

Hui Transport Sdn Bhd

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 14 of 2020)**

Steven Chong, CJ

7 July 2020

Criminal law – Sentence – Forfeiture – Failure to declare – Discretion – Applicable principles – s.131 of the Customs Order, 2006.

Hj Mohammad Daud Bin Hj Ismail (M/S Daud Ismail and Company) for the Appellant.

DPP Nor’adliatul Hidayah Binti Hj Mohd Zaidi for the Public Prosecutor/Respondent.

Cases cited:

Yunus Bin Diris, Nyamin anak Labang and Adang @Aidah Binti Sulaiman v Public Prosecutor [2001] 2 JCBD 65

Hong Leong Finance v Public Prosecutor [2004] 4 SLR (R) 475

Steven Chong, CJ (ex tempore):

Introduction

This is an appeal by Hui Transport Sdn Bhd (“Hui Transport”) against the order of forfeiture of its truck trailer.

The forfeiture order was made by Chief Magistrate Pg Masni Binti Pg Hj Bahar following the conviction of the driver of the truck trailer, Dennis Anak Ketok (“Dennis”), upon his guilty plea to the charge of failing to declare in the Customs Transit Declaration a total of 3,432 cartons of beer contrary to section 138(1)(b) of the Customs Order 2006.

Background facts

Hui Transport is a goods transport company based in Kuching. On 8 August 2019 Tiara Pewira Enterprise (“Tiara”) hired Hui Transport to carry 600 bags of “Baja Abok” (“wood dust”) from Miri to Keningau through the Sungai Tujoh Control Post.

Upon arrival of the truck trailer at the Sungai Tujoh Control Post on the morning of 11 August 2019, Dennis handed over a Customs Transit Declaration to customs control stating that it was transporting wood dust. However, a scan of the trailer truck revealed “suspicious images” and on inspection customs officers found 3,432 cartons of beer.

According to Ling Tien Hui (“Ling”), the managing director of Hui Transport, the truck trailer had been loaded by employees of Tiara and he believed that it was carrying wood dust as described in the delivery order. After the forfeiture order was made Ling made enquiries and discovered that Tiara had ceased operations and it was never registered at the Kuching Registry of Companies.

Chief Magistrate’s decision

The Chief Magistrate decided that (a) Hui Transport’s failure to inspect the contents of the truck trailer before making the declaration it was conveying wood dust, and (b) the seriousness of the offence, warranted a forfeiture order.

The appeal

Counsel for Hui Transport submits that the Chief Magistrate erred in law in ordering forfeiture when the company was an innocent victim of “*fraudulent conduct*” by Tiara which had hired the truck trailer purportedly to transport wood dust based on the delivery order.

Applicable principles

The court is conferred with a discretion to order forfeiture or not under section 131 of the Customs Order, 2006. In exercising this discretionary power the relevant factors to be considered are those set out in *Yunus Bin Diris, Nyamin anak Labang and Adang @Aidah Binti Sulaiman v Public Prosecutor* [2001] 2 JCB 65, and it is unnecessary to repeat them here.

As the exercise of the discretion is a fact sensitive decision the importance to be attached to any one or more of the relevant factors enumerated in the *Yunus Bin Diris* case depends on the nature of the offence and the facts of the case.

On the facts of the instant case the Chief Magistrate was right to order forfeiture for the reasons which she gave in her ruling.

In *Hong Leong Finance v Public Prosecutor* [2004] 4 SLR (R) 475, a decision of the Singapore High Court, Yong Pung How, CJ in dismissing the petition of a finance company for criminal revision of a forfeiture order against a truck owned by it, made under section 32(1) of the Wholesale Meat and Fish Act, said at para 26:

“Finance companies are responsible for the use of their vehicles and for protecting themselves against loss of their vehicles. Finance companies are well aware of the commercial risk associated with lending out vehicles under hire purchase. Therefore, they should enquire more carefully about the customer’s occupation and place of work. If finance companies find it difficult in keeping watch on the use of their vehicles, they should insure themselves against the loss of their vehicles and if they so desire, have the customer pay the cost of insurance premiums.”

The above comments of Yong Pung How, CJ in relation to finance companies are apposite to goods transport companies like Hui Transport. Goods transport companies, too, are responsible for the use of their vehicles and for protecting themselves against the loss of their vehicles. Goods transport companies are surely cognizant of the commercial risk of hiring out their vehicles for conveying goods.

It behoves on Hui Transport to assure itself that the goods it is conveying on behalf of a customer are what the customer claims to be. Hui Transport ought to have taken reasonable steps to ascertain that Tiara was in fact loading wood dust, and nothing else, into the truck trailer such as insisting on the presence of at least one of its own employee at the time of loading.

Hui Transport should also have conducted due diligence on Tiara before the carriage of the purported wood dust instead of belatedly doing so after the forfeiture.

The company has no basis to complain about the forfeiture due to its own neglect to protect itself by adopting sensible measures to authenticate the consignment and must live with the consequence of the decision it made to rely solely on the representations of Tiara.

Furthermore, the offence concerned a substantial quantity of beer and the duty payable amounted to over \$170,000. The gravity of the offence justified a forfeiture order aside from the fine imposed.

Conclusion

For these reasons the appeal is dismissed.

DATO SERI PADUKA DATO STEVEN CHONG
Chief Justice

