REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEON ZELMAN,
Petitioner,

versus

C.T.A. CASE NO. 2394

ROLANDO G. GEOTINA, in
His Official Capacity as
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 declaring forfeited the U.S. dollars and negotiable instruments, with exception of $1,000 in cash and $1,400 in traveller's checks which were declared by Leon Zelman in his currency declaration, for violation of Section 3 of Central Bank Circular 265 and Section 1(a) and (c) of Central Bank Circular No. 266 in relation to Section 2530(f) of the Tariff and Customs Code.

It appears that in the afternoon of March 19, 1969 petitioner Leon Zelman, a temporary visitor of the Philippines who was about to board an outgoing Japan Airlines plane enroute to the United States of America at the Manila International Airport, via Japan, was found upon inspection to be in possession of United States dollars in cash, traveller's and bank checks, amounting to $200,170.54, far exceeding the total amount of $2,400 declared by him in his Central Bank Currency Form broken down into $1,000 in cash and $1,400 in traveller's checks. The aforesaid foreign exchange were seized by the Collector of Customs for violation of Section 1(a) and (b) of Central Bank Circular No. 266, and seizure proceeding there was instituted.

In a decision dated August 19, 1969, the Collector of Customs of the Manila International Airport decreed the forfeiture in favor of the Republic of the Philippines of the aforesaid foreign exchange with the exception of $1,000 in cash and $1,400 in traveler's checks. This decision was appealed by petitioner to the Commissioner of Customs who affirmed the Collector's decision. Thereafter petitioner filed this appeal.

Hereunder we quote for ready reference the law involved in this case:

Central Bank Circular No. 265

x x x x x x x

(3) 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.

x x x x x x x

(6) Strict observance of the provisions of this Circular is enjoined; and any resident person, firm or corporation, who, being bound to the observance thereof, or of such other rules, regulations or directives as may hereafter be issued in implementation of this Circular, shall fail or refuse to comply with, or abide by, or shall violate the same, shall be subject to the penal sanctions provided for under Section 34 of the Central Bank Act.

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Central Bank Circular No. 266

In implementation of the provisions of Central Bank Circular No. 265 dated November 20, 1968, the following rules and regulations are hereby promulgated:

> SECTION 1. (a) Every Philippine resident departing from or returning to the Philippines from abroad and every temporary visitor entering the Philippines, including members of the crew or complement of vessels and airplanes engaged in international transportation, shall accomplish a Currency Declaration on CB Form No. 303 and shall declare on this form all Philippine currency and foreign exchange carried by the Declarant.
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> x x x x x
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> (c) Temporary visitors (i.e., all persons who are not residents of the Philippines) entering the Philippines, including members of the crew or complement of vessels and airplanes engaged in international transportation, shall exhibit their accomplished Currency Declaration to the Central Bank representatives at the pier or airport of entry who shall stamp the Currency Declaration and retain the stub. The visitor shall keep his Currency Declaration during his stay in the country. He may carry with him all the foreign exchange declared by him in his Currency Declaration, but to meet his local currency needs during his stay in the Philippines, he shall sell foreign exchange for Philippine pesos only to authorized agents of the Central Bank. He shall not take out of the Philippines foreign exchange in excess of the amount brought in by him. At the time of his departure from the country, the temporary visitor or member of the crew or complement of a vessel or airplane engaged in international transportation shall surrender his Currency Declaration to the Central Bank representatives at the pier or airport of departure. (Underscoring supplied.)

Central Bank Circular No. 270

Pursuant to Resolution No. 594 dated April 14, 1969 of the Monetary Board, Circular No. 266 dated November 26, 1968 is hereby revoked effective immediately.

Henceforth declaration of currency of any kind shall be required even from outgoing or incoming passengers.

Tariff & Customs Code

SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

x x x x x

(f) Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

It is not controverted that petitioner violated Section 1(a) and (c) of Central Bank Circular No. 266 requiring residents and temporary visitors entering the Philippines to accomplish a Currency Declaration on CB Form No. 303 of foreign exchange carried by the declarant and prohibiting temporary visitors from taking out of the Philippines foreign exchange in excess of the amount brought in by him. Petitioner however contends that since Circular No. 266 was repealed by Central Bank Circular No. 270 on April 14, 1969, the repeal abated the forfeiture proceeding. This pretension is untenable.

The repeal of Circular No. 266 abated only the penal responsibility of the petitioner, not the action for forfeiture which is civil in nature. (Capulong v. Acting Commissioner of Customs, 17 SCRA 61; Manuel Bastida v. Acting Commissioner of Customs and the Court of Tax Appeals, 35 SCRA 448.) Said the Supreme Court in the Bastida case, supra:

> 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.

At any rate the bills and foreign exchange in question are subject to forfeiture under Section 3 of Central Bank Circular No. 265 in relation to Section 2530 of the Tariff and Customs Code. Said circular, issued by the Central Bank pursuant to the powers vested it by its charter, is subject to enforcement by the Bureau of Customs and forms a part of our Customs Law. Violations thereof comes within the purview of Section 2530 of the Tariff and Customs Code although the circulars do not provide for confiscation in case of violation thereof. Said the Supreme Court in Bienvenido Capulong v. The Acting Commissioner of Customs, supra:

> Petitioner claims that the Court of Tax Appeals erred in declaring the forfeiture of the articles in question merely because it violates Central Bank Circulars Nos. 44 and 45 considering that said circulars do not provide for the penalty of forfeiture in case of violation of their provisions. But this question is now a settled matter in view of the several decisions rendered by this Court sanctioning the forfeiture of merchandise imported in violation of said Circulars Nos. 44 and 45. This Court said that these circulars should be correlated with Section 1363 of the Revised Administrative Code which authorizes the forfeiture of any merchandise of prohibited importation or of any the importation of which is effected contrary to law, as may be gleaned from the following portion of our decision:
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> > "As already stated, Circulars Nos. 44 and 45 were issued by the Monetary Board within the scope of its powers.

> They were published in the Official Gazette in June, 1953. Appellant failed to present to the Commissioner of Customs release certificates issued by the Central Bank or its duly authorized agent banks for the importation in question. The Commissioner of Customs may, therefore, seize them and order their forfeiture under the aforequoted provisions of the Revised Administrative Code. It is true that neither of the Circulars provide for the penalty or forfeiture. But since the importations in question were made without the necessary import license issued by the Monetary Board pursuant to Circular No. 45 and the release certificates issued by the Central Bank or its authorized agent bank in the prescribed form pursuant to Circular No. 44, they fall within the class of 'merchandise of prohibited importation' or merchandise 'the importation x x x of which is effected x x x contrary to law' that the Commissioner of Customs may seize and order forfeited. To sustain the appellant's theory of the case would render nugatory the aim and purpose of the law when it authorizes the Central Bank to temporarily suspend or restrict the sale of foreign exchange to licensing during an exchange crisis in order to protect the international reserve and to give the Monetary Board and the Government time in which to take constructive measures to combat such crisis." (Pascual vs. Commissioner of Customs, L-10979, June 30, 1959. <u>See also</u> Venancio Tonk Tek vs. Commissioner of Customs, L-11947, June 30, 1959; People vs. Que Po Lay, 50 O.G. No. 10, p. 4800).
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> The merchandise in question may not be one of prohibited importation within the meaning of the law, but it cannot be denied that it is an importation that was effected contrary to law, and in this sense it is subject to forfeiture. x x x

Thus, the exportation of dollars without authority from the Central Bank, which is prohibited by Section 3 of Circular No. 265 is subject to forfeiture in favor of the government under Section 2530(f) of the Customs Code as exportation effected contrary to law. For this it suffices that petitioner is caught attempting to bring out of the Philippines dollar bills and foreign exchange without authority from the Central Bank. Section 3 of Circular No. 265 covers all manner of exporting foreign exchange without authority from the Central Bank, whether it is brought out by outgoing passengers, or sent through the mail, or hidden in cargo sent abroad.

WHEREFORE, the appealed decision of respondent is hereby affirmed.

SO ORDERED.

Quezon City, January 15, 1976.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMÁN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge