REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA CARLOTA MILL DISTRICT
MULTI-PURPOSE COOPERATIVE,
Petitioner,

- versus -

C.T.A. CASE NO. 5078

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
SEP 12 1995

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# D E C I S I O N

This is a petition seeking the refund of P1,533,317.66, representing erroneously and illegally paid Value-Added Tax (VAT) on withdrawal of processed sugar by petitioner-Cooperative from the sugar refinery.

The factual background of the case as gathered from the petition for review borne out of the records, and supported by the uncontroverted evidence of petitioner are stated as follows:

1. Petitioner is a multi-purpose cooperative duly organized and existing by virtue of the Cooperative Code of the Philippines (RA 6938) and other pertinent laws of the Philippines. It is registered with the Cooperative Development Authority (CDA)

under Certificate of Registration No. ILO-021, dated March 27, 1991 (Exh. A).

2. Petitioner is a licensed Sugar Trader with authority to operate as such for crop years 1991-1992 under Certificate of Registration No. STB-92-099, dated October 22, 1991, issued by the Sugar Regulatory Authority (Exh. B). It transacts business only with its members (T.S.N., Sept. 15, 1994 Hearing, p. 7).

3. Petitioner has for its members planters of sugar cane hereinafter referred to as Producer. For crop year 1992, the sugar cane harvested by its members were assigned to petitioner as evidenced by a Deed of Assignment (Exh. E). The Producer sold in favor of the Cooperative, petitioner herein, its produce with an undertaking that petitioner shall pay the market price of the sugar manufactured at the time of delivery of the quedans in the name of the petitioner. The price paid shall be net of cash advances, interests and costs incident to the storing and handling of sugar produced.

4. By virtue of another contract more particularly described as a "Marketing Agreement and Special Power of Attorney" (Exh. F), the Producer agrees to turn over in favor of petitioner the entire supervision and management of the sugar cane produced. Petitioner in turn undertakes to have the sugar cane milled and the finished product sold. Thereafter, petitioner shall pay the producer the sum received less the above-mentioned deductions. The corresponding quedans are issued in the name of the Cooperative with an annotation that it is for the account of a particular cooperative member.

5. In a letter dated October 1, 1991 (S26-0-38-91), respondent through Victor A. Deoferio, Jr., then Deputy Commissioner, issued a Tax Exemption Certificate in favor of petitioner, stating that it is exempt from all taxes and fees imposed under the internal revenue laws and other tax laws pursuant to Article 61 of the Cooperative Code of the Philippines, pertinent portion of which are quoted thus (Exh. C):

> "**Based on the foregoing and pursuant to Article 61 of the Cooperative Code, you are exempt from all taxes and fees imposed under the internal revenue laws and other tax laws.** <u>This exemption however, does not include the 10% value-added tax which might be passed on or billed to you by the seller/vendor on your purchase of goods</u>. x x x.
>
> This exemption shall be for a period of ten (10) years only, reckoned from the date of your registration with the CDA on March 27, 1991.
>
> **It is emphasized however, that the exemption of the cooperative does <u>not</u> extend to the individual members thereof.** x x x." (Emphasis Ours.)

6. Subsequently, in letter dated October 21, 1991, Mr. Beethoven L. Rualo, then Regional Director of Revenue Region No. 6-B, Bacolod City, informed petitioner that he had issued a directive to all personnel in the district offices especially those assigned in the sugar centrals to allow the withdrawal of processed sugar by cooperatives without the prepayment of the advance Value-Added Tax (VAT) upon showing of the Tax

Exemption Certificate, pertinent portion of which reads as follows (Exh. D):

> "In reply thereto, please be advised that I have instructed all my district offices, especially those assigned in the sugar centrals, that they may **allow the withdrawal of such processed sugar by cooperatives without the prepayment of advance Value-Added Tax (VAT) upon showing of the Tax Exemption Certificate issued by our Office.** However, we have also instructed them that they should inform the cooperative of the possibility that we either;
>
> (1) **Assess the individual member if withdrawals are made in their individual names considering that the exemption of the cooperative does not extend to the individual member**; or
>
> (2) Assess the cooperatives themselves if proven that they have engaged in a systematic and business-like manner the trading of such processed sugar, i.e., buying and selling activities, etc., more so, if the funds used were borrowed. To our mind, these activities no longer constitute the ordinary and usual functions of a cooperative but rather are the activities of a sugar trader, for the purpose of making profit." (Highlight Ours.)

7. In a letter dated March 3, 1992 (Exh. H), Acting Regional Director Mariano A. Aguilar, Jr., warned and instructed Central Azucarera de La Carlota to comply with the provisions of Revenue Regulations No. 7-89, November 8, 1979, regarding the advance

payment of VAT on the withdrawal of refined sugar. We quote at length the letter, dated March 3, 1992, as follows:

Revenue Region No. 6-B
Bacolod City

March 3, 1992

Central Azucarera de La Carlota
La Carlota City

Gentlemen:

It has come to the attention of this Office that you are allowing the withdrawal from your mill premises of refined sugar milled by members of La Carlota Mill District Multi-Purpose Cooperative, Inc. without prior advance payment of the 10% Value-Added Tax by the owners/sellers thereof, in clear violation of Section 4 of Revenue Regulations No. 7-89 dated November 8, 1989.

Although under Article 61 of the Cooperative Code, La Carlota Mill District Multi-Purpose Cooperative, Inc. may be exempt from all taxes and fees imposed under the internal revenue regulations and other tax laws, yet **this exemption does <u>not</u> however extend to its individual members. Correspondingly, individual members thereof cannot invoke the exemption privileges of the cooperative.** Accordingly, the sugar cane and the resulting refined sugar owned by the planters-members and sold through the cooperative is subject to the 10% Value-Added Tax advance payment prior to its removal from mill premises. Attached herewith are xerox copies of letters clearly defining the status of members of the cooperative signed by Deputy Commissioners Victor Deoferio and Eufracio

Santos, dated October 1, 1991 and November 18, 1991, respectively. (Underscoring Ours.)

You are therefore instructed to comply strictly with the provision of Revenue Regulations No. 7-89, otherwise, you will be liable to the penalty prescribed under Section 255 in relation to Section 254 and 274 of the National Internal Revenue Code, as amended.

Very truly yours,

(Sgd.)
MARIANO A. AGUILAR, JR.
Actg. Regional Director

Encls. - a/s

Copy furnished:

La Carlota Mill District
Multi-Purpose Cooperative, Inc.
RDO, RD No. 57

8. On the basis of the above-cited letter, Central Azucarera de La Carlota indiscriminately applied the provisions of Revenue Regulations No. 7-89 to cooperatives by withholding the 10% advance payment for VAT on the withdrawals made by petitioner.

9. By virtue of the Tax Exemption Certificate (dated October 1, 1991) issued by respondent pursuant to the tax exemption privileges granted to Cooperatives under Sec. 61 of R.A. 6938 (Cooperative Code of the Philippines) and the letter of the Bureau dated October 21, 1991, petitioner through its counsel wrote Central Azucarera de La Carlota to allow withdrawals of the

sugar owned by the cooperative and quedan exclusively under its name without the advance payment of the VAT (Exh. I).

10. On March 25, 1992, petitioner through its tax consultant wrote the Regional Director of Revenue Region No. 6-B, Bacolod City (Exh. J), asking for clarification regarding its instruction to the Central to comply with Revenue Regulations No. 7-89 because it appears that the Central did not make any distinction between the individual member and the Cooperative.

11. There being no action on the part of Central Azucarera de La Carlota and the BIR, petitioner informed the Bureau that it shall be paying the VAT under protest in order not to delay the release of the sugar (Exh. K). Thus it paid under protest the VAT from April 7-24, 1992, the sum of P1,533,317.66, itemized as follows:

| Exhibits | Date | O.R. No. | Amount |
|---|---|---|---|
| L | 4-07-92 | 0137615 L | P 357,273.24 |
| M | 4-07-92 | 0137616 L | 327,829.42 |
| N | 4-20-92 | 0140749 L | 240,599.78 |
| O | 4-20-92 | 0140843 L | 86,000.00 |
| P | 4-20-92 | 0140982 L | 67,295.72 |
| Q | 4-20-92 | 0140981 L | 118,726.00 |
| R | 4-20-92 | 0140980 L | 271,093.50 |
| S | 4-24-92 | 0141138 L | 64,500.00 |
| | TOTAL VAT PAID | | P1,533,317.66 |

12. On February 11, 1994, petitioner filed a claim for refund with the respondent (Exh. T). On March 18, 1994 petitioner informed respondent that it is appealing its claim for

refund with this Court (Exh. U), pursuant to Section 204(3) of the National Internal Revenue Code, in order to toll the running of the prescriptive period for judicially claiming for a refund. Hence, even without the decision of respondent on petitioner's claim for refund, petitioner filed on the same date the instant petition for review through registered mail and the same was received by the Court on March 21, 1994 (Exh. V).

Respondent failed to answer within the time prescribed even after several extensions of time was granted by the Court. Upon motion of petitioner, respondent was declared in default. The Court proceeded with the reception of petitioner's evidence. Thereafter, the only thing left for resolution by the Court in a judgment by default under Section 1 of Rule 18 of the Revised Rules of Court is to determine petitioner's entitlement to the claim.

The issue is limited to whether or not petitioner is entitled to claim for the refund of P1,533,317.66, representing erroneously and illegally collected VAT from April 7-24, 1992.

A close scrutiny of the evidence presented by petitioner will show that petitioner indeed paid the VAT from the period April 7-24, 1992 (see Exhs. L to S, inclusive). Central Azucarera de La Carlota collected from petitioner the 10% VAT on all of its withdrawal of refined sugar for the said period in the total amount of P1,533,317.66. It was only after the Central received the letter, dated March 3, 1992, coming from the Regional Office of the BIR that it started to collect the 10% VAT from petitioner.

It is hardly necessary to observe that the Central dealt mainly on the last paragraph of the said letter instructing it to comply strictly with the provision of Revenue Regulations No. 7-89. The imposition made by Mr. Mariano A. Aguilar, Jr., Acting Regional Director, upon the Central is clearly discernible if taken in its whole context. In other words, it should be read together with the provision regarding the exemptions enjoyed by cooperatives. The exemption of cooperatives does not extend to its individual members. Therefore, individual members cannot invoke the exemption privileges of the cooperatives. It can be aptly stated that respondent has in fact admitted that cooperatives, like petitioner's herein, have the privilege of tax exemptions and to that effect correspondingly issued a Tax Exemption Certificate in favor of petitioner, pursuant to Section 61 of R.A. 6938, otherwise known as the Cooperative Code of the Philippines, which provides:

> "**ART. 61. Tax Treatment of Cooperatives**. - Duly registered cooperatives under this Code which do not transact any business with nonmembers or the general public shall not be subject to any government taxes or fees imposed under the internal revenue laws and other tax laws. Cooperatives not falling under this article shall be governed by the succeeding section."

To assure, however, that the privilege is not abused or circumvented, the respondent's Acting Regional Director instructed the Central to collect the 10% VAT on the sugar cane milled by the planter-members and reiterated that the exemption of cooperatives does not extend to the individual members thereof. In other words, it merely clarified the previous ruling, dated October 1, 1991 (S26-0-38-91). No other conclusion can be drawn from the language of the March 3, 1992 letter as would adequately describe the reason for the circumstance for the enjoyment of the privilege extended to cooperatives. The reason is plain. Only the cooperatives are exempted.

The directive is for the Central to impose the 10% VAT pursuant to Revenue Regulations No. 7-89 on individual members who withdraw refined sugar milled by the members themselves. We are not to confuse about what seems feasible (on the part of the Central) with about what is right. As a matter of fact, we are not impressed by the non-observance of the Central in recognizing the exemption granted to cooperatives by its fear of being penalized under Section 255 in relation to Section 254 and 274 of the National Internal Revenue Code.

The 10% VAT imposed upon the withdrawal of refined sugar made by the petitioner falls flatly in conflict with the law granting its tax exemption (Section 61 of RA 6938). The blindness of the Central cannot be excused. We uphold the plain interpretation of the language of the March 3, 1992 letter. Thus, no other construction should be given.

After having established its exemption from taxes, petitioner likewise has proven by sufficient evidence that it had erroneously paid the VAT from April 7-24, 1992 (Exhs. L to S, inclusive) and therefore is entitled to the refund sought for by way of this petition for review.

**WHEREFORE,** the Court finds the petition to be meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is ordered to refund in favor of petitioner the amount of P1,533,317.66, representing erroneously paid Value-Added Tax for the year 1992.

No pronouncement as to cost.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

**MANUEL K. GRUBA**
Associate Judge

**RAMON O. DE VEYRA**
Associate Judge

# CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals