REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

VMC FARMERS MULTI-PURPOSE COOPERATIVE,
Respondent.

CTA *EB* NO. 1253
(CTA Case No. 8658)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
***Cotangco-Manalastas,** and*
Ringpis-Liban, JJ.

Promulgated:

MAR 03 2016 1:30 pm

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DECISION

BAUTISTA, J:

The Case

This is a Petition for Review under *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("CTA")*[1] seeking the nullification of the Decision promulgated on September 10, 2014 and

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[1] *Rules of Court,* Rule 42, sec. 1a.

SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

the Resolution promulgated on November 13, 2014 by the Second Division of the CTA ("Second Division") in the case of "*Victorias Milling Company Farmers Multi-Purpose Cooperative v. Commissioner of Internal Revenue*" docketed as CTA Case No. 8658, involving the refund of advance Value-added Tax ("VAT") erroneously or illegally collected by Bureau of Internal Revenue ("BIR") Region 12-Bacolod City in the amount of Nine Million Five Hundred Thirty Seven Thousand Three Hundred Six Pesos (Php9,537,306.00).[2]

The Parties[3]

Petitioner Victorias Milling Company Farmers Multi-Purpose Cooperative is a multi-purpose agricultural cooperative duly organized in accordance with Philippine laws, with principal address at Hilado Ext., Bacolod City, Philippines. It is registered with the Cooperative Development Authority ("CDA"), as evidenced by its Certificate of Registration dated January 13, 2010. Petitioner was also granted a Certificate of Good Standing by the CDA dated April 15, 2011.

Respondent Commissioner of Internal Revenue ("CIR") is sued in her official capacity as the head of the BIR, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit, as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.

The Facts

As stated in the Decision[4] dated September 10, 2014, the factual antecedents of this case are as follows:[5]

> Petitioner alleged that from May 31, 2011 to April 16, 2012, the BIR Regional Director of Region 12-Bacolod City refused to issue a Certificate Authorizing Release of Refined Sugars (CARRS) because petitioner failed to secure a new Certificate of Tax Exemption. Subsequently, petitioner was able

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[2] *Records, CTA Case No. 8658*, p. 372.
[3] *Id.*, pp. 372-373.
[4] *Id.*, pp. 372-384; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Contangco-Manalastas concurring.
[5] Petitioner refers to the present respondent and *vice versā.*

to secure a new Certificate of Tax Exemption from the BIR on November 16, 2011, as a cooperative transacting with members only. However, despite obtaining a new Certificate of Tax Exemption, the BIR refused to issue CARRS without petitioner paying advance VAT.

Due to the refusal of the BIR to issue CARRS in favor of petitioner, the latter paid the advance VAT under protest on 93,503 Lkg bags of refined sugar in the amount of ₱9,537,306.00.

As a result, petitioner filed before the BIR a claim for refund on July 23, 2012, alleging that it is exempted from payment of VAT as per Section 109(L) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Articles 60 and 61 of Republic Act (RA) No. 9520, otherwise known as the Cooperative Code of the Philippines of 2008.

Without waiting for the expiration of the two (2)-year prescriptive period for the recovery of tax erroneously or illegally collected provided under Section 229 of the NIRC of 1997, as amended, petitioner filed the instant Petition for Review before this Court on May 29, 2013.

In her Answer filed on September 2, 2013, respondent argued, among others, that petitioner must prove that its case falls within the provisions of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of Republic Act No. 9520 ("Joint Rules and Regulations" for brevity), particularly, Sections 8, 12 and 13 thereof, which provide:

> SECTION 8. *Taxability/Exemption of Duly Registered Cooperatives Which Transact Business with Members and Non-Members.* –
>
> a) Cooperatives with accumulated reserves and undivided net savings of not more than Ten Million (Php10,000,000.00) – Exemption from all national internal revenue taxes for which these cooperatives are liable as enumerated under Section 7 of this Joint Rules and Regulations.
>
> b) Cooperatives with accumulated reserves and undivided net savings of more than Ten Million Pesos (Php10,000,000.00).
>
> b.1) Business transactions with members - Business activities engaged in by such cooperatives with its members where said

cooperative generates revenues shall be exempt from all national internal revenue taxes for which it is liable as enumerated in Section 7 of this Joint Rules and Regulations;

b.2) Business transactions with non-members - Cooperatives with accumulated reserves and undivided net savings of more than Php10,000,000.00 which transact with non-members shall:

b.2.1) Pay the following taxes at the full rate:

xxx xxx xxx

b.2.1.2) Value Added Tax (VAT) - On transactions with nonmembers: Provided, however, That cooperatives, pursuant to Section 109, par. (L), (M) and (N) of the NIRC, as amended by RA 9337, shall be exempt from the imposition of VAT, namely the following:

i. Sales by agricultural cooperatives duly registered and in good standing with the CDA to their members, as well as sale of their produce, whether in its original state or processed form, to nonmembers, their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce (Sec. 109 (1) (L) of the NIRC, as amended).

Provided, further, That the exempt transactions pursuant to the above shall include sales made by a duly registered agricultural cooperative organized and operated by its members to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by said cooperative to its members and non-members: *Provided, finally,* That any processed product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative, shall be deemed the product of the cooperative.

Sale by agricultural cooperatives to non-members can only be exempted from VAT if the producer of the agricultural products sold is the cooperative itself. If the cooperative is not the producer (*e.g.,* trader), only those sales to its members shall be exempted from VAT.

Exempt transactions shall include sales made by a duly registered agricultural cooperative organized and operated by its members to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by said cooperative to its members and nonmembers.

Products produced/processed by non-members or production not related to the purposes for which a cooperative is created as stated in its Articles of Cooperation even if sold in the name of said cooperative shall not be considered as produced/processed by said cooperative. To illustrate, raw materials produced by the members and processed by the cooperative shall be exempt from VAT.

xxx xxx xxx

SECTION 12. *Certificate of Tax Exemption/Ruling.* - All cooperatives which were issued a new certificate of registration by the CDA in compliance to Article 144 (1) of RA 9520 and subsequent new cooperatives to be registered under the same Act shall secure their certificate of tax exemption from the BIR by way of confirmatory ruling to be issued by the Regional Director or by the Assistant Commissioner of Internal Revenue (ACIR), Legal Service, as the case may be, in accordance with the delegated authority granted to them by RDAO No. 3-2009.

xxx xxx xxx

SECTION 13. *Documents to Be Attached to the Letter Application for the Issuance of a Certificate of Tax Exemption/Ruling.* -

xxx xxx xxx

> All duly registered cooperatives under RA 9520 shall apply for a Certificate of Tax Exemption/Ruling within sixty (60) days counted from the date of issuance of certificate of registration.
>
> Exemption from taxes herein stated shall apply to the duly-registered cooperatives on the year the certificate of tax exemption/ruling was issued. However, for the initial issuance of the Certificate of Tax Exemption/Ruling under RA 9520, the effectivity of such Certificate of Tax Exemption/Ruling issued shall commence from the year RA 9520 took effect: *Provided,* That the cooperative has registered with the CDA as provided for under Article 144 of RA 9520.
>
> For applications for tax exemption not filed within the prescribed period, the late applicants shall be subjected to internal revenue taxes prior to the issuance of the Certificate of Tax Exemption/Ruling; however they can apply for tax credit/refund of taxes previously paid from the date of registration with the CDA up to the issuance of the Certificate of Tax Exemption/Ruling, subject to the rules and procedures for processing tax credit/refund. The BIR shall act on the request for tax refund of taxes previously paid within one hundred twenty (120) days from submission of the complete documents in support of the application filed.

In relation thereto, respondent asserted that since petitioner failed to prove that it has submitted complete supporting documents to warrant the grant of its application for tax refund pursuant to the afore-quoted provisions, respondent cannot act on the administrative claim for refund. Furthermore, such failure of petitioner to submit supporting documents and the subsequent filing of its claim for refund on July 23, 2012 effectively deprived respondent of the opportunity to fully exercise her function of deciding claims for refund or modifying or affirming the findings of her subordinates, tantamount to failure to exhaust administrative remedies.

During trial, petitioner presented Jose V. Ramos as its witness.

In his Judicial Affidavit, Jose V. Ramos testified that he is the present tax consultant of petitioner. Based on his findings, petitioner was granted (1) a Certificate of Registration, (2) a Certificate of Good Standing, and (3) a Certificate of Tax Exemption by relevant government agencies. Since it belatedly applied for tax exemption, it was forced to pay advance VAT. Nevertheless, Section 13 of the Joint Rules and Regulations allows petitioner to apply for tax credit or refund of the advance VAT it already paid.

Petitioner presented and formally offered Exhibits "P-1" to "P-43-A", inclusive of sub-marking, via Formal Offer of Exhibits for the Petitioner filed on December 17, 2013; which the Court admitted except for Exhibit "P-7" for being a mere photocopy and for petitioner's failure to have it identified before the Court.

On the other hand, respondent waived her right to present evidence, reasoning that the investigation in connection with petitioner's claim for refund has not been concluded.

The case was submitted for decision on May 14, 2014, considering petitioner's Memorandum filed on March 3, 2014 and respondent's Memorandum filed on May 12, 2014.

The dispositive portion[6] of the assailed September 10, 2014 Decision reads as follows:

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of Nine Million Five Hundred Thirty-Seven Thousand Three Hundred Six Pesos (₱9,537,306.00), representing erroneously paid advance VAT for the period covering May 31, 2011 to April 16, 2012.

SO ORDERED.

Not satisfied with the Decision, petitioner filed its "Motion for Reconsideration (Re: Decision Promulgated 10 September 2014)"[7] on September 26, 2014. Respondent filed its corresponding "Comment To

[6] *Records*, pp. 383-384.
[7] *Id.*, pp. 386-395.

Motion for Reconsideration (Re: DECISION Promulgated 10 September 2014)"[8] on October 20, 2014.

On November 13, 2014, the Second Division issued a Resolution[9], the dispositive portion states:

> **WHEREFORE,** premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Upon the denial, petitioner raised the instant case to the Court *En Banc* when she filed a "Petition for Review"[10] on December 18, 2014, praying that:[11]

> **WHEREFORE,** premises considered, it is most respectfully prayed of this Honorable Court that the Decision promulgated 10 September 2014 and the Resolution promulgated 13 November 2014, be set aside and another one be entered denying respondent's Petition for Review filed on 29 March 2013.
>
> Other relief just and equitable under the premises are likewise prayed for.

On March 19, 2015, respondent filed its "Comment (To Petition for Review)"[12].

On March 31, 2015, the Court promulgated a Resolution[13] submitting the case for decision, hence, this Decision.

On June 22, 2015, respondent filed its "Motion to Correct Caption," which states that Victoria Milling Company is also known for its acronym "VMC;" that it was discovered that the name, as registered in the CDA is only "VMC Farmers Multi-purpose Cooperative" and not "Victoria Milling Company Farmers Multi-

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[8] *Records*, pp. 398-404.
[9] *Id.*, pp. 407-411.
[10] *Rollo, CTA EB No. 1253*, pp. 6-42, with Annexes.
[11] *Id.*, p. 16.
[12] *Id.*, pp. 46-55.
[13] *Id.*, pp. 57-58.

purpose Cooperative" as provided in the caption; and that the correction will not affect the merits of the case. In this regard, respondent's "Motion to Correct Caption" is hereby **GRANTED**. Consequently, the caption is hereby corrected to read as "*Commissioner of Internal Revenue v. VMC Farmers Multi-purpose Cooperative.*"

The Issues

Based on the "Petition for Review"[14] filed by petitioner, the lone assigned error/issue[15] of the present case is as follows:

> **WHETHER PETITIONER IS ENTITLED TO A TAX REFUND IN THE AMOUNT OF NINE MILLION FIVE HUNDRED THIRTY-SEVEN THOUSAND THREE HUNDRED AND SIX PESOS (PHP9,537,306.00) REPRESENTING ADVANCE VAT ALLEGED TO BE ERRONEOUSLY OR ILLEGALLY COLLECTED.**

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review.

In the Decision[16] dated September 10, 2014, the Second Division unanimously ruled as follows:[17]

> **THE COURT'S RULING**
>
> In essence, the issue is whether or not petitioner is exempted from payment of VAT, thus, entitled to a tax refund.
>
> Petitioner is exempt from payment of VAT.
>
> Article 109(L) of the NIRC of 1997, as amended, and Articles 60 and 61 of RA No. 9520 provide:

[14] *Rollo*, pp. 6-42, with Annexes.
[15] *Id.*, p. 9.
[16] *Records*, pp. 372-384.
[17] *Id.*, pp. 378-384.

SEC. 109. *Exempt Transactions.* - xxx the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

(L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in the original state or processed form to non-members, their importation of direct farm inputs, machineries and equipment including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce; xxx

ART. 60. *Tax Treatment of Cooperatives.* - Duly registered cooperatives under this Code **which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws.** Cooperatives not falling under this article shall be governed by the succeeding section. *(Emphasis supplied)*

ART. 61. *Tax and Other Exemptions.* - Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including [*sic*] not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions: xxx

The pertinent portions of Sections 6 and 7 of the Joint Rules and Regulations state that:

SECTION 6. *Classification of Cooperatives According to the Extent of the Tax Exemptions Granted.* -

a) Those duly registered cooperatives which transact business with members only; and

b) Those duly registered cooperative which transact business with both members and non-members which are further sub-classified according to the following:

b.1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten Million Pesos (Php10,000,000.00); and

b.2) Cooperatives with accumulated reserves and undivided net savings of more than Ten Million Pesos (Php10,000,000.00).

SECTION 7. *Tax Exemptions of Duly Registered Cooperatives Which Transact Business with Members Only.* - Duly registered cooperatives dealing/transacting business with members only shall be exempt from paying any taxes and fees, including but not limited to:

a) Income Tax imposed by Title II of the NIRC, as amended;

b) Value-Added Tax (VAT) imposed under Title IV of the NIRC, as amended;

c) Percentage Tax imposed under Title V of the NIRC, as amended;

d) Donor's Tax imposed under Title Ill of the NIRC, as amended, on donations to duly accredited charitable research and educational institutions and reinvestment to socio-economic projects within the area of operation of the cooperatives;

e) Excise Tax under Title VI of the NIRC, as amended, for which it is directly liable;

f) Documentary Stamp Tax imposed under Title VII of the NIRC, as amended, provided, however, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax;

g) Annual Registration Fee of ₱500.00 under Section 236 (B) of the NIRC, as amended;

h) All taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% final income tax on interest income derived from a depository bank under the expanded foreign currency deposit system; and

i) Electric cooperatives duly registered with the Authority shall be exempt from VAT on revenues on systems loss and VAT on revenues on distribution, supply, metering and lifeline subsidy of electricity to their members.

From the foregoing, there are two (2) kinds of cooperatives classified according to the extent of their tax exemption: (1) those duly registered cooperatives which transact business with members only; and (2) those duly registered cooperatives which transact business with both members and non-members.

In the instant case, petitioner belongs to the category of duly registered cooperatives which transact business **with members only** as shown by its Certificate of Tax Exemption dated November 16, 2011. Hence, it is Article 60, not Article 61, of RA No. 9520 that should apply with respect to the tax-exempt status of petitioner. Applying Article 60 of RA No. 9520, petitioner shall not be subject to "taxes and fees imposed under internal revenue laws and other tax laws," including VAT.

Accordingly, it is wrong for respondent to argue that petitioner failed to submit supporting documents to be entitled to tax exemptions based on Article 61 of RA No. 9520 in relation to Section 8 of the Joint Rules and Regulations. Clearly, said provisions apply only to cooperatives which transact business **with members and non-members**. In other words, petitioner is not required to submit the documentary requirements under the aforesaid provisions of law and regulations because it does not transact with non-members of the cooperative.

Section 13 of the Joint Rules and Regulations likewise provides that petitioner can apply for tax credit/refund of taxes previously paid from the date of registration with the CDA up to the issuance of the Certificate of Tax Exemption/Ruling, subject to the rules and procedures for processing tax credit/refund.

Petitioner faithfully complied with the requirements for it to be accorded a tax-exempt status, specifically, from payment of VAT, by presenting the following documents: (1) Certificate of Registration with the CDA; (2) Certificate of Good Standing issued by the CDA; and (3) Certificate of Tax Exemption issued by the BIR. Since petitioner is exempted from paying taxes, including VAT, petitioner may then apply for tax credit/refund of the advance VAT it already paid.

The Court shall now decide whether the Petition for Review was timely filed.

A claim for refund of erroneously paid tax is governed by Section 204(C) and Section 229 of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

> 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.
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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.

Based on the foregoing, both administrative and judicial remedies for filing a claim for refund of erroneously paid tax must be done within two (2) years from payment of tax. In other words, the two-year period applies not only to the filing of claim for refund before the Commissioner, but it also applies to the filing of a Petition for Review before the Court of Tax Appeals.

Accordingly, the taxpayer is given two years from his erroneous payment of tax within which to file his written claim for refund. However, if the Commissioner does not act on the written claim for refund and the two-year period is about to expire, the suit or proceeding must be instituted with the Court of Tax Appeals without waiting for the decision of the BIR Commissioner.

The claim involves payment of advance VAT on refined sugar by petitioner from May 31, 2011 to April 16, 2012. Counting the two-year period from May 31, 2011, petitioner had until May 31, 2013 within which to file both its administrative and judicial claims. Considering that petitioner filed its administrative claim on July 23, 2012 and its Petition for Review before the Court of Tax Appeals on May 29, 2013, it is clear that both actions were instituted by petitioner within the two-year prescriptive period.

The Court will now determine whether petitioner managed to substantiate its refund claim.

> In order to prove that it actually paid the amount of ₱9,537,306.00 representing advance VAT on 93,503 Lkg bags of refined sugar, petitioner submitted a Summary of Advance VAT Payments with the related Revenue Official Receipts/BIR Tax Payment Deposit Slips, and payment forms (BIR Form No. 0605), which reflected the following:
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> xxx xxx xxx
>
> After careful scrutiny of the above-enumerated documents, the Court finds them to be in order. Consequently, petitioner has sufficiently proven its refund claim amounting to ₱9,537,306.00.

Claiming that the Second Division erred in its ruling, petitioner maintains that respondent's Certificate of Tax Exemption ("Certificate") is not sufficient in itself to prove entitlement to a refund of advance VAT since it does not guarantee that respondent is indeed transacting with members only; that the Certificate was only secured on November 16, 2011, hence, additional documents must be provided regarding transactions from May 31, 2011 to November 16, 2011; that the Certificate was issued based merely on respondent's representations; that respondent should have presented substantial proof that it actually and exclusively transacted with its members by providing its list of members and sales invoices; that respondent should have produced the quedans to show that the refined sugar were actually produced by the cooperative through its members; that tax refunds are construed *strictissimi juris* against the person claiming exemption; and that respondent failed to overcome the presumption that taxes collected are in accordance with laws and regulations.

Respondent counters that it convincingly substantiated its claim of exemption from advance VAT on its withdrawal of refined sugar from the refinery or mill; that the case is not a refund of VAT on the sale of sugar; that the documents presented are the only ones required for the issuance of an Authority Allowing Release of Refined Sugar ("AARRS"); that the list of members, sales invoice and quedans are not required by law; that the requirement can only be found in *Revenue Regulations ("R.R.") No. 13-2008*, which was expressly repealed by the *Joint Rules and Regulations Implementing Sections 60, 61 and 144 of Republic Act ("R.A.") No. 9520 in relation to the 1997 National Internal Revenue Code ("NIRC"), as amended ("Joint Rules");* that the quedans were submitted to the Revenue District Officer ("RDO") upon withdrawal of the sugar; that the RDO would not release the AARRS and the mill would not have released the sugar without the said quedans; that the quedans were already sold prior to the filing of the case; that it is presumed that when the RDO issued the AARRS, he was satisfied that respondent was the producer of the sugar through its members, same applies to the sugar refinery when it released the sugar to the cooperative; and that the presumption is that both the RDO and the sugar refinery acted in accordance with applicable laws and rules.

Respondent further posits that the advance VAT was collected despite the ruling that respondent is exempt from VAT; that there is no need to submit additional evidence involving transactions before November 16, 2011 since respondent is merely applying for the release of its sugar and that there was no sale involved; that respondent was registered with the CDA prior to the issuance of the Certificate; that it was BIR itself which certified respondent's entitlement to tax exemptions and incentives by meeting the conditions set forth by law; that pursuant to the principle of regularity in the performance of official functions, the BIR must have issued the certification upon ascertaining that respondent satisfied the conditions and has not committed any violation of the certification since it was never revoked; that respondent is entitled to a full refund of advance VAT paid pursuant to the *Joint Rules*; that respondent is a late applicant for tax exemption, hence, it paid the advance VAT, then applied for tax exemption; and that it suffered monetary loss in the payment of advance taxes erroneously collected.

After a careful consideration of the Petition for Review, the Court finds that the issues and arguments raised therein are the same ones raised in petitioner's Memorandum in CTA Case No. 8658, and have been sufficiently passed upon and discussed in the assailed Decision. Nonetheless, the Court *En Banc* hereby expounds on some of the matters ruled upon by the Second Division.

Petitioner failed to present evidence to disprove the presumption that official duty has been regularly performed and that the law has been obeyed.

Section 3 of Rule 131 of the Revised Rules of Court ("RROC"), which provides the meaning of "disputable presumption," reads as follows:

SECTION 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx xxx xxx

(m) That official duty has been regularly performed;

xxx xxx xxx

(ff) That the law has been obeyed; [Underscoring ours]

In support of its contention, respondent presented the following documents, which the Second Division relied upon in granting the refund, to wit:

1. Certificate of Registration CIN-0103060403 with Reg. No. 9520-06006137 issued by the CDA on January 13 2010, certifying that VMC Farmers Multi-Purpose Cooperative has complied with the requirements prescribed by the CDA for the issuance of New Certificate of Registration under *Article 144 of R.A. No. 9520* and shall continue to enjoy the rights and privileges in accordance with *R.A. No. 9520* and all other laws appurtenant thereto unless the Certificate is suspended or cancelled for cause;[18]

2. Certificate of Good Standing issued by the CDA to VMC Farmers Cooperative, Inc. with CIN-0103060403 and CGS No. ILO-11-239 for being compliant with all requirements under *Memorandum Circular No. 03, s. 2008*, valid and effective until April 15, 2012;[19] and

3. Certificate of Tax Exemption (For Cooperatives registered under *R.A. No. 9520*) No. COOP-00078-11-RR12-RDO076 dated November 16, 2011 issued by the BIR Regional Director Perfecto L. Aranas to VMC Farmers Cooperative, Inc., certifying that respondent is a cooperative transacting with members only and entitled to exemptions and incentives provided under *Article 60 of R.A. No. 9520*, including exemption

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[18] *Records, Exhibit* "P-3," p. 18.
[19] *Id., Exhibit* "P-4," p. 19.

> from VAT on CDA-registered sales or transactions, valid until November 16, 2016 unless sooner revoked for violation of any provision of the Joint Revenue Regulations, the terms and conditions or upon withdrawal of the Certificate of Registration by the CDA.[20] [Underscoring ours]

The foregoing evidence created the presumption that, in the issuance of the same, official duty has been regularly performed and that the law has been obeyed. Therefore, respondent is deemed a tax exempt cooperative, *e.g.* not liable for VAT, with a Certificate of Tax Exemption that is unrevoked and valid.

Being disputable presumptions, these can be controverted by evidence to the contrary. Nonetheless, instead of offering documents to negate the same, petitioner chose to waive her right to present evidence, leading to her failure to refute the presumption created by the presentation of the said exhibits.

Respondent is entitled to a refund of the advance VAT paid based on the principle of solutio indebiti.

Having settled the issue as to whether respondent is VAT exempt, the Court *En Banc* moves on to whether respondent is entitled to a refund of any VAT paid.

The principle of *solutio indebiti* has been discussed by the Supreme Court as applying even against the Government itself:[21]

> ***Solutio indebiti*** **applies to the Government**
>
> Tax refunds are based on the principle of quasi-contract or *solutio indebiti* and the pertinent laws governing this principle are found in Arts. 2142 and 2154 of the Civil Code, which provide, thus:
>
> > Art. 2142. Certain lawful, voluntary, and unilateral acts give rise to the juridical relation of

[20] *Records, Exhibit* "P-5," p. 20.
[21] *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007, 516 SCRA 93.

> quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.
>
> Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.
>
> When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it.
>
> (gg) The Government comes within the scope of *solutio indebiti* principle as elucidated in *Commissioner of Internal Revenue v. Firemans Fund Insurance Company*, where we held that: Enshrined in the basic legal principles is the time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine. [Underscoring ours]

The Second Division found that respondent was able to substantiate its claim of payment of the total amount of Php9,537,306.00 through its submission of the Payment Form (BIR Form No. 0605) and a copy of the bank deposit, reflecting the said amount. Hence, the Court *En Banc* finds no reversible error in the Second Division's Decision granting respondent's claim for refund.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on September 10, 2014 and the Resolution promulgated on November 13, 2014 by the Second Division are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution,* it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice