Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

NEGROS CONSOLIDATED FARMERS MULTI-PURPOSE COOPERATIVE,
Petitioner,

CTA CASE NO. 8288

For: Tax Refund

-versus-

Present:

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

COMMISSIONER OF INTERNAL REVENUE , BIR REGIONAL DIRECTOR , REGION 12, BACOLOD CITY
Respondents.

Promulgated: DEC 12 2012

1:20 p.m.

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DECISION

MINDARO-GRULLA, J.:

This a Petition for Review filed on May 12, 2011 by Negros Consolidated Farmers Multi-Purpose Cooperative as petitioner against Commissioner of Internal Revenue and BIR Regional Director, Region 12, Bacolod City as respondents for the Court in Division, pursuant to Section 7 (a) (2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended, as well as Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner seeks a tax refund in the amount of ₱7,290,960.00, allegedly representing advance value-added tax (VAT) on 71,480 LKG bags of refined sugar, erroneously or illegally collected during the period covering May 12, 2009 to July 22, 2009.

Petitioner Negros Consolidated Farmers Multi-Purpose Cooperative is a multi-purpose agricultural cooperative duly organized and existing under Philippine Laws, particularly, Republic Act (R.A.) No. 6938 or the "Cooperative Code of the Philippines," as evidenced by the Cooperative Development Authority Certificate of Registration No. 9520-06000814 dated October 19, 2009[1]. Its office address is at Door No. 2, A. Chan Building, Mandalagan, Bacolod City, Philippines[2].

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested with the authority to carry out all the functions, duties and responsibilities of 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.

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[1] Exhibit "C", Docket, p. 21.
[2] Par. 1, The Parties, Petition for Review, Docket, p. 6.

On the other hand, co-respondent Regional Director of BIR Region 12-Bacolod City is holding office at the BIR Regional Office, Hernaez St. Extension, Bacolod City[3].

Petitioner was issued a Certificate of Good Standing dated May 19, 2010 by the Cooperative Development Authority[4]. It was granted a tax exemption under Article 61 of R.A. No. 6938 and from VAT pursuant to Section 109(r) of R.A. No. 8424, as amended by R.A. No. 9337, as shown by exemption certificates issued by respondent Revenue Commissioner, through Sixto S. Esquivias IV, then Deputy Commissioner for Legal and Enforcement Group, and Milagros V. Regalado, Assistant Commissioner for Legal Service[5].

Petitioner alleges that prior to the assignment of Rodita Galanto as Officer-in-Charge (OIC) Regional Director of BIR Region 12-Bacolod City, her predecessor BIR Regional Directors had been issuing the Authorization Allowing the Release of Refined Sugar (AARRS) to petitioner without requiring it to pay an advance VAT. However, beginning February 3, 2009, OIC Rodita B. Galanto and her successor Jose N. Tan refused petitioner's request for the issuance of AARRS on the ground that the interpretation of "producer" as the tiller of the land it owns or leases, incurs cost of agricultural production of the sugarcane to be refined by the sugar refinery. Petitioner

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[3] Par. 1, The Parties, Petition for Review, Docket, p. 6.

[4] Exhibit "D", Docket, p. 22.
[5] Exhibit "E", Docket, pp. 23-24; Exhibit "F", Docket, pp. 25-27.

claims that respondent's refusal was made from February 6, 2009 to August 6, 2009, thereby forcing its President, Vicente Lovina, to pay an advance VAT under protest to save it from incurring huge losses[6].

This compelled petitioner to seek the legal opinion of the BIR Legal Division as to whether petitioner is considered the producer of the sugar product of its members since OIC Regional Director Rodita B. Galanto would use her interpretation of the word "producer" to exclude agricultural cooperatives which do not till the land they own or lease.

In a Ruling dated January 11, 2008, Assistant Commissioner for Legal Services, James H. Roldan, confirmed petitioner's opinion that the sales of sugar produce made by petitioner to its members as well as to non-members are exempt from the payment of VAT pursuant to Section 109(L) of Republic Act No. 9337, as implemented by Revenue Regulations (R.R.) No. 4-2007[7].

On January 19, 2011, petitioner filed with respondent Commissioner an administrative claim for the refund of the total amount of ₱7,290,960.00[8], representing the advance VAT incurred by it on 71,480 LKG bags at P102.00 VAT per bag of refined sugar. Due to respondent Commissioner's inaction on petitioner's claim for refund and in order to suspend the running of the two-

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[6] Exhibit "I", Docket, pp. 153-156.
[7] Exhibit "H", Docket, pp. 79-82.
[8] Exhibit "B", Docket, pp. 15-19. Note: Petitioner's administrative claim for tax refund filed with the BIR on January 19, 2011 covers the aggregate amount of ₱11,172,570.00 representing 109,535 LKG bags of refined sugar at ₱102.00 VAT per bag for the period covering February 3, 2009 to July 22, 2009, which includes the amount of ₱7,290,960.00 for the 71,480 LKG bags of refined sugar during the period covering May 12, 2009 to July 22, 2009, subject of the instant Petition for Review.

year prescriptive period, petitioner filed this Petition for Review on May 12, 2011.

On June 16, 2011, respondents filed their Answer[9] alleging the following defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation by respondent Bureau of Internal Revenue (BIR).
>
> 5. The amount of Php7,290,960.00 being claimed by petitioner as alleged advance VAT 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 Section 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.
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> 7. 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 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).***
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> 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:
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> '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 without authority, or of any sum alleged to have been excessively or in

[9] Docket, pp. 91-97.

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)*

9. The power of taxation will not be surrendered except in words too plain to be mistaken. The reason is that the State 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 a 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 (Español vs. Philippine Veterans Administration, 137 SCRA 314).*"

Thereafter, on October 3, 2011, notice was issued for a pre-trial conference which was set for November 10, 2011.

Petitioner filed its Pre-trial Brief on November 8, 2011; while respondent filed her Pre-trial Brief on November 4, 2011.

On December 2, 2011, the parties filed with this Court their Joint Stipulation of Facts and Issues, which was later approved in a Resolution dated December 8, 2011. In the same Resolution, the pre-trial conference was deemed terminated.

Trial proceeded, during which petitioner presented its lone witness, Tax Consultant, Mr. Jose V. Ramos[10].

On February 13, 2012, an Offer of Evidence for Petitioner[11] was filed, submitting Exhibits "A" to "I", inclusive of their sub-markings; which this Court admitted in the Resolution[12] dated March 7, 2012.

The documentary evidence formally offered and admitted are as follows:

Exhibit	Description
A	Petition for Review filed before the Court of Tax Appeals on May 06, 2011
B	Administrative case for tax refund filed with the Office of the Commissioner of Internal Revenue on January 19, 2011.
C	Certificate of Registration issued by the Cooperative Development Authority for Petitioner (COFA).
D	Certificate of Good Standing issued by CDA to COFA.
E	Certificate of Tax Exemption issued by the BIR to COFA
F	Certificate of Tax Exemption issued by the BIR dated April 23, 2003.
G	Summary of Advance VAT payments made by COFA to BIR.
G-1	Certificate of Advance VAT Payment of ₱255,000.00.
G-1-a	BIR Revenue Official Receipt
G-2	Certificate of Advance VAT Payment of ₱326,400.00

[10] Minutes of Hearing dated January 16, 2012, Docket, p. 159; TSN, January 16, 2012.
[11] Docket, pp. 172-179.
[12] Docket, pp. 186-187.

G-2-a	Revenue Official Receipt for ₱326,400.00
G-3	Certificate of Advance VAT Payment of ₱204,000.00
G-3-a	BIR Revenue Official Receipt for ₱204,000.00
G-4	Certificate of Advance VAT Payment of ₱499,494.00
G-4-a	BIR Revenue Official Receipt for ₱499,494.00
G-5	Certificate of Advance VAT Payment of ₱855,066.00
G-5-a	BIR Revenue Official Receipt for ₱855,066.00
G-6	Certificate of Advance VAT Payment of ₱408,000.00
G-6-a	BIR Revenue Official Receipt for ₱408,000.00
G-7	Certificate of Advance VAT Payment of ₱386,172.00
G-7-a	BIR Revenue Official Receipt for ₱386,172.00
G-8	Certificate of Advance VAT Payment of ₱323,034.00
G-8-a	BIR Revenue Official Receipt for ₱323,034.00
G-9	Certificate of Advance VAT Payment of ₱671,874.00
G-9-a	BIR Revenue Official Receipt for ₱671,874.00
G-10	Certificate of Advance VAT Payment of ₱292,740.00
G-10-a	BIR Revenue Official Receipt for ₱292,740.00
G-11	Certificate of Advance VAT Payment of ₱102,000.00
G-11-a	BIR Revenue Official Receipt for ₱102,000.00
G-12	Certificate of Advance VAT Payment of ₱187,272.00
G-12-a	BIR Revenue Official Receipt for ₱187,272.00
G-13	Certificate of Advance VAT Payment of ₱510,000.00
G-13-a	BIR Revenue Official Receipt for ₱510,000.00
G-14	Certificate of Advance VAT Payment of ₱69,258.00
G-14-a	BIR Revenue Official Receipt for ₱69,258.00

G-15	Certificate of Advance VAT Payment of ₱79,050.00
G-15-a	BIR Revenue Official Receipt for ₱79,050.00
G-16	Certificate of Advance VAT Payment of ₱89,046.00
G-16-a	BIR Revene Official Receipt for ₱89,046.00
G-17	Certificate of Advance VAT Payment of ₱118,422.00
G-17-a	BIR Revene Official Receipt for ₱118,422.00
G-18	Certificate of Advance VAT Payment of ₱263,976.00
G-18-a	BIR Revene Official Receipt for ₱263,976.00
G-19	Certificate of Advance VAT Payment of ₱193,392.00
G-19-a	BIR Revene Official Receipt for ₱193,392.00
G-20	Certificate of Advance VAT Payment of ₱102,000.00
G-20-a	BIR Revene Official Receipt for ₱102,000.00
G-21	Certificate of Advance VAT Payment of ₱60, 894.00
G-21-a	BIR Revene Official Receipt for ₱60,894.00
G-22	Certificate of Advance VAT Payment of ₱292,536.00
G-22-a	BIR Revene Official Receipt for ₱292,536.00
G-23	Certificate of Advance VAT Payment of ₱510,204.00
G-23-a	BIR Revene Official Receipt for ₱510,204.00
G-24	Certificate of Advance VAT Payment of ₱460,428.00
G-24-a	BIR Revene Official Receipt for ₱460,428.00
G-25	Certificate of Advance VAT Payment of ₱30,702.00
G-25-a	BIR Revene Official Receipt for ₱30,702.00
H	Opinion of BIR Asst. Commissioner James H. Roldan
I	Judicial Affidavit of Jose V. Ramos
I-1	Signature of Jose V. Ramos

On the other hand, respondents, through counsel, manifested during the hearing held on April 30, 2012 that they will not be presenting any witness considering that there is still no final Report on the Investigation with regard to petitioner's administrative claim for refund and they will be submitting this case for decision[13]. The Court then directed the parties to submit their respective Memorandum within thirty (30) days from said date.

Both respondent Commissioner and petitioner filed their respective Memorandum[14] on May 28, 2012. Hence, on May 29, 2012, this case was submitted for decision[15].

The following are the parties' jointly stipulated issues[16] submitted for this Court's resolution:

> "1. Whether or not petitioner exhausted administrative remedies prior to the filing of the instant petition for review with the Honorable Court of Tax Appeals.
>
> 2. Whether or not Revenue Regulation 13-2008 is valid.
>
> 3. Whether or not Petitioner is deemed a 'PRODUCER' to be entitled to exemption from payment of TAX.
>
> 4. Whether or not Petitioner is entitled to refund of the amount of Php7,290,960.00 representing 71,480 LKG bags of refined sugar at Php102 VAT per bag."

The foregoing issues are summarized as -

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[13] Docket, p. 189.
[14] Docket, pp. 190-195 and 197-205.
[15] Docket, p. 208.
[16] Docket, pp. 145.

> "Whether or not petitioner is entitled to a refund in the amount of P7,290,960.00, representing its advance VAT on 71,480 LKG bags of refined sugar erroneously or illegally collected for the period covering May 12, 2009 to July 22, 2009."

In *Negros Sugar Farmers Multi-Purpose Cooperative vs. Commissioner of Internal Revenue, and Jose N. Tan, B.I.R. Regional Director, Region 12, Bacolod City*[17], We passed upon the issue of whether this Court has jurisdiction to rule on the validity of the provisions of 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 their 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. We cited the case of *British American Tobacco vs. Jose Isidro N. Camacho, et al.*[18], in declaring that the CTA's jurisdiction to resolve tax disputes in general does not include cases where the validity of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function 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

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[17] CTA Case No. 7996, November 9, 2011.
[18] G.R. No. 163583, August 20, 2008.

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 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 R.A. 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 the instant case. This exclusive appellate jurisdiction is likewise provided by the second paragraph of Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, stating that:

> "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)*

The next issue is whether petitioner's claim for refund is duly substantiated.

According to petitioner, it is exempt from payment of advance VAT pursuant to Article 61 of R.A. No. 6938 and Section 109(r) of R.A. No. 8424, as amended by R.A. No. 9337. Petitioner also asserts that it had secured Certificates of Tax Exemption ECCP-018-99 dated May 24, 1999 and ECCP-004-2003 dated April 23, 2003, and BIR Ruling dated January 11, 2008, affirming petitioner's status as a tax-exempt cooperative.

Respondents did not question petitioner's status as an exempt entity, except to claim that petitioner is not entitled to the refund or tax credit as claimed in the petition because petitioner failed to present evidence during the administrative and judicial proceedings for refund that it complied with 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, and R.R. No. 20-2001. Although respondents did not raise the said issue in their Answer, it is necessary to determine if petitioner is indeed an exempt entity.

Section 109(r) of R.A. No. 8424, which is reproduced by the amendment introduced by R.A. No. 9337, now under Section 109(L), 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:
>
> 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. 13-08, 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.**
>
> 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 Certificates of Tax Exemption dated May 24, 1999[19] and April 23, 2003[20] and BIR Ruling dated January 11, 2008[21], 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 productions inputs (fertilizers), capital, technology transfer and farm management." There is no showing that the said Certificates of Tax Exemption dated May 24, 1999 and April 23, 2003 and BIR Ruling dated January 11, 2008, which exempt petitioner from the payment of advance VAT, have been revoked or nullified by respondent. Unless legally and validly revoked, such exemption certificates and ruling are still binding upon respondent.

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[19] Exhbiit "E", Docket, pp. 23-24.
[20] Exhibit "F", Docket, pp. 25-27.
[21] Exhibit "H", Docket, pp. 79-82.

Moreover, by waiving their right to present evidence, respondents failed to controvert the presumption that petitioner 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," which was stated in the BIR Ruling dated January 11, 2008.

Consequently, having resolved that petitioner is exempt from VAT pursuant to R.A. No. 6938, in relation to Section 109(L) of the NIRC of 1997, petitioner's compliance with the procedural and substantiation requirements provided by the NIRC of 1997, as amended, need to be examined.

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

> "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." (*Emphasis supplied*)

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 (2) 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[22]. 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 (2) 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

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

rendering decision does not extend the peremptory period fixed by the statute[23].

The instant claim pertains to advance VAT on refined sugar paid by petitioner on various dates from May 12, 2009 to July 22, 2009. Reckoned from May 12, 2009, petitioner had until May 12, 2011, at the earliest, within which to file its claim both in the administrative and judicial levels. Clearly, both the administrative claim filed on January 19, 2011 and the judicial claim for refund filed before this Court on May 12, 2011 were filed within the two-year prescriptive period.

As stated earlier, when the two-year prescriptive period is about to end, petitioner need not wait for respondent Commissioner to act on its claim. Hence, petitioner's judicial appeal before this Court on May 12, 2011 or three months and twenty-three (23) days from the filing of its administrative claim on January 19, 2011, but within the two-year prescriptive period, gives this Court the jurisdiction to render its decision pursuant to 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".

Petitioner maintains that it has duly complied with the substantiation requirements with respect to its claim. In order to prove that it actually paid the amount of ₱7,290,960.00, representing advance VAT on 71,480 LKG

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[23] *Gibbs and Gibbs vs. Commissioner of Internal Revenue and Court of Tax Appeals,* 15 SCRA 318.

bags of refined sugar from May 12, 2009 to July 22, 2009, petitioner submitted in evidence the Summary of VAT Payments Under Protest[24] with the related BIR Certificates of Advance Payment of VAT[25] and Revenue Official Receipts (RORs)[26], summarized as follows:

Exhibits	BIR ROR	DATE PAID	NO. OF BAGS	VAT/BAG	VAT PAID
G-1; G-1-a	03008695	12-May-09	2,500	102.00	255,000.00
G-2; G-2-a	03008696	12-May-09	3,200	102.00	326,400.00
G-3; G-3-a	03008710	15-May-09	2,000	102.00	204,000.00
G-4; G-4-a	03008711	15-May-09	4,897	102.00	499,494.00
G-5; G-5-a	03008756	22-May-09	8,383	102.00	855,066.00
G-6; G-6-a	03008757	22-May-09	4,000	102.00	408,000.00
G-7; G-7-a	03008758	22-May-09	3,786	102.00	386,172.00
G-8; G-8-a	03008819	29-May-09	3,167	102.00	323,034.00
G-9; G-9-a	03008820	29-May-09	6,587	102.00	671,874.00
G-10; G-10-a	03008847	02-Jun-09	2,870	102.00	292,740.00
G-11; G-11-a	03008855	03-Jun-09	1,000	102.00	102,000.00
G-12; G-12-a	03008856	03-Jun-09	1,836	102.00	187,272.00
G-13; G-13-a	03008869	05-Jun-09	5,000	102.00	510,000.00
G-14; G-14-a	03008870	05-Jun-09	679	102.00	69,258.00
G-15; G-15-a	03008895	09-Jun-09	775	102.00	79,050.00
G-16; G-16-a	03008896	09-Jun-09	873	102.00	89,046.00
G-17; G-17-a	03008897	09-Jun-09	1,161	102.00	118,422.00
G-18; G-18a	03008957	24-Jun-09	2,588	102.00	263,976.00
G-19; G-19-a	03008958	24-Jun-09	1,896	102.00	193,392.00
G-20'; G-20-a	03008984	30-Jun-09	1,000	102.00	102,000.00
G-21; G-21-a	00239013	03-Jul-09	597	102.00	60,894.00
G-22; G-22-a	00239014	03-Jul-09	2,868	102.00	292,536.00
G-23; G-23a	00239040	07-Jul-09	5,002	102.00	510,204.00
G-24; G-24-a	00239041	07-Jul-09	4,514	102.00	460,428.00
G-25; G-25-a	00239083	22-Jul-09	301	102.00	30,702.00
			71,480.00		₱7,290,960.00

[24] Exhibit "G".
[25] Exhibits "G-1" to "G-25".
[26] Exhibits "G-1-a" to "G-25-a".

After a careful scrutiny of the foregoing documents, We find petitioner's claim to be properly substantiated and petitioner has sufficiently proven that it is entitled to a refund, representing erroneous payment of advance VAT for the period covering May 12, 2009 to July 22, 2009.

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 Consolidated Farmers Multi-Purpose Cooperative the amount of **SEVEN MILLION TWO HUNDRED NINETY THOUSAND NINE HUNDRED SIXTY PESOS (₱7,290,960.00)**, representing erroneously paid advance VAT for the period covering May 12, 2009 to July 22, 2009.

SO ORDERED.

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

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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 before the case was assigned to the writer of the opinion of the Court's Division.

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