REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

VARIOUS FOREIGN CURRENCIES WITH A TOTAL CONVERSION OF SIX MILLION FOUR HUNDRED FORTY EIGHT THOUSAND FOUR HUNDRED NINETEEN & 52/100 PESOS (P6,448,419.52)

LO CHI FAI,
Petitioner,

-versus- C. T. A. CASE NO. 4679

THE HON. COMMISSIONER OF CUSTOMS,
Respondent. 11/24/93

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D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Customs (Case No. 91-03), dated October 21, 1991, affirming the decision of the District Collector of Customs, NAIA, in Seizure Investigation (S.I.) No. 1253-86.

The records show that on July 9, 1986, claimant Lo Chi Fai, a Manila visitor from Hongkong and holder of a British passport No. A-922623, was a departing passenger on Philippine Airlines Flight PR-300 bound for Hongkong, was intercepted by Customs and PAFSECOM personnel in possession and about to bring out of the country various currencies (in checks and cash) as inventoried in a Seizure Receipt prepared by Eduardo Pike, Customs Examiner, and checked and verified by Atty. Rustum Pacardo, Flight Supervisor at the Customs District Office, NAIA, on even date, to wit:

CURRENCY	AMOUNT	
Japanese Yen	¥	32,800,000.00
Swiss Franc	SW Fr	6,900.00
Australian Dollar	A$	17,425.00
Singapore Dollar	S$	9,945.00
Deutsche Mark	DM	18,595.00
Canadian Dollar	C$	13,330.00
Hongkong Dollar	HK$	15,630.00
HFL Guilder	HFL	430.00
French Franc	FI	6,860.00
US Dollar	US$	73,950.00
English Pound		5,318.00
Malaysian Dollar	M$	14,760.00
Various Foreign Currency Checks		
Australian Dollar	A$	7,750.00
British Pound		700.00
U.S. Dollar	US$	17,630.00
Canadian Dollar	C$	990.00

The total amount of these foreign currencies in the possession of passenger Lo Chi Fai was valued in pesos at P6,448,419.52 per conversion made by the Central Bank. The above-listed foreign currencies were deposited at the Central Bank.

Per report and initial investigation by customs examiners, the passenger "could not show any valid authorization to take out the currencies he had in his possession."

In view of the apprehension of Lo Chi Fai, a corresponding warrant of seizure and detention (S.I. No. 1253-86) was issued by the Acting Collector of Customs on these various currencies in violation of Central Bank Circular No. 1028 in relation to Section 2530 (f) of the Tariff and Customs Code.

In the meantime, the National Customs Police referred this matter to the Office of the City Fiscal of Pasay for "proper disposition and guidance." On July 10, 1986, an Information was filed against Lo Chi Fai for violation of Section 6, Central Bank Circular No. 960 before the Regional Trial Court in Criminal Case No. 86-10126-P.

On the part of the Bureau of Customs, the District Collector initiated forfeiture proceedings in Seizure Identification (S.I.) No. 1253-86 versus what is now known as "Various Foreign Currencies with a total conversion of Six Million Four Hundred Forty-Eight Thousand Four

Hundred Nineteen and 52/100 Pesos (P6,448,419.52), Lo Chi Fai, Claimant."

In an undated Decision (the notice of Decision dated September 25, 1990), the District Collector of Customs, NAIA, "ordered and decreed that the above-described currencies covered by Seizure Identification No. 1253-86 be, as it is hereby declared, forfeited in favor of the government, the same to be disposed of in accordance with law."

Claimant, through counsel, appealed the Decision of the District Collector of Customs to the Commissioner of Customs in his letter of October 26, 1990.

In the review conducted by the Commissioner of Customs in said case (now denominated as Customs Case No. 91-03), the then Commissioner Salvador Mison, affirmed in toto the Decision of the District Collector of Customs, NAIA, finding "no reason to disturb the decision of the District Collector of Customs, Ninoy Aquino International Airport . . ."

Petitioner timely filed the present Petition for Review on December 19, 1991.

Before this Court, respondent requested for several extensions within which to file his

Answer. The last request for extension, dated March 13, 1992, but filed on March 17, 1992, was filed beyond the time within which respondent was to have filed his Answer (March 13, 1992). The Court, in its Order of March 25, 1992 denied said motion. Nonetheless, respondent, without leave of court, filed an Answer on March 30, 1992 (a date even beyond the time requested in his last Motion for Extension of Time to File Answer, dated March 13, 1992). On April 4, 1992, respondent filed a Motion for Reconsideration of the Order denying his Motion for Extension of Time to File Answer, dated March 13, 1992, alleging that he already filed his Answer on March 23, 1992 or within the extension of ten (10) days requested and prayed that the Answer filed be admitted. Petitioner opposed the Motion for Reconsideration stating, among others, that the motion is pro forma; that the Court previously granted respondent no less than 45 days to file an Answer and what was ostensibly produced was an Answer of "four pages of general averments." Petitioner then prayed that the admission of the Answer be denied and expunged from the records." The Court in its Resolution of November 24, 1992, denied the Motion for Reconsideration.

During the hearing of this case on January 14, 1993 for petitioner to present his evidence, he orally moved that respondent be declared in default. This was outright granted by the Court. Petitioner then manifested that he will just adopt the exhibits and proceedings in the administrative level as his evidence in-chief. The Court granted petitioner's motion and gave petitioner thirty (30) days within which to file his memorandum in support of his case. Curiously, on this hearing date, there was no appearance of counsel for respondent in spite of due notice. Neither did respondent at any time thereafter file any pleading to lift or set aside the Order of default.

"An answer filed after the expiration of the reglementary period should be disregarded or deemed not presented and the defenses incorporated therein should be considered as non-existent. Defendant cannot escape the consequences of his default by filing an answer after the expiration of the reglementary period, unless it is filed with leave of court and before the entry of the default, otherwise defendant would be entitled to prove the allegation of his answer notwithstanding that he is already in default." (49 C.J.S., 246; Leus and Bautista vs. Martin, 43 O.G. 1672).

As adverted to earlier, the last motion of respondent for extension which he filed on March 17, 1992 was already beyond the expiry date for him to file his Answer (due on March 13, 1992). This motion was denied by the Court in its Order of March 25, 1992. Respondent nonetheless filed his Answer on March 30, 1992 without leave of Court. It will be noted that the date of filing of his Answer was even beyond the time requested even if his last motion was granted. The denial of respondent's motion for reconsideration followed and subsequently the order of default on motion of the petitioner.

When a defendant is declared in default (a) he loses his standing in or is considered out of the court, and consequently cannot appear in court, adduce evidence and be heard; and (b) he is not entitled to notice of the proceeding until the final termination of the case (Lim Toco vs. Go Fay, 80 Phil. 166).

A defendant who has been declared in default loses his standing in court as party litigant.

Before the order of default is vacated, said defendant has no right to expect that his pleading would be acted upon by the court, nor has the right to be heard or file memorandum on the case (Tan vs. Dimayuga, et. al. No. L-15241, July 31, 1962; Lim Toco vs Go Fay, 80 Phil. 166).

Claimant, Lo Chi Fai, is no stranger to the country in the sense that he has been in and out of the Philippines on several occasions. He is a businessman from Hongkong engaged in the garment business. He is a holder of a British passport. With known business associates, namely, Sze Kai Kwan, Lee Hsiang Ping, Kobayashi Nabuo and Wakita Nabuyuki, they decided to form a partnership to go into an agri-business venture in the Philippines. As part of their partnership agreement forged in Hongkong, each partner was to contribute a maximum of U.S. $200,000.00.

On April 2, 1986, Lo Chi Fai brought to the Philippines fifty thousand U.S. dollars (US $50,000) and eight million five hundred thousand Japanese yen (¥8,500,000.00) as evidenced by his Baggage and Currency Declaration Form No. 844158 of even date. On May 4, 1986, he again brought into the country thirty nine thousand U.S. dollars (U.S. $39,000.00) and four million Japanese yen (¥4,000,000.00) as evidenced by Central Bank Currency Declaration Form No. 05048. On another trip to the Philippines on June 28, 1986, he brought in six million six hundred thousand Japanese yen (¥6,600,000.00) as declared by him in Central Bank Currency Declaration Form No. 06346. All in all, Lo Chi Fai brought into the country eighty nine thousand U.S. dollars (U.S. $89,000.00) and nineteen million one hundred thousand in Japanese currency (¥19,100,000.00).

Sze Kai Kwan, a business associate of Lo Chi Fai, came to the Philippines on March 28, 1986 and brought with him thirty thousand U.S. dollars (U.S. $30,000.00) and eight million Japanese yen (¥8,000,000.00) as evidenced by Central Bank Currency Form No. 04219. He entrusted these amounts which he brought into the country to Wakita Nabuyuki, the designated manager of their business venture in the Philippines.

Lee Hsiang Ping, the third man in the business venture, is also a businessman from Hongkong and a business associate of Lo Chi Fai. He has been in and out of the Philippines. On April 23, 1986, he and his wife, Lily Sui, brought to the Philippines the following foreign currency:

Lee Hsiang Ping - sixty five thousand U.S. dollars (U.S. $ 65,000.00) declared under Central Bank Currency Declaration Form No. 04763.

Lily Sui - sixty thousand U.S. dollars (US $60,000.00) as shown by Central Bank Currency Declaration Form No. 04765.

Kobayashi Nabuo is a Japanese businessman from Tokyo, Japan. He is one of the business associates and long-time friend of Lo Chi Fai. He first came to the Philippines on December 30, 1985. Detailed hereunder are the foreign currencies in cash and in traveller's checks which he brought to the country on various dates:

DATE	CURRENCY	CB DECLARATION FORM NO.
Feb. 27 '86	Sixty-one thousand seven hundred five U.S. dollars (U.S.$61,705.00)	03748
	Three million five hundred fifty thousand Japanese yen (¥3,550,000.00)	
	Fourteen thousand six hundred U.S. dollars (U.S. $14,600.00)	03929

	Fourteen thousand five hundred U.S. dollars in traveller's checks (US$14,500)	
	Four hundred thousand Japanese yen (¥400,000.00)	
Mar. 19 '86	Fifty thousand U.S. dollars (US$50,000)	04071
	Eight thousand five hundred U.S. dollars in traveller's checks (US $8,500)	
Mar. 21 '86	Fifty thousand U.S. dollars (US$50,000)	04108
May 16 '86	Sixty five thousand U.S. dollars (US $65,000.00)	05316
	Five thousand One Hundred Malaysian dollars (M$5,100)	

Nabuyuki Wakita, a Japanese national and partner of Kobayashi Nabuo in a nightclub business in Tokyo, is a long time friend of Lo Chi Fai. He was also brought in to do business in the Philippines. He came to the Philippines on several dates bringing with him various foreign currencies to be invested in the country, to wit:

DATE	CURRENCY	CB CURRENCY DECLARATION NO.
OCT. 21 '85	Fifteen thousand U.S. dollars (US$15,000)	01772

NOV. 9 '85	Twelve thousand three hundred US dollars (US$12,300.00)	02078
NOV. 21 '85	Fourteen thousand US dollars (US$14,000)	02305
DEC. 05 '85	Fourteen thousand U.S. dollars (US$14,000.00)	02535
	Three hundred forty Thousand Japanese yen (¥340,000)	
DEC. 28 '85	Twenty thousand U.S. dollars (US$20,000)	02866
APR. 02 '86	Six thousand U.S. dollars (US$6,000)	03520
	Three million Japanese yen (¥3,000,000)	
JUN. 02 '86	Thirty thousand U.S. dollars (US$30,000.00)	03543

To summarize, Lo Chi Fai and his business colleagues, namely, Sze Kai Wan, Lee Hsiang Ping, and his wife, Lily Sui, Kobayashi Nabuo and Wakita Nabuyuki brought to the Philippines on various dates foreign currencies which were all properly documented totalling U.S. $620,205,000; Japanese yen ¥39,390,000.00 and Malaysian dollars M$5,100.00.

Apparently, the projected agri-business venture of these foreign businessmen did not push through allegedly due to the then unstable political situation in the country which was marked by an aborted coup d'etat that took place on July 6, 1986. The business partners then decided to pull out and in the process bring out of the country the remaining foreign currencies they brought to the country on various dates.

Lo Chi Fai, the principal promoter of this aborted business venture, was bringing with him various currencies which he himself brought to this country and that of his business associates when he was accosted and apprehended at the Manila International Airport while waiting for his flight to Hongkong on July 9, 1986. Admittedly, Lo Chi Fai did not surrender his Currency Declaration Forms Nos. 05048 and 06346 to Central Bank authorities but he later on did at the time of his apprehension.

The only issue to be decided is whether or not the subject foreign currencies with a total conversion of six million four hundred forty eight thousand four hundred nineteen and 52/100 (P6,448,419.52) in Philippine pesos violated Central Bank Circular Nos. 960 and 1028 to warrant forfeiture in favor of the government pursuant to Section 2530 (f) of the Tariff and Customs Code, as amended.

It is not disputed that Lo Chi Fai and his business confederates brought into the country on several occasions various foreign currencies which were properly documented in Central Bank Declaration Forms and one Baggage and Currency Declaration Form and marked as Exhibits in the seizure proceedings before the Collector of Customs. Their genuineness, authenticity and validity were even confirmed by representatives of the Central Bank who testified during the seizure proceedings. They are summarized as follows and were correspondingly marked as exhibits during the seizure proceedings:

CENTRAL BANK CURRENCY DECLARATION NO.	
No. 05048	(Exhibit 1)
No. 06346	(Exhibit 2)
No. 04219	(Exhibit 5-R)
No. 04768	(Exhibit 5-P)
No. 04765	(Exhibit 5-Q)
No. 03748	(Exhibit 5-H)
No. 03929	(Exhibit 5-G)
No. 04071	(Exhibit 5-F)
No. 04108	(Exhibit 5-E)
No. 05316	(Exhibit 5-D)
No. 01772	(Exhibit 5-O)
No. 02078	(Exhibit 5-N)
No. 02305	(Exhibit 5-M)
No. 02595	(Exhibit 5-L)
No. 02866	(Exhibit 5-K)
No. 03520	(Exhibit 5-J)
No. 03543	(Exhibit 5-I)

The matter of the Baggage and Currency Declaration No. 844158 (Exh. 5-B), attributable to Lo Chi Fai was in effect authenticated as valid by Customs Examiner Celina de la Roca who testified during the Criminal Case against Lo Chi Fai (Case No. 86-10126-P) which form part of the record of this case.

The seizure proceedings is anchored on violations of Section 62 of Central Bank Circular No. 1028, in relation to Section 2530 (f) of the Tariff and Customs Code of the Philippines.

Section 62 of CB Circular No. 1028 provides thus:

> "Sec. 62. Foreign Currency. No person shall take out or transmit or attempt to take out foreign exchange in any form out of the Philippines, directly, through other persons, through the mails, or through international carriers except with specific authority by the Central Bank or when allowed under existing international agreements or by these rules." (underscoring supplied)

The section following, that is, Section 63, refers exclusively to tourists/non-residents which provides:

> "Sec. 63. Tourists/Non-Residents
>
> a. Tourists and non-resident visitors may take out or send out from the Philippines foreign currency in amounts not exceeding such amounts of foreign exchange brought in by them. For the purpose of establishing the amount of foreign exchange brought in, tourists, or non-residents, or temporary visitors bringing with them more than US $3,000.00 or its equivalent in other foreign currencies, shall declare their foreign exchange in the form prescribed by the

Central Bank at points of entry upon arrival in the Philippines." (underscoring supplied)

Section 2530 (f) of the Tariff and Customs Code provides that:

Section 2530. Property Subject to Forfeiture under Tariff and Customs Law.

x x x x

(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 of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, or were entered to be used as instrument in the importation or exportation of the former.

On the record of the case, it has been indubitably established that:

1) Lo Chi Fai, together with his business confederates Sze Kai Kwan, Lee Hsiang Ping with his wife, Lily Sui, Kobayashi Nabuo, Wakita Nabuyuki entered the Philippines on various dates as transient visitors bringing with them foreign currencies which were all properly documented upon arrival;

2) Lo Chi Fai and his business colleagues came to the Philippines for a legitimate purpose and that is, to establish a business and to invest the monies they brought in for such purpose;

3) That there is no evidence on record that at any time prior to July 9, 1986 when Lo Chi Fai was apprehended at the Manila International Airport on a flight back to Hongkong, did any of them, that is Lo Chi Fai himself, Sze Kai Kwan, Lee Hsiang Ping and his wife Lily Sui, Kobayashi Nabuo, Wakita Nabuyuki, send or bring out any foreign currency they brought in as documented. It

is likewise of record as reflected in their passports that these businessmen, transients as they were in this country, have been in and out of the country on various dates.

4) That the total Philippine peso conversion of all foreign currencies confiscated from Lo Chi Fai which he was bringing out of the country for himself and his business partners on July 9, 1986 is much less than the total Philippine peso conversion of the total foreign currencies legally brought in by Lo Chi Fai, Sze Kai Kwan, Lee Hsiang Ping and his wife, Lily Sui, Kobayashi Nabuo and Wakita Nabuyuki put together.

That Section 63 of CB Circular No. 1028 does not specifically provide how and in what manner such tourists or non-resident visitors may take out or send out from the Philippines foreign exchange they brought in legally. The only condition is that the foreign currency brought in, which is more than $3,000.00 or its equivalent in other foreign currency, must be properly declared upon entry and documented in the form prescribed by the Central Bank and what is brought out does not exceed the amounts brought in. Petitioner and his associates have assiduously complied with these conditions and substantially complied with all requirements provided for by law and regulations.

The ordeal of Lo Chi Fai did not end with his apprehension and administrative seizure proceedings initiated by the Bureau of Customs.

As adverted to, Lo Chi Fai was charged criminally before the Regional Trial Court in Pasay City in Criminal Case No. 86-10126-P for "violation of Section 6, Central Bank No. 960." In a judgment rendered by Judge Baltazar Dizon on September 26, 1986, accused Lo Chi Fai was acquitted of the charge (pp. 534-557, Customs record).

In a supplemental Memorandum filed by petitioner, through counsel, he cited two current resolutions of respondent which are "similar" to the present case.

1) Execution of a Decision of the Court of Appeals in CA-GR Sp. No. 24039 promulgated on July 10, 1991 wherein the Court ordered the return to claimant Robert Warren Nielsen or his representative the sum of Fifty Three Thousand ($53,000) U.S. dollars;

2) Implementation of a Decision of the District Collector of Customs, dated December 17, 1991, in NAIA Seizure Identification No. 037-88 as affirmed by the Commissioner of Customs in his Decision, dated January 7, 1992, directing the return of foreign currencies in the total converted sum of Eleven Million Nine Hundred Twenty Five Thousand Six Hundred Sixty Pesos (P11,925,660.00) less U.S. dollars $78,000.00 to Brian Gerard Ong.

What make these cited cases similar to the present case is the fact that 1) the persons involved are transients; 2) that they were able to prove that the foreign currencies sought to be brought out of the country were brought in by them; and 3) that these foreign visitors were all acquitted by the Regional Trial Courts.

WHEREFORE, having firmly established on record that no violation of Central Bank regulations and existing laws was deliberately committed by Lo Chi Fai in taking out foreign currencies belonging to him and his business partners and which they brought in legally, default judgment is hereby rendered granting the relief applied for by the petitioner, thereby reversing the Decision of the Commissioner of Customs, dated October 21, 1991, and, as prayed for, ordering the release of the confiscated foreign currencies per acknowledgement receipts issued by the Central Bank of the Philippines, or its equivalent in Philippine pesos in the amount of P6,448,419.52, based on the conversion rates as computed by the latter, in favor of petitioner.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, 26 November 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals