

## ROSA CANCIO, PETITIONER, VS. HON. COURT OF TAX APPEALS AND HON. COMMISSIONER OF CUSTOMS, RESPONDENTS.

*G.R. No. 73882. October 22, 1987*

Ponente: MELENCIO-HERRERA, J.

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### MELENCIO-HERRERA, J.:

Before us is petitioner's Motion for Reconsideration of this Court's Resolution of August 11, 1986, which denied for lack of merit her Petition for Review on Certiorari of respondent Court of Tax Appeals' (CTA) Decision in C.T.A. Case No. 3398.

During the pendency of this case, or on April 23, 1986, petitioner had passed away and her legal heirs were ordered substituted in her stead, and Jose Cancio, Jr., was appointed guardian ad-litem for the minors Ma. Irene and Roberto, both surnamed Cancio, in this Court's Resolution of August 11, 1986.

There is no substantial dispute on the background facts and the evidentiary aspects of the controversy, summarized in said Decision as follows:

"The records show that claimant Mrs. Rosa Cancio bearing Philippine Passport No. 11797799, while clearing through the Pre-Boarding (AVSECOM) Area of MIA with her husband and three (3) children to board PR 306 for Hongkong in the morning of June 12, 1981, was apprehended with One Hundred Two Thousand Nine Hundred Dollars (US\$102,900.00) in cash, six hundred dollars (US\$600.00) in two travelers checks, and one thousand five hundred (P1,500.00) Pesos; that such apprehension was effected only thru an alarm sounded by the scanner (metal detecting device) of the AVSECOM men, when Mrs. Cancio who did not declare her currency had already passed the Customs inspection area; that subject currencies were placed and concealed inside the two fairly-sized carton boxes for local chocolates, securely wrapped and taped with tin foil-back paper; and, that in view of claimant's failure, upon being required, to present the Central Bank Authority, the said currencies were accordingly confiscated and a seizure Receipt No. 013 was issued to her; hence, this seizure proceedings.

"At the hearing of this case, claimant, thru counsel, presented certified xerox copy of her Bank Book (Exhibit "I") for foreign currency deposit with the Philippine Commercial and Industrial Bank under Account FCDU No. 0265, dollar remittances in telegraphic transfers from abroad for deposits in her account from May 13, 1981 to May 21, 1981, and withdrawal cards (Exhibit "1-A" to "1-E", inclusive), attesting to the fact that claimant Rosa Cancio had withdrawn from her FCDU Account a certain amount of United States currency which tended to show that claimant herein was a foreign currency depositor pursuant to the provisions of Republic Act No. 6426, as implemented by Central Bank Circular No. 343. And herein claimant testified that because her foreign currency deposit could not be withdrawn at one time, she made her withdrawal on several occasions starting from May 14, 1981 up to May 27, 1981 when she closed her account preparatory to her departure which was scheduled in the morning of June 12, 1981 for Hongkong; that from Hongkong, she and her family intended to proceed to the United States for medical treatment of her heart ailment as advised by her two attending physicians from the UST Hospital; that the US currency that they were carrying and confiscated from them on June 12, 1981 was intended principally for such medical purpose and for other miscellaneous

and necessary expenses, and, that the subject currencies were concealed and hidden by them inside the two chocolate boxes solely for security reasons.”[1]

By reason of the forfeiture decreed by respondent Commissioner of Customs of both the foreign and local currencies due to petitioner's failure to present a Central Bank (CB) authority to bring said currencies out of the country, petitioner appealed to respondent Court of Tax Appeals. The latter Court affirmed the forfeiture of the US\$102,900.00 in cash, and US\$600.00 in travellers' checks for having been in violation of Central Bank Circulars Nos. 265 and 534, in relation to Section 2530(f) of the Tariff and Customs Code, as amended. It reversed, however, the forfeiture of P1,500.00 on the ground that since petitioner was travelling with her husband and three (3) children, the said amount did not exceed the P500.00 limit that each traveller is allowed to bring out of the country without a CB permit pursuant to paragraph 4 of CB Circular No. 383.

Petitioner's unimpugned evidence shows that she was a foreign currency depositor at the Philippine Commercial and Industrial Bank at Makati, Metro Manila, and that the subject foreign currency was part of the total amount of US\$116,000.00 she had withdrawn from said bank from May 14 to 27, 1981 for her travel and medical expenses in the United States via Hongkong.[2] Admitted, too, is the fact that petitioner failed to present to the apprehending customs authorities a Central Bank authority to bring out of the country the said currencies while at the pre-boarding area of the Manila International Airport on June 12, 1981 on her scheduled flight to Hongkong together with her husband and three children.

The primordial issue for resolution is whether or not respondent Court had committed reversible error in upholding the forfeiture of the foreign currencies in question.

A second look at the facts and the equity of the case, the pertinent laws, and the CB Circulars involved, constrains us to rule in the affirmative and, accordingly, to grant reconsideration of our Resolution of August 11, 1986 denying review.

It is true that in so far as the exportation or taking out of foreign currency from the country is concerned, Central Bank Circular No. 265, issued on November 20, 1968, particularly paragraph 3 thereof, mandates:

"3. 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."

Similarly, Central Bank Circular No. 534, issued on July 19, 1976, reiterates and provides in Sec. 3 thereof as follows:

"Sec. 3. 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 the 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."

However, peculiar to the present controversy is the fact that, as stated previously, petitioner is a foreign currency depositor. Relevant and applicable to her is the following provision of the "Foreign Currency Deposit Act of the Philippines" (Republic Act No. 6426, as amended), which took effect upon its approval on April 4, 1972:

"SEC. 5. Withdrawability and transferability of deposits. - There shall be no restriction on the withdrawal by the depositor of his deposit or on the transferability of the same abroad except those arising from the contract between the depositor and the bank." (Emphasis Ours).

Under the foregoing provision, the transferability abroad of foreign currency deposits is unrestricted. Only one exception is provided for therein, which is, any restriction "arising from the contract between the depositor and the bank". Neither is a Central Bank authority required for the transferability abroad of foreign currency deposits.

Attention is called, however, to the implementing rules and regulations to said Republic Act 6426, as embodied in CB Circular No. 343 issued on April 24, 1972, which provides:

"SEC. 11. Withdrawability and Liquidity of Deposits. -

"a. xxx xxx xxx

"b. Subject only to the terms of the contract between the bank and the depositor, the latter shall have a general license to withdraw his deposit, notwithstanding any change in policy or regulations.

xxx xxx xxx"

(Underlining supplied)

Respondent Court has taken the position that the foregoing provision limits the right of the depositor to that of withdrawal and withholds from him the right of transferability abroad. That is not so. Circular-Letter, dated August 3, 1978, issued by the Central Bank reads in explicit terms:

"TO: ALL BANKS AUTHORIZED TO ACCEPT FOREIGN CURRENCY DEPOSITS UNDER THE PROVISIONS OF RA 6426, AS AMENDED AND PRESIDENTIAL DECREE NO. 1035.

"Effective immediately, the banks authorized to accept foreign currency deposits under the provisions of RA 6426, as amended, and PD 1035 and as implemented by Central Bank Circulars 343 and 547, are hereby instructed to advise their foreign currency depositors who are withdrawing funds for travel purposes to carry with them the certificate of withdrawal that the banks shall issue. The travellers shall present the certifications to the Customs and Central Bank personnel at the MIA, if requested.

"The banks shall issue a uniform certification, as follows:

‘ \_\_\_\_\_

Date

"TO WHOM IT MAY CONCERN:

This certifies that \_\_\_\_\_ whose signature appears below has withdrawn today, the amount of \_\_\_\_\_ in cash (US\$ \_\_\_\_\_) and Travellers Check (US\$ \_\_\_\_\_) against his/her foreign currency account maintained with us.

The funds herein withdrawn are represented to be used in connection with the depositor's foreign travel scheduled on or about \_\_\_\_\_ 197\_\_.

\_\_\_\_\_

(Signature of Authorized Official Over

Printed Name)

\_\_\_\_\_

(Signature of Depositor)’

"Please be guided accordingly.

(SGD.) B.D. RUIZ

Director"

It is a fact that petitioner could not present a certificate of withdrawal at the Manila International Airport when she was about to depart. As she explained, however, she was unaware of this requirement. And if she had wrapped her dollar currency inside a chocolate box it was for "security reasons". Besides, as instructed in the Circular-Letter above-quoted, it is the authorized depository bank which should advise its depositors to carry with them the certificate of withdrawal. At any rate, respondent Court has found that petitioner has presented in evidence her foreign currency bankbook<sup>[3]</sup> and her withdrawal cards.<sup>[4]</sup> These may be considered as substantial compliance for purposes of this case.

Indeed, given the underlying objective of the Foreign Currency Deposit Act, as amended, which is to attract and invite the deposit of foreign currencies which are acceptable as part of the international reserve in duly authorized banks, in order that they may be put into the stream of the banking system, it would be to defeat the very purpose of the law to place undue restrictions on the transferability of such funds. The countervailing effect would be to discourage prospective foreign currency depositors to the detriment of the banking system.

In fine, Central Bank Circulars Nos. 265 and 534 requiring prior Central Bank authority for the taking out of the country of foreign currency should not be made to encompass foreign currency depositors whose rights are expressly defined and guaranteed in a special law, the Foreign Currency Deposit Act (RA 6426, as amended). As a foreign currency depositor, therefore, petitioner cannot be adjudged to have violated the aforestated Central Bank Circulars. It follows that neither is there room for the application of Section 2530(f) of the Tariff and Customs Code, as amended, which provides for the forfeiture of any article and other objects, the exportation of which is effected or attempted contrary to law.

This is not to condone petitioner's failure to declare the foreign currency she was carrying out of the country but just to stress that the Foreign Currency Deposit Act grants petitioner the right of transferability of her funds abroad except that she was not advised by her bank to secure, and consequently was unable to present, the necessary certificate of withdrawal from said bank.

ACCORDINGLY, the Decision of respondent Court of Tax Appeals is hereby SET ASIDE in so far as it upheld the forfeiture by respondent Commissioner of Customs of the sums of US\$102,900.00 in cash, and US\$600.00 in traveller's checks, which amounts should now be returned to petitioner's heirs, but AFFIRMED in so far as it reversed the forfeiture by the same official of the sum of P1,500.00. No costs.

**SO ORDERED.**

Yap, Acting C.J., (Chairman), Narvasa, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

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[1] CTA Decision, pp. 2-3; Rollo, pp. 33-34.

[2] Ibid., pp. 7-8.

[3] Exhibit "I".

[4] Exhibits "I-A" to I-E".

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