

KANEO SOTOYAMA, MIKIO NAWA, FUJICO NAWA AND MASAYOSHI IWAMA, PETITIONERS, VS. COURT OF TAX APPEALS AND THE COMMISSIONER OF CUSTOMS, RESPONDENTS.

G.R. No. 52221. January 30, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

Petition for review on certiorari of the decision of the Court of Tax Appeals in CTA Case No. 2902 entitled, "Kaneo Sotoyama, Mikio Nawa, Fujico Nawa and Masayoshi Iwama, Petitioners versus Commissioner of Customs, Respondent", which affirmed the forfeiture in favor of the government of the foreign currencies seized from petitioners under Seizure Identification No. MIA-1350-76 of the Bureau of Customs; as well as the denial by the same court of petitioners' motion for reconsideration and/or for new trial.

Petitioners, all Japanese nationals, came to the Philippines on December 29, 1975 as tourists or temporary visitors. On January 11, 1976, the day they were scheduled to leave the country on board Flight CX900 of the Cathay Pacific Airways for Hongkong, confidential information that five or six Japanese departing via said flight would be bringing out a huge amount of foreign currencies was transmitted by Atty. Severino L. Dayao, Acting Chief, Administrative Services Division, Bureau of Customs to Mr. Edgardo O. Bautista, Officer-in-Charge, MIA Flight Departure Area. Acting on said information, the latter immediately instructed Customs Examiners Josefina Tolentino and Antonio Versoza to conduct a rigid and thorough search of passengers checking in for said Flight CX900. Thus, when petitioners checked in their luggage, they were asked by Customs Examiner Josefina Tolentino, through Masayoshi Iwama, who could understand and speak English, if they were carrying dollars. All answered in the negative. However, upon subsequent inspection, their luggage yielded the following foreign currencies:

1] in the suitcase of Masayoshi Iwama

—

US\$ 22,000.00

2] in the suitcase of Kaneo Sotoyama

—

US\$ 6,000.00

3] in the suitcase of Fujico Nawa

—

US\$ 2,000.00

4] inside the pockets of a pair of trousers in Sotoyama's suitcase

—

US\$ 40,000.00

A body search of petitioners by customs police and special investigator Rodolfo Bautista resulted in the discovery of additional foreign currencies, to wit:

1] in the hip pocket of Sotoyama's coat

—

US\$ 9,500.00

¥11,500.00

HK 35.00

2] in Sotoyama's shoes

—

US\$ 20,000.00

3] in the hip pocket of Iwama's coat

—

US\$ 2,515.00

¥95,000.00

4] in the coat of Mikio Nawa

—

US\$ 2,600.00

¥71,500.00

Thereafter, petitioners were questioned as to the source of the currencies by a certain Major Amistoso, Chief of Operations and Control, Intelligence Division, Philippine Air Force. All said "Japan". They were asked if they had any permit or authorization from the Central Bank of the Philippines to bring out the foreign currencies, but they could not produce any. Hence, the foreign currencies were seized for a violation of Section 3 of Central Bank Circular No. 265, in relation to Section 2530 par. [f] of the Revised Tariff and Customs Code; and Seizure Identification No. MIA-1350-76 against said monies was instituted.

Petitioners were eventually allowed to leave the country as no criminal charges were filed against them, the reason being that:

"1. The government had insufficient evidence on how the foreign currencies were obtained locally; and,

"2. For want of a legal basis because Section 6 of CB Circular No. 265 [penal sanction] refers only to resident

persons." (p. 27, Rollo)

In the meantime, several hearings were conducted in Seizure Identification No. MIA-1350-76, where petitioners as claimants were duly represented by counsel. On March 16, 1976, the Collector of Customs, Airport Customshouse rendered a decision, declaring the seized foreign currencies forfeited in favor of the government. Petitioners appealed said decision to the Commissioner of Customs, who affirmed the same. Their motion for reconsideration having been denied, petitioners elevated the case to the respondent Court of Tax Appeals [CTA]. The appeal, docketed as CTA Case No. 2902, was likewise decided against petitioners, with respondent CTA affirming the decision of the Commissioner of Customs on April 23, 1979.[1]

On June 8, 1979, petitioners filed a motion for reconsideration, followed on June 27, 1979 by a supplemental motion for reconsideration and/or new trial.[2] Both were denied by respondent court in a resolution dated November 20, 1979.[3] Hence, the present recourse.

A decision on the instant petition, penned by then Chairman of the Second Division, retired Associate Justice Antonio P. Barredo, was promulgated on October 30, 1981. However, on November 11, 1981, before the decision of October 30 could attain finality, the court's Second Division issued the following resolution:

"Upon further consideration of the decision of this Court of October 30, 1981, the Court Resolved to RECALL the said decision and to RESUBMIT the same for another deliberation."[4]

Several motions and manifestations were thereafter filed by both parties[5] which were either noted or denied. Shortly before the 1986 Christmas recess, the Second Division resolved to refer the case at bar to the Court en banc.

Petitioners contest the forfeiture of the foreign currencies found in their persons and possession on two grounds, namely: 1] the alleged repeal of par. 3 of CB Circular No. 265, upon which the forfeiture was based, by CB Circular Nos. 270 and 534; and, 2] the supposed failure on the part of the government to show by competent proof the source of the subject foreign currencies to be the Philippines, vis-a-vis petitioners' claim that the same were brought in by them from Japan. Petitioners further charge the respondent CTA with grave abuse of discretion in having denied their motion for reconsideration and/or for new trial.

A review of the various circulars passed by the Central Bank of the Philippines during the period under consideration belies petitioners' first contention. C.B. Circular No. 265 was issued on November 20, 1968. Paragraph 3 thereof provided that "No person shall take out or export from the Philippines foreign currency or any foreign exchange except as otherwise authorized by law" while paragraph 6 enjoined strict observance of the provisions of said Circular and subjected to the penal sanctions of Section 34 of the Central Bank Law "x x x any resident person, firm or corporation who being bound to the observance thereof x x x shall fail or refuse to comply with, or abide by, or shall violate the same x x x."

Its implementing rules and regulations were embodied in CB Circular No. 266, issued by the Central Bank six [6] days later on November 26, 1968. Among its salient provisions were the following:

"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."

"Section 3. When there are reasonable grounds to believe that any resident Philippine or temporary visitors or a member of the crew or complement of a vessel or airplane engaged in international transportation is bringing Philippine currency and/or foreign exchange into or out of the Philippines in violation of the regulations of the Central Bank, the Central Bank agents shall secure the assistance of the Customs and other competent authorities in searching the person and luggage of the suspect, and the Philippine currency and/or foreign exchange involved shall be treated as provided by law."

On April 16, 1969, however, the Central Bank issued Circular No. 270, revoking Circular No. 266 in toto, and further directing that "hence-forth, no currency declaration of any kind shall be required either from outgoing or incoming passengers."

Another circular, Circular No. 534 was issued on July 19, 1976, which provided:

"Sec. 3. Unless specifically authorized by the Central Bank or allowed under existing international agreement 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 person, through the mails or through international carriers.

"The provision of this Section shall not apply to tourist and non-resident temporary visitors who are taking or sending out of the Philippines their own foreign exchange brought in by them."

The incident at bar occurred on January 11, 1976, at which time C.B. Circular No. 265 was still in full force and effect. Circular No. 270, issued on April 16, 1969, did not repeal C.B. Circular No. 265, but merely its implementing rules and regulations, known as Circular No. 266. The prohibition to "take out or export from the Philippines foreign currency or any foreign exchange except as otherwise authorized by law" still stood; only the cumbersome requirement of currency declaration was done away with. Thus, the failure of petitioners to present any permit or authorization from the Central Bank to take out the foreign currencies found in their possession, created a prima facie case for their seizure and confiscation in accordance with Section 3 of C.B. Circular No. 265, in relation to Section 2530 of the Revised Tariff and Customs Code which provides:

"Section 2530. Property subject to Forfeiture Under Tariff and Customs Law. — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following condition 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."

Evidently, petitioners cannot avail themselves of Circular No. 534, as said Circular was issued only on July 19, 1976, or six months after the incident at bar.

Even supposing that Circular No. 534 could apply to the present case, the result obtained will not be any different, for the provision relied upon by petitioners that "the provision of this Section shall not apply to tourist or non-resident temporary visitors who are taking or sending out of the Philippines their own foreign exchange brought in by them" does not dispense with the requirement of said tourist or non-resident temporary visitor having to show by competent proof that he is merely bringing out whatever foreign exchange he previously brought into the country. And this brings Us to the second posture taken by petitioners.

It must be emphasized that petitioners, although physically absent, were duly represented by counsel at all stages of the seizure proceedings. They had therefore all the opportunity to present sufficient evidence to substantiate their bare allegation that the foreign currencies came from their country of origin. Instead, reliance was placed solely on the statement given by petitioners to Major Amistoso that the currencies in question came from Japan. However, such information could not be accorded any evidentiary weight as the testimony of said Major Amistoso to this effect at the seizure proceedings was, as correctly ruled by the Collector of Customs in his decision,[6] in the nature of hearsay evidence. Thus, up to the time the case was pending before the respondent Court of Tax Appeals, petitioners, as claimants, had not successfully discharged the onus laid on them by Section 2535 of the Tariff and Customs Code as follows:

"Sec. 2535. Burden of Proof in Seizure and/or Forfeiture. — In all proceedings taken for the seizure and/or forfeiture of any vehicle, vessel, 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 first be 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."

It was only after the respondent court of Tax Appeals had decided the appeal against petitioners that the latter, in a motion for reconsideration and/or new trial, attempted to accomplish this task through the submission of documents purporting to show that the sum of US\$104,000.00 was purchased by petitioner Kaneo Sotoyama on December 15, 1975 from a company named Nangoku Shokuhin Kogyo Kabushiki Kaisha, later changed to Chikusan Jigyo Kaihatsu Kabushiki Kaisha. But by petitioners' own admission, said documents could hardly be considered newly-discovered evidence as would warrant a new trial under Sec. 1[b] of Rule 37 of the Rules of Court.[7] Thus, in denying petitioners' motion, the respondent Court of Tax Appeals said:

"2. Anent the matter of new trial, petitioners alleged that the documents [Annexes 'A', 'A-1', 'B' and 'B-1', supplemental motion, pp. 87-93, CTA records] which they would like to introduce as evidence would prove that the subject foreign currencies were purchased by them in Japan."Really, the presentation and admission of such documents will not alter nor affect the result of this case because of our findings and conclusion that when petitioners were taking out of the Philippines the subject foreign exchange on January 11, 1976, the law applicable was Central Bank Circular No. 265 which requires that no person shall take out or export from the Philippines any foreign exchange without prior authority from the Central Bank, and thus, regardless of their being tourists and the source of the foreign exchange being brought out of the country, the requirement of prior authorization from the Central Bank would still have to be complied with. Again respondent has seen this point in his opposition:

'6. Annexes "A" and "B", even if admitted will not alter the result of the case. As we have stated earlier, petitioners, at the time they tried to bring out the subject foreign currencies, had no permit or authority from the Central Bank. This was a clear violation of Central Bank Circular No. 265, which required all persons

taking out foreign currency, regardless of its source, to secure the necessary permit or authority.'

"At any rate, even on the supposition, for the sake of argument, that on the basis of the law applicable here tourists or non-temporary visitors who are bringing out of the country their own foreign exchange brought in by them are not required to secure a permit or authority from the Central Bank, and therefore, proof on the part of petitioners as to the source and ownership of the foreign exchange being brought by them out of the country is material and necessary, the documents referred to [Annexes 'A', 'A-1', 'B' & 'B-1'] do not satisfy the legal requirements of a newly-discovered evidence under Section 1[b] of Rule 37 of the Rules of Court. For if it is true, as appearing in said documents, that the purchase and receipt of said currencies [dollars] were made in Japan on December 15, 1975, then the said documents were already in existence and known to petitioners when this case arose on January 11, 1976 and during the seizure proceedings before the Bureau of Customs and the hearing before this Court. Besides, as admitted by petitioners in their supplemental motion, said evidence are not newly-discovered evidence. [p. 4, supplemental motion, p. 86, CTA records.]

"Furthermore, it cannot be validly asserted that even with reasonable diligence the said documents could not have been discovered and produced at the trial. The records show that petitioners did not even appear to testify for their defense before the Bureau of Customs nor before this Court, and their counsel never did even mention that there were such documents. At least before this Court wherein trial de novo can be availed of, petitioners could have testified, or through counsel, manifested that they have such documents showing the source of the subject foreign currencies and could have requested for time to produce said documents, if the same could not be produced at the time of the trial. But petitioners instead of availing trial before this Court, chose to waive the same and submitted the case on the basis of the pleadings, the records of the Bureau of Customs and their written memoranda. What measure of diligence, therefore, can be claimed by petitioners or their counsel in the production of said evidence? Surely, we believe it would not be in consonance with the rules of established judicial procedure, nor in keeping with the principles of justice, if a party who has waived trial and who, subsequently lost his case, should be afforded new trial on the ground of 'newly-discovered evidence'." [8]

We find nothing unreasonable nor arbitrary in the reasons given by respondent court in denying petitioners' motion that would warrant its reversal.

WHEREFORE, the petition is hereby denied and the decision of the Court of Tax Appeals in CTA Case No. 2902 is affirmed in toto. Costs against petitioners.

SO ORDERED.

Teehankee, C.J., Yap, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, and Bidin, JJ., concur.

Narvasa, J., no part.

[1] Annex "C", Petition, pp. 41-66, Rollo.

[2] Annexes "F" and "G", pp. 67 and 70, respectively, Rollo.

[3] Annex "H", pp. 79-86, Rollo.

[4] p. 140, Rollo.

[5] Manifestation and motion dated Feb. 17, 1982 by the Solicitor General, pp. 141-157, Rollo; Comment on and opposition dated March 4, 1982 to Manifestation and Motion of counsel for respondents dated Feb. 17, 1982 by counsel for petitioner, pp. 159-185, Rollo; Motion for resolution dated Jan. 26, 1983 filed by counsel for

petitioners, p. 187, Rollo; Motion for Repromulgation of Judgment dated April 22, 1985 by counsel for petitioners, p. 193, Rollo; Motion for Entry of Judgment and Issuance of a Writ of Execution dated April 28, 1986, filed by counsel for petitioners, p. 207, Rollo; Motion for extension of fifteen [15] days to file motion for reconsideration filed by counsel for petitioners dated Aug. 13, 1986, p. 211, Rollo; Supplement to motion for entry of judgment by counsel for petitioners dated July 21, 1986, p. 212, Rollo; Motion for last extension of ten [10] days to file motion for reconsideration dated August 30, 1986 by counsel for petitioners, p. 213, Rollo; Motion for Reconsideration dated Sept. 1, 1986 by counsel for petitioners, p. 214, Rollo; Notice of Appearance of Atty. Crispin T. Reyes as Chief counsel for petitioners dated Nov. 24, 1986,, Temporary Rollo; and motion for reconsideration of the resolution of Nov. 11, 1981 dated November 20, 1986 filed by counsel for petitioners, Temporary Rollo.

[6] p. 33, Rollo.

[7] p. 73, Rollo.

[8] pp. 83-85, Rollo.

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