REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MERCK SHARP & DOHME (I.A.) LLC – PHILIPPINE BRANCH, Petitioner,	**CTA CASE NO. 10718**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 06 2025

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DECISION

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

The *Petition for Review* prays that judgment be rendered:

a. declaring petitioner entitled to a refund of value-added tax (VAT) erroneously paid on the importation of diabetes, high cholesterol, and hypertension medicines in the amount of **₱33,730,490.83**; and,

b. ordering respondent to refund or issue a tax credit certificate to petitioner in the amount of **₱33,730,490.83.**[1]

THE PARTIES

Petitioner Merck Sharp & Dohme (I.A.) LLC – Philippine Branch is a foreign corporation duly organized and existing under the laws of the

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[1] Statement of the Case, Pre-Trial Order dated October 3, 2022, Docket – Vol. I, p. 321.

State of Delaware, United States of America and licensed to do business in the Philippines as a branch office, with principal office at the 26th Floor Philamlife Tower, 8767 Paseo de Roxas, Makati City.[2] It is a VAT-registered entity under Taxpayer Identification Number 004-474-947-00000.[3]

Respondent is the incumbent Commissioner of Internal Revenue (CIR) who holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City. He is represented by the Legal Officers of the BIR Litigation Division with office address at Room 703, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On October 18, 2021, petitioner filed with BIR Regular Large Taxpayers Audit Division I (LTAD1) two separate administrative claims for refund in the amounts of ₱6,290,154.00 and ₱27,440,336.83, or a total of ₱33,730,490.83, representing the alleged erroneously paid VAT on the importation of diabetes, high cholesterol, and hypertension medicines from January 1, 2020 to January 22, 2020, and from January 23, 2020 to April 30, 2020, respectively, based on Sections 109, 204(C), and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.[5] Likewise, through the letters dated October 18, 2021, petitioner filed two separate *Applications for Tax Credits/Refunds* (BIR Form No. 1914).[6]

However, on August 18, 2022, petitioner received the letter dated August 2, 2022, where respondent through the BIR Large Taxpayers Service Division denied petitioner's application for refund of erroneously paid VAT filed on October 18, 2021 for the first batch of medicines imported covering the period from January 1, 2020 to January 22, 2020, amounting to ₱6,290,154.00.[7]

In the same letter, respondent admitted that (i) petitioner complied with the documentary requirements listed under Revenue Memorandum Order (RMO) No. 36-2020 and (ii) the input tax on imported items have not

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2 Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI); Exhibit "P-1", Docket – Vol. I, pp. 310 and 519 to 535, respectively.

3 Exhibit "P-2", *Id.* at 536 to 537.

4 Par. 2, Summary of Admitted Facts, JSFI, *Id.* at 310

5 Par. 1, Stipulated Facts, JSFI; Exhibits "P-11" and "P-12", *Id.* at 311 and 156 to 166, respectively.

6 Par. 3, Stipulated Facts, JSFI; Exhibits "P-13" and "P-14", *Id.* at 311 and 167 to 168, respectively; Exhibits "R-1" and "R-2", BIR Records – Folder 1, pp. 181 to 182 and BIR Records – Folder 2, pp. 575 to 576, respectively.

7 Par. 4, Stipulated Facts, JSFI; Exhibit "P-19", Docket – Vol. I, pp. 311 and 461 to 462, respectively; Exhibit "R-4", BIR Records – Folder 1, pp. 260 to 261.

been reported and claimed as input tax credit. Respondent, however, denied petitioner's tax application for refund for the sole reason that the medicines were imported before the supposed effectivity date of Republic Act (R.A.) No. 11467[8] and its implementing rules and regulations:

> Despite the fact that the Company complied with all the documentary requirements required in RMO No. 36-2020 and the input tax on imported items have not been reported and claimed as input tax credit in the monthly/and or quarterly VAT returns as stated in Section 3 of RR No. 18-2020, the Company failed to comply with RMC No. 62-2020 which states that:
>
> > "... the copy of the List of Prescription Drugs and Medicines for Diabetes, High-Cholesterol and Hypertension Exempt from VAT **beginning January 27, 2020**"
> >
> > And RR No. 18-2020 provides:
> >
> > *"VAT on importation of prescription drugs and medicines for diabetes, high cholesterol and hypertension included in the Department of Health-Food and Drug Administration (DOH-FDA) approved list from the effectivity of R.A. No. 11467 on* ***January 27,2020 until the effectivity of these Regulations****"*
>
> Thus, the importations you ought to be refunded for the period of January 1, 2020 to January 22, 2020 are still subject to VAT, and granting the tax refund would be contrary to the law and regulations.
>
> In view of the foregoing, we regret to inform you that your Claim for Refund of Erroneously Paid VAT in the amount of **Six Million Two Hundred Ninety Thousand One Hundred Fifty-Four Pesos (P6,290,154.00)** covering January 1, 2020 to January 22, 2020 is hereby **DENIED.**[9]

On January 18, 2023, the *VAT Refund Notice* was issued by the BIR, through OIC - Assistant Commissioner Jethro M. Sabariaga of the Large Taxpayers Service,[10] informing petitioner that upon processing of the claim for VAT refund on erroneously paid VAT on importation of diabetes, high cholesterol, and hypertension medicines covering the period from January 23 to April 30, 2020 amounting to ₱27,440,336.83, the total amount to be refunded is ₱19,140,829.83, while the amount of ₱8,299,507.00 was

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8 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.

9 Par. 5, Stipulated Facts, JSFI; Exhibit "P-19", Docket – Vol. I, pp. 311 and 461 to 462, respectively.

10 Exhibit "P-44", *Id.* at 463 to 465; Exhibit "R-8", BIR Records – Folder 2, pp. 649 to 651.

"disallowed due to failure to comply with Revenue Memorandum Circular (RMC) No. 62-2020, which states that '...the copy of the List of Prescription Drugs and Medicines for Diabetes, High-Cholesterol and Hypertension Exempt from VAT beginning **January 27, 2020.**'

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* with this Court on January 5, 2022.[11]

In the Resolution dated February 14, 2022,[12] the Court ordered petitioner to submit, within ten (10) days from receipt thereof, a clear legible duplicate original or certified true copy of the letter dated October 18, 2021, which was allegedly not acted upon by respondent. Petitioner then filed on March 4, 2022 its *Compliance*,[13] which the Court noted in the Resolution dated March 14, 2022.[14]

Respondent's *Answer* was filed on May 23, 2022.[15]

The Pre-Trial Conference was set and held on August 16, 2022.[16] Prior thereto, respondent filed his *Pre-Trial Brief* on August 9, 2022,[17] while *Petitioner's Pre-Trial Brief* was submitted on August 11, 2022.[18]

On September 15, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[19] which was admitted and approved in the Resolution dated September 22, 2022,[20] thereby deeming the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated October 3, 2022 was issued by the Court.[21]

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

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[11] Docket – Vol. I, pp. 8 to 23.
[12] *Id.* at 170.
[13] *Id.* at 173 to 175.
[14] *Id.* at 172.
[15] *Id.* at 203 to 213.
[16] Notice of Pre-Trial Conference dated May 25, 2022, *Id.* at 215 to 216; Minutes of the hearing held on, and Order dated, August 16, 2022, Docket – Vol. II, pp. 237 to 239.
[17] Docket – Vol. I, pp. 217 to 220.
[18] *Id.* at 223 to 232.
[19] *Id.* at 310 to 318.
[20] *Id.* at 308 to 309.
[21] *Id.* at 321 to 329.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Paula Mae Francisco,[22] petitioner's Tax Officer; and, (2) Ms. Katherine O. Constantino,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The *Report* of the ICPA was submitted on November 3, 2022.[25] On the same date, respondent transmitted to this Court the *BIR Records* of this case.[26]

Petitioner filed its *Formal Offer of Evidence* on March 29, 2023.[27] Respondent then filed his *Comment (on Petitioner's Formal Offer of Evidence)* on March 31, 2023.[28] In the Resolution dated June 15, 2023,[29] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimony of Revenue Officer (RO) Ma. Clarissa DM. Calaoagan.[30]

On August 14, 2023, respondent filed his *Formal Offer of Evidence*,[31] to which petitioner submitted its *Comment (to Respondent's Formal Offer of Evidence)* on August 29, 2023.[32] In the Resolution dated October 24, 2023,[33] the Court admitted respondent's offered exhibits.

Petitioner filed its *Memorandum* through registered mail on December 11, 2023;[34] while respondent filed on January 8, 2024 a *Manifestation*,[35] stating that he is adopting the arguments he raised in his *Answer* as his *Memorandum*.

On January 9, 2024, the case was considered submitted for decision.[36]

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[22] Exhibits "P-20" and "P-48", Docket – Vol. I, pp. 24 to 41, and 453 to 460, respectively; Minutes of the hearings held on, and Orders dated, October 4, 2022 and March 8, 2023, Docket – Vol. I, pp. 330, 332 to 333, and 493 to 494, respectively.

[23] Exhibit "P-21", Docket – Vol. I, pp. 425 to 432; Minutes of the hearing held on, and Order dated, March 8, 2023, Docket – Vol. I, pp. 493 to 494.

[24] *Oath of Commission* dated October 4, 2022, Docket – Vol. I, p. 331; Minutes of the hearing held on, and Order dated, October 4, 2022, Docket – Vol. I, pp. 330, and 332 to 333, respectively

[25] Exhibit "P-23", Docket – Vol. II, pp. 345 to 418 .

[26] Respondent's *Compliance* dated October 28, 2022, Docket – Vol. I, pp. 337 to 339.

[27] Refer to *Manifestation and Submission* dated March 29, 2023 with attached *Formal Offer of Evidence, Id.* at 495 to 518.

[28] *Id.* at 594 to 597.

[29] Docket – Vol. II, pp. 601 to 602.

[30] Exhibit "R-10", Docket – Vol. II, pp. 613 to 620; Minutes of the hearing held on, and Order dated August 1, 2023, Docket – Vol. II, pp. 622 to 624.

[31] *Id.* at 625 to 630.

[32] *Id.* at 634 to 636.

[33] *Id.* at 654.

[34] *Id.* at 655 to 681.

[35] *Id.* at 686 to 688.

[36] Minute Resolution dated January 9, 2024, Docket – Vol. II.

THE STIPULATED ISSUE

The parties submitted the following issue for this Court's resolution, to wit:

> Whether or not Petitioner is entitled to the refund of PhP6,290,154.00 and PhP27,440,336.83 or a total of PhP33,730,490.83 representing alleged erroneously paid VAT on the importation of medicines intended for the treatment of persons with diabetes, high cholesterol, and hypertension from 6 January 2020 to 22 January 2020 and from 23 January 2020 to 30 April 2020, which are allegedly exempt from VAT pursuant to Section 109(1)(AA)(1) of the Tax Code, as amended by Republic Act No. 11467.[37]

Petitioner's arguments:

Petitioner argues that the importation of the medicines subject of the claims for refund is exempt from VAT beginning January 1, 2020. It claims that the erroneously paid VAT subject of the claims for refund has not been claimed and utilized by petitioner as input tax credits. Lastly, petitioner posits that it is entitled to the refund of ₱14,589,661.00 representing VAT erroneously paid on the importation from January 6, 2020 to January 26, 2020 of medicines intended for the treatment of persons with diabetes, high cholesterol, and hypertension.

Respondent's counter-arguments:

In his *Answer*, respondent contends that refunds are in the nature of tax exemptions, and thus, strictly construed against the taxpayer. Respondent argues that in case of doubt as to the entitlement to the refund, refund must be denied. Finally, even assuming, *arguendo* that R.A. No. 11467 can be applied retroactively, petitioner is still not entitled to the refund sought.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

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37 Stipulated Issue, JSFI, Docket – Vol. I, p. 313.

The provisions of the NIRC of 1997, as amended, which are pertinent to claims for refund of erroneously or illegally paid tax, are Sections 204(C) and 229 thereof, to wit:

> 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 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. *(Emphases added)*

The aforequoted provisions are clear: within two 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-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 tax credit filed either prematurely or out of time. It is worthy to stress that, as for the judicial claim, the law even explicitly provides that it be filed within two years from payment of the tax "regardless of any supervening cause that may arise after payment."[38]

Moreover, the foregoing provisions allow 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.[39]

Thus, for the present claims for refund to prosper, apart from showing the timely filing of its administrative and judicial claims, petitioner must also prove that the subject VAT paid is "erroneous or illegal".

Petitioner timely filed its administrative and judicial claims.

In this case, the dates of payments of the VAT on the importation for the period from January 1, 2020 to April 30, 2020 of medicines for diabetes, high cholesterol, and hypertension are as follows:

Date of payment	Amount of VAT paid
January 7, 2020	₱ 3,018,526.00[40]
January 16, 2020	159,930.00[41]
January 20, 2020	832,839.00[42]
January 21, 2020	1,688,096.00[43]
January 22, 2020	317,634.00[44]
January 22, 2020	273,129.00[45]
January 24, 2020	358,797.00[46]
January 24, 2020	981,626.00[47]

[38] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[39] *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.

[40] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36", "P-37", and "P-38".

[41] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-1", "P-37-1", and "P-38-1".

[42] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-2", "P-37-2", and "P-38-2".

[43] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-3", "P-37-3", and "P-38-3".

[44] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-4", "P-37-4", and "P-38-4".

[45] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-5", "P-37-5", and "P-38-5".

[46] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-6", "P-37-6", and "P-38-6".

January 24, 2020	2,993,884.00[48]
January 24, 2020	2,452,322.00[49]
January 24, 2020	117,410.00[50]
January 24, 2020	714,380.00[51]
January 24, 2020	115,886.00[52]
January 24, 2020	296,228.00[53]
January 24, 2020	211,311.00[54]
January 24, 2020	57,663.00[55]
January 28, 2020	116,180.00[56]
January 29, 2020	211,643.00[57]
January 29, 2020	483,201.00[58]
January 29, 2020	989,987.00[59]
January 29, 2020	708,324.00[60]
February 4, 2020	1,256,387.00[61]
February 6, 2020	228,754.00[62]
February 6, 2020	469,460.00[63]
February 6, 2020	250,585.00[64]
February 12, 2020	597,553.00[65]

47 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-7", "P-37-6", and "P-38-6".
48 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-8", "P-37-6", and "P-38-6".
49 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-9", "P-37-6", and "P-38-6".
50 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-10", "P-37-6", and "P-38-6".
51 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-11", "P-37-6", and "P-38-6".
52 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-12", "P-37-6", and "P-38-6".
53 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-13", "P-37-7", and "P-38-7".
54 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-14", "P-37-7", and "P-38-7".
55 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-15", "P-37-7", and "P-38-7".
56 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-16", "P-37-8", and "P-38-8".
57 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-17", "P-37-9", and "P-38-9".
58 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-18", "P-37-9", and "P-38-9".
59 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-19", "P-37-9", and "P-38-9".
60 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-20", "P-37-10", and "P-38-10".
61 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-21", "P-37-11", and "P-38-11".
62 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-22", "P-4", and "P-5".
63 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-24", "P-37-13", and "P-38-13".
64 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-52", "P-37-12", and "P-38-12".

February 14, 2020	305,234.00[66]
February 14, 2020	328,329.00[67]
February 18, 2020	280,936.00[68]
February 26, 2020	237,444.00[69]
February 26, 2020	1,593,064.00[70]
February 28, 2020	1,376,415.00[71]
March 3, 2020	188,000.00[72]
March 3, 2020	118,103.00[73]
March 10, 2020	1,415,841.00[74]
March 17, 2020	932,131.00[75]
March 17, 2020	1,310,297.00[76]
March 26, 2020	1,134,832.00[77]
March 17, 2020	2,062,284.00[78]
March 17, 2020	1,262,483.00[79]
March 17, 2020	168,017.00[80]
March 17, 2020	50,248.00[81]
March 27, 2020	158,358.83[82]
April 1, 2020	532,722.00[83]

65 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-25", "P-37-14", and "P-38-14".

66 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-26", "P-37-15", and "P-38-15".

67 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-27", "P-37-15", and "P-38-15".

68 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-28", "P-37-16", and "P-38-16".

69 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-29", "P-37-17", and "P-38-17".

70 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-30", "P-37-18", and "P-38-18".

71 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-33", "P-37-19", and "P-38-19".

72 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-34", "P-37-20", and "P-38-20".

73 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-35", "P-37-20", and "P-38-20".

74 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-36", "P-37-21", and "P-38-21".

75 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-37", "P-37-22", and "P-38-22".

76 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-38", "P-37-23", and "P-38-23".

77 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-39", "P-37-24", and "P-38-24".

78 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-40" to "P-36-42", "P-37-25", and "P-38-25".

79 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-44", "P-37-26", and "P-38-26".

80 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-45", "P-37-27", and "P-38-27".

81 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-46", "P-37-27", and "P-38-27".

82 Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-47", "P-37-28", and "P-38-28".

April 1, 2020	142,807.00[84]
April 1, 2020	115,950.00[85]
April 1, 2020	115,260.00[86]
Total	**₱33,730,490.83**

Correspondingly, the end of the two-year reglementary period is respectively determined as follows:

Date of payment	**End of the two-year reglementary period**
January 7, 2020	January 7, 2022
January 16, 2020	January 16, 2022
January 20, 2020	January 20, 2022
January 21, 2020	January 21, 2022
January 22, 2020	January 22, 2022
January 24, 2020	January 24, 2022
January 28, 2020	January 28, 2022
January 29, 2020	January 29, 2022
February 4, 2020	February 4, 2022
February 6, 2020	February 6, 2022
February 12, 2020	February 12, 2022
February 14, 2020	February 14, 2022
February 18, 2020	February 18, 2022
February 26, 2020	February 26, 2022
February 28, 2020	February 28, 2022
March 3, 2020	March 3, 2022
March 10, 2020	March 10, 2022
March 17, 2020	March 17, 2022
March 26, 2020	March 26, 2022
March 27, 2020	March 27, 2022
April 1, 2020	April 1, 2022

Considering that the administrative claims were filed on October 18, 2021[87] and the present *Petition for Review* was filed on January 5, 2022,[88] both administrative and judicial claims were timely filed within the two-year reglementary period. Such being the case, this Court has jurisdiction to entertain the same.

[83] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-48", "P-37-29", and "P-38-29".
[84] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-49", "P-37-29", and "P-38-29".
[85] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-50", "P-37-29", and "P-38-29".
[86] Exhibit "P-6", BIR Records (Exhibit "R-9") – Folder 1, pp. 149 to 155; Exhibits "P-36-51", "P-37-29", and "P-38-29".
[87] Par. 1, Stipulated Facts, JSFI; Exhibits "P-11" and "P-12", Docket – Vol. I, pp. 311 and 156 to 166, respectively.
[88] *Id.* at 8 to 23.

The importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension is exempt from VAT beginning January 1, 2020.

Section 109(1)(AA)(i) of the NIRC of 1997, as amended by R.A. No. 10963,[89] otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN), and as further amended by R.A. No. 11467,[90] provides that the importation of prescription drugs and medicines for diabetes, among others, shall enjoy exemption from VAT, to wit:

> SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be **exempt from the value-added tax**:
>
> xxx xxx xxx
>
> (AA) Sale of or **importation of prescription drugs and medicines** for:
>
> i. **Diabetes, high cholesterol, and hypertension beginning January 1, 2020**; and
> ii. Cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2023:
>
> 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)*

Pursuant to the foregoing provision, RMC No. 62-2020[91] 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. Furthermore, on October 14, 2020,

[89] 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.

[90] 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.

[91] 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.

respondent issued RMC No. 113-2020,[92] which clarified the effectivity date of RA No. 11467 to be January 23, 2020, instead of January 27, 2020, on account of the law's publication in the Official Gazette, through its website, on the said date.[93]

It is worth noting that while RMC No. 113-2020 indicates that the exemption shall only begin on January 23, 2020, **R.A. No. 11467 explicitly provides as to when the VAT exemption shall begin, *i.e.*, on January 1, 2020**. Particularly, the VAT exemption on the importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension, shall perforce begin on January 1, 2020, and not when R.A. No. 11467 took effect.

Pertinently, 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.[94] 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.[95]

Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out.[96] Particularly, administrative issuances such as revenue memorandum circulars cannot amend nor modify the law.[97]

Moreover, it is well-settled that a tax statute may be retroactive in its operation.[98] The legislative intent to grant VAT exemption on imported medicines for diabetes, high cholesterol, and hypertension, beginning

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92 SUBJECT: Publishing the full text of the letter from the Food Publishing the Full Text of the Letter from the Department of Finance (DOF) to Amend the Effectivity Date of Republic Act (R.A.) No. 11467, as Circularized Under Revenue Memorandum Circular No. 65-2020.

93 Par. 8, Stipulated Facts, JSFI, Docket – Vol. III, p. 968.

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

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

96 *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.

97 *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.

98 *Lorenzo vs. Posadas, Jr.*, G.R. No. 43082, June 18, 1937.

January 1, 2020, is perfectly clear under the aforequoted Section 109(1)(AA)(i) of the NIRC of 1997, as further amended by R.A. No. 11467.

Correspondingly, the VAT paid on the imported medicines for diabetes, high cholesterol, and hypertension, must be considered as erroneously or illegally collected or paid beginning January 1, 2020.

To prove payment of VAT on its importations of prescription medicines for diabetes, high cholesterol and hypertension, petitioner submitted various documents, such as the Bureau of Customs (BOC) Single Administrative Documents (SAD),[99] Statements of Settlement of Duties and Taxes (SSDT),[100] Temporary Assessment Notices,[101] Final Assessment Notices,[102] and various Commercial Invoices issued to petitioner,[103] as well as the VAT Payment Certification issued by BOC Revenue Accounting Division.[104]

Upon verification of the aforesaid supporting documents, the Court finds that petitioner indeed paid VAT on the said importation of prescription medicines for diabetes, high cholesterol, and hypertension in as much as ₱33,730,490.83—the amount of refund being claimed, to wit:

<table>
<tr><th>Item Description</th><th>Generic Name</th><th>VAT Payment</th><th>SAD Exhibit Reference</th><th>SSDT Exhibit Reference</th></tr>
<tr><td>EZETROL 10MG 3X10TAB PHL</td><td>Ezetimibe</td><td>₱ 3,018,526.00</td><td>“P-37”</td><td>“P-38”</td></tr>
<tr><td>COZAAR XQ 50/5MG 3X10TAB PHL</td><td>Losartan + Amlodipine</td><td>159,930.00</td><td>“P-37-1”</td><td>“P-38-1”</td></tr>
<tr><td>JANUMET 50 1000MG 4X</td><td>Metformin + Sitagliptin</td><td>832,839.00</td><td>“P-37-2”</td><td>“P-38-2”</td></tr>
<tr><td>JANUMET 50/500MG 4X7TAB PHL</td><td>Metformin + Sitagliptin</td><td>1,688,096.00</td><td>“P-37-3”</td><td>“P-38-3”</td></tr>
<tr><td>ZOCOR 20MG 30TAB PHL</td><td>Simvastatin</td><td>317,634.00</td><td>“P-37-4”</td><td>“P-38-4”</td></tr>
<tr><td>HYZAAR 100/12.5MG 3X10TAB PHL</td><td>Losartan + Hydrochlorothiazide</td><td>273,129.00</td><td>“P-37-5”</td><td>“P-38-5”</td></tr>
<tr><td>JANUVIA 25MG 4X7TAB PHL</td><td>Sitagliptin</td><td>358,797.00</td><td>“P-37-6”</td><td rowspan="2">“P-38-6”</td></tr>
<tr><td>COZAAR 50MG 3X10TAB PHL</td><td>Losartan</td><td>981,626.00</td><td>“P-37-6”</td></tr>
</table>

99 Exhibits “P-37” to “P-37-29” and “P-4”.
100 Exhibits “P-38” to “P-38-29” and “P-5”.
101 Exhibits “P-39” to “P-39-30”.
102 Exhibits “P-40” to “P-40-30”.
103 Exhibits “P-36” to “P-36-51” and “P-3”.
104 Exhibit “P-6”, BIR Records, pp. 149 to 155.

JANUVIA 100MG 4X7TAB PHL	Sitagliptin	2,993,884.00	"P-37-6"	
JANUVIA 50MG 4X7TAB PHL	Sitagliptin	2,452,322.00	"P-37-6"	
HYZAAR DS 100/25MG 6X5TAB PHL	Losartan + Hydrochlorothiazide	117,410.00	"P-37-6"	
COZAAR 100MG 3X10TAB PHL	Losartan	714,380.00	"P-37-6"	
HYZAAR 50/12.5MG 3X10TAB PHL	Losartan + Hydrochlorothiazide	115,886.00	"P-37-6"	
VYTORIN 10/10MG 30TAB PHL	Ezetimibe + Simvastatin	296,228.00	"P-37-7"	
VYTORIN 10/20MG 30TAB PHL	Ezetimibe + Simvastatin	211,311.00	"P-37-7"	"P-38-7"
VYTORIN 10/40MG 30TAB PHL	Ezetimibe + Simvastatin	57,663.00	"P-37-7"	
HYZAAR 50/12.5MG 3X10TAB PHL	Losartan + Hydrochlorothiazide	116,180.00	"P-37-8"	"P-38-8"
JANUMET 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	211,643.00	"P-37-9"	
JANUMET 50/850MG 4X7TAB PHL	Metformin + Sitagliptin	483,201.00	"P-37-9"	"P-38-9"
JANUMET 50 1000MG 4X7	Metformin + Sitagliptin	989,987.00	"P-37-9"	
JANUMET XR 100/1000MG 28TAB PHL	Metformin + Sitagliptin	708,324.00	"P-37-10"	"P-38-10"
JANUMET 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	1,256,387.00	"P-37-11"	"P-38-11"
HYZAAR 100/12.5MG 3X10TAB PHL	Losartan + Hydrochlorothiazide	228,754.00	"P-4"	"P-5"
COZAAR XQ 50/5MG 3X10TAB PHL	Losartan + Amlodipine	469,460.00	"P-37-13"	"P-38-13"
JANUMET 50/1000MG 4X	Metformin + Sitagliptin	597,553.00	"P-37-14"	"P-38-14"
VYTORIN 10/20MG 30TAB PHL	Ezetimibe + Simvastatin	305,234.00	"P-37-15"	"P-38-15"
ZOCOR 20MG 30TAB PHL	Simvastatin	328,329.00	"P-37-15"	
VYTORIN 10/10MG 30TAB PHL	Ezetimibe + Simvastatin	280,936.00	"P-37-16"	"P-38-16"
HYZAAR 100/12.5MG 3X10TAB PHL	Losartan + Hydrochlorothiazide	237,444.00	"P-37-17"	"P-38-17"
EZETROL 10MG 3X10TAB PHL	Ezetimibe	1,593,064.00	"P-37-18"	"P-38-18"
JANUMET XR 100/1000MG 28TAB PHL	Metformin + Sitagliptin	1,376,415.00	"P-37-19"	"P-38-19"
HYZAAR 50/12.5MG 3X10TAB PHL	Losartan + Hydrochlorothiazide	188,000.00	"P-37-20"	"P-38-20"
HYZAAR DS 100/25MG 6X5TAB PHL	Losartan + Hydrochlorothiazide	118,103.00	"P-37-20"	
JANUMET 50/1000MG 4X	Metformin + Sitagliptin	1,415,841.00	"P-37-21"	"P-38-21"

JANUMET 50/850MG 4X7TAB PHL	Metformin + Sitagliptin	932,131.00	"P-37-22"	"P-38-22"
JANUMET 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	1,310,297.00	"P-37-23"	"P-38-23"
JANUMET 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	1,134,832.00	"P-37-24"	"P-38-24"
JANUMET XR 100/1000MG 28TAB PHL	Metformin + Sitagliptin	2,062,284.00	"P-37-25"	"P-38-25"
JANUMET 50/500MG 4X7TAB PHL	Metformin + Sitagliptin	1,262,483.00	"P-37-26"	"P-38-26"
ZOCOR 40MG 30TAB PHL	Simvastatin	168,017.00	"P-37-27"	"P-38-27"
VYTORIN 10/40MG 30TAB PHL	Ezetimibe + Simvastatin	50,248.00	"P-37-27"	
COZAAR XQ 50 5MG 3X10	Losartan + Amlodipine	158,358.83	"P-37-28"	"P-38-28"
COZAAR 100MG 3X10TAB PHL	Losartan	532,722.00	"P-37-29"	"P-38-29"
JANUVIA 100MG 7TAB SAM PHL	Sitagliptin	142,807.00		
HYZAAR DS 100/25MG 6X5TAB PHL	Losartan + Hydrochlorothiazide	115,950.00		
HYZAAR 50/12.5MG 3X10TAB PHL	Losartan + Hydrochlorothiazide	115,260.00		
HYZAAR 100/12.5MG 3X10TAB PHL	Losartan + Hydrochlorothiazide	250,585.00	"P-37-12"	"P-38-12"
TOTAL		**₱33,730,490.83**		

Notably, the generic names of the listed imported prescription medicines are included in the list of VAT-exempt drugs and medicines for diabetes, high cholesterol and hypertension under RMC No. 62-2020 dated June 8, 2020,[105] which published the full text of the letter from the Food and Drug Administration (FDA) – Department of Health (DOH) containing the list of prescription drugs and medicines exempted from VAT beginning January 27, 2020, thus, qualify for VAT exemption under Section 109(AA)(i) of the NIRC of 1997, as amended by R.A. No. 11467. Consequently and considering that RA No. 11467 is clear that the subject VAT exemption shall begin on January 1, 2020, the payments of VAT by petitioner on the subject importations for the period from January 7 to April 1, 2020 are therefore deemed illegal and erroneous.

The input tax subject of the refund claim has not been reported as input tax credit.

[105] 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.

In its amended *Quarterly VAT Returns* (BIR Form No. 2550Q) for the first[106] and second quarters of calendar year (CY) 2020[107] and *Monthly VAT Return* (BIR Form No. 2550M) for the month of April 2020[108], petitioner declared Importations of Goods Other than Capital Goods and Purchases Not Qualified for Input Tax, as follows:

Particulars	1st Quarter 2020	April 2020	2nd Quarter 2020
Importation of Goods Other than Capital Goods - subjected to VAT	₱1,519,361,116.67	₱175,634,966.67	₱ 491,713,345.25
Purchases Not Qualified for Input Tax	271,443,050.00	120,490,280.47	292,691,364.04

Upon verification, the Court finds that the importations for the first quarter of CY 2020 and for the month of April 2020 related to the VAT subject of the present claim were declared as part of the Purchases Not Qualified for Input Tax. Evidently, the VAT on the subject imported items have not been reported and claimed as input tax credit in the petitioner's quarterly/monthly VAT returns. Such being the case, the input VAT subject of the present claim was not carried over or utilized in the succeeding amended Quarterly VAT Return for the third quarter of CY 2020.[109]

In fine, petitioner was able to establish the amount of the refund claim of ₱33,730,490.83. Considering, however, that the BIR or respondent has already granted the amount of ₱19,140,829.83 per the *VAT Refund Notice* dated January 18, 2023,[110] only the remaining balance of ₱14,589,661.00 (₱33,730,490.83 less ₱19,140,829.83) should be granted in this case.

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

Accordingly, respondent is **ORDERED TO REFUND** petitioner the amount of **Fourteen Million, Five Hundred Eighty-Nine Thousand, Six Hundred Sixty-One Pesos (₱14,589,661.00)**, representing VAT erroneously paid on the importation of medicines intended for the treatment of persons with diabetes, high cholesterol, and hypertension for the period from January 7, 2020 to April 1, 2020.

106 BIR Records, p. 546.
107 Exhibit "P-29-4".
108 Exhibit "P-9-B".
109 Exhibit "P-29-11".
110 Exhibit "P-44", Docket – Vol. I, pp. 463 to 465; Exhibit "R-8", BIR Records – Folder 2, pp. 649 to 651.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

On leave
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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