



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL
 REVENUE,

Petitioner,

- versus -

UNITED CADIZ SUGAR FARMERS
 ASSOCIATION MULTI-PURPOSE
 COOPERATIVE,

Respondent.

G.R. No. 209776

Present:

CARPIO, J., Chairperson,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, JJ.

Promulgated:

07 DEC 2016

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DECISION

BRION, J.:

Before us is the petition for review on *certiorari*¹ (under Rule 45 of the Rules of Court) filed by the Commissioner of Internal Revenue (CIR) to assail the June 5, 2013 decision² and the October 30, 2013 resolution³ of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 846 (CTA Case No. 7995).

In the assailed decision and resolution, the CTA *en banc* affirmed the decision⁴ and resolution⁵ of the CTA Second Division (CTA division).

¹ Rollo, pp. 10-28.

² Penned by CTA Associate Justice Erlinda P. Uy and concurred in by CTA Associate Justices Juanito C. Castañeda, Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen Ringpis-Liban. CTA Presiding Justice Roman G. Del Rosario issued a separate concurring and dissenting opinion. Id. at 156-176.

³ Id. at 178-190.

⁴ Id. at 64-86.

⁵ Id. at 97-102.

The Facts

By law, the CIR is empowered, among others, to act on and approve claims for tax refunds or credits.

The respondent United Cadiz Sugar Farmers Association Multi-Purpose Cooperative (*UCSFA-MPC*) is a multi-purpose cooperative with a Certificate of Registration issued by the Cooperative Development Authority (*CDA*) dated January 14, 2004.⁶

In accordance with Revenue Regulations (*RR*) No. 20-2001, the Bureau of Internal Revenue (*BIR*) issued BIR Ruling No. RR12-08-2004,⁷ otherwise known as the "Certificate of Tax Exemption" in favor of *UCSFA-MPC*.

In November 2007, BIR Regional Director Rodita B. Galanto of BIR Region 12 – Bacolod City required *UCSFA-MPC* to pay in advance the value-added tax (*VAT*) before her office could issue the Authorization Allowing Release of Refined Sugar (*AARRS*) from the sugar refinery/mill. This was the first instance that the Cooperative was required to do so. This prompted the cooperative to confirm with the BIR⁸ whether it is exempt from the payment of *VAT* pursuant to Section 109(l) of the National Internal Revenue Code (*NIRC*).⁹

The BIR responded favorably to *UCSFA-MPC*'s query. In BIR Ruling No. ECCP-015-08,¹⁰ the CIR¹¹ ruled that the cooperative "is considered as the **actual producer** of the members' sugarcane production, because it primarily provided the various inputs (fertilizers), capital, technology transfer, and farm management." (*emphasis supplied*) The CIR thus confirmed that *UCSFA-MPC*'s sale of produce to members and non-members is **exempt from the payment of VAT**.

As a result, Regional Director Galanto no longer required the advance payment of *VAT* from *UCSFA-MPC* and began issuing *AARRS* in its favor, thereby allowing the cooperative to withdraw its refined sugar from the refinery. But, in November 2008, the administrative legal opinion

⁶ Certificate of Registration marked as Exhibit "C" in the CTA. See *rollo*, p. 157.

⁷ Dated March 2, 2004. Referred to as BIR Ruling No. DA-013-2004 in the CTA *en banc* decision and the present petition.

⁸ In its letter dated January 9, 2008.

⁹ SEC. 109. *Exempt Transactions*. - (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

XXXX

(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;

¹⁰ Dated January 25, 2008.

¹¹ Through then Assistant Commissioner James H. Roldan.

notwithstanding, Regional Director Galanto, again demanded the payment of advance VAT from UCSFA-MPC. Unable to withdraw its refined sugar from the refinery/mill for its operations, UCSFA-MPC was forced to pay advance VAT under protest.

On November 11, 2009, UCSFA-MPC filed an administrative claim for refund with the BIR, asserting that it had been granted tax exemption under Article 61 of Republic Act No. (RA) 6938, otherwise known as the Cooperative Code of the Philippines (*Cooperative Code*),¹² and Section 109(I) of the NIRC.¹³

On November 16, 2009, it likewise filed a judicial claim for refund before the CTA division. During the trial, UCSFA-MPC presented, among other documents, its Certificates of Registration¹⁴ and Good Standing¹⁵ issued by the CDA; Certificate of Tax Exemption,¹⁶ and BIR Ruling No. ECCP-015-08 issued by the BIR,¹⁷ as well as its Summary of VAT Payments Under Protest, Certificates of Advance Payment, official receipts, and payment forms to substantiate its claim.

The CTA division ruled in UCSFA-MPC's favor,¹⁸ thus upholding the cooperative's exemption from the payment of VAT; the division held that the amount of ₱3,469,734.00 representing advance VAT on 34,017 LKG bags of refined sugar withdrawn from the refinery, was illegally or erroneously collected by the BIR. The CIR moved but failed to obtain reconsideration of the CTA division ruling.

The CIR then sought recourse before the CTA *en banc*. In its assailed decision,¹⁹ the CTA *en banc* affirmed the CTA division's ruling and ruled that UCSFA-MPC successfully proved its entitlement to tax exemption through its Certificate of Tax Exemption and BIR Ruling No. ECCP-015-08 (which confirmed its status as a tax-exempt cooperative). The CTA *en banc* also held that both its administrative and judicial claims for refund were timely filed, having been filed within the two-year prescriptive period,²⁰ in accordance with the requirements of Sections 204(C) and 229 of the NIRC.

In denying the CIR's motion for reconsideration,²¹ the CTA *en banc* further ruled that the payment of VAT on sales necessarily includes the exemption from the payment of advance VAT. It also struck down the argument questioning the validity of UCSFA-MPC's Certificate of Good Standing for having been raised belatedly and thus considered waived.

¹² Enacted on March 10, 1990.

¹³ Formerly Section 109(r) prior to the amendment put into effect by RA 9337 in 2005.

¹⁴ *Supra* note 6.

¹⁵ Exhibit "D" in the CTA.

¹⁶ Exhibit "E" in the CTA.

¹⁷ Exhibit "G" in the CTA.

¹⁸ In its decision dated August 16, 2011, *rollo* pp. 64-86.

¹⁹ *Supra* note 2.

²⁰ *Supra* note 4, citing *Gibbs and Gibbs vs. Commissioner of Internal Revenue and Court of Tax Appeals* (G.R. No. L-17406, November 29, 1965, 15 SCRA 318).

²¹ *Supra* note 3.

Finally, it also held that as a tax-exempt cooperative, UCSFA-MPC is not required to file monthly VAT declarations. The presentation of these documents is therefore not essential in proving its claim for refund.

These developments gave rise to the present petition.

The Court's Ruling

We find the petition unmeritorious.

We have consistently ruled that claims for tax refunds, when based on statutes granting tax exemption, partake of the nature of an exemption.²² Tax refunds and exemptions are exceptions rather than the rule and for this reason are highly disfavored.²³ Hence, in evaluating a claim for refund, the rule of strict interpretation applies.

This rule requires the claimant to prove not only his entitlement to a refund, but also his due observance of the reglementary periods within which he must file his administrative and judicial claims for refund.²⁴ Non-compliance with these *substantive* and *procedural* due process requirements results in the denial of the claim.²⁵ It is then essential for us to discuss each requirement and evaluate whether these have been duly complied with in the present case.

Procedural requirements: Present claim for refund was timely filed.

UCSFA-MPC's claim for refund – grounded as it is on payments of advance VAT alleged to have been **illegally and erroneously** collected from November 15, 2007 to February 13, 2009 – is governed by Sections 204(C)²⁶ and 229²⁷ of the NIRC. These provisions are clear: within two years from the

²² *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010, 624 SCRA 340, 358 citing *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.

²³ *Philippine Long Distance Company vs. City of Bacolod*, G.R. No. 149179, July 15, 2005, 463 SCRA 528, 536.

²⁴ See *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. 184823, October 6, 2010, 632 SCRA 422.

²⁵ *Id.*

²⁶ SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may - x x x x (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.

²⁷ 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 any manner wrongfully collected, until a claim for refund or credit has been duly filed with the

date of payment of tax, the claimant must first file an **administrative claim** with the CIR²⁸ before filing its **judicial claim** with the courts of law.²⁹ Both claims must be filed within a two-year reglementary period.³⁰ Timeliness of the filing of the claim is mandatory and jurisdictional. The court³¹ cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.

In the present case, the court *a quo* found that while the judicial claim was filed merely five days after filing the administrative claim, both claims were filed within the two-year reglementary period. Thus, the CTA correctly exercised jurisdiction over the judicial claim filed by UCSFA-MPC.

***Substantive requirements: UCSFA
MPC proved its entitlement to refund***

As mentioned, the rule on strict interpretation requires the claimant to sufficiently establish his entitlement to a tax refund. If the claimant asserts that he should be refunded the amount of tax he has previously paid because he is exempted from paying the tax,³² he must point to the specific legal provision of law granting him the exemption. His right cannot be based on mere implication.³³

In this case, the cooperative claims that it is exempted – based on Section 61 of R.A. 6938 and Section 109(1) of the NIRC – from paying advance VAT when it withdraws refined sugar from the refinery/mill as required by RR No. 6-2007. UCSFA-MPC thus alleges that the amounts of advance VAT it paid under protest from November 15, 2007 to February 13, 2009, were illegally and erroneously collected.

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.

Also see *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130, 141.

²⁸ See Section 204, NIRC, *supra* note 26.

²⁹ See Section 229, *id, supra* note 27.

³⁰ See *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015, sc.judiciary.gov.ph.

³¹ Section 7(a)(1) and (2) of R.A. No. 1125, as amended by R.A. No. 9282, vests upon the CTA the exclusive appellate jurisdiction to review by appeal decisions and inaction of the CIR in cases involving refunds of internal revenue taxes.

³² See *Mactan Cebu International Airport Authority v. Marcos*, 261 SCRA 667 (1996), citing Agpalo, *Statutory Construction*, (1990 ed.), p. 217.

³³ See *Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008, 567 SCRA 496; *Commissioner of Internal Revenue vs. A.D. Guerrero*, G.R. No. L-20942, September 22, 1967, 21 SCRA 190.

UCSFA-MPC's sale of refined sugar is VAT-exempt.

As a general rule under the NIRC, a seller shall be liable for VAT³⁴ on the sale of goods or properties based on the gross selling price or gross value in money of the thing sold.³⁵ However, certain transactions are exempted from the imposition of VAT.³⁶ One exempted transaction is the sale of agricultural food products in their original state.³⁷ Agricultural food products that have undergone simple processes of preparation or preservation for the market are nevertheless considered to be in their original state.³⁸

Sugar is an agricultural food product. Notably, tax regulations differentiate between *raw sugar* and *refined sugar*.³⁹

For internal revenue purposes, the sale of *raw cane sugar* is exempt from VAT⁴⁰ because it is considered to be in its original state.⁴¹ On the other hand, *refined sugar* is an agricultural product that can no longer be considered to be in its original state because it has undergone the refining process; its sale is thus subject to VAT.

Although the sale of refined sugar is generally subject to VAT, such transaction may nevertheless qualify as a VAT-exempt transaction if the sale is made by a cooperative. Under Section 109(1) of the NIRC,⁴² *sales by agricultural cooperatives* are exempt from VAT provided the following conditions concur, *viz*:

First, the seller must be an agricultural cooperative duly registered with the CDA.⁴³ An agricultural cooperative is "duly registered" when it has been issued a **certificate of registration by the CDA**. This certificate is conclusive evidence of its registration.⁴⁴

Second, the cooperative must sell either:

³⁴ See Section 105, NIRC.

³⁵ See Section 106, *id.*

³⁶ See Section 109, *id.*

³⁷ See Section 109(A), *id.*

³⁸ *Id.*

³⁹ According to RR No. 16-2005, "[S]ugar whose content of sucrose by weight, in the dry state, has a polarimeter reading of 99.5° and above are presumed to be refined sugar." On the other hand, under RR Nos. 6-2007 and 13-2008, raw sugar "refers to sugar whose content of sucrose by weight in dry state, corresponds to a polarimeter reading of less than 99.5°.

⁴⁰ *Supra* note 37.

⁴¹ *Id.*

⁴² 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 (1) 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

⁴³ *Id.*

⁴⁴ Article 17 of the Cooperative Code provides, "A certificate of registration issued by the Cooperative Development Authority under its official seal shall be conclusive evidence that the cooperative therein mentioned is duly registered unless it is proved that the registration thereof has been cancelled." See also Section 2, RR No. 20-2001.

- 1) exclusively to its members; or
- 2) to both members and non-members, *its produce*, whether in its original state or processed form.⁴⁵

The second requisite differentiates cooperatives according to its customers. If the cooperative transacts only with members, all its sales are VAT-exempt, regardless of what it sells. On the other hand, if it transacts with both members and non-members, the product sold must be the cooperative's own produce in order to be VAT-exempt. Stated differently, if the cooperative only sells its produce or goods that it manufactures on its own, its entire sales is VAT-exempt.⁴⁶

A cooperative is the producer of the sugar if it owns or leases the land tilled, incurs the cost of agricultural production of the sugar, and produces the sugar cane to be refined.⁴⁷ It should not have merely purchased the sugar cane from its planters-members.⁴⁸

UCSFA-MPC satisfies these requisites in the present case.

First, UCSFA-MPC presented its Certificate of Registration issued by the CDA. It does not appear in the records that the CIR ever objected to the authenticity or validity of this certificate. Thus, the certificate is conclusive proof that the cooperative is duly registered with the CDA.⁴⁹

While its certificate of registration is sufficient to establish the cooperative's due registration, we note that it also presented the Certificate of Good Standing that the CDA issued. This further corroborates its claim that it is duly registered with the CDA.

Second, the cooperative also presented BIR Ruling No. ECCP-015-08, which states that UCSFA-MPC "is considered as the **actual producer** of the members' sugar cane production because it primarily provided the various productions inputs (fertilizers), capital, technology transfer, and farm management." It concluded that the cooperative "has **direct participation** in the sugar cane production of its farmers-members."

Thus, the BIR itself acknowledged and confirmed that UCSFA-MPC is the producer of the refined sugar it sells. Under the principle of equitable estoppel,⁵⁰ the petitioner is now precluded from unilaterally revoking its own

⁴⁵ *Supra* note 42.

⁴⁶ CITE specific provision of the LAW and/or CASE.

⁴⁷ Section 4(a), RR No. 13-2008.

⁴⁸ Section 4(b), RR No. 13-2008.

⁴⁹ *Supra* note 44.

⁵⁰ In *Commissioner of Internal Revenue v. San Roque Power Corporation*, (G.R. No. 187485, February 12, 2013, 690 SCRA 336, 460), it was ruled that, "where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA, in these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly

pronouncement and unduly depriving the cooperative of an exemption clearly granted by law.

With the UCSFA-MPC established as a duly registered cooperative and the **producer** of sugar cane, its sale of refined sugar is exempt from VAT, whether the sale is made to members or to non-members.

The VAT-exempt nature of the sales made by agricultural cooperatives under the NIRC is consistent with the tax exemptions granted to qualified cooperatives under the Cooperative Code which grants cooperatives exemption from sales tax⁵¹ on transactions with members and non-members.⁵²

These conclusions reduce the issue in the case to whether the granted exemption also covers the *payment* of advance VAT upon withdrawal of refined sugar from the refinery or mill.

authorized under Section 246 of the Tax Code." *Republic v. Court of Appeals* (G.R. No. 116111, January 21, 1999, 301 SCRA 366), as cited in the case, describes the principle of equitable estoppel: "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals."

⁵¹ Section 2(f), RR No. 20-2001, issued to implement Sections 61 and 62 of the Cooperative Code, clarifies that "sales tax" as referred to in the Cooperative Code shall mean VAT or percentage tax.

⁵² Cooperatives enjoy exemption from tax under Articles 61 and 62 of the Cooperative Code of the Philippines, *viz*:

Article 61. Tax Treatment of Cooperatives. - Duly registered cooperatives under this Code which do not transact any business with non-members or the general public **shall not be subject to any government taxes and fees imposed under the Internal Revenue Laws and other tax laws.** Cooperatives not falling under this article shall be governed by the succeeding section.

Article 62. Tax and Other Exemptions. - Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions to members. Notwithstanding the provisions of the law or regulation to the contrary, such cooperatives dealing with non-members shall enjoy the following tax exemptions: (1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) **shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature.** Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax-free importations shall not be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the tax and/or duties thereon. (2) Cooperatives with accumulated reserves and undivided net savings of more than Ten million pesos (P10,000,000.00) shall pay the following taxes at the full rate: xxx (b) Sales Tax: On sales to non members: Provided, however, That all cooperatives, regardless of classification, are exempt from the payment of income and sales taxes for a period of ten (10) years. (emphasis supplied)

Exemption from VAT on sale of refined sugar by an agricultural cooperative includes the exemption from the requirement of advance payment thereof.

The CTA *en banc* ruled that the cooperative is exempted from the **payment of advance VAT**.⁵³ It also ruled that the exemption from the payment of VAT on sales necessarily includes the exemption from the payment of advance VAT.⁵⁴

The CIR argues that the exemption granted by the Cooperative Code and NIRC, on which the Certificate of Tax Exemption and BIR Ruling No. ECC-015-08 issued in favor of UCSFA-MPC were based, **only covers VAT on the sale of produced sugar**. It does not include the **exemption from the payment of advance VAT in the withdrawal of refined sugar** from the sugar mill.⁵⁵

The CIR's argument fails to persuade us.

As we discussed above, the sale of refined sugar by an agricultural cooperative is exempt from VAT. To fully understand the difference between VAT on the sale of refined sugar and the advance VAT upon withdrawal of refined sugar, we distinguish between the tax liability that arises from the **imposition of VAT** and the **obligation of the taxpayer to pay** the same.

Persons liable for VAT *on the sale of goods* shall pay the VAT due, in general, on a monthly basis. VAT accruing from the sale of goods in the current month shall be payable the following month.⁵⁶ However, there are instances where VAT is required to be paid in advance,⁵⁷ such as in the sale of refined sugar.⁵⁸

To specifically address the policies and procedures governing the advance payment of VAT on the sale of refined sugar, RR Nos. 6-2007 and 13-2008 were issued.

Under these regulations, VAT on the sale of refined sugar that, under regular circumstances, is payable within the month following the actual sale of refined sugar, shall nonetheless be paid in advance before the refined sugar can even be withdrawn from the sugar refinery/mill by the sugar

⁵³ *Supra* note 2.

⁵⁴ *Supra* note 3.

⁵⁵ *Rollo*, p. 16.

⁵⁶ Section 114 of the NIRC requires persons liable to pay VAT, as defined under Section 105 thereof, shall file a quarterly return reflecting the amount of his gross sales or receipts within 25 days following the close of the taxable quarter. However, VAT-registered persons shall pay the VAT on a monthly basis.

⁵⁷ Section 4.114-1(B), RR No. 16-2005.

⁵⁸ Section 4.114-1(B)(1), *id.*

owner. Any advance VAT paid by sellers of refined sugar shall be *allowed as credit* against their output tax on the actual gross selling price of refined sugar.⁵⁹

Recall in this regard that VAT is a transaction tax imposed at every stage of the distribution process: on the sale, barter, exchange, or lease of goods or services.⁶⁰ Simply stated, VAT generally arises because an actual sale, barter, or exchange has been consummated.

In the sugar industry, raw sugar is processed in a refinery/mill which thereafter transforms the raw sugar into refined sugar. The refined sugar is then withdrawn or taken out of the refinery/mill and sold to customers.⁶¹ Under this flow, the withdrawal of refined sugar evidently takes place prior to its sale.

The VAT implications of the **withdrawal** of refined sugar from the sugar refinery/mill and the actual **sale** of refined sugar are different. While the sale is the actual transaction upon which VAT is imposed, the withdrawal gives rise to the obligation to pay the VAT due, albeit in advance. Therefore, the requirement for the advance payment of VAT for refined sugar creates a special situation: While the transaction giving rise to the imposition of VAT — the actual sale of refined sugar — has not yet taken place, the VAT that would be due from the subsequent sale is, nonetheless, already required to be paid earlier, which is before the withdrawal of the goods from the sugar refinery/mill.

To be clear, the transaction subject to VAT is still the sale of refined sugar. The withdrawal of sugar is not a separate transaction subject to VAT. It is only the payment thereof that is required to be made in advance.

While the payment of advance VAT on the sale of refined sugar is, in general, required before these goods may be withdrawn from the refinery/mill, cooperatives are exempt from this requirement because they are cooperatives.

Revenue regulations specifically provide that such withdrawal shall not be subject to the payment of advance VAT if the following requisites are present, *viz*:

First, the withdrawal is made by a **duly accredited and registered agricultural cooperative in good standing**.⁶² It was later clarified that a cooperative is in good standing if it is a holder of a **certificate of good standing** issued by the CDA.⁶³

⁵⁹ Section 9, RR No. 6-2007.

⁶⁰ De Leon, De Leon, Jr., *The National Internal Revenue Code Annotated*, Vol. II (2003).

⁶¹ Available at <http://www.sra.gov.ph/wp-content/gallery/banner-slideshow/Sugar-Industry2.PNG>.

⁶² Section 4(a) and (b), RR No. 6-2007.

⁶³ Section 4(a), RR No. 13-2008.

Second, the cooperative should also be the **producer** of the sugar being withdrawn.⁶⁴

Third, the cooperative withdrawing the refined sugar should subsequently sell the same to either its members or another agricultural cooperative.⁶⁵

In sum, the sale of refined sugar by an agricultural cooperative duly registered with the CDA is exempt from VAT. A qualified cooperative also enjoys exemption from the requirement of advance payment of VAT upon withdrawal from the refinery/mill. The agricultural cooperative's exemption from the requirement of advance payment is a logical consequence of the exemption from VAT of its sales of refined sugar. We elaborate on this point as follows:

First, the VAT required to be paid in advance (upon withdrawal) is the same VAT to be imposed on the subsequent sale of refined sugar. If the very transaction (sale of refined sugar) is VAT-exempt, there is no VAT to be paid in advance because, simply, there is no transaction upon which VAT is to be imposed.

Second, any advance VAT paid upon withdrawal shall be allowed as credit against its output tax arising from its sales of refined sugar. If all sales by a cooperative are VAT-exempt, no output tax shall materialize. It is simply absurd to require a cooperative to make advance VAT payments if it will not have any output tax against which it can use/credit its advance payments.

Thus, we sustain the CTA *en banc*'s ruling that if the taxpayer is exempt from VAT on the sale of refined sugar, necessarily, it is also exempt from the advance payment of such tax.

Tax regulations cannot impose additional requirements other than what is required under the law as a condition for tax exemption.

Insisting that UCSFA-MPC does not enjoy exemption from the payment of advance VAT, the CIR questions the cooperative's compliance with tax regulations that require cooperatives to make additional documentary submissions to the BIR prior to the issuance of a certificate of tax exemption.

According to the CIR, RR No. 13-2008 requires an agricultural producer cooperative duly registered with the CDA to be in good standing before it can avail of the exemption from the advance payment of VAT. It

⁶⁴ Section 4(a) and (b), RR No. 6-2007.

⁶⁵ *Id.*

claims that the cooperative failed to present any certificate of good standing. While it did present a certificate of good standing, the cooperative only acquired this certificate on August 25, 2009. Hence, it was not exempt from advance payment of VAT during the period subject of its refund, or between November 15, 2007 to February 15, 2009.⁶⁶

We disagree with this CIR submission.

First, the CTA observed that the petitioner questioned the cooperative's certificate of good standing for the first time in its motion for reconsideration filed before the CTA *en banc*. Thus, the CTA *en banc* was correct in ruling that under the Rules of Court the argument is deemed waived, having been belatedly raised. No new issue in a case can be raised in a pleading, which issue, by due diligence, could have been raised in previous pleadings.⁶⁷

Second, the certificate of good standing is one of the requirements for the issuance of a certificate of tax exemption under RR No. 20-2001.

Article 2(d) of the Cooperative Code defines a certificate of tax exemption as "the ruling granting exemption to the cooperative" issued by the BIR. In turn, under RR No. 20-2001, the cooperative shall file a letter-application for the issuance of certificate of tax exemption, attaching thereto its certificates of registration and good standing duly issued by the CDA.⁶⁸ The certificate of tax exemption shall remain valid so long as the cooperative is "in good standing" as ascertained by the CDA.⁶⁹

In line with the presumption of regularity in the performance of duties of public officers, the issuance of the certificate of tax exemption in favor of UCSFA-MPC presupposes that the cooperative submitted to the BIR the complete documentary requirements for application, including its certificate of good standing. Simply stated, when the cooperative's certificate of tax exemption was issued in 2004, it had already obtained its certificate of good standing from the CDA.

⁶⁶ *Rollo*, pp. 18-19.

⁶⁷ CTA *en banc* decision citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561.

⁶⁸ SEC. 6. DOCUMENTS TO BE ATTACHED TO THE LETTER-APPLICATION FOR THE ISSUANCE OF TAX EXEMPTION CERTIFICATE. — A Letter-Application signed by the President/General Manager of the Cooperative, or his duly authorized representative, should be submitted to the Legal Division of the Revenue Region having jurisdiction over the principal place of business of the cooperative, attaching thereto the following documents:

xxxx

- b) Certified true copy of the Certificate of Registration issued by the CDA;

xxxx

- e) Original copy of the Certificate of Good Standing from the CDA;

⁶⁹ SEC. 7. VALIDITY OF TAX EXEMPTION CERTIFICATE. — The Tax Exemption Certificate shall be valid during such period that the cooperative is in good standing as ascertained by the CDA on an annual basis.

The fact that its certificate of good standing was dated August 25, 2009, should not be detrimental to UCSFA-MPC's case. As it correctly points out, a certificate of good standing is renewed and issued annually by the CDA. Its renewal simply shows that it has remained to be in good standing with the CDA since its original registration. More importantly, no evidence was presented to show that either the certificate of registration or certificate of good standing had been previously revoked.

Third, as discussed earlier, the exemption from VAT on the sale of refined sugar carries with it the exemption from the payment of advance VAT before the withdrawal of refined sugar from the refinery/mill.

Section 109(l) of the NIRC clearly sets forth only two requisites for the exemption of the sale of refined sugar from VAT. Tax regulations implementing Sections 61 and 62 of the Cooperative Code as well as Section 109(l) of the NIRC must be read together, and read as well to be consistent with the laws from which they have been derived. Thus, RR 20-2001 must be understood to implement the same principle as the Cooperative Code and the NIRC and not add to the existing requirements provided by these laws.

We must remember that regulations may not enlarge, alter, or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.⁷⁰ A taxpayer-claimant should not be required to submit additional documents beyond what is required by the law; the taxpayer-claimant should enjoy the exemption it has, by law, always been entitled to.

Hence, once the cooperative has sufficiently shown that it has satisfied the requirements under Section 109(l) of the NIRC for the exemption from VAT on its sale of refined sugar (*i.e.*, that it is duly registered with the CDA and it is the producer of the sugar cane from which refined sugar is derived), its exemption from the advance payment of VAT should automatically be granted and recognized.

On these bases, we reject the CIR's insistence that RR No. 13-2008 requires the submission of a certificate of good standing as a condition to a cooperative's exemption from the requirement of advance payment of VAT. In the same vein, the petitioner's argument that the submission of monthly VAT declarations and quarterly VAT returns is essential to a claim for tax refund must also fail.

⁷⁰ *Commissioner of Internal Revenue vs. Central Luzon Drug*, G.R. No. 159647, April 15, 2005, 456 SCRA 414.

The Certificate of Tax Exemption and BIR Ruling No. ECCP-015-2008 have not been revoked.

Finally, the CIR questions the validity of the certificate of exemption and BIR Ruling No. ECCP-015-08 used by UCSFA-MPC to prove its exemption from tax. Citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,⁷¹ the CIR insists that the BIR rulings on which the cooperative anchors its exemption were, in the first place, deemed revoked when it filed an Answer to the cooperative's judicial claim for refund before the CTA Division.⁷²

On the other hand, UCSFA-MPC points out that, while the case cited held that the filing of an answer by the CIR is a revocation of prior rulings issued in favor of the taxpayer-claimant, it has a recognized exception: the principle of non-retroactivity of rulings under Section 246 of the NIRC.⁷³

We agree with UCSFA-MPC.

The basic rule is that if any BIR ruling or issuance promulgated by the CIR is subsequently revoked or nullified by the CIR herself or by the court, the revocation/nullification cannot be applied retroactively to the prejudice of the taxpayers. Hence, even if we consider that the CIR had revoked the rulings previously issued in favor of UCSFA-MPC upon the filing of her answer, it cannot effectively deprive UCSFA-MPC of its rights under the rulings prior to their revocation.


We note that, as pointed out by UCSFA-MPC, this principle was recognized as an exception in the very case the CIR cited, although the CIR opted to omit this portion of the cited case.

Being exempt from VAT on the sale of refined sugar and the requirement of advance payment of VAT, the amounts that UCSFA-MPC had paid from November 15, 2007 to February 13, 2009, were illegally and erroneously collected. Accordingly, a refund is in order.

⁷¹ G.R. No. 153205, January 22, 2007, 512 SCRA 124.

⁷² *Rollo*, pp. 20-21.

⁷³ Section 246. Non-retroactivity of Rulings. – Any modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:


- (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
 - (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
 - (c) Where the taxpayer acted in bad faith.
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WHEREFORE, we **DENY** the petition and accordingly **AFFIRM** the June 5, 2013 decision and the October 30, 2013 resolution of the CTA *en banc* in CTA EB No. 846.

SO ORDERED.

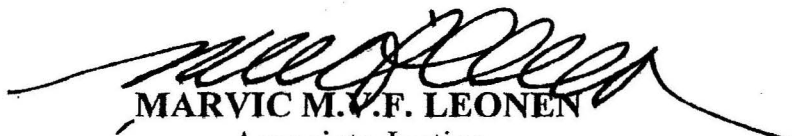

ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson

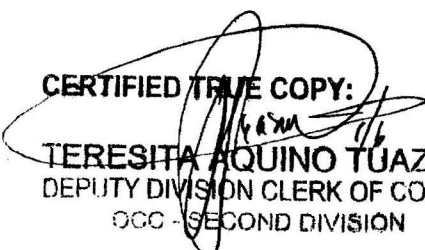
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY:



TERESITA AQUINO TUAZON
DEPUTY DIVISION CLERK OF COURT
OCC - SECOND DIVISION