REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, Petitioner,	**CTA EB No. 1915** (CTA Case No. 9025)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO**, *JJ*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 10 2021 3:30p.m.

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AMENDED DECISION

UY, *J*.:

For resolution is petitioner Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ's ***MOTION FOR RECONSIDERATION (Re: Decision dated July 1, 2020)***[1] filed on July 24, 2020, without Comment of the Commissioner of Internal Revenue's (CIR) despite due notice, as per *Records Verification*[2] issued by the Judicial Records Division of this Court on December 7, 2020.

In the instant motion, petitioner prays for reconsideration and reversal of the Court *En Banc's* Decision[3] dated July 1, 2020, and to order respondent to refund or issue a tax credit certificate in the amount of ₱59,809,336.79, representing petitioner's excess and

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[1] EB Docket, pp. 109 to 125.
[2] EB Docket, p. 130.
[3] EB Docket, pp. 90 to 104.

unutilized input value-added tax (VAT) on its purchases of goods and services attributable to zero-rated sales for the four (4) quarters of calendar year (CY) 2011. The dispositive portion of the assailed Decision reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated May 23, 2018 and Resolution dated August 3, 2018, both rendered by the Court in Division in CTA Case No. 9025 are **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In its *Motion*, petitioner submits that its judicial claim was timely filed within the period prescribed under Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

According to petitioner, the notice for additional documents is not required to be in writing. Thus, petitioner insists that verbal requests are valid requests.

Allegedly, respondent continuously requested for, and received the additional supporting documents through various requests made by Revenue Officer Cadidia Carim and Group Supervisor Adolph Viacrusis. Thus, the entirety of the verbal requests made by respondent falls squarely within the definition of the "request" as defined under Section 112 (C) of the NIRC of 1997, as amended, and Revenue Memorandum Circular (RMC) No. 49-2003 for being issued by the proper tax authorities in the course of the administrative claim for refund. Hence, petitioner insists that the said verbal requests are valid.

In addition, petitioner avers that respondent is estopped from questioning the repeated request made by its officers. Assuming *arguendo* that respondent's notices for additional supporting documents must be in written form, it cannot be denied that verbal requests are valid pursuant to the principle of equitable estoppel.

Petitioner further submits that its administrative claim for refund was filed within the two-year reglementary period under Section 112 of the NIRC of 1997, as amended. Petitioner argues that the *Pilipinas Total Gas Inc. vs. Commissioner of Internal Revenue* [4] (or *"Pilipinas Total Gas case")*, *case* is not on all fours with the facts of the present case; and that the two-year period does not include the submission of supporting documents.

THE ISSUE

The issue for this Court's resolution in the instant motion is as follows: whether or not the verbal requests for the presentation of additional documents made by revenue examiners of the CIR to petitioner are sufficient for the purpose of determining the reckoning point of the 120-day period for the CIR to act on petitioner's administrative claim.

THE COURT *EN BANC'S* RULING

After a second hard look at the facts and circumstances in the instant case, and taking into consideration subsequent jurisprudential pronouncements on the issue at hand, the Court *En Banc* is constrained to reconsider the assailed Decision dated July 1, 2020, in light of the recent Decision of the Supreme Court (Second Division) in *Zuellig-Pharma Asia Pacific, Ltd. Phils. ROHQ, vs. Commissioner of Internal Revenue*[5] (or the "***2020 Zuellig case***") promulgated on July 15, 2020. The assailed Decision rendered in this case was promulgated on July 1, 2020.

In the ***2020 Zuellig case***, the Supreme Court ruled as follows:

> **"Notably, there is no requirement in the Tax Code or in RMC No. 49-2003 that the taxing authority's request for additional documents should be made in a specific form. Stated differently, nowhere in the law does it require that the request for additional documents must <u>always and absolutely</u> be made in written form**. While written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials.

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[4] G.R. No. 207112, December 8, 2015.
[5] G.R. No. 244154, July 15, 2020.

To be sure, while the Court in *Pilipinas Total Gas* did state that "such notice by way of a written request is required by the CIR to be sent to [the taxpayer]," the said statement was not intended to foist any judicial doctrine anent the request's required form. The seeming requirement that the request for additional documents must be "written" only appears in a singular sentence of the Court's entire Decision. In fact, the word "written" only appears twice in *Pilipinas Total Gas*, the pertinent portion of which is hereby reproduced as follows:

> Second, the CIR sent **no written notice** informing Total Gas that the documents were incomplete or required it to submit additional documents. **As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas**. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.

In contrast, it must be pointed out that the initial portions of the Court's ruling in *Pilipinas Total Gas* did not even qualify that the request must be in written form. As held in the same case, what is "**essential**" is that there must be **"a request from the tax collection authority to produce the complete documents"** given to the taxpayer-claimant:

> Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days

> from request of the investigating/processing office. **Again, notice, by way of <u>a request from the tax collection authority to produce the complete documents</u> in these cases, is essential.**
>
> Thus, the statement that "such notice by way of a written request is required by the CIR to be sent to [the taxpayer]" was only an innocuous statement of the Court which was not meant to create any doctrine on the request's required form. This is confirmed by the fact that in *Pilipinas Total Gas*, there was even no request - whether verbal or written - given by the BIR to the taxpayer.
>
> xxx xxx xxx
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> In this case, records show that Zuellig-PH duly complied with the BIR officials' written and verbal requests for additional documents through its letters dated July 5, 2011, May 8, 2012, July 25, 2012, December 6, 2012, September 11, 2013, and April 29, 2014, with the last letter indicating that it had "<u>already submitted the complete documents in support of [its] application for refund of excess and unutilized input VAT for the four (4) quarters of TY 2010 in the amount of ₱39,931,971.21</u>." Notably, **all of these verbal requests for additional documents and Zuellig-PH's corresponding submissions in response thereto were well-documented and all confirmed by the BIR**; hence, there is no danger of losing track of when to reckon the 120-day period. As held in *Pilipinas Total Gas*, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. As herein applied, the 120-day period should therefore be reckoned from the April 29, 2014 letter of Zuellig-PH wherein it stated that it had already submitted the complete documents in support of its refund claim. In turn, the BIR had 120 days from such time (or until August 27, 2014) to act on Zuellig-PH's administrative claim for refund. Since it was established that the BIR failed to act within such period, Zuellig-PH had thirty (30) days, or until September 26, 2014, to file its judicial claim. **Thus, its Petition for Review was timely filed on September 25, 2014.** (*Citations omitted and emphasis supplied.*)

Based from the foregoing, the Supreme Court ruled that verbal requests for additional documents are not prohibited provided they are duly made by authorized BIR officials. Thus, both **verbal** and **written** requests for additional documents made by authorized BIR officials may be used as basis in determining the date of submission of complete documents in support of an administrative claim for refund or tax credit of input VAT. In the foregoing case, the Supreme Court, after taking into account the verbal requests made by the BIR officials, reckoned the 120-day period for the CIR to act on the administrative claim from the last submission made by the taxpayer-claimant on April 29, 2014, where it was manifested that it had "*already submitted the complete documents in support of [its] application for refund of excess and unutilized input VAT for the four (4) quarters of TY 2010 in the amount of ₱39,931,971.21.*" Counting 120 days from April 29, 2014, the taxpayer had until September 26, 2014 to file its judicial claim. Thus, the Supreme Court concluded that the judicial claim filed on September 25, 2014 was timely filed.

In the instant case, petitioner likewise claims that the BIR's revenue officers requested additional documents during the course of the processing of its administrative claim for refund. This was confirmed by petitioner's Senior Accounting Manager, Carolina Zenaida A. Magat. Pertinent portions of her Judicial Affidavit state as follows:

> "Q32: What happened, if any, after the Company filed its administrative claim for refund on January 16, 2013?
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> A: On March 13, 2013, the Company received a Letter of Authority No. eLA201100014655/LOA-049-2013-00000074 from the BIR dated March 5, 2013 (the "LOA") authorizing Revenue Officer (RO) Cadidia Carim and Group Supervisor Adolph Viacrusis to examine the Company's books of accounts and other accounting records for VAT for the period covering January 1, 2011 to December 31, 2011. Attached to the letter is a Checklist of Requirements which enumerated the books of accounts and supporting documents that the BIR requested from the Company.
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> Q33: If shown a copy of the LOA, would you be able to identify the same?
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> A: Yes.

Q34: I am showing you a document marked as Exhibit "P-12". What relation does this document have with your previous statement?

A: This is the LOA that I was referring to earlier.

Q35: What events transpired, if any, after the Company received the LOA?

A: In compliance with the BIR's LOA and Checklist of Requirements, the Company submitted supporting documents to the BIR on several occasions. During that period, we were in constant communication with the BIR's Revenue Officers to discuss or follow-up the Company's claim for refund and to determine what additional documents they will need to process the Company's VAT refund claim. **Every now and then, the Revenue Officers would request additional supporting documents from the Company and we would comply with their request by submitting the relevant documents.**"[6] (*Emphasis supplied.*)

The Court notes that the foregoing testimony was not controverted nor refuted by the respondent.

Records likewise show that petitioner complied with the BIR officials' written and verbal requests for additional documents as evidenced by the series of transmittal letters, detailed as follows:

DATE SUBMITTED	EXHIBIT
March 20, 2013	"P-13"[7]
June 13, 2013	"P-14"[8]
August 16, 2013	"P-15"[9]
August 30, 2013	"P-16"[10]
September 6, 2013	"P-17"[11]
September 13, 2013	"P-18"[12]
September 16, 2013	"P-19"[13]
September 18, 2013	"P-20"[14]
November 26, 2013	"P-21"[15]

[6] Exhibit "P-26", Division Docket (CTA Case No. 9025) – Vol. 1, pp. 341 to 342.
[7] Division Docket (CTA Case No. 9025) – Vol. 1, p. 509.
[8] Division Docket (CTA Case No. 9025) – Vol. 1, p. 512.
[9] Division Docket (CTA Case No. 9025) – Vol. 1, p. 513.
[10] Division Docket (CTA Case No. 9025) – Vol. 1, p. 514.
[11] Division Docket (CTA Case No. 9025) – Vol. 1, p. 515.
[12] Division Docket (CTA Case No. 9025) – Vol. 1, p. 516.
[13] Division Docket (CTA Case No. 9025) – Vol. 1, p. 517.
[14] Division Docket (CTA Case No. 9025) – Vol. 1, p. 518.
[15] Division Docket (CTA Case No. 9025) – Vol. 1, p. 519.

December 9, 2013	"P-22"[16]
April 2, 2014	"P-23"[17]
November 11, 2014	"P-24"[18]

In the Letter dated November 11, 2014, petitioner indicated that "*the Company has already submitted the* ***complete documents*** *in support of its application for refund of excess and unutilized input VAT for TY 2011 in the total amount of ₱59,809,336.79*".

It bears noting that upon careful review of the records of this case, there is no showing that respondent denied making said requests for documents. In fact, a perusal of the said transmittal letters reveals that these were duly received by BIR officers.

The Court *En Banc* finds that the factual milieu in the present case is analogous to the ***2020 Zuellig case***. In both cases, the BIR officers made numerous written and verbal requests for additional supporting documents which were complied with by the taxpayer-claimant as shown in the series of letters submitted to the BIR, with the last letter indicating that the taxpayer-claimant had submitted the complete documents in support of its application for refund. Further, both cases involve the same parties and issue, albeit referring to different taxable periods. Accordingly, the pronouncement in the ***2020 Zuellig case*** should apply to the instant case.

It must be emphasized that the doctrine of *stare decisis* enjoins judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[19] Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[20]

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[16] Division Docket (CTA Case No. 9025) – Vol. 1, p. 521.
[17] Division Docket (CTA Case No. 9025) – Vol. 1, p. 522.
[18] Division Docket (CTA Case No. 9025) – Vol. 1, p. 527.
[19] *Carmelo F. Lazatin, et al. vs. Hon. Aniano A. Desierto as Ombudsman*, G.R. No. 147097, June 5, 2009 citing *Fermin vs. People*, G.R. No. 157643, March 28, 2008, 550 SCRA 132.
[20] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

We are not unmindful of the *Pilipinas Total Gas case* rendered by the Supreme Court *En Banc* and which was cited by the Court in the assailed Decision. A careful reading of the facts and issues involved in the *Pilipinas Total Gas case* however show that the said case is not on all fours with the present case. Relative thereto, the elucidation of the Supreme Court in the ***2020 Zuellig case*** is instructive, *to wit*:

> "In any event, *Pilipinas Total Gas* is not squarely applicable to the case at bar. To be sure, the core of the controversy in *Pilipinas Total Gas* only lies in the supposed prematurity of the taxpayer's judicial claim for refund, considering that the latter allegedly failed to submit complete documents in support thereof at the time the claim was filed; hence, the 120-day period for the BIR to decide the claim had not yet begun to run. The Court held that the 120-day period should be reckoned from the time the taxpayer had deemed itself to have submitted the complete documents in support of its administrative claim, without prejudice to the BIR's request for additional documents which did not obtain in this case; thus, with the 120 days having lapsed therefrom, the taxpayer may then, within thirty (30) days, accordingly, file its judicial claim for refund, as was done by the taxpayer in *Pilipinas Total Gas*. To this end, the Court had summarized its disposition as follows:
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>> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

> Unlike in this case, **the Court in *Pilipinas Total Gas* was not confronted with the issue of whether or not requests for documents should be in any particular form, for the purpose of determining the reckoning point of the 120-day period**. In fact, as earlier mentioned, in *Pilipinas Total Gas*, there was no request - whether verbal or written - given by the BIR to the taxpayer. Thus, in view of the foregoing, *Pilipinas Total Gas* is not the proper basis to construe that all subsequent verbal communications made by the BIR to Zuellig-PH (or any taxpayer for that matter) are insufficient for the purpose of determining the reckoning point of the 120-day period." (*Citations omitted, emphasis and underscoring supplied.*)

Based from the foregoing, unlike the ***2020 Zuellig case***, the Court in *Pilipinas Total Gas* case was **not** confronted with the issue of whether or not requests for documents should be in any particular form for the purpose of determining the reckoning point of the 120-day period. As such, the Supreme Court in the ***2020 Zuellig case*** decreed that *Pilipinas Total Gas case* is not the proper basis to construe that all subsequent verbal communications made by the BIR to the taxpayer-claimant are insufficient for the purpose of determining the reckoning point of the 120-day period.

Following the foregoing disquisition, and considering that the case at bar involves the issue of whether or not the verbal requests for additional documents are sufficient for purposes of determining the reckoning point of the 120-day period, it is the ruling in the ***2020 Zuellig case*** rather than the *Pilipinas Total Gas* case, which is controlling in the instant case.

Applying the jurisprudential pronouncement in the ***2020 Zuellig case*** to the instant case, the 120-day period for the CIR to act on petitioner's administrative claim should be reckoned from the **November 11, 2014** Letter, the last letter of petitioner indicating that it had already submitted the complete documents in support of its refund claim. Thus, counting 120 days from November 11, 2014, respondent had until March 11, 2015 to act on the administrative claim. In view of respondent's inaction on the subject claim, petitioner then had thirty (30) days from March 11, 2015 or until **April 10, 2015** within which to file its judicial claim before this Court.

Thus, considering that petitioner's judicial claim through its *Petition for Review* docketed as CTA Case No. 9025 was filed before the Court in Division on April 8, 2015[21], the same was filed on time.

As pointed out by the Supreme Court in the ***2020 Zuellig case***, were it not for the BIR's own representations, the taxpayer-claimant could have filed its judicial claim for refund sooner. The High Court emphasized that the taxpayer cannot be faulted for merely acting in accord with the representations of the BIR itself. Similar to the instant case, petitioner has duly complied with the repeated requests by the BIR officers for additional documents during the course of the processing of its administrative claim. Thus, in light of the ruling in the ***2020 Zuellig case***, petitioner's entitlement for refund or tax credit should not be impaired since it merely relied on the BIR officers' representations that its compliance with the said requests would result to the resolution of its claim.

It is worth mentioning at this point however that, as clarified by the Supreme Court in both *Pilipinas Total Gas case* and the ***2020 Zuellig case***, in view of the issuance of Revenue Memorandum Circular (RMC) No. 54-2014[22] dated June 11, 2014, for administrative claims for refund made on or after June 11, 2014, the taxpayer is now required at the time of filing of its administrative claim to submit its complete supporting documents and to attach a statement under oath attesting to the completeness of the submitted documents. Further, no other documents shall be accepted/required from the taxpayer upon submission of its administrative claim. Thus, the prevailing rule now is that all complete documents are to be submitted upon the filing of the taxpayer's administrative claim for refund.[23]

It appearing that petitioner's administrative claim for refund of its alleged excess and unutilized input VAT for the four (4) quarters of CY 2011 in the total amount of ₱59,809,336.79 was filed with the BIR Revenue District Office (RDO) No. 49 prior to June 11, 2014, to be specific, on January 16, 2013[24], RMC No. 54-2014 shall not apply to petitioner in the instant case.

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[21] Division Docket (CTA Case No. 9025) – Vol. 1, pp. 10 to 19.
[22] SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as Amended.
[23] *Zuellig-Pharma Asia Pacific, Ltd. Phils. ROHQ, vs. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020.
[24] Exhibit "P-11 ", Division Docket (CTA Case No. 9025)- Vol. 1, pp. 495 to 496.

It is well entrenched that under Section 246[25] of the NIRC of 1997, as amended, and as consistently affirmed by the Supreme Court in a long line of cases[26], rulings or circulars promulgated by the CIR should not have retroactive effect if it would be prejudicial to taxpayers. Thus, RMC No. 54-2014 cannot be given retroactive application in this case as this would prejudice petitioner whose claims for tax credit or tax refund were filed and pending before June 11, 2014, the date RMC No. 54-2014 took effect.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is **PARTIALLY GRANTED**. Let CTA Case No. 9025 be **REMANDED** to the CTA Second Division for the proper determination of the refundable or creditable amount due to petitioner, if any.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[25]Section 246 of the NIRC of 1997, as amended 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 **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:

(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 gathered 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."

[26] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007, citing *Commissioner of Internal Revenue vs. Benguet Corporation*, G.R. No. 134587, July 8, 2005, *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117982, February 6, 1997, *Commissioner of Internal Revenue vs. Telefunken Semiconductor Philippines, Inc.*, G.R. No. 103915, October 23, 1995; *Commissioner of Internal Revenue vs. Mega General Merchandising Corp.*, G.R. No. L-69136, September 30, 1988; *Commissioner of Internal Revenue vs. Burroughs Limited and the CTA*, G.R. No. L-66653, June 19 1986; *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals, et al.*, G.R. No. L-52306, October 12, 1981.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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