REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ESSEX PHARMACEUTICALS, INC.,
Petitioner,

CTA CASE NO. 10742

-versus-

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 10 2024
3:50 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

THE CASE

Before the Court is a *Petition for Review* filed by petitioner Essex Pharmaceuticals Inc. praying that the Court render judgment:

1. Declaring petitioner entitled to a refund of value-added tax (VAT) erroneously paid on the importation of diabetes medicines in the amount of ₱9,659,284.22; and

2. Ordering respondent to refund or issue a tax credit certificate to petitioner in the said amount of ₱9,659,284.22.[1]

THE PARTIES

Petitioner Essex Pharmaceuticals, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at

[1] Statement of the Case, Amended Pre-Trial Order dated January 18, 2023, Docket, p. 309.

the 26th Floor Philamlife Tower, 8767 Paseo de Roxas, Makati City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 005-376-872-00000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue with office address at c/o Rm. 703, 7th Floor, BIR National Office, Diliman, Quezon City.[4]

THE FACTS OF THE CASE

On July 1, 2021, petitioner filed with respondent's Regular Large Taxpayers Audit Division I an *Application for Tax Credits/Refunds* (BIR Form No. 1914) and supporting documents for the amount of ₱9,659,284.22, representing the alleged erroneously paid VAT on its importation of VAT exempt medicines,[5] for the period from January 23, 2020 to July 9, 2020.[6] Subsequently, on August 17, 2021 and November 15, 2021, petitioner filed its transmittal letter and supplemental letter, respectively.[7]

On December 13, 2021, petitioner received from respondent, through Assistant Commissioner Manuel V. Mapoy, the letter dated October 26, 2021, denying the claim for refund.[8]

Petitioner filed the present *Petition for Review* on February 2, 2022.[9] The case was raffled to this Court's Third Division.

Within the extended period,[10] respondent filed his *Answer* on May 30, 2022.[11]

On July 18, 2022, respondent transmitted the *BIR Records* for the present case, consisting of two (2) parts, with one hundred fifty-one (151) pages for Part I, and twenty-seven pages (27) for Part II, in one (1) folder.[12]

---

[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 177; Exhibit "P-1", Docket, pp. 359 to 371.
[3] Exhibit "P-2", Docket, pp. 372 to 374.
[4] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 177.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 177.
[6] Exhibit "P-9", Docket, 79.
[7] Exhibits "P-10" and "P-11", Docket, pp. 80 to 100.
[8] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 177; Exhibits "P-12" and "R-2", BIR Records (Exhibit "R-3"), pp. 23 to 24.
[9] Docket, pp. 6 to 17.
[10] *Motion for Extension of Time to File Answer*, Docket, pp. 117 to 119; Resolution dated May 11, 2022, Docket, p. 123.
[11] Docket, pp. 124 to 131.
[12] *Compliance* dated July 15, 2022, Docket, p. 152 to 154.

The Pre-Trial conference was set and held on September 15, 2022.[13] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on September 9, 2022,[14] while respondent's *Pre-Trial Brief* was submitted on September 12, 2022.[15]

On October 17, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[16] which was admitted and approved in the Resolution dated October 25, 2022,[17] thereby deeming the termination of the pre-trial. The Pre-Trial Order dated November 8, 2022 was then issued.[18]

On November 4, 2022, the parties filed a *Joint Motion to Amend Joint Stipulation of Facts and Issues* to correct the description of certain documents to be presented by petitioner.[19] Consequently, the amended Pre-Trial Order dated January 18, 2023 was issued.[20]

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

Petitioner presented Ms. Paula Mae A. Francisco, petitioner's Tax Officer;[21] and the Court-commissioned Independent Certified Public Accountant (ICPA) [22], Ms. Maricelle L. Ricaforte,[23]

The ICPA submitted her *Report* on January 3, 2023.[24]

Petitioner submitted its *Formal Offer of Evidence for Petitioner* on March 7, 2023.[25] Respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on March 17, 2023.[26] In the Resolution dated May 10, 2023,[27] the Court admitted all of petitioner's offered exhibits.

---

[13] Notice of Pre-trial Conference dated June 2, 2022, Docket, pp. 147 to 148; Minutes of the hearing held on, and Order dated, September 15, 2022, Docket, pp. 173 and 175 to 176, respectively.
[14] Docket, pp. 157 to 164.
[15] Docket, pp. 168 to 170.
[16] Docket, pp. 177 to 180.
[17] Docket, p. 206.
[18] Docket, pp. 212 to 217.
[19] Docket, pp. 207 to 209.
[20] Docket, pp. 309 to 314.
[21] Exhibit "P-14", Docket, pp. 21 to 39; Minutes of the hearing held on, and Order, dated February 14, 2023, Docket, pp. 332 to 334.
[22] *Oath of Commission* dated November 17, 2022, Docket, p. 225; Minutes of the hearing held on, and Order dated, November 17, 2022, Docket, pp. 224, and 228 to 229, respectively.
[23] Exhibit "P-15", Docket, pp. 318 to 327; Minutes of the hearing held on, and Order, dated February 14, 2023, Docket, pp. 332 to 334.
[24] Docket, pp. 242 to 306.
[25] Docket, pp. 345 to 358.
[26] Docket, pp. 410 to 412.
[27] Docket, pp. 415 to 416.

Respondent presented his lone witness, Revenue Officer Michael Vincent C. Arias.[28]

On May 26, 2023, respondent filed his *Formal Offer of Evidence.*[29] On June 8, 2023, petitioner filed its *Comment (to Respondent's Formal Offer of Evidence).*[30] In the Resolution dated July 13, 2023,[31] the Court admitted respondent's offered exhibits.

Meanwhile, in the Resolution dated June 1, 2023,[32] the present case was transferred to this Court's Second Division.

Petitioner's *Memorandum* was posted on August 22, 2023.[33] Respondent, however, failed to file his memorandum.[34]

The present case was submitted for decision on September 12, 2023.[35]

THE STIPULATED ISSUE

The issue, as stipulated by the parties, for the Court's resolution is:

> "Whether or not Petitioner is entitled to the refund of Php9,659,284.22 allegedly representing VAT erroneously paid for the period 23 January 2020 to 9 July 2020 on the importation of medicines intended for the treatment of persons with diabetes".[36]

THE ARGUMENTS OF THE PARTIES

Petitioner's arguments:

Petitioner argues that the importation of the medicines subject of the claim for refund is exempt from VAT; that the erroneously paid VAT subject of the claim for refund have not been claimed and utilized as input tax credits; and that petitioner is entitled to a refund of ₱9,659,284.22, representing VAT

[28] Exhibit "R-4", Docket, pp. 136 to 140; Minutes of the hearing held on, and Order, dated May 11, 2023, Docket, pp. 417 to 418.
[29] Docket, pp. 419 to 422.
[30] Docket, pp. 425 to 427.
[31] Docket, p. 433.
[32] Notice, Docket, p. 424.
[33] Docket, pp. 434 to 457.
[34] Records Verification dated September 4, 2023 issued by the Judicial Records Division of this Court, Docket, p. 462.
[35] Docket, p. 463.
[36] Stipulated Issue, JSFI, Docket, p. 178.

erroneously paid on the importation of medicines intended for the treatment of persons with diabetes.

Respondent's counter-arguments:

Respondent contends that the instant judicial claim should be denied for petitioner's failure to comply with the requirements under item (II)(9) of Revenue Memorandum Order (RMO) No. 36-2020; that taxes paid and collected by the BIR are presumed to have been made in accordance with laws, rules and regulations and the burden to prove otherwise is upon petitioner; and that claims for refund are strictly construed against the claimant.

THE COURT'S RULING

The *Petition for Review* has merit.

Governing provisions for refund claims.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 provide as follows, *viz.*:

> "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 added)*
>
> "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 therefore, 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." *(Emphases added)*

The afore-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[37]

Moreover, the law allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[38]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise taxes paid are "erroneous or illegal".

Petitioner timely filed its administrative and judicial claims.

An examination of the case records shows that the following dates are significant in determining the timeliness of the present refund claim, *viz.*:[39]

Dates of payment of VAT	Respective last day of the two (2)-year prescriptive period	Date of filing of administrative claims	Date of filing of judicial claim

[37] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[38] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[39] Exhibit "P-6", BIR Records (Exhibit "R-3"), pp. 93 to 115.

January 24, 2020[40]	January 24, 2022		
January 27, 2020	January 27, 2022		
January 31, 2020	January 31, 2022	July 1, 2021[41]	February 2, 2022[42]
April 13, 2020	April 13, 2022		
April 21, 2020	April 21, 2022		

It is clear that petitioner's claim for refund filed on July 1, 2021, for its payments of VAT on the subject importations made on January 24, 2020, January 27, 2020, January 27, 2020, April 13, 2020 and April 21, 2020, was timely filed within the two (2)-year prescriptive period.

As for the judicial claim for refund, Supreme Court Administrative Circular No. 01-2022[43] states:

> "In view of the alarming number of Covid-19 infections, the effects of super typhoon Odette, and the request of the 25th Board of Governors of the Integrated Bar of the Philippines, the filing periods of any and all pleadings and other court submissions falling due in the month of January 2022 **in all courts** are hereby **EXTENDED** until February 1, 2022."

February 1, 2022 however, was declared a special non-working holiday per Proclamation No. 1236.[44] Petitioner's judicial claim filed on the next work day, **February 2, 2022**, was timely made within the two (2)-year prescriptive period.

The subject medicine importations of petitioner are not subject to VAT. Thus, petitioner is entitled to refund.

The Court shall now determine whether the VAT payments arising from the subject importations of medicines are illegal or erroneous.

Petitioner imported into the country the following medicines, and paid the 12% VAT due thereon starting on January 24, 2020, to wit:[45]

	Description	Category	Generic Name
1	VELMETIA 50/500MG 4X7TAB	Blood Glucose Lowering Drugs (A10B) (Diabetes)	Metformin + Sitagliptin

---

[40] Covering three (3) importations.
[41] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 177; Exhibit "P-9", Docket, 79.
[42] Docket, pp. 6 to 17.
[43] RE: EXTENSION OF THE DEADLINES FOR THE FILING OF ANY AND ALL PLEADINGS AND OTHER COURT SUBMISSIONS FALLING DUE IN THE MONTH OF JANUARY 2022 IN ALL COURTS
[44] DECLARING THE REGULAR HOLIDAYS AND SPECIAL (WORKING/NON-WORKING) DAYS FOR THE YEAR 2022.
[45] Exhibit "P-6", BIR Records, pp. 93 to 116.

2	VELMETIA 50/100MG 4X7TAB	Blood Glucose Lowering Drugs (A10B) (Diabetes)	Metformin + Sitagliptin
3	XELEVIA 50MG 4X7TAB	Dipeptidyl Peptidase 4 (DPP-4) Inhibitors (A10BH) (Diabetes)	Sitagliptin
4	XELEVIA 100MG 4X7TAB	Dipeptidyl Peptidase 4 (DPP-4) Inhibitors (A10BH) (Diabetes)	Sitagliptin

Petitioner claims that the importation of the aforementioned medicines are exempt from VAT pursuant to Section 109(1)(AA)(i) of the Tax Code and RMC No. 62-2020.[46]

Section 109(1)(AA)(i) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963,[47] otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN), and was further amended by RA No. 11467,[48] provides that the importation of prescription drugs and medicines for diabetes, among others, shall enjoy exemption from VAT, thus:

> "**SEC. 109.** ***Exempt Transactions.*** – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be **<u>exempt</u> from the value-added tax**:
>
> xxx xxx xxx
>
> (AA) Sale of or **<u>importation</u> of prescription drugs and medicines** for:
>
> i. **<u>Diabetes,</u> high cholesterol, and hypertension <u>beginning January 1, 2020</u>**; and
> ii. Cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2021:
>
> Provided, That the DOH shall issue a list of approved drugs and medicines for this purpose within sixty (60) days from the effectivity of this Act: xxx xxx xxx. *(Emphases and underscoring added)*

N

[46] Par. 11, Statement of Facts and Proceedings, *Memorandum*, p. 435.
[47] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.
[48] AN ACT AMENDING SECTIONS 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, AND 288-A, AND ADDING A NEW SECTION 290-A TO REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AND FOE OTHER PURPOSES.

Pursuant to the foregoing provision, Revenue Memorandum Circular (RMC) No. 62-2020[49] was promulgated on June 8, 2020, following the issuance by the DOH-FDA of the letter dated March 2, 2020, with an approved list of medicines for diabetes, high cholesterol and hypertension, that are qualified for VAT exemption beginning January 27, 2020.

It is worth noting that while RMC No. 62-2020 indicates that the exemption shall only begin on January 27, 2020, RA No. 11467 explicitly provides for an effectivity date of January 1, 2020.

The time-honored doctrine, in case of conflict, is that the law prevails over the administrative regulations implementing it. The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute.[50] Thus, if a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails, because the law cannot be broadened by a mere administrative issuance — an administrative agency certainly cannot amend an act of Congress.[51]

Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out.[52] Particularly, administrative issuances such as revenue memorandum circulars cannot amend nor modify the law.[53]

In the recent case of *Manila Peninsula Manila Hotel, Inc. vs. Commissioner of Internal Revenue*,[54] the Supreme Court cited the case of *Philippine Bank of Communications v. Commissioner of Internal Revenue,*[55] wherein it upheld the nullification of RMC No. 7-85 because it was inconsistent with the provision of Section 230 of 1977 NIRC. In so doing, the Supreme Court said that the BIR did not simply interpret the law, instead, it legislated guidelines contrary to the statute passed by Congress. Thus, the Court then held as follows:

> "It bears repeating that Revenue [Memorandum Circulars] are considered administrative rulings (in the sense of more specific

---

[49] SUBJECT: Publishing the full text of the letter from the Food and Drug Administration (FDA) of the Department of Health (DOH) containing the "List of Prescription Drugs and Medicines for Diabetes, High-Cholesterol and Hypertension Exempt from VAT beginning January 27, 2020" pursuant to Section 1 of Republic Act No. 11467.

[50] *Felix B. Perez and Amante G. Doria vs. Philippine Telegraph and Telephone Company and Jose Luis Santigao*, G.R. No. 152048, April 7, 2009.

[51] *MCC Industrial Sales Corporation vs. Ssangyong Corporation*, G.R. No. 170633, October 17, 2007.

[52] *In the matter of declaratory relied on the validity of Revenue Memorandum Circular No. 65-2020, Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kin S. Jacinto-Henares and Revenue District Officer (RDO) Ricardo B. Espiritu vs. First E-Bank Tower Condominium Corp.*, G.R. No. 215801, January 15, 2020; and *First E-Bank Tower Condominium Corp. vs Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kim S. Jacinto-Henares*, G.R. No. 218924, January 15, 2020.

[53] *ING Bank N.V., engaged in banking operations in the Philippines as ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue*, G.R. No. 167679, April 20, 2016.

[54] G.R. No. 229338, April 17, 2024.

[55] G.R. No. 112024, January 28, 1994.

and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, **courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.**" *(Emphasis added)*

Also, in *Saint Wealth Ltd. vs. Bureau of Internal Revenue*,[56] the Supreme Court *En Banc* declared certain parts of RMC No. 102-2017 and RMC No. 78-2018 as invalid and unconstitutional for being issued without any statutory basis and for encroaching upon legislative power to enact laws.

Following the above cited jurisprudence, We hold that the importation of prescription drugs and medicines for diabetes, high cholesterol and hypertension is exempt from VAT beginning January 1, 2020.

In her *Report*, the Court-commissioned ICPA, Ms. Maricelle Ricaforte, presented in detail the imported medicines for diabetes that are traceable to the DOH-FDA List[57] of VAT-exempt medicine as reported in petitioner's amended Quarterly VAT Returns for the 1st and 2nd quarters of calendar year (CY) 2020, thus:[58]

DESCRIPTION	GENERIC NAME	CATEGORY IN DOH FDA LIST OF DRUGS	SUB-CATEGORY IN DOH FDA LIST OF DRUGS	RECEIPT DATE PER SSDT	AMOUNT OF VAT PAID
1ST QUARTER OF CY 2020					
VELMETIA 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	Drugs used in Diabetes (A10)	Blood Glucose Lowering Drugs, excluding Insulins (A10B) C. Combinations of oral blood glucose lowering drugs (A10BD)	January 24, 2020	₱792,571.00
VELMETIA 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	Drugs used in Diabetes (A10)	Blood Glucose Lowering Drugs, excluding Insulins (A10B) C. Combinations of oral blood glucose lowering drugs (A10BD)	January 24, 2020	761,136.00
VELMETIA 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	Drugs used in Diabetes (A10)	Blood Glucose Lowering Drugs, excluding Insulins (A10B) C. Combinations of oral blood glucose lowering drugs (A10BD)	January 24, 2020	459,921.00

[56] G.R. Nos. 252965 and 254102, December 7, 2021.
[57] Exhibit "P-21-2" pages 10 and 11 of 18, USB.
[58] Table 12 and Annex 6, Exhibit "P-16", Docket, pp. 260 and 302, respectively.

DESCRIPTION	GENERIC NAME	CATEGORY IN DOH FDA LIST OF DRUGS	SUB-CATEGORY IN DOH FDA LIST OF DRUGS	RECEIPT DATE PER SSDT	AMOUNT OF VAT PAID
XELEVIA 50MG 4X7TAB PHL	Sitagliptin	Drugs used in Diabetes (A10)	Blood Glucose Lowering Drugs, excluding Insulins (A10B) F. Dipeptidyl peptidase 4 (DPP-4) inhibitors (A10BH)	January 27, 2020	3,511,692.00
VELMETIA 50/1000MG 4X7TAB PHL	Metformin + Sitagliptin	Drugs used in Diabetes (A10)	Blood Glucose Lowering Drugs, excluding Insulins (A10B) C. Combinations of oral blood glucose lowering drugs (A10BD)	January 31, 2020	727,083.00
SUBTOTAL					**₱6,252,403.00**
2ND QUARTER OF CY 2020					
XELEVIA 50MG 4X7TAB PHL	Sitagliptin	Drugs used in Diabetes (A10)	Blood Glucose Lowering Drugs, excluding Insulins (A10B) F. Dipeptidyl peptidase 4 (DPP-4) inhibitors (A10BH)	April 13, 2020	₱1,620,601.00[59]
XELEVIA 100MG 4X7TAB PHL	Sitagliptin	Drugs used in Diabetes (A10)	Blood Glucose Lowering Drugs, excluding Insulins (A10B) F. Dipeptidyl peptidase 4 (DPP-4) inhibitors (A10BH)	April 21, 2020	1,786,281.00[60]
SUBTOTAL					**₱3,406,882.00**[61]
GRAND TOTAL					**₱9,659,285.00**[62]

Considering that petitioner's importation of "Velmetia" with generic name "Metformin + Sitagliptin" and "Xelevia" with generic name "Sitagliptin" fall under the category "Blood Glucose Lowering Drugs, excluding Insulins (A10B)" in the FDA list of VAT-exempt medicines, attached to RMC No. 62-2020, the payments by petitioner of VAT on the subject importations on January 24, 2020, January 27, 2020, January 31, 2020, April 13, 2020 and April 21, 2020, respectively, are therefore deemed illegal and erroneous.

In its amended Quarterly VAT Returns (BIR Form No. 2550Q) for the 1st and 2nd quarters of CY 2020, petitioner reported ₱35,568,482.45 total input tax from its importation of goods other than capital goods, as follows:

Line	Particulars	1st Quarter (2020)[63]	2nd Quarter (2020)[64]	Total
21H	Importation of Goods Other than Capital Goods	₱ 6,252,403.00	₱ 29,316,079.45	₱ 35,568,482.45

[59] ₱1,620,600.00 only per ICPA Report (Table 12 and Annex 6, Exhibit "P-16", Docket, pp. 260 and 302, respectively) contrary to the VAT amount of ₱1,620,601.00 per SSDT (Exhibit "P-30-5", USB).

[60] ₱1,786,281.22 per ICPA Report (Table 12 and Annex 6, Exhibit "P-16", Docket, pp. 260 and 302, respectively) contrary to the VAT amount of ₱1,786,281.00 per SSDT (Exhibit "P-30-4", USB).

[61] As adjusted.

[62] As adjusted.

[63] Exhibit "P-7-a", Docket, pp. 388 to 389.

[64] Exhibit "P-8-a", Docket, pp. 392 to 393.

The difference of ₱25,909,198.23 between the ₱9,659,284.22 amount of claim and ₱35,568,482.45 input VAT on importation reported in petitioner's amended Quarterly VAT Returns for the 1st and 2nd quarters of 2020, pertains to importation of medicines in the year 2019 which is outside of the period of the refund claim. Petitioner allegedly paid such VAT when it availed the Prior Disclosure Program of the Bureau of Customs (BOC) after recognizing that additional duties and VAT are due after petitioner underwent transfer pricing adjustments.[65]

In order to prove that erroneous payment of VAT in the amount of ₱9,659,284.22 was made on its importation of VAT exempt diabetes medicines, petitioner offered its Summary Lists of Importations for the months of January 2020, February 2020 and April 2020;[66] Taxable Imports per Summary List of Importations for the 1st and 2nd quarters of CY 2020;[67] Comparison of Schedule of Importations for the month period January 1 to July 31, 2020 and Summary List of Importations;[68] Single Administrative Documents (SADs);[69] Statement of Settlement of Duties and Taxes (SSDTs);[70] and VAT Payment Certification issued by BOC Revenue Accounting Division.[71]

Upon verification of the aforementioned supporting documents, petitioner has evidently paid the VAT arising from the above importations of medicines, as follows:

SAD Exhibit No.	SAD Date	Customs reference No.	SSDT (Exhibit No.)	SSDT Receipt Date	SSDT Receipt No.	Amount of VAT
"P-4"	17 January 2020	C-6791	"P-5"	27 January 2020	R-53573	₱ 3,511,692.00
"P-29"	20 January 2020	C-23230	"P-30"	24 January 2020	R-39792	792,571.00
"P-29-1"	20 January 2020	C-23447	"P-30-1"	24 January 2020	R-39798	761,136.00
"P-29-2"	20 January 2020	C-23303	"P-30-2"	24 January 2020	R-39802	459,921.00
"P-29-3"	29 January 2020	C-35388	"P-30-3"	31 January 2020	R-52761	727,083.00
"P-29-4"	17 March 2020	C-37891	"P-30-4"	21 April 2020	R-215528	1,786,281.00
"P-29-5"	26 March 2020	C-41132	"P-30-5"	13 April 2020	R-203369	1,620,601.00
					TOTAL	**₱9,659,285.00**

Respondent argues however that it is possible that the claimed input taxes were carried over or utilized in the succeeding amended Quarterly VAT Return.[72]

We note however that while the claimed input VAT amount of ₱9,659,284.22 was included in the reported input VAT on importation of goods

[65] Q&A No. 45, Judicial Affidavit of Ms. Paula Mae A. Francisco, Docket, p. 34; Refer also to Summary List of Importations for the month of April 2020, Exhibit "P-28-2", USB.
[66] Exhibits "P-28", "P-28-1" and "P-28-2", respectively, USB.
[67] Annex 2-a, Exhibit "P-16", Docket, p. 272.
[68] Annexes 3 and 3-a, Exhibit "P-16", Docket, pp. 273 to 274.
[69] Exhibit "P-4", Docket, pp. 377 to 380; Exhibits "P-29" to "P-29-5", USB.
[70] Exhibit "P-5", Docket, p. 383; Exhibits "P-30" to "P-30-5", USB.
[71] Exhibit "P-6", Docket, pp. 384 to 385.
[72] Par. 10, *Answer*, Docket, p. 126.

other than capital goods in petitioner's amended Quarterly VAT Returns for the 1st and 2nd quarters of CY 2020, the same remains unutilized since it was also deducted as "VAT Refund/TCC claimed" in that same VAT Returns, as follows:

2020	Amount
1st Quarter	₱6,252,403.00[73]
2nd Quarter	3,406,882.00[74]
Total	**₱9,659,285.00**

Accordingly, the subject claim no longer forms part of the excess input VAT of ₱23,052,848.52[75] as of the end of the 2nd quarter of CY 2020. Thus, the claimed input VAT was not carried over or utilized in the succeeding amended Quarterly VAT Return for the 3rd quarter of CY 2020.[76]

The failure of petitioner to comply with RMO No. 36-2020 in its administrative claim is not fatal to its judicial claim for refund.

Respondent asserts that the denial of petitioner's claim for refund was because of its failure to comply with the requirements under Item (II)(9) of RMO No. 36-2020, particularly, the schedule of importations corresponding to the amount of input VAT claimed per monthly VAT declarations/quarterly VAT returns conforms with the details prescribed in Annex A.2 thereof.

RMO No. 36-2020 was promulgated only on October 15, 2020, or three and a half (3½) months after petitioner had filed its administrative claim on July 1, 2020. Hence, the requirements set forth therein were still inexistent at the time petitioner filed its administrative claim for refund. Necessarily, petitioner cannot be expected to comply therewith.

The principle of fairness and equity dictates that the non-retroactive rule under Section 246 of the NIRC of 1997 be applied in this case. Said Section provides:

> "SEC. 246. *Non-Retroactivity of Rulings.* – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or <u>any of the rulings or circulars promulgated by the Commissioner shall not be given</u> <u>retroactive application</u> if the revocation, modification or reversal will be <u>prejudicial to the taxpayers</u>, except in the following cases:

---

[73] Line 23D, Exhibit "P-7-a", Docket, p. 389.
[74] Line 23D, Exhibit "P-8-a", Docket, p. 393.
[75] Line 29, Exhibit "P-8-a", Docket, p. 393.
[76] Line 20A, Exhibit "P-24-13", USB.

> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gather by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith." *(Underscoring added)*

The non-retroactivity principle mentioned above, was upheld by the Supreme Court in *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.*,[77] thus:

> "However, well entrenched is the rule that rulings and circulars, rules and regulations promulgated by the CIR would have no retroactive application if to so apply them would be prejudicial to the taxpayers.
>
> xxx xxx xxx
>
> Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax."

In this case, the respondent's denial of petitioner's application for tax refund for failure to comply with RMO No. 36-2020 is clearly erroneous.

None of the exceptions to the Non-retroactivity Rule exists. RMO No. 36-2020 should be applied prospectively in the interest of justice and equity.

That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.[78]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED.**

---

[77] G.R. No. 117982, February 6, 1997.

[78] *Filinvest Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 146941, August 9, 2007.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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

Accordingly, respondent is ordered to refund or issue a tax credit certificate in favor of petitioner the amount of **₱9,659,284.22** representing VAT erroneously paid on January 24, 2020, January 27, 2020, January 31, 2020, April 13, 2020 and April 21, 2020, respectively, on the importation of medicines intended for the treatment of persons with diabetes.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson