

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

UNITED CADIZ SUGAR
FARMERS ASSOCIATION MULTI-
PURPOSE COOPERATIVE,
Petitioner,

CTA CASE NO. 7995

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

AUG 16 2011

✓ 4:05 p.m.

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DECISION

CASTAÑEDA, JR., J.:

The case involves a claim for refund of the amount of P3,496,734.00, allegedly representing advance value-added tax (VAT) on 34,017 LKG bags of refined sugar illegally or erroneously collected from petitioner for the period covering November 15, 2007 to February 13, 2009.

United Cadiz Sugar Farmers Association Multi-purpose Cooperative (petitioner) is a multi-purpose cooperative duly organized in accordance with 

the Cooperative Development Authority on January 14, 2004, with office at AGMAC Bldg., Mandalagan, Bacolod City, Philippines.¹

Respondent 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.

According to petitioner, prior to November 2007, 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, 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 as to whether petitioner is considered the producer of the sugar product of its members, as Regional Director Galanto uses her interpretation of the word “producer” to exclude agricultural cooperatives that do not till the land they own or lease.

In a letter dated January 25, 2008, Assistant Commissioner James Roldan confirmed petitioner’s opinion that its sales of sugar to its members and non-members are exempt from the payment of VAT.²

Petitioner alleged that upon receipt of the legal opinion issued by Assistant Commissioner Roldan, Regional Director Galanto resumed issuing AARRS to petitioner. However, starting November 2008, Regional Director 

¹ Exhibits “C” and “D”

² Exhibit “G”

Galanto again refused to release the AARRS of petitioner without prior payment of the advance VAT.

Insisting 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. 9337,³ petitioner filed its administrative claim for refund on November 11, 2009.⁴

On November 16, 2009, petitioner filed its judicial claim for refund before this Court.

On December 23, 2009, respondent filed her Answer⁵ 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 Php3,496,734.00 being claimed by petitioner as alleged overpayment of Value-Added Tax (VAT) which are erroneously, excessively and/or illegally assessed, and collected by respondent is not properly documented.
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 Code), as amended, on the prescriptive period for recovery of taxes erroneously or illegally collected.
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:

**'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** 

³ Par. I.d, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 217-218

⁴ Exhibit "B"

⁵ Docket, pp. 123-136

alleged to have erroneously or 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, 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.

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 United Cadiz Sugar Farmers Association Multi-Purpose Cooperative (UCSFAMPC) to pay advance VAT beginning November 15, 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 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 be 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.'

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:

(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.
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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 

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: *gc*

- (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(B)(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. 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 held 

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 regulations 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. Respondent's counsel, however, manifested that he is dispensing the presentation of evidence on the ground that only legal issues are involved in this case.⁶

On December 21, 2010, the case was submitted for decision, considering petitioners Memorandum⁷ filed on December 8, 2010 and respondent's Manifestation⁸ filed on December 17, 2010, stating that she is adopting her Answer as her Memorandum.⁹

The issues¹⁰, 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." 

⁶ Docket, p. 259

⁷ Docket, pp. 260-267

⁸ Docket, pp. 269-272

⁹ Docket, p. 274

¹⁰ Docket, pp. 218-219

The foregoing issues can be summarized as follows:

1. Whether or not Revenue Regulations No. 13-2008 is valid;
2. Whether or not the claim was filed within the two-year prescriptive period so as to clothe this Court with jurisdiction over the instant case; and
3. Whether or not the claim is duly substantiated by documentary evidence.

In the instant case, petitioner assails the validity of Revenue Regulations No. 13-2008, particularly, Sections 3 and 4, which are quoted hereunder for ready reference:

“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.

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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.

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.

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.

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.

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.”

In order to address the alleged invalidity of Revenue Regulations No. 13-2008, it is necessary to determine first if resolving the validity of a revenue regulation falls within the jurisdiction of this Court.

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:
 - (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;
 - (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;”

The above-quoted provision does not indicate that this Court’s jurisdiction includes the power to decide or rule on the validity of a rule or regulation issued by the Bureau of Internal Revenue. *Jr*

In fact, the Supreme Court made a corroborating pronouncement in the case of *British American Tobacco vs. Jose Isidro Camacho, et. al.*¹¹, in this wise:

“While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

In *Drilon v. Lim*, it was held:

We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, B.P. 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of 

¹¹ G.R. No. 163583, August 20, 2008

Rights. **Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.**” (*Emphasis supplied*)

Considering the foregoing, this Court, therefore, cannot rule on the validity of Revenue Regulations No. 13-2008.

The Court will now address the issue of whether or not the advance VAT paid “under protest” by petitioner was erroneously and/or illegally collected.

Petitioner alleges that it has been granted tax exemption under Article 61 of R.A. No. 6938 (Cooperative Code of the Philippines) and Section 109(r) of R.A. 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.” (*Emphasis supplied*)

“SECTION 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

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

(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;" (*Emphasis supplied*)

To further prove its entitlement to tax exemption, specifically, from payment of VAT, petitioner submitted the Certificate of Exemption dated March 2, 2004 issued by Regional Director Lirio A. Cabsaba, containing a declaration that petitioner is exempt from VAT pursuant to Section 109(r), (s), and (u) of the NIRC of 1997 and the three percent (3%) percentage tax pursuant to Section 116 of the said Tax Code.¹² Petitioner likewise submitted a letter dated January 25, 2008, from then Assistant Commissioner for Legal Service James Roldan, who affirmed that the sale of sugar produce made by petitioner to its members as well as non-members is exempt from the payment of VAT, pursuant to Section 109(L) of R.A. No. 9337, as implemented by R.R. No. 4-2007.¹³

Based on the foregoing, it is clear 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.

The Court will now proceed to determine petitioner's entitlement to a refund in the amount of P3,496,734.00, allegedly representing advance VAT on 34,017 LKG bags of refined sugar, which has been illegally or erroneously *je*

¹² Exhibit "E"

¹³ Exhibit "G"

collected from petitioner for the period covering November 15, 2007 to February 13, 2009.

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 provide as follows:

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

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(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." (*Emphasis supplied*)

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied*) *je*

The two-year prescriptive 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.¹⁴ 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 Revenue 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.¹⁵ 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 pertains to advance VAT on refined sugar allegedly paid by petitioner on various dates from November 15, 2007 to February 13, 2009. Reckoned from November 15, 2007, petitioner had until November 16, 2009¹⁶ within which to file its claim both in the administrative and judicial levels. Clearly, the administrative claim filed on November 11, 2009¹⁷ and the judicial claim via a Petition for Review filed before this Court on November 16, 2009 fall within the two-year prescriptive period. *Je*

¹⁴ Tax Law and Jurisprudence, 2nd ed., Justice Jose Vitug and Presiding Justice Ernesto D. Acosta, p. 306

¹⁵ *Gibbs and Gibbs vs. Commissioner of Internal Revenue, et al.*, 15 SCRA 318

¹⁶ November 15, 2009 fell on a Sunday

¹⁷ Exhibit "B"

To reiterate, when the two-year prescriptive period is about to end, petitioner need not wait for the BIR to act on its claim. Thus, petitioner's immediate appeal before this Court on November 16, 2009 or barely five (5) days from the filing of its administrative claim on November 11, 2009, but within the two-year prescriptive period, gives this Court the jurisdiction to render its decision as described in Section 7(a)(2) of R.A. No. 9282, amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals, to wit,

"SEC. 7. *Jurisdiction.* - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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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;"

The foregoing provisions, however, should be read in conjunction with Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, which provide:

"RULE 4
Jurisdiction of the Court

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SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following: *je*

(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 Code or other laws administered by the Bureau of Internal Revenue;

(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 or other applicable law provides a specific period of action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and ***Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period*** under Section 229 of the National Internal Revenue Code;" (*Emphasis supplied*)

"RULE 8
Procedure in Civil Cases

SEC. 3. *Who may appeal; period to file petition. –*

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner

of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.”

To prove that it actually paid the amount of P3,496,734.00 representing advance VAT on 34,017 LKG bags of refined sugar from November 15, 2007 to February 13, 2009, petitioner submitted a Summary of VAT Payments Under Protest¹⁸, with the related BIR’s Certificates of Advance Payment, Revenue Official Receipts (ROR), Payment Forms and letters to BIR Regional Director Rodita B. Galanto, as summarized below:

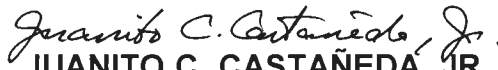
BIR ROR/ BANK	DATE PAID	NO. OF BAGS	VAT/BAG	VAT PAID	EXHIBITS
02920729	11/15/2007	3,669	102.00	P 374,238.00	“I”, “I-1”, and “I-2”
02920729	11/15/2007	189	102.00	19,278.00	“I”, “I-1”, and “I-3”
02920825	11/22/2007	3,153	102.00	321,606.00	“J”, “J-1” and “J-2”
02920924	11/22/2007	895	102.00	91,290.00	“K”, “K-1” and “K-2”
02920866	11/28/2007	3,281	102.00	334,662.00	“L”, “L-1” and “L-2”
02920867	11/28/2007	906	102.00	92,412.00	“M”, “M-1” and “M-2”
02920913	12/06/2007	924	102.00	94,248.00	“N”, “N-1” and “N-2”
02920912	12/06/2007	2,959	102.00	301,818.00	“O”, “O-1” and “O-2”
02920951	12/13/2007	898	102.00	91,596.00	“P”, “P-1” and “P-2”
02920952	12/13/2007	3,672	102.00	374,544.00	“Q”, “Q-1” and “Q-2”
02920983	12/20/2007	3,292	102.00	335,784.00	“R”, “R-1” and “R-2”
BPI	11/27/2008	1,022	102.00	104,244.00	“S”, “S-1” and “S-2”
BPI	11/27/2008	2,018	102.00	205,836.00	“T”, “T-1” and “T-2”
BPI	11/28/2008	306	102.00	31,212.00	“U”, “U-1” and “U-2”
BPI	11/28/2008	2,356	102.00	240,312.00	“V”, “V-1” and “V-2”
BPI	12/03/2008	567	102.00	57,834.00	“W”, “W-1” and “W-2”
BPI	12/03/2008	890	102.00	90,780.00	“X”, “X-1” and “X-2” and docket page no. 00092
02344141	02/13/2009	3,020	102.00	308,040.00	“Y-1” and “Y-2”
TOTAL		34,017		P3,469,734.00	

Upon careful scrutiny of the foregoing documents, this Court finds petitioner’s claim to be properly substantiated but only in the above computed amount of P3,469,734.00. 

¹⁸ Exhibit “H”

WHEREFORE, premises considered, petitioner's claim for refund is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of P3,469,734.00, representing petitioner's erroneously paid tax for the period covering November 15, 2007 to February 13, 2009.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

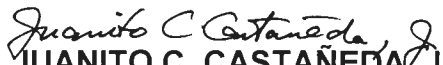
WE CONCUR:


CAESAR A. CASANOVA
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division