

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

**Criminal
Case No. 18/2339 SC/CRML**

BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: LIANG CHIAO
Defendant

Before: *Justice Oliver A. Saksak*

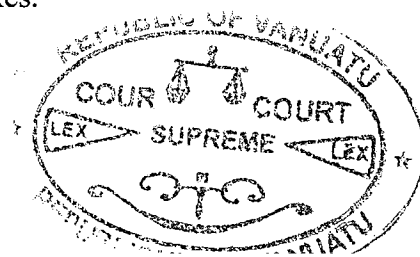
Counsel: *Damien Boe for Public Prosecutor
Andrew Bal for Defendant*

Date of Plea: *3rd September 2018*

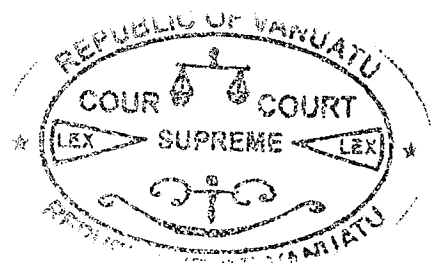
Date of Sentence: *6th September 2018*

SENTENCE

1. Liang Chao you are here for Sentence today for having pleaded guilty to one charge of failure to declare tobacco in order to defraud customs revenue contrary to section 174(1) of the Customs Act No. 17 of 2013, and to one count of misleading labels contrary to section 26 of the Tobacco Control Act No. 19 of 2008.
2. The facts of your offendings are quite simple. On 19 July 2018 you travelled from Fiji into Port Vila on Fiji Airways Flight FJ263 arriving at 15.50 hours. When passing through customs you failed to declare in your arrival card that you had tobacco with you. Custom Officers at the Airport checked your luggage and found 4 packages of tobacco concealed and labelled as China Tea. The total quantity of tobacco in the 4 packages was 1,400 grams or 1.4 kilograms. Searching further the custom officers found 50 packets of fine rolling papers, 1 Maxotte Roll Box and 1 Packet of Cigarette Butt/Fitters. Each packet had 10 rolls in it. These were not declared by you.
3. On 3rd August 2018 when the Custom Officers interviewed you at the Police Station in Luganville, you freely admitted having tobacco in your luggage on 19 July 2018 but you concealed them with labels as China Tea. You had a clear intention of smuggling these into Vanuatu without paying appropriate taxes.



4. Clearly you have broken Vanuatu law. And the penalty for an offence under section 174(1)(a) of the Customs Act is a fine not exceeding VT10,000,000 or imprisonment of not exceeding 5 years or both. For the offence under section 26 of the Tobacco Control Act, the maximum penalty is not exceeding VT5,000,000 fine and/or not exceeding 2 years imprisonment or both.
5. Your action was intentional and deliberate and you were dishonest by failing to declare your goods. These actions must be denounced by the Court as a deterrence to protect the public and to deter you and others from such offendings. These principles are well established in case law such as R v. Radich [1954] NZLR 86-87, In Veen v. The Queen (No.2) [1998] HCA 14.
6. I have seen the submissions by the Prosecution and defence counsel. Both have submitted that the Court impose fines as the appropriate punishment for you. The only issue is how much. The Prosecution submits a fine of VT4,000,000 for the first offence in Count 1 while defence counsel submits a fine of VT2,000,000. For Count 2, Prosecution submits a fine of VT250,000 and defence counsel submits the same amount. These are based on the assessments made by the Court in the case of Yao v. Public Prosecutor [2016] VUCA 25 and Rommers v. Public Prosecutor [2018] VUSC 121. These cases differ from your case on their facts and circumstances. The charges were not laid under the same sections under which you were charged. And of course the amounts involved in those cases were far more than the quantity of tobacco found in your luggage.
7. It is therefore equally important that the Court must consider and apply the principle of proportionality established in cases such as R v. Engert (1995) 84 A Crime R 67 and R v. Dodd (1991) 57 A Crime R 349. This is guard against the imposition of unduly lenient or unduly harsh sentences but to balance the sentence against the gravity of the offence.
8. I note the mitigating factors submitted on your behalf by Mr Bal which are also contained in your Same Day Report. These are that –
 - (a) You are 21 years old.
 - (b) You are a first time offender.



- (c) You have no previous criminal record.
- (d) You pleaded guilty at first opportunity.
- (e) You cooperated well with Customs Officers and the Police and made full admissions to them during search and investigations.
- (f) You are remorseful for your actions.
- (g) You are in gainful employment and supporting your parents who are in China and dependent on you.
- (h) You are the only person responsible for the laboratory of CCECC.

I accept these factors to your credit to impose not a sentence of imprisonment but only monetary fines.

- 9. And I accept defence counsel's submission that the Court treats your offendings as falling within the lower end of the scale.
- 10. I therefore convict you and sentence you to monetary fines of VT750,000 of the offence in Count 1. And for the offence in Count 2 you are sentenced to a fine of VT250,000. Your total amount of fines is VT1,000,000. You must pay this amount in full within the next 21 days from the date hereof on or before 30th September 2018.
- 11. That is the Sentence of the Court. You have a right of appeal against this Sentence within 14 days if you do not agree with it.

DATED at Luganville this 6th day of September, 2018.

BY THE COURT


OLIVER A. SAKSAK
Judge

