David Lee

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No.8 of 2015)

Dato Seri Paduka Hj Kifrawi, C.J.
21st May, 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 Hazirah Bte Pg Yusof for Public Prosecutor.

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

The Defendant was charged on 14/3/2015 as follows:-

<u>Charge</u>

That you on the 12th day of March 2015 at about 0610 hours, inside a vehicle bearing registration number KK 9472 [Proton Wira] at the vicinity of Customs Kuala Lurah Control Post, in Brunei Darussalam, did knowingly have in your possession unexcisable goods, to wit

1. 48 cans of Carlsberg Beer @ 320 ml
2. 24 cans of Tiger Beer @ 330 ml
3. 24 cans of Heineken Beer @ 330 ml
4. 4 cartons x 10 packets x 20 sticks Dunhill (red) cigarettes
5. 1 carton x 10 packets x 16 sticks Djarum super cigarettes
6. 1 carton x 10 packets x 20 sticks Dunhill (blue) cigarettes
7. 5 cartons x 10 packets x 20 sticks Premium International cigarettes
8. 3 cartons x 10 packets x 20 sticks Marlboro 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
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 to the Charge and admitted to the following Statement of Facts.

'Statement of Facts –

1. The Defendant is a male Malaysian national who currently resides at Kampong Lubak, 89800 Beaufort, Sabah in Malaysia. The Defendant is unemployed and single.

2. On 12th day of March 2015 at about 0610 hours, the Customs Officer at Customs Kuala Lurah Control Post stopped a vehicle bearing registration number KK 9472 (Proton Wira). The vehicle was driven by Defendant.

3. 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 ordered the driver to get out of the car and ordered him to open the rear trunk. The Customs Officers then made an inspection at a rear trunk and found several cans of alcoholic liquor kept conceal at the spare type compartment.

4. The Customs Officer later asked Customs Officer EO 0588 to move the said vehicle to the parking area for further inspection.

5. Upon further inspection conducted by the Customs Officers at the officer parking area the following items were found:

No	Description	Remarks
1 2 3	48 cans of Carlsberg Beer @ 320 ml 24 cans of Tiger Beer @ 330 ml 24 cans of Heineken Beer @ 330 ml	Found kept conceal at rear trunk inside spare tyre compartment
4 5 6 7 8	4 cartons x 10 packets x 20 sticks Dunhill (red) cigarettes 1 carton x 10 packets x 16 sticks Djarum super cigarettes 1 carton x 10 packets x 20 sticks Dunhill (blue) cigarettes 5 cartons x 10 packets x 20 sticks Premium International cigarettes 3 cartons x 10 packets x 20 sticks Marlboro Menthol cigarettes	Found kept conceal inside speaker box at the rear trunk

6. The Defendant, together with all the items, was detained. Notice of Seizure was duly issued for all the seized items. The Defendant and the seized items were brought to the Customs Preventive Office at Kampong Anggerek Desa for further investigation.

7. Upon further investigation, the Defendant admitted all the cigarettes and the alcoholic drinks that were found belonged to him. The Defendant admitted all the cigarettes and the alcoholic liquors that were found were meant for sale and for his own consumption.

8. The Defendant further admitted he purchased the cigarettes and the alcoholic liquors at Belading, Tedungan at Limbang, Malaysia for a price of BND$250.00.

9. The Defendant admitted that he hid all the cigarettes and the alcoholic liquors.

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

11. The Excise Duty to be paid for cigarettes is BND$690.00 (Brunei dollar: Six hundred and ninety only). The Excise Duty to be paid for the alcoholic liquor is BND$95.00 (Brunei dollar: Ninety Five Only).

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

13. The Defendant has no previous conviction under the Excise Order 2006.'

The Magistrate imposed a fine of $7000 in default 7 months imprisonment after rightly taking into consideration on the mitigating factors, in particular, for pleading guilty and for being a first offender. The Defendant informed the Magistrate that he could pay the fine in two weeks time. When the case was mentioned again on 28/3/2015 he only paid $1,500. He explained he could only able to collect $1,500. He filed an appeal against sentence. The law provides for a minimum fine of not less than 6 times the total amount of excise duty payable ($690 + $95 = $785). Therefore, the minimum fine that may be imposed is not less than $4,710 ($785 x 6 = $4,710). The maximum fine is $40,000. So, therefore, $7,000 is nearer to the minimum fine the court can impose on the Defendant.

As regards the imprisonment in default Section 132 of the Excise Order provides:

'132. Notwithstanding the provisions of the Criminal Procedure Code (Chapter 7), the period for which the court directs the offender to be imprisoned in default of payment of any fine under this Order, or in default of a sufficient distress to satisfy any such fine, shall not exceed the following scale –

Where the fine	*the period shall not exceed*
does not exceed $100	2 months;
exceeds $100 but does not exceed $1,000	4 months;
exceeds $1,000 but does not exceed $5,000	**6 months;**

With an additional 2 months for every $1,000 after the first $5,000 of the fine until a maximum period of 3 years is reached.'

The Court may impose up to 10 months imprisonment in default of payment of fine. I, therefore, do not find the fine $7000 in default 7 months imprisonment to be manifestly excessive.

The Defendant appealed to the court for the fine to be reduced and that he be given time to pay the fine. He said he just got a job and his salary is $600 a month. He could only afford to pay $300 a month. If I allow him to pay $300 a month this would mean he would take 18 months and 3 days to pay the balance.

This may be a burden to him and also for the Court to collect from him every month for 18 months. The Defendant then offered to pay $550 a month commencing from 5/6/2015.

I, therefore, order him to pay the balance of the fine, $5500 by instalment by $550 every month. He will start paying on 5/6/2015 and the following monthly payments on the 5th of the subsequent months until full payment. If he fails to pay any instalment payments he has to serve the imprisonment in default accordingly.

The Magistrate's order is to be varied accordingly.

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