REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROBERT WARREN NIELSON,
Petitioner,

- versus - C.T.A. CASE NO. 4307

COMMISSIONER OF CUSTOMS,
Respondent.
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12/14/90

D E C I S I O N

This is an appeal from the Commissioner of Customs' decision ordering the forfeiture of Fifty-three Thousand ($53,000) US Dollars as violative of Central Bank Circular No. 960 taken in relation with Section 2530(f) of the Tariff and Customs Code.

Petitioner, an American citizen, is a Director of the China Pacific Exploration Ltd., a Hongkong-based company undertaking jointly with the Worldwide First Co. and the Philippine National Museum underwater research, exploration, and excavation of sunken ships and vessels in the Philippines. His work requires him to bring in funds from his Hongkong office for use in the project which needs substantial capital to acquire needed equipment, devices, gadgets, machineries, vessels, and highly skilled and trained personnel.

On October 31, 1986, petitioner came from Hongkong and accomplished Central Bank Form 6-22-42, otherwise known as currency declaration (Currency Declaration No. 09398). He declared therein that he was bringing in with him foreign currencies, namely: (1) $120,000 US Dollars, (2) 50 Deutsche Marks, (3) 30 Pound Sterling, (4) 5,000 Swiss Francs, (5) 50 Belgian Francs and 200 Philippine Pesos.

On November 8, 1986, petitioner left the Philippines for Hongkong without surrendering Currency Declaration No. 09398, but declared when asked by the customs authorities that he was not carrying any foreign currency. He was cleared for boarding but only after a body search.

On November 14, 1986, petitioner came back to the Philippines. Since he brought in with him $9,000 US Dollars he declared it under Currency Declaration No. 9784.

On November 24, 1986, petitioner again departed for Hongkong without surrendering Currency Declaration No. 9784 as he was not carrying then any foreign currency. He was bodily searched before allowed to board the plane. He came back the same day bringing in $4,000 US Dollars, which he declared under Currency Declaration No. 10140.

On December 17, 1986, for the third time, petitioner was booked for Hongkong. He advised the customs personnel that he carried with him $56,000 US Dollars and presented Currency Declaration No. 09398, accomplished on October 31, 1986 when he first arrived in the Philippines. The currency declaration was duly verified and confirmed by the Central Bank Office (Airport) that the same was indeed authentic and the petitioner was accordingly cleared.

Later the petitioner was to be accosted by government authorities at the passenger terminal who informed him that he "violated the foreign exchange rules of the Central Bank by departing the Philippines twice before, on November 8, 1986 and November 24, 1986, without surrendering his currency declaration dated October 31, 1986". Thereupon the District Collector of Customs (Airport) confiscated his foreign currency amounting to $53,000 US Dollars, leaving petitioner $3,000 US Dollars, the maximum allowed by the

Central Bank to be brought in without the need of any currency declaration.

Seizure proceeding was accordingly instituted against the confiscated foreign currency pursuant to Section 2530(f) of the Tariff and Customs Code, which provides:

> SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Law.- x x x x
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> f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former.
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> xxx xxx xxx

After due hearing the Collector of Customs decreed the forfeiture of US$53,000 on February 5, 1987. A motion for reconsideration proved to no avail and on appeal, the Commissioner of Customs affirmed the Collector's decision on July 28, 1988, a copy of which was secured through the efforts of petitioner's counsel on September 29, 1988.

Hence, the instant petition.

The case before Us presents no dispute as to the relatively simple material facts but the parties seem trying to get the better of each other over by a quibble as to proper import and scope of the "Notice" of instructions in CB Form 6-22-42 or currency declaration, stating: (1) Keep your copy of this currency declaration and surrender the same to the representative of either the Bureau of Customs or Central Bank at the departure area, and (2) This declaration is valid for this particular trip only.

The respondent Commissioner of Customs holds on to the proposition that the petitioner breached the "injunction" of said notice, starvelingly agitating in effect that when petitioner left for Hongkong on November 8, 1986, the authority granted by the Central Bank to bring out the foreign exchange declared under CB Currency Declaration No. 09398 issued on his arrival in Manila on October 31, 1986 is deemed to have expired. Hence, the said currency declaration was inefficacious when it was presented on his subsequent trip to Hongkong on December 17, 1986. Otherwise stated, the CB Currency Declaration No. 09398 could no longer serve as petitioner's authority to bring out the confiscated currency for the said trip.

All told the apparent misfortune of the

petitioner was his failure to surrender the foreign currency declaration on a trip immediately following his arrival in the Philippines regardless of whether he was bringing out any foreign exchange.

In assailing the forfeiture order, petitioner lays stress on the plain language of Section 39 of the Central Bank Circular No. 960, which reads:

> SEC. 39. <u>Illegal exportation/transmittal of foreign exchange</u>. - No person, firm, association or corporation shall take or transmit or attempt to take or transmit foreign exchange, in any form, in any manner, out of the Philippines directly or through other person, through the mails, or through international carriers unless specifically authorized by the Central Bank or allowed under existing international agreements or Central Bank regulations: <u>Provided, That this prohibition shall not apply to tourists and non-resident temporary visitors who are taking or sending out of the Philippines foreign exchange in amounts not exceeding such amounts of foreign exchange brought in and declared by them</u>.
>
> <u>For purposes of establishing the amount of foreign exchange brought by them into the Philippines, tourists and non-resident temporary visitors bringing with them more than US$3,000.00 or its equivalent in other foreign currency, notes, checks, and other transfer instruments denominated in freely convertible foreign currency, shall declare their foreign exchange at points of entries upon arrival in the Philippines in a form prescribed by the Central Bank</u>. (Underscoring supplied)

Hewed close to the said context, petitioner avers that it appears clear and explicit that tourists and non-resident temporary visitors may bring out foreign exchange provided they comply with the two requirements, namely: (1) the tourist or non-resident temporary visitor must declare at the time of arrival the foreign currency brought in by him, and 2) the foreign currency that the tourist or non-resident temporary visitor desires to bring out must not exceed the amount of foreign currency brought in and declared by him.

Rationalizing further, "Thus, had petitioner surrendered to the Bureau of Customs or the Central Bank the currency declaration in question when he departed the Philippines on November 8, 1986 even if he was not carrying any foreign currency with him, then he would have parted with the possession of the only document that serves as his authorization to bring out later on the foreign currency or part of it he brought in. A surrender of the currency declaration everytime he departs the Philippines even though he does not bring out any foreign currency is tantamount to a surrender of his right to bring out what he has brought in. This could not have been the intent of the CB

Circular. There is neither rhyme nor reason behind the interpretations that the district collector of customs and respondent Commissioner would want to make of the instructions printed at the back of the currency declaration."

Just so and aptly enough We agree with the petitioner.

The apparent patina of cogency nevertheless impressed, We find illogic the sprouting impression precipitately broached by the respondent that 1) failure to surrender the currency declaration when the declarant first departed the Philippines rendered the currency declaration invalid, and 2) the currency declaration is valid only from the time of arrival up to the time of departure of the declarant from the Philippines.

Respondent has overplayed his understanding of the simple "notice" in the currency declaration, which constitutes neither law nor regulations, and could not have been intended to supplant the purpose in Sec. 39, *supra*. He has fumbled into a reversible error.

Petitioner must have stated the obvious that, "the purpose of the currency declaration (as provided in the Circular) is to establish the amount of foreign exchange brought in by the declarant and, thereby, establishing in turn the amount of foreign exchange that the declarant will be allowed to bring out when he departs the Philippines. The currency declaration, therefore, is meaningful only when the declarant carries with him foreign exchange when he departs the Philippines. If he does not carry with him foreign exchange when he departs the Philippines, there logically is no need to present the same when the declarant departs the Philippines. As a matter of fact, this was what a representative of the Central Bank told the petitioner when the latter accomplished the currency declaration upon his arrival from Hongkong on October 31, 1986."

This sets in place the legal moorings of the basic purpose of Section 39 of CB Circular No. 960. The currency declaration which respondent himself had occasioned should not serve narrow purpose in construing the rights and obligations of the party declarant. It will therefore be an absurdity on the part of the respondent in repudiating the petitioner's currency declaration. We find no justification in stultifying the import and scope of said Section 39, *supra*, that "Tourist and non-resident visitors may take out or send out from the

Philippines foreign exchange in amounts not exceeding such amounts of foreign exchange brought in by them." (Sec, 6, CB Circular No. 960.)

We therefore view with ease petitioner's righteous indignation in prying loose from an apparent legal constraint posed by the respondent that the currency declaration must be surrendered when the declarant leaves the Philippines regardless of whether or not the declarant takes out with him foreign exchange; and that the currency declaration is valid only for the particular trip on the occasion of which it is executed. This is stretching too far the effective range of expediency.

WHEREFORE, finding the petition well taken, the same is granted and the order of forfeiture against the confiscated currency is hereby set aside and cancelled. No costs.

SO ORDERED.

Quezon City, Metro Manila, December 14, 1990.

ALEX Z. REYES
Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals