

Md Rafiuddin Bin Hj Samri

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 7 of 2015)**

Dato Seri Paduka Hj Kifrawi, C.J.
16 June, 2015.

Criminal law – Sentence – knowingly have in possession of unexcisable goods – Section 132 and Section 146 of the Excise Order 2006.

Appellant In Person.
DPP Dk Didi Nuraza Bte Pg Latif for Public Prosecutor.

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

The Defendant was charged as follows:-

1st Charge

That you, on the 5th day of January 2015, at about 1515 hours, inside a vehicle, bearing registration number BR 5963 [Kia Picanto] at the vicinity of Customs Kuala Lurah Control Post, in Brunei Darussalam did knowingly have in your possession unexcisable goods, to wit

- 1) 9 cartons x 10 packets x 20 sticks Era Premium cigarettes
- 2) 6 cartons x 10 packets x 20 sticks Era Full Flavour cigarettes
- 3) 7 cartons x 10 packets x 20 sticks Era Black Menthol cigarettes
- 4) 5 cartons x 10 packets x 16 sticks Extreme Mild Menthol cigarettes
- 5) 4 cartons x 10 packets x 20 sticks Sampoerna Menthol cigarettes
- 6) 2 cartons x 10 packets x 20 sticks Marlboro Ice cigarettes
- 7) 2 cartons x 10 packets x 20 sticks Mevius Charcoal Filter cigarettes
- 8) 1 carton 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 the excise duty or \$40,000.00 whichever is the lesser amount, and not more than 20 times the amount of the 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.

2nd Charge

That you, on the 7th day of February 2015, at about 1825 hours, inside a vehicle bearing registration number BT 8144 [Mitsubishi Lancer] at the vicinity of Customs Kuala Lurah Control Post, in Brunei Darussalam did knowingly have in your possession unexcisable goods, to wit

- 1) 4 cartons x 10 packets x 20 sticks Era Premium cigarettes
- 2) 2 cartons x 10 packets x 20 sticks Marlboro cigarettes
- 3) 1 carton x 10 packets x 16 sticks Extreme Mild Menthol cigarettes
- 4) 1 carton x 10 packets x 20 sticks Era Black Menthol cigarettes
- 5) 1 carton x 10 packets x 20 sticks Era Black Menthol cigarettes
- 6) 3 cartons x 10 packets x 20 sticks Marlboro (black) 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 the excise duty or \$40,000.00 whichever is the lesser amount, and not more than 20 times the amount of the 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.

The Defendant pleaded guilty to the 1st Charge and the 2nd Charge. He admitted the following Statement of Facts:

'Statement of Facts

1st Charge

The Defendant is a Bruneian who currently resides at No.45, simpang 152, Kampong Delima Satu in Brunei Darussalam. The Defendant is unemployed and single.

On 5th day of January 2015 at about 1515 hours, the Customs Officer at Customs Kuala Lurah Control Post stopped a vehicle bearing registration number BR 5963 (Kia Picanto). The vehicle was driven by the Defendant with 4 passengers.

Prior to the inspection the Customs Officer asked the driver what he had brought into the country. The Defendant replied nothing. The Customs Officer then made an inspection at a rear trunk and nothing were found but when the Customs Officer asked the driver to open the front engine compartment the Defendant told that the front engine compartment were unable to open.

Upon further inspection conducted by the Customs Officers inside the said vehicle and at the engine compartment the following items were found:

No.	Description	Remarks
1	2 cartons x 10 packets x 20 sticks Era Premium Cigarettes	Found kept conceal at rear left passenger door compartment
2	5 cartons x 10 packets x 20 sticks Era Full Flavour Cigarettes	
3	1 carton x 10 packets x 20 sticks Era Full Flavour Cigarettes	Found kept conceal inside front dashboard compartment
4	2 cartons x 10 packets x 16 sticks Extreme Mild Menthol Cigarettes	Found kept under front passenger foot rest
5	2 cartons x 10 packets x 20 sticks Era Premium Cigarettes	Found kept conceal inside rear right passenger door compartment.
6	3 cartons x 10 packets x 20 sticks Era Black Menthol Cigarettes	
7	1 carton x 10 packets x 20 sticks Mevius Charcoal Filter Cigarettes	
8	1 carton x 10 packets x 20 sticks Era Black Menthol Cigarettes	Found kept conceal under steering wheel
9	4 cartons x 10 packets x 20 sticks Sampoerna Menthol Cigarettes	Found kept conceal at the wiper compartment

10	3 cartons x 10 packets x 16 sticks Extreme Mild Menthol Cigarettes	Found kept conceal at the engine compartment
11	3 cartons x 10 packets x 20 sticks Era Black Menthol cigarettes	
12	5 cartons x 10 packets x 20 sticks Era Premium Cigarettes	
13	1 carton x 10 packets x 16 sticks Djarum Super Cigarettes	
14	2 cartons x 10 packets x 20 sticks Marlboro Ice Cigarettes	
15	1 carton x 10 packets x 20 sticks Mevius Charcoal Filter Cigarettes	

The Defendant, together with all the items, was detained at the Customs Preventive Office for further investigation. Notice of seizure was duly issued for all the seized items.

Upon further investigation, the Defendant admitted all the cigarettes that were found belonged to his customer. The Defendant admitted that he will get a profit from \$4.00 to \$6.00 by bringing the cigarettes into Brunei Darussalam.

The Defendant further admitted he purchased the cigarettes at a shop in Limbang, Malaysia for a price of BND\$300.00.

The Defendant admitted that he hid all the cigarettes because the Defendant was afraid that Customs Officer would find the cigarettes.

The Defendant admitted that he knew it was an offence to have in his possession unexcisable goods.

The Excise Duty To Be Paid For Cigarettes Is BND\$1,740.00 (Brunei Dollar: One Thousand Seven Hundred And Fourty Only)

The prosecution is applying for all the seized items listed in the Notice of Seizure to be forfeited to the State.

2nd Charge

On 7th day of February 2015 at about 1825 hours, the Customs Officer at Customs Kuala Lurah Control Post stopped a vehicle bearing registration number BT 8144 (Mitsubishi Lancer). The vehicle was driven by the Defendant.

Prior to the inspection the Customs Officers asked the driver what he had brought into the country and where he came from. The Defendant replied nothing.

The Customs Officer then made an inspection of the said vehicle at the Customs Officer parking area at Customs Kuala Lurah Control Post.

Upon further inspection conducted by the Customs Officer inside the said vehicle, the following items were found:

NO	Description	Remarks
1	4 cartons x 10 packets x 20 sticks Era Premium Cigarettes	Found kept conceal inside rear right passenger door compartment.
2	2 cartons x 10 packets x 20 sticks Marlboro Cigarettes 1 carton x 10 packets x 16 sticks Extreme Mild Menthol Cigarettes 1 carton x 10 packets x 20 sticks Era Black Menthol Cigarettes	Found kept conceal inside rear left passenger door compartment.

The Defendant, together with all the items, was detained at the customs preventive office for further investigation. Before notice of seizure issued for all the seized items to the Defendant, the Defendant asked to the Customs Officer to go outside several times and the Customs Officer suspect that the Defendant is doing something suspicious.

The Customs Officer later saw the Defendant standing outside near the toilet. Inspection that was made at the said vehicle found **1 carton x 10 packets x 20 sticks Era Black Menthol Cigarettes** under Defendant's vehicle.

The Customs Officer also checked behind the toilet near the premises where the Defendant standing and found **3 cartons x 10 packets x 20 sticks Marlboro (Black) Cigarettes**.

Upon further investigation, the Defendant admitted all the cigarettes that were found kept conceal inside rear and left passenger door compartment belonged to him.

The Defendant also admitted that all the cigarettes that were found under the vehicle and behind the toilet belonged to him.

The Defendant admitted that he hid all the cigarettes by himself and the Defendant also admitted that he hid the cigarettes behind the toilet because to reduce the total amount of the cigarettes.

The Defendant admitted that he will get a profit from \$4.00 to \$5.00 per carton by bringing the cigarettes into Brunei Darussalam.

The Defendant further admitted he purchased the cigarettes at a house at Limbang, Malaysia for a price of BND\$280.00.

The Defendant admitted that he committed the offence to earn a living because he has no income.

The Defendant admitted that he knew it was an offence to have in possession unexcisable goods.

The Excise Duty To Be Paid For Cigarettes Is BND\$590.00 (Brunei Dollar: Five Hundred and Ninty Only)

The prosecution is applying for all the seized items listed in the Notice of Seizure to be forfeited to the State.

On record, the Defendant has no previous conviction.'

The Defendant was convicted as charged. The Magistrate sentenced him as regards to the 1st Charge; a fine of \$12,000 in default 12 months. As regards the 2nd Charge, the Defendant was sentenced to pay fine of \$6,000 in default 6 months imprisonment. The Magistrate ordered for him to pay \$1,500 per month beginning 31/3/2015 until he settled fully the fine by 29/2/2016.

The Magistrate did not make an order of forfeiture against the two cars BR 5963 and BT 8144 used respectively by the Defendant. The Defendant appealed against the Magistrate's Order on 11/3/2015. The Defendant stated that he wanted the Court to reduce the amount of fine. He said he could not afford to pay the monthly fine. He has no job and is still looking for a job. He was in away 'working' by smuggling cigarettes without paying Excise Duty. He would be paid for doing so. He committed the offences on 5/1/2015 and again on 7/2/2015.

He appealed to this court because he cannot afford to pay the instalment payment. He proposed to pay \$200 a month which would take him 7 ½ years to pay fully the fine. I ordered him to pay fully the fine by 29/2/2016. There is no need to pay by monthly instalment if he cannot afford. What is important from him to understand is that he has to pay fully the fine by 29/2/2016. If he fails to pay fully the fine, then he has to serve the imprisonment in default as ordered by the Magistrate which is 18 months imprisonment. The Magistrate's order is to be varied accordingly.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI

Chief Justice