

Ak Mohammad Nurul Arifin bin Pg Umar

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 19 of 2017)**

Dato Seri Paduka Hj Kifrawi, C.J.
16th September, 2017.

*Criminal law – sentence – knowingly in possession of unexcisable goods under section 146(1)(d) of the
Excise Order 2006 – whether more time should be given to pay the fine.*

Appellant In Person.
DPP Hjh Emerlida Sammiyah Bte POKLSDSLJ Hj Abbas for Public Prosecutor.
Assisted by DPP Raihan Nabilah Bte Hj Ahmad Ghazali.

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

1. The Appellant was charged as follows:

1st Charge

That you, on the 11th day of April 2017, at about 1018 hours, at the vicinity No.3 Jalan 39 Simpang 5-6 RPN Rimba in Brunei Darussalam did knowingly have in your possession of unexcisable goods, to wit:

1. 27 cartons x 10 packets x 20 sticks of Era Premium cigarettes
2. 04 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes
3. 04 packets x 20 sticks of Era Black 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)(i) of the same Order.

Penalty under section 146(1)(i) of the Excise Order 2006

In the case of unexcisable 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 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 fine not exceeding \$40,000.

2. He admitted the following brief Facts:-

1. The Defendant is Bruneian, unemployed, single and currently resides at No.3, Jalan 39, Simpang 5-6 RPN Rimba in Brunei Darussalam.
2. On the 11th day April 2017, at about 1018 hours, the Preventive Officers made an inspection to a house address No.3 Jalan 39 Simpang 5-6 RPN Rimba in Brunei Darussalam due to public information regarding customs offence.
3. During the inspection, the Preventive Officer found the following items inside of the said house:

NO	Description		Remark
01.	25 cartons x 10 packets x 20 sticks of Era Premium Cigarettes		Found inside the kitchen
02.	02 cartons x 10 packets x 20 sticks of Era Premium Cigarettes		Found inside the bedroom no.1
03.	03 cartons x 10 packets x 20 sticks of Era Black Menthol Cigarettes		
04.	04 packets x 20 sticks of Era Premium Cigarettes		
05.	01 carton x 10 packets x 20 sticks of Era Black Menthol Cigarettes		Found inside the bedroom no.2

4. The Defendant (D1) together with all the items was detained for further investigation and Notice of Seizure was duly issued for all the seized items.
5. Upon investigation, the Defendant (D1) admitted that he had purchased all the cigarettes from a Chinese man called Si Kang who delivered the cigarettes to him at the vicinity Kuala Lurah in Brunei Darussalam.

6. The Defendant (D1) also admitted that all the seized items were belonged to him with an intent of selling.
 7. The Defendant further admitted that he will take full responsible for an offence he had committed.
 8. The Excise Duty to be paid for Cigarettes is:-
BND\$3140.00 (Brunei dollar: Three thousand One Hundred and Forty only)
 9. On the record, the Defendant has no previous conviction under Customs Order 2006 and Excise Order 2006.
3. The Magistrate convicted him and sentenced him to \$25,000 in default 18 months imprisonment. He was ordered to pay the fine immediately on the same day. The Magistrate refused to give him time to pay because the Appellant has informed the Court that he was unemployed and has no means to pay even he was given time.
 4. The Appellant failed to pay and he has to serve the imprisonment sentence. He appealed against the sentence passed by the Magistrate. He pleaded for his fine and the imprisonment in default to be reduced. The Appellant is a first offender and aged 26 years old.
 5. I agree with the DPP that the fine of \$25,000 is not excessive. But as to the imprisonment in default, the sentence in default is not the usual sentence for similar cases. In the cases referred by the DPP, the imprisonment in default was one year. I, therefore, vary the Magistrate's order to \$25,000 fine, and in default one year imprisonment.
 6. The next issue I need to consider is whether the Appellant should be given time to pay. On the face of it, he has no means to pay the fine but then if he was given time he could have borrowed money from his parents, relative or friends. He could be given time to pay to enable him so I suppose to raise money from a legal source. Obviously the Court should not give him too much time to pay by instalment. I agree with the authorities that the time given should be between 2 to 3 years and if he failed to pay in any one instalment he had to serve the imprisonment in default as ordered.
 7. For the above reasons, I allow the Appellant's time to pay as follows:

The Appellant has to pay \$500 by today and \$300 monthly, within a week of every month until full payment. If he failed to pay any one instalment he has to serve the imprisonment in default.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI
Chief Justice