

**Hasnan Bin Hj Mohd Dahlan**

And

**Public Prosecutor**

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**(High Court of Brunei Darussalam)**  
**(Criminal Motion No. 29 of 2024)**

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Muhammed Faisal Bin PDJLD Kol (B) DSP Haji Kefli, J.C.

**Date of Ruling: 5<sup>th</sup> May 2025**

*Headnote – Criminal Procedure – Excise Order – Repeat offender – Possession of unexcisable goods – Tobacco and liquor – Section 146(1)(d), (ia), (iia) Excise Order, 2006 – Application for extension of grace period – Application for installment payment – Long installment payment not in public interest – appeal dismissed*

Appellant In Person.

DPP Nurul Husna Aqilah Binti Haji Abidin for the Public Prosecutor.

**Cases cited:**

*Nazirah Faiqah binti Adeni v Public Prosecutor* (HCCA No. 3 of 2020)

*Liew Shauw Ming v Public Prosecutor* (HCCA No. 14 of 2018)

*Nur Syafiq Iskandar bin Suhaili v Public Prosecutor* (HCCA No. 30 of 2018)

**Statutes:**

Section 146(1)(d) of the Excise Order, 2006

Section 146(1)(ia) of the Excise Order, 2006

Section 146(1)(iia) of the Excise Order, 2006

Section 132 of the Excise Order, 2006

**RULING**

**Muhammed Faisal, J.C.:**

**I Introduction**

The defendant, Hasnan bin Haji Mohd Dahlan was charged in the Magistrates' court on the 16 December, 2024 on 3 counts under section 146(1)(d) of the Excise Order, 2006.

He pleaded guilty and was fined to a total of BND713,820.00 in default 65 months imprisonment, with a 6 months grace period. Full payment is due by 16 June 2025.

The defendant now appears before the High Court, seeking for both an extension of the grace period and an order for monthly installment payment.

The defendant (D1) was jointly charged with a co-accused (D2), who has claimed trial.

The defendant is also a repeat offender, having a conviction for a similar offence in 2020.

## **II The Charges**

The charges are reproduced below:

### **Amended 1<sup>st</sup> Charge (D1 and D2 only)**

That you, on the 22<sup>nd</sup> December 2021, at about 1112 hours, at the vicinity of a rental house address at No. 9, Simpang 701-23, Kampong Salambigar, Jalan Muara, in Brunei Darussalam, did knowingly keep unexcisable goods, to wit:

1. 50 cartons X 10 packets X 20 sticks of Era Premium Cigarettes
2. 03 cartons X 10 packets X 20 sticks of Era Full Flavor Cigarettes
3. 74 cartons X 10 packets X 20 sticks of Era Black Menthol Cigarettes
4. 03 cartons X 10 packets X 20 sticks of L&M Fine Tobaccos Finely Cut
5. 01 carton X 2 packets X 20 sticks of L&M Fine Tobaccos Finely Cut
6. 34 cartons X 10 packets X 16 sticks of Win Mild Merah Cigarettes
7. 91 cartons X 10 packets X 16 sticks of Grow Reg Merah Cigarettes
8. 48 cartons X 10 packets X 16 sticks of Grow Merah Cigarettes
9. 03 cartons X 10 packets X 16 sticks of Grow Black Ice Cigarettes
10. 05 cartons X 10 packets X 16 sticks of Djarum Super Cigarettes
11. 09 cartons X 10 packets X 16 sticks of L.A Ice Energice
12. 10 cartons X 10 packets X 16 sticks of L.A Menthol 100% Menthol Alam
13. 20 cartons X 10 packets X 16 Sticks of Grow Reg Cigarettes
14. 05 packets X 16 sticks of L.A Menthol Cigarettes
15. 01 packet X 01 stick of L.A Menthol Cigarettes

and you have thereby committed an offence under section 146(1)(d) of the Excise Order, 2006 and punishable under Section 146(1)(ia) of the same Order

In the case of unexcisable goods, such goods being dutiable goods consisting of wholly or partly of tobacco –

(A) For the first offence, to a fine of –

(AA) Not less than 8 times of the amount of excise duty or \$5000, whichever is the greater amount; and

(AB) Not more than 15 times the amount of excise duty or \$50,000, whichever is the greater amount; and

(B) For the second and any subsequent conviction, to a fine of –

(BA) not less than 20 times the amount of excise duty or \$10,000, whichever is the greater amount; and  
(BB) not more than 30 times the amount of excise duty or \$100,00, whichever is the greater amount, imprisonment for a term not exceeding 3 years or both

Except that when the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding \$100,000.

**Amended 2<sup>nd</sup> Charge (D1 and D2 only)**

That you, on the 22<sup>nd</sup> December 2021, at about 1112 hours, at the vicinity of a rental house address at No. 9, Simpang 701-23, Kampong Salambigar, Jalan Muara, in Brunei Darussalam, did knowingly keep unexcisable goods, to wit:

1. 04 bottles X 360ml X 12.5% Alcohol of Green Grape (Good Day)
2. 01 bottle X 360ml X 13.5% Alcohol of Grape Fruit (Good Day)
3. 01 bottle X 360ml X 13.5% Alcohol of Grape Fruit (Good Day)(used)
4. 01 bottle X 750ml X 13.5% Alcohol of B&G Merlot Reserve 2019 (Barton & Guestier)
5. 03 cans X 500ml of Kronenbourg 1664 Wheat Beer with A Hint of Citrus
6. 10 bottles X 330ml X 6.8% Alcohol of Guinness Foreign Extra Stout
7. 02 blue plastics X 24 cans X 320ml X 5% Alcohol of Heineken Original
8. 02 blue plastics X 24 cans X 320ml X 5% Alcohol of Carlsberg Danish Pilsner
9. 01 green plastic X 04 bottles X 01 litre X 40% Alcohol of Label 5 Blended Whisky
10. 01 bottle X 360ml X 13.5% Alcohol Melon (Good Day)

and you have thereby committed an offence under section 146(1)(d) of the Excise Order, 2006 and punishable under Section 146(1)(iia) of the same Order.

In the case of prohibited goods, such goods consisting intoxicating liquor –

(A) For the first offence, to a fine of –

(AA) Not less than 8 times of the amount of excise duty or \$5000, whichever is the greater amount; and

(AB) Not more than 15 times the amount of excise duty or \$50,000, whichever is the greater amount; and

(B) For the second and any subsequent conviction, to a fine of –

(BA) not less than 20 times the amount of excise duty or \$10,000, whichever is the greater amount; and

(BB) not more than 30 times the amount of excise duty or \$100,00, whichever is the greater amount, imprisonment for a term not exceeding 3 years or both

Except that when the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding \$100,000.

### **3<sup>rd</sup> Charge (D1 only)**

That you, on the 22<sup>nd</sup> December 2021, at about 1154 hours, inside a vehicle with bearing registration number KL5191 at the vicinity of a rental house address at No. 9, Simpang 701-23, Kampong Salambigar, Jalan Muara, in Brunei Darussalam, did knowingly have in your possession keep unexcisable goods, to wit:

1. 04 cartons X 10 packets X 20 sticks of Era Premium Cigarettes
2. 01 caron X 10 packets X 16 sticks of Grow Reg Cigarettes
3. 20 cartons X 10 packets X 16 sticks Grow Reg Merah Cigarettes
4. 10 cartons X 10 packets X 16 sticks of Grow Black Ice Cigarettes
5. 08 cartons X 10 packets X 16 stick of Win Mild Hijau Cigarettes
6. 05 cartons X 10 packets X 20 sticks of Era Black Menthol Cigarettes
7. 05 cartons X 10 packets X 16 sticks of Win Mild Merah Cigarettes
8. 01 carton X 10 packets X 20 sticks of Dunhill Switch Grey Cigarettes
9. 01 packet X 20 sticks of Dunhill Icy Mint Capsule Cigarettes

and you have thereby committed and offence under section 146(1)(d) of Excise Order, 2006 and punishable under Section 146(1)(ia) of the same Order.

In the case of unexcisable goods, such goods being dutiable goods consisting of wholly or partly of tobacco –

(A) For the first offence, to a fine of –

(AA) Not less than 8 times of the amount of excise duty or \$5000, whichever is the greater amount; and

(AB) Not more than 15 times the amount of excise duty or \$50,000, whichever is the greater amount; and

(B) For the second and any subsequent conviction, to a fine of –

(BA) not less than 20 times the amount of excise duty or \$10,000, whichever is the greater amount; and

(BB) not more than 30 times the amount of excise duty or \$100,00, whichever is the greater amount, imprisonment for a term not exceeding 3 years or both

Except that when the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding \$100,000.

### **III *In-default sentence and calculation of fine***

The defendant was fined as follows:

Amended 1 <sup>st</sup> Charge	BND613,220.00, in-default 36 months imprisonment
Amended 2 <sup>nd</sup> Charge	BND10,000.00, in-default 10 months imprisonment

3 <sup>rd</sup> Charge	BND90,600.00, in-default 19 months imprisonment
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For each of the charges, the excise duty evaded were BND30,661.00, BND318.00 and BND4,530 respectively.

For a second and any subsequent conviction, the defendant would be subjected to a fine of:

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*“...not less than 20 times the amount of excise duty or \$10,000, whichever is the greater amount; and not more than 30 times the amount of excise duty or \$100,000, whichever is the greater amount, imprisonment for a term not exceeding 3 years or both,”*<sup>1</sup>

Following the specified calculation and the excise duty to be paid, the magistrate imposed the lowest value of fine available to him as stipulated by law. The in-default sentence for each of the charges are also within that as stipulated in section 132 of the Excise Order, 2006.

Section 132 reads:

***“Imprisonment in default etc.***

*132. Notwithstanding the provisions of the Criminal Procedure Code (Chapter 7), the period for which the court directs the offender to be imprisoned in default of payment of any fine under this Order, or in default of a sufficient distress to satisfy any such fine, shall not exceed the following scale -*

<i>where the fine</i>	<i>the period shall not exceed</i>
<i>does not exceed \$100</i>	<i>2 months;</i>
<i>exceeds \$100 but does not exceed \$1,000</i>	<i>4 months;</i>
<i>exceeds \$1,000 but does not exceed \$5,000</i>	<i>6 months;</i>

*with an additional 2 months for every \$1,000 after the first \$5,000 of the fine until a maximum period of 3 years is reached.”*

Even though the defendant did not appeal to the amount of fine and the in-default sentence imposed, given the high value of the fine and length of the in-default sentence, I consider it prudent to nevertheless examine whether they are legally appropriate and proportionate.

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<sup>1</sup> Section 146(1)(ia)(B) and Section 146(1)(iia)(B)

Having done so, I am satisfied that both the fine and the in-default sentence fall within the bounds of the law and are certainly not excessive.

#### **IV Application for extension of grace period and installment payment**

To reiterate, the purpose of the defendant's appeal is to apply for an extension of his grace period and for monthly installment payment. The magistrate granted a 6-month grace period, ending on the 16 June 2025. He is asking for extension of between 2 – 3 years as well as installment payment of BND1,500.00 per month.

Currently the defendant's wife is ill and needs to be brought for dialysis regularly. She needs to be transported to and from the medical clinic for dialysis as well as being cared for during her time of treatment. This is the defendant's responsibility which he feels duty bound to discharge, as there are no one else who is able to assist him in caring for his ill wife.

This seems to be the sole purpose of his application as he added in court that "*if she is no longer alive, I do not have a problem going into prison*". The defendant's brutal honesty and candor does put starkly his position, which appears to be motivated not by a desire to evade punishment, but by a sense of personal duty to care for his wife. While the Court acknowledges the weight of such obligations, they do not, in and of themselves, constitute a legal basis to interfere with a sentence properly passed.

It is noted that, at the point of the appeal, the defendant has only contributed to BND5,000 towards paying the fine by way of 4 installment payments. While the defendant may yet settle the fine within the time frame specified, however BND5,000 only represent less than 1% of BND713,820.00 with the end of the grace period looming close.

With this in mind, his proposal for installment payment of BND1,500 per month over an estimated 2 years will only yield BND36,000.00, a mere 5% odd of the total fine. When this is put to the defendant, he merely added that his default sentence will be shortened by the amount of the fine that he would have paid, if his appeal was granted.

It is clear that the defendant is only buying for time.

#### **V Case laws**

Relevant cases have upheld magistrates' grace period of 6 months being sufficient time for defendant to pay off the fine imposed.<sup>2</sup> These are for fines of the amounts of BND242,000.00 and BND246,000.00 respectively.<sup>3</sup>

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<sup>2</sup> See *Liew Shaw Ming v Public Prosecutor (HCCA No. 14 of 2018)*, *Nur Syafiq Iskandar bin Suhaili v Public Prosecutor (HCCA No. 30 of 2018)*

<sup>3</sup> *ibid*

In *Nazirah Faiqah binti Adeni v Public Prosecutor (HCCA No. 3 of 2020)*, the High Court allowed monthly installments of 36 months installment to settle a BND250,000.00 fine. A longer grace period was not allowed.

We can conclude that the accepted grace period is that of six months. Even if the grace period was extended to a maximum of 36 months, the defendant would have to pay a month installment of the region of BND20,000.00 (rounding up). There is no indication that he has this kind of funds.

To allow the defendant a longer grace period with a substantially lower monthly installment payment is not in the public interest.

## **VI Conclusion**

Having considered the grounds of the defendant's application and the reasons advanced in support of it; I find no sufficient basis to interfere with the sentence lawfully imposed. Personal circumstances, however sincere, do not displace the interests of justice or justify a departure from due process. The application is accordingly dismissed.

**MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HAJI KEFLI**  
Judicial Commissioner