

Omar Ali Bin Abdullah

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 47 of 2015)**

Dato Seri Paduka Hj Kifrawi, C.J.
27th August, 2016.

Appellant In Person.
DPP Farhana Bte Pehin Suhaili for Public Prosecutor.

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

The Appellant was charged with the following charge:

Charge

That you, on the 27th day of November 2015, at about 1047 hours, at the vicinity of Kampong Lumapas, in Brunei Darussalam, did knowingly have in your possession unexcisable goods, to wit

100 cartons x 10 packets x 16 sticks Extreme Mild Menthol Cigarettes
05 cartons x 10 packets x 20 sticks Era Full Flavour Cigarettes
05 cartons x 10 packets x 20 sticks Era Black Menthol Cigarettes
03 cartons x 10 packets x 20 sticks Marlboro (red) Cigarettes
02 cartons x 10 packets x 20 sticks Era Premium Cigarettes
02 cartons x 10 packets x 16 sticks Djarum Super 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 – Section 146(1)(i) of the Excise Order 2006

In the case of unexcisable goods, such goods being dutiable, for the first offence to a fine not less than 6 times the amount of excise duty or \$40,000.00 whichever is the lesser amount, and not more than 20 times the amount of excise duty or \$40,000.00, 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 \$40,000.00.

He pleaded guilty and admitted to the following Statement of Facts –

‘Statement of Facts

1. The defendant is a 39 year old Bruneian who currently resides at No.47, Simpang 49, Jalan Pengkalan Pinang, Kg Penanjong, Tutong, in Brunei Darussalam. The defendant is unemployed and married with 2 children.
2. On 27th November 2015, at about 1047 hours, acting from a public tip-off the Customs Preventive officers of BSB has stopped and inspected a vehicle with registration number BP 4722 (Nissan Almera) at the vicinity of an unoccupied green house at Kampong Lumapas, in Brunei Darussalam.
3. Prior to the inspection, the Customs Preventive Offices of BSB approached the driver later known as Awang Omar Ali Bin Abdullah (the defendant).
4. Inspections conducted subsequently led to the discovery of following items:

No	Goods Description	Remarks
1.	1 box x 60 cartons x 10 packets x 16 sticks Extreme Mild Menthol cigarettes	Found kept in a rear trunk of the vehicle number BP 4722 Nissan Almera
2.	1 box x 40 cartons x 10 packets x 16 sticks Extreme Mild Menthol cigarettes	
3.	3 cartons x 10 packets x 20 sticks Marlboro (red) cigarettes	
4.	1 carton x 10 packets x 20 sticks Era black Menthol cigarettes	

5.	1 carton x 10 packets x 16 sticks Djarum Super cigarettes	
6.	3 cartons x 10 packets x 20 sticks Era Black Menthol cigarettes	Found kept at spare tyre compartment at the rear trunk of the vehicle number BP 4722 Nissan Almera
7.	1 carton x 10 packets x 16 sticks Djarum Super cigarettes	
8.	5 cartons x 10 packets x 20 sticks Era Full Flavour cigarettes	
9.	2 cartons x 10 packets x 20 sticks Era Premium cigarettes	
10.	1 carton x 10 packets x 20 sticks Era Black Menthol cigarettes	

5. The defendant, together with all the items, were detained and brought to Royal Customs and Excise Department at Kg Anggrek Desa for further investigations. Notice of Seizure was duly issued for all the seized goods (mark A1).
6. During the investigations, the defendant admitted that he was detained at the said place because he was caught for being possession of unexcisable goods.
7. The defendant further admitted that all the cigarettes that were found in the vehicle with registration number BP 4722 (Nissan Almera) belonged to him.
8. The defendant admitted that the cigarettes that were found is for own consumption and his friends.
9. The defendant further admitted that he purchased all the cigarettes from his friend known as Jimmy for a total price of BND\$1080.00.
10. The defendant further admitted that he knew what he had committed is an offence.
11. The Excise Duty to be paid for Cigarettes is BND\$4,830.00 (Brunei dollar: Four Thousand Eight Hundred and Thirty Only).
12. The Prosecution is applying for all the seized items listed in the Notice of Seizure to be forfeited to the State.
13. On record, the defendant has no previous convictions under Excise Order 2006.'

He was convicted and sentenced to pay fine \$38,500 in default 12 months imprisonment. He was ordered to pay monthly payment of \$2,138 commencing 31/12/2015 until full settlement on 31/5/2017. He appealed against sentence on 12/12/2015.

He stated he could only afford to pay \$200 a month. He has no job. He has a wife and 7 children. His wife is working as a cashier earning \$400 a month. His children are still studying. He wanted the court to reduce the monthly payment and give him more time to pay the fine. If the court allows him to pay \$200 a month, he would take 16 years to settle the fine. This would be a burden to him and his family and the court. He said he has sold a piece of land which he has half share for \$45,000, but this has not been paid yet. As usual, approval is required. This may take a long time. He said he has not paid the instalment which the Magistrate's Court has ordered him to pay commencing 31/12/2015. According to him, the court staff told him not to pay yet because of his appeal.

I, therefore, give him the last opportunity to settle the fine. I order him to pay the instalment of \$2,138 at the end of every month commencing from end of this month on 31/8/2016 and thereafter, the end of every month until full payment. If he fails to pay any instalment, he has to serve 12 months' imprisonment.

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