REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LYNN ROBINSON, LESTER SEBOLD
and MILDRED SEBOLD,
Petitioners,

- versus -

C.T.A. Case NO. 4512

3/1/94

SALVADOR M. MISON, in his capacity as Commissioner of Customs,
Respondent.

x - - - - - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of respondent, Commissioner of Customs, dated March 16, 1990, affirming *in toto* the order and decree of forfeiture issued by the Acting District Collector of Customs, Airport Customhouse, Ninoy Aquino International Airport (NAIA), Metro Manila, dated December 21, 1989.

As borne by the records, the uncontroverted facts of the case are the following:

1. On 12 May 1989, Lynn Robinson, an American with Passport No H-157731 was apprehended at the departure area while about to board flight NW-004 for Narita, Japan on her way to the United States. Customs authorities found in an envelope inside her handbag US$8,000.00 of which she cannot show

Central Bank authority to take out of the country such amount of foreign currency;

2. The US$8,000.00 was seized by Customs authorities allegedly in violation of Section 2530(f) of the Tariff and Customs Code (TCC) in relation to Sections 62 and 63 of Central Bank Circular No. 1028;

3. Seizure Receipt No. 491 was issued to her together with an inventory containing the serial numbers of the currency seized;

4. Petitioner Lynn Robinson was not allowed to leave the country on 12 May 1989; however, she was allowed to leave for the U.S.A. on 13 May 1989 without the US$8,000.00;

5. On 26 May 1989, a Warrant of Seizure and Detention was issued against the US$8,000.00 and seizure proceedings were filed;

6. On 21, December 1989, the Acting District Collector of Customs - **NAIA**, issued a decision, the dispositive portion of which states:

> "**WHEREFORE**, by virtue of the authority vested by law in this Office, it is hereby ordered and decreed that the US$8,000.00 foreign currency covered by Seizure Identification No. 079-89 be **FORFEITED** in favor of the government, the same to be disposed of in the manner provided by law."

Copy of the above decision was received by petitioner on 19 January 1990;

7. On 25 January 1990, petitioner filed a notice of appeal of the decision to the Commissioner of Customs and filed her memorandum in support of said appeal on 14 February 1990;

8. On 16 March 1990, the respondent Commissioner of Customs issued his decision, the dispositive portion of which states:

> "Premises considered, this Office finds no cogent reason to disturb the order and decree of forfeiture dated December 21, 1989 of the US$8,000.00 covered by Seizure Identification No. 079-89, Airport Customshouse, NAIA, Metro Manila and hereby affirms the same *in toto.*"

Copy of the above decision was received by petitioner on 30 March 1990;

9. On 17 April 1990, petitioner filed a motion for reconsideration of the decision dated 16 March 1990 and to allow petitioner to present Lester Sebold to affirm his affidavit and be cross-examined;

10. On 24 April 1990, petitioner filed an urgent *ex-parte* motion to present Lester Sebold to affirm his affidavit and be cross-examined as he was in the Philippines on business;

11. On 07 May 1990, the statement of Lester Sebold was taken by Atty. J.C. Moroket of the Legal Service, Bureau of Customs;

12. On 15 October 1990, respondent Commissioner of Customs issued an order denying petitioner's motion for reconsideration which was received by petitioner on 30 October 1990;

13. The instant petition for review was filed in this Court on 12 November 1990 with claimant Lynn Robinson joined by Lester Sebold and Mildred Sebold as petitioners. It was prayed that the decision of the Commissioner of Customs dated 16 March 1990 and order dated 15 October 1990 be

reversed and the US$8,000.00 be ordered returned to the petitioners.

Petitioners presented their evidence *ex-parte* inasmuch as respondent was declared in default for failure to file his answer.

The issues presented before Us for resolution are:

I. Whether or not petitioners violated Section 2530(f) of the Tariff and Customs Code in relation to Sections 62 and 63 of Central Bank Circular No. 1028.

II. Whether or not petitioners are entitled to the return of the US$8,000.00.

Quoted hereunder are the pertinent provisions of law subject of contention in the case at bar:

> "Section 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following condition be subject to forfeiture:
>
> xxx xxx xxx
>
> (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."

in relation to Sections 62 and 63 of Central Bank Circular No. 10-28:

> "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, or through international carriers except with specific authority by the Central Bank or when allowed under existing international agreements or by these rules.
>
> SEC. 63. *Tourist/Non-Residents*
>
> a. Tourists and non-resident visitors may take or send out from the Philippines foreign exchange in amount not exceeding such amounts of foreign exchange brought in, tourist and 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."

In seizure of forfeiture proceedings, the burden of proof is upon the claimant. The applicable law, Section 2535 of the Tariff and Customs Code, is explicit in this regard:

> "SEC. 2535. ***Burden of Proof on Seizure and/or Forfeiture.*** - In all proceedings taken for the seizure and/or forfeiture of any vehicle, vessel, aircraft, beast or articles under the provisions of the tariff and customs laws, <u>the burden of proof shall lie upon the claimant</u>: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code." (Underscoring supplied)

Upon the facts of the case, the requirement of the law that the existence of probable cause should first be shown before filing of the forfeiture proceedings, had been fully met. When

Lynn Robinson was apprehended at the departure area and was found to have in her possession US$8,000.00, she could not produce the required Central Bank authorization allowing her to bring them out of the country. She even denied knowledge thereof in the statement she gave to Investigator D. Aquino on 12 May 1989, viz:

> "07.Q: You were apprehended at the **NAIA** while about to depart for **TOKYO** when apprehended by Customs officials for bringing out US$8,000.00. Can you explain this?
>
> A.: Last night at the hotel, my employer handed me an envelope which I am to bring along with me on my way back to New York, the contents of which, I do not know.
>
> 08.Q: Did you not inquire from your employer what could be the contents of said envelope?
>
> A.: No. I did not." (Pages 27-28, Customs records)

This constituted *prima facie* evidence of infringement of Section 2530(f) of the Tariff and Customs Code in relation to Sections 62 and 63 of Central Bank Circular No. 1028. Probable cause having been shown, the burden of proof was upon Lynn Robinson to establish that she did not violate the law.

Petitioners contend that they did not violate Section 2530(f) of the Tariff and Customs Code in relation to Section 62 and 63 of Central Bank Circular No. 1028 and seek refuge in the defense that the subject US$8,000.00 was brought to the Philippines by petitioners Lynn Robinson and Spouses Lester and Mildred Sebold when they arrived on the same flight, CX 901 of Cathay Pacific, on 07 May 1989 from Hongkong (Exhibit B). Since there were three (3) of them, they reasoned that there was no necessity to secure Central Bank authority because each of them would be carrying less than US$3,000.00 each ($8,000.00/3 = $2,666.67).

Further, the US$8,000.00 were allegedly their collections from people in Hongkong who owed them money. Documentary evidence originating from Hongkong were submitted by petitioners in support of their claim (Exhibits C to C-3 and D to D-2). Nonetheless, respondent affirmed the seizure order.

Premises considered, We find petitioners to have failed to satisfactorily discharge the burden placed upon them. We cannot give credence to petitioners' allegation that the US$8,000.00 seized from Lynn Robinson belong to the three of them. Most likely, the money belongs only to Mr.

and Mrs. Sebold. This was clearly manifested in the statement given by Lynn Robinson to the Customs authorities that she does not know the contents of the envelope entrusted to her by the Sebolds to be brought to New York, U.S.A. Considering likewise, that based on petitioners' own declaration that they have done business with their Philippine suppliers for more than ten (10) years (T.S.N. pp 8-9, Aug. 12, 1991) and they usually come to the Philippines once or twice a year to see for themselves the sources of their imports (T.S.N. p. 17, August 12, 1991), they would be familiar with the requirements for bringing in and taking out foreign currency in the country. Their lame excuse for having failed to declare and secure Central Bank authorization for the US$8,000.00 cannot therefore be given credence.

Citing the case of Acting Commissioner of Customs vs. Court of Tax Appeals 129 SCRA 70, 78, petitioners contend that a currency declaration is not the only proof to show legitimate source of currency in possession of a foreign non-resident. The said citation is herein reproduced:

> "Finally, Andrulis contends that no foreign currency declaration is required of any incoming or outgoing passenger and that is not

the intention of the Government to entrap unwary foreigners. True, Resolution No. 594, dated 14 April 1969, of the Monetary Board, provides:

> "Henceforth, no currency declaration of any kind shall be required from outgoing or incoming passengers."

However, tourists are not precluded from submitting proof, other than a currency declaration, to show the legitimate source of the currency in their possession. Besides, Resolution No. 594 must be deemed superseded by Resolution No. 1412, dated 16 July 1976, which requires that persons taking or transmitting or attempting to take or transmit foreign exchange out of the Philippines must have authorization from the Central Bank allowing them to do so.

WHEREFORE, the Decision of respondent Court of Tax Appeals, promulgated on 30 June 1982, is hereby reversed and set aside, and the decision of the Acting Commissioner of Customs, dated 15 December 1980, hereby ordered reinstated. No costs.

SO ORDERED." (Underscoring supplied)

Based on the foregoing, We find the Decision of the respondent Commissioner of Customs, dated March 16, 1990, affirming *in toto* the order and decree of forfeiture by the Acting District Collector of Customs - NAIA, dated December 21, 1989, to be in accordance with law and jurisprudence.

WHEREFORE, the instant petition for review is hereby dismissed for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, March 01, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that the above 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