REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

US$531,338 and HK$870
ANG TOR CHEO
(PETER UY TONG)
Petitioner,

- versus - C.T.A. CASE NO. 3897

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

7/1/87

D E C I S I O N

Petition for review of the decision dated November 14, 1984 of respondent Commissioner of Customs which affirmed the forfeiture in favor of the Government of the foreign currencies consisting of US$531,338.00 and HK$870.00 seized from petitioner Peter Uy Tong under Customs Case No. 84-31 (MIA S.I. No. 572-83) for violation of Central Bank Circular No. 365 in relation to Section 2530 of the Tariff and Customs Code.

This case was submitted for decision on the basis of the pleadings and the records. As borne out by the pleadings and the records, and narrated by the Acting Collector of Customs, Manila International Airport, in his decision dated May 28, 1986, the facts are: (pp. 162-165, CTA record.)

"This is a seizure proceedings against the above-captioned amounts for alleged violation of Central Bank Circular No. 265, as amended, in relation to Section 2530(f) of the revised Tariff and Customs Code.

The case stemmed from the interception of the above currencies from the luggage of departing passenger, Peter Uy Tong, on May 28, 1983 ex PAL flight PR 310 bound for Hongkong.

At the hearing of the case, Apollo Paz testified, among other things, that on or about 5:15 p.m., Saturday, May 28, 1983 while in the performance of his duty as Customs examiner on PAL flight PR 106 bound for the United States, he noticed on the X-ray monitor rectangular shapes appearing on the luggage that passed thru the said X-ray; that he immediately pin-pointed the baggage for verification, and thereupon requested the carrier-owner who turned out to be Peter Uy Tong to open the same; that upon opening the luggage, he saw a coat hanger and inside such coat hanger were the above-stated currencies now subject of this proceedings; that he asked Mr. Peter Uy Tong if he has any Central Bank permit and Mr. Tong answered in the negative; that upon further inquiry, the subject passenger (Peter Uy Tong) told him that he was going to the United States of America together with his wife; and, that Apollo Paz called the attention of Mr. Ignacio Nuñoz, Central Bank people and the Officer-in-Charge of the Departure Operation Division, Capt. Vicente Josue, Jr., who instructed the bringing of the passenger and the luggage containing the currency to the Office of the Collector of Customs, this Customhouse, for proper inventory and thereupon the corresponding seizure receipt was issued.

Messrs. Jose Ruivivar of the Central Bank and Ignacio Nuñez corroborated the testimony of Apollo Paz on material points. More importantly, however, they (Ruivivar and Nuñez) testified to the fact that Peter Uy Tong told them at the time of apprehension that he was going to use the money to buy a condominium unit in Hongkong because of his export-import business.

Upon the other hand, the defense claimed that while the suitcases containing the money were in the possession of departing passenger Mr. Peter Uy Tong the fact is that the said foreign currencies were owned by a group of non-resident alien-businessmen and were brought into the Philippines by a representative who is a Singaporean national, named Ong Tor Cheo, which money for all intents and purposes were allocated for a business venture in this country.

To substantiate the above claim, Ong Tor Cheo testified that he is engaged in building and construction materials; that he has been travelling to the Philippines for business purposes since 1981; that he is the sole owner of the HK $870 while the US $531,338.00 is owned by eight (8) other friends, all of whom are foreigners and non-residents; that he and his eight friends having shared the same business objectives, contributed the said amount of US$531,338.00 purposely to finance their projected condominium business in the Philippines together with William Gabolden, a Filipino stock and real estate broker; that Ong Tor Cheo together with three (3) of the eight (8) contributors namely, Voon Yang Pen (Exh. 3 and 3-A), GOB KHUON KEK (Exh. 4 and 4-A) and WONG SIE SING (Exh. 5 and 5-A), arrived in the Philippines having with them the afore-stated amount; that they were billeted at the Midtown Ramada Hotel (Exhs. 7, 7-A, 7-B and 7-C) where they discussed the matter and laid out plans for the realization of their common goals and objectives, that during those times, Hongkong prices were very much lower and as such, they decided to instead invest their money in Hongkong to have a better return on investment; that Ong Tor Cheo left the country on May 11, 1983 and being the one in charge in the safekeeping of the money, he decided to leave and entrust the suitcases containing the money at the residence of a Filipino friend, Peter Uy Tong, without however, disclosing to the latter their actual contents; that contrary to his original plan to come back to the Philippines Ong Tor Cheo failed to arrive as scheduled; that by such failure, Ong Tor Cheo called up Peter Uy Tong via long distance and requested the latter, whom he knew before hand would be leaving for Hongkong, to bring with him the aforementioned left behind two suitcases; that on May 29, 1983 he heard from a friend that Peter Uy Tong would not be able to go to Hongkong on May 28, 1983 as he (Peter Uy Tong) was apprehended at the Manila International Airport, having in his possession the US$531,338.00; that he thereupon contacted Peter Uy Tong and apologized to him and requested him to engage the services of a lawyer; and, that he (Ong) came to the Philippines to claim the money.

Likewise presented during the formal hearing, in support of the claim were the persons of William Gabaldon, Peter Uy Tong and Ismael Estella, all of whom corroborated Ong Tor Cheo's testimony on material points, whereupon, the case was submitted for resolution."

While petitioner in his appeal to this Court assigns the following errors which he considers issues: (p. 80, CTA record.)

1. The respondent Commissioner of Customs erred as a matter of law in adopting the findings and conclusions of the Collector of Customs that the subject foreign currencies are owned by Peter Uy Tong which decision is grounded on speculation and conjecture and contrary to the evidence adduced.

2. The Commissioner of Customs erred in not sustaining that the subject currencies are owned by a group of foreign businessmen headed by petitioner Ong Tor Cheo into the Philippines for business undertaking.

3. The Commissioner of Customs erred in not concluding that Central

> Bank Circular No. 265, as amended, was never violated nor a Central Bank permit is necessary under the given circumstances, and thus, confiscation order of the subject currencies is without legal basis.

the basic issue is whether the attempted exportation of the subject currencies was in violation of Central Bank Circular No. 265 in relation to Section 2530(f) of the Tariff and Customs Code.

Central Bank Circular No. 265 dated November 20, 1968 provides 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."

Petitioner anchors his defense however on the proposition that Central Bank Circular No. 265 has already been amended by Central Bank Circular No. 534 dated July 19, 1976, Section 3 of which states:

> "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."

Petitioner asserts therefore that he falls within the purview of the term "tourists and non-resident temporary visitors who are taking or sending out of the Philippines their own foreign exchange brought by them."

Respondent Commissioner of Customs considers petitioner's reliance on the aforequoted provision misplaced since there is nothing in the records which shows that the subject currencies were previously imported into the country by tourists or non-resident temporary visitors, and we agree. The bare, self-serving statement of petitioner Ong Tor Cheo, who claims to be the owner of the subject foreign currencies, that the currencies were previously imported into the country by tourists and non-resident temporary visitors, unaccompanied by adequate and competent evidence has no weight with the Court.

To begin with, forfeitures are imposed by the seizure and subsequent institution of seizure proceedings pursuant to Section 2532 of the Tariff and

Corporation vs. Commissioner of Customs, supra; Metropolitan Garment Corporation vs. Ramon J. Farolan, as Acting Commissioner of Customs, supra; Mayer Steel Pipe Corporation vs. Hon. Pio de Roda, et al., supra; Southern Isles Wood Export vs. Commissioner of Customs, supra.) And Section 2535 of the Tariff and Customs Code, as amended, provides:

> "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 the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first 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."

When the Bureau of Customs seized the foreign currencies involved in this case, what are the circumstances which warranted, or created the suspicion, that indicated the existence of probable cause for the institution of seizure proceedings?

As stated above, and summarized by respondent Commissioner of Customs: (p. 15, CTA record.)

1. That on or about 3:15 P.M. of May 28, 1983, while the baggage of an outgoing passenger, PETER UY TONG was passing through the X-Ray IV, a Customs Examiner, APOLLO A. PAZ, of the Departure Area, noticed rectangular shapes inside the passenger's baggage;

2. That further verification and inspection of said luggage revealed that the same contained the following currencies:

   1. FIVE HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED THIRTY-EIGHT US DOLLARS ($531,338.00)

   2. EIGHT HUNDRED SEVENTY HONGKONG DOLLARS (HK$870.00), and

3. That PETER UY TONG did not have any permit or authority from the Central Bank to carry or transmit the currencies to Hongkong where he was reportedly bringing the money to buy a condominium unit for his import-export business.

Thus, as special and affirmative defense, respondent alleged in his answer: (p. 63, CTA record.)

> "Peter Uy Tong's attempt to take subject foreign currencies out of the country without the required Central Bank permit is violative of Central Bank Circular No. 265, as amended."

Consequently, the subject currencies in question are subject to forfeiture as provided for in Section 2530(f) of the Tariff and Customs Code. Thus: (pp. 63-

64, CTA record.)

> "Sec. 2530. <u>Property Subject to Forfeiture Under Tariff and Customs Law.</u>- Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:
>
> xxx xxx xxx
>
> (f) <u>Any article the importation or exportation of which is effected or attempted contrary to law</u>, 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." (Emphasis supplied.)

In an attempt to draw support from the provision of Section 3, Central Bank Circular No. 534, <u>supra</u>, which states that "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", petitioner Peter Uy Tong denied having knowledge of the true contents of the subject baggage in his possession and the ownership of the same, and contends that said foreign currencies belong to herein petitioner Ong Tor Cheo, who is allegedly a Singaporean national and head/ representative of a group of foreign businessmen who brought the same to the Philippines for their envisioned condominium business here.

At the outset, as pointed out by respondent in his answer, Peter Uy Tong is presently estopped from denying his previous and unequivocal statement given to investigating Central Bank and Customs personnel Jose Ruivivar and Ignacio Nuñez admitting his ownership of the foreign currencies in question on the same day he was caught in possession thereof. Indeed, a man's act, conduct and declaration whenever made voluntarily are admissible against him for the reason that it is fair to presume that they correspond with the truth and it is his fault if they do not. (U.S. vs. Ching Po, 23 Phil. 578-583.) To quote, with approval, the observation of the Acting Collector of Customs in his decision dated May 28, 1984 rejecting the version of Ong Tor Cheo that he is the owner of the confiscated foreign currencies: (pp. 168-169, CTA record.)

> "From both the documentary and testimonial evidence adduced during the hearings, Peter Uy Tong clearly appears the sole owner of the confiscated foreign currencies to the exclusion of herein nine (9) claimants.

The uncorroborated testimony of Ong Tor Cheo that he and eight (8) other friends of his are the owners of the subject currencies is at best self serving considering that these eight (8) other alleged owners were not even presented during the hearings. The testimony of William Gabaldon, the alleged friend of Ong Tor Cheo in the Philippines, did not also corroborate the statements given by him (Ong Tor Cheo) because Gabaldon testified only as to the fact of the alleged plan of Ong Tor Cheo and his friends to purchase condominium units in the country and not with respect to the ownership of the money. Likewise, the unsolicited and spontaneous statements of Peter Uy Tong at the time of his apprehension on May 28, 1983 given to Messrs. Ignacio Nuñez of the Bureau of Customs and Jose Ruivivar of the Central Bank that he will use the money to buy a condominium unit in Hongkong is more credible and of a higher probative value than that he gave several months after the occurence of the incident. The propensity of Peter Uy Tong to manufacture untruthful statements is most discernible when he told Apollo Paz, the apprehending officer, right there and then at the time of apprehension that he and his wife were going to the United States instead of Hongkong, as shown by their plane tickets."

And which manifestly supports and gives credence to the allegation of respondent that: (p. 65, CTA record.)

"Ong Tor Cheo's tale that he merely entrusted the suitcases containing the money to Peter Uy Tong for the latter to bring to Hongkong is highly incredible. Ong Tor Cheo could have brought the

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"Ong Tor Cheo's tale that he merely entrusted the suitcases containing the money to Peter Uy Tong for the latter to bring to Hongkong is highly incredible. Ong Tor Cheo could have brought the

> money himself when he left for Hongkong several days before Peter Uy Tong's supposed departure. Further, it is unbelievable for Ong for Cheo not to have advised Peter Uy Tong of the real contents of the suitcases to prevent their loss and guard against unexpected robbers."

Settled is the rule that the party who prays for judgment on the pleadings without offering proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party. (Bauermann vs. Casas, et al., 10 Phil. 386; Evangelista vs. De la Rosa, 70 Phil. 115.)

At any rate, the subject foreign currencies were seized in the possession of Peter Uy Tong and the presumption is that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him. (Section 5(j), Rule 131, Rules of Court.)

Moreover, the records do not show who were the tourists and non-resident temporary visitors who brought into the country the subject foreign currencies, the respective amounts of foreign exchange brought in by each one of them, the dates they were brought in, and at what points of entries upon arrival in the Philippines they have been declared in forms prescribed by the Central Bank of the Philippines, as required by Section 3 of Central Bank Circular No. 265. It should be noted that the exception provision of the prohibition refers only to tourists and non-resident temporary visitors who are taking or sending out of the Philippines foreign exchange previously brought in by them.

As respondent Commissioner of Customs put it: (pp. 18-19, CTA record.)

> This Office however finds the stand of appellant untenable because except for the self-serving testimony of Ong Tor Cheo, the alleged owner of subject currencies, nothing else in the records shows that the currencies were previously imported into the country by tourists and temporary non-resident visitors. Furthermore, while appelant has taken pains to show that Ong Tor Cheo who allegedly brought in the subject currencies is a successful and prominent businessman in Singapore, who has been to and from the Philippines since 1981 for business commitments, the local transactions however of said Ong Tor Cheo seem to be unbusinesslike. For example, while most businessmen would

> normally prefer their financial transactions done through banks by means of negotiable instruments which are not only handy but much safer and reliable, Ong Tor Chee did his in the most primitive manner - bundle the bills which amounted to several thousand dollars, pack them in a suitcase and entrust the same to a friend without telling that friend of the contents of the suitcase. Furthermore, it appears that his alleged joint condominium venture was still in the planning stage and yet the defense is giving the impression that the money needed for the project, in cash and already bundled in bills, is ready and prepared for payment as if looking for a suitable condominium unit is just like shopping for clothes at a shopping center.

Besides ignoring commonly accepted and recognized business practices, no adequate and competent evidence to show the legitimate source of the currency in his possession was presented by petitioner. To quote respondent again: (p. 167, CTA record.)

> It is not believable that Mr. Chee, having allegedly traveled on business to the Philippines since 1981, would be ignorant of the requirement that such a substantial amount must be declared upon arrival here, and covered by a permit should they be withdrawn from the Philippines (Central Bank Circular No. 265, Section 3, paragraph 3 and as amended by Central Bank Circular No. 1412 dated July 16, 1976).

Then, aside from Ong Tor Chee's unusual, and questionable manner of conducting business, which cast doubt on his allegation as a businessman engaged in building condominium, and alleged legitimate, bona fide possession of the foreign currencies, his claim that he and his associates came to the Philippines to "invest in the country" has not been established by adequate and competent evidence. In Acting Commissioner of Customs vs. Court of Tax Appeals and Charles Andrulis, L-62636, April 27, 1984, 129 SCRA 70, the Supreme Court quoted with approval the following observations of the Solicitor General on this point which finds relevance:

> "If it was really his intention to invest, he could have presented documents to support his assertion. He could have produced papers required by the Government of foreigners intending to invest in the Philippines. He could have presented as witnesses Filipino businessmen with whom he entered into joint ventures or at least discussed the prospects thereof. He could at the least have revealed the nature of the business he intended to engage in, the capital requirements thereof, the situs of the business, the form of the entity he intended to form to carry on the business, etc. He had done none of these.
>
> "Private respondent implies that the foreign currencies seized from him were intended to be invested in business ventures in the Philippines. If this is

> so, why was it necessary for him to have three kinds of currencies: US dollars, Indonesian Rupiah and Singapore dollars. Besides, businessmen usually do not personally carry the cash which they intend to invest. They remit them through the banks."

In fine, upon the facts of the case, the requirement of the law that the existence of probable cause should first be shown before filing of the forfeiture proceedings, had been fully met. When Peter Uy Tong was apprehended at the Manila International Airport and was found to have in his possession the foreign currencies in question, he could not produce the required Central Bank authorization allowing him to bring them out of the country. This constituted prima facie evidence of infringement of the provisions of Central Bank Circular No. 534 and provided sufficient basis for the seizure of the said foreign exchange. Probable cause having been shown, the burden of proof was upon petitioner Peter Uy Tong (who is a Filipino and certainly not a tourist or non-resident temporary visitor) or Ong Tor Cheo (who claims ownership thereof) to establish that he fell within the purview of the exception prescribed in the second paragraph of the aforequoted Section 3 of Central Bank Circular No. 534 in that he actually brought into the country the foreign currencies and was just taking them out. This burden, imposed in seizure or forfeiture proceeding by Section 2535 of the Tariff and Customs Code, supra, Ong Tor Cheo or Peter Uy Tong had failed to satisfactorily discharge. (See Acting Commissioner of Customs vs. Court of Tax Appeals, supra.)

Ong Tor Cheo contends that no foreign currency declaration is required of any incoming or outgoing passenger and that it is not the intention of the Government to entrap unwary foreigners. True, Resolution No. 594, dated April 14, 1969, of the Monetary Board, provides "Henceforth, no currency declaration of any kind shall be required either from outgoing or incoming passengers." However, tourists are not precluded from submitting proof, other then a currency declaration, to show the legitimate source of the currency in their possession. Besides, Resolution No. 594 must be deemed superseded by Resolution No. 1412, dated 16 July 1976, which requires that persons taking or transmitting or attempting to take or transmit foreign exchange out of the

Philippines must have authorization from the Central Bank allowing them to do so. (See Acting Commissioner of Customs v. Court of Tax Appeals, supra.)

Accordingly, the decision of respondent Commissioner of Customs affirming the forfeiture of the subject currencies consisting of US$931,338.00 and HK$870.00 in favor of the Government must be sustained.

WHEREFORE, we find no merit in the petition for review and the same is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, July 1, 1987.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes

ALEX Z. REYES
Associate Judge