REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ZHONGSHU HUA AND NGA HEONG CHONG,
Petitioner,

- versus -

BUREAU OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 7273

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
SEP 22 2008 3:00 pm

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DECISION

BAUTISTA, *J.:*

Before the Court is a *Petition for Review* seeking to reverse and set aside: (1) the Commissioner of Customs' Decision dated January 20, 2005 setting aside the Decision of NAIA District Customs Collector; and (2) the ruling of the Undersecretary of Finance contained in the Second Indorsement dated April 27, 2005 affirming the assailed Decision of the Commissioner of Customs that reversed the Decision of the NAIA District Customs Collector ordering the return of the seized P700,000.00 of petitioners.

On June 26, 2003, petitioners were apprehended by airport authorities of the Ninoy Aquino International Airport (NAIA) when they were about to depart for Hongkong, for attempting to bring out of the country Seven Hundred Thousand Pesos (P700,000.00), without the required permit and/or clearance as mandated by *Bangko Sentral ng Pilipinas* (BSP) Rules and Regulations.[1]

A case was thereafter filed by respondent against Zhong Zhu Huang[2] before the Regional Trial Court Branch 111 of Pasay City entitled **People of the Philippines vs. Zhong Zhu Huang**, docketed as Criminal Case No. 03-1086. After trial, RTC Branch 111, in its Decision dated July 4, 2003, acquitted Zhong Zhu Huang and ordered the return of his travel documents and other personal effects including the subject amount of P700,000.00. The trial court further ordered that "he should not be allowed to bring out the sum in excess of P10,000.00 in his return trip to Hongkong on his way to the China's mainland unless the excess of the allowable amount should be duly covered by proper clearance and permit or authorization from the Central Bank of the Philippines".

On June 27, 2003, the District Collector, NAIA Customhouse, through the latter's Law Division, issued a Warrant of Seizure and Detention (WSD) against the abovementioned P700,000.00 for violation of Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP), as amended, in relation to BSP Rules and Regulations.[3]

After trial in the seizure proceeding docketed as Seizure Identification No. 021-2003, the NAIA District Collector rendered a Decision dated January 23, 2004, holding that the instant seizure case against the amount of P700,000.00 should be dismissed for lack of merit; and consequently, ordered the return of the same to petitioners.[4]

By virtue of automatic review, the Commissioner of Customs, through a Decision dated January 20, 2005, reversed and set aside the Decision of the NAIA District Collector dated January 23, 2004; and accordingly ordered the District Collector to forfeit the seized

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[1] Par. 1, Stipulated Facts, Revised Joint Stipulation of Facts and Issue, Docket p. 352
[2] Zhongshu Hua
[3] Par. 3, Stipulated Facts, Revised Joint Stipulation of Facts and Issue, Docket pp. 353-354
[4] Exhibit "C"

currency in the amount of P700,000.00.[5] Petitioners moved for a reconsideration, which was denied through a 4th Indorsement dated March 9, 2005.[6]

Petitioners then filed a Notice of Appeal[7] dated March 15, 2005 with the Bureau of Customs (BOC), and later filed their Memorandum of Appeal[8] dated April 18, 2005 with the Department of Finance (DOF), praying that the Decision of the Commissioner of Customs be reversed and the Decision of the NAIA District Collector be affirmed.

Through a 2nd Indorsement dated April 27, 2005, DOF Undersecretary Emmanuel Bonoan denied petitioner's appeal for lack of merit, and affirmed the Decision of the Commissioner of Customs.

After the DOF's denial of petitioner's appeal, on June 23, 2005, a *Petition for Review* was filed before this Court praying for the reversal and setting aside of the Decisions of the Commissioner of Customs and the Department of Finance.

On August 15, 2005, respondent filed its *Answer* raising several affirmative defenses, among them are the grounds for the dismissal of the instant *Petition*, to wit:

> "a. It violates Section 3, in relation to Section 2 of Rule 42 of the 1997 Rules of Civil Procedure;
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> b. It violates Section 4, Rule 8 and Section 1(d), Rule 16 of the 1997 Rules of Civil Procedure;
>
> c. It violates Section 7(a) of Republic Act No. 9282; and,
>
> d. Petitioners' resort to the instant petition is erroneous."[9]

On October 10, 2005, petitioners, through counsel, filed a *Motion to Admit* inadvertently missed exhibits and correctly re-typed *Petition for Review*, which this Court granted via *Resolution* dated March 8, 2006. Consequently, respondent filed its *Answer (To Amended Petition)* on April 26, 2006.

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[5] Exhibit "F"
[6] Exhibit "J"
[7] Exhibit "K"
[8] Exhibit "M"
[9] Docket, pp. 78-79

On June 6, 2006, respondent filed a *Motion to Set for Hearing (on Affirmative Defenses)* praying that a hearing be set for the affirmative defenses it raised in its *Answer* and that the *Petition for Review* be dismissed. Respondent alleged several grounds for the dismissal of the *Petition for Review*, namely: (1) the requirement of verification and certificate of non-forum shopping has not been properly satisfed; (2) it was a certain Arlene C. Lumauig, a non-party who signed for petitioners, equipped only with a Special Power of Attorney that does not clearly state her authority to file the *Petition for Review*; and (3) the Court has no jurisdiction over the case since the *Petition for Review* was purportedly filed out of time.

This Court granted respondent's *Motion* and accordingly dismissed the *Petition for Review* via *Resolution* dated July 20, 2006. Petitioners, through counsel, then filed a *Motion for Reconsideration* on September 1, 2006.

On January 8, 2007, this Court granted petitioner's *Motion for Reconsideration* by reversing its earlier findings on each alleged procedural infirmities and on grounds of substantial compliance and equity. The July 20, 2006 *Resolution* was set aside and the parties were ordered to file their respective *Pre-trial Brief*.

Pre-trial of the case commenced on February 23, 2007. Thereafter, the parties submitted their *Revised Joint Stipulation of Facts and Issue* on March 9, 2007, which the Court approved in a *Resolution* dated March 13, 2007.

After issues were joined, petitioners presented documentary evidence[10] and then rested their case. Meanwhile, counsel for respondent manifested during the November 6, 2007 hearing that he is submitting the case for decision, considering that this case involves purely legal questions.[11] The case was considered submitted for decision after petitioners

[10] Exhibits "A" to "P"
[11] Docket, p. 387

and respondent each filed their Memorandum on December 3, 2007 and November 20, 2007, respectively.[12]

As stipulated by the parties, the lone issue[13] for this Court's resolution is, "*Whether or not the Commissioner of Customs committed error when he reversed the Decision of the NAIA District Collector and ruled that the subject amount should be forfeited in favor of the government.*"

Section 2530 of the Tariff and Customs Code of the Philippines enumerates the properties subject to forfeiture, pertinent portions of which are quoted as follows:

> "Section 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* – Any vehicle, vessel or aircraft and other objects shall, under the following conditions be subjected 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;
>
> xxx xxx xxx."

The above provision must be taken in relation to Circular No. 1389 dated April 13, 1993, as amended by Circular No. 98 dated December 11, 1995. Section 4, Chapter I of the Circular reads:

> "Section 4. *Import/Export of Philippine Currency.* No person may import or export nor bring with him into or out of the country, or electronically transfer legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding P10,000.00 without authorization by the Bangko Sentral ng Pilipinas.
>
> xxx xxx xxx."

[12] Resolution dated December 10, 2007
[13] Docket, p. 355

Based on the foregoing provisions, articles whose importation or exportation or any attempt of importation or exportation of such articles is contrary to law are subject to seizure and forfeiture. Here, the law that declares illegal the importation or exportation of legal tender Philippine notes and coins, checks, money order, and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding P10,000.00, unless duly authorized by the BSP, is Section 4 of CB Circular No. 1389.

It is an uncontroverted fact that petitioners were about to depart for Hongkong, carrying the amount of P700,000.00 without the required permit and/or clearance as mandated by the Rules and Regulations of the BSP. The absence of permit or clearance is an operative factor for the application of Section 2530(f) of the TCCP and, such application carries with it the penalty of forfeiture.

The foregoing finding can be corroborated by previous Decisions of the High Tribunal, such as in the case of **Commissioner of Customs vs. Caridad Capistrano**[14], the significant portions of which are hereunder quoted:

> "Section 1363(f) of the Revised Administrative Code[15] relied upon by the appellant reads as follows:
>
> > Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other merchandise 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.
>
> There can scarcely be any doubt that Philippine money may be exported or brought out of the country. Indeed, the Court of Tax Appeals recognized this fact in the decision appealed from. That such exportation ultimately affects the stability of the peso cannot be denied. As clearly explained by the Tax Court, it was in the light of compelling economic reasons and necessities that Central Bank Circulars Nos. 37 and 42, prohibiting the exportation of Philippine bills and coins, subject to certain exceptions, were conceived and promulgated.

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[14] G.R. No. L-11075, June 30, 1960
[15] same as Section 2530 of the TCCP

We believe that Philippine peso bills come within the concept of 'merchandise', as this term is understood in Section 1363(f) of the Revised Administrative Code. As defined by the same Code, merchandise, when used with reference to importations or exportations, includes goods, wares, and in general anything that may be the subject of importation or exportation. (Sec. 1419) It cannot be gainsaid that money may be a commodity-an object of trade.

> **Money in the country where it is current, is both a measure of value and a medium of exchange, while in other countries it is a commodity bought and sold in the market, and its value fluctuates in the market like that of other commodities. (58 C. J. S. 845, citing Richard vs. American Union Bank, 170 N. E. 532, 535, 69 A. L. R. 667.)**

In the same manner that in the Philippines the United States dollar bills which have ceased to be legal tender, are considered merchandise, the Philippine peso bills when attempted to be exported, as in the present case, may be deemed to have been taken out of domestic circulation as legal tender and treated as commodity. Hence, they may be forfeited pursuant to Central Bank Circular No. 37 in relation to Section 1363 (f) of the Revised Administrative Code." (*Emphasis supplied*)

Equally applicable is the case of **Venancio Carreon Tong Tek, *et al.* vs. The Commissioner of Customs**[16], where the Honorable Supreme Court declared that:

"Petitioners allege that the term 'merchandise of prohibited exportation' used in Section 1363(f) of the Revised Administrative Code has its own fixed and definite meaning; that it refers exclusively to those articles specifically declared prohibited by Section 3 of the Philippine Tariff Act of 1909, such as firearms and explosive, obscene and subversive articles, gambling outfits, falsely marked gold and silver articles, adulterated foods, lottery tickets, opium and opium pipes, and as gold bars do not fall under any of the enumeration, they conclude that the aforementioned codal provision cannot be invoked in ordering the forfeiture of the articles in question. We entertain a different view.

It must be remembered that the Revised Administrative Code is a general legislation. As such, it must have been intended to meet not only the peculiar conditions obtaining at the time of its enactment but also designed to comprehend those that may normally arise after its approval. To our mind, the term 'merchandise of prohibited exportation' used in the code is broad

[16] G.R. No. L-11947, June 30, 1959

> **enough to embrace not only those already declared prohibited at the time of its adoption but also goods, commodities or articles that may be the subject of activities undertaken in violation of subsequent laws. Considering that the Central Bank circulars, issued for the implementation of the law authorizing their issuance although by themselves are not statutes, have the force and effect of law (People vs. Que Po Lay, 94 Phil., 640; 50 Off. Gaz., No. 10, p. 4850), the carrying out of transactions or undertakings without complying with the requirements of Circular Nos. 20, 21, and 42 makes these undertakings illegal. And as a natural consequence thereof, the articles involved in such unauthorized ventures become prohibited and, therefore, subject to forfeiture under Section 1363 (f) of the Revised Administrative Code.**" (*Emphasis supplied*)

This Court does not disregard the fact that petitioner Huang Zhong Zhu[17] was enrolled under the Enhanced Player Rebate Program of the Philippine Gaming Corporation (PAGCOR). In fact, PAGCOR issued a Certification to this effect. It reads:[18]

> "This is to certify that MR. HUANG ZHONG ZHU and his companion, MR. CHONG NGA MEI, played in this branch from June 24-26, 2003. MR. HUANG is enrolled under the Enhanced Player Rebate Program. Based on his playing capacity, he was granted Free Plane Ticket and Free Hotel Room Accomodation. The SEVEN HUNDRED THOUSAND PESOS (P700,000.00) found in their possession is the remaining balance of their total playing capital.
>
> This certification is being issued for whatever legal purpose it may serve."

However, the Certification issued by PAGCOR Casino Operations Manager Miel K. Tolentino, and noted by its Senior Branch Manager Dan N. Dia, did not state that there was a permit granted to petitioners to bring out the amount of P700,000.00 from the country. Likewise, PAGCOR should know that petitioners needed to secure an authorization from the BSP to bring out Philippine currency in the amount of P700,000.00 from the country; and they should have informed petitioners or secured the required authorization. No one is above the law. This is a basic precept in any legal system which recognizes equality of all

[17] Zhongshu Hua
[18] Exhibit "B"

men before the law as essential to the law's moral authority and that of its agents to secure respect for and obedience to its commands.[19]

Equally noteworthy is the fact that notwithstanding the acquittal of petitioners by the RTC, it does not follow that the seizure or forfeiture case must similarly be dismissed. The said case was a criminal action against petitioner Zhongshu Hua for violating Section 4 of Central Bank Circular No. 1389, as amended; while the present case is an action *in rem*, a proceeding against the thing itself instead of against the person,[20] pursuant to Section 2530(f) of the TCCP. The High Tribunal had the following to say about the matter:

> "IV. **Citing American jurisprudence, petitioners also urge that their acquittal in the criminal case bars the forfeiture of the articles in another proceeding where the issue as a cause for such forfeiture is the same act or fact involved in the criminal prosecution.** It may be stated in this connection that petitioners were charged in the Court of First Instance of Manila of having 'wilfully and unlawfully manifested by overt acts their desire to export 144 pieces of gold bars (only 138 were deposited with and duly receipted by the Insular Treasurer) from the Philippines to Japan', in violation of Central Bank's Circulars Nos. 21 and 42, in relation to Section 32 of the Central Bank's Charter (R.A. 265). In acquitting them, the Court of Appeals declared that 'the omission to secure such license cannot be penalized unless it is consummated'. **It is clear that although the act upon which the seizure proceedings were based may be the same as that involved in the criminal action, the provisions of the Administrative Code under which the articles are being confiscated specifically include attempts. Under the latter statute, therefore, it is not necessary that the offense be completely executed as required under the provisions of the Central Bank circulars; it is sufficient that all the elements of an attempted exportation, as in the case at bar, are present. Consequently, acquittal under the latter legal provisions does not constitute a bar to forfeiture proceedings under the Revised Administrative Code."**[21] (*Emphasis supplied*)

This Court also differs with NAIA District Collector Celso P. Templo when he dismissed the seizure case in this manner:

> "Wherefore, in view of the foregoing, finding no willful intent on the part of herein Claimants to violate the provisions of the TCCP, as amended, in relation to Central Bank Rules and Regulations particularly in the exportation

[19] *Ernesto B. Francisco, Jr., et al. vs. The House of Representatives, et al.,* G.R. No. 160261, November 10, 2003
[20] *Republic of the Philippines, represented by the Anti-Money Laundering Council vs. Glasgow Credit and Collection Services, Inc. and Citystate Savings Bank, Inc.,* G.R. No. 170281, January 18, 2008
[21] *Venancio Carreon Tong Tek, et al. vs. Commissioner of Customs*, G.R. No. L-11947, June 30, 1959

of Philippine Currency or US dollars (or its equivalent in other foreign currencies), and finding further that the above-mentioned Philippine Currency was proven to be legitimate, both as to its source and purpose of exportation, it is hereby Ordered and Decreed that this seizure case filed against the above-mentioned Philippine Currency be dismissed for lack of merit. It is further Ordered that the said seized Philippine currency be returned to the possession of herein Claimants or their duly authorized representative in the person of Ms. Arlene C. Lamauig."

In seizure cases, it is not necessary that there was intent to circumvent our statutes. Criminal intent is not necessary where the acts are prohibited for reasons of public policy.[22] The mere attempt to bring out of the country Philippine currency without permit or authorization from the BSP subjects the same to forfeiture. It is settled rule that where the provisions of the law are clear and unambiguous there is no room for interpretation. The duty of the court is only to apply the law.[23]

IN VIEW OF THE FOREGOING, the instant *Petition for Review* is hereby **DISMISSED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(Inhibited)
CAESAR A. CASANOVA
Associate Justice

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[22] *Garcia vs. Hon. Court of Appeals and the People of the Philippines,* G.R. No. 157171, March 14, 2006
[23] *Abello, et al. vs. Commissioner of Internal Revenue, et al.,* G.R. No. 120721, February 23, 2005

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division