



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,      G.R. No. 212735

Petitioner,

Present:

BERSAMIN, C.J.,  
Chairperson,  
DEL CASTILLO,  
TIJAM,  
GESMUNDO, and  
CARANDANG,\* JJ.

- versus -

NEGROS CONSOLIDATED  
FARMERS MULTI-PURPOSE  
COOPERATIVE,

Respondent.

Promulgated:

**DEC 05 2018**

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**DECISION**

**TIJAM, J.:**

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court are the Decision<sup>2</sup> dated March 5, 2014 and the Resolution<sup>3</sup> dated May 27, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 992, declaring respondent Negros Consolidated Farmers Multi-Purpose Cooperative (COFA) as exempt from the Value-added tax (VAT) and hence, entitled to refund of the VAT it paid in advance.

\* Designated Additional Member per Raffle dated December 5, 2018, vice Associate Justice Francis H. Jardeleza.

<sup>1</sup> *Rollo*, pp. 35-52.

<sup>2</sup> Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred in by Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova; *id.* at 12-28.

<sup>3</sup> *Id.* at 30-32.

### The Antecedents

COFA is a multi-purpose agricultural cooperative organized under Republic Act (RA) No. 6938.<sup>4</sup>

As its usual course, COFA's farmer-members deliver the sugarcane produce to be milled and processed in COFA's name with the sugar mill/refinery.<sup>5</sup> Before the refined sugar is released by the sugar mill, however, an Authorization Allowing the Release of Refined Sugar (AARRS) from the Bureau of Internal Revenue (BIR) is required from COFA. For several instances, upon COFA's application, the BIR issued the AARRS without requiring COFA to pay advance VAT pursuant to COFA's tax exemption under Section 61<sup>6</sup> of RA 6938 and Section 109(r) (now under Section 109[L])<sup>7</sup> of RA No. 8424<sup>8</sup>, as amended by RA No. 9337.<sup>9</sup> As such, COFA was issued Certificates of Tax Exemption dated May 24, 1999 and April 23, 2003 by the BIR.<sup>10</sup>

However, beginning February 3, 2009, the BIR, through the Regional Director of Region 12-Bacolod City, required as a condition for the issuance of the AARRS the payment of "advance VAT" on the premise that COFA, as an agricultural cooperative, does not fall under the term "producer." According to the BIR, a "producer" is one who tills the land it owns or leases, or who incurs cost for agricultural production of the sugarcane to be refined by the sugar refinery.<sup>11</sup>

As bases for the required payment of advance VAT, the Regional Director pointed to Sections 3 and 4 of Revenue Regulations (RR) No. 13-2008,<sup>12</sup> which, in part, respectively provide:

<sup>4</sup> AN ACT TO ORDAIN A COOPERATIVE CODE OF THE PHILIPPINES.

<sup>5</sup> *Rollo*, p. 120.

<sup>6</sup> Section 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.

<sup>7</sup> Sec. 109 *Exempt Transactions.* - Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

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(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;

<sup>8</sup> THE TAX REFORM ACT OF 1997.

<sup>9</sup> AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

<sup>10</sup> Through Sixto S. Esquivias IV, then Deputy Commissioner for Legal and Enforcement Group and Milagros V. Regalado, Assistant Commissioner for Legal Service; *Rollo*, p. 131.

<sup>11</sup> *Id.* at 58.

<sup>12</sup> Dated September 19, 2008.

**Sec. 3. Requirement to pay in Advance VAT Sale of Refined Sugar.** – In general, the advance VAT on the sale of refined sugar provided for under Sec. 8 hereof, shall be paid in advance by the owner/seller before the refined sugar is withdrawn from any sugar refinery/mill. xxx

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**Sec. 4. Exemption from the Payment of the Advance VAT.** - xxx

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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.

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COFA was thus, constrained to pay advance VAT under protest<sup>13</sup> and to seek the legal opinion of the BIR Legal Division, as to whether COFA is considered the producer of the sugar product of its members.

In a Ruling dated January 11, 2008, the BIR<sup>14</sup> stated that the sales of sugar produce by COFA to its members and non-members are exempt from VAT pursuant to Section 109(L) of RA 9337, as implemented by Revenue Regulations (RR) No. 4-2007. The Ruling, in part, provides:

Thus, COFA and its members['] respective roles in the operation of the Cooperative cannot be treated as separate and distinct from each other. Notwithstanding that COFA is not the owner of the land and the actual tiller of the land, it is considered as the actual producer of the members' sugarcane production because it primarily provided the various production inputs (fertilizers), capital, technology transfer and farm management. In short, COFA has direct participation in the sugarcane production of its farmers-member.<sup>15</sup>

Thus, pursuant to Section 229<sup>16</sup> of RA 8424, as amended, COFA lodged with petitioner Commissioner of Internal Revenue (CIR) an administrative claim for refund in the amount of ₱11,172,570.00 for the advance VAT it paid on the 109,535 LKG bags of refined sugar computed at ₱102.00 VAT per bag for the period covering February 3, 2009 to July 22,

<sup>13</sup> *Rollo*, p. 59.

<sup>14</sup> Through Assistant Commissioner for Legal Services, James H. Roldan; *id.*

<sup>15</sup> *Id.* at 80.

<sup>16</sup> **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 xxx, 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 xxx.

2009. Because of the CIR's inaction, COFA filed a petition for review<sup>17</sup> before the CTA Division pursuant to Rule 8, Section 3(a)<sup>18</sup> of the Revised Rules of the CTA, but this time seeking the refund of the amount of ₱7,290,960.00 representing 71,480 LKG bags of refined sugar at ₱102.00 VAT per bag for the period covering May 12, 2009 to July 22, 2009.<sup>19</sup>

In its Answer, the CIR raised as sole point COFA's alleged failure to comply with the requisites for recovery of tax erroneously or illegally collected as spelled under Section 229 of RA 8424, specifically, the lack of a prior claim for refund or credit with the CIR.<sup>20</sup>

Trial on the merits thereafter ensued where only COFA presented evidence through its Tax Consultant, Jose V. Ramos. The CIR, on the other hand, waived the presentation of evidence. However, in its Memorandum,<sup>21</sup> the CIR additionally argued that COFA is not entitled to refund as it failed to present certain documents<sup>22</sup> required under Sections 3 and 4 of RR No. 13-2008.<sup>23</sup>

<sup>17</sup> *Rollo*, pp. 83-89.

<sup>18</sup> xxx In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two year period prescribed by law from payment or collection of the taxes. xxx.

<sup>19</sup> *Rollo*, p. 132.

<sup>20</sup> *Id.* at 96.

<sup>21</sup> *Id.* at 113-117.

<sup>22</sup> These documents are enumerated in the CIR's Memorandum as follows:

“(a) Documents required under Section 3 of RR No. 13-2008:

1. Certificate of Advance Payment of VAT (Annex-E);
2. Declaration for Advance Payment on refined sugar to the RD/RDO having jurisdiction over the place where the sugar mill is physically located (Annex B-1);
3. Listing/abstract of official Warehouse Receipt Quedan (Annex B-2) in soft and hard copy;
4. Proof of Payment of Advance VAT on sale of Refined Sugar; and
5. Sworn Statement to the effect that the cooperative-owner of the refined sugar is an agricultural producer as defined in RR No. 13-2008; and the refined sugar is the property of the cooperative at the time of removal and it will not charge advance VAT or any other tax to the future buyer.

“(b) Documents required under Section 4 of RR No. 13-2008 [and] Section 6 of RR No. 20-2001:

1. Certified true copy of the Certificate of Registration from Cooperative Development Authority (CDA);
2. Original copy of the Certificate of Goods [sic] Standing from CDA;
3. Articles of Cooperation and By-laws;
4. Certificate under oath by the tpresident/General Manager twwhether tthet cooperative ttis transacting business with members only or with both members and non-members, whichever is applicable;
5. Certified true copy of the Certificate of confirmation of registration from the CDA (in the case of cooperative already existing and previously registered under P.D. 175, P.D. 775, and E.O. 898, before the creation of CDA)
6. Certification under oath by the Chairman/President/General Manager of the Cooperative (if previously registered as above stated) as certified by the CDA, as to the amount of accumulated reserves and undivided net savings, and that at least 25% of the net income is returned to the members in the form of interest and/or patronage refund;
7. Certification under oath of the list of members and the share capital contribution of each member; and
8. Latest financial Statements duly audited by an independent CPA.”

<sup>23</sup> *Rollo*, pp. 114-115.

On December 12, 2012, the CTA Division rendered its Decision<sup>24</sup> finding COFA to be exempt from VAT and thus, ordered the refund of the advance VAT it erroneously paid. The CIR Division reasoned that COFA's Certificates of Tax Exemption dated May 24, 1999 and April 23, 2003 and the BIR Ruling dated January 11, 2008, which had not been revoked or nullified, affirmed COFA's status as a tax-exempt agricultural cooperative. It further held that based on said uncontroverted<sup>25</sup> evidence, COFA is "considered as the actual producer of the members' sugarcane production because it primarily provided the various production inputs (fertilizers), capital, technology transfer and farm management."<sup>26</sup> The CIR Division likewise held that COFA substantiated its claim for refund in the amount of ₱7,290,960.00 representing advance VAT on the 71,480 LKG bags of refined sugar from May 12, 2009 to July 22, 2009, by submitting in evidence the Summary of VAT Payments Under Protest with the related BIR Certificates of Advance Payment of VAT and Revenue Official Receipts.<sup>27</sup>

In disposal, the CIR Division pronounced:

WHEREFORE, the instant Petition for Review is hereby GRANTED. Accordingly, [CIR] is hereby ORDERED TO REFUND in favor of [COFA] 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.<sup>28</sup>

The CIR's motion for reconsideration met similar denial in the CTA Division's Resolution<sup>29</sup> dated March 5, 2013, thus prompting a petition for review before the CTA *En Banc*.

The CIR maintained its argument that COFA failed to present evidence to prove that the refined sugar withdrawn from the sugar mills were actually produced by COFA through its registered members as required under RA 8424, as amended. The CIR argues that COFA's failure to present the *quedan* of the raw sugar issued by sugar mills in COFA's name is fatal to its claim for refund as it cannot be determined whether its registered members are the actual producers of the refined sugar before it was transferred in COFA's name and before COFA sells it to its members and non-members.<sup>30</sup>

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<sup>24</sup> Id. at 129-149.

<sup>25</sup> Id. at 144.

<sup>26</sup> Id. at 144.

<sup>27</sup> Id. at 147.

<sup>28</sup> Id. at 148.

<sup>29</sup> Id. at 165-169.

<sup>30</sup> Id. at 176.

Further, the CIR pointed to COFA's failure to present documentary evidence to prove that it is indeed the principal provider of the various production inputs (fertilizers), capital, technology transfers and farm management, as well as documentary evidence to show that COFA has sales transactions with its members and non-members. The CIR reiterated its argument that COFA failed to present the documents required for the administrative and judicial claim for refund in accordance with RR No. 13-2008.

COFA countered that the instant case involves advance VAT assessed on its withdrawal of sugar from the refinery/mill, and not on its sale of sugar to members or non-members. Thus, COFA argued that the payment in advance of VAT for the withdrawal of sugar from the refinery/mill was without basis.

In its presently assailed Decision, the CTA *En Banc* affirmed COFA's status as an agricultural cooperative entitled to VAT exemption. By evidence consisting of COFA's Certificate of Registration dated October 19, 2009 and Certificate of Good Standing dated May 19, 2010, as well as the CIR's admission in its Answer, pre-trial brief and stipulation of facts, it was established that COFA is an agricultural cooperative. According to the CTA *En Banc*, COFA, at the time of the subject transactions, was a cooperative in good standing as indicated in the Certification of Good Standing issued and renewed by the CDA on May 19, 2010.

As such, the CTA *En Banc* held that pursuant to Section 109(L) of RA 8424, as amended, transactions such as sales by agricultural cooperatives duly registered with the CDA to their members, as well as sales of their produce, whether in its original state or processed form, to non-members, are exempt from VAT. Citing Article 61 of RA 6938, as amended by RA 9520, the CTA *En Banc* held that cooperatives were exempt from VAT for sales or transactions with members. As well, the CTA *En Banc* held that COFA was exempt from VAT for transactions with non-members, provided that the goods subject of the transaction were produced by the members of the cooperative; that the processed goods were sold in the name and for the account of the cooperative; and, that at least 25% of the net income of the cooperatives was returned to the members in the form of interest and/or patronage refunds.

The CIR's motion for reconsideration was denied by the CTA *En Banc* in its Resolution dated May 27, 2014, thus, giving rise to the present petition.

### The Issue

The issue to be resolved is whether or not COFA, at the time of the subject transactions, *i.e.*, from May 12, 2009 to July 22, 2009, is VAT-exempt and therefore entitled to a tax refund for the advance VAT it paid.

### The Ruling of the Court

#### **We deny the petition.**

COFA is a VAT-exempt agricultural cooperative. Exemption from the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill.

VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services.<sup>31</sup> Section 105 of RA 8424, as amended, provides:

Section 105. *Persons Liable.* - Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business.

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<sup>31</sup> *Commissioner of Internal Revenue v. Court of Appeals*, 385 Phil. 875 (2000).

There are, however, certain transactions exempt from VAT<sup>32</sup> such as the sale of agricultural products in their original state, including those which underwent simple processes of preparation or preservation for the market, such as raw cane sugar. Thus, Section 7 of RA 9337 amending Section 109 of RA 8424 provides:

Section 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

“Section 109. Exempt Transactions. — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

“A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.

**“Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state; (Emphasis ours)**

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While the sale of raw sugar, by express provision of law, is exempt from VAT, the sale of refined sugar, on the other hand, is not so exempted as refined sugar already underwent several refining processes and as such, is no longer considered to be in its original state. However, if the sale of the sugar, whether raw or refined, was made by an agricultural cooperative to its members or non-members, such transaction is still VAT-exempt. Section 7 of RA 9337 amending Section 109 (L) of RA 8424, the law applicable at the time material to the claimed tax refund, further reads:

Section 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

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

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<sup>32</sup>Exempt transaction is defined as one involving goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT, under the Tax Code, without regard to the tax status of the party in the transaction. (*Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, 550 Phil. 304, 311-312 [2007]).



**“(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 ours)

Relatedly, Article 61 of RA 6938, as amended by RA 9520, provides:

ART. 61. *Tax and Other Exemptions.* Cooperatives transacting business with both members and non-members shall not be subjected to tax on their transaction with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers 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 (DTI). All tax free importations shall not be sold nor the beneficial ownership thereof 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 imposed tax and/or duties.

(2) Cooperatives with accumulated reserves and divided net savings of more than Ten million pesos (P10,000,000.00) shall fee (sic) the following taxes at the full rate:

(a) Income Tax – xxx;

**(b) Value-Added Tax – On transactions with non-members: *Provided, however,* That cooperatives duly registered with the Authority; are exempt from the payment of value-added tax; subject to Section 109, subsections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended: *Provided,* That the exempt transaction under Section 109 (L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or process**

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**products for sale by the cooperative to its members and non-members:** *Provided, further,* That any processed product or its derivative arising from the raw materials produced by its members, sold in then (sic) name and for the account of the cooperative: *Provided, finally,* That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds;

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Thus, by express provisions of the law under Section 109 (L) of RA 8424, as amended by RA 9337, and Article 61 of RA 6938 as amended by RA 9520, the *sale itself* by agricultural cooperatives duly registered with the CDA to their members as well as the sale of their produce, whether in its original state or processed form, to non-members are exempt from VAT.

In the interim, or on September 19, 2008, the BIR issued RR No. 13-2008 consolidating the regulations on the *advance payment of VAT* or "*advance VAT*" on the sale of refined sugar.<sup>33</sup> Generally, the advance VAT on the sale of the refined sugar is required to be paid in advance by the owner/seller before the refined sugar is *withdrawn* from the sugar refinery/mill. The "sugar owners" refer to those persons having legal title over the refined sugar and may include, among others, the cooperatives.<sup>34</sup>

By way of exception, withdrawal of refined sugar is exempted from advance VAT upon the concurrence of certain conditions which ultimately relate to a two-pronged criteria: *first*, the character of the cooperative seeking the exemption; and *second*, the kind of customers to whom the sale is made.

As to the character of the cooperative, Section 4 of RR No. 13-2008 in part, provides:

***Sec. 4. Exemption from the Payment of the Advance VAT.*** - Notwithstanding the provisions of the foregoing Section, the following withdrawals shall be exempt from the payment of the advance VAT:

(a) Withdrawal of Refined Sugar by Duly Accredited and Registered Agricultural Producer Cooperative of Good Standing. - In the event the refined sugar is owned and withdrawn from the Sugar Refinery/Mill by an agricultural cooperative of good standing duly accredited and registered with the Cooperative Development Authority (CDA), which cooperative is the agricultural producer of the sugar cane that was refined into

<sup>33</sup> Section 2(a) of RR No. 13-2008 defines "refined sugar" as sugar whose sucrose content by weight, in the dry state corresponds to a polarimeter reading of 99.5° and above.

<sup>34</sup> Section 2(d) of RR No. 13-2008.

refined sugar, the withdrawal is not subject to the payment of advance VAT. xxx

Thus, for an agricultural cooperative to be exempted from the payment of advance VAT on refined sugar, it must be (a) a cooperative in good standing duly accredited and registered with the CDA; and (b) the producer of the sugar. Section 4 of RR No. 13-2008 defines when a cooperative is considered in good standing and when it is said to be the producer of the sugar in this manner:

A cooperative shall be considered in good standing if it is a holder of a "Certificate of Good Standing" issued by the CDA. xxx

A cooperative is said to be the producer of the sugar if it is the tiller of the land it owns, or leases, incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

As to the kind of customers to whom the sale is made, Section 4 of RR No. 13-2008 differentiates the treatment between the sale of a refined sugar to members and non-members as follows:

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.

Nevertheless, RR No. 13-2008 makes it clear that the withdrawal of refined sugar by the agricultural cooperative for sale to its members is not subject to advance VAT, while sale to non-members of refined sugar is not subject to advance VAT only if the cooperative is the agricultural producer of the sugar cane. Thus, it appears that the requirement as to the character of the cooperative being the producer of the sugar is relevant only when the sale of the refined sugar is likewise made to non-members.

The foregoing requisites for the application of the VAT-exemption for sales by agricultural cooperatives to apply were likewise identified by the Court in *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*,<sup>35</sup> thus:

*First*, the seller must be an agricultural cooperative duly registered with the CDA. 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.

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<sup>35</sup> 802 Phil. 636 (2016).

*Second*, the cooperative must sell either:

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

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. xxx<sup>36</sup>

Having laid down the requisites when an agricultural cooperative is considered exempt from the payment of advance VAT for the withdrawal of the refined sugar from the sugar refinery/mill, the next task is to measure whether, indeed, COFA met the foregoing requirements.

We find no reason to disturb the CTA *En Banc's* finding that COFA is a cooperative in good standing as indicated in the Certification of Good Standing previously issued and subsequently renewed by the CDA. It was likewise established that COFA was duly accredited and registered with the CDA as evidenced by the issuance of the CDA Certificate of Registration. There is no showing that the CIR disputed the authenticity of said documents or that said certifications had previously been revoked. Consequently, such must be regarded as conclusive proof of COFA's good standing and due registration with the CDA.<sup>37</sup>

Similarly, COFA is considered the producer of the sugar as found by the CTA Division and affirmed by the CTA *En Banc*. That COFA is regarded as the producer of the sugar is affirmed no other than the BIR itself when it issued its Ruling<sup>38</sup> on the matter, the pertinent portions of which are herein quoted:

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As a multi-purpose cooperative, COFA is an agricultural co-producer of the sugarcane produced by all its cooperative members. Being a juridical person, it is legally impossible for the cooperative to do the actual tillage of the land but the cooperative and all its members altogether carry out the sugar farming activities during the agricultural crop year. The cooperative members have consistently provided the sugar farms/plantations and the tillage while COFA, in its capacity as co-producer, has provided the following services to its members as its co-producers xxx.

<sup>36</sup> Id. at 647-648.

<sup>37</sup> See *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, supra note 35.

<sup>38</sup> BIR Ruling ECCEP-002-2008 dated January 11, 2008.

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Moreover, being the exclusive marketing arm of the harvested sugarcane from the various farms of its members, the cooperative does not engage in the purchase of sugarcane produced by non-members. As such, the sugarcane produced by the cooperative members will be harvested, hauled, delivered and milled to the sugarmill in the name of COFA. The sugarmill issues the quedan of the raw sugar in the name of COFA pursuant to the membership agreement that the cooperative will be solely and exclusively tasked to market the sugar, molasses and other derivative products. Thereafter, COFA turns over to its members the net proceeds of the sale of the sugarcane produce. When COFA further decides to process the produced raw sugar of its members into refined sugar, the sugarmill issues refined sugar quedan in the name of COFA.

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The farmer-members of COFA joined together to form the COFA with the objective of producing and selling of sugar as its products. The members thereof made their respective equitable contributions required to achieve their objectives. Consequently, the proceeds of the sale thereof are intended to be shared among them in accordance with cooperative principles.

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The above BIR ruling operates as an equitable estoppel precluding the CIR from unilaterally revoking its pronouncement and thereby depriving the cooperative of the tax exemption provided by law.<sup>40</sup>

Having established that COFA is a cooperative in good standing and duly registered with the CDA and is the producer of the sugar, its sale then of refined sugar whether sold to members or non-members, following the express provisions of Section 109(L) of RA 8424, as amended, is exempt from VAT. As a logical and necessary consequence then of its established VAT exemption, COFA is likewise exempted from the payment of advance VAT required under RR No. 13-2008.

The CIR, however, breeds confusion when it argues that the VAT exemption given to cooperatives under the laws pertain only to the sale of the sugar but not to the withdrawal of the sugar from the refinery. The CIR is grossly mistaken. To recall, VAT is a transaction tax – it is imposed on sales, barter, exchanges of goods or property, and on the performance of services. The withdrawal from the sugar refinery by the cooperative is not the incident which gives rise to the imposition of VAT, but the subsequent sale of the sugar. If at all, the withdrawal of the refined sugar gives rise to the obligation to pay the VAT on the would-be sale. In other words, the

<sup>39</sup> *Rollo*, pp. 68-69.

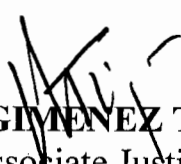
<sup>40</sup> See *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, supra note 35.

advance VAT which is imposed upon the withdrawal of the refined sugar is the very same VAT which would be imposed on the sale of refined sugar following its withdrawal from the refinery, hence, the term “advance.” It is therefore erroneous to treat the withdrawal of the refined sugar as a tax incident different from or in addition to the sale itself.

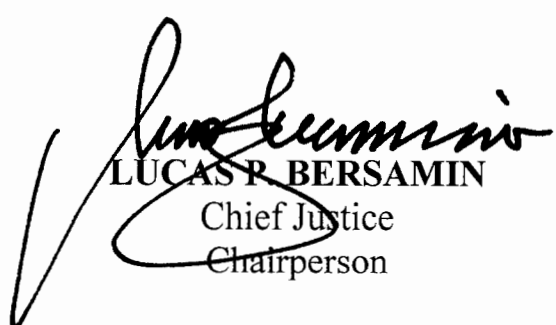
Finally, as regards the CIR's contention that COFA failed to submit complete documentary requirements fatal to its claim for tax refund, suffice it to say, that COFA was a previous recipient and holder of certificates of tax exemption issued by the BIR, and following the Court's pronouncement in *United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, the issuance of the certificate of tax exemption presupposes that the cooperative submitted to the BIR the complete documentary requirements. In the same manner, COFA's entitlement to tax exemption cannot be made dependent upon the submission of the monthly VAT declarations and quarterly VAT returns, as the CIR suggests. Here, it was established that COFA satisfied the requirements under Section 109(L) of RA 8424, as amended, to enjoy the exemption from VAT on its sale of refined sugar; its exemption from the payment of advance VAT for the withdrawal it made from May 12, 2009 to July 22, 2009 follows, as a matter of course.

**WHEREFORE**, the petition is **DENIED**. The Decision dated March 5, 2014 and the Resolution dated May 27, 2014 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 992, declaring respondent Negros Consolidated Farmers Multi-Purpose Cooperative exempt from Value-added tax (VAT) and hence, entitled to refund of the VAT it paid in advance in the amount of SEVEN MILLION TWO HUNDRED NINETY THOUSAND NINE HUNDRED SIXTY PESOS (₱7,290,960.00) for the withdrawal of the refined sugar it made from May 12, 2009 to July 22, 2009 are **AFFIRMED**.

**SO ORDERED.**

  
NOEL GIMENEZ TIJAM  
Associate Justice

**WE CONCUR:**

  
LUCAS P. BERSAMIN  
Chief Justice  
Chairperson

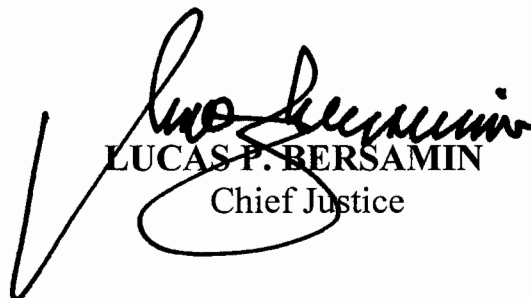
  
MARIANO C. DEL CASTILLO  
Associate Justice

  
ALEXANDER G. GESMUNDO  
Associate Justice

  
ROSMARI D. CARANDANG  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
LUCAS P. BERSAMIN  
Chief Justice