Muhammad Fauzi Bin Lasa

and

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No.15 of 2018)

Pg DP Hjh Rostaina binti Pg Duraman, J.C.
9th July 2018

Criminal Law --- offence under Section 146(1)(d) and punishable under Section 146(1)(i) of the Excise Order 2006 --- Whether fine excessive --- Extension of time to pay fine

Cases cited:
Ang Suat Goh vs PP (Criminal Appeal No.12 of 2011)
Asri bin Ramlee vs PP (Criminal Appeal No.22 of 2011)
Hjh Dara binti Yusup vs PP (Criminal Appeal No.23 of 2011)
Aishah binti Md Zaini vs PP (Criminal Appeal No.28 of 2011)
Sepinah binti Hj Saat vs PP (Criminal Appeal No.29 of 2011)
Norkidah binti Abu Bakar vs PP (Criminal Motion No.10 of 2014)
Low Tze Yen vs PP (Criminal Motion No. 28 of 2015)
Omar ali bin Abdullah vs PP (Criminal Appeal No. 47 of 2015)

Appellant in person.
DPP Nur Eleana bte Dato Paduka Hj Hairol Arni and assisted by DPP Dr Mohd Hussin Ali bin Idris for Respondent/Public Prosecutor.

J U D G M E N T

Pg DP Hjh Rostaina, J.C

1. On 19th May 2018, in the Magistrate's Court, the Appellant was convicted on his own plea to one count under section 146(1)(d) of the Excise Order 2006. The charge was as follows:-

Charge

That you, on the 14th of January 2018, at about 1138 hours, inside a vehicle model Hyundai Accent bearing registration number BAS 9192 at the vicinity of Kuala Lurah Control Post in Brunei Darussalam, did have in your possession un-excisable goods, to wit:

1. 100 bottle x 60ml of Vape Juice (orange)
2. 84 bottle x 60ml of Vape Juice (green)
3. 84 bottle x 60ml of Vape Juice (brown)

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

Penalty under section 146(1)(i) of the Excise Order 2006
In the case of un-excisable goods, such goods being dutiable goods, for the first offence, to a fine not less than 6 times the amount of the excise duty or $40,000 whichever is the lesser amount, and of not more than 20 times the amount of excise duty or $40,000, whichever is the greater amount, and for a second or any subsequent conviction, to such fine, to imprisonment for a term not exceeding 2 years or both; Provided that when the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding $40,000

2. The Magistrate sentenced him to $27,900 fine or 14 months' imprisonment in default of payment. He was given 6 months grace period to fully settle the fine; by 19th November 2018.

3. The admitted facts were that on the 14th January 2018, the Customs officers at the Kuala Lurah Control had inspected the vehicle that the Appellant drove and found the items as stated in the charge. He told them he had collected the items from the post office at Limbang for his brother. He informed me that he was not aware he had to pay the excise duty on these items.

4. He appealed for a reduction in the amount of fine imposed on him and a longer period of instalment payments at $800 monthly until the total amount of the fine is settled. He has no prior conviction, single, aged 24, employed and earns $800 monthly. He admitted he has financial difficulties. He supports his parents and has other financial obligations.

5. DPP Nur Eleana bte DP Hj Hairol Arni submitted the total duty evaded by the Appellant was $3,484 and the Magistrate had imposed a fine of $27,900. This was 8 times the duty evaded and is by no means manifestly excessive. It is within the range of sentences normally imposed by the court below for similar offences and has been accepted by the High Court. In order to support her argument she cited the following authorities*: Low Tze Yen vs PP (HCCM No.28 of 2015); Norkidah binti Abu Bakar vs PP (HCCM No.10 of 2014); Hjh Dara binti Yusup vs PP (HCCA No.23 of 2011); Asri bin Ramlee vs PP (HCCA No.22 of 2011); Aishah binti Md Zaini vs PP (HCCA No.28 of 2011); Sepinah binti Hj Saat vs PP (HCCA No.29 of 2011); Omar Ali bin Abdullah vs PP (HCCA No.47 of 2015).*

6. I agree. It is clear the range of sentencing tariff for a first time offender under section 146(1)(d) of the Excise Order 2006 has a minimum multiplier of 6 times to the amount of excise duty evaded as the financial penalty to be imposed or $40,000, whichever is the lesser amount. I find the sentence imposed by the Magistrate was by no means manifestly excessive. It is within the range of tariff imposed by the court in similar cases. Accordingly, I dismiss the appeal for the fine to be reduced.

7. The DPP further submitted after considering the Appellant's proposal of $800 monthly instalment payment, it would take him 31 months for the total fine to be settled. This would not only defeat the deterrent element of the sentence but would also be an administrative burden to the Court. I agree.

8. However, I refer to the case of *Ang Suat Goh vs PP (HCCA No 12 of 2011), DP Steven Chong, J, stated, "In appropriate cases the court may allow the offender to pay a fine by instalments and there is nothing wrong in principle in allowing a long period to pay ….. One of the objects of a fine is to remind the offender that what he has done is wrong and the fact that he is being reminded of that over the months is no bad thing at all".*

9. Having regard to the Appellant's personal circumstances and he is a person of limited means, as he claims to be, I extend the time he has to pay the fine by 12 months. It must be paid by 19th November 2019. If he cannot pay then he will have to serve the in default prison sentence.

10. This appeal is allowed to that extend.

PG DP HJH ROSTAINA BINTI PG HJ DURAMAN
Judicial Commissioner
9th July 2018