

PUBLIC PROSECUTOR

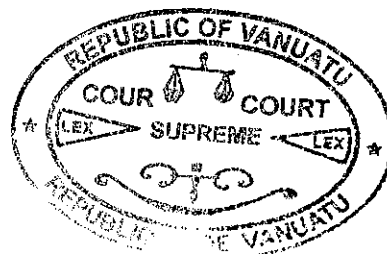
V

LI ZHI

Hearing: *13 December 2012*
Before: *Justice Robert Spear*
Appearances: *Simcha Blessing for the Prosecution*
John Malcolm for the Defence

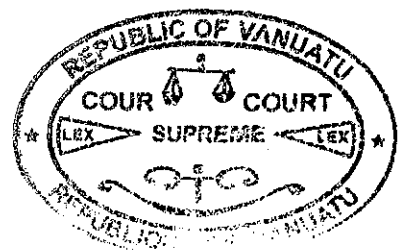
SENTENCE

1. Li Zhi, you are for sentence today having pleaded guilty and been convicted of count 3 in the indictment. That is a charge that between January and May 2012 at Port Vila you knowingly, and with intent to defraud the Government of duty and tax, imported goods liable to duty and tax without declaring the goods to Customs. That is an offence under section 52 (1) (a) of the Customs Act. It is a serious charge carrying with it a maximum penalty of a fine of Vt 5 million and/or imprisonment of 15 years. The summary of facts presented by the prosecution is not disputed.
2. You are a 30 year old man and, with your family (both immediate and extended) you operate a number of shops in Vanuatu. In early 2012, you entered into an agreement with a Chinese company for the purchase of certain goods in China for resale in Vanuatu. Those goods were loaded into a container in China and freighted to Vanuatu. On 26 April 2012, you presented an invoice to Customs as well as a bill of lading and a manifest number all for the purpose of enabling Customs to determine what import duty and other taxes the goods should attract. The documentation that you presented was false. It was grossly inadequate and undeclared goods to a total value of approximately Vt 6,504,000 were found by Customs officers when they examined the container. The amount of customs' dues and taxes that you would have avoided paying, if your criminal offending had not been detected,



is Vt 2,340,310. The total value of goods not declared Vt 6,504,000, total tax attempted to be avoided Vt 2,340,310.

3. You initially faced trial on an indictment containing a number of charges against you which are now effectively encapsulated in the charge to which you pleaded guilty on the day set for your trial. It was a late plea of guilty and that does you no credit at all particularly as you now claim to be remorseful for what you had done. I recognise, however, that there was a guilty plea before the trial commenced that followed the prosecution indicating that it would not pursue the other charges against you and that has saved the State the cost of a trial.
4. In the main, the goods that you failed to declare were of a relatively modest nature; for example, wallets, scarves, ties, perfumes, sunglasses and such like. All matters by themselves of relatively modest value but together, of course, they represent a significant quantity of goods and your attempt at defrauding the State was a serious attempt on your part effectively to steal from this Country.
5. Vanuatu is a country to which you have chosen to immigrate and take up residence. Rather than appreciate the opportunity that this country has provided to you and your family, you have endeavoured to steal from it. That does not speak well of your integrity at all.
6. I am informed by counsel that the goods that were not declared were seized by customs and they have been forfeited to the State. Accordingly, there is no real loss to the State in that respect.
7. What is necessary is for this Court to mark this offending with the serious note that it requires. There is a need for the sentence to send out a strong message to those involved in the importing of goods to this country that they will be dealt with very severely if they are caught attempting to defraud the revenue by falsely declaring what goods are being imported. In short, importers must understand that it is not worth the risk to attempt to save a relatively small amount of money in this way.
8. I understand from the pre-sentence report that you are a 30 year old man, that you have been in a relationship of some 4 years, and that you have a 10 month old son. Clearly you have decided to make your life and your family's life here in Vanuatu and yet you have not



hesitated at attempting to abuse the opportunity that this Country had provided to you. It is disgraceful conduct for a new immigrant and you must understand that to be so.

9. Counsel have addressed me on the question of sentence. First and foremost, I consider that I need to contemplate a term of imprisonment. For blatant dishonest offending at this level, a starting point of 2 years' imprisonment is appropriate. For the late guilty plea and because of the fine I intend also to oppose, I am prepared to reduce that to 18 months' imprisonment. As I have said, your expression of remorse is one to which I pay little regard given the fact that your plea of guilty came only on the day of trial and you had earlier pleaded not guilty. In other words, you had denied the offending right up to the day set for the trial. I question your remorse. It appears to me that you are more for having been caught rather than because of some acceptance on your part of wrong-doing.
10. I am, however, prepared to suspend the sentence of imprisonment because you have no previous convictions and there appears to be some hope you will become a useful and contributing member to this community if given that opportunity. As I have also indicated, I intend to couple the suspended term of imprisonment with a fine that reflects that this offending is in the upper level of seriousness given the amounts involved.
11. You are sentenced to 18 months' imprisonment which I suspend for a period of 2 years. This means that if you are convicted of another offence of any nature, the Public Prosecutor will seek to have you start serving this sentence of 18 months' imprisonment.
12. I also fine you Vt 3 million which is to be payable forthwith.
13. You have 14 days to appeal this sentence if you do not accept it.
14. Your passport will now be returned to you.

BY THE COURT

