the Court of Tax Appeals En Banc.
>
> a. The OSG hereby deputizes BIR handling lawyers to:
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> i. Appear before the Courts; and
> ii. Continue the prosecution/litigation of appealed tax cases before the Regional Trial Courts, Court of Appeals and the Court of Appeals En Banc.

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16 SUBJECT : Publishing the full text of the Memorandum of Agreement between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General

The BIR handling lawyer shall have the following responsibilities:

i. To appear before the courts; and
ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.

b. **The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.** (Emphasis supplied)

An examination of the *Petition for Review* and its attachments reveals that the BIR Special Counsel failed to attach any deputation from the OSG authorizing the filing of the said *Petition.* Neither is there any document on record showing that the OSG expressly authorized the Special Counsel to file the Petition or to appear on its behalf in these proceedings.

While RDAO No. 2-2007, which was attached to the *Petition for Review*, delegates petitioner's authority to institute civil, administrative, and criminal actions for the recovery of taxes or the enforcement of fines, penalties, and forfeitures under the NIRC of 1997, as amended, such delegation emanated exclusively from the then CIR. Since the said RDAO was not issued by the OSG, it cannot serve as the requisite deputation authorizing BIR lawyers to commence or prosecute actions in representation of the OSG.

It has been held that a petition filed without the OSG's *imprimatur*, when it is required, shall be defective; it shall be dismissible based on this ground alone.[17]

Be that as it may, even if the BIR Special Counsel were properly authorized by the OSG, the instant *Petition for Review* would still be denied for lack of merit.

The Court in Division was correct in partially granting respondent's claim for refund.

Petitioner claims that respondent has not proven its entitlement to the refund sought as the amount of input tax on the imported items have been reported and claimed as input tax credit. Considering that respondent has the burden of proof in refund cases, petitioner asserts that it must prove that it has submitted valid and acceptable supporting documents to substantiate its administrative claim for refund.

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[17] *Commissioner of Internal Revenue vs. Second Division of the Court of Tax Appeals*, G.R. No 280165, August 4, 2025.

On the contrary, respondent explains that it has sufficiently proven that its refund claim had not been reported and previously claimed as input tax credit. It maintains that, when it filed its amended quarterly VAT returns and monthly VAT declarations on August 4, 2021, there were no set guidelines on how to reflect said importation in the returns as RMC No. 99-2021, which provides such guidelines, was only issued on August 16, 2021. Respondent insists that, at that time, the prevailing regulation was Revenue Memorandum Order (RMO) No. 36-2020, which does not require the presentation of the input tax to be claimed as refund in the returns.

Respondent further avers that the input tax subject of the claim for refund had not yet been reported nor claimed as input tax credit precisely because the input taxes pertaining to the importation of the VAT-exempt medicines were deducted from the allowable input tax.

Respondent also points out that the Independent Certified Public Accountant (ICPA) confirmed that the amount subject of the refund claim was lodged under Items 23D and 20D of the Quarterly VAT Declaration and the Monthly VAT Declarations, respectively, and that the same had not been claimed as input tax credit.

We agree with respondent.

At the outset, it is apparent that the foregoing arguments of petitioner on this matter are mere verbatim reiterations of those raised in his *Motion for Reconsideration* before the Court in Division and were already squarely considered, resolved, and passed upon in the assailed Resolution. Petitioner has not advanced any new matter or persuasive reason that would warrant a departure from the Court in Division's findings and conclusions.

Petitioner's insistence that respondent failed to prove that the amount subject of refund was not previously reported and claimed as input tax credit deserves scant consideration. A careful review of the records reveals that the Court in Division properly scrutinized the evidence and correctly concluded that respondent was able to substantiate its claim.

In finding that the input tax on imported items has not been claimed as input tax credit in the monthly and/or quarterly VAT returns, the Court in Division examined and evaluated the documentary and testimonial evidence presented by respondent and found the same sufficient to establish compliance with the requirements for refund. In the assailed Decision, the Court in Division held that, while the claimed amount of ₱135,898,004.25 was included in the input VAT for "Importation of Goods Other Than Capital Goods", it remained unutilized in the computation of the VAT payable, because it was also deducted as "VAT Refund/TCC claimed" in those same

VAT returns. The Court in Division found that this claim no longer formed part of the excess input VAT as of the end of the third quarter and the months of October and November 2020. The claimed input VAT was neither carried over nor utilized in the succeeding months or quarters.

The Court in Division, thus, aptly ruled that respondent must be deemed to have satisfied the wisdom behind the requirement of RMC No. 99-2021, which aims to "ensure that the imported items have not been reported and claimed as input tax credit in the monthly and quarterly VAT returns pursuant to Section 110 of the Tax Code of 1997, as amended, for purposes of computing the VAT payable."

Significantly, petitioner has failed to demonstrate that such findings were unsupported by the evidence on record or that the Court in Division committed any error in its appreciation thereof.

More importantly, the Court in Division correctly rejected petitioner's position that respondent's claim should fail for its alleged noncompliance with reporting requirements that were not yet in effect at the time the claim was filed.

Since petitioner has not shown any misapprehension of facts, misapplication of law, or other reversible error that would justify the reversal or modification of the assailed Decision and Resolution, We sustain the findings of the Court in Division and hold that respondent is entitled to the partial refund of the erroneously paid VAT on its importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension during the period July 1, 2020 to November 30, 2020. The assailed Decision and Resolution must therefore be upheld.

ACCORDINGLY, the instant **Petition for Review** is **DENIED** for lack of merit. The Decision dated December 17, 2024 and the Resolution dated March 25, 2025 rendered in CTA Case No. 10854 are hereby **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

C E R T I F I C A T I O N

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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice