

## ACTING COMMISSIONER OF CUSTOMS, PETITIONER, VS. COURT OF TAX APPEALS AND CHARLES ANDRULIS, RESPONDENTS.

*G.R. No. 62636. April 27, 1984*

Ponente: MELENCIO-HERRERA, J.

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### MELENCIO-HERRERA, J.:

A proceeding for review on certiorari of the Decision of respondent Court of Tax Appeals in CTA Case No. 3201, which reversed the Decision of petitioner, the Acting Commissioner of Customs, decreeing the forfeiture of various foreign currencies found in the possession of private respondent (Charles Joseph Andrulis) for violation of Central Bank Circular No. 534, in relation to section 2530(f) of the Revised Tariff and Customs Code.

On 20 February 1980, Andrulis representing himself as an American businessman "on joint ventures with his Filipino counterparts", arrived in Manila and checked in at the Century Park Sheraton Hotel. Two days later, or on 22 February 1980, he left the hotel surreptitiously without paying for his bills in the amount of P2,000.00. Col. Felix Zerrudo, Chief Security Officer of the Hotel, timely discovered the scheduled departure of Andrulis on that same day, and immediately tipped-off the Customs authorities on Andrulis' intention to abscond. At the Manila International Airport (MIA), the Customs authorities looked for Andrulis from among the passengers who were already on board Philippine Airlines Flight No. 501 bound for Singapore. Apprehensive, Andrulis locked himself inside the airplane's comfort room. In the course of negotiations for him to come out, he slipped through an opening bills worth US\$300.00. Andrulis finally yielded to the authorities and surrendered the luggage he was carrying which, when opened by the authorities, contained various foreign currencies consisting of US\$59,639.00; 53,100 Indonesian Rupiah, and Singapore \$308.00.

A criminal charge was filed before the Office of the City Fiscal, Pasay City, for violation of CB Circular No. 534 in relation to RA 265, the Central Bank Charter. On 10 March 1980, the Assistant City Fiscal dismissed the charge on the rationalization that the Government had failed to present evidence that the currencies were not brought in by Andrulis.

Proceedings for the seizure of the foreign currencies were also commenced at the Customs Office of the MIA in Pasay City, docketed as Seizure Identification No. 416280.

During the hearing, Andrulis submitted the case for resolution on the basis of the following documentary evidence:

"1. Sworn Affidavit of Charles Joseph Andrulis, stating that the foreign exchange in question are owned by claimant;

"2. Resolution of the City Fiscal of Pasay City in I.S. No. 80-94112, entitled MIA Customhouse vs. Charles Joseph Andrulis, dismissing the alleged charge of violation of Central Bank Circular No. 534, in relation to Central Bank Circular No. 265, to show that there was no violation as charged."[1]

For its part, the prosecution submitted the case on the basis of the following:

"A. Affidavit of Col. Felix A. Zerrudo (Ret.) Chief Security Officer of the Century Park Sheraton-Manila Hotel, executed on February 29, 1980;

"B. Certification issued by Col. Felix A. Zerrudo (Ret.) dated February 29, 1980;

"C. Certification of Mr. Domingo J. Galicia, Acting Credit Manager of the Manila Hotel dated February 28, 1980;

"D. Letter of Demand dated July 9, 1979 issued by Robert L. Maniquiz, Credit and Collection Manager of the Resort Hotels Corporation addressed to Mr. Charles Andrulis;

"E. Sworn statement dated February 22, 1980 of Mr. Ramonchito Liongson, a Customs Officer, who apprehended the various foreign currencies herein subject to seizure."[2]

Items "C" and "D" above-listed tended to show that Andrulis had, on previous occasions, also tried to abscond without payment of his bills from the Manila Hotel and the Pines Hotel in Baguio.

On 3 June 1980, the Acting District Collector of Customs rendered a Decision, which found Andrulis to have violated Central Bank Circular No. 534 in relation to section 2530(f) of the Tariff and Customs Code, and decreed:

WHEREFORE, by authority of law vested in this Office, it is ordered and decreed that the various foreign currencies confiscated from herein claimant, covered by SID No. 4162-80 be, as they are hereby declared forfeited in favor of the Government of the Republic of the Philippines, the same to be turned over to the Central Bank of the Philippines and exchanged with their equivalent in Philippine pesos which shall be deposited with the National Treasury and accounted for as Customs receipts.

"Let copies of this Decision be furnished all offices and parties concerned for their information and guidance.

"The Chief, Auction and Cargo Disposal Division, this Customhouse, shall inform this Office of the action taken hereon.

"SO ORDERED."[3]

Andrulis appealed to the Acting Commissioner of Customs, who affirmed the same.

On 23 January 1981, Andrulis filed a Notice of Appeal and on 16 February 1981, a Petition for Review with the Court of Tax Appeals, docketed as CTA Case No. 3201. On 30 June 1982, respondent Court reversed the appealed Decision on the theory that the legal presumption of ownership has to be accorded the possessor of the res, who need not be obliged to show or prove it pursuant to Section 5(j) of Rule 131 of the Rules of Court and Article 541 of the Civil Code. The dispositive portion of the CTA Decision decreed:

"WHEREFORE, the decision appealed from is reversed and respondent ordered to effect the restitution of the forfeited currencies to petitioner. No pronouncement as to costs.

"SO ORDERED."[4]

On 10 September 1982, petitioner filed a Motion for Reconsideration on the principal ground that respondent Court had failed to consider that claimant Andrulis had the burden of proof to show that the foreign currencies seized from him were brought into the Philippines by him. The motion was denied on 2 December 1982. Hence, the instant Petition for Review on Certiorari by the Acting Commissioner of Customs represented by the Solicitor General.

The pertinent legal provisions provide:

"Section 3. Unless specifically authorized by the Central Bank or allowed under existing international agreements or Central Bank regulations, no person shall take or attempt to take or transmit foreign exchanges, 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 in by them." (CB Circular No. 534)

"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:

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 exportation of the former."[5] (Italics supplied)

In his defense, private respondent seeks refuge behind the exception in the aforequoted CB Circular No. 534 giving tourists the right to take out of the Philippines their own foreign exchange brought in by them. Private respondent also relies heavily on his acquittal in the criminal charge filed against him for violation of CB Circular No. 534.

The core issue is who has the burden of proof in seizure or forfeiture proceedings? The applicable law, Section 2535 of the Tariff and Customs Code, is explicit in this regard.

"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 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"[6] (Italics ours).

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 Andrulis was apprehended at the MIA and was found to have in his possession the various foreign currencies, 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 CB 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 Andrulis to establish that he fell within the purview of the exception prescribed in the second paragraph of the aforequoted Section 3 of CB Circular No. 534 in that he actually brought into the country the foreign currencies and was just taking them out.[7] This burden, Andrulis had failed to satisfactorily discharge. The legal presumption in Section 5(j), Rule 131 of the Rules of Court and Article 541 of the Civil Code, relied upon by respondent Court, are of a general character and cannot prevail over the specific provisions of the Tariff and Customs Code.

Aside from Andrulis' suspicious actuations when about to be apprehended on board the plane, which cast doubt on his alleged bona fide possession of the foreign currencies, his bare assertion in his Affidavit, claiming that "he came into the country with the intention of investing here and of going into joint ventures with local counterparts"[8] , has not been corroborated by other convincing evidence. The observations of the Solicitor General on this point 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." [9]

Andrulis' acquittal in the criminal charge before the City Fiscal's Office does not operate as *res judicata* in a seizure or forfeiture proceeding. A distinction exists between the proceedings before the Fiscal which are in *personam* since they are directed against the owner or holder of the thing; whereas, a forfeiture proceeding is one in *rem* directed against the thing itself.

"There is a split of authority as to whether a former conviction of a criminal offense based upon the same facts amounts to a bar. x x x The authorities are by no means agreed, however, that a prior conviction for a criminal charge bars an action for a forfeiture of property. Thus, it has been held that since the forfeiture proceedings is one in *rem* under which the offense is attached primarily to the thing rather than the offender, the forfeiture proceedings stands independent of, and wholly unaffected by, any criminal proceeding in *personam* and is not barred by a conviction of the individual under a criminal charge." [10]

In a similar vein, it was also held in *C.F. Sharp & Co., Inc. vs. Commissioner of Customs*, 22 SCRA 765 (1968) that the result of criminal proceedings in a separate case before a different tribunal, being dependent upon the evidence adduced therein, would not necessarily influence the judgment in a forfeiture proceeding.

Finally, Andrulis 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 14 April 1969, of the Monetary Board, provides:

"Henceforth, no currency declaration of any kind shall be required either from outgoing or incoming passengers." [11]

However, tourists are not precluded from submitting proof, other than 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.

WHEREFORE, the Decision of respondent Court of Tax Appeals, promulgated on 30 June 1982, is hereby reversed and set aside, and the Decision of the Acting Commissioner of Customs, dated 15 December 1980, hereby ordered reinstated. No costs.

### **SO ORDERED.**

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

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[1] pp. 53-54, Rollo.

[2] p. 54, *ibid*.

[3] p. 52, *ibid*.

[4] p. 65, *ibid.*

[5] Revised Tariff and Customs Code.

[6] Tariff and Customs Code, as amended by P.D. No. 34.

[7] *Lee Co Liong Ha vs. Court of Tax Appeals, et al.*, G. R. No. 65235, February 28, 1984.

[8] p. 184, *Rollo*.

[9] p. 185, *ibid.*

[10] 23 Am. Jur., p. 618.

[11] CB Circular No. 270, 65 O.G. No. 17, p. 4290.

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