Lib

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEE CO LIONG HA,
Petitioner,

- versus -

C.T.A. CASE NO. 3407

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

2/28/83

D E C I S I O N

This appeal involves the forfeiture of foreign exchange, which amount of a lofty ONE MILLION TWENTY-FIVE THOUSAND FIFTY-SIX AND FORTY CENTS (US$1,025,-056,43) US dollars, lends special eloquence to the case at bar, as follows:

1. FOREIGN CURRENCIES

Kind of currency	Box No. 1	Box No. 2	Total	US Dollar Equivalent
US Dollar	US$423,655,00	$457,010.00	$885,665.00	$885,665.00
Australian $	A$ 6,976.00	12,842.00	19,818.00	22,289.30
Canadian $	C$ 137.00	1,221.00	1,358.00	1,087.79
Deutsche Mark	DM 2,200.00	12,270.00	14,470.00	5,779.32
English Pound	L 8,388.00	2,963.00	11,351.00	20,608.88
French Franc	FF 7,000.00	-	7,000.00	1,177.40
Hongkong $	HK$ 6,260.00	57,270.00	63,530.00	10,857.28
Japanese Yen	Y288,000.00	88,000.00	376,000.00	1,545.74
Singapore $	S$ 350.00	2,450.00	2,800.00	1,283.24
Swiss Franc	-	500.00	500.00	229.60
Saudi Rial	R 5,480.00	14,515.00	10,995.00	3,225.93
Scotland Pound	-	1.00	1.00	
				$953,749.48
			or	₱7,544,158.39

II. CHECKS FOUND IN SUITCASE NO. 1

US Dollar	23,659.71 plus 7,480.00 =	$31,139.71 or	₱246,315.11
Canadian $	950.00	761.05	6,019.91
Australian $	10,090.00	11,348.22	89,764.42
Swiss Franc	600.00	275.52	2,179.36
Deutsche Mark	1,098.00	438.54	3,468.85
English Pound	4,269.15	7,751.07	61,310.96
	Sub-Total A . .	$51,714.11	₱409,058.61

III. CHECKS FOUND IN SUITCASE NO. 2

US Dollar	10.00	10.00	79.10
Deutsche Mark	4,630.00	1,857.21	14,690.53
Australian $	8,590.00	9,661.17	76,419.85
Canadian $	1,475.00	1,181.62	9,346.61
English Pound	3,146.00	5,711.88	45,180.97
Swiss Franc	2,530.00	1,170.96	9,262.29
	Sub-Total B . . .	US$19,592.84	₱154,979.35
	GRAND TOTAL . . .	US$71,306.95	₱564,037.96

The aforementioned foreign currencies in cash and checks were turned over to the Central Bank of the Philippines for safekeeping pending termination of the seizure and forfeiture proceeding therefor. The Central Bank, on the other hand, encashed the various checks to the corresponding drawee banks or financial institutions to avoid their becoming stale. (pp. 55-57, Record; pp. 160-161, CTA Record)

It appears that petitioner, a resident of Hongkong carrying British Passport No. 258338, and an outbound passenger on Philippine Airlines Flight 306 for Hongkong on August 3, 1981, while at the pre-boarding area of the Manila International Airport was tagged owner of the two (2) suitcases unambiguously singled out on a cue followed by the operatives of t he Finance Ministry Intelligence Bureau and Bureau of Customs personnel from among the baggages at the check-in loading zone, which upon verification found as suspected to contain foreign currencies in cash and checks (above inventory report) without the necessary supporting papers required under existing regulations, as follows:

CB CIRCULAR NO. 265 dated November 20, 1968

"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." (Par. 3)

CB CIRCULAR NO. 534 dated July 19, 1976

"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 any form, out of the Philippines directly, through other persons, through 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 by them." (Section 3)

The District Collector of Customs, Manila International Airport Customshouse, instituted seizure proceedings against the subject foreign exchange "the exportation of which is effected or attempted contrary to law" pursuant to Section 2530(f) of the Tariff and Customs Code and accordingly decreed the forfeiture thereof in favor of the government on September 17, 1981 (Seizure Identification No. 4471-81), which on appeal by the petitioner-claimant, was affirmed by the respondent Commissioner of Customs on November 18, 1981 (Customs Case No. 81-35). Petitioner had this recourse.

Petitioner disputes the legality of the forfeiture. She holds herself as a tourist and invokes the exceptive proviso of the 2nd paragraph of Section 3 of CB Circular No. 534, supra, providing that "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 by them." She claims that the confiscated foreign currencies were all along with her upon arrival from Hongkong on August 1, 1981. She opted not to declare the same, there being no requirement to do so. She had this amount for a spree at the Philippine Village Hotel casino. Her plans fizzled and abandoned altogether upon sight of a black butterfly wandering a bit too far over her mother's tomb (buried sometime in 1979) on her visit at the Manila Chinese cemetery, the day after arrival. Immersed somehow in Chinese superstition, such a kind of close encounter augurs not so well for a comfortable binge at gambling. Thus her decision to return to Hongkong after a two-day stint bringing along the foreign exchange she brought, including some 644 foreign checks with an amount equivalent to US$71,306.95, which she exchanged with cash US dollars at the casino when she dropped by anyway on the eve of her departure for Hongkong.

Respondent poses the rub wrapped up this wise: "In the case at bar, probable cause was established even prior to the institution of the forfeiture proceeding, on the basis of the undisputed fact that petitioner was apprehensive and evasive when her two (2) suitcases reported to contain big amounts of foreign currencies were recalled for verification from among the luggages to be loaded in a van for loading in the plane; that at first she disclaimed ownership thereof; that she even tried to prevent the opening of said suitcases by first claiming that she did not have the keys thereto when all along she had these keys; that she refused to give the correct numbers for the combination locks thereof; that her two (2) suitcases contained different kinds of foreign currencies (cash and checks) totalling the huge amount of US$1,025,056.43 converted at the prevailing rates; that when confronted, she could not explain where the said foreign currencies came from; and that she could not present any Central Bank authority to take said foreign currencies out of the country. Indubitably, the foregoing facts lead to the inescapable conclusion that the foreign currencies in question were being smuggled out of the country when petitioner was apprehended."

The precise issue is nothing more than whether or not the forfeiture of the subject foreign currencies is in accord with law and evidence.

What we have in the case at bar is a virtual Pandora's box of incriminating evidence. The suitcases in question, after a demanding wringer at verification, yielded foreign currencies in cash and checks of an amount equivalent to some US$1,025,056.43 at the prevailing rates, which as earlier stated were traced to the petitioner as the owner thereof. Murphy's law must have taken over because everything that could go wrong has, so to speak. The interception could but be a fitting finale for a seeming reckless insatiety and altogether needless frustration. We view with ease therefore respondent's righteous indignation that the subject foreign currencies sans the necessary authority from the Central Bank incurred the liability of forfeiture under Section 2530(f) of the Tariff and Customs Code, as amended, supra. The actual findings are not short of tractable data laid open and fully disclosed, such are: First, the denial and disclaimer then grudging admission of ownership of the suitcases and contents thereof seem eerily irrelevant to the ebullient stance that the same have been brought by petitioner from Hongkong. We distrust the logic of such kind of intriguing colloquy. Second, petitioner's definite refusal to surrender the keys and reluctance to reveal the correct combination numbers to the locks of the suitcases implacably demonstrate a defensive clumsiness at further deception. We find these sciamachies unacceptable and indeed unthinkable. Third, the exchange of the cash US dollars with quite a number various instruments of foreign drawee banks and financial institutions negotiated with local payees and/or endorsees comes as a random quirk which cannot be easily reconciled with the evident needs nor advantage of the petitioner. At this point it seems appropriate to pose the question, why? The stark and staring evidence however remains that the foreign exchange checks were procured locally. Fourth, the prospect of a substantial financial stakes represented of a family gross income over a period of more than two years (US$525,056.00), loan obligation (US$400,000.00) and inheritance (US$100,000.00), solely and precisely thrust on a derring-do of a gambling novice, as petitioner in the case at bar, seems more of a comedy of errors unless for dubious motives as surmised. Such particular malarky is incomprehensible. We are not prepared to attach importance to such a conundrum.

Petitioner must come to terms with the facts obtaining, nothing more. Her claim of having brought the foreign currencies cannot remain nestled on the exceptive proviso of second paragraph of Section 3 of CB Circular No. 534, supra, which is not of such a broad spectrum with open ended features as would sire the proposition that every foreign exchange being taken out by a tourist had been brought by him. The attendant circumstances in the case at bar do not necessarily equate. The privilege, generously tolerated, must find confinement to the "foreign exchange brought by them". But, "Contrary to petitioner's assertion, the foreign currencies seized were obtained in the Philippines. Proof of this are the undisputed facts heretofore mentioned, as well as the uncontrovertible fact that the payees and endorsees of the foreign currency checks were either Filipinos or residents of the Philippines (pls. see Exhs. "I", "I-1" to "I-84"; "J", "J-1" to "J-323"; "K", "K-1" to "K-32"; "L", "L-1" to "L-23"; "M", "M-1" to "M-12"; "N", "N-1" to "N-73", Record)." (CTA Records, p. 165). Just so and aptly enough, we share such findings.

Accordingly, the caveat that "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" (CB Circular No. 265) insofar as the same is brought to bear upon the circumstances of the petitioner retains its potency. Petitioner must bear the burden of proof required under Section 2535 of the Tariff and Customs Code, as amended, thus,

> "Sec. 2535. Burden of Proof in Seizure and/or Forfeiture. - In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of tariff and customs laws, the burden of proof shall lie upon the claimant; Provided: That probable cause shall first be 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)

And petitioner has not pried herself loose from the grip of the narrative implausibilities and internal contradictions as would prove her entitlements to a favorable determination as a matter of law and evidence. This Court can do little in leading petitioner out of what could be a legal cul de sac.

WHEREFORE, the petition for review is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, February 28, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge