REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

UNITED CADIZ SUGAR FARMERS ASSOCIATION MULTI-PURPOSE COOPERATIVE,
Respondent.

CTA EB NO. 846
(CTA Case No. 7995)

Members:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 05 2013 9:10 a.m.

x - x

DECISION

UY, J.:

This Petition for Review filed before the CTA Court *En Banc* on December 2, 2011 seeks to reverse and set aside the Decision dated August 16, 2011 and the Resolution dated October 21, 2011 issued by the Second Division of this Court (Court in Division)[1] in CTA Case No. 7995, entitled "United Cadiz Sugar Farmers Association Multi-Purpose Cooperative, petitioner, vs. Commissioner of Internal Revenue and Jose N. Tan, B.I.R. Regional Director, Region 12, Bacolod City, respondents", which partially granted herein respondent's claim for refund. The dispositive portions thereof read as follows:

[1] Chaired by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla as members.

Decision promulgated on August 16, 2011[2]

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

SO ORDERED.

Resolution promulgated on October 21, 2011[3]

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration* is **DENIED**.

SO ORDERED.

THE FACTS

These are the factual antecedents of the case.

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who is vested with authority to administer and enforce national internal revenue laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, on the other hand, is a multi-purpose cooperative duly organized in accordance with the Cooperative Development Authority on January 14, 2004, with office at AGMAC Bldg., Mandalagan, Bacolod City, Philippines.

Prior to November 2007, Regional Director Rodita B. Galanto of BIR Region 12-Bacolod City had been issuing the Authorization Allowing Release of Refined Sugar (AARRS) to respondent without requiring it to pay advance Value-Added Tax (VAT). However, beginning November 2007, Regional Director Galanto began to require respondent to pay advance VAT before issuing to respondent

[2] Assailed Decision dated August 16, 2011, Docket, pp. 27-49.
[3] Assailed Resolution dated October 21, 2011, Docket, pp. 50-55.

its AARRS. This compelled respondent to seek the legal opinion of the Legal Division of the BIR as to whether respondent is considered the producer of the sugar product of its members, as Regional Director Galanto uses her interpretation of the word "producer" to exclude agricultural cooperatives that do not till the land they own or lease.

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

Upon receipt of the legal opinion issued by Assistant Commissioner Roldan, Regional Director Galanto resumed issuing AARRS to it. However, starting November 2008, Regional Director Galanto again refused to release the AARRS of respondent without prior payment of the advance VAT.

Insisting that it had been granted tax exemption under Article 61 of Republic Act (R.A.) No. 6938 (Cooperative Code of the Philippines) and Section 9(r) of R.A. No. 8424 as amended by R.A. No. 9337, respondent filed its administrative claim for refund on November 11, 2009.

Subsequently, on November 16, 2009, respondent filed its judicial claim for refund before the Court in Division, docketed as CTA Case No. 7995. During trial, respondent presented documentary and testimonial evidence in support of its claim. On the other hand, petitioner's counsel manifested during the hearing held on November 17, 2010[4] that he is not presenting evidence on the ground that only legal issues are involved in CTA Case No. 7995.

Thus, on December 21, 2010, the case was submitted for decision taking into consideration respondent's Memorandum filed on December 8, 2010, and petitioner's Manifestation filed on December 17, 2010, stating that she is adopting her Answer as her Memorandum.

On August 16, 2011, the Court in Division rendered its assailed Decision[5], partially granting respondent's claim for refund representing advance VAT on 34,017 LKG bags of refined sugar, which has been illegally or erroneously collected from respondent for

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[4] Minutes of the hearing held on November 17, 2010, CTA Case No. 7995, Records, p. 259.
[5] Ponencia of Associate Justice Juanito C. Castañeda, Jr., concurred by Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla; Docket, pp. 27-49.

the period covering November 15, 2007 to February 13, 2009 in the reduced amount of P3,469,734.00. The Court *a quo* ruled that respondent's sale of sugar produce made by respondent to its members as well as non-members is exempt from payment of VAT. Correspondingly, respondent's actual payment of said tax in the amount of P3,469,734.00 was properly substantiated upon presentation of its Summary of VAT Payments Under Protest, including the related BIR's Certificates of Advance Payment, Revenue Official Receipts (ROR), Payment Forms and letters to BIR Regional Director Galanto.

Petitioner filed a Motion for Partial Reconsideration of the said Decision before the Court *a quo* on September 5, 2011 but the same was denied by the Court in Division in the Resolution dated October 21, 2011 for lack of merit.

Hence, the instant Petition for Review before the Court *En Banc* filed on December 2, 2011 praying that the assailed Decision dated August 16, 2011, and Resolution dated October 21, 2011 of the Court in Division, be reversed and set aside, and that a new decision be rendered dismissing and denying respondent's claim for refund. Petitioner presents one assigned error, to wit:

"<u>ASSIGNED ERROR</u>

THE HONORABLE SECOND DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S JUDICIAL CLAIM FOR REFUND IN THE AMOUNT OF P3,469,734.00, REPRESENTING ITS ALLEGED ERRONEOUSLY PAID TAX FOR THE PERIOD COVERING NOVEMBER 15, 2007 TO FEBRUARY 13, 2009."

In the Resolution dated January 9, 2012[6], respondent was ordered by the Court *En Banc* to file its Comment, not a motion to dismiss, to the instant Petition for Review. Relative thereto, respondent filed an Answer[7], instead of the required Comment, on January 24, 2012.

In the Resolution dated March 20, 2012, both parties were directed to file their respective memorandum.[8] Only respondent filed

[6] Docket, pp. 60-61.
[7] Docket, pp. 62-67
[8] Docket, pp. 71-72.

its Memorandum on April 30, 2012[9], and this case was considered submitted for decision on June 6, 2012[10], sans petitioner's memorandum[11].

Hence, this Decision.

THE ISSUE

The sole issue raised for the Court *En Banc's* consideration is whether or not respondent is entitled to its claim for refund in the amount of P3,469,734.00, representing its alleged erroneously paid tax for the period covering November 15, 2007 to February 13, 2009.

Petitioner's Arguments

Petitioner submits that respondent did not convincingly prove that its sales of sugar produce to its members as well as to non-members is exempt from payment of VAT. Additionally, considering that the validity of petitioner's Revenue Regulations (RR) No. 13-2008 was not passed upon by the Court in Division in CTA Case No. 7995, respondent is allegedly legally bound to comply with the said administrative law.

Relative thereto, petitioner points out that respondent failed to present convincing evidence to prove that the refined sugar withdrawn from the sugar mills were actually produced by it through its registered members (natural or juridical persons), in violation of Section 109(L) of the National Internal Revenue Code (NIRC) of 1997, as amended, as implemented by Section 14 of RR No. 4-2007. Thus, it is allegedly imperative for respondent to submit the *quedan* of the raw sugar issued by sugar mills in respondent's name to be able to determine whether its registered members are the actual producers of the refined sugar before it was transferred to the name of the respondent, and before it sold the same to its members and non-members.

Further, petitioner contends that in order to prove that respondent is the principal provider of the various production inputs (fertilizers), capital, technology transfers and farm management, it should have presented documentary evidence such as lists of project

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[9] Respondent's Memorandum, Docket, pp. 73-81.
[10] Resolution dated June 6, 2012, Docket, pp. 85-86
[11] Per Records Verification Form dated May 28, 2012, Docket, p. 83.

programs, capital investments, and disbursement of expenses for the production of the sugarcanes produced by the farmer-members.

Lastly, petitioner claims that she has legal basis to demand and enforce the provisions of RR No. 13-2008 against respondent because the validity of said regulation has not been ruled upon by this Court. Hence, failure to present the documents enumerated therein during the administrative and judicial proceedings is allegedly fatal to respondent's claim for refund.

Respondent's Counter-arguments

Respondent counter-argues that the Court in Division has correctly ruled that it is exempted from paying taxes, pursuant to Article 61 of Republic Act (RA) No. 6938, also known as the Cooperative Code of the Philippines, and Section 109(L) of RA No. 8424 or the NIRC, as amended. In addition thereto, the opinion of the BIR Legal Division, and Assistant Commissioner Roldan, Head of the Legal Division, which favored and justified respondent's exemption to pay the advance VAT, was not even directly contested by petitioner since she probably recognized the propriety of the same.

Likewise, respondent believes that petitioner simply confuses the distinction between an agricultural corporation and an agricultural cooperative. Since respondent is a cooperative, the legislative intent to give it a preferential tax treatment is apparent in Articles 61 and 62 of RA No. 6938, citing the case of *Dumaguete Cathedral Cooperative vs. Commissioner of Internal Revenue, G.R. No. 182722, January 22, 2010*. Thus, it would be immaterial whether the refined sugar belongs to the cooperative or to its members since both are allegedly entitled to the tax exemption granted therein.

THE COURT EN BANC'S RULING

The petition has no merit.

At the outset, it bears emphasis that the issue as to whether or not respondent has been granted tax exemption under Section 61 of Republic Act (RA) No. 6938, also known as the Cooperative Code of the Philippines) and Section 109(r) of RA No. 8424, the Tax Reform Act of 1997, as amended by Section 109(L) of RA No. 9337, particularly as to the payment of VAT, has already been ruled upon by the Court in Division in respondent's favor. We quote with approval the findings of the Court in Division, to wit:

> To further prove its entitlement to tax exemption, specifically, from payment of VAT, petitioner submitted the Certificate of Exemption dated March 2, 2004 issued by Regional Director Lirio A. Cabsaba, containing a declaration that petitioner is exempt from VAT pursuant to Section 109 (r), (s), and (u) of the NIRC of 1997 and the three (3%) percentage tax pursuant to Section 116 of the said Tax Code. Petitioner likewise submitted a letter dated January 25, 2008, from then Assistant Commissioner for Legal Service James Roldan, who affirmed that the sale of sugar produce made by petitioner to its members as well as non-members is exempt from the payment of VAT, pursuant to Section 109(L) of R.A. No. 9337, as implemented by R.R. No. 4-2007.
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> Based on the foregoing, it is clear that petitioner's sale of sugar produce made by petitioner to its members as well as non-members is exempt from the payment of VAT.[12]

For clarity, Section 109(L) by RA No. 9337 which reproduced and renumbered Section 109(r) of RA No. 8424, the Tax Reform Act of 1997, as amended, pertinently 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; xxx *(Emphasis supplied)*

[12] *Supra.*, see note 2, p. 17, Docket, p. 43.

The phrase "sale of their produce" under Section 109(L), as applied to respondent's sale of refined sugar to non-members, is defined or interpreted under Section 4(a) of RR 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**.
>
> 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 RR No. 13-2008, 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 case at bench, however, respondent presented Certificate of Exemption dated March 2, 2004 (marked as Exhibit "E") and a Letter dated January 25, 2008 (marked as Exhibit "G") affirming its status as a tax exempt agricultural cooperative and that respondent's sales of sugar to its members and non-members are exempt from the payment of VAT. Clearly therefore, as there is no showing that the said Certificate of Exemption and Letter which exempt respondent from the payment of advance VAT, have been revoked or nullified by petitioner, there is no doubt that respondent is exempted thereto.

Moreover, a closer look at the "Comment to Petitioner's Offer of Exhibits[13]" filed by petitioner in CTA Case No. 7995 on September 17, 2010 before the Court in Division shows that she interposed no objection to the admission of Exhibits "E" and "G", among others. Although respondent further stated that she is not admitting the relevancy, materiality and probative value and the validity of the purposes for which the said exhibits were offered in evidence, it would have been more prudent on the part of herein petitioner, who was the respondent therein, to have registered her objection/s thereto.

Thus, there being no objection/s interposed by petitioner (as respondent in CTA Case No. 7995) as to the admission of the aforementioned documentary exhibits of respondent (as petitioner in said case), the Court *a quo* was correct in giving evidentiary value thereto as regards the tax exemption granted to respondent pursuant to Article 61 of RA No. 6983 and the provisions of the NIRC of 1997, as amended. Accordingly, We find that respondent's sale of sugar

[13] CTA Case No. 7995, Records, pp. 251-253.

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produce made by respondent to its members as well as non-members, is exempt from the payment of VAT.

Now, in determining the timeliness of respondent's claim filed with the Court in Division, We likewise adopt its factual and legal findings that respondent complied with the procedural and substantiation requirements mentioned under Sections 204(C) and 229 of the NIRC of 1997, as amended, quoted hereunder to wit:

> The two-year prescriptive period is a limitation of action not only in submitting the written claim for refund to the Commissioner, but likewise in instituting an action with the Court of Tax Appeals. Accordingly, the taxpayer must file its administrative claim for refund with the Commissioner within two (2) years after the payment of the tax; however, if the Commissioner takes time in deciding the claim and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period, without awaiting the decision of the Revenue Commissioner. This is so because of the positive requirement of Section 204 and the doctrine that delay of the Commissioner in rendering a decision does not extend the peremptory period fixed by the statute. Thus, when the two-year period is about to prescribe and the claim for refund with the Commissioner remains unacted upon, the taxpayer should file a Petition for Review with this Court in order to preserve its right to seek judicial recourse.
>
> The instant claim pertains to advance VAT on refined sugar allegedly paid by petitioner (respondent herein) on various dates from November 15, 2007 to February 13, 2009. Reckoned from November 15, 2007, petitioner (respondent herein) had until November 16, 2009 within which to file its claim both in the administrative and judicial levels. **Clearly, the administrative claim filed on November 11, 2009 and the judicial claim via a Petition for Review filed before this Court on November 16, 2009 fall within the two-year prescriptive period.** [14]

[14] *Supra.*, see note 2, p. 19; Docket, p. 45, citing the case of *Gibbs and Gibbs vs. Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. No. L-17406, November 29, 1965, 15 SCRA 318.

We are in agreement with the Court in Division that respondent's immediate appeal before the Court of Tax Appeals on November 16, 2009 or merely five (5) days upon filing of its administrative claim on November 11, 2009, but within the two-year prescriptive period, did not divest this Court with the jurisdiction to render its assailed decision pursuant to Section 7(a)(2) of RA No. 9282, amending RA No. 1125, in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended.

As regards petitioner's argument that respondent allegedly failed to submit all the necessary and relevant documentary requirements mentioned under Sections 3 and 4 of RR No. 13-2008, and Section 6 of RR No. 20-2001 pertaining to its administrative claim, We note respondent's explanation that it did not anchor its administrative claim under Section 3 of RR No. 13-2008, because it precisely contested the same, but instead, it anchored its claim upon the provisions of Article 61 of RA No. 6938, and Section 109(r) of RA 8424, as amended by RA 9337 as Section 109(L) of RA 9337.

Be that as it may, We find that respondent has complied with the mandates of Section 3 in relation with Section 4 of RR No. 13-2008[15] pertaining to the "***Requirement to Pay in Advance VAT on Sale of Refined Sugar"*** and to "**Exemption from the Payment of the Advance VAT"**, respectively.

Records show that in CTA Case No. 7995, respondent presented in evidence Exhibits "H" to "AA-3" , inclusive, to prove its advance payment of VAT; and Exhibit "E" to prove the issuance of a Certificate of Exemption in its favor. We find these documentary evidence as sufficient proof to show respondent's compliance with the requirements set forth under Sections 3 and 4 of RR No. 13-2008.

As regards petitioner's claim that respondent must show compliance with the requirements provided under Section 6 of RR 20-2001[16] , the Court *En Banc* finds that this requirement is an administrative matter as it pertains to "Documents To Be Attached To The Letter-Application For The Issuance Of Tax Exemption Certificate". The fact that a Certificate of Exemption dated March 2, 2004 (Exhibit "E" in CTA Case No. 7995) has been issued by petitioner's authorized officer, and the fact that there was no objection interposed by petitioner in the admission of said exhibit before the

[15] 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.
[16] Regulations Implementing Articles 61 and 62 of Republic Act No. 6938, Otherwise Known as the "Cooperative Code of the Philippines", in Relation to R.A. Nos. 7716, 8241, and 8424, Thereby Amending Revenue Memorandum Circular (RMC) No. 48-91.

Court in Division, the said document enjoys the presumption of regularity in the performance of official functions in the issuance of the same by the appropriate revenue officer.

Said Certificate of Exemption dated March 2, 2004, and the Letter dated January 25, 2008 issued by Assistant Commissioner for the Legal Service, James H. Roldan, confirmed that the sale of sugar produced by respondent to its members, as well as to non-members, is exempt from the payment of VAT, pursuant to Section 109(L) of RA No. 9337, as implemented by RR No. 4-2007 and found respondent to be a multi-purpose cooperative with Accumulated Reserves and Undivided Net Savings of not more than Ten Million Pesos (P10,000,000).

Notably as petitioner failed to present any evidence before the Court in Division that respondent ceased to be a tax exempt agricultural cooperative, We find no cogent reason to reverse the Court in Division's ruling partially granting respondent's claim for refund, quoted hereunder as follows:

> To prove that it actually paid the amount of P3,496,734.00 representing advance VAT on 34,017 LKG bags of refined sugar from November 15, 2007 to February 13, 2009, petitioner (respondent herein) **submitted a Summary of VAT Payments Under Protest, with the related BIR's Certificates of Advance Payment, Revenue Official Receipts (ROR), Payment Forms and letters to BIR Regional Director Rodita B. Galanto**, xxx
>
> xxx xxx xxx
>
> Upon careful scrutiny of the foregoing documents, this Court finds petitioner's claim to be properly substantiated but only in the above computed amount of P3,469,734.00.[17] *(Emphasis supplied)*

Lastly, petitioner raises the issue as to whether or not this Court has jurisdiction to rule on the validity of the provisions of RR No. 13-2008.

[17] *Supra.*, see note 2, p. 22; Docket, p. 48.

In this regard, We affirm the pronouncements of the Court in Division that it cannot, as said jurisdiction is not among those enumerated under Section 7 of RA No. 1125, as amended by RA Nos. 3457, 9282, and 9503.

In ***British American Tobacco vs. Jose Isidro N. Camacho, et al., G.R. No. 163583, August 20, 2008***, the Supreme Court sitting *En Banc* 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 cannot pass upon the validity of Sections 3 and 4 of RR No. 13-2008 issued by the Secretary of Finance.

Hence, in light of the foregoing discussions, We find no errors of fact or law committed by the Court in Division that would warrant a reversal or modification of the assailed Decision dated August 16, 2011 and Resolution dated October 21, 2011 in CTA Case No. 7995.

WHEREFORE, in view of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated August 16, 2011 and Resolution dated October 21, 2011 of the Court in Division in CTA Case No. 7995, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO - with concurring and dissenting opinion
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

no part.
Ma. Belen Ringpis-Liban
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 846** (CTA Case No. 7995)
- versus -	*Present:* **DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
UNITED CADIZ SUGAR FARMERS ASSOCIATION MULTI-PURPOSE COOPERATIVE, Respondent.	Promulgated: JUN 05 2013 *9:10 a.m.*

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I agree with the opinion of the majority to deny the Petition for Review. Respondent's entitlement for tax refund in the reduced amount of P3,469,734.00, which represents the erroneously paid tax for the period covering November 15, 2007 to February 13, 2009 is proper in view of the tax exemption granted under Republic Act No. 6938, and Section 109(r) of Republic Act (RA) No. 8424 *[renumbered as Section 109(L) under RA 9337]* in relation to the Certificate of Exemption dated March 2, 2004 (Exhibit E) and the ruling of the BIR, as contained in its January 25, 2008 Letter to respondent (Exhibit G).

The point of my dissent, however, is the opinion of the majority affirming the ruling of the Court in Division that CTA cannot rule on the validity of the provisions of Revenue Regulations No. 13-2008 as said jurisdiction is not among those enumerated under Section 7 of RA 1125, as amended. To my mind, CTA can properly rule on the validity of a ruling issued by the BIR and the provisions of tax rules and regulations.

The basis of my opinion is the decision of the Supreme Court in the case of **Asia International Auctioneers, Inc. and Subic Bay Motors Corporation vs. Hon. Guillermo L. Parayno, Jr., in his capacity as Commissioner of the Bureau of Internal Revenue (BIR), The Regional Director, BIR, Region III, The Revenue District Officer, BIR, Special Economic Zone, and Office of the Solicitor General.**[1] In that case the Supreme Court rejected the contentions of petitioners that jurisdiction over the case properly pertains to the regular courts as the case involves an action to declare as unconstitutional, void and against the provisions of Republic Act No. 7227, the Revenue Memorandum Circulars[2] (RMCs) issued by the Commissioner of Internal Revenue (CIR), and that the challenge on the authority of the CIR to issue RMCs does not fall within the jurisdiction of the CTA. Citing the cases of **Rodriguez vs. Blaquera**[3] and **CIR vs. Leal**[4], the Supreme Court ruled as follows:

> "Now, to the main issue: does the trial court have jurisdiction over the subject matter of this case?
>
> Petitioners contend that jurisdiction over the case at bar properly pertains to the regular courts as this is 'an action to declare as unconstitutional, void and against the provisions of [R.A. No.] 7227' the RMCs issued by the CIR. They explain that they 'do not challenge the rate, structure or figures of the imposed taxes, rather they challenge the authority of the respondent Commissioner to impose and collect the said taxes.' They claim that the challenge on the authority of the CIR to issue the RMCs does not fall within the jurisdiction of the Court of Tax Appeals (CTA).
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> Petitioners' arguments do not sway.
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> R.A. No. 1125, as amended, states:
>
> > Sec. 7. Jurisdiction.—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—
> >
> > (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or**

[1] G.R. No. 163445, December 18, 2007.
[2] RMC Nos. 31-2003 and 32-2003.
[3] 109 Phil. 598 (1960).
[4] G.R. No. 113459, November 18, 2002, 392 SCRA 9.

> **other laws or part of law administered by the Bureau of Internal Revenue**; x x x (*emphases supplied*)

We have held that RMCs are considered administrative *rulings* which are issued from time to time by the CIR.

Rodriguez v. Blaquera is in point. This case involves Commonwealth Act No. 466, as amended by R.A. No. 84, which imposed upon firearm holders the duty to pay an initial license fee of ₱15 and an annual fee of ₱10 for each firearm, with the exception that in case of 'bona fide and active members of duly organized gun clubs and accredited by the Provost Marshal General,' the annual fee is reduced to ₱5 for each firearm. Pursuant to this, the CIR issued General Circular No. V-148 which stated that 'bona fide and active members of duly organized gun clubs and accredited by the Provost Marshal General… shall pay an initial fee of fifteen pesos and an annual fee of five pesos for each firearm held on license except caliber .22 revolver or rifle.' The General Circular further provided that '[m]ere membership in the gun club does not, as a matter of right, entitle the member to the reduced rates prescribed by law. The licensee must be accredited by the Chief of Constabulary… [and] the firearm covered by the license of the member must be of the target model in order that he may be entitled to the reduced rates.' Rodriguez, as manager of the Philippine Rifle and Pistol Association, Inc., a duly accredited gun club, in behalf of the members who have paid under protest the regular annual fee of ₱10, filed an action in the Court of First Instance (now RTC) of Manila for the nullification of the circular and the refund of ₱5. **On the issue of jurisdiction, plaintiff similarly contended that the action was not an appeal from a ruling of the CIR but merely an attempt to nullify General Circular No. V-148, hence, not within the jurisdiction of the CTA. The Court, in finding this argument unmeritorious, explained**:

> We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provision above mentioned, as set forth in the circular. The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such, it comes within the purview of [R.A.] No. 1125, section 7 of which provides that the [CTA] 'shall exercise exclusive appellate jurisdiction to review by appeal * * * decisions of the Collector of Internal Revenue in * * * matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.' Besides, it is plain from plaintiff's original complaint that one of its main purposes was to secure an order for the refund of the sums collected in excess of the amount he claims to be due by way of annual fee from the gun club members,

> regardless of the class of firearms they have. **Although the prayer for reimbursement has been eliminated from his amended complaint, it is only too obvious that the nullification of General Circular No. V-148 is merely a step preparatory to a claim for refund.**

Similarly, in **CIR v. Leal**, pursuant to Section 116 of Presidential Decree No. 1158 (The National Internal Revenue Code, as amended) which states that '[d]ealers in securities shall pay a tax equivalent to six (6%) per centum of their gross income. Lending investors shall pay a tax equivalent to five (5%) per cent, of their gross income,' the CIR issued Revenue Memorandum Order (RMO) No. 15-91 imposing 5% lending investor's tax on pawnshops based on their gross income and requiring all investigating units of the BIR to investigate and assess the lending investor's tax due from them. The issuance of RMO No. 15-91 was an offshoot of the CIR's finding that the pawnshop business is akin to that of 'lending investors' as defined in Section 157(u) of the Tax Code. Subsequently, the CIR issued RMC No. 43-91 subjecting pawn tickets to documentary stamp tax. Respondent therein, Josefina Leal, owner and operator of Josefina's Pawnshop, asked for a reconsideration of both RMO No. 15-91 and RMC No. 43-91, but the same was denied by petitioner CIR. Leal then filed a petition for prohibition with the RTC of San Mateo, Rizal, seeking to prohibit petitioner CIR from implementing the revenue orders. The CIR, through the OSG, filed a motion to dismiss on the ground of lack of jurisdiction. The RTC denied the motion. Petitioner filed a petition for certiorari and prohibition with the CA which dismissed the petition 'for lack of basis.' **In reversing the CA, dissolving the Writ of Preliminary Injunction issued by the trial court and ordering the dismissal of the case before the trial court, the Supreme Court held that '[t]he questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops.' They were issued pursuant to the CIR's power under Section 245 of the Tax Code 'to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes.' The Court held that under R.A. No. 1125 (An Act Creating the Court of Tax Appeals), as amended, such rulings of the CIR are appealable to the CTA**.

In the case at bar, **the assailed revenue regulations and revenue memorandum circulars are actually rulings or opinions of the CIR** on the tax treatment of motor vehicles sold at public auction within the SSEZ to implement Section 12 of R.A. No. 7227 which provides that 'exportation or removal of goods from the territory of the [SSEZ] to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines.' They were issued pursuant to the power of the CIR under Section 4 of the National Internal Revenue Code, viz:

> Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.-- **The power to interpret**

> **the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**
>
> **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.** (*emphases supplied*)

Petitioners point out that the CA based its decision on Section 7 of R.A. No. 1125 that the CTA 'shall exercise exclusive appellate jurisdiction to review *by appeal...*' decisions of the CIR. They argue that in the instant case, there is no decision of the respondent CIR on any disputed assessment to speak of as what is being questioned is purely the authority of the CIR to impose and collect value-added and excise taxes.

Petitioners' failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why the instant case should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

Petitioners' insistence for this Court to rule on the merits of the case would only prove futile. Having declared the court *a quo* without jurisdiction over the subject matter of the instant case, any further disquisition would be *obiter dictum*."

(Emphases supplied; Citations omitted)

I am not unaware of the case of ***British American Tobacco vs. Camacho***[5] cited by the majority. As a background, that case stemmed from the Regional Trial Court (RTC) of Makati, Branch 61, where a **petition for injunction** with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction was filed by therein petitioner, seeking to enjoin the implementation of Section 145 of the National Internal

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

Revenue Code (NIRC), Revenue Regulations Nos. 1-97, 9-2003, 22-2003 and Revenue Memorandum Order No. 6-2003 on the ground that they discriminate against new brands of cigarettes, in violation of the equal protection and uniformity provisions of the Constitution. Eventually, petitioner in that case brought its petition for review with the Supreme Court on a pure question of law after the RTC upheld the constitutionality of the questioned provisions of law and BIR issuances. Fortune Tobacco Corp., one of the intervenors of the case claims that the challenge to the validity of the BIR issuances should have been brought by petitioner before the CTA and not the RTC because it is the CTA which has exclusive appellate jurisdiction over decisions of the BIR in tax disputes. In rejecting that contention, the Supreme Court ruled that while RA 1125, as amended 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. Accordingly, 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.

There is no dispute that the law creating and expanding the jurisdiction of CTA does not confer jurisdiction over **injunction** cases to settle question on the constitutionality or validity of tax laws, and rules and regulations. The CTA, however, is not without power to rule on the issue of the constitutionality or validity of tax laws, and rules and regulations whenever such issue is the cause of actual controversy either in a tax refund or assessment case. Truth to tell, jurisprudence dictates that courts will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or crux of the controversy.[6] Conversely, courts can touch the issue of constitutionality if it is unavoidable and is the very *lis mota* of the case.

To deprive the CTA of its jurisdiction to rule on the issue of the constitutionality or validity of tax laws, rules and regulations, when it is the very *lis mota* in a tax refund or assessment case, presents dire consequences. In order to protect its rights, a taxpayer will thereby be compelled to file two separate actions, that is, one before the regular courts for purposes of questioning the constitutionality or validity of tax laws, rules and regulations and another one before the CTA for purposes of protesting the assessment or claiming tax refund. The probability for the regular court and the CTA to render two incompatible or inconsistent decisions cannot simply be discounted even as such scenario wreaks havoc in the judicial system. Otherwise stated, the trouble sought to be forestalled by the rule against

[6] Ernesto B. Francisco, Jr. vs. The House of Representatives, G.R. No. 160261, November 10, 2003

forum shopping, which is the rendition by two competent tribunals of two separate and contradictory decisions, will not be avoided.

In my humble opinion, the foregoing clearly shows that the CTA has jurisdiction to rule on the validity of a ruling issued by the CIR in the exercise of her power to interpret and implement the 1997 NIRC, as amended, and of tax law, and rules and regulations when it is the very *lis mota* of the case.

ROMAN G. DEL ROSARIO
Presiding Justice