Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB CASE No. 1012** (CTA CASE No. 8287)
	Present:
-versus-	DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
NEGROS DEL NORTE PLANTERS ASSOCIATION MULTI-PURPOSE COOPERATIVE. *Respondent.*	Promulgated: AUG 14 2014 9:00 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4,* in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),*[1] *as amended,* of the Decision dated

[1] Rule 4, SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

January 30, 2013[2] and the Resolution dated April 18, 2013[3] rendered by the Special Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated January 30, 2013:

> "**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.**"

Resolution dated April 18, 2013:

> "**WHEREFORE,** respondent's "Motion for Reconsideration (RE: Decision Promulgated on January 30, 2013)," is hereby **DENIED** for lack of merit.
>
> On the other hand, petitioner's "Manifestation," is hereby NOTED. Accordingly, let the dispositive

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Rule 8, SEC. 4. *Where to appeal; mode of appeal.* – x x x

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Amelia Cotangco-Manalastas, Associate Justice Olga Palanca-Enriquez has already retired on the date of promulgation, *En Banc* Docket, pp. 27-43.
[3] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice AmeliaR. Cotangco-Manalastas, Associate Justice Olga Palanca-Enriquez has already retired on the date of promulgation, *En Banc* Docket, pp. 44-48.

portion of the Decision dated January 30, 2013, be amended as follows:

> "**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 del Norte Planters Association Multi-Purpose Cooperative*** the amount of Twelve Million Three Hundred Thirty Thousand Sixty Six Pesos (₱12,330,066.00), representing erroneously paid advance VAT for the period covering May 15, 2009 to December 23, 2009."
>
> **SO ORDERED.**"

The facts of the case as recited by the Special Third Division in Its Decision[4] are as follows:

> "Petitioner[5] is a duly organized multi-purpose agricultural cooperative in accordance with Republic Act ("RA") No. 9520, with license[d] to transact business and sue in the Philippines, having its office at VICMICO Compound, Victorias City, Negros Occidental. It is represented by its Vice-Chairman Alexis Javelona.
>
> On the other hand, respondents are the Commissioner of Internal Revenue[6] ("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.

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[4] *Supra* note 2.
[5] Now the respondent.
[6] Now the petitioner.

On October 7, 1999, Deputy Commissioner (Legal and Enforcement Group), Sixto S. Esquivias IV, issued a letter 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% 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 was issued by James H. Roldan, Assistant 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
<7> acts as the exclusive marketing arm of the sugar

produced from the various farms of its cooperative members.

xxx xxx xxx

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.

On May 25, 2009, the CDA Iloilo Extension Office issued a Certificate of Good Standing 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 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.

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.

On June 30, 2011, respondent filed her Answer, 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 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 c

> 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 (Espaftol vs. Philippine Veterans Administration, 137 SCRA 314).**

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

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

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

The Special Third Division ruled in favor of NDNPAMPC, declaring it to be a duly registered agricultural cooperative in good standing based on its Certificate of Registration and Certificate of Good Standing, which were not contested by respondents therein as no evidence was ever presented. Moreover, being an agricultural producer of sugar, NDNPAMPC's sale of its processed goods to non-members is exempt from VAT. The said Division also ruled that NDNPAMPC has complied with the substantial and procedural requirements in availing tax refund.

Petitioner's Motion for Reconsideration was denied for lack of merit.

Hence, petitioner filed the instant Petition.

Petitioner claims that the payment of advance VAT has long been implemented through several Revenue Regulations, starting with RR No. 07-89 dated November 08, 1989; that NDNPAMPC is required to present its monthly or quarterly VAT returns to prove that it did not apply the subject claim as credit against its output tax; that NDNPAMPC failed to substantiate its claim; that the Special Third Division erred in relying on BIR Ruling No. EECP-001-2008; and that NDNPAMPC only acquired its juridical personality on October 19, 2009, which is after the taxable year of the subject claim.

The issue is whether NDNPAMPC is entitled to claim for a tax refund and/or credit in the amount of ₱12,330,066.00 allegedly representing 120,883 lkg bags of refined sugar at ₱102.00 advanced VAT per bag paid to and collected by the Bureau of Internal Revenue (BIR).

As provided for in Article 61(b) of RA 9520 and Section 109(L) of RA 9337, sale by an agricultural cooperative of its products to its non-members shall be exempted from VAT, provided it is duly registered with the CDA, thus:

> "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:
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> 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, 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 processed products for sale by the cooperative to its members and non-members xxx xxx xxx"

> "SEC. 109. Exempt Transactions. - (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx

> (L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; xxx xxx xxx"

Be that as it may, RR 13-2008 requires payment of the advance VAT on the sale of refined sugar before the refined sugar is withdrawn from a sugar refinery. The same RR enumerates several withdrawals that shall be exempt from the payment of said advance VAT, to wit:

> "***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. xxx xxx xxx
>
> 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, <u>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</u>, unless the buyer who withdraws the refined sugar from the Sugar Refinery/Mill is a member of the cooperative."

If the sale of sugar is in its original form, regardless of the seller, the said sale is exempt from payment of advance

VAT. If the sugar is in processed form, the sale must be made to the agricultural cooperative's members to be exempt from payment of advance VAT. If the sale of sugar in processed form is made by an agricultural cooperative to non-members, it will only be VAT-exempt if the cooperative is the agricultural producer of the refined sugar.

Based on Section 4 of RR 13-2008, for an agricultural cooperative to be exempt from paying Advance VAT on the withdrawal of refined sugar, the agricultural cooperative must be of good standing (through Certificate of Good Standing), duly accredited and registered with the CDA and that the cooperative must be the producer of the sugar.

Since NDNPAMPC is claiming exemption from payment of above-mentioned advance VAT, it should comply with the stated requirements to be exempt from such.

As observed by this Court's Special Third Division, it is undisputed that NDNPAMPC is an agricultural cooperative of good standing, as evidenced by its Certificate of Good Standing presented before the Court in Division. NDNPAMPC also presented its Certificate of Registration with the CDA, proving that it is duly registered and accredited by the said Authority.

No other than the BIR itself, through Assistant Commissioner James H. Roldan, states that NDNPAMPC is the actual producer of its refined sugar, through BIR Ruling No. ECCP-001-2008. As stated by the Special Third Division, no evidence to the contrary was ever presented by petitioner. Unless and until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Rulings shall be considered valid with full force and effect.[7] Moreover, as properly observed by NDNPAMPC, no investigation report was ever presented in Court that would nullify the said BIR Ruling.

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[7] Delta Airlines Inc., vs. Hon. Sec. Cesar V. Purisima (in his capacity as Incumbent Secretary of the Department of Finance) and Hon. Com. Kim S. Jacinto-Henares (in her capacity as Incumbent Commissioner of Internal Revenue), CTA Case No. 8360, August 15, 2013.

Furthermore, the Court has ruled in the case of *Negros Sugar Farmers Multi-Purpose Cooperative vs. Commissioner of Internal Revenue (the "NSFMPC Case")*[8] that:

> "The foregoing definition that "[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" does not mention whether the "cooperative" refers to the juridical entity, or to the individual members. The definition is broad enough to include or cover *bona fide* individual members of the cooperative, which is deemed the co-producer of the sugar produced by the members. Besides, the actual "tiller of the land" has to be a natural person, instead of a juridical person, for the reason that the latter's existence is merely a fiction of law.
>
> At any rate, even assuming that the individual members are not embraced by the meaning of "cooperative" under Section 4(a) of R.R. No. 13-08, the same provision considers an agricultural cooperative a producer if, among others, it "incurs cost of agricultural production of the sugar and produces the sugar cane to be refined." This means that the cooperative need not be the tiller of the land it owns or leases for as long as it incurs production cost and produces the sugar cane to be refined.
>
> In the instant case, petitioner presented Certificate of Exemption dated November 3, 1999 and BIR Ruling dated December 27, 2007, 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 Exemption No. ECCP 007-99 dated November 3, 1999 and the BIR Ruling dated December 27, 2007, which exempt petitioner from the

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[8] CTA Case No. 7996, November 09, 2011.

> payment of advance VAT, have been revoked or nullified by respondent.
>
> Moreover, by waiving their right to present evidence, respondents failed to present controverting evidence to refute the presumption that 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.""

The contention of petitioner that the repealing clause of RR 13-2008 affects the validity of the said BIR Ruling is of no moment as there were no inconsistencies between the two in the first place. We find no irreconcilable conflict that can constitute an implied repeal between the two. The subject BIR Ruling merely rules that NDNPAMPC, being an actual producer of its products, is exempt from payment of advance VAT pursuant to Section 109(L) of the NIRC of 1997, while RR 13-2008 merely prescribed the procedures for the payment of advance VAT on the sale of refined sugar before it is withdrawn from the sugar refinery, as well as the exempt entities thereto. Even so, it is a cardinal rule in statutory construction that implied repeals are disfavored and will not be so declared unless the intent of the legislators is manifest.[9]

The claim that petitioner's answer acts as a revocation of the said BIR Ruling cannot also hold water, as the cited case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao Inc.*[10] precisely rejects this contention. As we have held in the case of *Total (Philippines) Corporation vs. Commissioner of Internal Revenue:*[11]

> "xxx [E]ven when the foregoing Answer effectively served as a revocation of BIR Ruling No. DA-489-03 following the ruling in the said *Burmeister* case, insofar as the petitioner herein is concerned, the

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[9] Antonio A. Mecano vs. Commission on Audit, G.R. No. 10398, December 11, 1992.
[10] G.R. No. 153205, January 22, 2007.
[11] CTA EB No. 838 (CTA Case No. 7855), August 27, 2013.

revocation cannot be given retroactive application, since it is prejudicial to petitioner.

Section 246 of the NIRC of 1997 provides:

> "SEC. 246. Non-Retroactivity of Rulings. - **Any revocation, modification or reversal** of any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases: xxx"

xxx xxx xxx

The ruling in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* - the very ruling relied upon by respondent, recognized the above-quoted Section 246 as follows:

> "Petitioner's filing of his Answer before the CTA challenging respondent's claim for refund effectively serves as a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95. **However, such revocation cannot be given retroactive effect since it will prejudice respondent.** Changing respondent's status will deprive respondent of a refund of a substantial amount representing excess output tax. **Section 246 of the Tax Code provides that any revocation of a ruling by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation will prejudice the taxpayer. Further, there is no showing of the existence of any of the exceptions enumerated in Section 246 of the Tax Code for the**

> **retroactive application of such revocation."**
>
> Thus, since respondent fails to show the existence of any of the exceptions enumerated in Section 246 of the NIRC of 1997 against petitioner, and this Court sees none, the revocation of BIR Ruling No. DA-489-03 by virtue of respondent's Answer, cannot be given retroactive application. Correspondingly, BIR Ruling No. DA-489-03 may still be made to apply in the instant claim for refund." [Emphasis in the original]

Considering therefore that NDNPAMPC complied with the provisions of Section 4 of RR 13-2008, being the actual producer of its refined sugar, as stated in BIR Ruling No. ECCP-001-2008, the sale of its sugar in original form, and processed form to its members and non-members, is exempted from payment of advance VAT by virtue of Article 61 of RA 9520 and Section 109(L) of the National Internal Revenue Code (NIRC) of 1997.

It must be noted that Section 19 of RA 9520's Joint Rules and Regulations repealed the said Revenue Regulation, which states:

> "Section 19. Repealing Clause – Revenue Regulations 13-2008, Revenue Regulations 6-2007 and Section 4.114-(B) and Section 4.109 (B) (1) (a) of Revenue Regulations 16-2005 are hereby repealed.
>
> xxx xxx xxx"

However, the said Joint Rules and Regulations was issued on February 05, 2010 and took effect on June 16 of the same year, which was after the taxable period in question. Thus, the said repeal should not affect NDNPAMPC, considering that the said repeal will prejudice NDNPAMPC if it will be applied retroactively. Settled is the rule that any revocation or reversal of any rules and regulations or rulings promulgated by the CIR shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers.[12] Having put in mind that the provisions of RR 13-2008 is actually beneficial to NDNPAMPC, particularly Section 4 of such, its subsequent repeal, which took place after the taxable year 2009, cannot be applied retroactively in this case.

On the claim that NDNPAMPC should have presented its quarterly/monthly VAT returns to prove that its claim was not applied as credit against its output tax, being exempt from VAT, NDNPAMPC is not required to file any VAT return.

On the issue of juridical personality, the Certificate of Registration states:

> "This is to certify that
>
> **Negros Del Norte Planters' Association Multi-Purpose Cooperative**
>
> **CIN-0103060158**
>
> with address at Negros Del Norte Planters' Ass'n Building, duly registered with the Authority under Certificate of Registration/Confirmation No. ILO-3468 dated August 16, 1999 has complied with the requirements prescribed by the Authority for the issuance of New Certificate of Recognition under Article 144 of RA 9520 otherwise known as the "Philippine Cooperative Code of 2008".
>
> By virtue of the powers and duties vested in me by law, the Negros Del Norte Planters' Association Multi-Purpose Cooperative is hereby registered with the Cooperative Development Authority and shall continue to enjoy the rights and privileges in accordance with RA 9520 and all other laws appurtenant thereto unless this Certificate is suspended or cancelled for cause.

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[12] Section 246, National Internal Revenue Code of 1997.

Given in Quezon City, this 19th day of October, 2009."

Based from the foregoing, NDNPAMPC has been registered with CDA as early as August 16, 1999, under Confirmation No. ILO-3468, and the Certification issued on October 19, 2009 is an affirmation by CDA to "continue to enjoy the rights and privileges in accordance with RA 9520 and all other laws appurtenant thereto." Moreover, the Certificate of Good Standing issued by CDA Iloilo Extension Office states that NDNPAMPC is duly registered as early as August 16, 1999.

It is important to note that the NSFMPC Case may be applied on all fours in this instant Petition. In the said case, NSFMPC is a multi-purpose agricultural cooperative as evidenced by the CDA Certificate of Registration No. IL0-3513 dated October 18, 1999. It was issued a Certificate of Good Standing dated August 29, 2007. It was granted tax exemption under Article 61 of Republic Act No. 6938 (Cooperative Code of the Philippines) and from VAT pursuant to Section 109(r) of RA No. 8424, as amended by RA No. 9337, as shown by the exemption ruling issued by the Revenue Commissioner, through then Deputy Commissioner, Legal and Enforcement Group, Sixto S. Esquivias IV. Beginning November 2007, OIC Regional Director Galanto began to require NSFMPC to pay an advance VAT before issuing the AARRS. This compelled NSFMPC to seek the legal opinion of the Legal Division of the BIR as to whether it is considered the producer of the sugar produce of its members. In a Ruling dated December 27, 2007, Assistant Commissioner for Legal Service, James H. Roldan, confirmed NSFMPC's opinion that the sales of sugar produce made by NSFMPC to its members as well as the sales to non-members are exempt from the payment of VAT. However, OIC Regional Director Galanto sometime in 2008 again refused to issue AARRS, prompting NSFMPC to pay advance VAT under protest. Same issues and arguments herein have been raised in the NSFMPC Case, and CIR also waived her right to present evidence.

As stated earlier, the Court held, both in Division[13] and *En Banc,*[14] that NSFMPC is exempt from payment of advance VAT, being the actual producer of the sugar produce by virtue of Article 61 of RA 6938 and Section 109(r)[15] of the NIRC of 1997. Most importantly, the Supreme Court, in Resolutions dated July 24, 2013, and October 23, 2013, docketed as G.R. No. 206902,[16] has denied CIR's Petition for Review on Certiorari for failure to show any reversible error on the assailed Decision and Resolution of this Court.

It must be noted that the protest covers various dates from May 15, 2009 to December 23, 2009. An examination of the Certificate of Good Standing[17] however reveals that the said certificate is valid and effective only until November 25, 2009. This means that NDNPAMPC's claim after the said validity date should not be granted by this Court without any evidence that NDNPAMPC is an agricultural cooperative in good standing after the said effectivity date of its Certificate of Good Standing.

WHEREFORE, the assailed Decision dated January 30, 2013 and Resolution dated April 18, 2013 is hereby **MODIFIED.** Accordingly, Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of Negros Del Norte Planters Association Multi-Purpose Cooperative the amount of eight million seven hundred thirty three thousand four hundred forty four pesos (₱8,733,444.00), representing erroneously paid advance VAT for the period covering May 15, 2009 to November 25, 2009.

SO ORDERED.

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

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[13] *Supra* note 6, Resolution dated February 22, 2012.
[14] CTA EB No. 877, Decision promulgated on February 14, 2013; Resolution promulgated on April 25, 2013.
[15] Now Section 109(L).
[16] Commissioner of Internal Revenue vs. Negros Sugar Farmers Multi-Purpose Cooperative (NSFMPC).
[17] Division Docket p. 18, Exhibit "D."

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

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

ROMAN G. DEL ROSARIO
Presiding Justice