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KANEO SOTOYAMA, MIKIO
NAWA, FUJICO NAWA and
MASAYOSHI IWAMA,
Petitioners,

- versus - C.T.A. CASE NO. 2902

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

4/23/79

D E C I S I O N

This case, submitted for judgment on the pleadings, records of the Bureau of Customs and respective memoranda of the parties, is an appeal from the decision of respondent Commissioner of Customs dated June 30, 1976, affirming the decision of the Collector of Customs of the Manila International Airport in Seizure Identification No. MIA 1350-76 dated March 16, 1976, decreeing the forfeiture of foreign currencies consisting of United States dollars, Japanese Yen and Hongkong dollars in the total amounts of US$105,145.00, ¥178,000.00 and HK$35.00, respectively, for violation of Section 3 of Central Bank Circular No. 265 in relation to Section 2530(f) of the Tariff and Customs Code.

From the records of the Bureau of Customs, we gather the following undisputed facts:

Petitioners Kaneo Sotoyama, Mikio Nawa, Fujico Nawa and Masayoshi Iwama, all Japanese nationals, arrived in the Philippines on December 29, 1975 as tourists or temporary visitors.

In the morning of January 11, 1976, they were scheduled to leave the country on flight CX900 of a Cathay Pacific Airways plane bound for Hongkong. When they were checking-in their luggage through the Customs at the departure area of the Manila International Airport, they were asked by customs examiner Josefina Tolentino (through Masayoshi Iwama who could understand and speak English) if they had dollars with them, and to which question, they answered in the negative. However, upon search and examinations, Mrs. Tolentino found foreign currencies cleverly hidden in their luggage, to wit: (a) in the suitcase of Kaneo Sotoyama - US$22,000.00; (b) in the suitcase of Masayoshi Iwama - US$6,000.00; and (c) in the suitcase of Fujico Nawa - US$2,000.00. Likewise, customs examiner Antonio Versoza, who was also assigned in the same checking area together with examiner Tolentino, found concealed in the pockets of a pair of trousers inside of Sotoyana's suitcase, US$40,000.00. Thereafter, at the MIA

Customs Police Headquarters, a physical body search conducted by customs police and special investigator Rodolfo Bautista resulted in the discovery of additional foreign currencies. In the hip pockets of Sotoyama's coat were found US$9,500.00, ¥11,500.00 and HK$35.00; and hidden in his pair of shoes were US$20,000.00. Similarly, in the hip pockets of Iwama's coat, US$2,515.00 and ¥95,000.00 were discovered; and in the coat of Mikeo Nawa, US$2,600.00 and ¥71,500.00 were found.

Admittedly, petitioners had no permit or authority from the Central Bank to bring out the foreign currencies found in their possession. Consequently, seizure proceeding (Seizure Proceeding No. MIA 1350-76) was instituted by the Bureau of Customs against the said foreign currencies (amounting all in all to $105,145.00, ¥178,000.00 and HK$35.00) for violation of Section 3 of Central Bank Circular No. 265, in relation to Section 2530(f) of the Tariff and Customs Code.

On March 16, 1976, after several hearings, the Collector of Customs of the Manila International Airport rendered a decision decreeing the forfeiture of the subject foreign currencies for violation of the aforesaid laws, which decision on appeal by petitioners, was affirmed by respondent

Commissioner of Customs on June 30, 1976. Two subsequent motions for reconsideration interposed by petitioners were of no avail. Hence, the present appeal.

The issue for judicial determination is whether or not the subject foreign currencies (or foreign exchange) found in the possession of subject Japanese tourists while about to depart from the country in January 1976, and who have no permit or authority from the Central Bank, are subject to forfeiture for violation of Section 3 of Central Bank Circular No. 265, in relation to Section 2530(f) of the Tariff and Customs Code, as amended by Presidential Decree No. 34, which provide as follows:

Central Bank Circular No. 265

x x 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 x x

Tariff and Customs Code

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

x x x - x x x - x x x

> (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;
>
> x x x - x x x - x x x

In a nutshell, the position of petitioners is that there was no violation of Central Bank Circular No. 265; hence, forfeiture under Section 2530(f) of the Tariff and Customs Code is without basis or merit.

In their memoranda, it is stressed that Central Bank Circular No. 265, which was issued by the Central Bank of the Philippines on November 20, 1968, was implemented and amplified by Central Bank Circular No. 266 on November 26, 1968, requiring temporary visitors to accomplish currency declarations. But this Circular (C.B. Circular No. 266) was completely repealed and revoked by Central Bank Circular No. 270 on April 16, 1969, thus doing away with the currency declaration requirement. Furthermore, Section 6 of Central Bank Circular No. 265, was amended by Central Bank Circular No. 273 on April 25, 1969; and on July 19, 1976, the Central Bank issued Circular No. 534, expressly providing that the provision prohibiting the taking or sending out of the Philippines of foreign exchange without specific authority from the Central Bank 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.

Thus, according to petitioners, Section 3 of Central Bank Circular No. 265 has, likewise, been repealed, and it is clear that at the time this incident occurred on January 11, 1976, tourists or non-resident temporary visitors may bring in and take out of the Philippines any amount of foreign exchange provided that the foreign currency or exchange they bring out does not exceed what they brought in. And inasmuch as the foreign currencies found in their possession while about to depart from the country were brought in by them from Japan, petitioners claim that there was no violation of Central Bank Circular No. 265, in relation to Section 2530(f) of the Tariff and Customs Code.

Petitioners would further capitalize on the fact that they have not been prosecuted criminally for violation of the Central Bank circulars, which allegedly proves and indicates that there is no factual or legal basis for the forfeiture of the confiscated foreign currencies.

Respondent, on the other hand, maintains in his memorandum that: (1) while Central Bank Circular No. 270 dated April 16, 1969 revoked Central Bank Circular No. 266 and thus abolished the currency declaration requirement for tourists and non-resident temporary visitors, this did not, in any way, revoke or repeal Central Bank Circular No. 265, Section 3 of which prohibits the taking out or exportation of foreign exchange without prior authorization from the Central Bank; (2) the non-filing of criminal charges against petitioners was on account of the fact that the government had insufficient evidence on how the subject foreign currencies were obtained locally and, further, that the penal provision of Central Bank Circular No. 265 (Sec. 6) does not apply to tourists or non-resident temporary visitors; and (3) the provisions of Central Bank Circular No. 534 dated July 19, 1976 are not applicable to the instant case (which happened on January 11, 1976) because said Circular has no retroactive application, and, even assuming that such circular has retroactive effect, the same cannot be availed of by petitioners because they have not sufficiently and satisfactorily shown that the subject foreign exchange were brought in by them.

The Court is of the persuasion that prior to the issuance and effectivity of Central Bank Circular No. 534, the provisions of Section 3 of

Central Bank Circular No. 265 had not been amended nor repealed by the subsequent circulars of the Central Bank. So, on January 11, 1976, when this case arose, said Section 3 of Central Bank Circular No. 265 was still in force and in effect. A perusal and analysis of the pertinent provisions of the Central Bank circulars involved clearly indicate and demonstrate the basis for this deduction.

<u>Central Bank Circular No. 265</u>
<u>dated November 20, 1968</u>

x x x - x x x - x x x

3. <u>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.</u>

x x x - x x x - x x x

6. Strict observance of the provisions of this Circular is enjoined; and <u>any resident person</u>, 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. (underlining supplied.)

<u>Central Bank Circular No. 266</u>
<u>dated November 26, 1968</u>

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.

x x x - x x x - x x x

(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.

<u>Central Bank Circular No. 270
dated April 16, 1969</u>

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

Central Bank Circular No. 273
dated April 25, 1969

Pursuant to the provisions of Republic Act No. 265 and by unanimous vote of the Monetary Board, and with the approval of the President of the Philippines and in accordance with executive and international agreements to which the Republic of the Philippines is a party, the following regulations are hereby promulgated:

x x x - x x x - x x x

SEC. 2. Section 6 of Central Bank Circular No. 265 dated November 20, 1968, is hereby amended to read as follows:

> "6. Strict observance of the provisions of this Circular is enjoined; and any 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." (emphasis supplied.)

Central Bank Circular No. 534
dated July 19, 1976

x x x - x x x - x x x

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 the 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.
>
> x x x - x x x - x x x
>
> Section 6. All provisions of existing Central Bank regulations which are inconsistent herewith are hereby revoked and/or modified accordingly.
>
> x x x - x x x - x x x

As will be noted, Section 3 of Central Bank Circular No. 265 does not make any qualification in prohibiting the taking out or exportation of any foreign currency or foreign exchange without authorization from the Central Bank. It states in general terms and without qualification: "no person", and this plainly and clearly includes foreign tourists and non-resident temporary visitors. On the other hand, Section 6 thereof makes reference only to "any resident person, firm or corporation." Nothing there is said of tourists and non-resident temporary visitors. This can only mean to refer, insofar as the applicability of the penal sanctions or criminal liability is concerned, to resident persons. Tourists and non-resident temporary visitors are not resident persons. The non-imposition of the penal sanctions under Section 34 of the Central Bank Act against tourists and non-resident temporary visitors for not observing the provisions of the Circular as required by Section 6 thereof does not therefore affect the prohibition against such tourists and non-resident temporary visitors from taking out or exporting from the Philippines foreign currency or any other foreign exchange except as authorized by the Central Bank under Section 3 of Circular No. 265.

As the opening paragraph expressly states, Central Bank Circular No. 266 is merely an implementing circular of Central Bank Circular No. 265, promulgating the rules and regulations for the enforcement thereof. The Currency Declaration requirement provided therein is intended to make more effective Circular No. 265 and said requirement is not actually in conflict or inconsistent with the provisions of the latter. The provisions of Central Bank Circular No. 266 neither express nor imply an amendment or a repeal of the provisions of Section 3 of Central Bank Circular No. 265. Thus, the revocation thereof by Central Bank Circular No. 270, thereby abolishing the currency declaration requirement, did not, at all, effect a repeal or revocation of Circular No. 265, particularly Section 3 thereof.

The ruling of this Court in the case of Leon

Zelman vs. Rolando G. Geotina, C.T.A. Case No. 2394, January 1, 1976, which involved forfeiture of foreign exchange for violation of Section 3 of Central Bank Circular No. 265 and Section 1(c) of Central Bank Circular No. 266, in relation to Section 2530(f) of the Tariff and Customs Code, plainly indicates that, apart from Central Bank Circular No. 266 and despite its revocation by Central Bank Circular No. 270, Section 3 of Central Bank Circular No. 265 has not been affected and, therefore, is still applicable at the time pertinent to this case. Said this Court in that case:

> At any rate the bills and foreign exchange in question are subject to forfeiture under Section (three) 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. 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. (Underlining supplied.)

Similarly, the issuance of Central Bank Circular No. 273 on April 25, 1969, amending the penal provisions under Section 6 of Central Bank Circular No. 265, did not affect the applicability of Section 3 thereof. Said amendment which, in fact, made the penal sanctions now applicable to any person in general, instead of limiting the same to any resident person, firm or corporation prior to the amendment, the more clearly demonstrates the intention and policy of the Central Bank to maintain and revitalize the enforceability of Section 3 of Central Bank Circular No. 265, and to subject to criminal liability violations thereof even as against tourists and non-resident temporary visitors.

Indeed, it may be conceded that after the issuance of Central Bank Circular No. 534 on July 19, 1976, a partial amendment to Section 3 of Central Bank Circular No. 265 may have been effected. For the while, Section 3 of Central Bank Circular No. 265 expressly, and without any qualification, prohibits any person from exporting or taking out of the country any foreign exchange unless authorized by the Central Bank. Section 3 of Central Bank Circular No. 534 which, in its first portion, in effect, reiterated the same prohibition against the taking out of foreign exchange as provided in

Section 3 of Central Bank Circular No. 265, expressly provides in its second portion or paragraph 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 in by them." In other words, under Section 3 of Central Bank Circular No. 534, tourists and non-resident temporary visitors who are bringing or sending out of the Philippines their own foreign exchange brought in by them are not required to secure a specific authority from the Central Bank. However, as correctly observed by respondent, Central Bank Circular No. 534 does not have a retroactive provision and it can not, therefore, be given retroactive effect. It is well settled that statutes have no retroactive effect unless otherwise provided therein. (Espiritu vs. Cipriano, No. L-32743, February 15, 1974, 55 SCRA 533.)

Consequently, since the law applicable to this case is Section 3 of Central Bank Circular No. 265, there was clearly a violation thereof when petitioners attempted to export out of the country the subject foreign exchange without an authority from the Central Bank. The said foreign exchange are

Firstly, as shown by the evidence presented by the Central Bank lawyers who collaborated with the Customs lawyers during the seizure proceedings, the foreign exchange laws of Japan restrict and limit the amount of foreign exchange and currency that Japanese residents traveling abroad may bring out of Japan. Residents of Japan may purchase foreign currencies for expenses in connection with travel abroad up to US$1,500.00 a trip, subject to validation by a foreign exchange bank; and applications in excess of US$1,500.00 a person a trip requires the approval of the Bank of Japan. Both residents and non-residents of Japan may take out freely up to 30,000.00 Japanese yen. And said residents traveling abroad <u>are required to have their passports marked for the amount of foreign exchange being purchased</u>. (See 56th Annual Report on Exchange Restrictions, International Monetary Fund, Washington, 1975, pp. 276-280 [Exhs. "Q" to "Q-4", pp. 335-338, Folder 2, Customs rec.]) In this case, it has been established, and uncontroverted, that the amounts of foreign exchange indicated in the passports of petitioners when they arrived in the Philippines on December 29, 1975 are as follows:

Kaneo Sotoyama - Passport ME No. 2837591 -- <u>$1,000.00</u> (Exh. "6", p. 304, Folder 3, Customs rec.)

therefore subject to forfeiture under Section 2530(f) of the Tariff and Customs Code. Petitioners' defense that they are Japanese tourists or non-resident temporary visitors taking out their own foreign exchange brought in by them cannot suffice to defeat the express and unqualified provisions of Section 3 of Central Bank Circular No. 265 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", because, admittedly, they had no authority from the Central Bank to bring out of the Philippines the said foreign currencies. And, certainly, to petitioners may well apply the ruling of this Court in the case of Leon Zelman vs. Rolando G. Geotina, supra, for which they are similarly situated.

At any rate, even assuming arguendo that, at the time this incident occurred, the policy of the Central Bank to allow tourists or non-resident temporary visitors to bring out of the country the foreign exchange brought in by them already existed, the Court is not inclined to believe that the foreign exchange in question, involving as they are substantial amounts of United States dollars and Japanese yen, were brought in by petitioners.

Mikio Nawa - Passport ME No. 1076831 --
$1,000.00 (Exh. "8", p. 302,
Folder 3, Customs rec.)

Fujiko Nawa - Passport ME No. 1076832 --
$500.00 (Exh. "5", p. 305,
Folder 3, Customs rec.)

Masayoshi Iwama - Passport ME No. 1614644 --
$900.00 (Exh. "7", p. 303, Folder 3,
Customs rec.)

Evidently, these facts militate against the theory of petitioners that the large and excessive amounts of foreign exchange they were taking out of the Philippines on January 11, 1976 were the foreign currencies or foreign exchange brought in by them.

Secondly, if the foreign exchange in question were brought in by petitioners and that petitioners were then allowed under Central Bank laws to bring them out even without authority from the Central Bank, it is very intriguing, indeed, and difficult to understand why such foreign exchange had been clandestinely and meticulously concealed in their persons and suitcases so much so that at the departure area of the Manila International Airport, petitioners had to deny to the customs examiners before actual examination that they had dollars with them. What were they afraid of? After all, as again shown in the passports of Masayoshi Iwama (the Japanese who could understand and speak English) and Mikio Nawa (see Exhs. "T" to "T-7", inclusive, pp. 318-325, Folder 2, Customs rec.; and

Exh. "U" to "U-6", inclusive, pp. 314-317, Folder 2, Customs rec.), they had been to the Philippines several times prior to their arrival on December 29, 1975, and they knew or ought to know more or less the foreign exchange laws and regulations of the Central Bank, especially concerning tourists and non-resident temporary visitors.

Thirdly, while the records of the Bureau of Customs relating to this case do not show, by direct evidence, the manner as to how the foreign exchange in question were obtained locally, as the informers who knew and gave the information regarding this matter were never made to testify, but only the persons to whom said information was given, namely: Atty. Severino Dayao and Sixto Bernabe who executed a sworn affidavit to this effect (Exh. "S", p. 327, Customs rec., Folder 2), the information as to the identities of the Japanese concerned, particularly that of Masayoshi Iwama and of Kaneo Sotoyama, and the substantial amount of United States dollars that they were carrying, proved to be correct and was duly established by evidence. These circumstances, when summed up with the facts and and circumstances already shown above, could well contribute to the proposition, if not conclusion, that the foreign currencies in question did not come from without but from within the Philippines.

Fourthly, petitioners themselves never appeared to explain, nor were they presented by their counsel during the seizure proceedings in the Bureau of Customs or the hearing before this Court, to testify for their defense, especially as to the source and the justification of the large sums of foreign exchange being taken out by them. Much stress was placed by them on the testimony of a certain Major Amistoso of the Philippine Air Force that the foreign exchange in question were bought by petitioners from the black market in Japan. (see pp. 11-16 & 22, Folder 4, Customs rec.) However, Amistoso's testimony on this point did not come from his own personal knowledge but only as allegedly told to him by petitioners themselves. And in his previous direct examination on February 4, 1976, Major Amistoso, who testified that he conducted an interview with petitioners in written questions and answers in the afternoon of January 11, 1976 (see pp. 93-99, Folder 4, Customs rec.), when queried by petitioners' counsel whether he had asked the question, and received an answer from them, where the foreign currency came from, could not even recall having propounded such a question. (See pages 83-93, Folder 4, Customs rec.). Apart from these, it was insisted several times by counsel for the Bureau of Customs that the best evidence on the matter involved in the interview of petitioners would be the written statements of petitioners themselves as taken down by said witness, but the same were never presented or offered in evidence. (see pp. 83-93, Id.)

Verily, the hearsay nature of Amistoso's testimony as to the source of the subject foreign exchange, coupled by the fact that the written statements of petitioners allegedly taken down by him during his interview were not produced and presented, and the ambiguity and uncertainty exhibited by said witness in his previous testimony on direct examination, cast not only a cloud of doubt on the truth and credibility of his sworn statements but also impaired the probative value or weight of said witness' testimony. And to the mind of the Court, the black market theory was apparently concocted and conceived to serve as a disguise or cover-up to the reality that petitioners could not have brought into the Philippines these large sums of foreign exchange because the foreign exchange laws of Japan restrict and limit the amount of foreign currency which Japanese nationals and residents could bring out of Japan, which is ordinarily $1,500.00. In fact, as marked and indicated on their passports, none of petitioners had been authorized to bring out of Japan more than US$1,000.00 each.

Finally, petitioners' defense that they were not prosecuted criminally for violation of the Central Bank Circular is not material and relevant to this proceeding. As stated by respondent on page 4 of his memorandum, the non-filing of criminal charges against petitioners was due to the fact that the government had insufficient evidence on how the subject foreign currencies were obtained locally. Further, Section 6 of Central Bank Circular No. 265 (penal sanction) applies, according to respondent, only to resident persons and not to tourists or non-resident temporary visitors. At any rate, a forfeiture proceeding, as sanctioned under our Customs Laws, is <u>in rem</u> or one directed against the <u>res</u> and the article or property, in such proceeding, is considered the offender. (Lopez vs. Commissioner of Customs, CTA Case No. 1933, December 17, 1971, citing Trias, et al, vs. Acting Commissioner of Customs, CTA Case No. 1413, March 18, 1964; Ampere Trading vs. Commissioner of Customs, CTA Case No. 1959, March 27, 1972.) Said proceeding is independent of and is wholly not affected by any criminal proceeding _in personam_.

> Petitioner has lost sight of the fact that his act of "importing contrary to law" entails two penalties--one penalty for violation of Central Bank Circular No. 44 as prescribed by Section 34 of Republic Act No. 265 directed principally against the person of the offender and which may be had in a criminal prosecution involving an action _in personam_, and the other penalty of forfeiture imposed by Section 1363(f) of the Revised Administrative Code directed primarily against the goods rather than the offender and which may be had in action _in rem_ (see Origet vs. U.S., 125 US 240, 246-247; 31 L. Ed. 743, 746-747). The two penalties being distinct and different, the forfeiture may be enforced against the goods by proceedings _in rem_ independently of the criminal prosecution against the offender (Origet vs. U.S., _supra_). The imposition of one does not preclude the imposition of the other, for it is a well-established rule that forfeiture proceedings stand independent of and are wholly unaffected by any criminal proceeding _in personam_ (23 Am. Jur. 618). For while punishment for the crime and forfeiture of the goods might be coincident, they are not necessarily so (U.S. vs. 25 Pkgs. of Panama Hats, 231 U.S. 358, 362, 58 L. Ed. 267, 269). Thus, while it is true that the Bureau of Customs is not authorized to impose the penalty prescribed by section 34 of Republic Act No. 265 for violation of Central Bank Circular No. 44, there is nothing to preclude the Bureau of Customs from imposing the penalty of forfeiture of the goods or merchandise the importation of which has been effected or attempted contrary to law in accordance with section 1363(f) of the Revised Administrative Code. (See Pascual vs. Commissioner of Customs, 114 Phil. 953, 958-959.)

A forfeiture proceeding is, furthermore, civil in nature (Manuel Bastida vs. Acting Commissioner of Customs and the Court of Tax Appeals, No. L-

24011, October 24, 1970, 35 SCRA 448) and, as such, proof beyond reasonable doubt to establish conviction or a finding of guilt is not required as in a criminal case. Mere preponderance of evidence showing probable cause for the violation is sufficient in such proceeding.

> In seizure cases, one important aspect of the proceedings in the consideration of the issues involved, is the duty on the part of the government of presenting evidence which indicates probable cause for instituting such proceedings. (See U.S. vs. One Bag of Paradise and Ghoura Feathers, N.Y., 256 F. 301, 167 C.C.A. 473). And the term "probable cause", which has been held synonymous with "reasonable cause", means less than evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion (Locke vs. United States, 7 Crank [U.S.] 339). x x x. (Sanchez vs. Comm. of Customs, BTA Case No. 185, Nov. 2, 1954; affirmed, G.R. No. L-8556, Sept. 30, 1957, 102 Phil. 37.)

As a matter of fact, there is another settled principle that acquittal in a criminal case is not a bar to a forfeiture proceeding against the article. (C.R. Sharp & Co., Inc. vs. Commissioner of Customs, C.T.A. Case No. 1309, August 17, 1964; affirmed in G.R. No. L-23803, Feb. 26, 1968, 22 SCRA 760.)

In finding the subject foreign exchange forfeitable, it might be stated in passing that while the policy of the government is to encourage tourism in order to enhance the flow of foreign exchange into the country, the taking or sending out of foreign currencies brought in by tourists themselves should as much as possible be not without restriction or regulation. Expectedly, tourists have to spend during their stay here the foreign exchange, or part of it, brought in by them and, logically, when they depart from the country, the foreign currency taken out by them should be less than what was brought in. The taking out of more than the amount of foreign exchange brought in by a tourist cannot but therefore help create the suspicion that he is bringing out the foreign exchange reserves of the country.

Accordingly, the decision of respondent Commissioner of Customs dated June 30, 1976 declaring the forfeiture in favor of the Government of the subject foreign currencies consisting of US $105,145.00; ¥178,000.00 and HK$35.00 seized from petitioners Kaneo Sotoyama, Mikio Nawa, Fujico Nawa and Masayoshi Iwama, and covered by Seizure Identification No. MIA 1350-76 of the Bureau of Customs, for violation of Section 3 of Central Bank Circular No. 265 in relation to Section 2530(f) of the Tariff and Customs Code should be sustained.

WHEREFORE, the judgment under review is hereby affirmed at petitioners' costs.

SO ORDERED.

Quezon City, April 23, 1979.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge