CARLOS SUN, LOLITA ORENDAIN,
AND MARIANO V. AGCAOILI,
Petitioners,

- versus - C.T.A. CASE NO. 2478

ACTING COMMISSIONER OF
CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the Commissioner of Customs decreeing the forfeiture of various dollar bills, checks, money orders, with a total value of $132,615.09 and a green-colored suitcase containing the same for violation of Section 2530 (f), (j) and (m) of Republic Act No. 1937, otherwise known as the Tariff and Customs Code, in relation to Central Bank Circulars No. 20 and 42.

The following statement of facts of the appealed decision is uncontroverted:

> The record shows that previous to July 1, 1959 or thereabouts, the National Bureau of Investigation received a reliable information that subject dollar instruments were to be smuggled out of the country for abroad with one Dolores Benedicto as carrier. Acting on such information, National Bureau of Investigation agents led by Agent No. 97 were forthwith dispatched to the Manila International Airport to prevent the carting away of said U.S. dollars, and if need be, to effect the seizure thereof and the apprehension of the culprits. Said NBI agents arrived at the Manila International Airport at about 7:50 o'clock in the morning of July 1, 1959, and immediately proceeded to the Office of the Deputy Collector of Customs

thereat, informing him that a 'certain lady outgoing passenger was about to leave for Hongkong on the Pan American plane' which was about to depart at the moment. Accompanied by an examiner from the Bureau of Customs, the NBI agents proceeded to the examination room of the Balagbag Terminal and found on top of the examination counter two suitcases, namely, one gray-colored suitcase and one green-colored with white linings, which were listed in the name of Dolores Benedicto. It appears that Miss Benedicto was already on board the Pan American Airways' plane at the moment, so she was requested to come down to identify the suitcases listed in her name. Miss Benedicto, however, denied ownership over the green-colored suitcase. Consequently, Miss Benedicto was allowed to leave the country and the green-colored suitcase was forthwith seized. It appears further that when the green-colored suitcase was opened in the presence of several NBI agents, representatives of the Central Bank and those of the Bureau of Customs, it was found to contain subject U.S. dollar instruments.

Since it appeared that there was no license to export the above mentioned dollar instruments the Collector of Customs instituted seizure proceeding against them for violation of the provisions of Section 2530 (j) and (m) of the Tariff and Customs Code in relation to Central Bank Circular No. 20 and 42. There was no known claimant at the time of seizure so the Collector of Customs posted the required notice of hearing for fifteen (15) days in the Bulletin Board of the Customs house as required by Section 2304 of the Tariff and Customs Code. No one appeared and claimed ownership of said commodities during the hearing of the seizure proceeding. Thereafter on the basis of the evidence adduced therein the Collector of Customs rendered a decision on September 29, 1959 decreeing

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the forfeiture of the aforesaid commodities in favor of the government.

Meanwhile, George Chua alias Chaw Yaw Shun, Rosita Chua and Lolita Manio Orendain, the latter being one of petitioners in this case, were charged in Criminal Case No. 5184-P filed before the Court of First Instance of Rizal for violation of Sec. 3 (b) of Central Bank Circular No. 42, which prohibits the exportation of foreign exchange without license from the Central Bank. While the case was pending in the Court of First Instance, Central Bank Circular No. 133 was issued on January 21, 1962 authorizing the importation or exportation of foreign exchange without need of a license from the Central Bank. In view of this Circular No. 133, the accused therein filed with the Court of Appeals a special civil action for Certiorari, Prohibition with Preliminary Injunction (CA- G.R. No. 31901-R) against the Honorable Angel Mojica as C.F.I. Judge of Rizal, Branch VII and Pasay City Fiscal Gregorio Pineda to restrain said respondents therein from proceeding with the trial and prosecuting said criminal case. On April 28, 1963, the Court of Appeals rendered judgment annulling the proceedings in the aforesaid Criminal Case No. 5184-P of the Court of First Instance of Rizal and permanently enjoining respondent Judge of the Court of First Instance of Rizal, Branch VII and the Pasay City Fiscal from proceeding with the prosecution and trial thereof ruling that since Central Bank Circular No. 20 which requires prior licensing by the Central Bank of foreign exchange transaction and Central Bank Circular No. 42 which includes securities as a foreign exchange transaction needing prior licensing were repealed by Central Bank Circular No. 133, violations of Central Bank Circular Nos. 20 and 42 can no longer be prosecuted as crimes.

On January 24, 1964, petitioner Carlos L. Sun appeared for the first time as claimant of the forfeited bills and negotiable instruments by filing a motion for reconsideration with the Collector of Customs to set aside the latter's decision of September 29, 1959 on the basis of the decision of the Court of Appeals in CA-G.R. No. 31912-R. Petitioners Lolita Orendain and Mariano V. Agcoile entered their appearance as claimants also. The Collector of Customs in an order dated June 11, 1964 denied the motion. This order was appealed to the Commissioner of Customs but the latter denied same. Hence this appeal.

Petitioner first urges that the Collector of Customs rendered his decision without due process of law. It is alleged that the notice of seizure was made through publication although the Collector of Customs could have given personal notice to petitioners since he knew that petitioners were charged criminally with the violation of Section 3 (b) of Circular No. 42 of the Central Bank for exportation of securities and foreign exchange in question without the necessary

Central Bank license or permit in Criminal Case No. 5184-P of the Court of First Instance of Manila. We find no merit in this pretension.

The records reveal that sometime in April 1959 petitioner Carlos L. Sun told Rosita Chua that he wanted to send a suitcase containing gifts for his relatives in Hongkong without informing the latter that the suitcase would contain dollar bills and securities. Rosita Chua referred him to petitioner Lolita Orendain who was then managing a travel agency and who agreed to make the proper arrangement. Dolores Benedicto, a passenger of a Pan American plane for Hongkong on the morning of July 1, 1959 agreed to bring the suitcase as part of her luggage. When the customs authorities discovered the dollar bills and foreign exchange in the suitcase, Dolores disclaimed ownership of the suitcase. The customs authorities seized the suitcase and its contents and instituted a seizure proceeding thereof. No one appeared to claim the suitcase and its contents.

Petitioner Sun did not appear as claimant because, as he stated in an affidavit dated January 18, 1961, of fear to face criminal prosecution. Thus, he was not one of the accused in the criminal case aforesaid. He appeared as claimant only on January 27, 1964, years after the Collector of Customs had rendered his decision on September 29, 1959 and only after the Court of Appeals had dismissed said criminal case on the ground that Central Bank Circular Nos. 20 and 42 had been repealed on January 21, 1962 by Central Bank Circular No. 133. Petitioner Lolita Orendain on the other hand is admittedly not the owner of the suitcase and did not even know the contents of the suitcase. Agcaoile for his part appears to be only counsel of Orendain. Orendain and Agcaoile filed their appearance in the seizure proceeding only on February 26, 1964. Under these circumstances it is not at all surprising that the Collector of Customs did not give petitioners herein personal notice of the seizure proceedings before they entered their appearance in 1964.

At any rate petitioners submitted evidence when the decision of the Collector of Customs was on appeal with the Commissioner of Customs. Then again, an appeal to this Court is in the nature of a trial de novo and petitioners could have also presented additional evidence had they wanted to. It is significant in this respect that during the hearing of this case their counsel instead manifested that the facts of this case are uncontroverted and that petitioners submit it on the basis of the pleadings and customs record. Assuming arguendo that the Collector of Customs committed an irregularity in not giving petitioners personal notice of the seizure still petitioners were obviously not prejudiced by same. The rule is that no error or defect in any ruling or order or in anything done or omitted by the Court or by the parties is ground for setting aside or otherwise disturbing a judgment unless substantial justice so require (Sec. 5, Rule 51, Rules of Court).

It is also urged that since the dollar bills and checks in question were the subject of Criminal Case No. 5184 pending in the Court of First Instance of Rizal, said Court assumed jurisdiction over the subject matter therein to the exclusion of the Bureau of Customs. In answer to this position suffice it to quote the following language of the Supreme Court in the case of Francisco Pascual vs. Commissioner of Customs, 4 SCRA 1020:

> Petitioner has lost sight of the fact that his act of 'importing contrary to law' entails two penalties - one penalty for violation of Central Bank Circular No. 44 as prescribed by Section 34 of Republic Act No. 265 directed principally against the person of the offender and which may be had in a criminal prosecution involving an action *in personam* and the other penalty of forfeiture imposed by Section 1363 (f) of the Revised Administrative Code directed primarily against the goods rather than the offender and which may be had in action *in rem* (see Origet vs. U.S. 125, U.S. 240, 246-247; 31 L. Ed. 743, 746-747). The two penalties being distinct and different, the forfeiture may be enforced against the goods by proceedings in rem independently of the criminal prosecution against the offender (Origet vs. U.S. supra). The imposition of one does not preclude the imposition of the other, for it is a well-established rule that forfeiture proceedings stand independent of and are wholly unaffected by any criminal proceeding in personam (23 Am. Jur. 618). For while punishment for the crime and forfeiture of the goods might be coincident, they are not necessarily so (U.S. vs. 25 pdgs. of Panama Hats, 231 U.S. 358, 368, 58 L. Ed. 267, 269). Thus, while it is true that the Bureau of Customs is not authorized to impose the penalty prescribed by section 34 of Republic Act No. 265 for violation of Central Bank Circular No. 44,

> there is nothing to preclude the Bureau of Customs from imposing the penalty of forfeiture of the goods or merchandise the importation of which has been effected or attempted contrary to law in accordance with section 1363 (f) of the Revised Administrative Code. (Underscoring Ours)

Lastly, it is urged that the crime of illegal exportation of foreign securities no longer exists with the repeal of Central Bank Circulars No. 20 and 42 by Central Bank Circular No. 133 and the commodities in question cannot now be confiscated. This legal question is no longer of first impression in this jurisdiction.

> 3. Finally, the petitioner argues that in view of the repeal of Circulars 20 and 42 by Circular 133, the possession and exportation of dollars, without prior license from the Central Bank, is no longer prohibited. While this may be true in the context of present-day foreign exchange transactions, we nevertheless must recognize the dual character of proceedings that could be instituted for violation of Central Bank circulars 20 and 42, during the time that these were in force, under the authority of Republic Act 265 (Central Bank Act).
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> The petitioner loses sight of the fact that his attempt to export the checks, money orders and dollar bills in question, in violation of the aforementioned provisions of the Revised Administrative Code and Central Bank circulars, entailed two penalties: (a) a penalty for violation of Circular 42, prescribed by Section 8 of Circular 20 in relation to Section 34 of Republic Act 265, directed principally against the person of the offender and which may be imposed in a criminal prosecution (an action _in personam_), and (b) a penalty of forfeiture imposed by Section 1363(f) of the Revised Administrative Code directed primarily against the merchandise rather than the offender (an action _in rem_).
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> In the case at bar, the repeal of Circulars 20 and 42 by Circular 133 did not have the effect of abating the forfeiture case

> instituted against the petitioner, for the simple reason that the forfeiture proceedings undertaken here are civil - not criminal - in nature. In this sense, therefore, the repeal cannot be given retroactive effect and cannot infuse the attribute of legality into the petitioner's attempt to export the checks, money orders and dollar bills in question. (Bastida vs. Acting Comm. of Customs, 35 SCRA 448)

The repeal of Circular 20 and 42 took effect only on January 21, 1962 and did not abate the forfeiture case which is not a criminal case.

WHEREFORE the decision appealed from is hereby affirmed with costs against petitioners.

SO ORDERED.

Quezon City, February 24, 1975.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge