



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 12, 2020 which reads as follows:*

**“G.R. No. 225239 – (Commissioner of Internal Revenue v. VMC Farmers Multi-Purpose Cooperative)**

**Antecedents**

Respondent VMC Farmers Multi-Purpose Cooperative is a multi-purpose agricultural cooperative registered with the Cooperative Development Authority (“CDA”). The CDA granted VMC a Certificate of Registration on January 13, 2010 and a Certificate of Good Standing on April 15, 2011. From May 31, 2011 to April 16, 2012, however, the Bureau of Internal Revenue (BIR) Region 12-Bacolod City refused to issue VMC a Certificate Authorizing Release of Refined Sugars (CARRS) due to the latter’s failure to secure a new Certificate of Tax Exemption. Subsequently, on November 16, 2011, the BIR issued a new Certificate of Tax Exemption to VMC as a cooperative transacting with members only. This time though, the BIR required VMC to first pay the advance Value-Added Tax (VAT) on its refined sugar from May 31, 2011 to April 16, 2012 prior to the issuance of CARRS in its favor. VMC was thus constrained to pay advance VAT under protest on its 93,503 LKG bags of refined sugar amounting to ₱9,537,306.00.<sup>1</sup>

On July 23, 2012, VMC filed a claim for refund with the BIR in the amount of ₱9,537,306.00 for the advance VAT it paid.<sup>2</sup> VMC alleged it was exempted from payment of VAT under Section 109(L) of the National Internal Revenue Code (NIRC) of 1997,<sup>3</sup> as amended,

<sup>1</sup> *Rollo*, pp. 12-13.

<sup>2</sup> *Id.* at 13.

<sup>3</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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in relation to Articles 60 and 61 of Republic Act 9520 (RA 9520), otherwise known as the Philippine Cooperative Code of 2008.<sup>4</sup> Because of the BIR's inaction on its claim, VMC filed a petition for review on May 29, 2013 before the Court of Tax Appeals (CTA) Division.<sup>5</sup>

In its Answer, the Commissioner on Internal Revenue (CIR) mainly countered that VMC failed to prove it had submitted complete supporting documents to warrant the grant of tax refund.<sup>6</sup> Specifically, the CIR argued that VMC should have presented substantial proof that it actually and exclusively transacted with its members only by providing the official list of members, sales invoices, and the *quedans* showing that the refined sugar were actually produced by the cooperative through its members.<sup>7</sup>

During trial, VMC's tax consultant Jose V. Ramos testified that although VMC belatedly applied for tax exemption, Section 13<sup>8</sup> of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA 9520 (Cooperative Code of the Philippines) provides that VMC can apply for tax credit or refund of advance VAT paid from the date of registration with the CDA up to the issuance of the Certificate of

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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.

<sup>4</sup>ART. 60. *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 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.

ART. 61. *Tax and Other Exemptions.* - Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including [sic] 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: xxx

<sup>5</sup> Pursuant to Rule 8, Section 3 (a) 18 of the Revised Rules of the CTA which states: x x x 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. x x x.

<sup>6</sup> *Rollo*, p. 16.

<sup>7</sup> *Id.* at 25.

<sup>8</sup> SECTION 13. *Documents to Be Attached to the Letter-Application for the Issuance of a Certificate of Tax Exemption/Ruling.* - xxx.

For applications for tax exemption not filed within the prescribed period, the late applicants shall be subjected to internal revenue taxes prior to the issuance of the Certificate of Tax Exemption/Ruling; however they can apply for tax credit/refund of taxes previously paid from the date of registration with the CDA up to the issuance of the Certificate of Tax Exemption/Ruling, subject to the rules and procedures for processing tax credit/refund. The BIR shall act on the request for tax refund of taxes previously paid within one hundred twenty (120) days from submission of the complete documents in support of the application filed.

Tax Exemption in its favor.<sup>9</sup> VMC also submitted the following documentary evidence: *Certificate of Registration* with the CDA; *Certificate of Good Standing* issued by the CDA; *Certificate of Tax Exemption* issued by the BIR;<sup>10</sup> *Summary of Advance VAT Payments with Revenue Official Receipts/BIR Tax Payment Deposit Slips*; and *payment forms (BIR Form No. 0605)* which reflected advance VAT paid on 93,503 LKG bags of refined sugar totaling ₱9,537,306.00.<sup>11</sup>

The CIR, on the other hand, waived the right to present evidence.<sup>12</sup>

### CTA Second Division's Ruling

Under Decision dated September 10, 2014, the CTA Second Division ruled that VMC was exempt from VAT as it was a duly registered cooperative in good standing under RA 9520. Too, the BIR itself issued a Certificate of Tax Exemption which clearly stated that VMC was a cooperative transacting **with members only**. As such, there was no need for VMC to submit other additional documents under Article 61 of RA 9520 which only applies to registered cooperatives transacting business with both members and non-members. Article 60, not Article 61, of RA 9520 should therefore be applied with respect to VMC's tax-exempt status; and under Article 60, VMC shall not be subject to "taxes and fees imposed under internal revenue laws and other tax laws," including VAT.<sup>13</sup>

Thus, the CTA Second Division ordered the CIR to refund the advance VAT that VMC erroneously paid, *viz*:

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of Nine Million Five Hundred Thirty-Seven Thousand Three Hundred Six Pesos (₱9,537,306.00), representing erroneously paid advance VAT for the period covering May 31, 2011 to April 16, 2012.

**SO ORDERED.**<sup>14</sup>

The CIR's motion for reconsideration was denied under Resolution dated November 13, 2014. The CIR thereafter elevated the case to the CTA En Banc via a petition for review.<sup>15</sup>

<sup>9</sup> *Id.* at 16-17.

<sup>10</sup> *Id.* at 23.

<sup>11</sup> *Id.* at 25.

<sup>12</sup> *Id.* at 17.

<sup>13</sup> *Id.* at 22-25.

<sup>14</sup> *Id.* at 17.

<sup>15</sup> *Id.* at 18.

### CTA En Banc Ruling

By Decision dated March 3, 2016,<sup>16</sup> the CTA En Banc affirmed. It held that the CIR erred in claiming that VMC failed to submit supporting documents to be entitled to tax exemptions based on Article 61 of RA 9520 in relation to Section 8<sup>17</sup> of the Joint Rules and Regulations. For the provision applies only to cooperatives which transact business with members and non-members. VMC was not required to submit the documentary requirements under the aforesaid provisions of law and regulations because it does not transact with non-members of the cooperative.

More, VMC faithfully complied with the requirements for it to be accorded a tax-exempt status, specifically, from payment of VAT. The CTA En Banc also found that VMC was able to substantiate its

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<sup>16</sup> *Id.* at 11-35.

<sup>17</sup> SECTION 8. *Taxability/Exemption of Duly Registered Cooperatives Which Transact Business with Members and Non-Members.* —

a) Cooperatives with accumulated reserves and undivided net savings of not more than Ten Million (₱10,000,000.00) — Exemption from all national internal revenue taxes for which these cooperatives are liable as enumerated under Section 7 of this Joint Rules and Regulations.

b) Cooperatives with accumulated reserves and undivided net savings of more than Ten Million Pesos (₱10,000,000.00)

b.1) Business transactions with members — Business activities engaged in by such cooperatives with its members where said cooperative generates revenues shall be exempt from all national internal revenue taxes for which it is liable as enumerated in Section 7 of this Joint Rules and Regulations;

b.2) Business transactions with non-members — Cooperatives with accumulated reserves and undivided net savings of more than ₱10,000,000.00 which transact with non-members shall:

b.2.1) Pay the following taxes at the full rate:

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b.2.1.2) Value Added Tax (VAT) — On transactions with non-members: Provided, however, That cooperatives, pursuant to Section 109, par. (L), (M) and (N) of the NIRC, as amended by RA 9337, shall be exempt from the imposition of VAT, namely the following:

i. Sales by agricultural cooperatives duly registered and in good standing with the CDA 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 (Sec. 109 (1) (L) of the NIRC, as amended).

Provided, further, That the exempt transactions pursuant to the above shall include sales made by a duly registered agricultural cooperative organized and operated by its members to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by said cooperative to its members and non-members: Provided, finally, That any processed product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative, shall be deemed the product of the cooperative.

Sale by agricultural cooperatives to non-members can only be exempted from VAT if the producer of the agricultural products sold is the cooperative itself. If the cooperative is not the producer (e.g., trader), only those sales to its members shall be exempted from VAT.

Exempt transactions shall include sales made by a duly registered agricultural cooperative organized and operated by its members to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by said cooperative to its members and non-members.

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claim of payment of the total amount of ₱9,537,306.00 through documentary evidence.

The CIR moved for reconsideration but was denied under Resolution dated June 15, 2016.<sup>18</sup>

### **The Present Petition**

The CIR now seeks affirmative relief from the Court via a petition for review on certiorari. It reiterates that VMC's Certificate of Exemption is not sufficient to prove entitlement to a refund of advance VAT. The CIR repeats its claim that VMC should have presented proof that it actually and exclusively transacted with its members only by providing its list of members, sales invoices, and *quedans* to show that the refined sugar were actually produced by the cooperative members only.<sup>19</sup>

In its Comment,<sup>20</sup> VMC counters: it substantiated its claim of exemption from advance VAT on its withdrawal of refined sugar from the refinery or mill; the case is not a refund of VAT on the sale since there was no sale involved but only the release of sugar; and the list of members, sales invoice, and *quedans* are not required by law. VMC further asserts that the *quedans* were submitted to the Revenue District Officer (RDO) who would not have released the AARRS without the *quedans*. Thus, it is presumed that when the RDO issued the AARRS, he was satisfied that VMC was the producer of the sugar through its members only.

### **Issue**

Did the CTA En Banc err in ruling that VMC was exempted from payment of VAT, thus, entitled to a tax refund?

### **Ruling**

The petition lacks merit. It is a mere rehash of the CIR's arguments raised before the CTA Second Division and CTA En Banc which have been duly passed upon.

***VMC is exempted from payment of VAT***

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<sup>18</sup> *Rollo*, pp. 83-85.

<sup>19</sup> *Id.* at 47-48.

<sup>20</sup> *Id.* at 96-101.

The issue here is not novel. In the recent case of *Commissioner of Internal Revenue v. Negros Consolidated Farmers Multi-Purpose Cooperative*,<sup>21</sup> the Court had already settled that 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.

By express provisions of law, the sale by agricultural cooperatives duly registered with the CDA to their members are exempt from VAT. Article 109(L) of the NIRC of 1997, as amended, and Article 60 of RA 9520 provide:

SEC. 109. Exempt Transactions. - **xxx 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 the 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

ART. 60. 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 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. (Emphasis supplied)

In *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*,<sup>22</sup> the Court laid down the following conditions for an agricultural cooperative to be exempt from VAT, viz:

*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.

*Second*, the cooperative must sell either:

<sup>21</sup> G.R. No. 212735, December 5, 2018.

<sup>22</sup> G.R. No. 209776, 802 Phil. 636, 647-648 (2016).

- 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. Stated differently, if the cooperative only sells its produce or goods that it manufactures on its own, its entire sales is VAT-exempt. (Emphasis supplied)

VMC satisfies these requisites.

*First*, VMC presented its Certificate of Registration and Certificate of Good Standing both issued by the CDA. The CIR never objected to its authenticity or validity. Thus, these certificates are conclusive proof that VMC is duly registered with the CDA.

*Second*, the BIR itself issued a Certificate of Tax Exemption to VMC certifying it is a cooperative **transacting with members only** and entitled to exemptions and incentives provided under Article 60 of RA 9520, including exemption from VAT on CDA-registered sales or transactions, *viz*:

THIS IS TO CERTIFY THAT VMC FARMERS COOPERATIVE, INC. (VMCFMPC), an agricultural multi-purpose cooperative, with address at Osmena Avenue III, Victorias City, Negros Occidental, is a duly-registered taxpayer of ROO No. 076 under Tax Identification No. 000-962-814 and is registered with the Cooperative Development Authority under Registration Certificate No. 9520-06006137 dated January 13, 2010.

**As a cooperative transacting with members only, VMCFMPC is entitled to the following tax exemptions and incentives provided for under Article 60 of Republic Act No. 9520**, as implemented by Section 7 of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520:

xxx xxx xxx

This Certificate of Registration shall be valid for five (5) years or until November 16, 2016, unless sooner revoked by this Office for violation of any provisions of the Joint Revenue Regulations, the terms and conditions on the reverse

side hereof or upon withdrawal of the Certificate of Registration by the CDA. (Emphasis supplied)

We agree with the CTA's findings that pursuant to the principle of presumption of regularity in the performance of official functions, the BIR issued the Certificate of Tax Exemption in the discharge of its official duties and functions. Surely, the BIR would not have issued the certification if it has not determined that VMC met the requirements to be granted a tax exempt status. Being disputable presumptions, these could have been controverted by evidence to the contrary. But instead of offering documents to negate the same, the CIR chose to waive its right to present evidence.

Thus, it is undisputed here that VMC belongs to the category of duly registered cooperatives which transact business with members only. Its transactions, therefore, are vat-exempt.

***VMC is entitled to a refund  
of the advance VAT paid***

As regards the CIR's contention that VMC failed to submit complete documentary requirements to support its claim for tax refund, suffice it to say that, VMC was a previous recipient and holder of certificates of tax exemption issued by the BIR, and following the Court's pronouncements in *Commissioner of Internal Revenue v. Negros Consolidated Farmers Multi-Purpose Cooperative*<sup>23</sup> and *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*,<sup>24</sup> the issuance of the certificate of tax exemption presupposes that the cooperative submitted to the BIR the complete documentary requirements to be accorded a tax-exempt status.

In any event, both the CTA Second Division and En Banc found that VMC was able to substantiate its claim that it paid advance VAT in the total amount of ₱9,537,306.00 through its submission of the Summary of Advance VAT Payments with Revenue Official Receipts/BIR Tax Payment Deposit Slips and Payment Forms (BIR Form No. 0605) which reflected the said amount.

Verily, having established that VMC satisfied the requirements under Section 109(L) of RA 8424, as amended, to enjoy the exemption from VAT on its sale or withdrawal of refined sugar; its

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<sup>23</sup> Supra note 21.

<sup>24</sup> Supra note 22.



exemption from the payment of advance VAT for withdrawals made from May 31, 2011 to April 16, 2012 follows, as a matter of course.

If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.<sup>25</sup>

**WHEREFORE**, the petition is **DENIED**. The Decision dated March 3, 2016 and Resolution dated June 15, 2016 of the Court of Tax Appeals En Banc in CTA EB Case No. 1253 are **AFFIRMED**.

**SO ORDERED.**” *J. Reyes, Jr., J. on leave.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court 

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<sup>25</sup> *BPI Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719, 729 (2000).