REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NEGROS SUGAR FARMERS MULTI - PURPOSE COOPERATIVE, Petitioner,	**CTA Case No. 7996**
	Members:
- versus -	**ACOSTA,** *Chairperson* **UY,** *and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, and JOSE N. TAN, B.I.R. REGIONAL DIRECTOR, REGION 12, BACOLOD CITY. Respondent.	**Promulgated:** NOV 09 2011 ; 11:57 am

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DECISION

UY, J.:

This is a Petition for Review filed on November 16, 2009 by Negros Sugar Farmers Multi-Purpose Cooperative to appeal the inaction of the Commissioner of Internal Revenue over its administrative claim for tax refund[1] in the amount of Ten Million Eight Hundred Ten Thousand Four Hundred Seventy (P10,810,470.00) Pesos, allegedly representing advance value-added tax (VAT) payments on 105,985[2] LKG

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[1] Par. II(a), Proposed Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 174.
[2] Erroneously written in the Petition for Review as 105,995 LKG bags, docket, p. 8.

bags of refined sugar, erroneously or illegally collected by then O-I-C Regional Director Rodita B. Galanto, Region No. 12, Bacolod City, before the Office of the Commissioner of Internal Revenue, during the period covering November 16, 2007 to December 19, 2008.

THE FACTS

Petitioner Negros Sugar Farmers Multi-Purpose Cooperative is a multi-purpose agricultural cooperative duly organized and existing under Philippines Laws, particularly, Republic Act (RA) No. 6938 or the Cooperative Code of the Philippines, as evidenced by the Cooperative Development Authority Certificate of Registration No. ILO-3513 dated October 18, 1999.[3] Its office address is at the Ground Floor, Luxur Bldg., Magsaysay Avenue, Bacolod City, Philippines.[4]

Respondent Commissioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to carry out all the functions, duties and responsibilities of the said office, including, *inter alia*, the power to decide, approve and grant refunds and tax credits of erroneously paid or illegally collected internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City. Co-respondent Jose N. Tan, on the other hand, is the Regional Director of BIR Region 12-Bacolod City, who replaced Roditha B. Galanto in February 2009.[5]

[3] Exhibit "C", Docket, p. 15.
[4] Par. I(a), Summary of Admitted Facts, JSFI, docket, p. 173.
[5] Par. 1(c), Summary of Admitted Facts, JSFI, docket, p. 17

Petitioner was issued a Certificate of Good Standing dated August 29, 2007 by the Cooperative Development Authority.[6] 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.[7]

Petitioner alleges that prior to November 2007, Rodita B. Galanto, Officer-in-Charge (OIC) Regional Director of BIR Region 12-Bacolod City, had been issuing the Authorization Allowing Release of Refined Sugar (AARRS) to petitioner without requiring it to pay an advance VAT. However, beginning November 2007, said OIC Regional Director Galanto began to require petitioner to pay an advance VAT before issuing the 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 produce of its members inasmuch as OIC Regional Director Galanto would use the interpretation of the word "producer" to exclude agricultural cooperatives which do not till the land they own or lease.

In a Ruling dated December 27, 2007, Assistant Commissioner for Legal Service, James H. Roldan, confirmed petitioner's opinion that the sales of sugar produce made by petitioner to its members as well as the sales to non-members are exempt from the payment of VAT.[8]

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[6] Exhibit "D", Docket, p. 16.
[7] Annex "D", ECCP-007-99 dated November 3, 1999, Docket, pp. 17-18; Par. I(d) Summary of Admitted Facts, JSFI, docket, p. 174.
[8] Exhibit "F", Docket, pp. 19-22

Upon receipt of the said Ruling issued by Assistant Commissioner Roldan, OIC Regional Director Galanto resumed issuing AARRS to petitioner. However, starting November 2008, OIC Regional Director Galanto again refused to release the AARRS of petitioner without payment of the advance VAT. Thus, petitioner was constrained to pay the advance VAT under protest[9] to save it from incurring huge losses if it could not withdraw its refined sugar from the sugar refinery/mill.

On November 11, 2009, petitioner filed with respondent Commissioner the appropriate administrative claim for the refund of the total amount of P10,810,470.00, representing the advance VAT incurred by it on 105,985[10] LKG bags at P102.00 per bag of refined sugar for the taxable period covering November 16, 2007 to December 19, 2008.[11] Due to respondent Commissioner's inaction on petitioner's claim for refund and in order to suspend the running of the two-year prescriptive period, petitioner filed this Petition for Review on November 16, 2009.[12]

On December 23, 2009, respondents filed their Answer[13] alleging the following defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation by respondent Bureau of Internal Revenue (BIR).
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> 5. The amount of Php10,810,470.00 being claimed by petitioner as allegedly overpayment of Value-Added Tax (VAT) which are erroneously, excessively and/or illegally assessed, and collected by respondent is not properly documented.

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[9] TSN dated July 22, 2010, p. 9; Exhibits "G", "I" to "N-2", "O" to "Q-2", and "R" to "X-3".
[10] Erroneously written in the Petition for Review as 105,995 LKG bags, docket, p. 8.
[11] Exhibit "G"; Docket, p. 23; Par. II(a) Proposed Stipulation of Facts, JSFI, docket, p. 174.
[12] Docket, pp. 1-10
[13] Docket, pp. 99-110.

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 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, <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.**
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> xxx xxx xxx'. (*Underscoring supplied*)

8. In an 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 highest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (***ASIATIC PETROLEUM CO. (P.I.) VS. LLANES, 49 PHIL. 466, cited in collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670***).

9. Petitioner, in its petition, argues that respondent BIR Regional Director Rodita Galanto of BIR Revenue Region 12, Bacolod City 'capriciously' began to require petitioner Negros Sugar Farmers Multi-Purpose Cooperative (NSFMPC) to pay advance VAT beginning November, 2007 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 Sections 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 Regulations provides, to wit:

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

11. Upon the other hand, the same RR 13-2008 provides for instances wherein certain withdrawals of sugar from the refineries/mills shall be exempt from the payment of 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. xxx xxx xxx.

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 a 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 Refined Sugar* is first secured from the concerned RD/RDO having jurisdiction over the owner of the refined sugar. In securing such authorization, the cooperative-owner shall, in addition to that of satisfying VAT-exemption requirements under RR No. 20-2001, submit to the concerned RDO a *Sworn Statement* to the effect that:

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

13. Petitioner likewise anchors its arguments on a BIR ruling dated December 27, 2007 it has secured claiming exemption from the payment of the advance VAT on withdrawal of its refined sugar from the Sugar Refinery/Mill. Said ruling was issued on the basis of the facts as presented by petitioner, giving emphasis on the provision of Section 14 of RR No. 4-2007, implementing RA 9337, and amending Section 4-109-1(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 of 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 9520 does it contain a provision for retroactive applicability, to do so would have the effect of condoning the 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 courts declared a law to be 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 are 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 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 its lone witness, its Tax Consultant, Jose V. Ramos[14] to prove its claim.

On the other hand, respondents, through counsel, manifested during the hearing held on December 2, 2010 that they are waiving their right to present evidence considering that this case involved legal issues for the determination and resolution of this Court.[15]

[14] Minutes of Hearing dated July 22, 2010 and August 26, 2010, docket, pp. 191 and 210; TSN, July 22, 2010 and August 26, 2010.
[15] Docket, p. 235; TSN, December 2, 2010.

Thus, the Court directed the parties to submit their respective Memorandum within thirty (30) days from said date. On December 20, 2010, petitioner filed its Memorandum for Petitioner.[16] On the other hand, on December 21, 2010, respondent Commissioner filed a Manifestation[17] stating that she intends to adopt the relevant facts, proceedings, issues and discussions specifically declared in her Answer filed on December 23, 2009, as her Memorandum in this case.

On July 15, 2011, this case was submitted for decision.[18]

Hence, this Decision.

THE ISSUES

The stipulated issues[19] submitted for this Court's resolution are as follows:

"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."

We simplify the foregoing issues as follows:

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[16] Docket, pp. 247-254.
[17] Docket, pp. 264-265.
[18] Docket, p. 300.
[19] Docket, pp. 174-175.

> "Whether or not petitioner is entitled to a refund in the amount of P10,810,470.00, representing its advance VAT on 105,985 LKG bags of refined sugar erroneously or illegally collected for the taxable period covering November 16, 2007 to December 19, 2008."

THE COURT'S RULING

Before considering petitioner's entitlement to subject refund claim, We shall first look into this Court's jurisdiction to rule on the validity of the provisions of Revenue Regulations (R.R.) No. 13-2008, particularly, Section 3 thereof, which requires, as a general rule, the payment of advance VAT by the owner/seller before the refined sugar is withdrawn from the mill/refinery and Section 4 thereof, which requires a cooperative to be the "producer" of sugar to be exempt from such advance VAT payment.

The jurisdiction of this Court is defined under Republic Act No. 1125, as amended. Section 7 thereof states, in pertinent part:

> "Sec. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;" (*Emphasis supplied*)

In *British American Tobacco vs. Jose Isidro N. Camacho, et al.*[20], the Supreme Court held that 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.

This Court therefore will not pass upon the question of validity of Sections 3 and 4 of R.R. No. 13-2008 issued by the Secretary of Finance.

Nonetheless, as provided in Section 7 of RA No. 1125, as amended, this Court has exclusive appellate jurisdiction to decide claims for refund of internal revenue taxes, or other matters arising under the NIRC of 1997, as amended, as in this case. This exclusive appellate jurisdiction is also recognized by Section 4, second paragraph of the NIRC of 1997, as amended, to wit:

"The power to decide disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, **subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**." (*Emphasis supplied*)

[20] G.R. No. 163583, August 20, 2008

We shall now resolve the merits of petitioner's refund claim.

According to petitioner, it is exempt from payment of advance VAT pursuant to Article 61 of Republic Act No. 6938 and Section 109(r) of Republic Act No. 8424 (National Internal Revenue Code of 1997), as amended by RA No. 9337. Petitioner also alleges that it had secured a Certificate of Tax Exemption No. ECCP-007-99 dated November 3, 1999 and a BIR Ruling dated December 27, 2007, both confirming petitioner's status as a tax exempt cooperative.

Respondents counter-argue that in order to qualify for exemption from the payment of advance VAT on the withdrawal of refined sugar, the cooperative has to meet the conditions set forth in Revenue Regulations No. 13-2008, or the "Consolidated Regulations on Advance Value-added Tax on the Sale of Refined Sugar", which requires that the cooperative should itself be the "producer" of the refined sugar it would sell to non-members.

Further, respondents contend that the BIR Ruling dated December 27, 2007 invoked by petitioner in its favor, stating that it is exempt from payment of advance VAT as an agricultural cooperative, was issued on the basis of the facts as presented by petitioner; but based on said ruling, if the cooperative is not the producer but merely the trader, then only those sales to its members shall be exempt from VAT, while the sales to non-members shall be subject to advance VAT. Moreover, respondents argue that said ruling may be considered null and void if, upon investigation, it shall be disclosed that the facts are different.

This Court finds for petitioner.

Section 109(r) of RA No. 8424, which is reproduced and renumbered as Section 109(L) by RA No. 9337, provides:

> "SEC. 109. *Exempt Transactions.* - (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
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> xxx xxx xxx
>
> (L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members **as well as sale of their produce, whether in its original state or processed form, to non-members**; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;" (*Emphasis supplied*)

The phrase "sale of their produce" under Section 109(L), as applied to petitioner's sale of refined sugar to non-members, is supposedly defined or interpreted under Section 4(a) of R.R. No. 13-2008, as follows:

> "***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.**

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> 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. (*Emphasis supplied*)

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[21] and BIR Ruling dated December 27, 2007[22], 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 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."

Having resolved that petitioner is exempt from VAT pursuant to RA No. 6938, in relation to Section 109(L) of the NIRC of 1997, We shall examine petitioner's compliance with the procedural and substantiation requirements mentioned under the NIRC of 1997, as amended.

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

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[21] Annex "D", Petition for Review.
[22] Exhibits "F" and "F-1"

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

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

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

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

Based on the above-quoted provisions, the administrative and judicial remedies of filing a claim for refund of erroneously paid tax must be done within two years from the payment of the tax. The two-year period is a limitation of action not only in submitting the written claim for refund to the Commissioner, but likewise in instituting an action with the Court of Tax Appeals.[23]

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

Thus, the taxpayer-claimant must file its administrative claim for refund with the Commissioner within two (2) years after the payment of the tax. However, if the Commissioner takes time in deciding the claim and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period, without awaiting the decision of the Commissioner. This is so because of the positive requirement of Section 204 and the doctrine that delay of the Commissioner in rendering a decision does not extend the peremptory period fixed by the statute.[24]

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 the CTA in order to preserve its right to seek judicial recourse.

The instant claim pertains to advance VAT payments on refined sugar by petitioner on various dates from November 16, 2007 to December 19, 2008. Reckoned from November 16, 2007, petitioner had until November 16, 2009 within which to file its claim both in the administrative and judicial levels. Clearly, both the administrative claim filed on November 11, 2009[25] and the judicial claim for refund filed before this Court on November 16, 2009 were filed within the two-year prescriptive period. Petitioner's immediate appeal before this Court on November 16, 2009 or barely five (5) days upon 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 pursuant to Section 7(a)(2) of RA No. 9282, amending RA No. 1125.

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[24] *Gibbs and Gibbs vs. Commissioner of Internal Revenue and Court of Tax Appeals*, 15 SCRA 318.
[25] Par. II(a), Proposed Stipulation of Facts, JSFI, docket, p, 174.

Looking now at petitioner's evidence submitted in support of its claim, the Court took into consideration the Summary of VAT Payments Under Protest[26] with the related BIR Certificates of Advance Payment of VAT, Revenue Official Receipts (ROR), Payment Forms, letters to BIR Regional Director Rodita B. Galanto, and BIR Declaration for VAT Advance Payment, to show that petitioner actually paid the amount of P10,810,470.00, representing advance VAT on 105,985 LKG bags of refined sugar from November 16, 2007 to December 19, 2008, which is hereby summarized as follows:

Exhibits	BIR ROR/ BANK	DATE PAID	NO. OF BAGS	VAT PER BAG	VAT PAID
"I", "I-1", and "I-2"	02920730	11/16/07	13,631	102.00	P 1,390,362.00
	02920815	11/22/07	14,530	102.00	1,482,060.00
"J", "J-1", "J-2" and "J-3"	02920860	11/28/07	15,660	102.00	1,597,320.00
"K", "K-1", "K-2" and "K-3"	02920905	12/06/07	15,580	102.00	1,589,160.00
"L", "L-1", "L-2" and "L-3"	02920946	12/13/07	13,944	102.00	1,422,288.00
"M", "M-1", "M-2" and "M-3"	02920982	12/20/07	10,951	102.00	1,117,002.00
"N", "N-1" and "N-2"	01007008	12/27/07	4,000	102.00	408,000.00
"O", "O-1" and "O-2"	UCPB	10/29/08	1,175	102.00	119,850.00
"P", "P-1" and "P-2"	UCPB	11/03/08	1,384	102.00	141,168.00
"Q", "Q-1" and "Q-2"	UCPB	11/03/08	638	102.00	65,076.00
"R", "R-1", "R-2" and "R-3"	Landbank	11/11/08	1,160	102.00	118,320.00
"S", "S-1", "S-2" and "S-3"	Landbank	11/14/08	4,501	102.00	459,102.00
"T", "T-1", "T-2" and "T-3"	Landbank	11/19/08	418	102.00	42,636.00
"U", "U-1", "U-2" and "U-3"	Landbank	11/21/08	1,080	102.00	110,160.00
"V", "V-1" and "V-2"	Landbank	11/28/08	3,000	102.00	306,000.00
"W", W-1" and "W-2"	UCPB	12/09/08			113,526.00

[26] Exhibit "G", Docket, p. 23

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			1,113	102.00	
0	Landbank	12/19/08	3,220	102.00	328,440.00
TOTAL			**105,985**		**P 10,810,470.00**

Upon careful scrutiny of the foregoing documents, the advance VAT payment dated November 22, 2007 under BIR ROR No. 02920815 in the amount of P1,482,060.00 shall be disallowed because petitioner failed to formally offer in evidence the related Certificate of Advance Payment of VAT, Revenue Official Receipt and Payment Form. The photocopies of said documents were merely annexed to the Petition for Review.

Likewise, petitioner's claimed advance VAT payment dated November 14, 2008 in the amount of P459,102.00 shall be disallowed.

Although petitioner presented the related Certificate of Advance Payment of VAT[27] and the Declaration for VAT Advance Payment on Refined Sugar pursuant to R.R. No. 7-89[28], however, the supporting Revenue Official Receipt[29] and Payment Form[30] submitted do not correspond to the claimed amount of P459,102.00 but pertain to another advance VAT payment claimed by petitioner in the amount of P119,850.00 under Exhibits "O-1" and "O-2".

In sum, petitioner has sufficiently proven that it is entitled to a refund of the erroneously paid advance VAT for taxable period covering November 16, 2007 to December 19, 2008 in the reduced amount of P8,869,308.00, computed as follows:

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[27] Exhibit "S", docket, p. 68.
[28] Exhibit "S-3", docket, p. 71.
[29] Exhibit "S-1", docket, p. 69.
[30] Exhibit "S-2", docket, p. 70.

Amount of claimed advance VAT payments					P 10,810,470.00
Less: Disallowances					
Exhibits	**BIR ROR/ BANK**	**DATE PAID**	**NO. OF BAGS**	**VAT PAID**	
	02920815	11/22/07	14,530	P 1,482,060.00	
"S", "S-1", "S-2" and "S-3"	Landbank	11/14/08	4,501	459,102.00	1,941,162.00
Substantiated advance VAT payments					**P 8,869,308.00**

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of petitioner Negros Sugar Farmers Multi-Purpose Cooperative the amount of **Eight Million Eight Hundred Sixty Nine Thousand Three Hundred Eight (P8,869,308.00) Pesos**, representing erroneously paid advance VAT for taxable period covering November 16, 2007 to December 19, 2008.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE
ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice