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ROSA CANCIO,
Petitioner,

- versus - C.T.A. CASE NO. 3398

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - x

11/15/82

D E C I S I O N

Sought to be reviewed in this appeal brought by petitioner Rosa Cancio is the decision of respondent Commissioner of Customs dated December 1, 1981 in Customs Case No. 81-40 (Seizure Identification No. 4431-81) which affirmed the decision of the Acting Collector of Customs of the Manila International Airport dated November 18, 1981, decreeing the forfeiture of US$102,900.00 in cash, US$600.00 in travellers checks and ₱1,500.00.

The seizure proceeding was instituted against the subject currencies for violation of Section 2530(f) of the Tariff and Customs Code, in relation to Central Bank Circular Nos. 265 and 383, after petitioner failed to present to the apprehending customs authorities a Central Bank authority to bring out of the country the said currencies while at the pre-boarding area of the Manila International Airport on June 12, 1981 on her scheduled flight to Hongkong together with her husband and three children.

The case is rested on the pleadings, records of the Bureau of Customs and respective memorandum of the parties. No substantial dispute exists on the background facts and evidentiary aspect of the controversy as found by the Acting Collector of Customs and fully restated in the decision of the Commissioner of Customs. Thus:

> The records show that claimant Mrs. Rosa Cancio bearing Philippine Passport No. 11797799, while clearing through the Pre-Boarding (AVSECOM) Area of MIA with her husband and three (3) children to board PR 306 for Hongkong in the morning of June 12, 1981, was apprehended with One Hundred Two Thousand Nine Hundred Dollars (US $102,900.00) in cash, six hundred dollars (US$600.00) in two travelers checks, and one thousand five hundred (₱1,500.00) Pesos; that such apprehension was effected only, thru an alarm sounded by the scanner (metal detecting device) of the AVSECOM men, when Mrs. Cancio who did not declare her currency had already passed the Customs inspection area; that subject currencies were placed and concealed inside the two fairly-sized carton boxes for local chocolates, securely wrapped and taped with tin foil-back paper; and, that in view of claimant's failure, upon being required, to present the Central Bank Authority, the said currencies were accordingly confiscated and a seizure Receipt No. 013 was issued to her; hence, this seizure proceedings.

At the hearing of this case, claimant, thru counsel, presented certified xerox copy of her Bank Book (Exhibit "1") for foreign currency deposit with the Philippine Commercial and Industrial Bank under Account FCDU No. 0265, dollar remittances in telegraphic transfers from abroad for deposits in her account from May 13, 1981 to May 21, 1981, and withdrawal cards (Exhibit "1-A" to "1-E", inclusive), attesting to the fact that claimant Rosa Cancio had withdrawn from her FCDU Account a certain amount of United States currency which tended to show that claimant herein was a foreign currency depositor pursuant to the provisions of Republic Act No. 6426, as implemented by Central Bank Circular No. 343. And herein claimant testified that because her foreign currency deposit could not be withdrawn at one time, she made her withdrawal on several occasions starting from May 14, 1981 up to May 27, 1981 when she closed her account preparatory to her departure which was scheduled in the morning of June 12, 1981 for Hongkong; that from Hongkong, she and her family intended to proceed to the United States for medical treatment of her heart ailment as advised by her two attending physicians from the UST Hospital; that the US Currency that they were carrying and confiscated from them on June 12, 1981 was intended principally for such medical purpose and for other miscellaneous and necessary expenses, and, that the subject currencies were concealed and hidden by them inside the two chocolate boxes solely for security reasons. (pp. 85-86 and 140-141, Customs record.)

The primordial issue for resolution is whether there is a violation of Central Bank circulars as would warrant the forfeiture of the subject United

States currency and Philippine notes under Section 2530(f) of the Tariff and Customs Code, as amended, which pertinently provides as follows:

> SEC. 2530. - Property Subject to Forfeiture Under Tariff and Customs Law. - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:
>
> xxx xxx xxx
>
> f. Any article the importation or exportation of which is effected or attempted contrary to law, xxx;
>
> xxx xxx xxx

Treating first the Philippine notes in the amount of ₱1,500.00 found in the possession of petitioner Rosa Cancio, the legal requirement is that the amount that a traveller can bring out of the country should not exceed ₱500.00. If the amount to be brought out or exported exceeds ₱500.00, prior authorization from the Central Bank must be secured. This is clear from the provisions of paragraph 4 of Central Bank Circular No. 383 which state:

> "Any person, firm, company or corporation, may import or export, and any incoming or outgoing traveller may bring with him, Philippine notes and coins, and checks, money orders and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount not exceeding ₱500.00; Provided, That an amount

> in excess of ₱500.00 may be imported into, exported from, or brought into or out of, the Philippines upon prior authorization of the Central Bank of the Philippines; xxx."

In the case at bar, petitioner was travelling with her husband and three children and, as testified by her, the amount of ₱1,500.00 was for the expenses of the five of them in Hongkong. Her claim that each of them was "therefore" allocated only ₱300.00 has not been refuted nor argued by respondent. Evidently, such facts which indicate that she was merely carrying the whole amount of ₱1,500.00 including the allocation of ₱300.00 for each of the other four (4) members of the family travelling with her, does not constitute a violation of the law although no Central Bank authorization was obtained because, in reality, the ₱500.00 limit which each traveller can freely bring abroad has not been exceeded. To hold otherwise would result in an absurdity in the application of the above provisions of Central Bank Circular No. 383 as it would require, in a situation like this, every member of the family travelling together, including even each child going with his/her parents, to physically and personally carry the money intended for his/her expenses. To our mind, any responsible member of the family travelling abroad together may personally carry the whole amount for all of them without need of a Central Bank authorization, provided that the amount allocated to each member does not exceed ₱500.00.

As regards the foreign currency or foreign exchange, the legal provisions pertinent to the exportation or taking out thereof from the country are found in Central Bank Circular No. 265, particularly paragraph 3 thereof, which reads:

> "No person shall take out or export from the Philippines foreign currency or any other foreign exchange except as otherwise authorized by the Central Bank."

and Section 3 of Central Bank Circular No. 534, providing as follows:

> "Sec. 3. Unless specifically authorized by the Central Bank or allowed under existing international agreements or Central Bank regulations, no person shall take or transmit or attempt to take or transmit foreign exchange, in an y form, out of the Philippines directly, through other persons, through the mails, or through international carriers.
>
> The provisions of this Section shall not apply to tourists and non-resident temporary visitors who are taking or sending out of the Philippines their own foreign exchange brought in by them."

Central Bank Circular No. 534, which took effect on July 19, 1976, has partially amended or modified Central Bank Circular No. 265 to the extent that, among others, it excludes from the prohibitory provision (Central Bank authorization requirement), tourists and non-resident temporary visitors who are taking or sending out of the Philippines their own foreign exchange brought in by them. (See Sotoyama, et al. vs. The Commissioner of Customs, C.T.A. Case No. 2902, April 23, 1979.)

In this case, petitioner, a resident citizen of the Philippines, was taking abroad a large amount of United States dollars without a Central Bank authority or authorization under existing Central Bank regulations. Clearly, such fact constitutes a violation of the Central Bank Circulars, and thus would subject to forfeiture said foreign currency under Section 2530(f) of the Tariff and Customs Code.

Indeed, based on her unimpugned evidence which shows, among others, that she was a foreign currency depositor at the Philippine Commercial and Industrial Bank, Makati, and that the subject United States dollars were a part of the total amount of US$116,000.00 she withdrew from said bank from May

14 to 27, 1981 for her travel and medical expenses in the United States, petitioner would argue that a Central Bank authority is not necessary in this case because under Section 5 of Republic Act No. 6426, as implemented by Central Bank Circular No. 343, which states:

> Sec. 5. Withdrawability and transferability of deposits. There shall be no restriction on the withdrawal by the depositor of his deposit or on the transferability of the same abroad except those arising from the contract between the depositor and the bank.

she could bring out or transfer abroad her deposit without restriction. (See pp. 5 & 6, petition for review, pp. 5 & 6, C.T.A. records.) She maintains that Section 5 of Republic Act No. 6426 should be an exception to or must prevail over Central Bank Circular No. 265, thus:

> As we have above stated, CB Circular No. 265 applies to all foreign currencies from whatever source. It is, therefore, a law of general application. On the other hand, Section 5 of R.A. No. 6426 only refers to specific or particular kind of foreign currency - those deposited under the said Act. The law, therefore, is specific or particular in its application. Furthermore, R.A. No. 6426 is a later legislation.
>
> Reconciling the two laws, it is safe to state that while CB Circular No. 265 is the general rule, Section 5 of R.A. No. 6426 provides for an exception. A particular law prevails over a general law.

> More so, when RA No. 6426 is a later legislation. For if Congress intended to require a CB authority for the transfer abroad of foreign currency deposits, it could have so easily provided it in RA No. 6426 as an exception to its expressly declared policy of unrestrained transferability abroad of foreign currency deposited under the Act.
>
> It is our contention that the dollars confiscated from the petitioner having come from her foreign currency deposited under the provisions of RA No. 6426, no CB authority is necessary to take them abroad. Hence, the petitioner did not violate CB Circular No. 265. (p. 7, petitioner's memorandum, p. 55, C.T.A. records.)

Said postulation fails to convince us.

Prescinding from the question on whether or not Section 5 of Republic Act No. 6426 must prevail over paragraph 3 of Central Bank Circular No. 265, the fact remains that Central Bank Circular No. 534 which was promulgated by the Central Bank in July 1976, and very much later than Republic Act No. 6426, has to all intents and purposes reiterated the regulatory provisions of paragraph 3 of Central Bank Circular No. 265 relative to the taking out or exportation of foreign currency or foreign exchange. Central Bank Circular No. 534, as quoted heretofore, prohibits the taking out, transmittal, or attempt to take out or transmit foreign exchange in any form unless specifically authorized by the Central Bank, or allowed under existing international agreements or Central Bank regulations. Only tourists and non-resident temporary visitors who are taking or sending out of the Philippines their own foreign exchange brought in by them are expressly exempted.

The reason is obvious: they are merely bringing out what was <u>actually brought in</u> by them, being only transients or sojourners in the Philippines. However, nothing in the exemption is mentioned or contemplated of residents of the Philippines who are foreign currency depositors bringing out or withdrawing and transferring abroad their own foreign currency deposits in the Philippines. We cannot ignore the principle that express mention of an exemption precludes reading others into it. (Manila Electric Company vs. Misael Vera, L-23847, October 22, 1975, 67 SCRA 351, citing Hoard vs. Sears, Roebuck & Co., 122 Conn. 185, 188, A. 269.)

It maybe that under Section 5 of Republic Act No. 6426, <u>supra</u>, there is no restriction of the withdrawability and transferability of deposits except those arising from contract between bank and depositor. Nonetheless, the peremptory requirements of public interest and state necessity of protecting and safeguarding our dollar reserves would stress the urgency for full and unconditional compliance with the prohibition of taking out or exportation from the Philippines of foreign currency or any other foreign exchange by residents unless otherwise authorized by the Central Bank.

w Nevertheless, Section 3 of Central Bank Circular No. 534 must prevail over Section 5 of Republic Act No. 6426 because apart from said circular being posterior to the latter, the very context of the provision of Section 7 of Republic Act No. 6426 itself and of Section 11 (a) and (b) of its implementing circular, Central Bank Circular No. 343, afford a reservation that the rights of foreign currency depositors may be subject to change or diminution by the Central Bank, except with respect to their deposit already existing at the time of such change. The pertinent provisions aforesaid read:

<u>Section 7, Rep. Act No. 6426</u>

> Sec. 7. Rules and Regulations.-
> xxx xxx xxx
> In case the Central Bank promulgates new rules and regulations decreasing the rights of depositors, the rules and regulations at the time the deposit was made shall govern.

Section 11, CB Circular No. 343

> Sec. 11. Withdrawability and Liquidity of Deposits.
>
> a. In case of any change in Central Bank regulations, the deposits already existing at the time of change shall not be adversely affected.
>
> b. Subject only to the terms of the contract between the bank and the depositor, the latter shall have a general license to withdraw his deposit, notwithstanding any change in policy or regulations.
>
> xxx xxx xxx

As a matter of fact, the intent to subject to regulation by the Central Bank the transferability of foreign currency deposit abroad is made more manifest in the above provision of Section 11(b) of Central Bank Circular No. 343, which expressly gives the foreign currency depositor a general license to withdraw his deposit but withholds therefrom the transferability abroad of said deposit.

Significantly, long before the foreign currency (dollar) deposits of petitioner here were made in April and May, 1981 (see Exhs. "1", "1-B" & "1-C"; pp. 73, 74 & 76, Customs records), the rights of foreign currency depositors relative to the transferability of their foreign currency deposits abroad, under Section 5 of Republic Act

No. 6426, have already been changed or diminished. Central Bank Circular No. 534 prohibits, except with respect to tourists and non-resident temporary visitors, the taking or transmittal, or even attempt thereof, of any foreign currency or foreign exchange, in any form, out of the Philippines, directly, through other persons, through the mails, or through international carriers, without authority from the Central Bank or without authorization under existing international agreements or existing Central Bank regulations. And goods, as well as merchandise, which include checks, money orders and dollar bills (Bastida vs. Commissioner of Customs, L-24011, October 24, 1970, 35 SCRA 418), imported or exported without a release certificate or authority by Circulars issued by the Central Bank are subject to forfeiture under Customs Laws. (See Capulong vs. Actg. Commissioner of Customs, L-22991, January 16, 1968, 22 SCRA 11; Rosita de la Cruz vs. Court of Tax Appeals, L-23335 and L-23452, February 29, 1968, 22 SCRA 886; Juana T. de la Cruz vs. Court of Tax Appeals, L-23334 & L-23451, February 29, 1968, 22 SCRA 891; Leuterio vs. Commissioner of Customs, L-21800, June 22, 1968, 23 SCRA 1055; Fermin Sare vs. Commissioner of Customs, L-22988, June 30, 1969, 28

SCRA 113.)

Accordingly, the decision appealed from is hereby affirmed insofar as the forfeiture of the US$102,900.00 in cash and US$600.00 in checks is concerned, there being a violation of Central Bank Circular No. 265 and Section 3 of Central Bank Circular No. 534, in relation to Section 2530(f) of the Tariff and Customs Code as amended. The said decision is however reversed insofar as the forfeiture of the ₱1,500.00 is concerned.

WHEREFORE, the decision of respondent Commissioner of Customs dated December 1, 1981 is modified as indicated in the above opinion of the Court. With costs against petitioner.

SO ORDERED.

Quezon City, November 15, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge