

VENANCIO CARREON TONG TEK, ET AL., PETITIONERS, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. 11947. June 30, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition to review the decision of the Court of Tax Appeals in CTA Case No. 135, upholding the validity of the order of the Commissioner of Customs in Manila Seizure Identification No. 2040, forfeiting the 138 gold bars subject of said proceedings in favor of the Government.

At about 7:00 o'clock in the evening of October 8, 1954, Port Policeman Felipe de Guzman, then stationed at the central gate of Pier 9, Manila, was approached by three men, later identified as Venancio Carreon Tong Tek, his brother Juanito Tong, and one George Tong, an employee of the American President Lines, seeking entrance therein. As they were duly equipped with passes to visit American President Lines' vessel "S. S. President Cleveland", then docked at the aforementioned pier, he allowed them to get in. Later, or about 7:15 p.m., Venancio Carreon Tong Tek and Juanito Tong returned intending to get out of the premises. Allegedly due to their unnatural gait and stride, the suspicion of guard De Guzman was aroused. He then tried to search them but they refused. With the help of the other guards who were attracted by the resulting commotion, the two brothers were taken to the Port Patrol Headquarters where a search on their persons yielded 4 canvass belts, found tied around their waists, containing 138 gold bars weighing 97,290 grams and valued at P470,760.00. (Petitioner claims there were 144 bars, but only 138 bars are subject of this case). The aforementioned articles were forthwith confiscated and later turned over to the National Treasurer for safekeeping. As a consequence thereof, seizure proceedings were instituted in the Bureau of Customs (S. Iden. No. 2040), simultaneous with the filing of a criminal action with the Court of First Instance of Manila against Venancio Carreon Tong Tek and Juanito Tong for alleged attempted violation of Central Bank Circular Nos. 21 and 42 (Crim. Case No. 30216). It may be mentioned in passing, as we are not concerned with the criminal aspect of the case, that although the accused were found guilty by the lower court, on appeal the decision was reversed by the Court of Appeals on the ground that under Circular Nos. 21 and 42, only consummated offenses are punishable (CAG.R. No. 15666-R).

On March 7, 1955, the Acting Collector of Customs rendered a decision in the seizure proceedings, finding therein claimants guilty of attempted exportation of gold without the corresponding license from the Central Bank and ordered the forfeiture of the articles involved therein in favor of the government. From said decision, claimants appealed to the Acting Commissioner of Customs who, on April 21, 1955, affirmed the decision of the Acting Collector. The matter was later elevated to the Court of Tax Appeals and said court, in its decision of November 21, 1956, ruled that the 138 gold bars were validly forfeited under section 1363-(f) and

Reducing the issues herein raised by the petitioners to bare essentials, the questions presented by the instant case for our consideration are:

1. Whether Central Bank Circular Nos. 20, 21 and 42 are valid or not;

2. Whether gold bars are subject to forfeiture under Section 1363 of the Revised Administrative Code;
3. Whether the Court of Tax Appeals erred in upholding the validity of the order of forfeiture of the 138 gold bars; and
4. Whether or not the petitioners' acquittal in the criminal action bars the forfeiture of the merchandise in another proceeding.

I. In so far as pertinent with the issues in this case, Central Bank Circular No. 20 and Circular Nos. 21 and 42 implementing it read as follows:

"Circular No. 20
December 9, 1949

Restrictions on Gold and Foreign Exchange Transactions

- Pursuant to the provisions of Republic Act No. 26 (Central Bank Act) the Monetary Board, by unanimous vote 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, hereby restricts sales of exchange by the Central Bank and Subjects all transactions in gold and foreign exchange to licensing by the Central Bank.

* * * (Exh. 8)
"CIRCULAR NO. 21"
(As amended) October 15, 1952

Section 4. Export of gold

Any person desiring to export gold in any form, including jewelry, whether for refining abroad or otherwise, must obtain a license from the Central Bank. Applicants for export licenses must present satisfactory evidence that the import of the gold into the country of the importer will not be in violation of the rules and regulation of such country.

* * * (Exh. 9)

"Circular No. 42
May 21, 1953

Section 2.

The following are foreign exchange transactions and as required by Central Bank Circular No. 20 are subject to prior licensing by or on behalf of the Central Bank;

(m) Any other transactions involving international financial implications.

* * * (Exh. 10)

In assailing the validity of the aforequoted circulars of the Central Bank, petitioners contend that there is no evidence to prove that they were duly signed and approved by the President as required by law (Sec. 74, Rep. Act No. 265). In a recent decision, this Court, squarely passing upon the same question, held:

"It is further argued that, as published in the Official Gazette, Circular No. 21, in its original, as well as in its amended form, did not bear the approval of the President and that, accordingly, said publication was not sufficient to give effect contemplated by law therefor. This pretense is based upon a false premise. The original circular subjecting to licensing by the Central Bank 'all transactions in gold and foreign exchange', is Circular

No. 20, which, as approved and published, states, that, 'pursuant to the provisions of Republic Act No. 265', it had been adopted by 'the Monetary Board, by unanimous vote and with the approval of the President of the Philippines.'. What is more, the last paragraph of Circular No. 20, provides that 'further regulations in respect to transactions covered by this circular will be issued separately'. Thus, the President had approved not only the 'licensing by the Central Bank' of 'all transactions in gold and foreign exchange' but, also, the issuance, subsequently to the promulgation of Circular No. 20, of 'further regulations in respect of such transactions. Said further regulation were incorporated into Circular No. 21, which thus bears the stamp of presidential sanction, although this is not specifically required by law. It is only the decision of the Monetary Board to subject to license by the Central Bank all transactions in gold and foreign exchange that needs the approval of the President.. Once the same has been given, the details in the implementation of said decision may be determined by said Board, through such regulations as may be promulgated from time to time. * * *'. (Peoples vs. William Ernest Jolliffe, supra, p. 677).

Under the aforequoted ruling, therefore, the approval by the President of the Philippines of Circular No; 20 not only satisfies the requirement of the law with respect to said circular but also extends to those that subsequently may be issued in implementation thereof, such as Circular No. 21, as amended, and Circular No. 42. The first issue thus fully met must necessarily fail.

II. The Court of Tax Appeals affirmed the decision of the Commissioner of Customs in Seizure Identification No. 2040 on the strength of Section 1363 of the Revised Administrative Code, as amended, providing, among others:

"SEC. 1363. Property subject to forfeiture under customs laws.— Vessels, cargo, merchandise, and other objects and things shall, under the conditions herein-below specified, be subject to forfeiture:

* * * * *

(f) Any merchandise of prohibited importation or exportation, the importation or 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 herein-below described—

- Upon importation or exportation, either consummate or frustrate, without going through a customhouse. (Italics supplied),

* * * * *

Petitioners allege that the term "merchandise of prohibited exportation" used in Section 1363-(f) of the Revised Administrative Code has its own fixed and definite meaning; that it refers exclusively to those articles specifically declared prohibited by Section 3 of the Philippine Tariff Act of 1909, such as firearms and explosives, obscene and subversive articles, gambling outfits, falsely marked gold and silver articles, adulterated foods, lottery tickets, opium and opium pipes, and as gold bars do not fall under any of the enumeration, they conclude that the aforementioned codal provision can not be invoked in ordering the forfeiture of the articles in question. We entertain a different view.

It must be remembered that the Revised Administrative Code is a general legislation. As such, it must have been intended to meet not only the peculiar conditions obtaining at the time of its enactment but also designed to comprehend those that may normally arise after its approval. To our mind, the term "merchandise of prohibited exportation" used in the code is broad enough to embrace not only those already declared prohibited at the time of its adoption but also goods, commodities or articles that may be the subject of activities undertaken in violation of

subsequent laws. Considering that the Central Bank circulars, issued for the implementation of the law authorizing their issuance although by themselves are not statutes, have the force and effect of law (People vs. Que Po Lay; 94 Phil, 640; 50 Off. Gaz., No. 10, p. 4850), the carrying out of transactions or undertakings without complying with the requirements of Circular Nos. 20, 21 and 42 makes these undertakings illegal. And as a natural consequence thereof, the articles involved in such unauthorized ventures become prohibited and, therefore, subject to forfeiture under Section 1363(f) of the Revised Administrative Code.

III. As found by the Court of Tax Appeals, the petitioners went aboard the vessel "S.S. President Cleveland" to find an unoccupied cabin where the 138 gold bars, which Venancia intended to transmit to a certain Mr. Tokida in Japan, could be hidden. Failing to find a place that will satisfactorily serve their purpose, they left the vessel for home, still carrying in their person the 4 canvass belt containing the gold bars. At the main gate on their way out, they were stopped and apprehended. Based on these findings of fact, which we find no reason to disturb, the Court of Tax Appeals declared that Venancio Carreon Tong Tek attempted to export the above-mentioned gold bars without prior approval of the Central Bank and consequently affirmed the order of forfeiture appealed from.

Petitioners assert that the provision applicable to the instant case is not Section 1363-(f) but subparagraph (m-1) of the same section which makes even attempted exportation, without going through a customhouse, punishable. They contend, however, that their acts did not constitute an attempted felony. Thus, we are now called to resolve whether under the forgoing facts, there has been an attempt to export gold without going through a customhouse (which would necessarily require a license from the Central Bank) or attempted smuggling, as it is commonly referred to.

Under the Revised Penal Code, an attempt to commit a felony takes place "when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance (Article 6). For an offender to be found guilty of this wrong, the following requisites must be present: (1) that he has commenced the commission of the felony directly by some overt acts, and (2) that he did not perform all the acts of execution which would produce the felony due to some cause or accident other than his own spontaneous desistance. Considering that the Revised Penal Code has suppletory effect in cases involving violations of special laws (Art. 10, Revised Penal Code), we will determine the nature of petitioners' action in the light of the aforementioned Article 6 of the Penal Code.

Petitioners maintain that their act of leaving the boat, taking along with them the gold bars, and with the intention to go home constitutes voluntary desistance and thus takes the incident out of the scope of an attempted felony. In short, petitioners claim that their plan to send the gold bars out of the country remained a mental state or still in the preparatory stage. Indeed, there is a wide difference between "preparation" and "attempt". The preparation consists in devising or arranging the means or measures necessary for the commission of the offense; the attempt is the direct movement toward the commission after the preparation had been made (Francisco's The Revised Penal Code, Book I, 2nd Ed., p. 126). From the records of the case, it appears that when Venancio and Juanito Tong visited the vessel "S.S. President Cleveland" on the night of October 8, 1954, they were armed with duly accomplished personal passes for that day (Exhs. 1 and 2), Apparently to insure their admission to the premises, as in fact they did. The act of securing the passes and having them countersigned by the Chief of the Customs' Secret Service might be considered as preparation, but the act of going to the pier, at 7 o'clock in the evening, bringing with them 97,260 grams of gold, tied around their waists, and actually getting aboard the steamship looking for an unoccupied cabin or place where the gold could be hidden apparently to avoid detection certainly transform the scheme from a mental state to direct overt acts.

Petitioners, however, claim that their failure to perform all the acts of execution was due to their own spontaneous

desistance. This allegation does not appear convincing enough. As found by the Collector of the Port of Manila, the Commissioner of Customs, and the Court of Appeals, they went to the boat to deposit the said bars and then inform Mr. Tokida about it. That they abandoned their original plan was not due to any feeling of repentance, respect for the law and authority or fear of the possible consequence of their nefarious activity, but due to a cause entirely independent of their own will, i.e., absence of a place that would insure non-discovery of such undeclared cargo. Neither does the fact that they were apprehended only on their way out of the premises merit consideration. Section 1363 (m-1) of the Administrative Code, as correctly pointed out by petitioners themselves, condemns even an attempt to send out of the country any merchandise without satisfying the requirements of the law and subjects the same to forfeiture. Their apprehension after they were forced to give up the scheme did not operate to wipe out or obliterate the legal consequence of their act—the forfeiture of the merchandise.

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 "wilfully and unlawfully manifested by overt acts their desire to export 144 pieces of gold bars (only 138 were deposited with and duly receipted 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.

Wherefore, and on the strength of the foregoing consideration, the decision of the Court of Tax Appeals sought to be reviewed is hereby affirmed, with costs against the petitioners. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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