



Haji Ahad Bin Adi

.... Appellant

AND

Public Prosecutor

.... Respondent

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 12 of 2016)**

Before Hon. Judicial Commissioner Gareth John Lugar-Mawson in Court
Date of Hearing: 13th May 2017

Criminal Law - *section 146(1)(d) of the Excise Order 2006 - possession of un-excised cigarettes - time to pay fine.*

Ms S.Rozaimarlenny DSLJ Hj Abd Rahman for Appellant.
DPP Md Danial Bin Dato Seri Paduka Hj Kifrawi for the Respondent.

Cases cited in the Judgment:

Hjh Dara binti Yusup (High Court Criminal Appeal No.2 of 2011)
Asri bin Ramlee v PP (High Court Criminal Appeal No.12 of 2011)
Affendi bin Hj Md Hussin (High Court Criminal Appeal No.23 of 2012)
Roslan bin Mansor (High Court Criminal Motion No.32 of 2014)
Low Tze Yen v PP (High Court Criminal Motion No.28 of 2015))

J U D G M E N T

1. The Appellant was convicted after a trial on 1st April 2016 of 3 charges of possession of un-excised goods under section 146(1)(d) of the Excise Order 2006. Each charge related to the possession of cigarettes on which duty had not been paid. The first charge related to possession of 10 cartons of cigarettes, containing



1,000 cigarettes in total, on 29 March 2012. The second charge related to possession of 42 packets of cigarettes, containing 600 cigarettes in total, on 9 May 2013. The 3rd charge related to possession of 179 cartons of cigarettes, containing 33,400 cigarettes in total, on 10 January 2014. This was by far the largest quantity of cigarettes in the 3 charges and the excise duty evaded in respect of them was BND\$8,750.

2. The Appellant pleaded not guilty to all 3 charges and was convicted after trial.
3. On 13 April 2016, the Appellant was sentenced on the 1st charge to a fine of BND\$4,000, with 4 months imprisonment in default of payment, on the 2nd charge to a fine of BND\$2,000, with 2 months imprisonment in default of payment and on the 3rd charge to a fine of BND\$81,000, with 12 months imprisonment in default of payment. If they are to be served, all periods of imprisonment are to be served consecutively. He was given a grace period of 10 months to pay the fines. To date he has paid the fines imposed in respect of the 1st and 2nd charges, but not the fine imposed in respect of the 3rd charge.
4. The Appellant appeals against his sentence on the 3rd charge only and against the grace period of 10 months given to him to pay the fine.
5. It is clear from the authorities cited to me by counsel for the Public Prosecutor (namely: **Hjh Dara binti Yusup (High Court Criminal Appeal No.2 of 2011)**; **Asri bin Ramlee v PP (High Court Criminal Appeal No.12 of 2011)**; **Affendi bin Hj Md Hussin (High Court Criminal Appeal No.23 of 2012)**; **Roslan bin Mansor (High Court Criminal Motion No.32 of 2014)**; and **Low Tze Yen v PP**



(High Court Criminal Motion No.28 of 2015)) that the High Court has set a tariff sentencing range based on a multiplier of 8 to 10 to the amount of duty evaded as the penalty to be imposed on a first-time offender, after an early guilty plea, for an offence under section 146(1)(d).

6. In this case the Appellant was convicted after trial. He is a first-time offender. In the 3rd charge, the duty evaded for the cigarettes was BND\$8,750, the fine imposed of BND\$81,000, with 12 months imprisonment in default of payment, is about 9 times the amount of the duty evaded. This sentence is by no means manifestly excessive, indeed it is rather lenient given that the Respondent did not plead guilty and took the matter to trial.
7. Counsel for the Appellant argues that the Magistrate erred in principle in failing to make an inquiry into the Appellant's means. I do not agree, the Magistrate considered, among other matters, the Appellant's mitigating factors, namely: that he is a government pensioner receiving a pension of BND\$1,400 per month; that he is the sole breadwinner of his family; that his wife is unemployed; and that 2 of his children are unemployed. I am satisfied that the Magistrate gave adequate consideration to the Appellant's financial circumstance.
8. With respect to the appeal for an extension of time to pay the fine; the Appellant has made no payments towards the reduction of the fine since the date of his sentence (13th April 2016), however, I take into account that to a man of limited means, as the Appellant claims to be, it is a considerable sum that he has to raise. As an act of clemency, I extend the time he has to pay the fine to 30 November of this year - 2017. If he fails to pay the fine by that date he will have to serve the 12 month period of imprisonment imposed in default of payment.



9. The appeal is allowed to the extent that the grace period for paying the fine is extended to 30 November 2017.

Hon. Gareth John Lugar-Mawson
Judicial Commissioner