

Sania bin Haji Junidi

and

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 25 of 2016)**

Pg DP Hjh Rostaina Pg Hj Duraman, J.C.
5th October 2016

Criminal Law --- Section 146(1)(d) of the Excise Order 2006 --- Section 140(1)(d) of the Customs Order 2006 --- Whether fines excessive --- Extension of time to pay fines

Cases referred to:

Asri bin Ramlee v PP (CA No.22 of 2011)

Ang Suat Goh v PP (CA No.12 of 2011)

Affendy bin Haji Md Hussin v PP (CA No.23 of 2012)

Roslan bin Mansor v PP (Criminal Motion No.32 of 2014)

Low Tze Yen v PP (Criminal Motion No.28 of 2015)

Appellant in person.

DPP Mohammad Danial bin DSP Hj Kifrawi for the Public Prosecutor (Respondent).

Pg DP Hjh Rostaina, JC

1. On 10th August, 2016 in the Magistrate's Court, the appellant was convicted on his own pleas to the possession of contraband cigarettes contrary to section 146(1)(d) of the Excise Order of 2006 and to the possession of prohibited goods contrary to section 140(1)(d) of the Customs Order 2006.
2. The charges were:-

1st charge

That you, on the 18th day of April 2015, at about 1250 hours, in a vehicle model Suzuki Alto bearing registration number BAN 6756 at the vicinity of Kuala Lurah Control Post in Brunei Darussalam, did have in your possession un-excisable goods, to wit:

1. 04 cartons x 10 packets x 20 sticks of Era Premium cigarettes
2. 06 cartons x 10 packets x 20 sticks of Era Full Flavor cigarettes
3. 06 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes
4. 15 cartons x 10 packets x 16 sticks of Extreme Mild Menthol cigarettes
5. 02 cartons x 10 packets x 16 sticks of Extreme Mild cigarettes
6. 03 cartons x 10 packets x 16 sticks of LA Ice cigarettes

7. 01 carton x 10 packets x 20 sticks of Marlboro cigarettes (red and white)
8. 02 packets x 16 sticks of Extreme Mild Menthol cigarettes
9. 01 packets x 20 sticks of Era Premium 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.

2nd charge

That you, on the 18th day of April 2015, at about 1250 hours, in a vehicle model Suzuki Alto bearing registration number BAN 6756 at the vicinity of Kuala Lurah Control Post in Brunei Darussalam, did have in your possession prohibited goods, to wit:

1. 04 packets x 02 kg of Chicken Wing Rose poultry
2. 06 packets x 02 kg of Bishop Nose
3. 04 boxes x 06 packets x 02 kg of Bishop Nose

and you have thereby committed an offence under section 140(1)(d) of the Customs Order 2006 and punishable under section 140(1)(iii) of the same.

3. The Magistrate imposed the following sentences:
 - i. 1st charge: BND\$13,500 fine in default 8 months' imprisonment.
 - ii. 2nd charge: BND\$1,000 fine in default 4 months' imprisonment.

This resulted in the total sentence of BND\$14,500 fines in default 12 months' imprisonment.

4. He was given a grace period of 6 months to pay the fines. The seized items were forfeited to the state.
5. The appellant appealed for a reduction in the total fines and for a longer period of instalment payments at \$500 per month, until the total amount of fines are settled.
6. The admitted facts were that on 18th April 2015, the appellant who was driving a Suzuki Alto BAN 6756, was stopped by customs officers at the Kuala Lurah, Control Post.
7. Upon inspection of the car, the customs officers found the contraband cigarettes and prohibited goods in the form of chicken products inside the car; at the boot of the car, from inside the cushion covers at the passenger and driver seats. The appellant admitted he had bought the seized items from Limbang, Sarawak for his own consumption. However, today he informed the court he had purchased the seized items with the intention of selling them in order to earn extra income.
8. The excise duty evaded for the contraband cigarettes was BND\$1,663.00 and the value of the prohibited goods was BND\$416.00.
9. The appellant is aged 42, supports a wife and one child. He is self-employed, selling food from his home and earns BND\$600 per month. He is a first offender.

10. Were the fines manifestly excessive? DPP Mohammad Danial bin DSP Hj Kifrawi appeared for the respondent. He submitted the Magistrate's sentences were within the range of sentences normally imposed by the court below for similar offences under section 146(1)(d) of the Excise Order 2006 and under section 140(1)(d) of the Customs Order 2006 and is by no means excessive. In order to support his argument he cited the following authorities: *Asri bin Ramlee v PP (CA No.22 of 2011)*; *Ang Suat Goh v PP (CA No.12 of 2011)*; *Affendy bin Haji Md Hussin v PP (CA No.23 of 2012)*; *Roslan bin Mansor v PP (Criminal Motion No.32 of 2014)* and *Low Tze Yen v PP (Criminal Motion No.28 of 2015)*.
11. I agree. I found the sentences imposed by the Magistrate were by no means manifestly excessive. They were within the range of tariff imposed by the court in similar cases.
12. Should the appellant be allowed a longer period of instalment payment until the total amount is settled? The DPP had submitted after considering the appellant's financial circumstances at a monthly instalment payment of BND\$500, it would take the appellant 29 months or 2.5 years for the total fines to be settled. This would present an administrative burden to the court. He further submitted that at most 12 months represent a reasonable period for payment bearing in mind the need to preserve the deterrence element in the sentence.
13. In *Ang Suat Goh v PP (CA No.12 of 2011)* DP Steven Chong, Ag C.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 providing it is not an "undue burden" and "too severe a punishment" having regard to the nature of the offence and the nature of the offender. 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."*

He also referred to *R v Olliver and Olliver (1989) 11 Cr.App.R.(5)*: where Lord Lane, C.J., delivering the judgment, *"having reviewed the authorities, concluded that "a two year period will seldom be too long, and in an appropriate case three years will be unassailable" depending on the nature of the offender and the nature of the offence."*
14. In our present case, balancing between the need to preserve the deterrence objective and the appellant's personal circumstances, I allow for a longer period of payment from 6 months to be extended to 12 months, commencing at the end of this month and at the end of each subsequent month and in default of payment of any one instalment to serve the term of imprisonment ordered by the court below.
15. The appeal is allowed to that extent.

PG DP HJH ROSTAINA BINTI PG HJ DURAMAN
Judicial Commissioner
5th October 2016