REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 109(L) of RA 9337; RR 8-15; RMC 40-15; RA 9520
BIR Ruling No. 245-18
VAT-0253-2020 MAY 27 2020

UNITED SUGAR PLANTERS AGRARIAN REFORM BENEFICIARIES COOPERATIVE (USPARB COOP)
Door No. 3, J&L Building, Lopez-Jaena Street
Bacolod City

Attention: **Ms. Floravil S. King**
General Manager

Gentlemen:

This refers to your letter dated November 14, 2017, which was indorsed to this Office by Revenue Region No. 12 dated November 27, 2017, requesting for confirmation that the sale of sugar produce made by United Sugar Planters Agrarian Reform Beneficiaries Cooperative (USPARB COOP) to non-members is exempt from the payment of Value-Added Tax (VAT) pursuant to Section 109(L) of Republic Act No. 9337 (NIRC).

It is represented that USPARB COOP is a cooperative duly registered with the Cooperative Development Authority (CDA) with Certificate of Registration No. dated March 18, 2010. To date, USPARB COOP remains a cooperative of good standing as evidenced by the issuance of Certificate of Compliance on May 12, 2017 with COC No. , valid until April 30, 2018.

From the documents submitted, it appears that USPARB COOP leases agricultural lands of its members consistent with the joint production concept of a producer's cooperative. The farming expenses in the agricultural production of sugar such as the costs of fertilizers, plowing, weeding, handling and loading of sugarcane crops, among others, are all being incurred by US PARB COOP. As proof that USPARB COOP is the producer of the sugar cane to be refined, the following documents are submitted: (1) Lease Contracts between USPARB COOP, as Cooperative-Lessee-Tiller and its members as Lessor-Members; (2) Acknowledgment Receipts showing the expenses incurred by USPARB COOP in the production of sugar; (3) Authorization Allowing the Release of Sugar (Refined Sugar) issued by BIR RR No. 12 dated October 24, 2017; (4) Copies of Official Sugar Warehouse Receipts (Quedans) all sold in the name and for the account of USPARB COOP for products produced by its members; (5) Copy of the cooperative's Certificate of Registration with the Cooperative Development Authority; and (6) Certificate of Compliance from CDA.

At present, USPARB COOP is a holder of Tax Exemption Certificate No. COOP-0025-16-RR12-RDO-077 dated December 16, 2016 pursuant to R.A. No. 9520 and pertinent provisions of the NIRC.

In reply, please be informed that Section 109(1)(L) of Republic Act (RA) No. 9337, as amended, and as implemented by Revenue Regulations (RR) No. 8-2015, provides, to wit:

VAT - 0253 - 2020
MAY 22 2020

"**SEC. 109.** ***Exempt Transactions.*** **–**

(1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax.

xxx xxx xxx

(L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;"

Sec.5(b)&(c) of RR No. 8-2015, in turn provides:

"SECTION 5. Exemption from the Payment of the Advance VAT. *— The following withdrawals shall be exempt from the payment of the advance VAT:*

(a) Withdrawal of Raw Cane Sugar. — Sale of Raw Cane Sugar, including muscovado, is always exempt from VAT irrespective of the seller and buyer pursuant to Sec. 109 (1) (A) of the Tax Code.

(b) Withdrawal of Sugar by Duly Accredited and Registered Agricultural Cooperative of Good Standing. — In the event the 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), the withdrawal of Sugar for sale to members is not subject to advance VAT. The same shall also not be subject to advance Percentage Tax. Provided, however, that withdrawal of Sugar for sale to non-members is subject to payment of advance VAT or percentage tax if the agricultural cooperative is not the producer of Sugar. Provided, however, that any quedan or evidence of ownership showing the name of the cooperative together with another entity, natural or juridical, shall not be considered sales by an agricultural cooperative but by the other entity named therein, and are, therefore, not covered herein and are subject to advance business tax required under this Regulations. A cooperative must be a holder of a valid, current and subsisting Certificate of Tax Exemption which is issued in accordance with Revenue Memorandum Order No. 76-2010 dated September 27, 2010.

(c) Withdrawal of Sugar by Duly Accredited and Registered Agricultural Cooperative which is sold to another Agricultural cooperative. — If the owner of the Sugar as reflected in the quedan is an agricultural cooperative, the sale of the resulting Sugar to another agricultural cooperative is not subject to VAT pursuant to Sec. 109 (L) of the Tax Code. It shall also not be subject to advance Percentage Tax. Thus, if the seller-cooperative is not an agricultural producer but merely purchases the Sugar from planter, whether members or non-members,

or transfer the Sugar to cooperative through assignment, its sale of the resulting sugar to another agricultural cooperative shall be subject to VAT and its withdrawal from the Sugar Refinery/Mill will only be allowed upon payment of the advance VAT or Percentage Tax in the RDO having jurisdiction over the place of business of the cooperative. Any quedan or evidence of ownership issued to cooperative together with another entity, natural or juridical, shall not be considered sale by the cooperative, but the entity named therein and are, therefore, not exempted from the advance business taxes required under this Regulations."

In relation thereto, Revenue Memorandum Circular (RMC) No. 40-2015, in turn provides, viz:

"***Section 3. CLARIFICATION:***

It is hereby clarified that a duly registered agricultural cooperative is said to be the producer of Sugar – consistent with the concept of a producer's cooperative being a joint production wherein raw materials or goods are produced by its members for processing into finished or processed products – if the following requisites are present:

*(a) it is the tiller, **thru its members**, of the land it owns, or leases; **and***

(b) it incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

*The aforesaid requisites **must concur**. In the absence of any one of these requisites, an agricultural cooperative cannot be considered a producer of Sugar and, thus, its withdrawals of Sugar for sale to non-members or another agricultural cooperative are subject to advance VAT or Percentage Tax." (Emphasis supplied)*

From the foregoing provisions of RA 9337 and RR No. 8-2015, as clarified under RMC No. 40-2015, it is clear that the sale by agricultural cooperatives of their agricultural products to their members and non-members is exempt from VAT. However, with regard to the sale of their products to non-members, it will only be exempt from VAT if the following requisites are present:

1) the agricultural cooperative itself is of good standing and duly accredited and registered with the Cooperative Development Authority (CDA);

2) the agricultural cooperative must be a holder of a valid, current and subsisting Certificate of Tax Exemption which is issued in accordance with Revenue Memorandum Order (RMO) No. 76-2010 dated September 27, 2010 and of good standing; and

3) the seller-agricultural cooperative is the producer of sugar, *i.e.*, it is the tiller, thru its members, of the land it owns, or leases and it incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

VAT - 0253 - 2020
MAY 22 2020

A cooperative is an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles. (Section 1, RA No. 9520)

Considering that the farmer-members of USPARB COOP voluntarily agreed to pool their resources, under their joint production concept of a producer's cooperative, to form a cooperative with the sole purpose of maximizing the potential of their agricultural partnership and ensure maximum agricultural productivity by pooling together their respective resources for a joint production venture, said farmer-members and the joint production concept of a producer's cooperative is considered a single entity.

Thus, USPARB COOP and its members' respective roles in the operation of the cooperative cannot be treated as separate and distinct from each other. USPARB COOP is the tiller, thru its members, of the land it owns and that the same incurs cost of agricultural production of the sugar and produces the sugar cane to be refined because it primarily provided the various production inputs (fertilizers), capital, technology transfer and farm management. In short, USPARB COOP has direct participation in the sugarcane production of its farmers-members;

Accordingly, since USPARB COOP meets all the requisites as above-mentioned to qualify for VAT and percentage tax exemptions, this Office hereby confirms your opinion that the sale of sugar produce made by USPARB COOP to its members as well as to non-members is exempt from the payment of VAT and/or percentage tax, pursuant to Section 109(1)(L) of R.A. No. 9337, as amended, and as implemented by RR No. 8-2015 and further clarified under RMC No. 40-2015. Consequently, for as long as the three (3) requisites or elements above-mentioned are fully met and satisfied, the withdrawal of sugar to be made by USPARB COOP is exempt from the payment of advance VAT and percentage tax.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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gps (USPARB COOP)