

Park Seungkyun

and

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 27 of 2018)**

Pg DP Rostaina Pg Hj Duraman, J
15th November, 2018

*Criminal Law --- Possession of contraband cigarettes-- Section 146(1)(d) of the Excise Order 2006 -
--appeal against sentence --- asking for more time to pay fine—dilution of deterrent element
of sentence*

Cases referred to:

Norkidah binti Abu Bakar vs PP (Criminal Motion No.10 of 2014)

Md Misham bin Awang Mustaman vs PP (Criminal Appeal No.34 of 2015)

Hj Ahad bin Adi vs PP (Criminal Appeal No.12 of 2016)

Appellant in person.

DPP Raihan Nabilah bte Hj Ahmad Ghazali for Respondent/Public Prosecutor.

Pg DP Hjh Rostaina, J

1. On 12th September 2018, before Magistrate Hjh Noor Amalina bte DP Hj Alaihuddin the Appellant pleaded guilty to one count of possession of unexcisable goods contrary to section 146(1) (d) of the Excise Order 2006. He was sentenced to a fine of B\$75,000 or 17 months' imprisonment in default of payment. He was given a period of 6 months to settle the fine that is by 12th March 2019.

The charge was as follows:-

That you, on the 27th August 2018 at about 1613 hours, at the vicinity Labu Control Post, Temburong in Brunei Darussalam did knowingly have in your possession of unexcisable goods, to wit:

1. 60 cartoons x 10 packets x 20 sticks of Raison (blue) cigarettes
2. 10 cartoons x 10 packets x 20 sticks of Raison (red) cigarettes
3. 05 cartoons x 10 packets x 20 sticks of Bohem Ciger No. 6 cigarettes

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

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

In the case of unexcisable goods, such goods being dutiable goods consisting of wholly or partly of tobacco

- (A) For the first offence, to a fine of-
 - (AA) no less than 8 times the amount of excise duty or \$5,000, whichever is the greater amount; and
 - (AB) not more than 15 times the amount of excise duty or \$50,000, whichever is the greater amount; and
- (B) For the second and any subsequent conviction, to a fine of –

- (BA) not less than 20 times the amount of excise duty or \$10,000, whichever is the greater amount; and
(BB) not more than 30 times the amount of excise duty or \$100,000, whichever is the greater amount, imprisonment for a term not exceeding 3 years or both,

Except that when the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding \$100,000.

2. He appealed for a reduction in the amount of fine, for the 17 months' imprisonment in default of payments to be reduced and sought for more time to pay the fine.
3. In summary the admitted facts was that in the evening of 27th August 2018, the Labu Control Post customs officers stopped the appellant's car and found he was in possession of contraband cigarettes which he had purchased at Limbang for RM\$2,695. He had intended them as gifts for friends during the Malaysian Independence Day and the Moon Cake festival.
4. The DPP submitted the sentence imposed by the Magistrate was by no means manifestly excessive. She referred to the formula provided in the Excise Order for the calculation of the fine to be imposed according to the duty evaded and to section 132 of the Excise Order with regard to the length of sentence of imprisonment in default of payment.
5. It is clear with effect from 26th March 2018, the range of sentencing tariff involving contraband cigarettes meted out on a first time offender under section 146(1)(d) of the Excise Order 2006, is between 8 to 15 times to the amount of excise duty evaded as the financial penalty to be imposed. In this case, the excise duty evaded was B\$7,500. This would be from \$60,000 being the lesser amount or \$112,500 being the maximum amount.
6. I agree with the DPP. Neither the fine nor the sentence of imprisonment in default of payment can be said to be excessive. I find them proper and in line with the penalty prescribed in the Excise Order 2006 and the range of sentences passed in similar cases of this nature.
7. The Appellant sought more time to pay. He could not make any effort towards paying the fine as he is unemployed and has no income. He could not say with certainty when he could settle this fine even though had asked his friends and family in Korea to help raise the money. He also proposed to sell his car but he is yet to find a buyer. I doubt his ability to pay. Allowing him a further extension of time would dilute the deterrent element of the sentence. I find the Magistrate has given him sufficient time to pay the fine.
8. I therefore dismiss the appeal.

PG DP HJH ROSTAINA BTE PG HJ DURAMAN
Judge, High Court
15th November, 2018