

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

ZHONGSHU HUANG and NGA
HEONG CHONG,
Petitioners,

C.T.A. E.B. NO. 451
(C.T.A. CASE NO. 7273)

Present:

- versus -

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

BUREAU OF CUSTOMS,
Respondent.

Promulgated:

MAR 12 2010

[Signature]
1:20 p.m.

X ----- X

DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on February 5, 2009 in accordance with Rule 43 of the Revised Rules of Court as provided in Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,¹ seeking a review of the Decision and

¹ Appeal to the Court *en banc* is provided under Section 18 of Republic Act (RA) No. 1125, as amended by Republic Act (RA) No. 9282, and Section 2(a), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

Resolution by the Special First Division of this Court (Court in Division)² which dismissed CTA Case No. 7273, entitled “Zhongshu Hua and Nga Heong Chong, petitioners, vs. Bureau of Customs, respondent”, to wit:

- 1) Decision promulgated on September 22, 2008³ dismissing the case for lack of merit on the ground that in seizure cases, it is not necessary that there was intent to circumvent our statutes; hence, mere attempt to bring out of the country Philippine currency without permit or authorization from the Bangko Sentral ng Pilipinas (BSP) subjects the same to forfeiture; and
- 2) Resolution promulgated on December 15, 2008⁴ denying herein petitioners’ Motion for Reconsideration of the assailed Decision also for lack of merit.

THE FACTS

The factual antecedents of the case are as follows:

On June 26, 2003, petitioners Zhongshu Hua and Nga Heong Chong 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.

A case was thereafter filed by respondent against petitioner Zhong Zhu Huang before the Regional Trial Court (RTC) 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 petitioner Zhong Zhu Huang and ordered the return of

² Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

³ Ponencia of Associate Justice Lovell R. Bautista, Special First Division, concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, Docket, pp. 55-65.

⁴ Docket, pp. 66-69.

his travel documents and other personal effects including the subject amount of P700,000.00. The trial court further ordered that "Zhong Zhu Huang 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 amount of P700,000.00 for violation of Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP), as amended, in relation to the BSP Rules and Regulations.

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

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 currency in the amount of P700,000.00. Petitioners moved for a reconsideration of said ruling but this was denied through a 4th Indorsement dated March 9, 2005.

Petitioners then filed a Notice of Appeal dated March 15, 2005 with the respondent Bureau of Customs (BOC), and later filed their Memorandum of

Appeal 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 petitioners' appeal for lack of merit, and affirmed the Decision of the Commissioner of Customs.

After the DOF's denial of petitioners' appeal on June 23, 2005, a Petition for Review was filed before the Court in Division docketed as CTA Case No. 7273 entitled "Zhongshu Hua Nga Heong Chong, claimants-petitioners, v. Bureau of Customs, respondent" praying for the reversal and setting aside of the Decisions of the Commissioner of Customs and Undersecretary of Finance.

On August 15, 2005, respondent filed an Answer in CTA Case No. 7273 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;
- 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."

On October 10, 2005, petitioners, through counsel, filed a Motion to Admit inadvertently missed exhibits and correctly re-typed Petition for Review, which the Court in Division granted via Resolution dated March 8, 2006.



Consequently, respondent filed an Answer (To Amended Petition) on April 26, 2006.

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 raised in the 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 satisfied; (2) it was a certain Arlene C. Lumaug, 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.

The Court in Division granted respondent's Motion and accordingly dismissed the Petition for Review in the Resolution dated July 20, 2006. Petitioners, through counsel, then filed a Motion for Reconsideration on September 1, 2006. However on January 8, 2007, the Court in Division granted petitioners' Motion for Reconsideration by reversing its earlier findings on the alleged procedural infirmities and on grounds of substantial compliance and equity and correspondingly set aside the July 20, 2006 Resolution, and the parties were directed to file their respective Pre-trial Brief.

Pre-trial proceedings commenced on February 23, 2007. Thereafter, the parties submitted their Revised Joint Stipulation of Facts and Issue on March 9, 2007, which was approved by the Court in Division in a Resolution dated March 13, 2007. After issues were joined, petitioners presented

documentary evidence 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 said case involves purely legal questions. The case was considered submitted for decision after petitioners and respondent filed their Memoranda on December 3, 2007 and November 20, 2007, respectively.

In the assailed Decision dated September 22, 2008⁵, the Court in Division ruled against petitioners and dismissed CTA Case No. 7273 considering that it was uncontroverted 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 and the provision of Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP) with the consequent penalty of forfeiture.⁶

The Court in Division likewise denied petitioners' Motion for Reconsideration of the aforesaid Decision for lack of merit in the assailed Resolution dated December 15, 2008.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated September 22, 2008 and the Resolution dated December 15, 2008, respectively, of the Court in Division be reversed, nullified, and set aside in the greater interest of equity and substantial justice.

In the Resolution dated February 18, 2009⁷, the Court *En Banc* required petitioners to: submit certified true copies/duplicate original copies of the subject assailed Decision and Resolution; submit a Special Power of

⁵ Supra.

⁶ Assailed Decision dated September 22, 2008, p. 6; Docket, p. 60.

⁷ Docket, pp. 50-52.

Attorney (SPA) authorizing Atty. Romulo B. Lumauig to act for and in behalf of both petitioners to sign the Verification/Certification in the instant Petition; and submit the appropriate Verification/Certification stating the correct *en banc* case number. Petitioners' filed their Compliance⁸ thereto on March 2, 2009.

On March 13, 2009, this Court issued a Resolution⁹ noting partial compliance only because petitioners still failed to submit the appropriate SPA and the Verification/Certification duly signed by the authorized representative. Thus, petitioners were again ordered to submit said documents.

On March 27, 2009, a Manifestation¹⁰ was filed by petitioners submitting the required documents. Thereafter, said Manifestation was noted; the attached SPAs and Verification/Certification were admitted, and consequently, the Court required respondent to file its Comment to the instant petition in the Resolution dated April 1, 2009.¹¹

Upon submission of respondent's Comment on May 18 2009,¹² this petition was given due course and both parties were ordered to submit their respective Memorandum as contained in a Resolution dated May 21, 2009.¹³ Petitioners filed their Memorandum on June 23, 2009,¹⁴ while respondent Bureau manifested that it is adopting its Comment previously filed as its Memorandum and this case was deemed submitted for decision in the Resolution dated August 4, 2009.¹⁵

⁸ Docket, pp. 53-77.

⁹ Docket, pp. 79-81.

¹⁰ Docket, pp. 82-86.

¹¹ Docket, pp. 88-90.

¹² Docket, pp. 96-114.

¹³ Docket, pp. 116-117.

¹⁴ Docket, pp. 118-138.

¹⁵ Docket, p. 216.

Accordingly, the Manifestation/Comment filed by petitioners on August 7, 2009 (alleging that adoption by respondent of its old and previous comment of 15 May 2009 does not comply with the En Banc requirement because said comment cannot substitute for the Memoranda called for submission) is deemed moot.

Hence, this decision.

THE ISSUES

The issues raised by petitioners in the instant petition are as follows:

“1. The Honorable Court of Tax Appeals (1st Division) committed GRAVE REVERSIBLE ERROR of fact and law by conveniently setting aside, the fact that, the Central Bank in its response letter dated 17 September 2004, to an earlier query of the Commissioner of Customs, clearly stated among others, that under Section 4, Chapter 1 of Circular No. 1389 of the Central Bank... **‘No provision is made relative to the forfeiture of the subject currency.’**”

2. The Honorable Court committed GRAVE REVERSIBLE ERROR of fact and law, in simply ignoring the official communication of a State Agency performing strategic fiscal and revenue raising activities for the Government, which relevancy is notably intertwined with the case at bar, as reflected in the letter of Carlos R. Bautista, Jr., Vice-President for corporate and Legal Services Department of the Philippine Amusement and Gaming Corporation (PAGCOR) dated 15 October 2008, to the undersigned Counsel of Petitioners, **re-echoing and explicitly quoting from the earlier Decision of the Regional Trial Court of Pasay dated 04 July 2003, in Criminal Case No. 03-1086 that ‘he (Zhongshu Huang has not violated any penal statute as to speak of’).**

3. The Honorable Court of Tax Appeals committed REVERSIBLE ERROR, when it stated, in the last paragraph of page 3 of 4 of its Resolution dated 15 December 2008, and the first paragraph of page 4 of 4 of said Resolution is quoted hereunder-

‘This Court is not bound to adopt the decision of the lower court of the finding of administrative agencies whose decisions are being reviewed. It

is a highly specialized court dedicated to the study and consideration of tax problems, including custom cases, and necessarily had developed expertise thereon. All that is required is that in rendering a decision, the Court must weigh the evidence presented and apply the applicable statutes. And this Court complied with the said requirement and responsibilities when it issued the assailed Decision.'

x x x

'Finally, Section 2530(f) of the TCCP, in relation to Central Bank Circular No. 1389 as amended by Circular No. 98 dated 11 December 1995, merely prescribes the forfeiture of any article the importation of which is effected or attempted contrary to law. It made no distinction whether the violator is importer, exporter or owner. Thus, regardless of who the owner is, the property is subject to forfeiture **when there is violation of Section 2530(f) of the TCCP.**'¹⁶

The aforesaid issues may be summed up into one issue, to wit:
WHETHER OR NOT THE COURT IN DIVISION COMMITTED REVERSIBLE
ERROR IN AFFIRMING THE RULING OF THE COMMISSIONER OF
CUSTOMS THAT THE SUBJECT AMOUNT OF P700,000.00 SHOULD BE
FORFEITED IN FAVOR OF THE GOVERNMENT.

Petitioners' arguments

Petitioners submit the following arguments :

(1) Section 2530(f) of the TCCP explicitly refers only to importation and exportation of which is effected or attempted contrary to law or to be used as instruments in the importation or exportation of the former, which is inapplicable in the present case considering that petitioners are neither

¹⁶ Issues (To be Resolved), Petition for Review, Docket, pp. 13-14.

importers nor exporters, and the Philippine currency in question came from a legitimate source;

(2) the alleged attempt of petitioners to export Philippine currency is wanting in any basis in fact and in law as their possession of said currency was due to their having participated/played in the gaming activities of the Philippine Amusement and Gaming Corporation (PAGCOR) being enrolled in the "Enhanced Players Rebate Program";

(3) the contention of mere absence of permit or clearance from the BSP to depart for Hongkong carrying the amount of P700,000.00 is an operative factor for the applicability of Section 2530(f) of the TCCP, and that such application carries with it the penalty of forfeiture, lack legal basis. Petitioners had no knowledge of Central Bank Circular (CBC) No. 1389, as amended, particularly Section 4 thereof, which 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 operation in the Philippines in an amount exceeding P10,000.00, unless duly authorized by the BSP;

(4) the acquittal of petitioner Zhong Zhu Huang in Criminal Case No. 03-1086 before Branch 111, Regional Trial Court (RTC) of Pasay City, clearly shows that he did not violate any law, including the penal provision of CBC No. 1389, as amended. As a matter of fact, the RTC directed the PAGCOR to extend assistance in obtaining clearance from the BSP for the release of the entire amount of P700,000.00; hence, it did not give any merit on the forfeiture of the seized amount by the Commissioner of Customs;

(5) the case of Commissioner of Customs vs. Caridad Capistrano, G.R. No. 11075, June 30, 1960, cited by the Court in Division, which quoted Section 1363(f) of the Revised Administrative Code, is inapplicable in the instant case considering that the term "merchandise" was already absent in the New Administrative Code of 1987, and Section 2530(f) of the TCCP, the applicable law in the present case;

(6) in case of violation of Section 4, Chapter 1, Part 1 of CBC No. 1389, the Court at its discretion is only authorized to impose a penalty of fine not less than P50,000.00 nor more than P200,000.00 or by imprisonment of not less than 2 years nor more than 10 years, or both; but no provision is made relative to the forfeiture of petitioners' Philippine Currencies in excess of P10,000.00;

(7) the RTC's Decision in acquitting petitioner Zhongshu Huang of the crime charged was an action *in personam*, and when it ordered the return of the seized articles, it was already an action *in rem* as it dealt with the articles seized and not the person of the accused;

(8) Section 2530(f) of the TCCP specifically refers only to articles which are by their very nature and character absolutely not importable or exportable without violation of any law. Money is a regulated item, which is not classified as prohibited importation. What the law prohibits are the acts which are addressed to the importer or exporter but not the money itself, that is why there is a corresponding sanction against the person who imports or exports the fund; and

(9) the assailed Decision of the Court in Division would deter foreigners from coming into our country and play in our casinos; thus, emasculating, if not rendering inutile, the program of the Department of Tourism and PAGCOR to attract foreign players.

Respondent's counter-arguments

In respondent's Comment, it counter-argues that:

(1) petitioners miserably failed to comply with the procedural requirements warranting the immediate dismissal of the instant petition as it violates pertinent provisions of the Rules; and

(2) respondent correctly ordered the seizure and forfeiture of the subject P700,000.00 considering that it is undisputed that petitioners attempted to export Philippine Currency in excess of the allowable amount allowed without prior BSP authority which is a clear violation of Section 2530(f) of the TCCP, as said provision does not require malice or fraud for its commission. Mere attempt to export without the appropriate clearance is the violation itself.

THE COURT EN BANC'S RULING

A careful and closer look at the arguments set forth by the petitioners in the instant petition for review readily reveals that the grounds relied upon, are mere restatements of petitioners' previous arguments raised before the Court *a quo*. It is Our finding that these matters have already been exhaustively discussed and passed upon by the Court in Division in its assailed Decision and Resolution dated September 22, 2008 and December



15, 2008, respectively. Nevertheless, We deem it necessary to discuss certain matters.

In the case at bench, the subject matter in controversy is the money of petitioners amounting to P700,000.00 which was attempted to be carried out of the country without the required permit and/or clearance as mandated by Bangko Sentral ng Pilipinas (BSP) Rules and Regulations, particularly Section 4 of Central Bank Circular (CBC) No. 1389, as amended by Circular No. 98. This fact is admitted by petitioners.

Respondent maintains that petitioners violated Section 4 of Central Bank Circular (CBC) No. 1389, as amended by Circular No. 98, which provides:

“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 Bangko Sentral ng Pilipinas.”

This is a clear prohibition from the Bangko Sentral ng Pilipinas to take out more than P10,000.00 of the Philippine jurisdiction without its authority and the same carries legal sanctions for a violation thereof.

Corollary thereto, respondent further contends that petitioners' money is subject to forfeiture under Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP), which provides:

“SEC. 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 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 the exportation of the former;" (*Emphasis supplied*)

The focal point of the controversy hinges on the proper interpretation of and the applicability in the present case of Section 2530(f) of the TCCP.

A careful reading of the afore-quoted provision shows that there are two kinds of properties under subsection (f) that may be subject to forfeiture, to wit:

- 1) Any article the importation or exportation of which is effected or attempted contrary to law; or
- 2) 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 the exportation of the former.

The Court in Division ruled that petitioners' money is covered by the first kind of property under subsection (f) of Section 2530. Petitioners, in their attempt to divert themselves from the application of the law, averred that money is a regulated item and not a prohibited article; hence, it cannot be classified as prohibited importation/exportation.

At this point, We stress that the second kind of property under subsection (f) which is also subject to forfeiture, are those which by their nature alone are prohibited, such as marijuana or opium. As money is a regulated item, it may be subject of forfeiture if its importation/exportation is

contrary to law. Apparently, as opposed to petitioners' claim, this case falls under the first kind of article which may be subject of forfeiture, to wit: "*any article the importation or exportation of which is effected or attempted contrary to law*".

"Any Article The Importation Or Exportation Of Which Is Effected Or Attempted Contrary To Law"

It is imperative to define the related terms to clarify significant issues: an "article" refers to a particular object or substance, a material thing or a class of things; material or tangible object. On the other hand, the term "exportation" is defined as the act of sending or carrying goods and merchandise from one country to another. While the phrase "contrary to law" means illegal; in violation of statute or legal regulations at a given time.¹⁷

a. Article

Applying the foregoing to the instant case, the term "*article*" covers any material thing or tangible object which necessarily includes money or Philippine currency. Hence, money may be an *article* subject of forfeiture under Section 2530(f) of the TCCP.

b. Exportation

The term "*exportation*" as used in Section 2530 is not limited to business or trade, but rather, it is used in a general sense which connotes any act of bringing any article out of the country. There is no qualification used in the law which would limit the term to business/trade only. Well settled

¹⁷ Black's Law Dictionary, Fifth Edition, 1979.

is the rule in statutory construction that “where the law does not distinguish, neither do we distinguish”.

Admittedly, petitioners were apprehended with the amount of P700,000.00 in the airport before departure bound to Hongkong, which is a clear attempt to export the money. Therefore, when petitioners attempted to bring the amount of P700,000.00 to Hongkong, it is already deemed an exportation.

c. Contrary to law

Since there is a clear prohibition from the BSP under Section 4 of CBC No. 1389, as amended by Circular No. 98, the act of exportation of the amount of P700,000.00 is evidently contrary to law.

We cannot concur with petitioners’ argument that bringing of the excess of their money as they go home is also legal as their money were legitimately brought into the Philippines pursuant to the promotional program of PAGCOR. It is worthy of emphasis that petitioners’ money were subjected to forfeiture for violation of the law in attempting to bring the money ***outside*** the Philippines. Logically, *bringing into* is different from *bringing out*, they are two distinct acts.

Petitioners may have brought in their money legitimately as they were enrolled in PAGCOR’s “Enhanced Players Rebate Program”, but the act of bringing out of Philippine notes in excess of the allowed P10,000.00 without BSP clearance is clearly violative of our laws. Even if petitioners traveled into the Philippines under a legitimate program, the painful truth is, trying to bring out Philippine currency without the required permit is punishable under our

laws. Petitioners, being regular gamblers and travelers, must be aware of the economic value of P700,000.00, and that even tourists are restricted to bring a certain amount of currency to and from a certain country without required permit. As admitted by petitioners, they brought in their money in another currency which was duly registered through the PAGCOR and Department of Tourism and was subsequently converted in Philippine currency for their games.

Again, the law neither prohibits the possession of money or Philippine currency for that matter nor even forbids the exportation of the same, if the exporter has the required clearance/permit from the BSP. What the law provides as illegal is the bringing out of Philippine currency in excess of P10,000.00 without the required clearance/permit.

It may be true, as certified by PAGCOR, that the amount of P700,000.00 was part of petitioners' capital for his gambling; thus, possession of such money is not illegal *per se*. However, the law specifically provides that such amount of money must have been cleared with the BSP before it may be brought out of the Philippines. Worthy of emphasis is that the BSP promulgated rules and regulations regarding the importation and exportation of Philippine currency for the primary purpose of protecting the economic value of Philippine peso.

As to petitioners' contention that they were not informed by PAGCOR authorities of the prohibitory circular, We find the same devoid of merit. As contained in the Decision of the District Collector dated January 23, 2004, which was not controverted by petitioners:



“xxx Moreover, Ms. Lumauig, she being a Customer Relations Officer of PAGCOR and a Chinese language interpreter as well, **warned or apprised herein Claimants beforehand to change their pesos into dollars if they intend to leave the country** as there is a Central Bank limiting to a maximum of P10,000.00 which an individual can carry in his/her possession when leaving or entering the country. Xxx”¹⁸ (*Emphasis supplied*)

Moreover, it is a fundamental principle that ignorance of the law excuses no one from compliance therewith; therefore, petitioners cannot claim that they are not aware of the prohibitory circular especially that it is not their first time in the country, as evidence shows that they are regular players of PAGCOR.

Finally, the dismissal of petitioner’s criminal case does not necessarily follow that the seizure/forfeiture case must be similarly dismissed. As aptly ruled by the Court in Division in its assailed Decision:

“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, 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 “willfully and unlawfully manifested by overt acts their desire to export 144 pieces of gold bars (only 138 were deposited with and duly receipted

¹⁸ Exhibit “C”, NAIA District Collector Decision dated January 23, 2004, CTA Case No. 7273.

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.'** (*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 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. Lumaig.'

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. 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."¹⁹ (*Emphasis and underscoring supplied*)

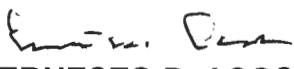
For all the foregoing, We find no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated September 22, 2008 and December 15, 2008, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit.

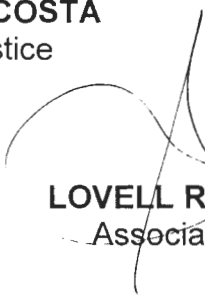
SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

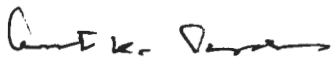

CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

¹⁹ Assailed Decision dated September 22, 2008, pp. 9-10; Docket, pp. 63-64.

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.


ERNESTO D. ACOSTA
Presiding Justice