

Bilkrim binti Tahir

and

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 4 of 2018)**

**Pg DP Hjh Rostaina Pg Hj Duraman, J.C.
28th March 2018**

Criminal Law --- Section 146(1)(d) of the Excise Order 2006 --- Appeal for longer period of instalment payments.

Cases referred to:

Rosani binti Rabaha vs PP (Criminal Appeal No.14 of 2013)

Hj Abdullah bin Hj Awang Damit vs PP (Criminal Appeal No.48 of 2015)

Sania bin Hj Junidi vs PP (Criminal Appeal No.25 of 2016)

Appellant in person.

DPP Dr Mohammad Hussin Ali bin Idris for the Respondent/Public Prosecutor.

Pg DP Hjh Rostaina, JC

1. On 13th February 2018, in the Magistrate's Court the Appellant was convicted on her own plea to one count under the Excise Order 2006. The Magistrate imposed a sentence of \$6,500 fine or 6 months imprisonment in default of payment. The Appellant was given a grace period of one month to settle the fine, commencing from 13th February 2018 until 13th March 2018.
2. The charge was as follows:-

That you, on the 23rd day of January 2018, at about 0922 hours, at a Flat No.2, Block E5, Jalan Airport Lama Berakas, in Brunei Darussalam, did knowingly have in your possession unexcisable goods, to wit:

1. 14 packets x 20 sticks of Era Full Flavour cigarettes
2. 24 packets x 20 sticks of Era Premium cigarettes
3. 22 packets x 20 sticks of Era Black Menthol cigarettes
4. 20 packets x 16 sticks of L.A Ice cigarettes
5. 31 packets x 16 sticks of Extreme Mild Menthol 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 goods 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 of \$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.

3. The Appellant appeals for a longer period of instalment payments until the total amount of the fine is fully settled.
4. The admitted facts were that upon receiving information from members of the public, on 23rd January 2018, Customs officers carried out inspection upon the Appellant's residence at Flat No.2, Block E5, Jalan Airport Lama Berakas and found the undeclared cigarettes at the said residence.
5. The Appellant has financial difficulties. She is 60 years old, a widow with five children and several grandchildren. She has no income and depended on a monthly widow's welfare benefit of \$200. She has no prior conviction.
6. The DPP objected to her offer of monthly payments of \$300 as it would take about 2 years for the total fines to be settled. He submitted that a longer grace period would defeat the deterrent element of the sentence and would also be an administrative burden to the Court.
7. I agree. However, having regard to her personal situation that she is a person of limited means, as she claims to be, I extend the time she has to pay the fine by 3 months from today's date. It must be paid by the end of June 2018. If she cannot pay, then she will have to serve the default prison sentence.
8. The appeal is allowed to that extent.

PG DP HJH ROSTAINA BTE PG HJ DURAMAN
Judicial Commissioner
28th March 2018