

# FIRST DIVISION

[ G.R. No. 212735, December 05, 2018 ]

## COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. NEGROS CONSOLIDATED FARMERS MULTI-PURPOSE COOPERATIVE, RESPONDENT.

### 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.

### 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:

**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. x x x

x x x x

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

x x x x

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.

x x x x

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 P11,172,570.00 for the advance VAT it paid on the 109,535 LKG bags of refined sugar computed at P102.00 VAT per bag for the period covering February 3, 2009 to July 22, 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 P7,290,960.00 representing 71,480 LKG bags of refined sugar at P102.00 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>

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 P7,290,960.00 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 (P7,290,960.00), 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>

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 nonmembers, 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 non-stock, non-profit 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.

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)**

x x x x"