REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NEGROS CONSOLIDATED FARMERS ASSOCIATION MULTI-PURPOSE COOPERATIVE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, and JOSE N. TAN, B.I.R. REGIONAL DIRECTOR, REGION 12, BACOLOD CITY
Respondent.

CTA CASE NO. 7994

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:
FEB 17 2012 ; 3:00 p.m.

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DECISION

ACOSTA, *P.J.*

This is a Petition for Review filed on November 16, 2009 by Negros Consolidated Farmers Association Multi-Purpose Cooperative involving a claim for tax refund in the amount of Twenty Million Nine Hundred Ninety Eight Thousand Six Hundred Thirty Eight Pesos (₱ 20,998,638.00), allegedly representing advance value-added tax (VAT) payments on 205, 869 LKG bags of refined sugar, erroneously or illegally collected by then Officer-In-Charge (O-I-C) Regional Director Rodita B. Galanto, Region No. 12, Bacolod City, before the Office of the Commissioner of Internal Revenue, during the period covering November 19, 2007 to December 23, 2008.

THE FACTS

Petitioner Negros Consolidated Farmers Association Multi-Purpose Cooperative (or Negros Consolidated Farmers Multi-Purpose Cooperative) is a multi-purpose agricultural cooperative duly organized under the Republic Act (RA) No. 6938 or the Cooperative Code of the Philippines, as evidenced by the Cooperative Development Authority Certificate of Registration No. IL0-3513 dated October 18, 1999.[1] Its office address is at A. Chan Building, Mandalagan, Bacolod City, Philippines.[2]

Respondent Commissioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is vested with authority to administer and enforce national internal revenue laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City. Co-respondent Jose N. Tan, on the other hand, is the Regional Director of BIR Region 12-Bacolod City, who replaced Rodita B. Galanto in February 2009.[3]

Petitioner posits that prior to November 2007, O-I-C Regional Director Rodita B. Galanto of BIR Region 12-Bacolod City had been issuing the Authorization Allowing Release of Refined Sugar (AARRS) to petitioner without requiring it to pay advance VAT. However, beginning November 2007, said Regional Director Galanto began to require petitioner to pay advance VAT before issuing to petitioner its AARRS. This compelled petitioner to seek the legal opinion of the Legal Division of the BIR on whether petitioner is considered the producer of the sugar product of its members, as Regional Director Galanto interpreted the word "producer" to exclude agricultural cooperatives that do not till the land they own or lease.

Petitioner alleged that upon receipt of a legal opinion issued by Assistant Commissioner James Roldan confirming petitioner's opinion that its sales of sugar to

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[1] Exhibit "C", docket, p. 15.
[2] Par. I (a), Summary of Admitted Facts, JSFI, docket, p. 231.
[3] Par. I (c), Summary of Admitted Facts, JSFI, docket, p. 231.

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its members and non-members are exempt from the payment of VAT, Regional Director Galanto resumed issuing AARRS to petitioner. However, starting November 2008, Regional Director Galanto again refused to release the AARRS of petitioner without prior payment of the advance VAT.

Believing that it had been granted tax exemption under Article 61 of Republic Act (R.A.) No. 6938 (Cooperative Code of the Philippines) and Section 9(r) of R.A. No. 8424 as amended by R.A. No. 9337,[4] petitioner filed its administrative claim for refund on November 11, 2009.[5]

On November 16, 2009, petitioner filed its judicial claim for refund before this Court due to respondent Commissioner's inaction on petitioner's claim for refund and in order to toll the running of the two-year prescriptive period.[6]

On December 23, 2009, respondent filed her Answer[7] and interposed the following counter-arguments:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation by respondent Bureau of Internal Revenue (BIR).
>
> 5. The amount of Php20,998,638.00 being claimed by petitioner as alleged overpayment of Value-Added Tax (VAT) which is erroneously, excessively and/or illegally assessed, and collected by respondent is not properly documented.
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> 6. Petitioner must prove that it has complied with the provisions of Section 229 in relation to 204(C) of the National Internal Revenue Code of 1997 (1997 Tax).
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> 7. Claims for refund must be in accordance with the provision of Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, thus:
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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 erroneously or**

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[4] Par. I (d), Summary of Admitted Facts, JSFI, docket, p. 232.
[5] Par. II (a), Proposed Stipulation of Facts, JSFI, docket, p. 232.
[6] Par. II (b), Proposed Stipulation of Facts, JSFI, docket, p. 232.
[7] Docket, pp. 163-177.

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> **illegally assessed or collected, or of any penalty claimed 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, <u>until a claim for refund or credit has been duly filed with the Commissioner</u>, but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.**
> xxx xxx xxx' *(Underscoring supplied.)*

8. In action for refund, the ***onus probandi*** is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications *(ASIATIC PETROLEUM* CO. *(P.I.) VS. LLANES, 49 PHIL. 466, cited in Collector* of *Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil.670).*

9. Petitioner, in its petition, argues that respondent BIR Regional Director Rodita Galanto of BIR Revenue Region 12, Bacolod City 'capriciously' began to require petitioner Negros Consolidated Farmers Multi-Purpose Cooperative (NCFMPC) to pay advance VAT beginning November 19, 2007 (Annex 'F' of petitioner's Petition for Review) before issuing the Authorization Allowing Release of Refined Sugar (AARRS) on account of her 'myopic' interpretation of the term 'producer' to qualify for tax exemption, i.e., payment of the Advance VAT on refined sugar upon withdrawal of the same from the sugar mills. This argument is devoid of merit and should be set aside. In order to qualify for exemption from the payment of Advance VAT on the withdrawal of refined sugar, the cooperative has to meet the requirements set forth in Revenue Regulations No. 13-2008, or the consolidated Regulations on Advance Value Added Tax on the Sale of Refined Sugar; amending and/or revoking all revenue issuances issued to this effect, and for other related purposes. This is pursuant to the provisions of Section 6 and 244, in relation to sections 106, 109, 110 and 111(b)(1) all of the National Internal Revenue Code of 1977, as last amended by Republic Act No. 9337, in relation to Executive Order No. 18 dated May 28, 1986 (creating the Sugar Regulatory Administration {SRA}), Sugar Order No. 1 issued every crop year to allocate the volume of and classifying the cane sugar produced each production year, and Sugar Order No. 4, series of 2006-2007 (Conversion of 'C' or Reserve Sugar into 'D' or World Market Sugar and the Revised Sugar Classification and Percentage Allocation).

10. These regulations were promulgated (a) **to prescribe the updated policies and procedures for the advance payment of value added tax (VAT) on the sale of refined sugar, including those made by a duly accredited and registered agricultural cooperative of good standing,** (b) to prescribe policies and procedures for the recognition of classification of sugar and sugar products, (c) to provide for a monitoring system in the processing of raw sugar into refined sugar and the

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withdrawal thereof from the sugar refineries/mills, and (d) for other related purposes. Section 3 of said Regulation provides, to wit:

> '**Sec. 3 Requirement to pay in Advance VAT on Sale of Refined Sugar**.- In general, the advance VAT on the sale of refined sugar provided for under Sec. 8 hereof, shall be paid in advance by the owner, seller before the refined sugar is withdrawn from any sugar refinery/mill. Before the issuance of *Certificate of Advance Payment of VAT* (**Annex 'E'**), the owner/seller shall file *Declaration for Advance Payment on Refined Sugar* (**'Annex B-1'**) to the RD/RDO having jurisdiction over the place where the sugar mill is physically located and shall submit the following attachments:
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> 1. Listing/Abstract of official Warehouse Receipt Quedan **(Annex 'B-2'**) in soft and hard copy;
> 2. Proof of Payment of Advance VAT on Sale of Refined Sugar.
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> xxx xxx xxx'

11. Upon the other hand, the same RR 13-2008 provides for instances wherein certain withdrawals of sugar from the refineries/mills shall be exempt from the payment of the Advance VAT. Section 4, thereof, provides thus:

> '**Sec. 4 Exemption from the Payment of the Advance VAT.** – Notwithstanding the provisions of the foregoing Section, the following withdrawals shall be exempt from the payment of the Advance VAT:
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> **(a) Withdrawal of Refined Sugar by Duly Accredited and Registered Agricultural Producer Cooperative of Good Standing.** - In the event the refined sugar is owned and withdrawn from the Sugar Refinery/Mill by an agricultural cooperative of good standing duly Accredited and registered with the Cooperative Development Authority (CDA), which cooperative is the agricultural producer of the sugar cane that was refined into refined sugar, the withdrawal is not subject to the payment of Advance VAT. xxx
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> **A cooperative is said to be the producer of the sugar if it is the tiller of the land it owns, or leases, incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.**
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> Thus, withdrawal of refined sugar by the agricultural cooperative for sale to members is not subject to advance VAT whereas sale to non-members of said refined sugar is not subject to advance VAT only if the cooperative is the agricultural producer of the sugar cane that is the primary raw material in the manufacture of refined sugar.
>
> It is hereby made clear that if the refined sugar is owned and withdrawn from the Sugar Refinery/Mill by a duly accredited cooperative of good standing with the CDA, **which cooperative is not the agricultural producer of the sugar cane, the withdrawal of the refined sugar shall, in all instances, be subject to advance payment of VAT**, unless the buyer who withdraws the refined sugar from the sugar Refinery/Mill is a member of the cooperative. (Underscoring and Emphasis supplied)

12. A further perusal of the said Revenue Regulations, Section 7 thereof requires proof of exemption from the advance payment of VAT. If the duly accredited and registered agricultural producer cooperative of good standing is allowed to withdraw refined sugar without advance payment of VAT and said agricultural cooperative claims ownership of the refined sugar stocked in the sugar Refinery/Mill, the latter shall not release the said refined sugar unless an Authorization Allowing the Release of the Refined Sugar is first secured from the concerned RD/RDO having jurisdiction over the owner of the refined sugar. In securing such authorization, the cooperative-owner shall, in addition to that of satisfying VAT-exemption requirements under RR No. 20-2001 , submit to the concerned RDO a Sworn Statement to the effect that:

> (a) The cooperative-owner of the refined sugar is an **agricultural producer** as defined in RR No. 13-2008; and(b) The refined sugar is the property of the cooperative at the time of removal and it will not charge advance VAT or any other tax to the future buyer.

13. Petitioner likewise anchors its arguments on a BIR ruling dated December 27, 2007 it has secured claiming exemption from the payment of the advance VAT on withdrawal of its refined sugar from the Sugar Refinery/Mill. Said ruling was issued on the basis of the facts as presented by petitioner, giving emphasis on the provision of Section 14 of RR No. 4-2007, implementing RA 9337, and amending Section 4-109-1(8)(1) of RR No. 16-2005 on VAT exempt transactions. It is worthy of emphasis that based on said ruling, an agricultural cooperative can only be exempted from VAT, more so on the payment of advance VAT on withdrawal of refined sugar, if the producer of the agricultural products sold is the cooperative itself. If the cooperative is not the producer (e.g., trader), then only those sales to its members shall be exempt from VAT.

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Moreover, the said ruling was issued on the basis of the facts as represented by petitioner and if, upon investigation, it shall be disclosed that the facts are different, it would result in the ruling being considered null and void.

14. It is in this context that respondent asserts that petitioner has failed miserably to prove that it is entitled to the exemption it now claims.

Petitioner now assails the validity of RR No. 13-2008, stating that the same should not be allowed to enlarge or extend the law or RA 6938, otherwise known as the Cooperative Code of the Philippines, it has no legal basis and to give validity to it is to repeal a duly enacted law of Congress. However, petitioner also upheld its validity and clearly complied with said regulations by paying the advance VAT. It now adopts inconsistent postures by questioning the validity of said regulations in order to escape if not defeat its tax liabilities.

15. Moreover, issues not raised in the administrative level cannot be raised for the first time on appeal, as in the case of ***Aguinaldo Industries Corporation Fishing Nets Division vs. Commissioner of Internal Revenue, et. al., L-29790, February 25,1982.***

16. Anent the passage of Republic Act No. 9520, otherwise known as the 'PHILIPPINE COOPERATIVE CODE OF 2008,' again petitioner anchored its claim for refund on what it believes as the clarification of its exemption from the payment of advance VAT on its withdrawals of refined sugar which it incurred between the periods from November 16, 2007 to February 13, 2009. It is worthy of emphasis that the new law, RA 9520 was approved by Congress on 17 February 2009 and its effectivity was indicated as fifteen (15) days from its publication in a newspaper of general circulation. Otherwise stated, said law became effective only after the questioned payments of the advance VAT on refined sugar were made by petitioner. It follows therefore that since laws, as provided in Article 4 of the New Civil Code of the Philippines, have no retroactive effect as a rule unless the contrary is provided, petitioner cannot now claim its status of exemption under the new law. Nowhere in the text of RA 9250 does it contain a provision for retroactive applicability, to do so would have the effect of condoning tax liability of petitioner. It would be unfair to the government if the Honorable Court would permit the application of a subsequent law in order to make petitioner's claim for tax exemption proper. Allowing such situation may give precedent to others easily escape their liability or violation by merely invoking the retroactive application of a favorable act or law which the Honorable Court should not allow. Petitioner's allegations on the invalidity of RR 13-2008 are highly misplaced. The said regulations did not repeal a duly enacted law of Congress, the Cooperative Code of the Philippines. It merely provided the guidelines by which said law would be implemented. Neither did it enlarge or extend the law. It is well settled in this jurisdiction that:

> 'Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or

> practice to the contrary. When the court declared a law inconsistent with the Constitution, the former shall be void and the latter shall govern. **Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution**.' (Article 7, New Civil Code of the Phils.)(Emphasis supplied)

The burden of proving that a law or act is unconstitutional is reposed in the individual suitor or challenger because of the presumption of constitutionality of a law (**Occena vs. Comelec, 104 SCRA 1, April 2, 1981**). When Congress delegates its power, it can only delegate to others how the law may be enforced based on 'standards' but not the substantive matters (**Eastern Shipping Lines, Inc. vs. POEA 166 SCRA 533**).

17. Petitioner should have questioned and/or assailed the validity of said RR 13-2008 before the proper forum, i.e., the Secretary of Finance; if it felt and believed that the same was prejudicial to its interests. This, petitioner did not do and instead paid the assailed advance VAT on its withdrawals of refined sugar. This act is tantamount to an admission on its part that the assailed regulation is valid. Petitioner should not be allowed to adopt inconsistent postures regarding said regulations and is estopped from denying or assailing its validity.

18. Finally, the principle of *strictissimi juris* is applied in the interpretation of tax laws. The power of taxation is the prerogative of the sovereignty. The relinquishment of the power to tax is never presumed. Any reduction or diminution thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms. He who claims an exemption must be able to point out some provision of the law creating the right; it cannot be allowed to exist upon mere implication or inference (***Floro Cement Corporation vs. Judge Gorospe and the Municipality of Lugait, 200 SCRA 480, 1991***). Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (***Asiatic Petroleum Co. (P.I.) vs. Llanes, 49 Phil.466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670***).

During trial, petitioner presented documentary and testimonial evidence. On the other hand, respondent's counsel manifested that he is dispensing with the presentation of evidence on the ground that only legal issues are involved in this case.[8]

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[8] Docket, p. 328; TSN, December 2, 2010.

On February 23, 2011, the case was submitted for decision, considering petitioners Memorandum[9] filed on December 16, 2010 and respondent's Manifestation[10] filed on December 21, 2010, stating that she is adopting her Answer as her Memorandum.

Hence, this Decision.

THE ISSUES

The issues, as jointly stipulated by the parties, are the following:

"a) Whether or not petitioner is deemed a 'PRODUCER' to be entitled to exemption from payment of Advance VAT for its sale to non-members of its refined sugar produce.

b) Whether or not Sec. 4 of Revenue Regulation 13-2008 requiring agricultural cooperatives to be the tiller of the land it owns or leases to be considered a 'Producer' is legally valid.

c) Whether or not Sec. 3 of RR 13-2008 requiring payment of Advance VAT by the owner/seller before their refined sugar is withdrawn from the Mill/Refinery is legally valid.

d) Whether or not the Advance VAT paid 'Under Protest' by petitioner was erroneously and/or illegally collected.

e) Whether or not this Honorable Court has Jurisdiction over the instant petition for review."

In sum, the postulated issues may be simplified as follows:

a) Whether or not Revenue Regulations No. 13-2008, particularly Sections 3 and 4, is valid; and,

b) Whether or not petitioner is entitled to a refund in the amount of ₱ 20,998,638.00, representing its advance VAT payment on 205,869 LKG bags of refined sugar, erroneously or illegally collected for the taxable period covering November 19, 2007 to December 23, 2008.

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[9] Docket, pp. 343-351.
[10] Docket, pp.360-361.

THE RULING OF THE COURT

In the present case, petitioner assails the validity of Revenue Regulations No. 13-2008, particularly, Sections 3 and 4 thereof, *viz*:

> ***"SECTION 3. Requirement to Pay in Advance VAT on Sale of Refined Sugar.*** - In general, the advance VAT on the sale of refined sugar for under Sec. 8 hereof, shall be paid in advance by the owner/seller before the refined sugar is withdrawn from any sugar refinery/mill. Before the issuance of Certificate of Advance Payment (Annex 'E') , the owner/seller shall file a Declaration for Advance Payment on Refined Sugar (Annex 'B-1 ') to the RD/RDO having jurisdiction over the place where the sugar mill is physically located and shall submit the following attachments:
>
> 1. Listing/Abstract of official Warehouse Receipt Quedan (Annex 'B-2') in soft and hard copy;
>
> 2. Proof of Payment of Advance VAT on Sale of Refined Sugar.
>
> xxx xxx xxx
>
> ***SECTION 4. Exemption from the Payment of the Advance VAT.*** - Notwithstanding the provisions of the foregoing Section, the following withdrawals shall be exempt from the payment of the advance VAT:
>
> (a) ***Withdrawal of Refined Sugar by Duly Accredited and Registered Agricultural Producer Cooperative of Good Standing.*** - In the event the refined sugar is owned and withdrawn from the Sugar Refinery/Mill by an agricultural cooperative of good standing duly accredited and registered with the Cooperative Development Authority (CDA), which cooperative is the **agricultural producer** of the sugar cane that was refined into refined sugar, the withdrawal is not subject to the payment of advance VAT. The cooperative shall file an application for withdrawal using *Annex 'A-1 '*. Upon presentation of the *Authorization Allowing the Release of Refined Sugar (Annex "A")* and other documents prescribed in Sec. 5 hereof, the Sugar Refinery/Mill shall release the same but only after notifying the Revenue Officer On Mill Sites (ROOMS) of the time and date of the release of the sugar from the Sugar Refinery/Mill and the names and plate numbers of the sugar-carrying vehicles/trucks so that the release can be given proper supervision and that the advance VAT was collected from the transferee should evidence show that the refined sugar has already been sold under a circumstance that makes the sale thereof a taxable transaction.

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> A cooperative shall be considered in good standing if it is a holder of a *'Certificate of Good Standing'* issued by the CDA. A copy of the same shall be submitted to the BIR on or before April 30 of the following year.
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> **A cooperative is said to be the producer of the sugar if it is the tiller of the land it owns, or leases, incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.**
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> Sale of sugar in its ***original form*** is always exempt from VAT regardless of who the seller is pursuant to Sec. 109 (A) of the Tax Code. On the other hand, sale of sugar, in its processed form, by a cooperative is exempt from VAT if the sale is made to members of the cooperative. Whereas, if the sale of sugar in its processed form is made by the cooperative to non-members, said sale is exempt from VAT only if the cooperative is an agricultural producer of the sugar cane that has been converted into refined sugar as herein defined and discussed.
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> Thus, withdrawal of refined sugar by the agricultural cooperative for sale to members is not subject to advance VAT whereas sale to non-members of said refined sugar is not subject to advance VAT only if the cooperative is the agricultural producer of the sugar cane that is the primary raw material in the manufacture of refined sugar.
>
> It is hereby made clear that if the refined sugar is owned and withdrawn from the Sugar Refinery/Mill by a duly accredited cooperative of good standing with the CDA, which cooperative is <u>not the agricultural producer of the sugar cane, the withdrawal of the refined sugar shall, in all instances, be subject to advance payment of VAT</u>, unless the buyer who withdraws the refined sugar from the Sugar Refinery/Mill is a member of the cooperative."

At this point, it is material to determine whether this Court has jurisdiction to rule on the validity of a revenue regulation issued by the Commissioner of Internal Revenue. The jurisdiction of the Court of Tax Appeals as provided under Section 7 of Republic Act No. 1125, as amended by Republic Act Nos. 3457, 9282 and 9503, states that:

> "SEC. 7. Jurisdiction. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> (3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

In the case of *Commissioner of Internal Revenue vs. Josefina Leal*[11], the Supreme Court had the occasion to rule that the Court of Tax Appeals has jurisdiction to review the rulings of the Commissioner of Internal Revenue in the exercise of his or her power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. In the aforementioned Leal case, the Commissioner of Internal Revenue issued Revenue Memorandum Order (RMO) No. 15-91 imposing 5% lending investor's tax on pawnshops based on their gross income, and Revenue Memorandum Circular (RMC) No. 43-91 subjecting the pawn ticket to the documentary stamp tax based on the Commissioner's interpretation of Section 157(u) of the Tax Code, specifically, his evaluation that the nature of pawnshop business is akin to that of "lending investors". Therein respondent Josefina Leal filed a petition for prohibition in the Regional Trial Court for prohibition seeking to prohibit petitioner from implementing the revenue orders. In granting the appeal of the Commissioner of Internal Revenue, the Supreme Court ruled in this wise:

> "The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops. This is clear from petitioner's RMO No. 15-91, pertinent portion of which reads:
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[11] G.R. No. 113459, November 18, 2002.

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Such revenue orders were issued pursuant to petitioner's powers under Section 245 of the Tax Code, which states:

> "SEC. 245. Authority of the Secretary of Finance to promulgate rules and regulations. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.
>
> The authority of the Secretary of Finance to determine articles similar or analogous to those subject to a rate of sales tax under certain category enumerated in Section 163 and 165 of this Code shall be without prejudice to the power of the Commissioner of Internal Revenue to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes." (Emphasis added)

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals [CTA for brevity]), as amended, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

> "SEC. 7. Jurisdiction. — The Court of Tax Appeals shall *exercise exclusive appellate jurisdiction to review by appeal*, as herein provided —
>
> (1) *Decisions of the Commissioner of Internal Revenue in cases involving* disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or *other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;*
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> xxx xxx xxx." (Emphasis added)
>
> "SEC. 11. *Who may appeal; effect of appeal.* — Any person, association or corporation *adversely affected by a decision or ruling of the Commissioner of Internal Revenue*, or the Commissioner of Customs or any provincial or city Board of Assessment Appeals *may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.*
>
> xxx xxx xxx." (Emphasis added)
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> "SEC. 18. . . . — *No judicial proceeding against the Government involving matters arising under the National Internal Revenue Code,* the Customs Law or the Assessment Law *shall be maintained, except as herein provided, until and*

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> *unless an appeal has been previously filed with the Court of Tax Appeals and disposed of in accordance with the provisions of this Act.*
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> xxx xxx xxx." (Emphasis added)

The Court, in Rodriguez, etc. vs. Blaquera, etc., ruled:

> "Plaintiff maintains that this is not an appeal from a ruling of the Collector of Internal Revenue, but merely an attempt to nullify General Circular No. V-148, which does not adjudicate or settle any controversy, and that, accordingly, this case is not within the jurisdiction of the Court of Tax Appeals.
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> "We find no merit in this pretense. General Circular No. V-148 *directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provisions abovementioned, as set forth in the Circular. The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of the said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such, it comes within the purview of Republic Act No. 1125, Section 7 of which provides that the Court of Tax Appeals 'shall exercise exclusive appellate jurisdiction to review by appeal . . . decisions of the Collector of Internal Revenue in . . . matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue.'* . . . " (Emphasis added)

It is clear therefore that this Court has jurisdiction to rule on the validity of a rule or regulation issued by the Bureau of Internal Revenue, in this case, Revenue Regulations No. 13-2008.

According to petitioner, it has been granted tax exemption under Article 61 of Republic Act No. 6938 (Cooperative Code of the Philippines) and Section 109(r) of Republic Act No. 8424 as amended by Section 109(L) of R.A. No. 9337, to wit:

> "**ARTICLE 61 . Tax Treatment of Cooperative.** – 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 government 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."

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> "SECTION 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:
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> '**SEC. 109. Exempt Transactions.** –
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> (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
>
> (L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its 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 xxx xxx (Emphasis added)

In support of its contention, petitioner presented its Certificate of Registration CIN-0103060352 with the Cooperative Development Authority with Registration No. 9520-06000814[12] as well as a Certificate of Tax Exemption No. ECCP-004-2003 dated April 23, 2003 issued by Assistant Commissioner Milagros V. Regalado, containing a declaration that petitioner, as a primary agricultural cooperative which is dealing/transacting business with members only, is exempt from VAT pursuant to Section 109(r), (t), and (u) of the Tax Code of 1997, among others.[13] On the other hand, respondent, in waiving her right to present evidence[14], was not able to present evidence to refute the presumption that petitioner is a tax exempt agricultural cooperative and that petitioner's Certificate of Tax Exemption has been revoked or nullified by respondent.

This Court finds the position of the petitioner meritorious.

It is clear from a cursory reading of the aforecited Article 61 of Republic Act No. 6938 (Cooperative Code of the Philippines) and Section 109(r) of Republic Act No. 8424 as amended by Section 109(L) of R.A. No. 9337 aforequoted, as well as in

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[12] Exhibit "C", docket, p. 15.
[13] Exhibit "E", docket, pp. 17-19.
[14] Docket, p. 328; TSN, December 2, 2010.

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the documentary evidence presented that petitioner's sale of sugar produce made by petitioner to its members as well as non-members is exempt from the payment of VAT.

In declaring that in order to be exempt from VAT, a cooperative must be the *agricultural producer* of its sugar produce, *i.e.* ***the tiller of the land it owns, or leases, incurs cost of agricultural production of the sugar and produces the sugar cane to be refined,*** the Commissioner has not engaged in mere interpretation but has gone into unauthorized modification or amendment of the law. Only Congress can do this. Sections 3 and 4 of Revenue Regulations No. 13-2008, insofar as it imposes this requirement is, therefore, ultra vires and invalid.

In the case of *Commissioner of Internal Revenue vs. American Express Int'l, Inc.*[15], the Supreme Court held that"

> "Although "[i]t is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts," this interpretation is not conclusive and will have to be "ignored if judicially found to be erroneous" and "clearly absurd . . . or improper." An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court."

The Court will now determine petitioner's entitlement to a refund in the amount of ₱ 20,998,638.00, representing its advance VAT payment on 205,869 LKG bags of refined sugar, erroneously or illegally collected for the taxable period covering November 19, 2007 to December 23, 2008.

Although, in the case at bar, petitioner seeks the refund of advance VAT it paid under protest on the basis of Revenue Regulations No. 13-2008, the claim is not governed by Sec. 112 of the 1997 Tax Code, as amended, as this does not involve a refund of unutilized input VAT arising from zero-rated or effectively zero-rated sales. This is a claim for refund from an erroneous collection and payment of advance VAT.

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[15] G.R. No. 152609, June 29, 2005.

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An application for refund of erroneously paid tax is governed by Sections 204(C) and 229 of the National Internal Revenue Code of 1997, which read as follows:

> **"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."
>
> **"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 provisions, the administrative and judicial remedies of filing a claim for refund of erroneously paid tax must be done within two years from the payment of the tax. The two-year period is a limitation of action not only in submitting the written claim for refund to the Commissioner, but likewise in instituting an action with the Court of Tax Appeals.

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Accordingly, the taxpayer must file its administrative claim for refund with the Commissioner within two (2) years after the payment of the tax; however, if the Commissioner takes time in deciding the claim and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period, without awaiting the decision of the Commissioner. This is so because of the positive requirement of Section 204 and the doctrine that delay of the Commissioner in rendering a decision does not extend the peremptory period fixed by the statute.[16] Thus, when the two-year period is about to prescribe and the claim for refund with the Commissioner remains unacted upon, the taxpayer should file a Petition for Review with this Court in order to preserve its right to seek judicial recourse.

The instant claim involves payment of *advance* VAT on refined sugar allegedly made by petitioner on various dates from November 19, 2007 to December 23, 2008. Reckoned from November 19, 2007, petitioner had until November 19, 2009 within which to file both its administrative and judicial claims. Clearly, the administrative claim filed on November 11, 2009 and the judicial claim via a Petition for Review filed before this Court on November 16, 2009 fall within the two-year prescriptive period.

Anent petitioner's evidence submitted in support of its claim, the Court took into consideration the Summary of VAT Payments Under Protest[17] with the related BIR Certificates of Advance Payment of VAT, Revenue Official Receipts (ROR), Payment Forms, and letters to BIR Regional Director Rodita B. Galanto, to show that petitioner actually paid the amount of ₱ 20,998,638.00, representing advance VAT on 205,869 LKG bags of refined sugar from November 19, 2007 to December 23, 2008, summarized as follows:

Exhibits	BIR ROR/Bank	Date Paid	No. of Bags	VAT per Bag	VAT Paid
"I-1", "I-2"	02920749	11/19/2007	10,500	102.00	1,071,000.00
"J", "J-1", "J-2"	02920855	11/26/2007	8,107	102.00	826,914.00
"K", "K-1", "K-2"	02920856	11/26/2007	1,000	102.00	102,000.00
"L", "L-1", "L-2"	02920869	11/29/2007	9,000	102.00	918,000.00

[16] Gibbs and Gibbs vs. Commissioner of Internal Revenue, et.al. , 15 SCRA 318.
[17] Exhibit "H", docket, p. 24.

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“M”, “M-1”, “M-2”	02920878	11/29/2007	10,607	102.00	1,081,914.00
“N”, “N-1”, “N-2”	02920904	12/6/2007	10,168	102.00	1,037,136.00
“O-1”, “O-2”, O-3”	02920957	12/13/2007	10,000	102.00	1,020,000.00
“P-1”, “P-2”	01007029	1/2/2008	7,300	102.00	744,600.00
“Q-1”, “Q-2”	01007050	1/4/2008	8,800	102.00	897,600.00
“R”, “R-1”, “R-2”	EPCIB	1/8/2008	500	102.00	51,000.00
“S”, “S-2”	BDOBAC	9/8/2008	6,000	102.00	612,000.00
“T”, “T-1”, “T-2”	BDO	9/10/2008	1,889	102.00	192,678.00
“U”, “U-1”, “U-2”	BDO	9/12/2008	2,819	102.00	287,538.00
“V”, “V-1”, “V-2”	BDO	9/12/2008	3,600	102.00	367,200.00
“W”, “W-1”, “W-2”	BDO	9/22/2008	5,588	102.00	569,976.00
“X”, “X-1”, “X-2”	BDO	9/22/2008	8,485	102.00	865,470.00
“Y”, “Y-1”, “Y-2”	BDO	9/26/2008	3,000	102.00	306,000.00
“Z”, “Z-1”, “Z-2”	BDO	9/26/2008	3,899	102.00	397,698.00
“AA”, “AA-1”, “AA-2”	BDO	9/26/2008	3,676	102.00	374,952.00
“BB”, “BB-1”, “BB-2”	BDO	9/26/2008	2,466	102.00	251,532.00
“CC”, “CC-2”	BDO	9/26/2008	4,434	102.00	452,268.00
“DD”	BDO	10/3/2008	3,500	102.00	357,000.00
“EE”, “EE-2”	BDO	10/8/2008	2,271	102.00	231,642.00
“FF”, “FF-2”	BDO	10/8/2008	1,523	102.00	155,346.00
“GG”, “GG-2”	BDOBAC	10/8/2008	5,500	102.00	561,000.00
“HH”, “HH-2”	BDO	10/10/2008	4,000	102.00	408,000.00
“II”, “II-2”, “II-3”	LBP	10/16/2008	3,500	102.00	357,000.00
“JJ”, “JJ-2”, “JJ-3”	BDOBAC	10/27/2008	6,280	102.00	640,560.00
“KK”, “KK-2”	BDO	10/31/2008	6,000	102.00	612,000.00
“LL”, “LL-2”	BDO	11/4/2008	7,677	102.00	783,054.00
“MM”, “MM-2”	BDO	11/4/2008	3,735	102.00	380,970.00
“NN-1”, “NN-2”, “NN-3”	BDO	11/28/2008	5,818	102.00	593,436.00
“QQ”, “QQ-2”	BDOBAC	11/22/2008	7,000	102.00	714,000.00
“PP”, “PP-2”, “PP-3”	BDO	12/5/2008	4,000	102.00	408,000.00
“OO”, “OO-2”	BDO	12/12/2008	7,000	102.00	714,000.00
“TT”, “TT-2”	BDO	12/12/2008	2,727	102.00	278,154.00
“UU”, “UU-1”, “UU-2”, “UU-3”	BDO	12/19/2008	7,000	102.00	714,000.00
“VV”, “VV-1”, “VV-2”, “VV-3”	BDO	12/23/2008	6,500	102.00	663,000.00
Total:			**205,869**		**20,998,638.00**
LESS: Disallowed					
“O-1”, “O-2”, O-3”	02920957	12/13/2007	10,000		1,020,000.00
			195,869		**19,978,638.00**

The advance VAT payment dated December 13, 2007 under BIR ROR No. 02920957 in the amount of ₱1,020,000.00 shall be disallowed because petitioner's evidence in support of the claim, consisting of Exhibits “O-1”, “O-2”, and O-3”, were

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disallowed by this Court for failure to present the original documents under the Best Evidence Rule (Section 3, Rule 130 of the Revised Rules of Court).

After careful scrutiny of the evidence submitted, this Court finds that petitioner has sufficiently proven that it is entitled to a refund of the erroneously paid advance VAT for taxable period covering November 19, 2007 to December 23, 2008 in the reduced amount of Nineteen Million Nine Hundred Seventy Eight Thousand Six Hundred Thirty Eight Pesos (₱ 19,978,638.00).

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of petitioner Negros Consolidated Farmers Multi-Purpose Cooperative the amount of **Nineteen Million Nine Hundred Seventy Eight Thousand Six Hundred Thirty Eight Pesos (₱ 19,978,638.00)**, representing erroneously paid advance VAT for taxable period covering November 19, 2007 to December 23, 2008.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice