REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN NEGROS MULTI-PURPOSE COOPERATIVE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. Case No. 5077

Promulgated:
AUG 09 1995

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DECISION

This is a claim for refund of alleged erroneously and/or illegally collected value-added tax in the amount of P280,729.09 paid by petitioner in 1992.

Petitioner is a multi-purpose cooperative duly registered with the Cooperative Development Authority since August 15, 1991 evidenced by a certificate of registration (Exhibit "A") and licensed to operate as a sugar trader for the crop years 1991 to 1992. This license was issued on October 29, 1991 by the Sugar Regulatory Administration (Exhibit "B"). As a licensed sugar trader, petitioner is authorized to withdraw processed sugar from the warehouse of any sugar mill or refinery. Petitioner cooperative is primarily composed of sugar-cane planter members whose produce are milled by the Central Azucarera de la Carlota in Bacolod City. The processed sugar are then quedanned in the name of the petitioner cooperative pursuant to the deed of assignment executed by the planter-members in favor of petitioner cooperative (Exhibit "D").

In a letter, dated March 16, 1992, Acting Regional Director, Mariano A. Aguilar, Jr. reminded Central Azucarera de la Carlota that individual members cannot avail of the exemption privileges of the cooperative provided under R.A. 6938 so that the sugar cane and the resulting refined sugar owned by the planter-members and sold through the cooperative is subject to the 10% advance VAT payment prior to its removal from mill premises.

As a result of this letter, the Central Azucarera de la Carlota required petitioner to pay the 10% value-added tax otherwise the processed sugar will not be released from its custody.

In response, petitioner wrote two letters, one addressed to the Central Azucarera de la Carlota and the other to the BIR Regional Director, complaining of the requirement of prior payment of value-added tax and insisting that it was tax exempt. In fact, petitioner claims that since October of 1991, it was allowed to withdraw its processed sugar from the mill site without the prior payment of the advance value-added tax by virtue of a Tax Exemption Certificate issued by the BIR. Apparently, petitioner did not receive any response to these letters-complaint hence it was forced to pay the advance value-added tax in the following amount to wit:

Date	Amount	Exhibit
March 27, 1992	P155,454.46	"J"
March 27, 1992	P125,274.56	"K"
Total	P280,729.02	

On February 11, 1994, petitioner filed a claim for refund of the aforementioned VAT payments and elevated its cause to this Court via a petition for review on March 21, 1994 after respondent failed to give any response.

Petitioner contends that it is not liable for the payment of value-added tax by virtue of Article 61 of Republic Act No. 6938 known as the Cooperative Code of the Philippines which was later affirmed by then Regional Director Beethoven L. Rualo in a letter, dated October 21, 1991, advising petitioner cooperative that the BIR Regional Office had instructed all the district offices to allow the withdrawal of the processed sugar without prior payment of the advance value-added tax upon showing of the tax exemption certificate.

Court records show that respondent was eventually declared in default upon motion of the petitioner in a resolution, dated August 5, 1994. This declaration of default was a result of the failure of respondent to file her answer within the extended periods granted by this Court and her inaction to investigate the claim for refund "as a result of which no records could even be forwarded to this Court". (p. 74, CTA Records). It would seem that respondent was content with this trying situation as there was no showing that she attempted to ask this Court to set aside the order of default as shown by her failure to file the appropriate motion. As a consequence of this declaration of default, respondent lost its standing in court in accordance with Section 2 of Rule 18 of the Rules of Court. The Supreme Court in the case entitled **Cavili vs. Florendo**, 154 SCRA 610 elaborated on the effects of an order of default when it declared, thus:

> Loss of standing in court is the consequence of an order of default. Thus, a party declared in default is considered out of court and cannot appear therein, adduce evidence, and be heard and for that reason he is not entitled to notice. However, "loss of standing" must be understood to mean only the forfeiture of one's rights as a party litigant, contestant or legal adversary. A party in default loses his right to present his defense, control the proceedings, and examine or cross-examine witnesses. He has no right to expect that his pleadings would be acted upon by the court nor may he object to or refute evidence or motions filed against him.

The lackadaisical attitude displayed by the respondent in the instant case prompts this Court to review the arguments and evidence in support thereof submitted by the petitioner and determine whether or not petitioner has proven its entitlement to the refund of advance value-added tax in the amount of P280,729.02 paid in 1992.

We find for the petitioner.

The payment of the advance value-added tax on refined sugar originates from Revenue Regulation No. 7-89 which requires the owner/seller of the sugar to pay value-added tax in advance of its actual sale. Such advance payment shall be credited against their output tax based on the actual gross selling price of refined sugar. Pertinent provisions of Revenue Regulation 7-89 are quoted hereunder:

> SEC. 3. ***Requirement to pay in advance VAT on sale of refined sugar.*** - The value added tax on the sale of refined sugar shall be paid in advance by the owner/seller to the Bureau of Internal Revenue (BIR), thru the sugar refinery. The advance payment shall be made prior to or upon issuance of the refined sugar release order (RSRO) or similar instruments.
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> SEC. 4. ***Prohibition of withdrawal.*** - The proprietor or operator of a sugar refinery shall not allow any withdrawal of refined sugar from its premises without prior advance payments of value added tax made by the owners/sellers thereof.

> SEC. 5. ***Proof of advance payment.*** - The sugar refinery shall issue a certificate of advance payment in a form prescribed therefor (BIR Form No. ____) to each owner/seller upon payment in advance of the VAT as required in Section 3 of these Regulations. This certificate and the official receipt/confirmation receipt issued by the BIR for the advance payment shall serve as proof of the credit for such advance payment against output tax as provided in Section 7 of these Regulations.
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> SEC. 7. ***Credit for advance payments.*** - In addition to the input tax credits allowed under Section 104 of the Tax Code as implemented by Section 10 of Revenue Regulations No. 5-87, the amount of advance payments made by sellers of refined sugar under these Regulations shall be allowed as a credit against their output tax on the actual gross selling price of refined sugar. The advance payment certificate issued under Section 5 hereof shall be attached to the quarterly VAT returns to support the claim for credit of advance tax payment.

On March 10, 1990, Republic Act 6938 more popularly known as the Cooperative Code of the Philippines was promulgated. This law contains a provision exempting duly-registered cooperatives from the payment of taxes imposed under the internal revenue laws and other tax laws, thus:

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

Pursuant to the aforequoted law, petitioner obtained a Tax Exemption Certificate from the BIR effective for a period of ten (10) years from August 15, 1991 its date of registration. This Tax Exemption Certificate issued by Deputy Commissioner Eufracio Santos provides, among other things, that the tax exemption privilege does not extend to the individual members of the cooperative. It is this qualification that served as the core of the directive issued by the Acting Regional Director Mariano Aguilar which became the basis of Central Azucarera de la Carlota's decision not to allow the withdrawal of processed sugar without the prior payment of the value-added tax.

A careful examination of the evidence submitted by the petitioner shows that it has successfully proven its entitlement to the refund of the VAT paid on March 27, 1992. The Exemption Certificate issued by the Deputy Commissioner Eufracio Santos contains a declaration that petitioner cooperative is exempt from all taxes and fees imposed under the internal revenue laws and other tax laws (Exhibit "C"). Subsequently, in a letter addressed to petitioner, dated October 21, 1991, then Regional Director Beethoven L. Rualo affirmed this tax exemption privilege and advised the petitioner that he has instructed the district officers to allow the withdrawal of the processed sugar from the refineries without the prepayment of the advance VAT (Exhibit "F"). Even the letter of the Acting Regional Director, Mr. Mariano Aguilar, addressed to the Central Azucarera de la Carlota acknowledged the privilege accorded to petitioner cooperative by virtue of Republic Act 6938 but by way of clarification added that the exemption granted to the cooperative does not extend to the individual members. This letter did not pinpoint that a particular transaction or transactions of petitioner fall outside of the exemption. It was only Central Azucarera de la Carlota, the addressee of the letter, who applied this directive indiscriminately to all the withdrawals of the refined sugar quedanned in the name of the petitioner and required the payment of the advance value-added tax on all withdrawals of sugar made by petitioner cooperative. However, this Court concludes that petitioner by the evidence submitted has shown that the withdrawals of refined sugar made in 1992 where advance value-added tax was paid under protest in March of the same year fall within the tax exemption provided for in RA 6938 hence, refund of such payments is in order.

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner cooperative the sum of P280,729.02

corresponding to erroneously collected value-added tax paid by petitioner on March 27, 1992.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals