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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHARLES ANDRULIS,
Petitioner,

- versus - C.T.A. CASE NO. 3201

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

6/30/82

D E C I S I O N

Petitioner seeks to vacate respondent Commissioner of Customs' decision in Customs Case No. 80-25 dated December 15, 1980, relative to the forfeiture of various foreign currencies allegedly found violative of the pertinent provision of Section 3, Central Bank Circular No. 534, quoted as follows:

> "Section 3. 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 in by them."

It appears that on February 22, 1980, petitioner, an American outgoing passenger on board the Philippine Airlines flight 501 bound for

Singapore was found by the Customs authorities to have in possession various foreign currencies, viz.: US $59,639.00; R 53,100.00 (Indonesian rupiahs) and S $308.00 (Singapore dollars), without any supporting documents required under the aforesaid regulation of the Central Bank of the Philippines. And for such, the Customs authorities lodged a complaint with the Pasay City Fiscal's office against petitioner pursuant to the applicable provision of Section 34 of Republic Act No. 265 or the Central Bank Charter which penalizes the violation of any "order, instruction, rule or regulation issued by the Monetary Board", in addition to the seizure and forfeiture proceedings in the Bureau of Customs against the res. Suffice it to state that the same was dismissed for lack of merit.

Thus, based on the same incident and violation, the seized currencies were administratively proceeded against under Section 2530(f) of the Tariff and Customs Code, providing insofar as pertinent -

> "Section 2530. - Property subject to forfeiture under Tariff and Customs laws. - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the

following conditions 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.
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> xxx xxx xxx."

The District Collector of Customs, Manila International Airport Customshouse, decreed the forfeiture of the subject foreign exchange in favor of the government (Seizure Identification No. 4162-80), which on appeal by the petitioner, was affirmed by the respondent Commissioner of Customs in a decision rendered on December 15, 1980. Petitioner interposed this appeal.

In assailing the legality of the forfeiture, petitioner maintains that he was a tourist upon entry on February 20, 1980 and on arrival at the Manila International Airport the foreign currencies he had brought were not declared there being no such requirement; that he billeted for the brief duration of his stay at the Century Park Sheraton -

Manila hotel; that on his departure on February 22, 1980 he had still the amounts of US $59,639.00, R 53,100.00 (Indonesian rupiahs) and S $308.00 (Singapore dollars); that the same were seized from him on board the Philippine Airlines flight 501 bound for Singapore by the Customs authorities; and that he comes within the purview of the exemption proviso of Section 3, Central Bank Circular No. 534, supra.

The argument urged by the respondent is that "there is no showing that the claimant (petitioner) brought into the Philippines the various foreign currencies confiscated from him on February 22, 1980 on board PAL flight 501 bound for Singapore" and "On the other hand, the deliberate acts of claimant of checking in our hotels and slipping out without the knowledge of hotel authorities and without paying his hotel bills not only flaunt our laws but also negate his allegations that he owns and brought to the Philippines the subject foreign exchange in question. x x The most plausible conclusion is that claimant is a carrier of foreign exchange in the employ of a syndicate engaged in the salting of foreign exchange out of the Philippines which is already hard pressed in meeting the astronomical cost of imported oil for lack of foreign exchange."

The record raises the issue as to whether the regulatory provision of Section 3 of the Central Bank Circular No. 534, supra, was violated as to warrant the sanction of a forfeiture under Customs laws. The question at its core is one of an effective application of the exception in the subject Circular, read thus:

> "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 in by them." (2nd par. Section 3, Circular 534)

As disclosed, petitioner had the status of a tourist at the time of entry and upon departure as borne no less by a certification of the Commission on Immigration and Deportation. (Annex "A", Petition). Likewise, there was no means of keeping tab with the amount of foreign exchange petitioner presumably claimed to have brought as "no currency declaration of any kind shall be required either from outgoing or incoming passengers." (CB Circular No. 270). Such circumstance must have found for petitioner an appropriate cubby-hole within the import and scope of the proviso allowing tourist and non-resident temporary visitors the privilege of entry and egress with their own foreign currencies sans constraints.

As it appears however, petitioner had to labor through a gauntlet of respondent's objection in restraint of petitioner's possession of foreign exchange on departure, requiring the proper documentation of ownership and clearance from the monetary authorities. This to us is a quirk of a variance in the application of the exceptive proviso of the regulation. Were we not confronted with the said exception, the precise question raised by the respondent Commissioner of Customs could have been easily and readily decided and disposed on the strength of the general limitations imposed in the Circular, which, otherwise would have neatly fit petitioner's situation. But we find nothing ambiguous or obscure in the language of the said proviso insofar as the same is brought to bear upon the circumstances of petitioner. The sudden thrust of seizure and subsequent forfeiture therefore of petitioner's foreign exchange is something of a convoluted rendition of an expedient denouement that was not entirely justified.

It is hardly necessary to stress that in the absence of proof to the contrary that legal presumption of ownership has to be accorded the possessor of the res who need not be obliged to show or prove it. (Sec. 5(j), Rule 131, Revised Rules of Court; Art. 541, Civil Code). Respondent has not presented any evidence of the relevance and competence required to bash that patina of legitimacy over petitioner's just title to the involved foreign currencies. The Pasay City Fiscal's office must have struck the right chord in ruling on the same focusing question that, "To the volume of what has been testified in the case at bar, the complainant (now respondent) failed to present direct evidence to show that the currencies in question were not brought in by respondent (now petitioner) when he arrived in the Philippines. With this obtaining undisputed facts, the only reachable conclusion is that the currencies were brought by respondent when he arrived in the Philippines." (MIA Customshouse

v. Andrulis, I.S. No. 80-44112, March 10, 1980; Annex "D", Petition). Short of uncritical leniency, we do not think that any different conclusion ought to follow. To hold otherwise would extruncate the salutary purpose specifically intended for the tourists under Central Bank Circular Nos. 270 and 534, supra.

We deem unnecessary to resolve respondent's further starveling agitation of faulting petitioner for the alleged affiliating breaches, e.g.: petitioner's acts of checking in and slipping out of hotels a la French leave without settling hotel obligations. Certainly this sort of behavior tends to add and excite fascination but it does not square the issue in the instant case. It takes more than these fancy inferences and slickly practices lapses to hold petitioner "a carrier of foreign exchange in the employ of a syndicate engaged in the salting of foreign exchange out of the Philippines." One cannot simply fashion possibilities out of inconclusive ends with ambiguous means of validating the principal cause of action. Respondent has not been discharged from the burden of proving the violation asserted against the petitioner on the facts of the case before us.

Accordingly, we hold that petitioner has not infringed the legal restrictions in Section 3 of CB Circular No. 534, supra, much less should his foreign currencies be suffered to a delinquency contemplated under the provision of Section 2530(f) of the Tariff and Customs Code, supra.

WHEREFORE, the decision appealed from is reversed and respondent ordered to effect the restitution of the forfeited currencies to petitioner. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1982.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge