REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**SECOND DIVISION**

**NOVARTIS HEALTHCARE PHILIPPINES, INC.,**
*Petitioner,*

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 10773**

Members:

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

Promulgated:

3:49 pm

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# DECISION

*MODESTO-SAN PEDRO, J.*:

## The Case

This *Petition for Review* is a claim for the refund or issuance of a Tax Credit Certificate ("TCC") in the total amount of Twenty-Six Million Nine Hundred Sixty Thousand Five Hundred Seven and 62/100 Philippine Pesos (₱26,960,507.62), representing the alleged erroneous payment of Value-Added Tax ("VAT") during the period from February 19, 2020 to June 30, 2020 on its importations of prescription drugs and medicines for diabetes and hypertension, pursuant to *Sections 204(C) and 229 of the National Internal Revenue Code ("NIRC") of 1997, as amended*, in relation to *Section 109(AA)* of the same Code, as amended by *Republic Act ("RA") No. 11467.*[1]

[1] Par. 3, Summary of Admitted Facts, Joint Stipulation of Facts and Issues ("JSFI"), Docket – Vol. 3, p. 1428.

## The Parties

Petitioner Novartis Healthcare Philippines, Inc. is a domestic corporation duly registered under the laws of the Republic of the Philippines with address at 5th – 6th Floor, Ayala North Exchange Tower 1, Ayala Avenue, cor. Salcedo and Amorsolo Streets, Makati City.[2] It is also registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer, with Taxpayer's Identification No. ("TIN") 000-111-008-000.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

## The Facts

On January 10, 2022, petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914) and a Letter dated January 4, 2022,[5] based on *Sections 204(C) and 229, in relation to Section 109, of the NIRC, as amended by RA No. 11467*,[6] for the period from January 1, 2020 to June 30, 2020 amounting to ₱38,647,755.33.

In said Letter, petitioner alleged that it paid VAT on importation of medicines that are supposedly VAT-exempt under *Revenue Memorandum Circular* ("*RMC*") *No. 62-2020* and thus filed its application for refund of such erroneously paid VAT in compliance with *Revenue Memorandum Order* ("RMO") *No. 36-2020.*

Due to respondent's inaction on petitioner's claim for refund, petitioner filed a Petition for Review ("Petition") before this Court on February 18, 2022,[7] praying for the refund, of its erroneously paid VAT on importation of diabetes and hypertension medicines, albeit in the reduced amount of ₱26,960,507.62.

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2 Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, p. 1428.
3 Exhibit "P-4", Docket – Vol. IV, p. 1749.
4 Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. 3, p. 1427.
5 Exhibits "P-125" to "P-126", with sub-markings, Docket – Vol IV, pp. 1894 to 1904.
6 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 for Other Purposes.
7 Docket – Vol. 1, pp. 6 to 46.

On May 17, 2022, within the extended time granted by the Court,[8] respondent filed his Answer.[9]

Respondent filed his Pre-Trial Brief on August 4, 2022, while petitioner filed its Pre-Trial Brief on August 5, 2022.[10] Thereafter, Pre-Trial Conference was set and held on August 11, 2022.[11]

On September 12, 2022, the parties submitted their Joint Stipulation of Facts and Issues,[12] which was approved and adopted in the Pre-Trial Order issued on and dated October 5, 2022.[13]

Meanwhile, on October 25, 2022, respondent transmitted to this Court the BIR Records of the case, consisting of 8 pages.[14]

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

Petitioner offered the testimonies of the following individuals: (1) Ms. Sheena Marie G. Jurilla,[15] petitioner's Tax Manager; (2) Dr. Giovell Barangan,[16] petitioner's Chief Scientific Officer; (3) Mr. Enrico T. Pizzaro,[17] the Court-commissioned Independent Certified Public Accountant ("ICPA");[18] and (4) Dr. Sheila T. Lim,[19] petitioner's Manager, Medical, Cardiovascular 2 Department.

The Report of the ICPA was submitted on March 3, 2023.[20]

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[8] Motion for Extension of Time to File Answer filed by respondent on April 12, 2022 and Resolution dated April 22, 2022, Docket – Vol. 3, pp. 1347 to 1350 and 1353, respectively.

[9] Docket – Vol. 3, pp. 1354 to 1363.

[10] Docket – Vol. 3, pp. 1367 to 1370 and 1373 to 1398, respectively.

[11] Notice of Pre-Trial Conference dated May 25, 2022, Minutes of the hearing held on, and Order dated, August 11, 2022, Docket – Vol. 3, pp. 1365 to 1366 and 1400 to 1402, respectively.

[12] Docket – Vol. 3, pp. 1427 to 1436.

[13] Docket – Vol. 3, pp. 1419 to 1426.

[14] Compliance dated October 14, 2022, Docket – Vol. 3, p. 1451 to 1464.

[15] Docket – Vol. 1, pp. 215 to 232; Minutes of the hearing held on, and Order dated November 10, 2022, Docket – Vol. 3, pp. 1469 and 1471 to 1472, respectively; Exhibit "P-1050", Docket – Vol. IV, pp. 2132 to 2140; Minutes of the hearing held on, and Order dated February 15, 2024, Docket – Vol. V, pp. 2342 to 2343.

[16] Exhibit "P-1001", Docket – Vol. 1, pp. 457 to 470; Minutes of the hearings held on, and Order dated, April 11, 2023, Docket – Vol. IV, pp. 1618 to 1620.

[17] Exhibit "P-1023", Docket – Vol. 3, pp. 1569 to 1613; Minutes of the hearings held on, and Order dated, April 11, 2023, Docket – Vol. IV, pp. 1618 to 1620.

[18] Oath of Commission dated January 19, 2023, Docket – Vol. 3, p. 1524; Minutes of the hearing held on, and Order dated January 19, 2023, Docket – Vol. 3, pp. 1521 and 1525 to 1526, respectively.

[19] Exhibit "P-1100", Docket – Vol. V, pp. 2182 to 2197; Minutes of the hearings held on, and Order dated, April 2, 2024, Docket – Vol. V, pp. 2344 to 2346.

[20] Exhibit "P-1002", Docket – Vol. 3, pp. 1529 to 1551.

Petitioner filed its Formal Offer of Evidence and Supplemental Formal Offer of Evidence on May 2, 2023[21] and April 29, 2024,[22] respectively. Respondent then posted his Comment and Manifestation Re: Petitioner's Formal Offer of Evidence and Comment Re: Petitioner's Formal Offer of Evidence on May 18, 2023[23] and May 14, 2024,[24] respectively. The Court resolved thereon in Resolutions dated July 17, 2023[25] and July 31, 2024.[26]

On the other hand, respondent manifested that he would not present any evidence.

Respondent filed his Memorandum on September 13, 2024,[27] while petitioner's Memorandum was submitted on September 30, 2024.[28] Thus, in a Minute Resolution dated October 21, 2024, the case was deemed submitted for decision.

Hence, this Decision.

## The Issues

The parties submitted the following issues in this case:

A. Whether or not the CTA has jurisdiction over the case.

B. Whether or not the petitioner is entitled to a refund or a tax credit in the total amount of Twenty-Six Million Nine Hundred Sixty Thousand Five Hundred Seven and 62/100 Philippine Pesos (₱26,960,507.62) representing VAT for the period February 19, 2020 to June 30, 2020 on its importations of prescription drugs and medicines for diabetes, and hypertension.[29]

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[21] Docket – Vol. IV, pp. 1641 to 1673.
[22] Docket – Vol. V, pp. 1641 to 1673.
[23] Docket – Vol. IV, pp. 1677 to 1679.
[24] Docket – Vol. V, pp. 2378 to 2380.
[25] Docket – Vol. IV, pp. 1684 to 1688.
[26] Docket – Vol. V, pp. 2384 to 2388.
[27] Docket – Vol. V, pp. 2390 to 2399.
[28] Docket – Vol. V, pp. 2403 to 2444.
[29] Summary Statement of Issues, JSFI, Docket – Vol. 3, pp. 1428 to 1429.

## Arguments of the Parties

### Petitioner's Arguments:

Petitioner argues that its claim for the refund of erroneously paid VAT on importations of diabetes and hypertension medicines for the period from February 19, 2020 to June 30, 2020 should be granted as these goods are exempted from VAT under *Section 109(AA) of the NIRC, as amended*, and is filed in accordance with *Sections 204(C) and 229 of the same Code*.

### Respondent's Counter-arguments:

Respondent counter-argues that (1) the petition must be dismissed for lack of jurisdiction as petitioner failed to exhaust administrative remedies before elevating the case to this Court; (2) assuming there is jurisdiction, petitioner is not entitled to the refund as the supporting documents it attached to the instant Petition does not state or even mention that its VAT payments actually pertain to its importation of drugs qualified for VAT exemption; and (3) refunds are in the nature of exemptions and should be construed against the taxpayer claiming such refund.

## The Ruling of the Court

The Petition must be denied.

The provisions that govern the present claim for refund of erroneously paid taxes are *Sections 204(C) and 229 of the NIRC, as amended*, which read as follows:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. – The Commissioner may –
>
> (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.
>
> . . . .

> 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, of any sum alleged to have been excessively or in any manner wrongfully 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.
> (Italics, Ours.)

Based on the foregoing provisions, an erroneously paid or illegally collected tax may be refunded if:

1) the taxpayer files in writing with the CIR a claim for credit or refund within two years after the payment of the tax or penalty;

2) the claim for refund must first be filed before the CIR before maintaining a suit or proceeding in any court; and

3) such suit or proceeding shall be filed also within two years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after payment.

As explained in *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*[30] ("*Carrier*"):

> Section 204 refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.
>
> Section 229, on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.
>
> Reading the two provisions together, *both administrative and judicial claims must be filed within the two-year period*. Furthermore, the *administrative claim must be filed before the judicial claim*. This Court has

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[30] G.R. No. 226592, July 27, 2021.

> previously declared that "*[t]imeliness of the filing of the claim is mandatory and jurisdictional.* The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time."

Thus, while *both* administrative and judicial claims must be filed within two years after the payment of the alleged erroneously paid or illegally collected tax, the *filing of the administrative claim must still precede the filing of judicial claim.*

Moreover, the tax subject of the refund under *Sections 204(C) and 229 of the NIRC, as amended*, must be erroneously paid or illegally collected, that is it has been collected without authority, or that of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully 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 respect is illegal.[31]

In summary, in order for the present claim for refund to prosper, petitioner must show that: 1) the administrative and judicial claims were filed within two years from the payment of tax; and 2) that the tax was erroneously or illegally paid or collected.

*Petitioner's administrative and judicial claims were timely filed, thus, the Court acquired jurisdiction in this case.*

Petitioner alleges that it paid VAT on the importations of diabetes and hypertension medicines from February 19, 2020 to June 30, 2020, which were supposedly exempt from VAT pursuant to *Section 109(AA) of the NIRC, as amended by RA No. 11467.*

Counting two years from the earliest payment made, or from February 19, 2020, petitioner had until February 19, 2022 to file both its administrative and judicial claims for refund. Petitioner filed its Application for Tax Credits/Refunds with the BIR on January 10, 2022[32] and later filed its Petition before the Court on February 18, 2020.[33] Clearly, petitioner timely filed both claims before the two-year prescriptive period lapsed.

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[31] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. No. 188497, April 25, 2012.
[32] Exhibits "P-125" to "P-126", with sub-markings, Docket – Vol IV, pp. 1894 to 1904.
[33] Docket – Vol. 1, pp. 6 to 46.

However, respondent argues that the Court cannot acquire jurisdiction herein as petitioner failed to exhaust the available administrative remedies before filing its Petition. In particular, respondent laments that petitioner filed its administrative claim for refund on January 10, 2022, which is only a little over a month before filing its Petition.

Respondent asserts that the doctrine of exhaustion of administrative remedies rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with a condition precedent renders the petition for review filed by petitioner dismissible.

We find this argument untenable.

This issue on the doctrine of exhaustion of administrative remedies vis-à-vis *Sections 204(C) and 229 of the NIRC, as amended*, is no longer novel. In *Carrier*, citing *CBK Power Company Limited v. Commissioner of Internal Revenue*,[34] the High Court explained that *Sections 204 and 229 of the 1997 National Internal Revenue Code* require only that the administrative claim be filed before the judicial claim and that both claims be filed within two years from the payment of the tax. Hence, the taxpayer properly filed its judicial claim without awaiting the Commissioner's action on its administrative claim, as long as the judicial claim was filed within the two-year prescriptive period. Further, *Section 229* does not require that the Commissioner first act on the taxpayer's claim, and that the taxpayer cannot go to court without the Commissioner's action. The administrative claim filed before the Commissioner was intended "primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow[.]"

Thus, applying *Carrier* and its precedent in this case, petitioner rightfully filed its judicial claim before the Court even without respondent's ruling on its administrative claim. Given that the administrative claim, followed by the judicial claim, were both filed by petitioner within two years from the payment of the alleged erroneously or illegally collected VAT, the Court has well-acquired jurisdiction over this case.

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[34] G.R. Nos. 193383-84 & 193407-08, January 14, 2015.

*Petitioner's importation of diabetes and hypertension medicines from February 19, 2020 to June 30, 2020 are exempt from VAT; hence, the VAT paid thereon were erroneous.*

Petitioner alleges that it imported the following prescription drugs and medicines for diabetes and hypertension from February 19, 2020 to June 30, 2020 and paid VAT thereon in the total amount of ₱26,960,507.62:

| **Brand Name** | **Generic Name** | **Dosage Strength and Form** | **Disease Treated** |
|---|---|---|---|
| CO-DIOVAN | Valsartan + Hydrochlorothiazide | 160/12.5MG Film-Coated Tablet | Hypertension |
| | | 160/25MG Film-Coated Tablet | |
| | | 320/12.5MG Film-Coated Tablet | |
| | | 80/12.5MG Film-Coated Tablet | |
| DIOVAN | Valsartan | 160MG Film-Coated Tablet | Hypertension |
| | | 80MG Film-Coated Tablet | |
| EXFORGE | Amlodipine + Valsartan | 10/160MG Film-Coated Tablet | Hypertension |
| | | 5/160MG Film-Coated Tablet | |
| EXFORGE HCT | Amlodipine + Valsartan + Hydrochlorothiazide | 10/160/12.5MG Film-Coated Tablet | Hypertension |
| | | 5/160/12.5MG Film-Coated Tablet | |
| | | 5/160/25MG Film-Coated Tablet | |
| GALVUSMET | Vildagliptin + Metformin + Hyrdochloride | 50/1000MG Film-Coated Tablet | Diabetes |
| | | 50/500MG Film-Coated Tablet | |
| | | 50/850MG Film-Coated Tablet | |
| GALVUS | Vildagliptin | 50MG 2X14 Tablet | Diabetes |
| PROGLIN | Vildagliptin | 50MG Tablet | Diabetes |
| PROGLINMET | Vildagliptin + Metformin + Hyrdochloride | 50/1000MG Film-Coated Tablet | Diabetes |
| | | 50/500MG Film-Coated Tablet | |
| | | 50/850MG Film-Coated Tablet | |

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The foregoing products, with brand name, generic name, dosage, and form as specified, are duly registered with Food and Drug Administration ("FDA") and are each issued with a Certificate of Product Registration, naming petitioner as the products' importer and distributor in the Philippines.[35]

Meanwhile, *Section 109(AA) of the NIRC, as amended by RA No. 11467*, provides that:

> SEC. 109. *Exempt Transactions.* — (1) Subject to the provisions of Subsection 2 hereof, the following transactions shall be exempt from the value-added tax:
>
> . . . .
>
> (AA) Sale 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;

Eventually, *Revenue Regulations ("RR") No. 18-20*, dated June 26, 2020, was issued to implement the amendment to *Section 109* introduced by *RA No. 11467*, as follows:

> SEC. 4.109-1. *VAT-Exempt Transactions.* —
>
> . . . .
>
> (B) *Exempt transactions.* —
>
> (1) Subject to the provisions of Section 4.109-2 hereof, the following transactions shall be exempt from VAT:
>
> . . . .
>
> (aa) Sale 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.

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[35] Exhibits "P-127" to "P-145".

> The exemption from VAT under this subsection shall only apply to the sale or importation by the manufacturers, distributors, wholesalers and retailer of drugs and medicines included in the "list of approved drugs and medicines" issued by the Department of Health (DOH) for this purpose.
>
> . . . .
>
> SECTION 3. TRANSITORY PROVISIONS. - *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, shall be refunded pursuant to Section 204(C) of the Tax Code of 1997, as amended, in accordance with the existing procedures for refund of VAT on importation, provided that the input tax on the imported items have not been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns.* The same shall not be allowed as input tax credit pursuant to Section 110 of the Tax Code of 1997, as amended, for purposes of computing the VAT payable of the concerned taxpayer/s for the said period. (Italics, Ours.)

Based on the foregoing, a VAT can be considered erroneously paid under *Section 109(AA) of the NIRC, as amended*, and shall thus be refunded if the following elements concur:

1) the products sold or imported are prescription drugs and medicines for treatment of diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, and kidney diseases;

2) the sale or importation was made on January 1, 2020 onwards for prescription drugs and medicines for treatment of diabetes, high cholesterol, and hypertension and on January 1, 2023 onwards for prescription drugs and medicines for treatment of cancer, mental illness, tuberculosis, and kidney diseases;

3) the prescription drugs and medicines sold or imported must be included in the "list of approved drugs and medicines" issued by the DOH-FDA; and

4) The VAT paid on importations of prescription drugs and medicines for treatment of diabetes, high cholesterol, and hypertension until the effectivity of *RR No. 18-20 must not have been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns.*

To support its claim, petitioner submitted the commercial invoices,[36] Single Administrative Documents ("SADs"),[37] and Statements of Settlement of Duties and Taxes ("SSDTs"),[38] which were all examined by the Court-commissioned ICPA,[39] and is summarized as follows:

| Exhibit Reference | Supplier | IEIRD/ SAD | Commercial Invoice No. | Item Description | VAT Payment | SSDT/ BOC OR No. | SSDT/BOC OR Date |
|---|---|---|---|---|---|---|---|
| P-1010-1 | NOVARTIS PHARMA AG | 22969 | 2001522029, 2001522030, & 2001522031 | EXFORGE FCT 10/160MG ALU 1X7 PH; EXFORGE FCT 5/160MG ALU 1X7 PH; DIOVAN FCT 80MG 2X14; | ₱1,748,884.00 | R 101656 | 19-Feb-2020 |
| P-1010-2 | NOVARTIS SAGLIK GIDA VE TARIM | 22984 | 2001523351 | PROGLINMET 50/1000 MG TAB 30 BOX SS P8 | 701,358.00 | R 103829 | 20-Feb-2020 |
| P-1010-3 | NOVARTIS SAGLIK GIDA VE TARIM | 23609 | 2001523088 | GALVUMET FCT 50/500MG 3X10 PH | 2,050,844.00 | R 104648 | 20-Feb-2020 |
| P-1010-4 | NOVARTIS PHARMA AG | 24890 | 2001523334 | GALVUS TAB 50MG 2X14 PH | 1,490,856.00 | R 112710 | 24-Feb-2020 |
| P-1010-5 | NOVARTIS SAGLIK GIDA VE TARIM | 26146 | 2001525373 | PROGLINMET 50/1000MG TAB 30 BOX SS P8 | 647,482.00 | R 119897 | 27-Feb-2020 |
| P-1010-6 | NOVARTIS SAGLIK GIDA VE TARIM | 26159 | 2001525343 | GALVUMET FCT 50/1000MG 3X10 PH | 660,282.00 | R 120025 | 27-Feb-2020 |
| P-1010-7 | NOVARTIS PHARMA AG | 31572 | 2001527201 | PROGLIN 50MG TAB 28BOX SS PH | 589,070.00 | R 146693 | 09-Mar-2020 |
| P-1010-8 | NOVARTIS PHARMA AG | 35328 | 2001529260 | EXFORGE FCT 5/160MG ALU 1X7 PH | 479,897.00 | R 156100 | 12-Mar-2020 |
| P-1010-9 | NOVARTIS PHARMA AG | 35337 | 2001529245 | CO-DIOVAN FCT 160/25MG 2X14 PH | 82,083.68 | R 159090 | 13-Mar-2020 |
| P-1010-10 | NOVARTIS PHARMA AG | 36542 | 2001530051 | CO-DIOVAN FCT 80/12.5 2X14PH ALU | 377,121.81 | R 163767 | 16-Mar-2020 |
| P-1010-10 | NOVARTIS PHARMA AG | 36542 | 2001530053 | EXFORGE HCT FCT 5/160/25MG 1X7 PH | 42,693.04 | R 163767 | 16-Mar-2020 |
| P-1010-11 | NOVARTIS PHARMA AG | 36554 | 2001529262 | EXFORGE FCT 10/160MG ALU 1X7 PH | 473,906.00 | R 163759 | 16-Mar-2020 |
| P-1010-12 | NOVARTIS SAGLIK GIDA VE TARIM | 37168 | 2001532153 | GALVUS MET FCT 50/850MG 3X10 PH | 381,681.00 | R 166509 | 17-Mar-2020 |
| P-1010-13 | NOVARTIS SAGLIK GIDA VE TARIM | 37549 | 2001532150 | PROGLINMET 50/850 MG TAB 30 BOX SS PH | 370,753.00 | R 166508 | 17-Mar-2020 |

[36] Exhibits "P-20" to "P-56".
[37] Exhibits "P-57" to "P-90".
[38] Exhibits "P-91" to "P-124".
[39] Collectively marked and offered as Exhibits "P-1010-1" to "P-1010-33".

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|---|---|---|---|---|---|---|---|
| P-1010-14 | NOVARTIS SAGLIK GIDA VE TARIM | 37550 | 2001532151 | PROGLINMET 50/850 MG TAB 30 BOX SS PH | 374,443.00 | R 168335 | 18-Mar-2020 |
| P-1010-15 | NOVARTIS SAGLIK GIDA VE TARIM | 38614 | 2001532155 | GALVUMET FCT 50/500MG 3X10 PH | 1,386,980.00 | R 169625 | 19-Mar-2020 |
| P-1010-16 | NOVARTIS SAGLIK GIDA VE TARIM | 39116 | 2001533292 | PROGLINMET 50/1000MG TAB 30 BOX SS P8 | 721,412.00 | R 172685 | 20-Mar-2020 |
| P-1010-17 | NOVARTIS SAGLIK GIDA VE TARIM | 39718 | 2001532413 | GALVUMET FCT 50/500MG 3X10 PH | 1,409,978.00 | R 178024 | 25-Mar-2020 |
| P-1010-18 | NOVARTIS SAGLIK GIDA VE TARIM | 39724 | 2001533290 | GALVUMET FCT 50/1000MG 3X10 PH | 720,382.00 | R 178027 | 25-Mar-2020 |
| P-1010-19 | NOVARTIS SAGLIK GIDA VE TARIM | 39747 | 2001532154 | PROGLINMET 50/1000MG TAB 30 BOX SS P8 | 674,216.00 | R 178865 | 25-Mar-2020 |
| P-1010-20 | NOVARTIS PHARMA AG | 39752 | 2001532039 & 2001532046 | EXFORGE HCT FCT 10/160/12.5MG 1X7 PH; EXFORGE HCT FCT 10/160/25MG 1X7 PH; | 278,469.00 | R 178866 | 25-Mar-2020 |
| P-1010-21 | NOVARTIS PHARMA AG | 39769 | 2001532063 | DIOVAN FCT 80MG 2X14 | 803,269.00 | R 178023 | 25-Mar-2020 |
| P-1010-22 | NOVARTIS PHARMA AG | 41637 | 2001535399 | PROGLIN 50MG TAB 28BOX SS PH | 602,019.00 | R 183472 | 30-Mar-2020 |
| P-1010-23 | NOVARTIS PHARMA AG | 41640 | 2001535400 | DIOVAN FCT 160MG 2X14 | 660,455.00 | R 185387 | 31-Mar-2020 |
| P-1010-24 | NOVARTIS PHARMA AG | 41685 | 2001535394 | EXFORGE HCT FCT 5/160/12.5MG 1X7 PH | 322,825.00 | R 183466 | 30-Mar-2020 |
| P-1010-25 | NOVARTIS SAGLIK GIDA VE TARIM | 53864 | 2001540723 | PROGLINMET 50/500 MG TAB 30 BOX SS PH | 1,967,649.00 | R 208410 | 16-Apr-2020 |
| P-1010-26 | NOVARTIS PHARMA AG | 54861 | 2001537348 | GALVUS TAB 50MG 2X14 PH | 1,542,717.00 | R 208950 | 16-Apr-2020 |
| P-1010-27 | NOVARTIS PHARMA AG | 1012138 | 2001557744 | GALVUS TAB 50MG 2X14 PH | 1,091,534.63 | R 1088640 | 22-Jun-2020 |
| P-1010-28 | NOVARTIS SAGLIK GIDA VE TARIM | 1014917 | 2001561945 | GALVUSMET FCT 50/500MG 3X10 PH | 1,302,551.65 | R 1090381 | 23-Jun-2020 |
| P-1010-29 | NOVARTIS SAGLIK GIDA VE TARIM | 1015398 | 2001562552 | PROGLINMET 50/500 MG TAB 30 BOX SS PH | 974,906.98 | R 1095052 | 25-Jun-2020 |
| P-1010-30 | NOVARTIS PHARMA AG | 1015400 | 2001561237 | EXFORGE FCT 5/160MG ALU 1X7 PH | 471,072.32 | R 1090848 | 23-Jun-2020 |
| P-1010-31 | NOVARTIS PHARMA AG | 1015402 | 2001561231 | CO-DIOVAN FCT 160/12.5MG 2X14 ALU PH | 560,356.93 | R 1095048 | 25-Jun-2020 |
| P-1010-32 | NOVARTIS SAGLIK GIDA VE TARIM | 1015495 | 2001562551 | PROGLINMET 50/500 MG TAB 30 BOX SS PH | 973,356.87 | R 1093471 | 24-Jun-2020 |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P-1010-33 | NOVARTIS PHARMA AG | 1014075 | 2001559909 | CO-DIOVAN FCT 320/12.5MG 1X7 PHS | 25,002.71 | R 1090795 | 23-Jun-2020 |
| **Total Erroneously Paid VAT** | | | | | **₱26,960,507.62** | | |

Testing petitioner's compliance with the *first* element, while it is notable that only the brand names were stated in the foregoing documents, the corresponding generic names of each can, however, be cross-referred and verified in the FDA Certificate of Product Registration[40] of each brand and specification. And as testified by petitioner's witness Dr. Giovell Barangan, the foregoing product brand, with their corresponding generic names, are used for treatment of diabetes and hypertension.[41]

With respect to the *second* element, the documents clearly show that the importations were made beyond January 1, 2020, with February 19, 2020 as the earliest importation completed.

As for the *third* element, We take reference from *RMC No. 62-2020* which circularized the List of Prescription Drugs and Medicines for Diabetes, High-Cholesterol and Hypertension Exempt from VAT Beginning January 27, 2020 issued by the FDA of the DOH.

Included in said List are the following prescription drugs and medicines classified by the FDA as antihypertensives and drugs used in diabetes:

| Classification | Generic Name | Dosage Strength and Form |
|---|---|---|
| Antihypertensives (E. Agents Acting on the Renin-Angiotensin System) | Valsartan + Hydrochlorothiazide | 160/12.5MG Film-Coated Tablet |
| | | 160/25MG Film-Coated Tablet |
| | | 320/12.5MG Film-Coated Tablet |
| | | 80/12.5MG Film-Coated Tablet |
| | Valsartan | 160MG Film-Coated Tablet |
| | | 80MG Film-Coated Tablet |
| | Amlodipine + Valsartan | 10/160MG Film-Coated Tablet |
| | | 5/160MG Film-Coated Tablet |
| | Amlodipine + Valsartan + Hydrochlorothiazide | 10/160/12.5MG Film-Coated Tablet |
| | | 5/160/12.5MG Film-Coated Tablet |
| | | 5/160/25MG Film-Coated Tablet |
| Drugs Used in Diabetes [(Blood Glucose Lowering Drugs, excluding Insulins (A10B) – C. | Vildagliptin + Metformin + Hyrdochloride | 50/1000MG Film-Coated Tablet |
| | | 50/500MG Film-Coated Tablet |
| | | 50/850MG Film-Coated Tablet |
| | | 50/1000MG Film-Coated Tablet |

40 Exhibits "P-127" to "P-145".
41 Exhibit "P-1001" (Q&A No. 18, Judicial Affidavit of Dr. Giovell Barangan).

| | | |
|---|---|---|
| Combinations of oral blood glucose lowering drugs (A10BD)] | Vildagliptin + Metformin + Hyrdochloride | 50/500MG Film-Coated Tablet<br>50/850MG Film-Coated Tablet |
| Drugs Used in Diabetes [(Blood Glucose Lowering Drugs, excluding Insulins (A10B) – F. Dipeptidyl peptidase (DPP-4) inhibitors (A10BH)] | Vildagliptin | 50MG Tablet |

Indeed, petitioner paid VAT in the total amount of ₱26,960,507.62 on the foregoing importations from February 19, 2020 to June 23, 2020 pertaining to prescription drugs and medicines for diabetes and hypertension which should be exempt from VAT based on the List of Prescription Drugs and Medicines for Diabetes, High-Cholesterol and Hypertension Exempt from VAT Beginning January 27, 2020 issued by the FDA of the DOH.

*Petitioner failed to prove compliance with the fourth element.*

However, with respect to the *fourth* element, *Section 3 of RR No. 18-20* clarified that the VAT claimed for refund must not have been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns.

The following shows petitioner's Amended Quarterly VAT Returns for the 1st and 2nd quarters of taxable year ("TY") 2020:

| | **1st Quarter** | **2nd Quarter** | **Total** |
|---|---|---|---|
| VAT Sales/Receipt | ₱844,568,439.25 | ₱805,002,064.17 | ₱1,649,570,503.42 |
| Exempt Sales/Receipt | 323,895,875.64 | 466,784,302.01 | 790,680,177.65 |
| **Output Tax Due** | **101,348,212.71** | **96,600,247.70** | **197,948,460.41** |
| | | | |
| Input tax carried over from previous period | 346,985,674.38 | 337,792,422.16 | 346,985,674.38 |
| Input tax deferred on capital goods exceeding P1million from previous quarter | 40,132.45 | 16,052.98 | 40,132.45 |
| Input tax from current transactions: | | | |
| Domestic purchase of capital goods exceeding P1million | | | |
| Domestic purchase of goods other than capital goods | 531,960.66 | 1,822,621.08 | 2,354,581.74 |
| *Importation of goods other than capital goods* | *117,038,763.00* | *83,077,503.03* | *200,116,266.03* |
| Domestic purchase of services | 10,222,476.98 | 11,872,462.58 | 22,094,939.56 |
| Services rendered by non-residents | 92,339.71 | 89,963.37 | 182,303.08 |
| **Total available input tax** | **474,911,347.18** | **434,671,025.20** | **571,773,897.24** |
| | | | |
| *Deductions from input tax:* | | | |

/

| | | | |
|---|---|---|---|
| Input tax on purchases of capital goods exceeding P1million deferred for the succeeding period | 16,052.98 | - | - |
| *Input tax allocable to Exempt Sales* | *35,754,659.34* | *13,943,677.17* | *49,698,336.51* |
| Total | 35,770,712.32 | 13,943,677.17 | 49,698,336.51 |
| | | | |
| **Total allowable input tax** | **439,140,634.86** | **420,727,348.03** | **522,075,560.73** |
| | | | |
| **Net VAT Payable/(Overpayment)** | **₱(337,792,422.16)** | **₱(324,127,100.32)** | **₱(324,127,100.32)** |

Based on the foregoing, the input tax allocable to Exempt Sales amounting to ₱46,698,336.51 was deducted from the total available input tax as it was not qualified as credits against output taxes pursuant to *Section 4.109-1 of RR No. 16-2005.*[42]

On the other hand, the ICPA summarized the results of his examination of petitioner's documents, as follows:[43]

| Particulars | Exhibit Reference No. | Landed Cost | Amount of Input VAT |
|---|---|---|---|
| Summary of VATable and Exempt Importation Transactions: | | | |
| 1. Summary of VAT Exempt Importation Transactions: | | | |
| a. Summary of VAT Exempt Importation Transactions where VAT Payments were required by the BOC. | | | |
| a.1. Summary of VAT Exempt importation transactions where VAT payments were required by the BOC but were not included in the claim for refund. | **Exhibit P-1009** | P 122,471,797.75 | P 14,696,615.73 |
| a.2. Summary of VAT Exempt importation transactions where VAT payments were required by the BOC and were included in the claim for refund. | **Exhibit P-1010** | 224,670,896.84 | 26,960,507.62 |
| *Total Summary of VAT Exempt Transactions where VAT payments were required by the BOC.* | | *347,670,896.84* | *41,657,123.35* |
| 2. Summary of VATable importation transactions | **Exhibit P-1011** | 1,329,106,532.88 | 159,492,783.47 |
| **Total VAT Payments for both Exempt Where Payments were required by the BOC and VATable importation transactions** | | **1,676,249,227.47** | **201,149,906.82** |
| 3. Summary of VAT Exempt Importation Transactions where payments were not | **Exhibit P-1012** | 169,989,208.61 | - |

[42] SEC. 4-109.1. *VAT-Exempt Transactions.* –
(A) *In general* – "VAT-exempt" transactions refer to the sale of goods or properties and/or services and the use or lease of properties that is not subject to VAT (output tax) and *the seller is not allowed ay tax credit of VAT (input tax) on purchases.* (Italics, Ours.)

[43] Exhibit "P-1002" (ICPA Report, p. 19).

| | | | |
|---|---|---|---|
| required by the BOC and were not part of the claim for refund. | | | |
| ***Total of the Summary of VATable and Exempt Importation Transactions*** | | ***P1,846,238,436.08*** | ***P 201,149,906.82*** |

It is readily notable that there is a discrepancy between the Importation of goods other than capital goods and Input tax allocable to Exempt Sales per VAT returns and Total of the Summary of VATable and Exempt Importation Transactions and Total Summary of VAT Exempt Transactions where VAT payments were required by the BOC per ICPA's verification, as follows:

| | **per VAT Returns** | **per ICPA's Verification** | **Difference** |
|---|---|---|---|
| Importation of goods other than capital goods | ₱200,116,266.03 | | ₱(1,033,640.79) |
| Total of the Summary of VATable and Exempt Importation Transactions | | ₱201,149,906.82 | |
| | | | |
| Input tax allocable to Exempt Sales | ₱49,698,336.51 | | ₱8,041,213.16 |
| Total Summary of VAT Exempt Transactions where VAT payments were required by the BOC | | ₱41,657,123.35 | |

Neither the ICPA nor petitioner accounted or reconciled for the differences.

As verified by the ICPA, the VAT paid on importations amounting to ₱26,960,507.62 were reported in the Amended 1st and 2nd Quarterly VAT Returns for the TY 2020,[44] and summarized below:

| **Taxable Quarter** | **Exhibit Ref. No.** | **Amount of Input VAT on Importation per VAT Return** | **Amount of Input VAT on Importation Directly Attributable to VAT Exempt Sales (Sec. 23C, Schedule 5)** | **Amount of Input VAT on Importation Claimed as Input VAT Credit in the VAT Return** |
|---|---|---|---|---|
| 1st Quarter of 2020 | **Exhibit P-1013** | P 117,038,763.00 | P 32,747,955.24 | P 84,290,807.76 |
| 2nd Quarter of 2020 | **Exhibit P-1014** | 83,077,503.03 | 8,884,145.38 | 74,193,357.65 |
| **Total** | | **P 200,116,266.03** | **P 41,632,100.62** | **P 158,484,165.41** |

Again, it is apparent that there exists a discrepancy between the amounts of input tax allocable to Exempt sales per VAT returns, Total Summary of VAT Exempt Transactions where VAT payments were required

[44] Exhibit "P-1002" (ICPA Report, p. 20).

by the BOC per ICPA's summary, and Amount of Input VAT on Importation Directly Attributable to VAT Exempt Sales (Sec. 23C, Schedule 5) per ICPA's further verification. The discrepancies are demonstrated as follows:

| | Amount | Differences |
|---|---|---|
| Input tax allocable to Exempt Sales per VAT returns | ₱49,698,336.51 | |
| Total Summary of VAT Exempt Transactions where VAT payments were required by the BOC per ICPA's summary | ₱41,657,123.35 | ₱(8,041,213.16) |
| Amount of Input VAT on Importation Directly Attributable to VAT Exempt Sales (Sec. 23C, Schedule 5) per ICPA's further verification | ₱41,632,100.62 | ₱(25,022.73) |

Again, petitioner and ICPA failed to account or reconcile the noted differences.

Meanwhile, the amount of ₱158,484,165.41 pertaining to the Amount of Input VAT on Importation Claimed as Input VAT Credit in the VAT Return is the amount of VAT from importations allowable as input tax credits after deducting/removing the input taxes allocable to exempt sales. This amount was accordingly traced by the ICPA to the general ledger.[45] However, this too has a discrepancy, with the ICPA's summary which reflects the amount of ₱159,492,783.47[46] pertaining to the Summary of VATable importation transactions. The difference amounting to ₱1,008,618.06 is left unaccounted.

While it can be admitted that the input tax allocable to Exempt Sales per VAT returns amounting to ₱49,698,336.51 is higher than the amounts verified by the ICPA, the Court cannot just simply assume that the amount of ₱26,960,507.62 claimed for refund herein is already included in the input tax allocable to Exempt Sales per VAT returns which was deducted/removed from the total allowable input tax. Considering that the discrepancies noted are too significant to escape Our perusal, petitioner should have accounted for or reconciled all of these discrepancies in order to shed light on the matter and eliminate any doubt that the amount claimed for refund was already removed from petitioner's allowable input tax credits.

We find compliance with the *fourth* element to be crucial. As the taxpayer seeks to recover an erroneously paid tax, it is burdened upon it to prove that it does not recover said tax in another way. In this case, since petitioner reported the amount of claim of ₱26,960,507.62 in its VAT Returns, it is incumbent upon it to prove with clear and convincing evidence that such amount was already deducted from its input tax credits to eliminate any possibility of future application against output VAT. And, unfortunately, petitioner failed to prove this.

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[45] Exhibit "P-1002" (ICPA Report, p. 21); Exhibit "P-1015"..
[46] Exhibit "P-1011".

Time and again, We stress that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund. After all, tax refunds partake the nature of exemption from taxation and, as such, must be looked upon with disfavor. They are regarded as in derogation of the sovereign authority and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify its claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications. The burden of proof thus rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[47]

Since petitioner failed to prove its compliance with the *fourth* element, the present claim for refund must thus fail.

**ACCORDINGLY**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit.

**SO ORDERED.**

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

***WE CONCUR:***

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

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[47] *Commissioner of Internal Revenue v. Filminera Resources Corp.*, G.R. No. 236325, September 16, 2020.

## 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

## 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.

**MA. BELEN M. RINGPIS-LIBAN**
Acting Presiding Justice