REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NOVARTIS HEALTHCARE PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10900** Members:
-versus-	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 09 2025 1:12 p.m.

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DECISION

ANGELES, *J.*:

Before the Court is a *Petition for Review*[1] filed on June 27, 2022 by Novartis Healthcare Philippines, Inc. (NHPI or petitioner) against the Commissioner of Internal Revenue (CIR or respondent), praying for the refund or issuance of a Tax Credit Certificate (TCC) in the total amount of ₱31,773,256.85, representing Value-Added Tax (VAT) allegedly erroneously paid during the period from July 1, 2020 to December 31, 2020 on NHPI's importation of prescription drugs and medicines for diabetes and hypertension.

PARTIES

Petitioner is a domestic corporation duly established under the laws of the Philippines with address at 5th – 6th Floor, Ayala North Exchange Tower 1, Ayala Avenue, cor. Salcedo and Amorsolo Streets, Makati City. It is duly registered with the Securities and Exchange Commission (SEC)[2] and primarily engaged in the business of, among others, manufacturing, developing, processing, importing, exporting, buying, selling, distributing, transporting, and promoting pharmaceutical drugs and medicines.[3] It is also duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.[4]

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[1] Docket – Vol. I, pp. 6-36, with Annexes.
[2] *Pre-Trial Order* dated April 13, 2023, Docket – Vol. I, pp. 198-199.
[3] Exhibit "P-1", Docket – Vol. II, p. 798.
[4] Exhibit "P-4", Docket – Vol. II, p. 834.

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Respondent is the chief of the BIR, the government agency charged with the assessment and collection of all internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines connected therewith, subject to the exclusive appellate jurisdiction of this Court.[5]

ANTECEDENTS

On January 1, 2018, Republic Act (RA) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, took effect, amending certain sections of the National Internal Revenue Code of 1997[6] (Tax Code), including Section 109 thereof. Under Section 109 of the Tax Code, as amended by the TRAIN Law, the sale of drugs and medicines prescribed for diabetes, high cholesterol, and hypertension were exempt from VAT beginning January 1, 2019.

Section 109 of the Tax Code was further amended by RA No. 11467[7] which declared the importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension as likewise exempt from VAT beginning January 1, 2020. The said RA also required the Department of Health (DOH) to issue a list of approved drugs and medicines qualified for VAT exemption.

On June 8, 2020, respondent issued Revenue Memorandum Circular (RMC) No. 62-20 which published the full text of the letter dated March 2, 2020 from the Food and Drug Administration (FDA), a regulatory agency under the DOH, containing the list of prescription drugs and medicines for diabetes, high cholesterol and hypertension exempt from VAT pursuant to RA No. 11467. The said RMC also stated that the listed drugs and medicines were exempt from VAT beginning January 27, 2020. It was later clarified that the exemption from VAT was effective beginning January 23, 2020.[8]

On June 26, 2020, respondent issued Revenue Regulations (RR) No. 18-20[9] implementing RA No. 11467, and further amending RR No.

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[5] *Supra*, note 2.
[6] Tax Reform Act of 1997, Republic Act No. 8424, December 11, 1997.
[7] Amendments to R.A. No. 8424, Republic Act No. 11467, January 22, 2020.
[8] Revenue Memorandum Circular No. 113-20, October 14, 2020.
[9] Regulations to Implement Section 1 of Republic Act (R.A.) No. 11467, Further Amending Section 109 (AA) of the National Internal Revenue Code (Tax Code) of 1997, as Amended by Republic Act (R.A.) No. 10963 or the "TRAIN Law," Providing for Value-Added Tax (VAT) Exemption on the Sales and Importation of Drugs and Medicines Prescribed for Diabetes, High Cholesterol, Hypertension, Cancer, Mental Illness, Tuberculosis, and Kidney Diseases.

16-05,[10] as amended by RR No. 13-18.[11] He also issued Revenue Memorandum Order (RMO) Nos. 23-20[12] and 36-20[13] providing more guidelines for the implementation of RA No. 11467.

During the period from July 1, 2020 to December 31, 2020 (subject period), petitioner imported certain prescription drugs and medicines from foreign suppliers, Novartis Pharma AG and Novartis Saglik Gida Ve Tarim, to be sold in the Philippine retail market. To allow the release of the imported products from the Bureau of Customs (BOC), petitioner paid VAT on the said importations.

On April 8, 2022, petitioner filed with the BIR an application for refund or issuance of a TCC claiming the total amount of ₱31,773,256.85, representing the alleged erroneous payment of VAT on the importation of prescription drugs and medicines for diabetes and hypertension during the subject period, pursuant to Sections 109, 204(c) and 229 of the Tax Code, as amended.[14]

Due to the inaction of respondent on the said application, petitioner filed the instant *Petition for Review* on June 27, 2022.

PROCEEDINGS BEFORE THE COURT

After summons[15] was issued, and after being granted[16] an extension of time upon motion[17], respondent filed his *Answer*.[18] Subsequently, respondent filed a *Compliance*[19] transmitting the BIR Records of this case.

Respondent filed his *Pre-trial Brief*[20] on February 15, 2023, while petitioner filed its *Pre-trial Brief*[21] on February 20, 2023. The

[10] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.
[11] Regulations Implementing the VAT Provisions under the RA No. 10963, Further Amending RR No. 16-2005, as Amended, March 15, 2018.
[12] Issuance of an Authority to Release Imported Goods for Value-Added Tax Exemption on the Sales and Importation of Prescription Drugs and Medicines Pursuant to Section 1 of Republic Act No. 11467, Further Amending Section 109 (AA) of the National Internal Revenue Code of 1997, as amended, and as Implemented in Revenue Regulations No. 18-2020, July 9, 2020.
[13] Providing Guidelines and Procedures in Refund of Erroneously Paid VAT on Imported Drugs Prescribed for Diabetes, High Cholesterol, and Hypertension as Implemented Under RR No. 18-2020, October 15, 2020.
[14] Exhibit "P-151", BIR Records, p. 4.
[15] Docket – Vol. I, p. 102.
[16] Docket – Vol. I, p. 110
[17] Docket – Vol. I, pp. 104-107.
[18] Docket – Vol. I, pp. 111 to 116.
[19] Docket – Vol. I, pp. 120-122.
[20] Docket – Vol. I, pp. 125 to 128.
[21] Docket – Vol. I, pp. 130 to 157.

Pre-Trial Conference was then held on February 22, 2023,[22] and the parties submitted their *Joint Stipulation of Facts and Issues*[23] on March 24, 2023, which was approved in a *Resolution*[24] dated March 31, 2023. The *Pre-Trial Order*[25] was issued on April 13, 2023.

During the hearing held on May 11, 2023 for petitioner's *Motion to Commission an Independent Certified Public Accountant* (ICPA), counsels for both parties appeared. Petitioner presented the ICPA, Mr. Enrico T. Pizzaro. Finding merit in petitioner's *Motion*, the same was granted. Mr. Pizzaro proceeded to take his oath and was ordered by the Court to submit his ICPA report within thirty (30) days from the said hearing.[26] On June 13, 2023, Mr. Pizzaro submitted his ICPA Report.[27]

Trial ensued. Prior to the presentation of petitioner's evidence, petitioner filed on July 7, 2023 a *Motion to Set Additional Commissioner's Hearing*[28] and *Motion to Postpone Presentation of Dr. Giovell Barangan as Petitioner's Witness*,[29] both of which the Court noted and granted in the Order dated July 12, 2023.[30] Accordingly, the Court set the additional Commissioner's Hearing on July 26, 2023, and ordered petitioner to submit a Motion and Manifestation as regards the name of the substitute witness and the Judicial Affidavit of the same within five (5) days before the scheduled hearing on August 2, 2023. Thereafter, petitioner presented its first witness, Ms. Sheena Marie Jurilla, whose direct testimony was by way of *Judicial Affidavit* executed on June 24, 2022.

On July 13, 2023, petitioner filed its *Submission (With attached Judicial Affidavit of Enrico T. Pizzaro)*,[31] while on July 27, 2023, petitioner filed its *Motion to Substitute Witness with Motion to Admit Judicial Affidavit of Sheila T. Lim, M.D*,[32] which the Court granted.

During the hearing held on August 2, 2023 for the continuation of the presentation of its evidence, petitioner presented its second witness, Mr. Pizarro, whose direct testimony was by way of *Judicial Affidavit* executed on July 13, 2023. Petitioner also presented Dr.

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[22] Docket – Vol. I, pp. 161 to 163.
[23] Docket – Vol. I, pp. 185 to 194.
[24] Docket – Vol. I, p. 196.
[25] Docket – Vol. I, pp. 198 to 206.
[26] Docket – Vol. I, pp. 209-210.
[27] Docket – Vol. I, pp. 213-246.
[28] Docket– Vol. I, pp. 248 to 254.
[29] Docket– Vol. I, pp. 255 to 262.
[30] Docket– Vol. I, pp. 266-267.
[31] Docket – Vol. I, pp. 269-326.
[32] Docket – Vol. I, pp. 333-341.

Sheila T. Lim whose direct testimony was by way of *Judicial Affidavit* executed July 27, 2023. The Court then granted a Commissioner's Hearing on August 10, 2023 and August 15, 2023 for the marking of petitioner's documentary evidence, and ordered the petitioner to file its *Formal Offer of Evidence* (FOE) within fifteen (15) days from the last Commissioner's Hearing. The Court likewise noted respondent's manifestation that it would include in its comment to petitioner's FOE a manifestation whether it will present evidence for the instant case.[33]

On August 30, 2023, petitioner filed its *Formal Offer of Evidence with Motion to Set Additional Commissioner's Hearing*.[34] In a *Resolution*[35] dated September 6, 2023, the Court noted petitioner's FOE and granted petitioner's *Motion*. The Court set the Commissioner's Hearing on September 14, 2023 and ordered petitioner to submit its Supplemental Formal Offer of Evidence within five (5) days from the said Commissioner's Hearing.

On September 15, 2023, petitioner filed its *Supplemental Formal Offer of* Evidence.[36] While respondent filed his *Comment (on Petitioner's Formal Offer of Evidence) with Manifestation*[37] on September 21, 2023, he failed to file his comment on petitioner's supplemental FOE.[38]

In the *Resolution* dated June 8, 2020,[39] the Court resolved petitioner's FOE and Supplemental FOE, admitting most of petitioner's exhibits but denying admission of two (2) exhibits. The Court also noted that considering respondent's manifestation that he will no longer present a witness, the parties were given a period of thirty (30) days from notice to file their respective memoranda.

Petitioner filed its *Memorandum* on February 7, 2024,[40] while respondent filed his *Memorandum* on February 12, 2024.[41]

The case was submitted for decision on February 19, 2024.[42]

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[33] Docket – Vol. I, p. 641.
[34] Docket – Vol. II, pp. 660-704.
[35] Docket – Vol. III, pp. 1342.
[36] Docket – Vol. III, pp. 1357.
[37] Docket – Vol. III, pp. 1442.
[38] Docket – Vol. III, pp. 1447.
[39] Docket – Vol. III, pp. 1450-1455.
[40] Docket – Vol. III, pp. 1456-1462.
[41] Docket – Vol. III, pp. 1465-1506.
[42] Docket – Vol. III, p. 1508.

ISSUE

The sole issue to be resolved by this Court is whether petitioner is entitled to a refund or tax credit in the alleged total amount of ₱31,773,256.85, allegedly representing VAT erroneously paid during the period from July 1, 2020 to December 31, 2020 on petitioner's importation of prescription drugs and medicines for diabetes and hypertension.[43]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner argues that Sections 204(c) and 229 of the Tax Code, as amended, authorizes the refund or credit of taxes erroneously received or collected.[44] Relative thereto, petitioner alleges that it has satisfied all the requisites to be entitled to a refund of erroneously or illegally collected tax.[45]

First, petitioner avers that both its administrative and judicial claims for refund or tax credit were timely filed. It claims that the first date of erroneous payment was on July 13, 2020, and the last date of erroneous payment was on December 22, 2020. As it filed its administrative refund claim on April 8, 2022 and the instant *Petition for Review* on June 24, 2022, both claims were filed within the two-year prescriptive period under Section 229 of the Tax Code.[46]

Second, petitioner contends that the importations of prescription drugs and medicines for diabetes and hypertension, are exempt from VAT starting January 1, 2020, pursuant to Section 109(AA) of the Tax Code, as amended by Section 12 of RA No. 11467, and as implemented by RR No. 18-2020.[47]

In relation thereto, petitioner argues that based on the said provisions, in order for importations of prescription drugs and medicines to be exempt from VAT, the prescription drugs and medicines have to be for the treatment of diabetes and hypertension, and the importations of such drugs and medicines have to occur from

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[43] *Supra*, note 2.
[44] Petitioner's *Memorandum* dated February 12, 2024, Docket – Vol. III, pp. 1479.
[45] *Id.*, pp. 1480-1481.
[46] *Id.*, p. 1485.
[47] *Supra*, note 43, pp. 1486-1487.

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January 1, 2020 onwards. In this case, petitioner maintains that it met both criteria.

Petitioner explains that during the subject period, it imported the following prescription drugs and medicines:[48]

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	
		320/25MG Film-Coated Tablet	
		80/12.5MG Film-Coated Tablet	
DIOVAN	Valsartan	160MG Film-Coated Tablet	Hypertension
		320MG Film-Coated Tablet	
		80MG Film-Coated Tablet	
EXFORGE	Amlodipine + Valsartan	10/160MG Film-Coated Tablet	Hypertension
		5/160MG Film-Coated Tablet	
		5/80MG Film-Coated Tablet	
EXFORGE HCT	Amlodipine + Valsartan + Hydrochlorothiazide	10/160/12.5MG Film-Coated Tablet	Hypertension
		10/160/25MG Film-Coated Tablet	
		10/320/25MG Film-Coated Tablet	
		5/160/12.5MG Film-Coated Tablet	
		5/160/25MG Film-Coated Tablet	
GALVUSMET	Vildagliptin + Metformin Hydrochloride	50/1000MG Film-Coated Tablet	Diabetes
		50/500MG Film-Coated Tablet	
		50/850MG Film-Coated Tablet	
GALVUS	Vildagliptin	500MG Tablet	Diabetes
PROGLIN	Vildagliptin	50MG Tablet	Diabetes
PROGLINMET	Vildagliptin + Metformin Hydrochloride	50/1000 MG Film-Coated Tablet	Diabetes
		50/500MG Film-Coated Tablet	
		50/851MG Film-Coated Tablet	

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[48] *Id.*, 1488-1489.

Petitioner alleges that the above-mentioned prescription drugs and medicines are intended for the treatment of diabetes and hypertension and are included in the list of VAT-exempt prescription drugs and medicines issued by the FDA. Moreover, the brand name and generic names of the said drugs and medicines are indicated in the Certificates of Product Registration (CPR) issued by the FDA.[49]

Petitioner further alleges that all the importations subject of the instant refund claim were made after January 1, 2020, as can be observed from the Single Administrative Document (SAD).[50] Petitioner explains that the commercial invoice indicates the drugs that petitioner purchased from its foreign suppliers; the SAD confirms the actual items received from the said suppliers via shipping and contains the declared value of the medicines shipped; and the Statement of Settlement of Duties and Taxes (SSDT) confirms whether the taxes and duties for the medicines indicated in the SAD were duly paid or not.[51]

Petitioner adds that such VAT erroneously paid were not utilized by petitioner as input VAT.[52]

As such, petitioner submits that the VAT it paid during the period from July 1, 2020 to December 31, 2020 on its importations of prescription drugs and medicines for diabetes and hypertension, were erroneously paid and should, thus, qualify for refund or tax credit.[53]

Respondent's counter-arguments

Respondent counters that taxes paid and collected are presumed to have been made in accordance with the law and implementing regulations. Moreover, tax refunds are in the nature of tax exemptions which are construed *stictissimi juris* against the taxpayer claiming the exemption. Thus, the burden of proof is upon petitioner to prove that it is entitled to the claim for refund,[54] and the pieces of evidence presented must also be duly proven. Here, respondent contends that petitioner's claim for refund or tax credit was not duly substantiated with proper documentary evidence.[55]

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[49] *Supra*, note 43, p. 1489.
[50] *Id.*, p. 1490.
[51] *Id.*, p. 1494.
[52] *Id.*, p. 1495.
[53] *Id.*, p. 1500.
[54] Respondent's *Memorandum* dated February 7, 2024, Docket – Vol. III, p. 1458.
[55] *Id., p.* 1459.

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Respondent maintains that the supporting documents petitioner attached to the instant *Petition for Review* do not state or even make mention that its VAT payments actually pertain to its importations of drugs qualified for the VAT exemption under Section 109 of the Tax Code, as amended, in relation to RMC No. 62-20.[56]

Respondent argues that without the actual connection between the alleged erroneous payment of VAT on VAT-exempt drugs and the actual VAT payment, it cannot be expected to make a refund of the same. It is petitioner who has to prove that its VAT payments made are for the drugs which should be exempt from VAT. In this case, respondent submits that petitioner failed to do this.[57]

Respondent further submits that as petitioner failed to identify in its supporting documents the specific drugs it imported, there is no proof that the drugs imported are qualified for the VAT exemption.[58]

RULING OF THE COURT

After a careful review of the parties' respective arguments and evidence, We rule to **grant** the instant *Petition for Review*.

Governing provisions for refund claims.

Sections 204(C) and 229 of the Tax Code, as amended, read:

> 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

[56] *Supra*, note 54, p. 1459-1460.
[57] *Id.*, p. 1460.
[58] *Id.*

> overpayment shall be considered as a written claim for credit or refund. *(Emphasis added)*
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> 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. *(Emphasis added)*

Based on the above-cited provisions, erroneously or illegally collected taxes may be credited or refunded provided that: **(1)** the taxpayer files an administrative claim for refund with respondent within two (2) years after the payment of the tax; **(2)** the filing of a judicial claim for refund is preceded by the filing of an administrative claim for refund; and **(3)** the filing of a judicial claim for refund is also made within two (2) years after the payment of the tax.

To be sure, both the administrative and judicial claims must be filed within the two (2)-year reglementary period. Timeliness in the filing of both claims is mandatory and jurisdictional, and the Court cannot take cognizance of a judicial claim filed either prematurely or out of time.[59]

Moreover, 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 in some other similar aspect is illegal.[60] In other words, what can be credited or refunded is a tax that was erroneously, illegally, excessively

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[59] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[60] *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.

or in any manner wrongfully collected, because what was paid, or part of it, was not legally due.[61]

Thus, for the present judicial claim for refund to prosper, petitioner must not only establish that it timely filed both refund claims, but it must also prove that the subject VAT paid was erroneous, illegal, excessive or wrongful.

Petitioner timely filed its administrative and judicial refund claims.

Petitioner's refund claim is for VAT paid during the period from July 1, 2020 to December 31, 2020.[62] Counting from the earliest payment made on July 13, 2020,[63] petitioner had until July 13, 2022 to file its administrative and judicial refund claims.

Since petitioner's *Application for Tax Credits/Refunds* (BIR Form No. 1914)[64] and letter request for refund[65] dated April 7, 2022, was filed with the BIR - Excise Large Taxpayer Audit Division on April 8, 2022, and as the instant *Petition for Review* was filed with the Court on June 27, 2022,[66] both claims were timely filed.

The importations of prescription drugs and medicines for diabetes and hypertension from July 01, 2020 to December 31, 2020 are exempt from VAT; hence, the VAT paid on the said importations were erroneous.

Section 109(1)(AA)(i) of the Tax Code, as amended by the TRAIN Law and RA No. 11467, provides that the importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension, shall be exempt from VAT, to wit:

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[61] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[62] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. 1, pp. 186 to 187.
[63] Petitioner's *Memorandum*, par. 12, Docket – Vol. 3, pp. 1471 to 1474; Exhibits "P-153" "P-282-C.1", SSDT, USB.
[64] Exhibit "P-152", BIR Records, p. 5.
[65] Exhibit "P-151", BIR Records, p. 4.
[66] *Petition for Review*, Docket – Vo. I, pp. 6 to 34.

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

It can be gleaned from the foregoing that the importation of prescription drugs and medicines shall be exempt from VAT, provided the following conditions concur:

(a) the imported prescription drugs and medicines must be for the treatment of diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, and kidney diseases;

(b) the importation must have occurred on or after January 1, 2020, for prescription drugs and medicines for diabetes, high cholesterol, and hypertension; and on or after January 1, 2023, for prescription drugs and medicines for cancer, mental illness, tuberculosis, and kidney diseases; and

(c) the imported prescription drug or medicine must be approved by the DOH for purposes of VAT exemption under Section 109(1)(AA)(i) of the Tax Code, as amended by the TRAIN Law and RA No. 11467.

In relation to the third condition, the FDA under the DOH issued a letter dated March 2, 2020[67] signed by then Undersecretary of Health and Officer-In-Charge (OIC) Director General of the FDA, Rolando Enrique D. Domingo, addressed to then Undersecretary of the Department of Finance, Karl Kendrick T. Chua, through then Commissioner of the BIR, Cesar R. Dulay, and then Commissioner of

[67] Exhibit "P-223-1", Docket – Vol. 3, pp. 1419-1437.

the BOC, Rey Leonardo B. Guerrero, and copy furnished then Secretary of the Department of Trade and Industry (DTI), Ramon M. Lopez. In the said letter, the FDA endorsed and attached thereto a list of prescription drugs and medicines for diabetes, high cholesterol, and hypertension, approved for VAT exemption under RA No. 11467. An addendum to the said list of VAT-exempt drugs was provided by the FDA on May 28, 2020.[68]

In this case, petitioner claims that: **(1)** it imported various prescription drugs and medicines for diabetes and hypertension; **(2)** such importations occurred within the period from July 1, 2020 to December 31, 2020; and **(3)** the imported products were subjected to VAT on importation, which petitioner paid per relevant importation from July 13, 2020 to December 22, 2020. The total VAT paid during the subject period on its importations of drugs and medicines covered by RA No. 11467, as listed in the FDA's letter dated March 2, 2020, amounted to ₱31,773,256.85.[69]

To support its claim, petitioner submitted in evidence the relevant Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations (IEIRDs) or SADs,[70] SSDTs,[71] suppliers' Invoices,[72] and the Summary of Importations,[73] which reflected VAT payments in the total amount of ₱31,773,256.86, as summarized below:

Importations	VAT Paid	Date of Payment of VAT	Receipt No. per SSDT
EXFORGE FCT 10/160MG ALU 1X7 PH	₱315,320.17	13 July 2020	R 1126201
EXFORGE FCT 5/80MG ALU 1X7 PH	424,573.90	14 July 2020	R 1128339
EXFORGE HCT FCT 10/160/12.5MG 1X7 PH	149,106.67	13 July 2020	R 1126208
GALVUS MET FCT 50/850MG 3X10 PH	360,529.30	13 July 2020	R 1126204
PROGLIN 50MG TAB 28BOX SS PH	639,028.90	13 July 2020	R 1126213
EXFORGE FCT 5/160MG ALU 1X7 PH	461,240.48	15 July 2020	R 1131250
CO-DIOVAN FCT 160/25MG 2X14 PH	31,955.62	15 July 2020	R 1131246
GALVUSMET FCT 50/500MG 3X10 PH	1,255,963.18	17 July 2020	R 1137514
GALVUSMET FCT 50/500MG 3X10 PH	1,255,884.09	17 July 2020	R 1137179
CO-DIOVAN FCT 80/12.5 2X14 PH ALU	204,898.36	21 July 2020	R 1142474
EXFORGE FCT 5/80MG ALU 1X7 PH	528,691.98	21 July 2020	R 1143572
GALVUS TAB 50MG 2X14 PH	1,100,885.55	24 July 2020	R 1149983
GALVUSMET FCT 50/1000MG 3X10 PH	654,400.61	24 July 2020	R 1149339

[68] Exhibit "P-223-2", Docket – Vol. 3, pp. 1439-1440.
[69] Petitioner's *Memorandum*, Docket – Vol. 3, pp. 1471 to 1474.
[70] Exhibits "P-282-B.1" to "P-282-B.70", USB.
[71] Exhibits "P-282-C.1" to "P-282-C.70", USB.
[72] Exhibits "P-282-A.1" to "P-282-A.76", USB.
[73] Exhibit "P-282", USB.

DIOVAN FCT 80MG 2X14	503,249.39	24 July 2020	R 1150496
EXFORGE FCT 10/160MG ALU 1X7 PH	527,871.85	24 July 2020	R 1150498
EXFORGE HCT FCT 10/160/12.5MG 1X7 PH	98,588.66	24 July 2020	R 1150499
PROGLINMET 50/500 MG TAB 30 BOX SS PH	970,335.05	28 July 2020	R 1155899
PROGLINMET 50/850 MG TAB 30 BOX SS PH	333,851.71	28 July 2020	R 1156238
GALVUS MET FCT 50/850MG 3X10PH	367,266.57	28 July 2020	R 1155810
EXFORGE HCT FCT 5/160/25MG 1X7 PH	29,300.22	28 July 2020	R 1155809
PROGLINMET 50/1000 MG TAB 30 BOX SS PH	630,751.07	30 July 2020	R 1159764
PROGLINMET 50/1000 MG TAB 30 BOX SS PH	643,296.25	30 July 2020	R 1159803
EXFORGE HCT FCT 5/160/12.5MG 1X7 PH	211,870.39	4 August 2020	R 1167076
DIOVAN FCT 160MG 2X14	731,793.35	12 August 2020	R 1182281
EXFORGE HCT FCT 10/320/25MG ALU 1X7 PH	118,738.14	12 August 2020	R 1183167
PROGLIN 50MG TAB 28BOX SS PH	672,961.30	12 August 2020	R 1182285
EXFORGE HCT FCT 10/160/25MG 1X7 PH	62,878.98	11 August 2020	R 1181010
PROGLINMET 50/1000MG TAB 30 BOX SS P8	639,880.17	27 August 2020	R 1209907
GALVUMET FCT 50/1000MG 3X10 PH	613,519.07	26 August 2020	R 1207781
PROGLINMET 50/1000MG TAB 30 BOX SS P8	607,362.66	17 September 2020	R 1250668
GALVUMET FCT 50/1000MG 3X10 PH	300,141.94	18 September 2020	R 1253373
GALVUMET FCT 50/1000MG 3X10 PH	318,193.77	17 September 2020	R 1250667
PROGLINMET 50/1000MG TAB 30 BOX SS P8	584,141.53	17 September 2020	R 1250666
CO-DIOVAN FCT 160/12.5MG 2X14 ALU PH; CO-DIOVAN FCT 160/12.5MG 2X14 ALU PH	318,713.28	22 September 2020	R 1259419
CO-DIOVAN FCT 320/12.5MG 1X7 PHS; CO-DIOVAN FCT 320/12.5MG 1X7 PHS; CO-DIOVAN FCT 160/25MG 2X14 PH	71,526.91	22 September 2020	R 1260535
GALVUMET FCT 50/500MG 3X10 PH	1,216,489.26	29 September 2020	R 1272979
GALVUS MET FCT 50/850MG 3X10P PH	347,538.66	30 September 2020	R 1275182
PROGLINMET 50/500 MG TAB 30 BOX SS PH	905,559.94	29 September 2020	R 1272977
PROGLINMET 50/850 MG TAB 30 BOX SS PH	337,781.97	29 September 2020	R 1272392
EXFORGE FCT 5/160MG ALU 1X7 PH	941,348.19	29 September 2020	R 1272498
GALVUMET FCT 50/500MG 3X10 PH	1,088,570.10	6 October 2020	R 1286189
EXFORGE FCT 10/160MG ALU 1X7 PH	309,475.01	8 October 2020	R 1290778
CO-DIOVAN FCT 160/25MG 2X14 PH	77,326.42	7 October 2020	R 1288158
DIOVAN FCT 80MG 2X14	494,943.96	13 October 2020	R 1299367
GALVUS MET FCT 50/850MG 3X10 PH	337,370.06	13 October 2020	R 1299366
EFORGE FCT 5/80MG ALU 1X7 PH	414,288.73	26 October 2020	R 1325046
DIOVAN FCT 160MG 2X14	270,515.76	26 October 2020	R 1333150
GALVUMET FCT 50/1000MG 3X10 PH	547,537.57	3 November 2020	R 1341319

PROGLINMET 50/1000MG TAB 30 BOX SS P8	555,115.40	3 November 2020	R 1341317
GALVUMET FCT 50/1000MG 3X10 PH	387,806.24	3 November 2020	R 1341315
PROGLINMET 50/850 MG TAB 30 BOX SS PH	324,931.60	3 November 2020	R 1341311
CO-DIOVAN FCT 160/12.5MG 2X14 ALU PH	166,751.04	9 November 2020	R 1353231
GALVUS MET FCT 50/850MG 3X10 PH	210,877.84	9 November 2020	R 1354375
DIOVAN FCT 160MG 2X14; CO-DIOVAN FCT 160/25MG 2X14 PH	362,533.69	17 November 2020	R 1370870
PROGLINMET 50/500 MG TAB 30 BOX SS PH	1,152,572.15	23 November 2020	R 1382554
EXFORGE HCT FCT 5/160/12.5MG 1X7 PH	28,602.74	25 November 2020	R 1387198
CO-DIOVAN FCT 320/25MG 1X7 PHS	34,395.24	25 November 2020	R 1387198
GALVUMET FCT 50/1000MG 3X10 PH	754,311.98	27 November 2020	R 1392981
CO-DIOVAN FCT 320/12.5,G 1X7 PHS	33,830.24	2 December 2020	R 1401590
EXFORGE HCT FCT 10/160/12.5MG 1X7 PH	391,766.32	2 December 2020	R 1401409
EXFORGE HCT FCT 5/160/12.5MG 1X7 PH	184,394.83	2 December 2020	R 1402322
GALVUS MET FCT 50/850MG 3X10 PH	302,610.45	4 December 2020	R 1405880
EXFORGE FCT 5/160MG ALU 1X7 PH	473,691.48	7 December 2020	R 1411650
EXFORGE HCT FCT 10/160/25MG 1X7 PH	61,701.88	7 December 2020	R 1411649
EXFORGE HCT FCT 10/320/25MG ALU 1X7 PH	194,224.09	9 December 2020	R 1416715
PROGLINMET 50/1000MG TAB 30 BOX SS P8	564,677.80	10 December 2020	R 1418838
CO-DIOVAN FCT 160/12.5MG 2X14 ALU PH; DIOVAN FCT 160MG 2X14	423,389.84	15 December 2020	R 1429655
DIOVAN FCT 160MG 2X14	421,635.93	15 December 2020	R 1429670
DIOVAN FCT 320MG ALU 4X7 PH_1	348,782.53	21 December 2020	R 1441845
EXFORGE FCT 10/160MG ALU 1X7 PH	367,196.83	22 December 2020	R 1445199
TOTAL VAT ERRONEOUSLY PAID DURING THE PERIOD 1 JULY 2020 TO 31 DECEMBER 2020	**31,773,256.84**[74]		

On the other hand, respondent maintains that petitioner's supporting documents do not state that the subject VAT payments actually pertain to petitioner's importations of drugs and medicines qualified for VAT exemption.[75]

We rule for petitioner.

Petitioner presented, among others, Dr. Lim, a licensed physician and its Medical Manager, CV (Cardiovascular) 2 Department. In her direct testimony, Dr. Lim stated that part of her

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[74] Rounding Off Difference of 0.02.
[75] *Supra*, note 54, p. 1459-1460.

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functions as Medical Manager is to determine the nature of the drugs and medicines imported by petitioner, particularly their generic names and the diseases they treat.[76] She summarized the brand names and the corresponding generic names of the drugs and medicines imported by petitioner, and gave brief descriptions of the same.[77] It appears from such descriptions that the said imported drugs and medicines are indeed for the treatment of either diabetes or hypertension.

Dr. Lim also stated that the brand names and the corresponding generic names of the imported drugs and medicines are indicated in their respective CPRs issued by the FDA.[78] She stated that a comparison of the generic names of the imported drugs and medicines, with those included in the lists of VAT-exempt drugs issued by the DOH, would show that the former are covered by the latter. Thus, Dr. Lim stated that by looking at the brand names and the corresponding generic names of the imported drugs and medicines, as well as their active ingredients, it can be concluded that the said drugs and medicines are among the prescription drugs and medicines for diabetes and hypertension included in the lists of VAT-exempt drugs issued by the DOH.[79]

The ICPA likewise confirmed in his direct testimony that the prescription drugs and medicines that were imported by petitioner are for the treatment of diabetes and hypertension.[80] On cross-examination, the ICPA admitted that the importation documents do not directly contain information on whether the imported drugs and medicines are for the treatment of diabetes and hypertension.[81] However, on re-direct examination, the ICPA clarified that the CPRs issued by the FDA indicated therein the brand names and the corresponding generic names of the imported drugs and medicines, identified to be the prescription drugs for diabetes and hypertension.[82]

It bears noting that respondent did not present any evidence that contradicts or supplants petitioner's evidence in support of its claim.

In view thereof, the Court finds petitioner to have sufficiently established by a preponderance of evidence that the prescription drugs and medicines it imported during the subject period for which the

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[76] Exhibit "P-350", *Judicial Affidavit* dated July 27, 2023, Docket – Vol. I, pp. 349-350.
[77] *Id.*, pp. 353-355.
[78] *Id.*, p. 355.
[79] *Id.*, pp. 357-360.
[80] Exhibit "P-351", *Judicial Affidavit* dated July 13, 2023, Docket – Vol. I, p. 299-309.
[81] *Transcript of Stenographic Notes* (TSN), August 2, 2023, p. 15.
[82] *Id.*, p. 18.

subject VAT were paid, are for the treatment of diabetes and hypertension, were imported on or after January 1, 2020, and are included in the lists of VAT-exempt drugs as approved by the DOH through the FDA.

Having proved the existence of all the conditions required under Section 109(1)(AA)(i) of the Tax Code, as amended, for VAT-exemption, petitioner has likewise proved that the VAT it paid on the subject importations were indeed erroneous.

However, with regard to the amount of VAT erroneously paid, upon further scrutiny of the submitted documents, there appears to be instances where the claimed amount exceeded the payment reflected per SAD/SSDT or vice-versa. In line with the time-honored principle that tax refunds, just like tax exemptions, are strictly construed against the taxpayer,[83] the Court shall consider only the lesser of the two (2) amounts.

Accordingly, petitioner's claim for refund of ₱31,773,256.86, requires a downward adjustment in the amount of ₱18,993.36, broken down as follows:

Invoice No.	Exhibit No.	IEIRD/SAD No.	Exhibit No.	SSDT/BOC No.	Exhibit No.	Item Description	VAT Per Claim	VAT Per SAD/SSDT	Difference
2001598846	"P-282-A.56"	1071260	"P-282-B.52"	R 1353231	"P-282-C.52"	Co-Diovan FCT 160/12.5MG	166,751.04	164,444.97	2,306.07
2001604152	"P-282-A.61"	1078358	"P-282-B.56"	R 1387198	"P-282-C.56"	Exforge HCT FCT 5/160/12.5MG	28,602.74	26,370.59	2,232.15
2001604155	"P-282-A.62"	1078358	"P-282-B.57"	R 1387198	"P-282-C.57"	Co-Diovan FCT 320/25MG	34,395.24	32,242.44	2,152.80
2001605499	"P-282-A.64"	1081212	"P-282-B.59"	R 1401590	"P-282-C.59"	Co-Diovan FCT 320/12.5MG	33,830.24	29,837.43	3,992.81
2001605505	"P-282-A.66"	1081231	"P-282-B.61"	R 1402322	"P-282-C.61"	Exforge HCT FCT 5/160/12.5MG	184,394.83	177,521.75	6,873.08
2001606973	"P-282-A.69"	1083128	"P-282-B.64"	R 1411649	"P-282-C.64"	Exforge HCT FCT 10/160/25MG	61,701.88	60,265.43	1,436.45
								TOTAL	18,993.36

Verily, the amount of ₱31,754,263.49, as computed below, constitutes the properly substantiated VAT on importation by petitioner of prescription drugs and medicines for diabetes and hypertension, *viz.*:

Amount of VAT Claim	₱ 31,773,256.85
Less: Overstatement of Claim	18,993.36
Substantiated Input VAT	**₱ 31,754,263.49**

[83] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

In sum, considering that petitioner timely filed its administrative and judicial refund claims, and that the VAT paid on its importations of prescription drugs and medicines during the subject period, to the extent of **₱31,754,263.49**, were indeed erroneous, by virtue of Section 109(1)(AA)(i) of the Tax Code, as amended, petitioner is entitled to the refund of the said amount.

WHEREFORE, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND** to petitioner the amount of **₱31,754,263.49**, representing the erroneously paid VAT on its importation of prescription drugs and medicines for diabetes and hypertension from the period of July 1, 2020 to December 31, 2020.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

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

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice
Third Division 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice