

**Mohammad Khairul Amir Bin Ruslan**

AND

**Public Prosecutor**

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**(Criminal Appeal No. 4 of 2016)**  
**(High Court of Brunei Darussalam)**

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Dato Seri Paduka Hj Kifrawi, C.J.  
**30<sup>th</sup> March, 2016.**

Appellant In Person.

DPP Vuina Song together with DPP Dk Didi-Nuraza Pg Latif for Public Prosecutor.

## **J U D G M E N T**

**Dato Seri Paduka Hj Kifrawi, C.J.:**

The Appellant was charged in the Magistrate's Court with possession of unexcisable goods. The charges are as follows:

### 1<sup>st</sup> Charge

That you, on the 18<sup>th</sup> day of May 2013, at about 2215 hours, inside a vehicle bearing registration number BAE4984 [Chevrolet Captiva] at the vicinity of Customs Kuala Lurah Control Post, in Brunei Darussalam did have in your possession unexcisable goods, to wit

- 1) 10 cartons x 10 packets x 20 sticks Era Full Flavour cigarettes
- 2) 1 carton x 10 packets x 16 sticks Extreme Mild cigarettes
- 3) 6 packets x 16 sticks Extreme Mild cigarettes
- 4) 6 bottles x 1 litre of King Roberts
- 5) 4 bottles x 1 litre of Hankey Bannister
- 6) 1 bottle x 1.5 litre Arrack (Tuak)
- 7) 12 cans x 330 ml of Tiger Beer
- 8) 3 bottles x 325 ml of Carlsberg Beer
- 9) 1 can x 320 ml Carlsberg Beer
- 10) 1 bottle x 330 ml of Guinness

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.

**Penalty – Section 14(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 of \$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.

2<sup>nd</sup> Charge

That you, on the 4<sup>th</sup> day of July 2013 at about 2045 hours, inside a vehicle bearing registration number BV9193 [Nissan X-Trail] at the vicinity of Customs Kuala Lurah Control Post, in Brunei Darussalam did have in your possession unexcisable goods, to wit

- 1) 15 cartons x 10 packets x 20 sticks Era Black Menthol cigarettes
- 2) 6 cartons x 10 packets x 20 sticks Era Premium cigarettes
- 3) 10 packets x 20 sticks Era Premium cigarettes
- 4) 20 cartons x 10 packets x 20 sticks Era Full Flavour cigarettes
- 5) 11 cartons x 10 packets x 20 sticks Era Menthol cigarettes
- 6) 2 cartons x 10 packets x 16 sticks Extreme Mild Menthol cigarettes
- 7) 4 cartons x 10 packets x 16 sticks Extreme Mild cigarettes
- 8) 1 carton x 24 cans x 320 ml of Tiger Beer
- 9) 24 cans x 320 ml of Tiger Beer
- 10) 8 cartons x 24 cans x 330 ml of Carlsberg Beer
- 11) 10 bottles x 1 litre of Smirnoff Vodka
- 12) 6 bottles x 1 litre of Hankey Bannister
- 13) 6 bottles x 1 litre of Red Label

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.

**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 of the 1<sup>st</sup> Charge:**

- 1) The defendant is a Bruneian National who currently resides at No.155, Jalan 77, Kg Perpindahan Lambak Kanan in Brunei Darussalam.
- 2) On the 18<sup>th</sup> May 2013 at about 2215 hours, the Customs Officers at Customs Kuala Lurah Control Post stopped a vehicle bearing registration number BAE4984 (Chevrolet Captiva). The vehicle was driven by Mohammad Khairul Amri Bin Ruslan (the defendant) with one passenger Fatin Hafawati Binti Osman.
- 3) Prior to the inspection being conducted, the Customs Officer asked the driver whether he had anything to declare to which he replied 'Nothing to declare'. A thorough inspection was made on the said vehicle and the following items were found:

No	Description of Goods	Remarks
1	1 bottle of 320 ml of Guinness @ 330 ml	Found kept inside his right pants pocket
2	1 bottle Carlsberg Beer @ 325 ml	
3	2 bottles Hankey Bannister @ 1 litre	Found kept in a black bag at the rear trunk of the vehicle
4	2 bottles Hankey Bannister @ 1 litre	Found kept in a brown bag 'Ji Lia Hua' brand at the rear trunk
5	2 bottles x 1 litre King Robert	Found kept in a blue 'Campro' bag at the rear trunk
6	6 packets x 16 sticks Extreme Mild	
7	1 carton x 10 packets x 16 sticks Extreme Mild	
8	2 bottles x 325 ml of Carlsberg Beer	
9	1 can x 320 ml of Carlsberg Beer	
10	8 cartons x 10 packets x 20 sticks Era Full Flavour	Found kept under the carpet of the front passenger seat
11	cigarettes	
12	8 cans x 330 ml of Tiger Beer	Found kept under the third row passenger seat
13	4 cans x 330 ml of Tiger Beer	
14	4 bottles x 1 litre of King Robert	
15	1 bottle Arrack 'Tuak' in Borneo Mineral Water bottle	

16	2 cartons x 10 packets x 20 sticks Era Full Flavour cigarettes.	Found kept at the rear trunk compartment
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- 4) The defendant, together with all the items, were detained. Notice of seizure was duly issued for all the seized items. The defendant and all the seized items were later brought to the Royal Customs and Excise Department in Kg Anggerek Desa for further investigation.
- 5) During the investigation, the defendant further admitted that all the cigarettes and the alcoholic liquor that were found belonged to him he bought in Limbang, Malaysia for which a total price of BND\$171.00. The defendant also stated that the alcoholic liquor that were found inside the Borneo mineral water bottle is Arrack (Tuak) that he obtained from his friend when he was at Limbang.
- 6) The defendant further stated that the alcoholic liquor and the cigarettes that were found were meant for his own consumption and for his friends.
- 7) The defendant further admitted he knew that bringing in cigarettes and alcoholic liquor without a permit is in contravention of Customs regulation and the defendant will bear responsibility.
- 8) The estimated value of the cigarettes is BND\$174.00 and the estimated value of the alcoholic liquor is BND\$150.00, whilst the Excise Duty to be paid for the cigarettes is BND\$564.00 (Brunei dollar: Five hundred and sixty four only) and the excise duty to be paid for the Alcoholic Liquor is BND\$134.00 (Brunei dollar: One hundred and thirty four only).
- 9) Total Excise duty to be paid for the cigarettes and alcoholic liquor is BND\$698.00 (Brunei dollar: six hundred and ninety eight only).
- 10) The Prosecution is applying for all the items listed in the Notice of Seizure to be forfeited to the State.'

**'Statement of Fact of the 2<sup>nd</sup> Charge**

- 11) On the 4<sup>th</sup> July 2013 at about 2045 hours, the Customs Officer at Customs Kuala Lurah Control Post stopped a vehicle bearing registration number BV9193 (Nissan X-Trail). The vehicle was driven by Mohammad Khairul Amri bin Ruslan (the defendant) with one passenger Jeffri bin Hj Yusof.
- 12) Prior to the inspection being conducted, the Customs Officer asked the driver whether he had anything in the rear trunk which he replied 'Nothing in the rear trunk'. A thorough inspection was made on the said vehicle and the following items were found:

No	Description of Goods	Remarks
1 2 3 4 5 6 7	5 cartons x 10 packets x 20 sticks Era Premium cigarettes 12 cartons x 10 packets x 20 sticks Era Full Flavour cigarettes 9 cartons x 10 packets x 20 sticks Era Menthol cigarettes 15 cartons x 10 packets x 20 sticks Era Black Menthol cigarettes 2 cartons x 10 packets x 16 sticks Extreme Mild Menthol cigarettes 4 cartons x 10 packets x 16 sticks Extreme Mild cigarettes 6 bottles x 1 litre Hankey Bannister	Found kept at the engine compartment
9 10 11 12 13 14 15	1 carton x 10 packets x 20 sticks Era Premium cigarettes 2 cartons x 10 packets x 20 sticks Era Menthol cigarettes 8 cartons x 10 packets x 20 sticks Era Full Flavour cigarettes 10 bottles x 1 litre of Smirnoff Vodka 6 bottles x 1 litre of Red Label 8 cartons x 1 litre of Red Label 1 carton x 24 cans x 320 ml of Tiger Beer 24 cans x 320 ml of Tiger Beer	Found kept at the spare tyre compartment
16	10 packets x 20 sticks Era Premium cigarettes	Found kept in the centre console box

13) The defendant, together with all the items, were detained for further investigations. Notice of Seizure was duly issued for all the seized items. The defendant and all the seized items were then brought to the Royal Customs and Excise Department in Kg Anggerek Desa for further investigation.

14) During the investigation, the defendant admitted all the cigarettes and the alcoholic liquor that were found belonged to him and he bought all the items at a shop in Limbang, Malaysia for a price of BND\$910.00.

15) The defendant further admitted that the alcoholic liquor and the cigarettes that were found were meant for sale and for his own consumption.

16) The defendant further admitted he knew that bringing in cigarettes and alcoholic liquor without permit is in contravention of Customs regulation and the defendant will bear responsibility.

17) The Excise Duty to be paid for the Cigarettes is BND\$2890.00 (Brunei dollar: Two thousand eight hundred and ninety only) and the excise duty to be paid for the Alcoholic Liquor is BND\$468.00 (Brunei dollar: Four hundred and sixty eight only).

18) Total Excise duty to be paid for the cigarettes and alcoholic liquor is BND\$3358.00 (Brunei dollar: Three thousand three hundred and fifty eight Only).

19) The Prosecution is applying for all the items listed in the Notice of Seizure to be forfeited to the State.

20) On record the defendant has no previous conviction under the Excise Order 2006.'

He was sentenced as follows:

- (a) 1<sup>st</sup> Charge: To pay fine \$4,800 in default 4 months imprisonment.
- (b) 2<sup>nd</sup> Charge: To pay fine \$25,800 in default 12 months imprisonment.
- (c) Total sentence \$30,000 in default 16 months imprisonment.

The Magistrate ordered the Appellant to pay as follows:

- (a) 1<sup>st</sup> payment - \$300 on 5/3/2016
- (b) 2<sup>nd</sup> payment - \$1683 on 5/4/2016
- (c) 3<sup>rd</sup> and subsequent payment at \$1,683.33 at the first week of every month
- (d) He has to pay full and final payment on 30/9/2017. The grace period given to him is 18 months. The Magistrate ordered for all items seized and the car used to commit the offence to be forfeited to the State.

The Appellant appealed against the order to make payment as referred above. He stated he could not afford to pay as ordered because he has other financial commitments. He has to pay every month hire purchase payment for his car, helping his father to pay rent and other housing expenses. He is only earning \$700 a month. He could only pay \$250 a month. But just now he said he could pay \$300 a month. This would mean he would take 8 years to pay the fine. This would be a burden not only to the Court but also to the Appellant.

The Magistrate has rightly gave him enough time to pay by instalment. He has paid the first instalment on the 5/3/2016.

If the Appellant cannot pay as ordered by the Magistrate's Court, then he should serve the sentence of imprisonment in default of payment of fine if he failed to pay any instalment ordered by the Magistrate. His appeal is, therefore, dismissed.

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