

Haji Nurhassimie Bin Mohd Faizal

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 30 of 2022)**

Steven Chong, C.J.
29 March 2023

Criminal law – Possession of unexcised cigarettes and alcoholic drinks – Sentence

Ms Wafa Hamizah Binti Mohamad (M/S Ridzlan & Co.) for Appellant.
DPP Nor’Adliatul Hidayah Hj Mohd Zaidi for Respondent/Public Prosecutor.

Case cited:

Md Hisham Bin Awang Mustaman v Public Prosecutor [2017] 1 JCBD 194

Steven Chong, C.J.:

Introduction

On 6 October 2022 in the Magistrate’s Court the appellant was convicted after a trial of two offences under section 146(1)(d) of the Excise Order 2006: possession of unexcised cigarettes (1st Charge); and possession of unexcised alcoholic drinks (2nd Charge).

Senior Magistrate Pg Hazirah Binti Pg Mohd Yusof imposed fines of \$150,000 in default 18 months’ imprisonment on the 1st Charge and \$51,740 in default 6 months’ imprisonment on the 2nd Charge.

The appellant appeals against the resulting total fine of \$201,740 in default 2 years’ imprisonment.

The facts

Briefly summarized the case for the prosecution was that on the night of 16 July 2020 customs officers intercepted a van in the vicinity of the Kampong Sungai Buloh traffic lights on suspicion

of smuggling contraband goods. There were two men in the van. The driver was an Indonesian national named Ismunandar while the appellant was the passenger.

A total of 150 cartons of unexcised cigarettes and 54 cartons of alcoholic drinks were seized from the van and the duo were arrested by the customs officers. In his written statement recorded by a customs officer the appellant admitted the unexcised cigarettes and alcoholic drinks had been loaded into the van at the Pengkalan Sibabau Jetty by him and Ismunandar.

The amount of excise duty evaded for the cigarettes and alcoholic drinks amounted to \$15,000 and \$5,170 respectively.

Sentence of the court below

The Senior Magistrate gave credit to the appellant for his clear record and cooperation with the customs officers in the course of investigations.

In determining the fine to be imposed the Senior Magistrate decided a multiplier of 10 was appropriate on the "*facts of the case*".

Parties' submissions

Essentially, counsel for the appellant submits that the fine imposed was excessive having regard to the following factors: (1) "*lesser culpability*" of the appellant as he was "*only reckless*" being an "*accessory*"; (2) he is a young man aged 21; (3) his "*exemplary character*" as the breadwinner for his family supporting his parents and seven siblings on his income working in the oil and gas industry; and (4) delay of about 2 years in the prosecution.

The prosecution submits that the Senior Magistrate's decision to use a multiplier of 10 is in line with the tariff sentencing range mentioned in *Md Hisham Bin Awang Mustaman v Public Prosecutor* [2017] 1 JCBD 194.

My decision

The submission made on behalf of the appellant that his culpability for the crime is "*lesser*" as an "*accessory*" is misconceived. I see no difference in culpability between the appellant and his partner in crime. Both the appellant and Ismunandar were equally culpable in loading the unexcised cigarettes and alcoholic drinks into the van for delivery albeit the latter was the driver.

In *Md Hisham Bin Awang Mustaman (supra)* Lugar-Mawson, JC observed that:

“ . . . there is an established tariff sentencing range based on a multiplier of 8 to 10 to the amount of duty evaded as the financial penalty to be imposed on a first-time offender after an early guilty plea for an offence under section 146(1)(d).”

Notwithstanding the mitigating factors advanced on behalf of the appellant considering he was convicted after a trial the fine imposed by the Senior Magistrate premised on a multiplier of 10 to the amount of duty evaded is certainly not excessive.

Conclusion

For the foregoing reasons the appeal is dismissed.

DATO SERI PADUKA STEVEN CHONG
Chief Justice