

MANUEL BASTIDA, PETITIONER, VS. THE ACTING COMMISSIONER OF CUSTOMS AND THE COURT OF TAX APPEALS, RESPONDENTS.*G.R. No. L-24011. October 24, 1970*

Ponente: CASTRO, J.

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On November 2, 1956, Benigno Layug, a customs examiner at the Manila International Airport, conducted the required examination of cargoes that were to be shipped on a KLM plane. He examined, among others, a package supposedly containing only two Minifons (wire recorders) consigned to a certain priest in Rome, Italy by the petitioner Manuel Bastida. He found two cardboard boxes therein, each containing a Minifon, and, upon opening one of them, found concealed at the bottom thereof, covered by a piece of cardboard, various checks, money orders, and traveler's checks - all payable in US dollars - amounting to a total of \$13,780. In the other box, he found, concealed in the same manner, two money orders in the total amount of \$3,149.50 and several US dollar bills of different denominations in the total amount of \$630.

The Customs authorities seized the two cardboard boxes and all the contents thereof, alleging violation of Section 1363(f) and (m) sub-paragraphs 3 and 4, of the Revised administrative Code,[1] as well as Central Bank Circular 20 as implemented by Circular 42[2] (in relation to Section 1363[f] of the same Code) because although an Export Control Committee permit and Central Bank export license covered the exportation of the Minifons, the various checks, money orders and dollar bills were not covered by any Central Bank license.

On June 25, 1957, due hearing having been had, the Collector of Custom decreed the forfeiture of the two Minifons as well as the checks, money orders and dollar bills in favor of the Government of the Republic of the Philippines. The petitioner appealed to the Commissioner of Customs. Pending resolution by the Commissioner of Customs of the petitioner's appeal, the Central Bank, on January 21, 1962, promulgated Circular 133 permitting any person to buy US dollars at the prevailing market rate and export the same without prior specific licensing from the Central Bank. The said circular furthermore repealed all previous circulars inconsistent therewith.

Subsequently, on March 22, 1962, the Acting Commissioner of Customs affirmed the decision of the Collector of Customs. In his appeal to the Court of Tax Appeals, the petitioner contended, inter alia, that the bulk of the property seized consists of checks which are not subject to forfeiture because they are not "merchandise" as contemplated by Sections 1363 and 1419 of the Revised Administrative Code, and that even assuming arguendo that the properties seized fail within the meaning of "merchandise" as defined by the said Code, their forfeiture has become academic in view of the repeal of Central Bank Circulars 20 and 42 by Circular 133.

The Court of Tax Appeals, on November 25, 1964, affirmed the decision of the Acting Commissioner of Customs.

Hence, the present petition for review of the Tax Court's decision.

Tendered for resolution are the following issues: (1) Are the checks and money orders payable in US dollars and

the US dollar bills in question "merchandise" within the purview of Section 1363 of the Revised Administrative Code? (2) Did the petitioner violate Central Bank Circular 20 as implemented by Circular 42? (3) On the assumption that the checks, money orders and dollar bills are "merchandise," are they still subject to forfeiture in view of the repeal of Central Bank Circulars 20 and 42?

1. Upon the first issue, it is to be noted that Section 1363(f) of the Revised Administrative Code, under which the checks, money orders and dollar bills were ordered forfeited, specifically makes reference to "merchandise." Section 1419 of the same Code defines "merchandise" thus: "'Merchandise,' when used with reference to importations or exportations, includes goods, wares, and in general anything that may be made the subject of importation or exportation." The petitioner argues that the Revised Administrative Code provides only a general and vague definition of "merchandise," and that "'merchandise,' (actually) connotes some thing tangible, such as goods, wares, commodities, as distinguished from intangibles, such as choses in action, credits, rights, services."

The question whether the various dollar bills in controversy fall within the proscription of Section 1363 of the Revised Administrative Code, presents no special difficulty. In *Commissioner of Customs vs. Capistrano*,^[3] we held that US dollars, having ceased to be legal tender in the Philippines, fall within the meaning of the term "merchandise" as used in the Revised Administrative Code. The dollar bills in the case at bar are therefore subject to forfeiture.

As regards the checks, the petitioner forgets that as bills of exchange they are, fundamentally, negotiable instruments. And a negotiable instrument "is more like money than a contract right or chose in action."^[4] As such, it may be the "subject of conversation (*Knight vs. Seney*, 290 Ill. 11) or a replevin (*Rothwell vs. Taylor*, 303 Ill. 226)."^[5] It may also be the "subject of sale, like any other goods or wares."^[6] As the Tax Court aptly observed, "checks may be bought and sold like a commodity. As a matter of fact in the United States the deposit of a check with a bank is considered a sale. (*Helvering vs. Stein* [CA 4], 115 F 2d 468; *Burton vs. United States*, 196 US 283, 49 L ed 482)." Money orders, also considered as bills of exchange of limited negotiability, possess the same attributes as other negotiable instruments. Thus, they may be bought and sold like checks.

In addition, that part of the definition of "merchandise" which states, "in general anything that may be made the subject of importation or exportation," is sufficiently clear and comprehensive to include checks and money orders.

On the basis of the foregoing discussion, authorities cited, and observations made, this Court holds that the checks, money orders and dollar bills in question properly fall within the concept of "merchandise" as this term is used in Section 1419 of Revised Administrative Code.

2. The second issue involves Central Bank Circulars 20 and 42. Circular 20 requires prior licensing by the Central Bank of all transactions in foreign exchange, while Circular 42 makes any person who causes the placing of foreign exchange in any outgoing international carrier liable for the exportation thereof unless he has obtained prior license from the Central Bank. The petitioner argues that the attempted exportation of the checks and money orders in question without prior license from the Central Bank does not constitute a violation of the aforementioned circulars because check and money orders are not, and do not involve, foreign exchange. This contention is directly and pointedly refuted by the Tax Court, thus:

"The U.S. money orders and U.S checks in question directly involved foreign exchange whose flow the Central Bank, by fiat of law (Republic Act No. 265), was empowered to regulate (see *Pascual v. Commissioner Customs*, G.R. No. L-10979, June 30, 1959) in order to protect the international reserve of the country. The simple fact that the money orders and checks were not legal tender or currency is of no moment, for they represented and were substitute for the currency bearing on their face."

The petitioner's attempt to export the checks, money orders and dollar bills without the requisite prior license constituted an indubitable violation of Central Bank circulars 20 and 42.

3. Finally, the petitioner argues that in view of the repeal of Circulars 20 and 42 by Circular 133, the possession and exportation of dollars, without prior license from the Central Bank, is no longer prohibited. While this may be true in the context of present day foreign exchange transactions, we nevertheless must recognize the dual character of proceedings that could be instituted for violation of Central Bank circulars 20 and 42, during the time that these were in force, under the authority of Republic Act 265 (Central Bank Act).[7]

The petitioner loses sight of the fact that his attempt to export the checks, money orders and dollar bills in question, in violation of the aforementioned provisions of the Revised Administrative Code and Central Bank circulars, entailed two penalties: (a) a penalty for violation of Circular 42, prescribed by Section 8[8] of Circular 20 in relation to Section 34[9] of Republic Act 265, directed principally against the person of the offender and which may be imposed in a criminal prosecution (an action in personam), and (b) a penalty of forfeiture imposed by Section 1363(f) of the Revised Administrative Code directed primarily against the merchandise rather than the offender (an action in rem).

In the case at bar, the repeal of Circulars 20 and 42 by Circular 133 did not have the effect of abating the forfeiture case instituted against the petitioner, for the simple reason that the forfeiture proceedings undertaken here are civil - not criminal - in nature. In this sense, therefore, the repeal cannot be given retroactive effect and cannot infuse the attribute of legality into the petitioner's attempt to export the checks, money orders and dollar bills in question.

Furthermore, the petitioner overlooks or misinterprets the provisions of Section 1363(m), sub-paragraphs 3 and 4 of the Revised Administrative Code, which decree the forfeiture of any merchandise the exportation of which is attempted in any of the following ways:

"3. Upon the wrongful making by the owner, importer, exporter or consignee of any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandise and in connection with the importation or exportation of the same.

"4. Upon the wrongful making or delivery by the same person or persons, of a false invoice, letter or paper touching such merchandise and in connection with the importation or exportation of the same."

The record conclusively shows that the petitioner made a false declaration in his application for export license (exhibit D). In the said document, he mentioned only the two Minifons, but omitted to declare the checks, money orders and dollar bills. As regards this point, the Tax Court especially noted the "total Silence of petitioner on respondent's charge of false declaration under Section 1363(m) 3 and 4 of the Revised Administrative Code."

As to the Minifons, although they are covered by a Central Bank export license, they are subject to forfeiture because they were utilized by the petitioner as the means in his attempt to export illegally the checks, money orders and dollar bills.

ACCORDINGLY, the decision of the Court of Tax Appeals appealed from is affirmed, at petitioner's cost.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.
Concepcion, C.J., and Villamor, J., no part.

[1] Section 1363. Property subject to forfeiture under customs law. - Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:

* * *

(f) Any merchandise of prohibited importation or exportation, the importation and exportation of which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

* * *

(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described –

* * *

3. Upon the wrongful making by the owner, importer, exporter, or consignee of any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandise and in connection with the importation or exportation of the same.

4. Upon the wrongful making or delivery by the same person or persons, of any false invoice, letter or paper touching such merchandise and in connection with the importation or exportation of the same.

[2] Circular 20 states:

"Pursuant to the provisions of Republic Act No. 265 (Central Bank Act) the Monetary Board subjects all transactions ... foreign exchange to licensing by the Central Bank."

Circular 42 provides:

"The following shall also be held liable within the meaning of the prohibition of exportation of ... foreign exchange unless proper license has been obtained from the Central Bank:

* * *

"(b) Any person who causes ... the placing of such ... foreign exchange in any outgoing international carrier."

[3] 108 Phil. 694.

[4] Ludwig Teller, Bills and Notes, p. 6 (1948).

[5] Ibid., pp. 6-7.

[6] Ibid., p. 7.

[7] Pascual vs. Commissioner of Customs, L-12219, April 25, 1962, 4 SCRA 1020, 1024.

[8] "Section 8. - Strict observance of the provisions of this Circular is enjoined; and any person, firm or corporation, foreign or domestic, 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, abide by, or shall violate the same, shall be subject to the penal sanctions provided in the Central Bank Act."

[9] Section 34, in part, reads: "Whenever any person or entity wilfully violates this Act or any order, instruction, rule or regulation legally issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years."

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