

Hj Abdullah bin Hj Awang Damit

and

Public Prosecutor

**High Court of Brunei Darussalam
Criminal Appeal No.48 of 2015**

Pg Hjh Rostaina bte Pg Hj Duraman, JC
12th July, 2016

Criminal Law --- Section 146 (1) (d) of the Excise Order 2006 --- Appeal for reduction in the amount of monthly payment and longer period of instalment payments.

Appellant in person.

DPP Muhammad Aiman Adri bin Ahmad Zakaria for the Public Prosecutor.

Pg Hjh Rostaina, JC:

On the 5th December 2015, in the Magistrate's Court the Appellant pleaded guilty to one count under the Excise Order 2006. The charge was as follows:-

Charge

That you, on the 30th day of September 2014, at about 2050 hours, inside a vehicle bearing registration number BW 2869 (Toyota Innova) at the vicinity of Kuala Lurah Control Post in Brunei Darussalam, did knowingly have in your possession of unexcisable goods, to wit:

- 1. 10 cartons x 10 packets x 20 sticks of Premium International cigarettes*
- 2. 4 cartons x 10 packets x 20 sticks of ERA Black Menthol cigarettes*
- 3. 4 cartons x 10 packets x 20 sticks of ERA Premium cigarettes*
- 4. 3 cartons x 10 packets x 16 sticks of Djarum Super cigarettes*
- 5. 2 cartons x 10 packets x 20 sticks of ERA Full Flavor cigarettes*
- 6. 110 packets x 20 sticks of ERA Premium cigarettes*
- 7. 20 packets x 16 sticks of Extreme Mild 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.

The Magistrate imposed a sentence of \$14,000 fine or 12 months imprisonment in default of payment. He was given a grace period of 9 months to pay the fine with a mandatory monthly payment of \$1,500 commencing from the 30th December 2015. The seized items were forfeited to the state.

The Appellant appealed for a reduction in the amount of monthly payment and a longer period of instalment payments commencing from January 2016 until the total amount of fine is settled. That he is a pensioner with dependants to care for.

The admitted facts are that on 30th day of September 2014, Customs officers at the Kuala Lurah Control Post, upon searching the Appellant's vehicle on entry from Limbang found a total of 130 packets and 23 cartons of cigarettes as stated in the charge. He told the Customs officers that he bought the cigarettes for his family. However, today he informed the court that he had purchased the cigarettes because he was influenced by his friends and he had bought them for other people.

He is retired and receives a monthly pension of \$2,013 with additional \$250 as a senior citizen. He informed the court, he could only afford to pay the fine by monthly instalment of \$600 and not \$1,500. In his mitigation, after he was caught he expressed his regrets and shown he was remorseful by paying regularly and consistently \$600 monthly from December 2015 to date June 2016.

He has no prior conviction. He is now aged 71. His two wives and a young daughter aged 12 to support. He has five other older children and 20 grandchildren.

There was no objection from the Respondent and DPP Muhammad Aiman Adri submitted it would take another 16 months for the total fines to be settled.

I agree. This would give the Appellant the opportunity to pay and not suffer imprisonment but at the same time, be reminded over the months ahead what he did was wrong and so the deterrence objective of the sentence is preserved.

Balancing between the need to preserve the deterrence objective and the Appellant's personal circumstances, I consider payment of \$600 monthly over the next 16 months to be reasonable and I so order.

The appeal is allowed to that extent.

PG HJH ROSTAINA BINTI PG HJ DURAMAN
Judicial Commissioner
12th July, 2016