IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 2

Magistrate's Appeal No 9020 of 2023
Criminal Revision No 3 of 2023

Between

Nicholas Ng

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Customs Act]
[Criminal Procedure and Sentencing — Appeal]
[Criminal Procedure and Sentencing — Sentencing — Sentencing framework]

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v
Public Prosecutor

[2024] SGHC 2

General Division of the High Court — Magistrate's Appeal No 9020 of 2023 and Criminal Revision No 3 of 2023
Vincent Hoong J
2, 11, 23 October 2023

10 January 2024

Vincent Hoong J:

Introduction

1 This case involved an offender ("the Appellant") who claimed trial to 23 charges. The charges related to the excise duty, Goods and Services Tax ("GST") and Additional Registration Fee ("ARF") payable on nine vehicles which were imported into Singapore. In essence, the Appellant had underdeclared the value of nine vehicles to the Singapore Customs ("Customs"), which allowed him to pay less excise duty, GST and ARF for these vehicles. A key issue in this appeal was whether the sentencing framework laid down by the High Court in *Public Prosecutor v Tan Teck Leong Melvin* [2023] SGHC 188 ("*Melvin Tan*") for the offence of fraudulent evasion of GST on imported goods under s 128D and punishable under s 128L(2) of the Customs Act (Cap 70, 2004 Rev Ed) ("Customs Act") was applicable to charges for fraudulent evasion of

excise duty under s 128D and punishable under s 128L(2) of the Customs Act of which the Appellant was convicted.

2 The charges which the Appellant faced comprised:

(a) six charges under s 128D and punishable under s 128L(2) of the Customs Act which concerned the fraudulent evasion of excise duty leviable on eight of the vehicles;

(b) six charges under s 128D of the Customs Act read with ss 26 and 77 of the Goods and Services Tax Act (Cap 117A, 2005 Rev Ed) ("GST Act") and punishable under s 128L(2) of the Customs Act which concerned the fraudulent evasion of GST leviable on eight of the vehicles;

(c) one charge under s 128(1)(*a*) and punishable under s 128L(1) of the Customs Act which concerned the Appellant's conduct of causing Penanshin Air Express Pte Ltd ("Penanshin Air") to incorrectly declare the value of a vehicle in a cargo clearance permit that resulted in a shortfall in the excise duty payable;

(d) one charge under s 128(1)(*a*) of the Customs Act read with ss 26 and 77 of the GST Act and punishable under s 128L(1) of the Customs Act which concerned the Appellant's conduct of causing Penanshin Air to incorrectly declare the value of a vehicle in a cargo clearance permit that resulted in a shortfall in the GST payable; and

(e) nine charges under s 11(9) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") which concerned the giving of incorrect information in relation to the value of the nine vehicles that resulted in a shortfall in the ARF chargeable on the nine vehicles.

3 Following the trial, the District Judge ("DJ") convicted the Appellant of the 23 charges and imposed a sentence of four weeks' imprisonment and a fine of $465,033.96, with a default sentence of 30 weeks' imprisonment. The DJ also made an order under s 11(9) of the RTA for the undercharged ARF amounts of $219,162 to be paid to the Registrar.

4 The Appellant was dissatisfied with the DJ's decision and appealed against his conviction and sentence in Magistrate's Appeal No 9020 of 2023 ("MA 9020"). Having considered the parties' submissions, I ultimately dismissed the Appellant's appeal against conviction and sentence. Criminal Revision No 3 of 2023 ("CR 3") involved an application by the Prosecution for this Court to exercise its revisionary powers under s 401 of the Criminal Procedure Code 2010 (2020 Rev Ed) in relation to the sentence imposed by the DJ for one of the charges. This was because the sentence imposed by the DJ was in excess of the maximum fine prescribed under s 128L(1) of the Customs Act. Having considered CR 3, I allowed the Prosecution's application and revised the sentence for the charge accordingly.

5 I now set out the detailed reasons for my decision below.

Background facts

6 The Appellant was Mr Nicholas Ng. The detailed facts surrounding the offences can be found in the DJ's grounds of decision (see *Public Prosecutor v Nicholas Ng* [2023] SGDC 78). I set out the key facts below.

7 The Appellant was the sole director and shareholder of a company named 1 Genesis Pte Ltd ("1 Genesis"). He was responsible for the management and operation of 1 Genesis. He had, under the name of 1 Genesis, imported motor vehicles from the United Kingdom into Singapore. The charges he was

convicted of relate to the excise duty, GST and ARF payable on nine imported vehicles. Eight of these vehicles were imported under the name of 1 Genesis. The remaining vehicle was imported under the name of one Justin Chua Yong Chao who testified that the Appellant was the actual importer of the vehicle and that he was unaware why he was named as the importer of the vehicle.

8 Typically, the process for importing a vehicle into Singapore was as follows:

(a) To import a vehicle into Singapore, an importer was required to submit declarations to Customs in respect of the cost, insurance and freight ("CIF") value of the vehicles, which was typically the price at which the importer bought the vehicles.

(b) Thereafter, Customs relied on the declarations to calculate the approved value at which the importer could import the vehicles. This approved value was conveyed to the importer, who then relied on the approved value to obtain cargo clearance permits for the vehicles. Crucially, the amount of excise duty, GST and ARF payable by the importer was also determined from this approved value.[1]

(c) Where an importer submitted an inaccurate declaration to Customs, the approved value that Customs derived would resultingly be inaccurate. In turn, the amount of excise duty, GST and ARF payable, computed based on the inaccurate approved value, would also be inaccurate. In other words, an importer who under-declared the CIF value of a vehicle was liable to pay a lower amount of excise duty, GST and ARF.

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1 *Public Prosecutor v Nicholas Ng* [2023] SGDC 78 ("GD") at [11].

The decision below

9 The DJ held that the Prosecution had proven the elements of all charges beyond a reasonable doubt.[2] She found, in essence, that:

(a) the Appellant had made fraudulent declarations of the CIF values of the vehicles imported;

(b) the Appellant knew that the actual CIF value of each vehicle was a different figure; and

(c) these fraudulent declarations resulted in the evasion of excise duty, GST and ARF chargeable for each vehicle.

10 In finding that the Appellant had made fraudulent declarations of the CIF values of the vehicles, the crucial issue for determination related to the *actual* CIF values of the vehicles. On this issue, the DJ found that the actual CIF values could be obtained from the documents and information which were retrieved from the Appellant's electronic devices during investigations. These referred to the multiple invoices and a sales contract retrieved from his laptop, WhatsApp messages retrieved from his mobile phone, and evidence of fund transfers reflected in his personal and corporate bank account statements (referred to collectively by the DJ as the "retrieved values").

11 In making this finding, the DJ rejected the Appellant's defence in the court below. His defence could broadly be summarised as follows:

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2 GD at [68].

(a) The Appellant had a friend by the name of "Yang Fan" ("Yang"). Yang's father lent Yang $200,000 when Yang went to the United Kingdom for his university studies.

(b) Based on the Appellant's statements, Yang then purportedly lent the sum of $200,000 to the Appellant to set up his business. The Appellant claimed that the retrieved values as set out in the invoices found on his electronic devices were inaccurate as the invoices were created by the Appellant to show Yang that the vehicles were expensive and he was, therefore, unable to repay Yang.[3]

(c) At trial, however, the Appellant presented a different account. According to the Appellant at trial, Yang had spent the sum of $200,000 which his father had lent him. Yang then lied to his father that he had "put the money" in Singapore. The Appellant then assisted Yang by creating an "IOU" for Yang to show his father. The Appellant was never able to produce this "IOU" as he claimed that it had been seized by Customs.[4]

(d) Despite the inconsistency in the Appellant's account relating to Yang, the Appellant had sought to claim that the actual CIF values were not as reflected in the retrieved values. Rather, the actual CIF values could be determined from an additional set of invoices which he had provided to Customs investigators during investigations (referred to collectively by the DJ as the "additional values").

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3 Record of Proceedings ("ROP") at p 1025: Exhibit P33 at A28.

4 ROP at p 481: Notes of Evidence ("NE") for 16 August 2022, p 24, lines 4 to 21.

12 The DJ rejected the Appellant's defence, finding that the documents which contained the additional values were not genuine as they contained glaring errors such as wrong chassis numbers and erroneous or missing descriptions of the vehicle.[5] In contrast, the invoices that were retrieved from the Appellant's laptop did not contain the same obvious errors and discrepancies in details of the vehicles.[6] Further, the DJ found that the Appellant was not able to produce any information about Yang that enabled the investigators to contact him.[7] Neither was Yang produced as a witness at trial.[8] Even on the assumption that Yang was an actual person, the Appellant was unable to keep an internally consistent account of why he was fabricating invoices.[9]

13 In relation to the sentences, the DJ imposed a fine of $465,033.96 (with a default sentence of 30 weeks' imprisonment) for the 14 Customs Act charges and a total sentence of four weeks' imprisonment for the nine RTA charges.

14 In relation to the 14 Customs Act charges, these were the individual sentences:

Charge No	**Nature of Offence**	**Amount involved**	**Fine (default imprisonment term)**
DAC-922454-2019	Fraudulent evasion (excise duty)	$842.03	$10,104.36 (one week)
DAC-922455-2019	Fraudulent evasion (GST)	$353.66	$4,243.92 (one week)

5 GD at [36].

6 GD at [43].

7 GD at [45].

8 GD at [45].

9 GD at [46].

DAC-922456-2019	Fraudulent evasion (excise duty)	$2,066.74	$24,800.88 (three weeks)
DAC-922457-2019	Fraudulent evasion (GST)	$868.03	$10,416.36 (one week)
DAC-922458-2019	Fraudulent evasion (excise duty)	$6,451.82	$77,421.84 (three weeks)
DAC-922459-2019	Fraudulent evasion (GST)	$2,709.77	$32,517.24 (two weeks)
DAC-922460-2019	Fraudulent evasion (excise duty)	$10,889.58	$130,674.96 (six weeks)
DAC-922461-2019	Fraudulent evasion (GST)	$4,573.63	$54,883.56 (three weeks)
DAC-922462-2019	Fraudulent evasion (excise duty)	$3,374.03	$40,488.36 (three weeks)
DAC-922463-2019	Fraudulent evasion (GST)	$1,417.09	$17,005.08 (one week)
DAC-922464-2019	Fraudulent evasion (excise duty)	$2,091.26	$25,095.12 (two weeks)
DAC-922465-2019	Fraudulent evasion (GST)	$878.33	$10,539.96 (one week)
DAC-922466-2019	Incorrect declaration (excise duty)	$1,575.25	$$18,903.00 (one week)
DAC-922467-2019	Incorrect declaration (GST)	$661.61	$7,939.32 (one week)
	Total	$38,752.83	$465,033.96 (30 weeks)

15 In relation to the nine RTA charges, the DJ imposed a sentence of two weeks' imprisonment per charge, with two of the sentences ordered to run

consecutively, resulting in a total sentence of four weeks' imprisonment. An order for the undercharged ARF amounts of $219,162 was also made under s 11(9) of the RTA. I set out the sentences imposed for the nine RTA charges below:

MSC No.	**Nature of Offence**	**Amount involved**	**Sentence imposed**
MSC-902446-2020	Incorrect information (ARF)	$40,696	Two weeks' imprisonment (consecutive)
MSC-902447-2020	Incorrect information (ARF)	$18,600	Two weeks' imprisonment (consecutive)
MSC-902448-2020	Incorrect information (ARF)	$43,195	Two weeks' imprisonment (concurrent)
MSC-902449-2020	Incorrect information (ARF)	$42,294	Two weeks' imprisonment (concurrent)
MSC-902450-2020	Incorrect information (ARF)	$14,638	Two weeks' imprisonment (concurrent)
MSC-902451-2020	Incorrect information (ARF)	$30,063	Two weeks' imprisonment (concurrent)
MSC-902452-2020	Incorrect information (ARF)	$7,578	Two weeks' imprisonment (concurrent)
MSC-902453-2020	Incorrect information (ARF)	$10,354	Two weeks' imprisonment (concurrent)

MSC-902454-2020	Incorrect information (ARF)	$11,744	Two weeks' imprisonment (concurrent)
	Total	$219,162	Four weeks' imprisonment

Parties' submissions on appeal

16 On appeal, the Appellant's main argument against his conviction was that the retrieved values were not indicative of the actual CIF values of the imported vehicles. In particular, he maintained his claim at trial that the invoices retrieved from his laptop were created by him to assist his friend, Yang, in placating Yang's father.[10]

17 In response, the Prosecution submitted that the DJ was correct to convict the Appellant. It contended that the Appellant's account in relation to Yang had been inconsistent in the court below, and that there was no evidence to even prove the existence of Yang.[11]

18 In relation to the sentences imposed for the charges under the Customs Act, the Appellant relied on the case of *Melvin Tan*, where the High Court had laid down a sentencing framework for the offence of fraudulent evasion of GST on imported goods under s 128D and punishable under s 128L(2) of the Customs Act. Applying the sentencing framework in *Melvin Tan* to all the charges involving s 128D punishable under s 128L(2) of the Customs Act in the present case (referred to collectively as the "s 128D Charges"), the Appellant

[10] Appellant's Skeletal Submissions dated 20 October 2023 ("AS") at para 1.

[11] Prosecution's Submissions dated 22 September 2023 ("PS") at para 19.

argued that the sentences imposed by the DJ were manifestly excessive. Based on the sentencing framework in *Melvin Tan*, the Appellant contended that the indicative starting fines totalling $324,605.28 would be "too harsh" on the Appellant, since he was facing "three waves of punishment": the fines, the sentences for the RTA charges as well as the order for the undercharged ARF amounts of $219,162 made under s 11(9) of the RTA. Given the above, the Appellant urged this Court to order a default sentence of 18 weeks' imprisonment for the charges under the Customs Act.[12]

19 In relation to the sentence for the RTA charges, the Appellant took no issue with the individual sentences imposed by the DJ as well as the order for two of the sentences to run consecutively.[13] However, the Appellant contended that his global sentence should be backdated to account for the period that he had spent in remand from 28 August 2021 to February 2022, which amounted to 22 weeks and four days.[14]

20 On the other hand, the Prosecution argued that the sentencing framework in *Melvin Tan* should be extended to all specified offences punishable under s 128L(2) of the Customs Act.[15] In applying the sentencing framework in *Melvin Tan* to the s 128D Charges in the present case, the Prosecution contended that the sentences imposed by the DJ were in line with the framework and were not manifestly excessive.[16]

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12 AS at para 33.

13 AS at para 33.

14 AS at paras 34 and 38.

15 PS at para 34.

16 PS at para 45.

21 Separately, but relatedly, the Prosecution filed an application in Criminal Revision No 3 of 2023 ("CR 3") for this Court to exercise its revisionary powers under s 401 of the Criminal Procedure Code 2010 to set aside the sentence for one of the charges, DAC-922466-2019.[17] As the DJ had noted in the GD,[18] the Appellant was sentenced to a fine of $18,903 for the offence of incorrect declaration under s 128(1)(*a*) and punishable under s 128L(1) of the Customs Act despite the offence only providing for a maximum fine of $10,000, or up to 12 months' imprisonment, or both. The Prosecution submitted that the appropriate sentence was a maximum fine of $10,000.[19]

Issues which had to be determined

22 In relation to the Appellant's conviction, the sole issue to be determined was whether the retrieved values from the Appellant's electronic devices were indeed indicative of the actual CIF values of the imported vehicles.

23 In relation to the Appellant's sentences, the following issues arose for my determination:

(a) first, whether the sentencing framework in *Melvin Tan* was applicable to the s 128D Charges;

(b) second, in relation to the s 128D Charges, what the appropriate sentences for the Appellant's charges were;

(c) third, whether any backdating of the imprisonment term was appropriate to account for the Appellant's remand period; and

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17 PS at para 46.

18 GD at [92].

19 PS at para 45.

(d) fourth, in relation to CR 3, what the appropriate sentence for DAC-922466-2019 was.

Decision on conviction

Whether the retrieved values were indicative of the actual CIF values of the imported vehicles

24 The Appellant argued that the retrieved values were not in fact indicative of the actual CIF values of the imported vehicles as they were fake invoices created for his friend Yang.[20] Instead, the Appellant's submission on appeal was that he had given the correct values to Customs and, therefore, had not underdeclared the values of the vehicles.[21]

25 I was unable to accept this proposition. The Appellant's account of Yang's involvement was both internally and externally inconsistent. In my view, the DJ was correct to hold that the retrieved values from the Appellant's electronic devices were indicative of the actual CIF values.

26 Based on the record, the Appellant had not been internally consistent in his account of Yang's involvement with his business, and why these invoices were created for Yang. In his recorded statements, the Appellant had claimed that Yang had lent him money to set up his business of importing motor vehicles. Based on this version of events, the Appellant had created these fake invoices to mislead Yang that the vehicles costed more than they did, and that he had no money to repay Yang.[22]

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20 AS at paras 1 and 5.

21 AS at para 9.

22 GD at [46].

27 This, however, was not the Appellant's case at trial. Instead, the Appellant claimed at trial that Yang had not, in fact, lent him a sum of money. While Yang's father had lent Yang a sum of money, Yang had spent it all before he had even started the business with the Appellant. Thus, the Appellant had supposedly fabricated these invoices to mislead Yang's father into believing that Yang had invested a sum of money into the Appellant's business.[23]

28 The Appellant made no effort to reconcile these inconsistencies. Instead, on appeal, the Appellant claimed that he was consistent from the beginning.[24] In my view, this was clearly an untenable position. Further, even if these two accounts could be understood consistently, I found that it was insufficient to overturn the DJ's finding. As the Prosecution argued, Yang, who was central to the Appellant's case, had been uncontactable and had not been called to testify at trial.[25] The Appellant was also unable to produce further supporting evidence regarding Yang.[26] In other words, his version of events remained entirely uncorroborated. The only evidence that was before the DJ at trial in relation to Yang was the Appellant's bare assertion.

29 Further, I found the Appellant's version of events to be externally inconsistent with the objective evidence before me. As the DJ correctly found, the invoices that the Appellant provided during investigations, which he claimed to be the actual invoices, were clearly not genuine; rather, they were poorly made facsimiles of the legitimate invoices.[27] They contained obvious errors and

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23 GD at [46].

24 AS at para 1(a).

25 PS at para 19.

26 AS at para 7.

27 GD at [36] and [43].

discrepancies which one would not have expected from a legitimate commercial invoice.[28] This stood in stark contrast to the retrieved invoices from the Appellant's laptop, which appeared more professional and contained features that one would have expected in a legitimate commercial transaction.[29]

30 For these reasons, I found that the retrieved values were indeed indicative of the actual CIF value of the imported vehicles. Seeing that this was the Appellant's key argument on appeal, there was no reason to disturb the DJ's decision to convict the Appellant of all 23 charges against him. For completeness, I also found no error made by the DJ in her findings in relation to conviction.

Decision on sentence

Whether the sentencing framework in* Melvin Tan *was applicable to the s 128D Charges

31 I noted at the outset that parties agreed that the sentencing framework in *Melvin Tan* was applicable to the s 128D Charges in the present case. Accepting this position, however, necessarily meant an extension of the sentencing framework in *Melvin Tan*. In *Melvin Tan* (at [33]), the High Court was careful to confine its analysis to offences under s 128D of the Customs Act involving the fraudulent evasion of *GST* on imported goods, where no harmful goods (such as tobacco) were involved. As to whether the sentencing framework adopted could also apply to other offences under s 128D involving the fraudulent evasion of *customs or excise duty*, the High Court expressly left the question open for future determination in a suitable case given that there were no such offences before the court in *Melvin Tan*.

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28 GD at [43].

29 GD at [43].

32 In other words, as it stood before my decision, the sentencing framework in *Melvin Tan* would have applied only to the charges relating to the fraudulent evasion of GST, and not the fraudulent evasion of excise duty, notwithstanding that the offences arose in relation to importing of the same motor vehicle. The Prosecution submitted that the sentencing framework in *Melvin Tan* can and should be extended to *all* specified offences punishable under s 128L(2) of the Customs Act.[30]

33 Given the High Court's comments in *Melvin Tan*, it was appropriate to consider in some detail the reasons for extending the framework to the present case involving offences for the fraudulent evasion of customs or excise duty.

34 I was unable to accept the Prosecution's submission in full. I was of the view that the sentencing framework in *Melvin Tan* can and should be extended *only* to apply to offences concerning the fraudulent evasion of GST as well as offences concerning the fraudulent evasion of excise duty on imported goods, but where no harmful goods were involved. I set out my reasons as follows.

35 First, I agreed with the Prosecution's submission that many s 128L(2) cases would involve the evasion of excise duty and GST imposed on the same good.[31] I also accepted that, on a plain reading, s 128L(2) of the Customs Act made no distinction between the type of duty or tax evaded.[32] Indeed, one of the sentencing aims of s 128L(2), that of preventing loss of revenue to the State, would also apply equally across offences concerning the fraudulent evasion of GST and offences concerning the fraudulent evasion of excise duty.[33]

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30 PS at para 37.

31 PS at para 37.

32 PS at para 37.

33 PS at para 36.

36 Second, I agreed with the Prosecution's submission that the sentencing framework in *Melvin Tan* was introduced to promote consistency and provide coherence to the sentencing practice.[34] Extending it to offences concerning the fraudulent evasion of excise duty was certainly in line with the High Court's intentions in *Melvin Tan*.

37 However, I was of the view that this framework should not be extended to *all* specified offences that were punishable under s 128L(2) of the Customs Act. It should be noted that there are separate punishment provisions and carve-outs for offences involving goods consisting wholly or partly of relevant tobacco products, as provided under ss 128L(2), 128L(4), 128L(5) and 128L(5A) of the Customs Act.

38 Given that the present case did not involve the other types of specified offences under s 128L(2), and I did not have the benefit of hearing full arguments from parties on this, I found it appropriate only to extend the sentencing framework in *Melvin Tan* to also apply to offences concerning the fraudulent evasion of excise duty payable on imported goods, where no harmful goods are involved.

Whether the sentences imposed by the DJ for the Appellant's s 128D Charges were manifestly excessive

39 With that in mind, I turned to the second issue for my consideration. In applying the sentencing framework in *Melvin Tan* to the present case, I considered what the appropriate sentences were in relation to the s 128D Charges.

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[34] PS at para 39.

40 Applying the sentencing framework in *Melvin Tan*, I found that the DJ's imposed fines were about 37.7% higher than the indicative starting fines under the framework.

41 Under Step 1 of the sentencing framework in *Melvin Tan*, I had to ascertain the indicative starting fines for the individual s 128D Charges. The framework which was devised by the court in *Melvin Tan* applies different multiplier values based on the amount of GST evaded. In my view, this sentencing framework could be extended such that different multiplier values would apply based on the amount of GST *or excise duty* evaded. Accordingly, the framework set out below would allow a court to determine the range of indicative fine based on the amount of GST or excise duty evaded:

Amount of tax or duty evaded	**Multiplier applied to *each* bracket**	**Range of indicative fine**
$1 to $250	× 12	$12 to $3,000
$251 to $1,000	× 10	$3,010 to $10,500
$1,001 to $10,000	× 8	$10,508 to $82,500
$10,001 to $100,000	× 6	$82,506 to $622,500
$100,001 to $500,000	× 4	$622,504 to $2,222,500
$500,001 to $1m	× 3	$2,222,503 to $3,722,500
>$1m	× 2	> $3,722,500

42 As the court had set out in *Melvin Tan* (at [41]), the multiplier values set out at each level are to be applied cumulatively, in the same way that income tax is computed in Singapore. Applying the respective multipliers to the amount of GST and excise duty evaded, I ascertained the indicative starting fines for the s 128D Charges in the present case as follows:

(a) For DAC-922454-2019, the amount of excise duty evaded was $842.03. The indicative starting fine would be $8,920.30, derived from ($842.03 - $250) × 10 + $3,000.

(b) For DAC-922455-2019, the amount of GST evaded was $353.66. The indicative starting fine would be $4,036.60, derived from ($353.66 - $250) × 10 + $3,000.

(c) For DAC-922456-2019, the amount of excise duty evaded was $2,066.74. The indicative starting fine would be $19,033.92, derived from ($2,066.74 - $1,000) × 8 + $10,500.

(d) For DAC-922457-2019, the amount of GST evaded was $868.03. The indicative starting fine would be $9,180.30, derived from ($868.03 - $250) × 10 + $3000.

(e) For DAC-922458-2019, the amount of excise duty evaded was $6,451.82. The indicative starting fine would be $54,114.56, derived from ($6,451.82 - $1,000) × 8 + $10,500.

(f) For DAC-922459-2019, the amount of GST evaded was $2,709.77. The indicative starting fine would be $24,178.16, derived from ($2,709.77 - $1,000) × 8 + $10,500.

(g) For DAC-922460-2019, the amount of excise duty evaded was $10,889.58. The indicative starting fine would be $87,837.48, derived from ($10,889.58 - $10,000) × 6 + $82,500.

(h) For DAC-922461-2019, the amount of GST evaded was $4,573.63. The indicative starting fine would be $39,089.04, derived from ($4,573.63 - $1,000) × 8 + $10,500.

(i) For DAC-922462-2019, the amount of excise duty evaded was $3,374.03. The indicative starting fine would be $29,492.24, derived from ($3,374.03 - $1,000) × 8 + $10,500.

(j) For DAC-922463-2019, the amount of GST evaded was $1,417.09. The indicative starting fine would be $13,836.72, derived from ($1,417.09 - $1,000) × 8 + $10,500.

(k) For DAC-922464-2019, the amount of excise duty evaded was $2,091.26. The indicative starting fine would be $19,230.08, derived from ($2,091.26 - $1,000) × 8 + $10,500.

(l) For DAC-922465-2019, the amount of GST evaded was $878.33. The indicative starting fine would be $9,283.30, derived from ($878.33 - $250) × 10 + $3,000.

43 As can be seen in the table below, the fines which were imposed by the DJ were generally higher than the indicative starting fines based on an application of the sentencing framework in *Melvin Tan*:

Charge	**Amount involved**	**Indicative Starting fine under *Melvin Tan***	**Fine imposed by the DJ**	**Difference**
DAC-922454-2019	$842.03	$8,920.30	$10,104.36	13.3% increase
DAC-922455-2019	$353.66	$4,036.60	$4,243.92	5.1% increase
DAC-922456-2019	$2,066.74	$19,033.92	$24,800.88	30.3% increase

DAC-922457-2019	$868.03	$9,180.30	$10,416.36	13.5% increase
DAC-922458-2019	$6,451.82	$54,114.56	$77,421.84	43.1% increase
DAC-922459-2019	$2,709.77	$24,178.16	$32,517.24	34.5% increase
DAC-922460-2019	$10,889.58	$87,837.48	$130,674.96	48.8% increase
DAC-922461-2019	$4,573.63	$39,089.04	$54,883.56	40.4% increase
DAC-922462-2019	$3,374.03	$29,492.24	$40,488.36	37.3% increase
DAC-922463-2019	$1,417.09	$13,836.72	$17,005.08	22.9% increase
DAC-922464-2019	$2,091.26	$19,230.08	$25,095.12	30.5% increase
DAC-922465-2019	$878.33	$9,283.30	$10,539.96	13.5% increase
Total:	$36,515.97	$318,232.70	$438,191.64	37.7% increase

44 The Appellant submitted that even the indicative starting fines under the sentencing framework in *Melvin Tan* were harsh, and focused instead on seeking a default sentence of 18 weeks' imprisonment.[35] On the other hand, the Prosecution contended that the DJ's imposed fines were justifiable even based on a consideration of the sentencing framework in *Melvin Tan*.[36]

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35 AS at para 33.

36 PS at para 42.

45 I agreed with the Prosecution for the following reasons:

(a) First, as the court made clear in *Melvin Tan* (at [45]), the indicative starting fines were meant for first-time offenders who pleaded guilty at the earliest available opportunity. In the present case, the Appellant had not pleaded guilty.

(b) Second, under Step 2 of the sentencing framework in *Melvin Tan*, the court was required to identify the aggravating and mitigating factors present in the case and make adjustments to the indicative starting fines where necessary. In my view, the presence of several aggravating factors coupled with the absence of any mitigating factors justified an uplift from the indicative starting fines.

(i) The aggravating factors which featured in the present case included planning and premeditation by the Appellant, and evidence of him making a personal monetary gain from the offences.

(ii) In relation to mitigating factors, the Appellant argued that he had fully cooperated with the authorities.[37] He contended that his past incident of abscondment was unintentional, and that he was not of any flight risk during his abscondment.[38] I was not persuaded by this argument. Whether the abscondment was intentional did not change the fact that the Appellant had failed to cooperate with the authorities. Thus, I was of the view that there were no mitigating factors in the present case.

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37 AS at para 29(k).

38 AS at para 35.

46 Third, under Step 3 of the sentencing framework in *Melvin Tan*, the court was required to consider the totality principle. In my view, the fines imposed by the DJ were in line with the totality principle. As the court had stated in *Melvin Tan* (at [53]), it was relevant to consider whether the overall fine quantum was just and appropriate, especially if the offender was of limited financial means. This was precisely what the DJ had done in the court below when she considered the Appellant's impecuniosity due to his bankruptcy.[39] I found no reason to disturb her finding in this regard.

47 For these reasons, I upheld the fines imposed by the DJ in relation to the s 128D Charges.

48 In relation to the corresponding default sentences for the s 128D Charges, the High Court in *Melvin Tan* (at [67]) had provided guidance on the indicative default sentences for the fine quantum imposed per charge:

Fine quantum imposed per charge	**Indicative default sentence**
Up to $500,000	Up to six months
$500,000 to $1m	Six to 12 months
$1m to $2m	12 to 24 months
$2m to $3m	24 to 36 months
$3m to $5m	36 to 48 months
$5m to $10m	48 to 72 months
$10m and above	72 months (statutory maximum)

[39] GD at [84]–[85].

49 The Prosecution submitted that the default sentences of one to six weeks' imprisonment imposed by the DJ for fines ranging from about $10,000 to about $130,000 was broadly in line with the above framework.[40]

50 I agreed with the Prosecution's submission. In my view, the DJ had reasonably calibrated the default sentences based on the fine imposed for each charge. As the court had considered when devising the framework for default imprisonment terms in *Melvin Tan* (at [66]), this was the proper approach to deriving the indicative default imprisonment term for each charge. I saw no reason to disturb the default imprisonment terms imposed by the DJ in relation to the s 128D Charges as set out in the table below:

Charge	**Amount involved**	**Fine imposed by the DJ**	**Default imprisonment term**
DAC-922454-2019	$842.03	$10,104.36	One week
DAC-922455-2019	$353.66	$4,243.92	One week
DAC-922456-2019	$2,066.74	$24,800.88	Three weeks
DAC-922457-2019	$868.03	$10,416.36	One week
DAC-922458-2019	$6,451.82	$77,421.84	Three weeks
DAC-922459-2019	$2,709.77	$32,517.24	Two weeks
DAC-922460-2019	$10,889.58	$130,674.96	Six weeks
DAC-922461-2019	$4,573.63	$54,883.56	Three weeks
DAC-922462-2019	$3,374.03	$40,488.36	Three weeks
DAC-922463-2019	$1,417.09	$17,005.08	One week

[40] PS at para 44.

DAC-922464-2019	$2,091.26	$25,095.12	Two weeks
DAC-922465-2019	$878.33	$10,539.96	One week
Total:	$36,515.97	$438,191.64	27 weeks' imprisonment

Whether the total imprisonment term should be backdated to account for the Appellant's remand period

51 I then considered the Appellant's contention that the total imprisonment term should have been backdated to account for his remand period from 28 August 2021 to 10 February 2022, which amounted to 22 weeks and four days.[41]

52 I was unable to accept this argument. First, default imprisonment terms cannot be backdated to commence from the date of remand. Second, I found that the DJ had already taken his remand period into account in calibrating the default imprisonment term.[42]

53 Third, in considering the justice of the case as part of the totality principle, I noted that the Appellant's remand period arose only because he had absconded and failed to comply with the conditions stated in the Court order.[43] In my view, this diminished the significance of the Appellant's remand period as it had to be weighed against his disregard for the conditions which were imposed upon him. Thus, I was unable to place great weight on the Appellant's remand period.

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41 AS at para 34.

42 GD at [89].

43 GD at [90].

54 For these reasons, I upheld the default imprisonment terms imposed by the DJ in relation to the s 128D Charges.

The appropriate outcome for CR 3 and the appropriate sentence for DAC-922466-2019

55 It was clear that the fine of $18,903 (with a default sentence of two weeks' imprisonment) imposed by the DJ for this charge was in excess of the maximum fine prescribed under s 128L(1) of the Customs Act. Thus, I exercised my revisionary powers to set aside the sentence imposed and remedy the serious injustice. The Prosecution argued that the maximum fine of $10,000 should be imposed instead.[44]

56 I agreed with the Prosecution's submission. While there were aggravating factors which featured in relation to the charge, these were insufficient to result in the custodial threshold being crossed.[45] On the other hand, the Appellant's offence was serious enough to warrant the maximum fine being imposed. Thus, I found it appropriate for a fine of $10,000 (with a default sentence of one week's imprisonment) to be imposed on the Appellant for DAC-922466-2019.

Conclusion

57 To conclude, I dismissed the Appellant's appeals against his conviction and his sentence:

(a) In relation to the Appellant's conviction, I found no reason to disturb the DJ's findings in relation to the actual CIF values of the

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44 PS at para 48.

45 PS at para 49.

imported values. Ng's account of Yang was both internally inconsistent and externally inconsistent.

(b) In relation to the Appellant's sentences, I found it appropriate to extend the sentencing framework in *Melvin Tan* to apply beyond offences involving the fraudulent evasion of GST. In particular, I found that the sentencing framework ought to also apply to offences involving the fraudulent evasion of excise duty under s 128D punishable under s 128L(2) of the Customs Act. In determining so, I found that the sentences imposed by the DJ were justifiable and in line with the framework. Therefore, I upheld the DJ's decision in relation to the Appellant's sentences.

58 In relation to the application in CR 3, I allowed the application and exercised my revisionary powers to set aside the sentence imposed by the DJ DAC-922466-2019, given that the fine imposed clearly exceeded the maximum fine statutorily prescribed. I accepted the Prosecution's submission and found it appropriate to impose a fine of $10,000 (with a default sentence of one week's imprisonment).

59 As a result of my decision to allow CR 3, this meant a total sentence of four weeks' imprisonment and a fine of $456,130.96 (with a default sentence of 29 weeks' imprisonment). For completeness, I did not disturb the DJ's order under s 11(9) of the RTA for the undercharged ARF amounts of $219,162 to be paid to the Registrar.

Vincent Hoong
Judge of the High Court

Kanagavijayan Nadarajan (Kana & Co) for the appellant;
Timotheus Koh (Attorney-General's Chambers) for the respondent.