REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

NEGROS DEL NORTE PLANTERS ASSOCIATION MULTI-PURPOSE COOPERATIVE,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE, AND BIR REGIONAL DIRECTOR, REGION 12, BACOLOD CITY,
Respondents.

CTA CASE NO. 8287

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 30 2013
4:10 p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 7(a)(2) of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503, seeks for the refund of Twelve Million Three Hundred Thirty Thousand Sixty Six Pesos (Php12,330,066.00), representing 120,883 LKG bags of refined sugar at Php102.00 advance Value Added Tax ("VAT") per bag erroneously/illegally collected by the BIR Regional Director, Revenue Region 12, Bacolod City.[1]

[1] *Records*, pp. 1-57, with Annexes "A" to "H."

FACTS OF THE CASE

Petitioner is a duly organized multi-purpose agricultural cooperative in accordance with Republic Act ("RA") No. 9520,[2] with licensed to transact business and sue in the Philippines, having its office at VICMICO Compound, Victorias City, Negros Occidental.[3] It is represented by its Vice-Chairman Alexis Javelona.

On the other hand, respondents are the Commissioner of Internal Revenue ("respondent Commissioner"), charged with the duty to assess and collect internal revenue taxes; and the Regional Director ("respondent Director") of BIR, Region 12, Bacolod City who at present is Araceli Francisco.[4]

On October 7, 1999, Deputy Commissioner (Legal and Enforcement Group), Sixto S. Esquivias IV, issued a letter[5] stating as follows:

> "xxx xxx xxx
>
> Based on the foregoing and since you are an agricultural multi-purpose cooperative transacting business with members only, you are exempt from all taxes and fees imposed under the internal revenue laws and other tax laws, pursuant to Article 61 of the Cooperative Code.
>
> Moreover, you are exempt from the VAT pursuant to Section 109(r) of the Tax Code of 1997 on your sales of goods to your members as well as sales of your produce, whether in its original state or processed form to non-members and on your 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 your produce. You are also exempt from the payment of the 3% tax imposed under Section 116 of the same Tax Code. However, you shall be subject to the 10%

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[2] An Act Amending The Cooperative Code of the Philippines to be known as The "Philippine Cooperative Code of 2008," *Records*, Petition for Review, p. 2.
[3] Records, p. 91; Joint Stipulation of Facts and Issues, I. Summary of Admitted Facts, par. a., p. 91.
[4] Id., at par. c. and d., p. 91.
[5] Exhibit "E," pp. 19-20.

> VAT which may be passed on or billed to you by the seller/vendor on your purchases of goods because said tax is an indirect tax which can be passed on or shifted as part of the cost of the goods sold. In case you will distribute interest on capital, such interest shall be taxable to the recipient member and shall be declared in his income tax return for tax purposes.
>
> xxx xxx xxx
>
> This exemption shall be for a period of ten (10) years only, reckoned from August 16, 1999, the date of your registration with the CDA."

On January 14, 2008, a letter[6] was issued by James H. Roldan, Assisstant Commissioner, Legal Service, stating the following:

> xxx xxx xxx
>
> Being a multi-purpose cooperative, NDNPAMPC is an agricultural co-producer of the sugarcane produced by its cooperative members. Since NDNPAMPC is an artificial person, it is physically impossible to do the actual tillage of the land. Hence, the cooperative and its members jointly carry out the sugar farming activities during the agricultural crop year. The cooperative members have consistently provided the sugar farms/plantations and the tillage while NDNPAMPC has provided the following services, in its capacity as co-producer, to wit:
>
> <1> releases fertilizer subsidy to its members;
> <2>provides other production inputs to increase the sugarcane production of its members;
> <3> maintains transloading services sugarcane produce to the millsite;
> <4> releases cash advances or loans to its members during the production and milling stages to protect its members against imposition of usurious interests;
> <5> provides educational training seminar for production improvement and development;
> <6>facilitates technology transfer affecting sugar production and/or intercropping production; and

[6] Exhibit "H," pp. 54-57.

<7> acts as the exclusive marketing arm of the sugar produced from the various farms of its cooperative members.

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At present , NDNPAMPC is holding a tax exemption pursuant to BIR Ruling NO. ECCP-007-99/ECCP-032-99 dated 7 October 1999 pursuant to Republic Act No. 6938 and the pertinent provisions of the Tax Code of 1997, as implemented by BIR Revenue Regulation No. 20-2001.

xxx xxx xxx

From the foregoing provisions of R.A No. 9337, as implemented by RR 4-2007, it is clear that the sale by agricultural cooperatives of their agricultural products to their members and non-members is exempt from VAT. However, with regard to the sale of their products to non-members, it will only be exempt from VAT if the cooperative itself is the producer of said product and not acting as a mere trader or broker.

xxx xxx xxx

Thus, NDNPAMPC and its members' respective roles in the operation of the cooperative cannot be treated as separate and distinct from each other. Notwithstanding that NDNPAMPC is not the owner of the land and the actual tiller of the land, it is considered as the actual producer of the members' sugarcane production because it primarily provided the various productions inputs (fertilizers), capital, technology transfer and farm management. In short, NDNPAMPC has direct participation in the sugarcane production of its farmers-members.

Accordingly, this Office hereby confirms your opinion that the sale of sugar produce made by NDNPAMPC to its members as well as to non-members is exempt from the payment of VAT, pursuant to Section 109(L) of Republic Act No. 9337, as implemented by RR 4-2007."

Beginning May 15, 2009, the OIC Regional Director, Rodita Galanto, followed by successor Jose N. Tan, refused the request of petitioner for the issuance of Authorization Allowing the Release of Refined Sugar ("AARRS") on the basis of its exemption issued by the office of the CIR under BIR Ruling No. ECCP 077-99 dated October 7, 1999 as implemented by Revenue Regulation No. 20-2001.[7]

On May 25, 2009, the CDA Iloilo Extension Office issued a Certificate of Good Standing[8] stating that petitioner is a cooperative duly registered with CDA under Registration No. ILO-3468 on August 16, 1999, being compliant with all the requirements under Memorandum Circular No. 03, series of 2008.

On October 19, 2009, the Cooperative Development Authority ("CDA") issued a Certificate of Registration[9] stating that petitioner 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, otherwise known as the "Philippine Cooperative Code of 2008."

Due to this, on January 19, 2011, petitioner filed an administrative claim for refund of taxes erroneously or illegally collected by OIC Regional Director Rodita Galanto of Region 12 and her successor, with respondent Commissioner. [10]

Without awaiting for the action of respondent Commissioner, and in order to toll the running of the period, on May 12, 2011, petitioner filed this instant Petition for Review.[11]

On June 30, 2011, respondent filed her Answer,[12] interposing the following:

> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation by respondent Bureau of Internal Revenue (BIR).
>
> 5. The amount of Php12,330,066.00 being claimed by petitioner as alleged advance VAT

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[7] Records, p. 3; Petition for Review, par. 7, p. 3.
[8] Exhibit "D," p. 18.
[9] Exhibit "B," p. 17.
[10] Records, p. 92; Joint Stipulation of Facts and Issues, II. Agreed Stipulation of Facts, par. 1., p. 92.
[11] Id., at par. 2., p. 92.
[12] Id., at pp. 67-72.

REPRESENTING 120,883 LKG bags of refined sugar at Php102.00 VAT per bag which are erroneously, excessively and/or illegally assessed on, and collected by respondent is not properly documented.

6. Petitioner must prove that it has complied with the provisions of Sections 229 in relation to 204(C) of the National Internal Revenue Code of 1997, as amended, on the prescriptive period for recovery of tax erroneously or illegally collected, it appearing that the prescriptive period was about to expire on May 8, 2011 and the instant petition for review was filed before the Honorable Court of Tax Appeals on May 12, 2011. Section 229 of the NIRC of 1997 explicitly provides that ***"no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of tax xxx."*** (Emphasis Supplied).

7. 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***).

8. Claims for refund must be in accordance with the provisions of Section 229 of the National Internal Revenue Code of 1997, as amended, thus:

> **"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, <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.**
>
> **In any case, no such suit or proceeding shall be filed <u>after the expiration of two (2) years from the date of payment of the tax or penalty</u> regardless of any supervening cause that may arise after payment. xxxx xxx xxx."** (*Underscoring supplied*).

9. The power of taxation will not be surrendered except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty – its most essential power of taxation – by vague or ambiguous language. **Since tax refunds are in the nature of tax exemptions, these are deemed to be in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption (Commissioner of Internal Revenue vs. Solidbank Corporation, 416 SCRA 436)**. It must be indubitably shown to exist, for every presumption is against it **(Davao Light & Power Co., Inc. vs. Commissioner of Customs, 44 SCRA 122).**

Ignoring the above teaching of the Supreme Court and adopting the interpretation favorable to petitioner cannot be done because it runs afoul of its ruling that **those who claim to be exempt from the payment (here, claim for a refund) of particular tax must do so under clear and unmistakable terms found in the statute**. They

> must be able to point to some **positive provision, not merely a vague implication (Asiatic Petroleum Co., Ltd. vs. Llanes, 49 Phil. 466), of the law creating that right (Español vs. Philippine Veterans Administration, 137 SCRA 314).**

On August 31, 2011, the parties submitted their Joint Stipulation of Facts and Issues.[13]

Petitioner presented testimonial and documentary evidence. While, respondent manifested that she is submitting the case for decision without presenting any evidence.[14]

On March 20, 2012,[15] the Court resolved to submit the case for decision, taking into consideration the "Memorandum for Petitioner,"[16] filed on March 9, 2012, and the "Respondent's Memorandum,"[17] filed on March 16, 2012.

Hence, this Decision.

ISSUE

As stipulated upon by the parties, the sole issue for the Court's consideration is:[18]

WHETHER OR NOT PETITIONER IS ENTITLED TO CLAIM FOR TAX REFUND AND/OR CREDIT IN THE AMOUNT OF Php12,330,066 ALLEGEDLY REPRESENTING 120,883 LKG BAGS OF REFINED SUGAR AT Php 102.00 ADVANCED VAT PER BAG PAID TO AND COLLECTED BY THE BUREAU OF INTERNAL REVENUE.

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[13] Records, pp. 91-92.
[14] Records, p. 162.
[15] *Id.*, at p. 183.
[16] Records, pp. 163-170.
[17] Records, pp. 174-179.
[18] *Id.*, at p. 92.

RULING OF THE COURT

The Petition for Review is meritorious.

Republic Act No. 9520, entitled "An Act Amending the Cooperative Code of the Philippines to be known as the PHILIPPINE COOPERATIVE CODE OF 2008, dated February 17, 2009, specifically Article 23(c), in relation to Section 4(a) of R.R. No. 13-2008, defining the cooperative producer, as follows:

> "ART. 23. *Type and Categories of Cooperatives.* - (1) Types of Cooperatives - Cooperatives may fall under any of the following types:
>
> "(a) xxx xxx xxx;
>
> (c) *Producers Cooperative* is one that undertakes joint production whether agricultural or industrial. It is formed and operated by its members to undertake the production and processing of raw materials or goods produced by its members into finished or processed products for sale by the cooperative to its members and non-members. Any end 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 a product of the cooperative and its members;"
>
> While Section 4(a) R.R. No. 13-2008 provides as follows:
>
> '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:
>
> (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 xxx xxx

> 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.

xxx xxx xxx

From the foregoing, it can be deduced that an "Agricultural Producer Cooperative" is one that is registered with the CDA in good standing; and that it is a tiller of the land it owns or leases, incurs cost of agricultural production of the sugar, and produces the sugar cane to be refined.[19]

In the instant case, petitioner is a duly registered agricultural cooperative in good standing as shown in its Certificate of Registration[20] and Certificate of Good Standing.[21] Furthermore, it is supplying various production inputs such as fertilizers, capital, technology transfer, and farm management to its members.[22] Therefore it incurs cost of agricultural production for sugar.

These facts were never contested to by respondent as no evidence was ever presented.[23] Based on Rule 9, Section 1 of the Rules of Court, defences and objections not pleaded are deemed waived.[24] Thus, petitioner is considered as the actual producer of the members' sugarcane production as it primarily provided the various production inputs (fertilizers), capital, technology transfer and farm management.

We now determine whether petitioner, a cooperative producer, is exempt from Value Added Tax ("VAT") on its sale transaction of refined sugar to non-members.

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[19] Negros Sugar Farmers Multi-Purpose Cooperative vs. Commissioner of Internal Revenue, and Jose N. Tan, B.I.R. Regional Director, Region 12, Bacolod City, CTA Case No. 7996, November 9, 2011.
[20] Exhibit "C," p. 17.
[21] Exhibit "D," p. 18.
[22] Exhibit "H," p. 151.
[23] Records, p. 162.
[24] Sec. 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Relevant provisions are Section 61(b) of Republic Act No. 9520 and Section 109(L) of Republic Act No. 9337, which provide that "Cooperative Producer's" sale transaction of processed agriculture products is VAT exempt when sale is made to non-members, to wit:

> "ART. 61. *Tax and Other Exemptions. Cooperatives transacting business with both members and non-members shall not be subjected 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 but 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 non-members shall enjoy the following tax exemptions:*
>
> (2) xxx xxx xxx
>
> (b) Value-Added Tax - On transactions with non-members: *Provided, however, That cooperatives duly registered with the Authority, are exempt from the payment of value-added tax, subject to Section 109, sub-sections L, M and N of Republic Act No. 9337, of the National Internal Revenue Code, as amended: Provided, That the exempt transaction under Section 109(L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or process products for sale by the cooperative to its members and non-members: Provided, further,* That any processed products or its derivative arising from the raw materials produced by its members, sold in their name and for the account of the cooperative: *Provided , finally,* That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds;
>
> xxx xxx xxx

While Section 109(L) by RA No. 9337, provides:

> "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

(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;"

Based on Republic Act No. 9520, in relation to Republic Act No. 9337, 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 if the cooperative is an agricultural producer of the sugar cane that has been converted into refined sugar.

In a similar case involving the same parties, this Court, in CTA Case No. 7996,[25] has ruled that sale of sugar in its processed form by a cooperative is VAT exempt if the sale is made to members and non-members. However as to the sale made to non-members, the processed sugar must be produced by an agricultural producer in order to be VAT-exempt, to wit:

"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."

Hence, the withdrawal of refined sugar by the agricultural cooperative for sale to members is not subject to advance VAT, whereas

[25] Negros Sugar Farmers Multi-Purpose Cooperative vs. Commissioner of Internal Revenue, and Jose N. Tan, B.I.R. Regional Director, Region 12, Bacolod City, November 9, 2011.

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.

It is hereby made clear that to be exempt from VAT on its sale transaction of processed goods or materials, the cooperative must be an agriculture producer.

In the instant case, petitioner was able to prove that it is an agriculture cooperative producer by presenting its Certificate of Registration dated October 19, 2009[26] affirming its status as a tax exempt agricultural cooperative. Based on the foregoing evidence, petitioner is "considered as the actual producer of the members' sugarcane production because it primarily provided the various production inputs (fertilizers), capital, technology transfer, and farm management." There is no showing that the said Certificate of Registration, which exempt petitioner from the payment of advance VAT, have been revoked or nullified. Hence, petitioner is VAT-exempt on its sale transaction.

Having settled the issue of whether petitioner is exempt from VAT pursuant to RA No. 9520 and RA No. 9337, We shall now examine petitioner's compliance with the procedural and substantiation requirements mentioned under the NIRC of 1997, as amended.

The provisions of the National Internal Revenue Code of 1997, as amended, pertinent to claiming a tax refund of erroneously paid tax are Sections 204 (C) and 229, which read as follows:

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

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[26] Exhibit "C," p. 17.

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."

xxx xxx xxx

"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 above-quoted 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.[27]

Thus, the taxpayer-claimant must file its administrative claim for refund with the Commissioner within two (2) years after the payment

[27] Tax Law and Jurisprudence, 2nd ed., Associate Justice Jose C. Vitug and Presiding Justice Ernesto D. Acosta, p. 306.

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.[28]

Hence, 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 the CTA in order to preserve its right to seek judicial recourse.[29]

In the instant case, petitioner made Advance VAT payments under protest on refined sugar on various dates from May 15, 2009 to December 23, 2009.[30] Reckoning from May 15, 2009, petitioner had until May 15, 2011 within which to file its claim both in the administrative and judicial levels. Clearly, both the administrative claim filed on January 19, 2011 and the judicial claim for refund filed before this Court on May 12, 2011 were filed within the two-year prescriptive period. Hence, the appeal of petitioner before this Court on May 12, 2011 is well within the two-year prescriptive period giving this Court the jurisdiction to render its decision pursuant to Section 7(a)(2) of RA No. 9282[31], amending RA No. 1125.[32]

Looking now at petitioner's evidence submitted in support of its claim, the Court took into consideration the Summary of VAT Payments Under Protest,[33] by crossing referencing it with the related BIR Certificates of Advance Payment of VAT, and BIR Deposit Payment form,[34] in order to show that petitioner actually paid the amount of P12,330,066.00, representing advance VAT on 120,883 LKG bags of refined sugar from May 15, 2009 to December 23, 2009, which is hereby summarized as follows:

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[28] Gibbs and Gibbs vs. Commissioner of Internal Revenue and Court of Tax Appeals, L-17406, November 29, 1965, 15 SCRA 318.
[29] United Cadiz Sugar Farmers Association Multi-purpose Cooperative vs. Commissioner of Internal Revenue, CTA Case No. 7995, August 16, 2011.
[30] Exhibit "G," Summary of Advance VAT Payments Under Protest, p. 21.
[31] "An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Section of Republic Act No. 1125, as amended, otherwise known as the Court of Tax Appeals, and for Other Purposes."
[32] "An Act Creating the Court of Tax Appeals."
[33] Exhibit "G," Summary of Advance VAT Payments Under Protest, p. 21.
[34] Exhibits "G-1-a" to "G-32-a," pp. 22-53.

Exhibits	BIR Form No.	Date Paid	No. of Bags	VAT per Bag	Amount
"G-1-a"	2308	5/15/2009	3,841.00	102	391,782.00
"G-2-a"	2308	5/20/2009	5,543.00	102	565,386.00
"G-3-a"	2308	5/21/2009	2,136.00	102	217,872.00
"G-4-a"	2308	5/22/2009	973.00	102	99,246.00
"G-5-a"	2308	5/26/2009	4,489.00	102	457,878.00
"G-6-a"	2308	5/27/2009	2,295.00	102	234,090.00
"G-7-a"	2308	5/28/2009	2,547.00	102	259,794.00
"G-8-a"	2308	6/2/2009	2,616.00	102	266,832.00
"G-9-a"	2308	6/4/2009	1,359.00	102	138,618.00
"G-10-a"	2308	6/10/2009	1,363.00	102	139,026.00
"G-11-a"	2308	6/15/2009	1,470.00	102	149,940.00
"G-12-a"	2308	6/22/2009	1,546.00	102	157,692.00
"G-13-a"	2308	6/29/2009	1,714.00	102	174,828.00
"G-14-a"	2308	7/6/2009	1,911.00	102	194,922.00
"G-15-a"	2308	7/13/2009	3,313.00	102	337,926.00
"G-16-a"	2308	7/20/2009	3,061.00	102	312,222.00
"G-17-a"	2308	7/27/2009	1,956.00	102	199,512.00
"G-18-a"	2308	10/1/2009	6,040.00	102	616,080.00
"G-19-a"	2308	10/8/2009	5,750.00	102	586,500.00
"G-20-a"	2308	10/15/2009	5,524.00	102	563,448.00
"G-21-a"	2308	10/22/2009	5,070.00	102	517,140.00
"G-22-a"	2308	10/29/2009	3,600.00	102	367,200.00
"G-23-a"	2308	11/4/2009	3,321.00	102	338,742.00
"G-24-a"	2308	11/6/2009	1,784.00	102	181,968.00
"G-25-a"	2308	11/12/20009	5,600.00	102	571,200.00
"G-26-a"	2308	11/19/2009	6,800.00	102	693,600.00
"G-27-a"	2308	11/26/2009	6,589.00	102	672,078.00
"G-28-a"	2308	12/3/2009	6,351.00	102	647,802.00
"G-29-a"	2308	12/10/2009	6,406.00	102	653,412.00
"G-30-a"	2308	12/17/2009	7,265.00	102	741,030.00
"G-31-a"	2308	12/17/2009	1,002.00	102	102,204.00
"G-32-a"	2308	12/23/2009	7,648.00	102	780,096.00
		TOTAL	**120,883.00**		**12,330,066.00**

Upon a careful scrutiny of the foregoing documents, and for failure of respondent to present any counter evidence, We find the documents to be in order. Therefore, petitioner has sufficiently proven its claim.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of petitioner

Negros Sugar Farmers Multi-Purpose Cooperative the amount of Twelve Million Three Hundred Thirty Thousand Sixty Six (P12,330,066.00) Pesos, representing erroneously paid advance VAT for the period covering May 15, 2009 to December 23, 2009.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

WE CONCUR:

(Retired)
OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13 of Article VIII of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice