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

[2024] SGHC 217

Magistrate's Appeal No 9015 of 2024/01

Between

Low Han Siang

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

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

Low Han Siang
v
Public Prosecutor

[2024] SGHC 217

General Division of the High Court — Magistrate's Appeal No 9015 of 2024/01
Vincent Hoong J
23 August 2024

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Vincent Hoong J:

Introduction

1 The appellant, Mr Low Han Siang (the "Appellant"), pleaded guilty to the following five proceeded charges in the District Court:

(a) DAC-917659-2022 (the "First Excise Duty Charge"): An amalgamated charge concerning the fraudulent evasion of excise duties amounting to $1,050,018.54 on 611 cars in 2020, an offence under s 128D of the Customs Act (Cap 70, 2004 Rev Ed) (the "Customs Act"), punishable under s 128L(2) of the Customs Act read with s 124(4) of the Criminal Procedure Code 2010 (the "CPC").

(b) DAC-917661-2022 (the "Second Excise Duty Charge"): An amalgamated charge concerning the fraudulent evasion of excise duties

amounting to $769,846.51 on 530 cars in 2021, an offence under s 128D of the Customs Act, punishable under s 128L(2) of the Customs Act read with s 124(4) of the CPC.

(c) MSC-900973-2023 (the "First ARF Charge"): An amalgamated charge concerning the giving of incorrect information in relation to the value of 34 motor vehicles in 2017, causing a shortfall to the Additional Registration Fee ("ARF") amounting to a total of $123,726, an offence under s 11(1)(*a*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"), punishable under s 11(9) of the RTA read with s 124(4) of the CPC.

(d) MSC-900977-2023 (the "Second ARF Charge"): An amalgamated charge concerning the giving of incorrect information in relation to the value of 704 motor vehicles in 2021, causing a shortfall to the ARF amounting to a total of $7,647,298, an offence under s 11(1)(*a*) of the RTA, punishable under s 11(9) of the RTA read with s 124(4) of the CPC.

(e) 4220015752-1 (the "Car Defect Charge"): A charge concerning the failure to cause a notice of defect to be given to the relevant parties as required under the RTA, an offence under s 23A(5)(*a*) of the RTA, punishable under s 23A(5)(i) of the RTA.

2 With the Appellant's consent, 19 other charges were taken into consideration for sentencing: (a) three further amalgamated charges concerning the fraudulent evasion of excise duties; (b) five amalgamated charges concerning the fraudulent evasion of Goods and Services Tax ("GST"); (c) five amalgamated charges concerning the causing of appointed declaring agents to make incorrect declarations to the Singapore Customs; (d) four further

amalgamated charges concerning the giving of incorrect information in relation to the value of motor vehicles, causing a shortfall to the ARF; and (e) two further charges concerning the failure to cause a notice of defect to be given to the relevant parties as required under the RTA.

3 The District Judge (the "DJ") imposed a global sentence of nine months' imprisonment and a fine of $6,000,500 (in default 69 months and two days' imprisonment). He also issued a repayment order of $16,256,433 under s 11(9) of the RTA, corresponding to the total amount of ARF evaded. The detailed grounds of the DJ's decision are published as *Public Prosecutor v Low Han Siang* [2024] SGDC 53 ("GD").

4 In the present appeal against sentence, the Appellant submits that the sentence imposed by the DJ is manifestly excessive. In his submission, the global sentence should be reduced to 50 months, 13 weeks and two days' imprisonment, inclusive of any default imprisonment term. The Appellant does not challenge the sentence imposed for the Car Defect Charge or the repayment order under s 11(9) of the RTA.

The Excise Duty Charges

5 I begin with the Excise Duty Charges. The DJ sentenced the Appellant to a fine of $3.5m (in default 39 months' imprisonment) for the First Excise Duty Charge and a fine of $2.5m (in default 30 months' imprisonment) for the Second Excise Duty Charge. The Appellant submits that these should be reduced to a fine of $3m (in default 30 months' imprisonment) for the First Excise Duty Charge and a fine of $2.5m (in default 25 months' imprisonment) for the Second Excise Duty Charge.

6 There is no dispute that, in determining the fines to be imposed, the DJ was correct to apply the sentencing framework established in *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 ("*Melvin Tan*"), as subsequently extended in *Ng Nicholas v Public Prosecutor* [2024] 4 SLR 364 ("*Nicholas Ng*") to offences concerning the fraudulent evasion of excise duty payable on imported goods, where no harmful goods are involved: *Nicholas Ng* at [31]–[38]. There is similarly no dispute that the DJ correctly quantified the indicative fines to be imposed at the first step of the *Melvin Tan* framework.

7 However, the Appellant submits that the DJ erred at the second step of the *Melvin Tan* framework in applying an uplift to the indicative fines. According to him, balancing the aggravating and mitigating factors, the DJ should instead have left the indicative fines unadjusted or even calibrated them downwards. Specifically, the Appellant contends that the DJ failed to account for two mitigating factors: (a) his lack of antecedents; and (b) the hardship which would be occasioned to him and his family.

8 I reject this submission. In the first place, neither of these factors is deserving of any mitigating weight:

> (a) In respect of the Appellant's lack of antecedents, it must be remembered that the *Melvin Tan* framework is intended to apply to first-time offenders: *Melvin Tan* at [45]. It would therefore be double-counting to separately account for this factor. In any event, the lack of antecedents is no more than the absence of an aggravating factor, which is not mitigating but neutral in the sentencing process: *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 at [85]. It is true that a clean record can indicate that a person has been law-abiding for much of his life and that the index offence was merely an aberration in his

character explainable perhaps by some special circumstance: *Public Prosecutor v BWJ* [2023] 1 SLR 477 at [102]. However, this argument is simply not open to the Appellant having regard to the volume of his offences and the protracted nature of his offending. The only reason he had no prior convictions was that the law had not yet caught up with him for his past misdeeds. He is not entitled to be regarded as a "first offender" in any sense of the phrase: *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [15].

(b) The Appellant further submits that a "crushing" sentence would occasion significant financial hardship to him and his family. He relies on the fact that he has been in dire financial straits since the commencement of investigations against him, which caused his business to decline and subsequently resulted in his bankruptcy. He also adds that he is the sole breadwinner of his family. In my judgment, this is plainly not a valid mitigating factor. The Appellant must face the consequences of his actions. As for his family, the circumstances relied upon by him fall well short of the "very exceptional or extreme" threshold for such circumstances to attract mitigating weight: *Chua Ya Zi Sandy v Public Prosecutor* [2021] SGHC 204 at [11], citing *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10]–[11].

9 More fundamentally, there were no less than six aggravating factors identified by the DJ in the present case: (a) the moderate-to-high degree of planning and premeditation; (b) the presence of some sophistication; (c) the sustained period of offending; (d) the fact that the Appellant masterminded the offences; (e) the Appellant's commission of the offences for personal profit and to remain competitive in his business; and (f) the 13 similar charges under the Customs Act which were taken into consideration: GD at [62]. I am satisfied

that these six aggravating factors, none of which the Appellant disputes, amply justified the DJ's uplift to the indicative fines at the second step of the *Melvin Tan* framework.

10 For completeness, the Appellant asserts in his Petition of Appeal that the DJ failed to give sufficient mitigating weight to his cooperation with the authorities. This submission, which has not been pursued in his written submissions, is unmeritorious. The DJ had expressly cited the Appellant's cooperation with the authorities as a mitigating factor: GD at [63]. Further, as observed by the Prosecution, the uplift applied by the DJ to the indicative fines was ultimately relatively modest considering the number of aggravating factors. This would suggest that significant mitigating weight was accorded to the Appellant's cooperation with the authorities, which was rightly the only relevant mitigating factor identified by the DJ at the second step of the *Melvin Tan* framework.

11 Turning to the default imprisonment terms, the Appellant submits that the DJ was required to apply the totality principle in determining *both* the overall fine quantum *and* the aggregate default imprisonment term. He asserts that the DJ failed to do this and, consequently, failed to ensure that the aggregate default imprisonment term was not excessive. There is also some suggestion that the DJ should have adjusted the overall fine quantum downwards at the third step of the *Melvin Tan* framework having regard to the Appellant's limited financial means.

12 I reject this submission. Although the DJ only made one express reference to the totality principle, in reducing the fines and therefore the default imprisonment terms to be imposed (GD at [68]), he was clearly aware that both aspects of the Appellant's sentences were separately subject to the totality

principle. The DJ had referred *both* to the fines *and* the default imprisonment terms imposed in *Melvin Tan* before satisfying himself that the individual and global sentences imposed on the Appellant for the Excise Duty Charges were not manifestly excessive: GD at [70]–[71]. The DJ also subsequently reasoned as follows (GD at [81]):

> In coming to the decision on the global sentence for all the charges, I took into consideration the totality principle in ensuring that the total sentence, *including the default sentences for the evasion of excise duty charges*, commensurate with the gravity of the [Appellant's] offences and his culpability, but at the same time was not crushing on him …
>
> [emphasis added]

13 In any event, I am satisfied that the totality principle does not require any further reduction to the overall fine quantum or the aggregate default imprisonment term for the Excise Duty Charges:

(a) The DJ had already significantly reduced the fines imposed for the Excise Duty Charges on account of the totality principle. As observed by the Prosecution, this reduction was so sizeable that the fines eventually imposed were even lower than the indicative fines quantified under the first step of the *Melvin Tan* framework. Although no express reference was made to the Appellant's limited financial means, the DJ's significant downward calibration was more than sufficient to account for this factor. It should also be remembered that, in considering whether the overall fine quantum is just and appropriate, a sentencing court is not simply required to ensure that the fine is of an amount that the offender can reasonably pay given his financial means. An important competing consideration is that of ensuring that the fine imposed is sufficiently high to achieve the objectives of deterrence and retribution: *Melvin Tan* at

[53], citing *Chia Kah Boon v Public Prosecutor* [1999] 2 SLR(R) 1163 at [15].

(b) As for the aggregate default imprisonment term, I accept that the purpose of a default imprisonment term is to prevent evasion of the fine imposed and not to serve as a proxy for the punishment imposed for the original offence: *Melvin Tan* at [60], citing *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [18]. However, it certainly does not follow, as the Appellant seems to suggest, that the default imprisonment term should be "very short" in every case where the offender is genuinely unable to pay the fine. For example, the offender in *Melvin Tan* was sentenced to a substantial imprisonment term of 36 months despite his inability to pay his fines: see *Melvin Tan* at [10]. Having regard to the circumstances of the present case and in particular to the numerous aggravating factors, I am satisfied that the aggregate default imprisonment term imposed by the DJ does not offend the totality principle.

14 Finally, the case of *Public Prosecutor v Tan Tian Chye* [2024] SGDC 124 ("*Tan Tian Chye*") does not assist the Appellant. His submission appears to be that, as the overall fine in the present case for the Excise Duty Charges ($6m) is significantly lower in quantum than the fine in *Tan Tian Chye* ($35m), the aggregate default imprisonment term to be imposed should correspondingly be shorter than the 60 months imposed in *Tan Tian Chye*. This comparison is misleading because default imprisonment terms under the Customs Act are subject under s 119 to a 72-month cap. Thus, according to *Melvin Tan*, a fine quantum of "$10m and above" translates to an indicative default sentence of 72 months (*Melvin Tan* at [67]), whether the quantum is precisely $10m or significantly in excess thereof. As the fine quantum in *Tan Tian Chye* was

significantly in excess of $10m, it is misconceived to contrive a linear relationship between the fine quantum and default imprisonment term based on the sentence imposed in *Tan Tian Chye*. A related point of distinction is that *Tan Tian Chye* involved only a single charge under the Customs Act, while the present case concerned two such proceeded charges. It is therefore difficult to meaningfully compare the two cases because, as observed by the Prosecution, the default imprisonment term is to be calibrated by reference to the fine imposed for each charge and not the total fine imposed for all the charges: *Melvin Tan* at [66]. Moreover, in *Melvin Tan*, without ruling authoritatively on the proper interpretation of s 119, the High Court opined that a plain reading suggested that the statutory cap applied to the default imprisonment term imposed for each charge rather than the total default imprisonment term imposed in respect of all the charges: *Melvin Tan* at [61]–[62]. I make no further comment on *Tan Tian Chye* as it is pending appeal.

15 For the reasons above, I uphold the sentences imposed by the DJ for the First and Second Excise Duty Charges.

The ARF Charges

16 I turn next to the ARF Charges. The DJ sentenced the Appellant to one month's imprisonment for the First ARF Charge and eight months' imprisonment for the Second ARF Charge. The Appellant's position is that these should be reduced to two weeks' imprisonment for the First ARF Charge and 13 weeks' imprisonment for the Second ARF Charge.

17 The Appellant submits, relying heavily on the case of *Public Prosecutor v Sim Tze Ching, Andrew* [2023] SGDC 44 ("*Andrew Sim*"), that the sentences imposed for the ARF Charges are manifestly excessive. I disagree. First, in

comparing the quantum of ARF evaded in *Andrew Sim* and the present case, the Appellant inexplicably narrows his focus at times to the proceeded charges. On this basis, he suggests that the $7,771,024 evaded in the present case compares favourably with the $9,416,725 evaded in *Andrew Sim*. There is simply no basis to compare the two cases so myopically. In the present case, four similar charges were taken into consideration for sentencing with the Appellant's consent and the total quantum of ARF evaded, across all the charges, was $16,256,433, a markedly higher figure than the $11,525,020 evaded in *Andrew Sim*. Second, the Appellant complains that the aggregate sentence imposed for the ARF Charges is almost 40% higher than the total of 24 weeks' imprisonment imposed in *Andrew Sim* for similar offences despite the total quantum of ARF evaded being only approximately 30% higher. This is arithmetically incorrect because the total quantum of ARF evaded in the present case was more than 40% higher than that in *Andrew Sim*. In any event, the quantum of ARF evaded is not the only relevant sentencing consideration. Among other things, the Appellant's offences were committed over a longer period and in respect of significantly more cars. As observed by the DJ, it is further aggravating that he continued to offend in 2022 even after the Singapore Customs had raided his residence in 2021: GD at [74]. Bearing these considerations in mind, the sentences imposed for the ARF Charges certainly cannot be regarded as manifestly excessive even though the Appellant pleaded guilty at an earlier stage in the proceedings than the offender in *Andrew Sim*.

18 For the reasons above, I uphold the sentences imposed by the DJ for the First and Second ARF Charges.

The global sentence

19 I turn finally to the Appellant's global sentence. The Appellant contends that the DJ failed to apply the totality principle in determining the global sentence to be imposed and, consequently, imposed a global sentence that was crushing upon him. In his submission, two adjustments to the global sentence are necessary on account of the totality principle: (a) a downward calibration of the default imprisonment terms for the Excise Duty Charges; and (b) the concurrent running of the shorter of the two imprisonment terms imposed for the ARF Charges.

20 I reject this submission. The DJ had expressly referred to the totality principle in determining the global sentence to be imposed: GD at [81]. I see no reason to disagree with his assessment that the global sentence imposed was commensurate with the gravity of the Appellant's offences and his culpability without being crushing upon him. In particular, having regard to the staggering aggregate quantum of excise duty, GST and ARF evaded by the Appellant, I entirely agree with the DJ that a deterrent sentence was called for: GD at [81].

Conclusion

21 For the reasons above, I dismiss the appeal against sentence.

Vincent Hoong
Judge of the High Court

Victor David Lau Dek Kai (Drew & Napier LLC) for the appellant;
Lim Shin Hui (Attorney-General's Chambers) for the respondent.