

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

[2023] SGHC 338

Magistrates Appeal No 9067 of 2023/01

Between

Syed Fathuddin Putra bin Syed
A Rahman

... Appellant

And

Public Prosecutor

... Respondent

Magistrates Appeal No 9103 of 2023/01

Between

Bhawal Sourov

... Appellant

And

Public Prosecutor

... Respondent

FOUNDATIONS OF DECISION

[Criminal Law — Statutory offences — Customs Act]

[Criminal Procedure and Sentencing — Appeal]

[Criminal Procedure and Sentencing — Sentencing — Sentencing framework]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTUAL BACKGROUND	5
HC/MA 9067/2023/01 - SYED	5
<i>Facts.....</i>	5
<i>DJ Soh’s decision.....</i>	7
HC/MA 9103/2023/01 – BHAWAL	8
<i>Facts.....</i>	8
<i>DJ Ng’s decision.....</i>	10
THE PARTIES’ SUBMISSIONS IN THESE APPEALS	11
APPELLANTS’ SUBMISSIONS	11
<i>Syed’s case on appeal</i>	11
<i>Bhawal’s case on appeal</i>	11
YOUNG INDEPENDENT COUNSEL’S OPINION	12
PROSECUTION’S SUBMISSIONS	15
<i>Responding to the Young Independent Counsel’s opinion</i>	15
<i>Responding to Syed and Bhawal’s submissions.....</i>	16
ISSUES TO BE DETERMINED IN THESE APPEALS	17
ISSUE 1: WHAT IS THE APPROPRIATE SENTENCING FRAMEWORK FOR THE SPECIFIED OFFENCES PUNISHABLE UNDER S 128L(4) OF THE CUSTOMS ACT?	17
THE PANG SHUO FRAMEWORK SHOULD NOT APPLY AS IT IS TOO TECHNICAL AND SEEKS MATHEMATICAL PRECISION.....	17

THE YAP AH LAI FRAMEWORK SHOULD APPLY FOR OFFENCES FROM S 128D TO S 128I OF THE CUSTOMS ACT	24
ISSUE 2: APPLICATION OF THE RELEVANT SENTENCING FRAMEWORK TO THE PRESENT APPEALS.....	28
WHETHER THE SENTENCE IMPOSED ON SYED WAS MANIFESTLY EXCESSIVE	28
WHETHER THE SENTENCE IMPOSED ON BHAWAL WAS MANIFESTLY EXCESSIVE	30
CONCLUSION	32

This judgment is subject to final editorial corrections to be approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Syed Fathuddin Putra bin Syed A Rahman

v

Public Prosecutor and another appeal

[2023] SGHC 338

General Division of the High Court — Magistrate's Appeal No 9067 and 9103 of 2023/01

Sundaresh Menon CJ, Tay Yong Kwang JCA and Vincent Hoong J

26 October 2023

29 November 2023

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 These are two separate appeals against the sentences imposed in relation to offences committed under the Customs Act 1960 (2020 Rev Ed) (“Customs Act”). Syed Fathuddin Putra bin Syed A Rahman (“Syed”) is the appellant in HC/MA 9067/2023/01 and Bhawal Sourov (“Bhawal”) is the appellant in HC/MA 9103/2023/01. The respective appeals (collectively, “the Appeals”), were fixed for hearing together as they raised the same legal issue of whether the sentencing framework adopted in the High Court decision of *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 (“*Pang Shuo*”) is an appropriate framework in respect of the specified offences punishable under s 128L(4) of the Customs Act.

2 This issue arose because the High Court in *Ripon v Public Prosecutor* [2023] 3 SLR 896 (“*Ripon*”) commented that the lower courts should avoid using the graph in the sentencing framework in *Pang Shuo* as it was “overly complex and technical” (at [6] and [7]). There was therefore a divergence in the authorities concerning the applicable sentencing framework for specified offences punishable under s 128L(4) of the Customs Act, which led to confusion among the lower courts on the proper approach to be adopted (see *Wong Woon Kwong SC & Norine Tan Yan Ling*, “Criminal Procedure, Evidence and Sentencing” (2022) 23 SAL Ann Rev 430 at 468). To assist us in resolving this issue, we appointed a Young Independent Counsel, Mr Jonathan Trachsel (“Mr Trachsel”), for these Appeals which involved offences under ss 128H, 128I(1)(a)(ii) and 128I(1)(b) of the Customs Act.

3 Syed, a Malaysian national (31 years of age), pleaded guilty to one charge of being concerned in the delivery of 262.313kg of duty unpaid cigarettes, an offence under s 128H of the Customs Act (“Delivery Charge”); and another charge of storing 421.344kg of duty unpaid cigarettes, an offence under s 128I(1)(a)(ii) of the Customs Act (“Storage Charge”). Syed consented to four other charges being taken into consideration for the purpose of sentencing. District Judge Soh Tze Bian (“DJ Soh”) sentenced the appellant to 11 months’ imprisonment on the Delivery Charge and 20 months’ imprisonment on the Storage Charge. Both sentences were ordered to run consecutively, resulting in a global sentence of 31 months’ imprisonment.

4 Bhawal, a Bangladeshi national (32 years of age), pleaded guilty to one charge under s 128I(1)(b) of the Customs Act for dealing with 90.367kg of duty unpaid cigarettes and a corresponding charge for evasion of Goods and Service Tax (“GST”) on those cigarettes. District Judge Ng John (“DJ Ng”) sentenced

the appellant to 40 weeks' imprisonment for the excise duty-related offence (reduced to 33 weeks' imprisonment to take into account the period spent in remand) and ten weeks' imprisonment for the GST-related offence. Both sentences were ordered to run concurrently, resulting in a global sentence of 33 weeks' imprisonment.

5 The relevant provisions in the Customs Act pertaining to the three specified offences under ss 128H, 128I(1)(a)(ii) and 128I(1)(b) are as such:

Offences in relation to shipping, unshipping, loading, unloading, etc., of uncustomed or prohibited goods

128H. Any person who ships, unships, loads, unloads, lands or delivers, or who assists or is concerned in the shipping, unshipping, loading, unloading, landing or delivery of, any uncustomed or prohibited goods, whether or not the goods are shipped, unshipped, loaded, unloaded, landed or delivered, shall be guilty of an offence.

Offences in relation to possession, storage, conveying and harbouring of goods

128I.—(1) Any person who —

(a) stores, keeps or has in the person's possession any

—
(i) dutiable or prohibited goods, except under customs control; or

(ii) uncustomed goods;

(b) is in any way concerned in conveying, removing, depositing or dealing with any dutiable, uncustomed or prohibited goods with intent to defraud the Government of any customs duty or excise duty thereon, or to evade any of the provisions of this Act; or

(c) ...

shall be guilty of an offence.

6 The above offences come within the definition of “specified offence” as set out in s 128L(7) of the Customs Act. This term refers to the offences in

ss 128D to 128K of the Customs Act. For a specified offence involving tobacco products exceeding 2kg in weight, the prescribed punishment is set out in s 128L(4) of the Customs Act:

Penalty for various offences

128L. ...

...

(4) Any person who is guilty of any specified offence involving goods consisting wholly or partly of relevant tobacco products shall, if such tobacco products exceed 2 kilogrammes in weight, be liable on conviction —

(a) to a fine of —

(i) not less than 15 times the amount of the customs duty, excise duty or tax the payment of which would have been evaded by the commission of the offence, subject to a minimum of \$1,000; and

(ii) not more than 20 times the amount of the customs duty, excise duty or tax the payment of which would have been so evaded or \$10,000, whichever is the greater amount; or

(b) to imprisonment for a term not exceeding 3 years,

or to both.

7 Syed and Bhawal were unable to pay the fines which would have been imposed and were sentenced to imprisonment instead. They appealed against their imprisonment terms claiming that they were manifestly excessive. We heard their Appeals on 26 October 2023 and held that their sentences were not manifestly excessive. In fact, the sentence for Syed was rather lenient. The Appeals were dismissed accordingly.

Factual background

HC/MA 9067/2023/01 - Syed

Facts

8 On 3 November 2022, following his arrest by Customs officers, Syed was found in possession of various quantities of duty unpaid cigarettes. A total of 262.313kg of duty unpaid cigarettes was discovered in a van bearing registration number GBK 9580B (“Van 1”) at the pick-up point of Block 364A Sembawang Crescent, and another 421.344kg of duty unpaid cigarettes was recovered from a second van bearing registration number GBM 416S (“Van 2”) at the multi-storey carpark of Block 365 Sembawang Crescent.

9 Since October 2022, Syed was engaged by an unknown male, known to him as “Abang”, to carry out deliveries of duty unpaid cigarettes. He was promised \$1,000 for each day of work. In the early morning of 1 November 2022, on the instructions of Abang via a WhatsApp group chat, Syed and another unknown male collected boxes of duty unpaid cigarettes from a lorry at Pandan Loop. Syed then delivered some of these duty unpaid cigarettes to various customers according to a delivery list provided by Abang. Syed stored the remaining undelivered duty unpaid cigarettes inside Van 2, which was parked at the multi-storey carpark at Sembawang Crescent. Subsequently, in the early morning of 3 November 2022, acting on Abang’s instructions, Syed and an unknown male drove Van 1 to collect cigarettes from a lorry at Pandan Loop. Syed then drove Van 1 to the pick-up point at Sembawang Crescent pending further delivery instructions from Abang. Syed was subsequently arrested by Customs officers beside Van 1 and the keys to Van 2 were also found on him.

10 Syed admitted to knowledge and ownership of the duty unpaid cigarettes found in both Van 1 (the subject of the Delivery Charge) and Van 2 (the subject of the Storage Charge). The excise duty evaded was \$153,036.80 and \$213,500.00 respectively for each charge.

11 On 23 March 2023, Syed pleaded guilty to the Delivery Charge and the Storage Charge which read as follows:

[Delivery Charge]

... are charged that you, on the 3rd of November 2022, at about 1.01 pm, at the Pick-up point of Block 364A Sembawang Crescent, Singapore, were concerned in the delivery of uncustomed goods, to wit, 1112 cartons x 160 sticks and 80 packets x 16 sticks Gudang Garam Surya brand of duty unpaid cigarettes, weighing 262.313 kilogrammes, on which excise duty of \$153,036.80 was not paid, using a Van bearing plate number GBK9580B, and you have thereby committed an offence under section 128H of the Customs Act 1960 punishable under section 128L(4) of the same Act.

[Storage Charge]

... are charged that you, on the 3rd of November 2022, at about 1.50 pm, in a Van bearing plate number GBM416S parked at Deck 4A of Block 365 Sembawang Crescent Multi Story Carpark, Singapore, did store uncustomed goods, to wit, 2500 cartons x 200 sticks of assorted brands of duty unpaid cigarettes, weighing 421.344 kilogrammes, on which excise duty of \$213,500.00 was not paid, and you have thereby committed an offence under Section 128I(1)(a)(ii) of the Customs Act 1960 punishable under section 128L(4) of the same Act.

12 Syed also admitted to the offences in four other charges and consented to these being taken into consideration for the purpose of sentencing. These were two corresponding GST-related charges for the Delivery Charge and the Storage Charge and also a charge pertaining to his storage of 5.682kg of duty unpaid cigarettes at a flat and the corresponding GST-related charge.

DJ Soh's decision

13 DJ Soh first set out the factors in the High Court decision of *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 (“*Yap Ah Lai*”) that were relevant to sentencing for Customs Act offences (these were the quantity of tobacco products involved, repetition of the offence, whether the offender was involved in a syndicated operation and the role played by the offender).

14 Applying these factors to the facts, DJ Soh observed the following and considered both the sentencing frameworks in *Yap Ah Lai* and *Pang Shuo*:

(a) The quantity of duty unpaid cigarettes in the Delivery Charge was 262.313kg for the delivery of uncustomed goods and the excise duty evaded was \$153,036.80. The quantity of duty unpaid cigarettes in the Storage Charge was 421.344kg for the storage of uncustomed goods and the excise duty evaded was \$213,500.00.

(b) Syed did not have any management control or profit share in the operations. He was a paid worker who performed the physical role of delivering and storing duty unpaid cigarettes on the syndicate’s instructions, being promised \$1,000 for each day of delivery.

(c) Referencing the two sentencing frameworks, the benchmark sentence for the Delivery Charge would be about 19 to 20 months’ imprisonment under *Pang Shuo* and 18 to 24 months’ imprisonment under *Yap Ah Lai*. For the Storage Charge, the benchmark sentence would be 26 to 27 month’s imprisonment under *Pang Shuo* and 30 to 36 months’ imprisonment under *Yap Ah Lai*.

(d) An uplift from the benchmark sentences was warranted as the offences arose from different occasions which indicated a pattern of reoffending and there were four other similar GST or excise duty evasion charges taken into consideration.

(e) Given the large quantities of duty unpaid cigarettes in the charges, as well as loss of government revenue from the large sums of unpaid excise duty and GST, there was a strong public policy interest to impose a specific and general deterrent sentence on Syed.

(f) In Syed's mitigation plea, he pleaded for leniency as he was the sole breadwinner supporting his family. However, hardship to an offender's family would not normally be considered as mitigating.

15 DJ Soh sentenced Syed to 11 months' imprisonment on the Delivery Charge and 20 months' imprisonment on the Storage Charge. These were ordered to run consecutively given that they arose from separate and distinct transactions. The global sentence was therefore 31 months' imprisonment. The sentence was backdated to 3 November 2022.

HC/MA 9103/2023/01 – Bhawal

Facts

16 Bhawal was arrested on 5 May 2022 in the vicinity of a store at Sungei Kadut Avenue. He was observed by Customs officers to be carrying brown boxes out of the store and loading them into the boot of a yellow taxi in which Bhawal travelled to the store. During the arrest, 90.367kg of duty unpaid cigarettes were recovered from the yellow taxi and from the store.

17 Bhawal was engaged by one “Lo Ta” to collect and deliver duty unpaid cigarettes to various locations and he was promised \$25 for making the deliveries. In turn, Bhawal hired one Lim Tek Boon (“Lim”) to drive him around in the yellow taxi to the various locations. Bhawal knew that the cigarettes were duty unpaid as he had made past deliveries under the instructions of Lo Ta.

18 Bhawal was charged in court on 7 May 2022. After many court mentions and pre-trial conferences over a period of about one year, the case was set down for a trial for four days. However, on the first day of trial, on 16 May 2023, Bhawal elected to plead guilty to the charges for dealing with 90.367kg of duty unpaid cigarettes (“Excise Duty Charge”) and the corresponding charge for evasion of GST (“GST Charge”). These charges read as follows:

[Excise Duty Charge]

... are charged that you, on the 5th day of May 2022, at about 7.10p.m., at the vicinity of 5 Sungai Kadut Avenue, Singapore, were concerned in dealing with uncustomed goods, to wit, 526 Cartons x 200 sticks of Double Happiness brand of duty unpaid cigarettes, weighing 90.367 kilogrammes, on which excise duty of \$44,920.40 was not paid, with intent to defraud the Government of the excise duty thereon, and you have thereby, committed an offence under section 128I(1)(b) of the Customs Act 1960 punishable under section 128L(4) of the same Act.

[GST Charge]

... are charged that you, on the 5th day of May 2022, at about 7.10p.m., at the vicinity of 5 Sungai Kadut Avenue, Singapore, were concerned in dealing with uncustomed goods, to wit, 526 Cartons x 200 sticks of Double Happiness brand of duty unpaid cigarettes, weighing 90.367 kilogrammes, valued at \$51,074.60 on which the Goods and Services Tax of \$3,575.22 was not paid, with intent to defraud the Government of the tax thereon, and you have thereby, by virtue of sections 26 and 77 of the Goods and Services Tax Act 1993, paragraph 3 of the Goods and Services Tax (Application of Legislation Relating to Customs and Excise Duties) Order and paragraph 2 of the Goods and Services Tax (Application of Customs Act)

(Provisions on Trials, Proceedings, Offences and Penalties) Order, committed an offence under section 128I(1)(b) of the Customs Act 1960 punishable under section 128L(4) of the same Act.

DJ Ng's decision

19 DJ Ng referred to the sentencing frameworks and guidance set out in *Yap Ah Lai* and *Pang Shuo* on the relevant sentencing considerations for Customs Act offences involving cigarette smuggling. DJ Ng then cited the High Court decision of *Wong Jing Ho Samuel v Public Prosecutor* [2022] 3 SLR 1009 (“*Wong Jing Ho*”) where it was held that the sentencing benchmarks in *Pang Shuo* (concerning s 128H of the Customs Act) were relevant and applicable to offences under s 128I(1)(b) of the Customs Act.

20 DJ Ng calibrated the sentence based on the following considerations:

- (a) The quantity of duty unpaid cigarettes weighed 90.367kg, on which excise duty of \$44,920.40 and GST of \$3,575.22 were not paid.
- (b) Based on the guidelines in *Yap Ah Lai*, *Pang Shuo* and *Wong Jing Ho* (and considering the qualification in *Ripon*), the sentencing range would be six to 12 months’ imprisonment for a quantity of tobacco products weighing between 51kg and 100kg.
- (c) Bhawal was a first-time offender and had pleaded guilty on the first day of a four-day trial.
- (d) Bhawal’s role was more than loading and unloading as he had hired Lim to drive the yellow taxi to collect and deliver the duty unpaid cigarettes. Bhawal had also admitted to making past deliveries of boxes containing duty unpaid cigarettes under Lo Ta’s instructions.

21 Based on these considerations, DJ Ng calibrated the appropriate sentence at 40 weeks' imprisonment for the Excise Duty Charge. Given that Bhawal was in remand for seven weeks before he was released on bail, DJ Ng adjusted Bhawal's sentence downwards from 40 weeks to 33 weeks' imprisonment. A sentence of ten weeks' imprisonment was imposed for the GST Charge and this was ordered to run concurrently for a global sentence of 33 weeks' imprisonment.

22 Bhawal applied to defer the commencement of his sentence to 13 June 2023. However, he filed the present appeal subsequently and was granted a stay of sentence and bail pending appeal on 13 June 2023.

The parties' submissions in these appeals

Appellants' submissions

Syed's case on appeal

23 Syed submitted that he was the sole breadwinner in his family of seven and that the family would suffer financial hardship if he was incarcerated as there were outstanding debts. Syed also contended that he was a first-time offender with no prior antecedents and that he should be granted leniency. Syed disagreed that he had the propensity to re-offend. Further, his role in the offences was limited to driving the van containing the duty unpaid cigarettes. Syed highlighted that he was cooperative in the investigation process and had pleaded guilty. In view of these factors, Syed sought a reduction in sentence.

Bhawal's case on appeal

24 Bhawal argued that DJ Ng failed to give sufficient weight to the fact that he did not play an organisational role in the chain of cigarette smuggling and

that he merely conveyed the duty unpaid cigarettes. Bhawal was a low-level offender who was promised a mere \$25 for delivering less than 100kg (90.367kg) of duty unpaid cigarettes. Bhawal referred to an unreported case in the Singapore Customs Media Release concerning two Chinese nationals who were allegedly involved in the delivery of 1,873 cartons of duty unpaid cigarettes. Although no specific weight was stated in the Media Release, Bhawal estimated that the weight would have been 339kg. Each of the offenders was sentenced to a fine and four months' imprisonment. Following the approach of this unreported case, Bhawal should only be sentenced to under 1.5 months' imprisonment. He therefore asked that his sentence be reduced.

Young Independent Counsel's opinion

25 We posed three questions to Mr Trachsel in respect of these Appeals:

- (a) Question 1: What is an appropriate sentencing framework for offences involving the delivery of, storage of and dealing with duty unpaid cigarettes under ss 128H, 128I(1)(a)(ii) and 128I(1)(b) respectively and punishable under s 128L(4) of the Customs Act?
- (b) Question 2: Is the sentencing framework in *Pang Shuo* an appropriate framework?
- (c) Question 3: Should the same sentencing framework apply to other types of specified offences which are punishable under s 128L(4) of the Customs Act?

26 Mr Trachsel answered these questions in reverse order and his submissions were as follows:

(a) Question 3: Save in respect of s 128J and s 128K of the Customs Act (for which it was submitted that separate sentencing frameworks might be appropriate), the same sentencing framework should apply to the specified offences punishable under s 128L(4) of the Customs Act (*ie*, ss 128D, 128E, 128F, 128G, 128H and 128I). In so far as *Pang Shuo* and *Wong Jing Ho* stated that it was difficult, if not impossible, to discern any significant difference between each step of the smuggling chain with respect to uncustomed cigarettes, Mr Trachsel agreed that the reasoning was sound. At each step of the smuggling chain, any offender involved would necessarily be progressing the same ultimate criminal objective of smuggling the uncustomed or prohibited goods and there was no clear reason to distinguish any one step in the smuggling chain. Therefore, in determining which specified offences should be dealt with together under the same sentencing framework, the touchstone was whether such specified offence was in substance indistinguishable from any other step in the smuggling chain. In this regard, it was clear that the offences under s 128J (offences in relation to duty-free allowances) and s 128K (offences in relation to illegal removal of goods from customs control, *etc*, and carrying on of certain activities without licence) were substantively different from the other steps that make up the smuggling chain in ss 128D to 128I and therefore ought not to be dealt with as part of the same sentencing framework.

(b) Question 2: The framework in *Pang Shuo* was not an appropriate framework for two principal reasons. First, the framework in *Pang Shuo* required the sentencing court to undertake a close analysis of a curved graph to ascertain the starting position for a term of imprisonment for any given weight of duty unpaid cigarettes. This was not always a

straightforward process and the framework was therefore contrary to the Court of Appeal's caution against overly complex or technical sentencing frameworks. Second, the approach in *Pang Shuo* in stipulating a bifurcated sentencing framework depending on whether an offender "pleads guilty at the earliest opportunity" or "claims trial and shows no remorse" contradicted the High Court's earlier decision in *Yap Ah Lai* and introduced unnecessary additional difficulties in the sentencing process.

(c) Question 1: The appropriate sentencing framework for offences involving the delivery of, storage of and dealing with duty unpaid cigarettes under ss 128H, 128I(1)(a)(ii) and 128I(1)(b) and punishable under s 128L(4) of the Customs Act should be modelled after the graduated scheme set out in *Yap Ah Lai* as there was no reason to depart from this. Under this framework, the quantity of tobacco products involved in the relevant offence would provide a starting point (within a range) for the duration of the imprisonment term to be imposed. However, given that the sentencing benchmarks in *Yap Ah Lai* (concerning s 128F of the Customs Act) were built on the assumption that "the offender's role is limited to pure importation" (at [57(c)(iii)]), if the *Yap Ah Lai* sentencing benchmarks were to be applied more generally, then the assumptions underlying the benchmarks should be restated as follows: (a) the offender is a first-time offender; (b) the offender pleads guilty at the earliest opportunity; and (c) the offender's role in the smuggling chain is limited to that which is captured in the charge. Accordingly, if the charge concerns importation under s 128F of the Customs Act, then the offender's act or involvement is limited purely to importation.

Prosecution's submissions

Responding to the Young Independent Counsel's opinion

27 The Prosecution's submissions on the three questions posed were mostly aligned with Mr Trachsel's views, save for a slight divergence. The Prosecution agreed with Mr Trachsel that the *Yap Ah Lai* framework should be extended to almost all types of specified offences. However, the Prosecution's views differed slightly in that the *Yap Ah Lai* framework should also apply to the offences under s 128K(a) (illegal removal of goods from customs control) and s 128K(b) of the Customs Act (unlicensed manufacturing of tobacco products) as these could conceivably form part of a cigarette smuggling enterprise.

28 The Prosecution agreed with Mr Trachsel that the *Yap Ah Lai* framework was the appropriate framework to be applied for the three specified offences in these Appeals as it was not overly mechanical or technical and would promote broad consistency while maintaining the court's discretion to make adjustments to the indicative starting range for the sentence. The Prosecution opined that it was sound for the High Court in *Pang Shuo* and *Wong Jing Ho* to decide that most of the different offences in the chain of cigarette smuggling should be treated with equivalence and for a common sentencing approach to be adopted based on: (i) the legislative history of the specified offences holistically, (ii) that these offences targeted the same twin evils, and (iii) that there was no juridical basis to distinguish between one physical act from another in the specified offences.

29 The Prosecution agreed with Mr Trachsel that the *Pang Shuo* framework was not an appropriate sentencing framework as technical and mathematical approaches should be eschewed. There were also other issues with the

applicability of the framework as it imposed an arbitrary ceiling of 28 months' imprisonment for offenders who pleaded guilty, and it offered no guidance when the quantity of duty unpaid cigarettes exceeded 500kg.

Responding to Syed and Bhawal's submissions

30 The Prosecution submitted that Syed's grounds of appeal did not raise any new mitigating factors. Other than the fact that Syed's role was limited to purely delivering and storing the duty unpaid cigarettes on the instructions of another person, that he did not have related antecedents and had pleaded guilty, there were no other valid mitigating factors warranting a downward adjustment in the sentence. Syed's claim of financial hardship was merely a normal consequence of imprisonment. It was apparent that the individual sentences of 11 months' imprisonment for the Delivery Charge and 20 months' imprisonment for the Storage Charge could not be described as manifestly excessive as they fell well below the starting ranges indicated in *Yap Ah Lai*. This was despite the lack of any valid mitigating factor other than the plea of guilt. Applying the *Yap Ah Lai* framework, the global sentence could have been in the range of 48 to 60 months' imprisonment. Therefore, it could not be contended that Syed's global sentence of 31 months' imprisonment was manifestly excessive, especially when compared to precedent cases.

31 The Prosecution pointed out that Bhawal's role was not limited to purely dealing in duty unpaid cigarettes under the instructions of another person. He had hired Lim to ferry him in the yellow taxi, thus involving another person in his offending conduct. Further, while Bhawal did not have related antecedents, he pleaded guilty only on the first day of trial (after a year of court proceedings). DJ Ng rightly considered these factors as aggravating, warranting an uplift in the sentence. The Prosecution contended that there was no reason to disturb the

sentence. DJ Ng's calibration of the sentence at 40 weeks' imprisonment for the Customs Charge was within the range of six to 12 months' imprisonment in the *Yap Ah Lai* framework. DJ Ng also took into account Bhawal's time in remand leading to a downward adjustment to 33 weeks' imprisonment. In fact, Bhawal's sentence was arguably lenient when compared to precedent cases. The sentence of ten weeks' imprisonment for the GST Charge was also proportionate to the amount evaded and the culpability of Bhawal. DJ Ng was correct in ordering this to run concurrently with the Customs Charge resulting in a global sentence of 33 weeks' imprisonment.

Issues to be determined in these Appeals

32 We considered these two issues:

- (a) What is the appropriate sentencing framework for the specified offences punishable under s 128L(4) of the Customs Act (in particular, for the three specified offences in these Appeals)?
- (b) Applying the relevant sentencing framework to the present Appeals, whether the sentences imposed on Syed and Bhawal were manifestly excessive?

Issue 1: What is the appropriate sentencing framework for the specified offences punishable under s 128L(4) of the Customs Act?

The Pang Shuo framework should not apply as it is too technical and seeks mathematical precision

33 We agree with Mr Trachsel and the Prosecution that the *Pang Shuo* framework should not be applied for the specified offences punishable under s 128L(4) of the Customs Act as it is too technical and unnecessarily complex.

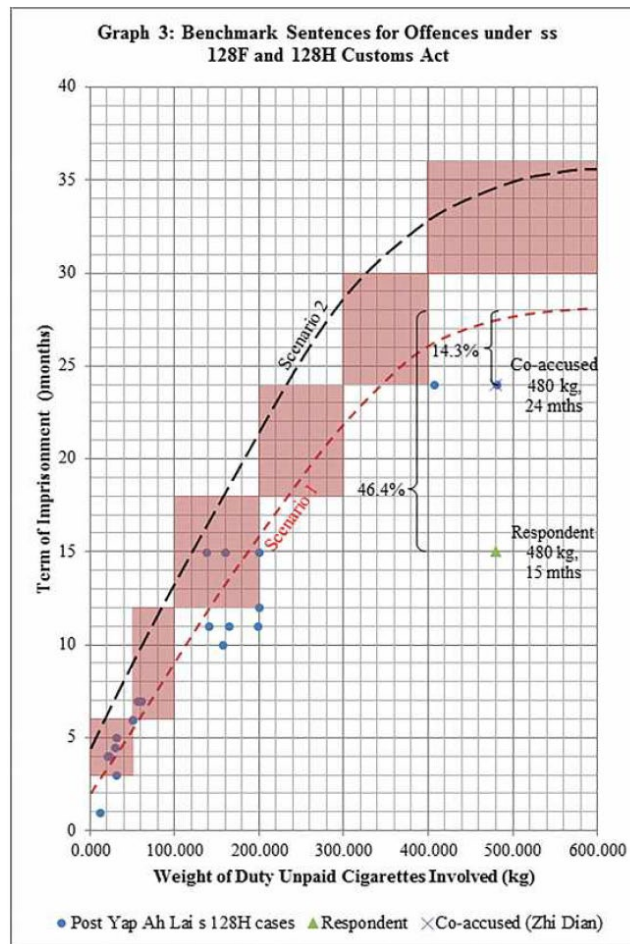
It seeks to achieve a mathematically precise sentence which is antithetical to the sentencing exercise which is essentially one of judgment and commonsense.

34 We summarise here the developments in the case law on sentencing for the specified offences. Beginning with *Yap Ah Lai* (which concerned the offence of importation under s 128F of the Customs Act), the High Court stated that Customs offences were directed at two evils: the loss of revenue to the Government and the offence against public policy and interest in reducing the consumption of harmful goods by raising their costs to the user (at [23]). These twin objectives made it clear that the primary factor to be considered in sentencing for cigarette smuggling offences was the quantity of tobacco products involved (*Yap Ah Lai* at [27]). The sentencing framework for cases where the offender's role was confined to pure importation, where he pleaded guilty at the earliest chance and was a first-time offender, was laid out in a table format using multiple starting ranges depending on the weight of tobacco products involved (*Yap Ah Lai* at [46] and [57]):

<i>Quantity of Tobacco Product (kg)</i>	<i>Sentencing Range (months)</i>
2-50	3-6
51-100	6-12
101-200	12-18
201-300	18-24
301-400	24-30
> 400	30-36

35 Subsequently, in *Pang Shuo* (primarily involving the offence of shipping, unshipping, loading, unloading, *etc* under s 128H of the Customs Act), the High Court opined that the legislative intent behind the developments surrounding the specified offences appeared to treat the mischief behind the

different offences in the whole chain of cigarette smuggling with equivalence (at [22]). There was no juridical basis for distinguishing between the seriousness of the offences encapsulated in the act of importing under s 128F and the act of unloading under s 128H (or for that matter the other physical acts and steps in the whole chain of smuggling) (at [23]). Therefore, the sentencing benchmarks in *Yap Ah Lai* were extended to the situation in *Pang Shuo*. However, the High Court set out a modified sentencing framework, adopting generally the sentencing benchmarks in *Yap Ah Lai* but making some adjustments to account for the broader aspects of various possible physical roles that could be played by a paid worker in the whole chain of a typical cigarette smuggling operation and the impact of a timely guilty plea (*Pang Shuo* at [48]). This modified framework was presented in a graphical curve format such that there is a specific plot point on the X-axis (representing the weight of tobacco involved in kilograms) corresponding to the Y-axis (representing the length of imprisonment in months). The graph (reproduced below) contains two curvilinear lines encompassing distinct scenarios depending on whether: (a) the offender pleads guilty at the earliest opportunity (labelled as “Scenario 1” in red), or (b) the offender claims trial and shows no remorse (labelled as “Scenario 2” in black) (*Pang Shuo* at [49]):



36 In *Wong Jing Ho*, (involving the offence of conveying, removing, depositing or dealing with any dutiable, uncustomed or prohibited goods under s 128I(1)(b) of the Customs Act), the sentencing graph in *Pang Shuo* was endorsed and extended to offences under s 128I(1)(b), without modification. The High Court found it appropriate to do so because: (a) the offences under s 128F, s 128H and s 128(1)(b) of the Customs Act targeted the same twin evils, (b) the legislative history of dealing with, importing and unloading uncustomed goods suggested that these offences were to be treated equivalently in sentencing and (c) there was no principled basis to distinguish between the

culpabilities of two offenders purely by looking at which step in the chain of smuggling they were charged with performing (*Wong Jing Ho* at [32]–[39]).

37 In *Ripon* (involving an offence under s 128I(1)(b) of the Customs Act), the High Court expressed its concern (at [6]) that the graphical curve approach in *Pang Shuo* (applied in *Wong Jing Ho*) was “overly complex and technical” and opined that while graphical curves may “give a semblance of predictability and precision”, these came “at the expense of judgment and consideration of circumstances”. The Court also stated that when an appropriate case was presented, it was likely that the High Court would lay down a new framework. In the meantime, the parties and the lower courts should avoid using the sentencing graph in *Pang Shuo* and derivations from it (*Ripon* at [7]).

38 We agree with the observations in *Ripon*. The criticism against the use of the *Pang Shuo* framework echoes the sentiment in other cases expressing disapproval of excessively complex or technical sentencing frameworks. In particular, in *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 (at [20]), the Court of Appeal gave the timely reminder that sentencing guidelines or frameworks “are a means to an end and the relevant end is the derivation of sentences that are just and are broadly consistent in cases that are broadly similar” and they “are not meant to yield a mathematically perfect graph that identifies a precise point for the sentencing court to arrive at in each case ... they are meant to guide the court towards the appropriate sentence in each case using a methodology that is broadly consistent”.

39 Similarly, in *Public Prosecutor v Takaaki Masui and another and other matters* [2022] 1 SLR 1033, the Court of Appeal did not endorse the sentencing

framework proposed by the High Court. That case involved an intricate three-dimensional conceptual model which was found to be too complex and likely to be of little assistance to sentencing courts (at [15]). The court again cautioned that “excessively complex or technical sentencing frameworks are prone to cause confusion and uncertainty, which are the very antithesis of a sound sentencing framework ... sentencing benchmarks are never intended to achieve mathematically precise sentences” (at [15]). Instead, the court should only introduce as much complexity as is necessary to make the framework theoretically just without making it either incomprehensible or too intricate for practical application (at [15]).

40 We agree entirely with the above pronouncements by the Court of Appeal. For the reasons that we set out below, we hold that the sentencing framework in *Pang Shuo* should not be adopted for the specified offences punishable under s 128L(4) of the Customs Act.

41 First, the use of graphical curves turns sentencing into a mathematical exercise. As alluded to above, the *Pang Shuo* framework requires the court to select a starting sentence with pin-point accuracy by matching the plot point on the x-axis to that found on the y-axis (as opposed to the more flexible multiple sentencing range approach adopted in *Yap Ah Lai*). In a mechanical fashion, one derives a precise indicative starting point on the curvilinear graph based solely on the weight of duty unpaid cigarettes. This could also have the unintended effect of fettering the court’s discretion and risks turning sentencing into a purely arithmetic computation.

42 Second, we agree that the sentencing framework in *Pang Shuo* is overly complex and technical for what it is trying to achieve. The use of graphical

curves is unnecessary and is difficult to read given that the x-axis is denominated in 20kg increments of tobacco products, which requires some measure of estimation when the figures fall in between these increments. The bifurcation of the framework into “Scenario 1” and “Scenario 2” (depending on whether the offender pleads guilty at the earliest opportunity or claims trial), as reflected in the two curvilinear graphs, is not easy to apply where the offender’s conduct does not fall neatly into either of the two categories as highlighted by Mr Trachsel. In cases that are less than clear, for example, when there is a delay before the plea of guilt is given but before any trial dates are fixed, the court would have to consider whether the curve in “Scenario 1” or “Scenario 2” provides the more appropriate starting point. This is unnecessarily cumbersome.

43 Third, as pointed out by Mr Trachsel and the Prosecution, the *Pang Shuo* framework imposes an artificial ceiling on the maximum sentence that can be ordered. There does not appear to be any sound basis nor explanation for imposing the ceiling of 28 months’ imprisonment (or two years and four months’ imprisonment) for offenders who plead guilty when the amount of uncustomed cigarettes reaches approximately 500kg to 600kg (see the red graph in “Scenario 1” above), given that the maximum prescribed imprisonment term under s 128L(4) of the Customs Act is up to three years’ imprisonment. This goes against the basic notion that the full range or spectrum of sentences as prescribed by Parliament should be utilised.

44 Fourth, there is also no guidance in *Pang Shuo* as to how a sentencing Court should determine the starting point sentence when the quantity of duty unpaid cigarettes exceeds 500kg in “Scenario 1” as the graph begins to plateau quickly and ends at 600kg on the x-axis. There is no indication when the maximum term of three years’ imprisonment would be appropriate other than

the suggestion that “it might well theoretically reach the statutory maximum imprisonment term of 36 months if an extremely huge quantity far in excess of 500kg of duty unpaid cigarettes is involved” (*Pang Shuo* at [52]). In contrast, the *Yap Ah Lai* framework offers simple and clear guidance that once the quantity of duty unpaid cigarettes exceeds 400kg, the sentencing range of 30 to 36 months’ imprisonment (which encompasses the statutory maximum sentence of three years’ imprisonment) is available and can be considered as a starting point, even in a plead guilty scenario.

45 For these reasons, we hold that the *Pang Shuo* framework should not be used for the sentencing of specified offences punishable under s 128L(4) of the Customs Act. Instead, we endorse the sentencing framework set out in *Yap Ah Lai*.

The Yap Ah Lai framework should apply for offences from s 128D to s 128I of the Customs Act

46 The *Yap Ah Lai* framework should continue to govern most of the specified offences punishable under s 128L(4) of the Customs Act. This would include ss 128H, 128I(1)(a)(ii) and 128I(1)(b) which are subject of the present Appeals. This framework promotes broad consistency whilst preserving the court’s discretion to make adjustments. It provides a clear frame of reference for a sentencing Court to derive an indicative starting range without identifying a specific point, providing for flexibility and individualised justice.

47 This form of sentencing framework is suitable where the offence in question is clearly targeted at a particular mischief which is measurable according to a single metric that assumes primacy in the sentencing analysis. Drug trafficking and cigarette smuggling cases are paradigm examples (*Ng*

Kean Meng Terence v Public Prosecutor [2017] 2 SLR 449 at [30]). The framework functions well in this context as the primary factor is the quantity of uncustomed goods involved. We agree with Mr Trachsel and the Prosecution that there is no reason to depart from the sentencing framework in *Yap Ah Lai*.

48 As mentioned earlier, the framework in *Yap Ah Lai* (at [57(c)(iii)]) was built on the assumption that the offender’s role is limited to pure importation under s 128H of the Customs Act. The Court deliberately excluded precedent cases where there were additional elements apart from pure importation (at [45]) when deriving the sentencing ranges. Therefore, if the *Yap Ah Lai* framework is to be applied more generally to the other specified offences punishable under s 128L(4) of the Customs Act, then the assumption underlying the benchmark should be restated such that the offender’s role in the smuggling chain is limited purely to the physical act which is the subject of the charge (where only one offending act of the specified offence is present). Where the offender took on a broader role in the smuggling operation by being involved in multiple points and offences in the chain of smuggling (for instance, importing, loading and unloading and storage of duty unpaid cigarettes), then it would be appropriate to consider whether these other acts are “reflected in a further charge that may be proceeded with or taken into consideration for purposes of sentencing” (*Yap Ah Lai* at [34]). Otherwise, where only one charge is brought despite the numerous roles played by the offender, it “would generally be appropriate to consider the enhanced role of the offender as an aggravating factor justifying a sentence more severe than that suggested in the first instance by the sentencing guidelines” (*Yap Ah Lai* at [34]).

49 In our view, the *Yap Ah Lai* sentencing framework should apply to the specified offences in ss 128D to 128I of the Customs Act, punishable under

s 128L(4). This is on the basis that the type of offending acts in the cigarette smuggling chain (for example, importing at the start against unloading at the end) should not have any serious bearing on the analysis such that significant differentiation should be made. It may be entirely fortuitous that an offender was caught at one step instead of another and we see no need to distinguish the culpabilities of two offenders purely by looking at which step in the chain they were charged with performing. Instead, the culpability of offenders may be distinguished by examining other factors such as further involvement in owning, managing or controlling the smuggling enterprise (*Wong Jing Ho* at [39]; *Pang Shuo* at [25]). The specified offences also target the same twin evils of preventing loss of revenue to the Government and reducing the consumption of harmful goods. The legislative history justifies such an approach (*Wong Jing Ho* at [32]–[38]; *Pang Shuo* at [15]–[22]).

50 We elaborate on why the *Yap Ah Lai* sentencing framework should apply to the specified offences in ss 128D to 128I of the Customs Act. The specified offences under ss 128F, 128G, 128H, and 128I of the Customs Act should be placed under the same sentencing framework as these offences form the core steps or activities in the smuggling chain (*ie*, importation, exportation, shipping/unshipping, loading/unloading, *etc*, and possession, storage, conveying and harbouring of uncustomed goods). Although the core steps of smuggling do not need to be dealt with under s 128D (offences in relation to fraudulent evasion) and s 128E (offences in relation to goods found in a person’s baggage or upon his person, *etc*), our view is that these should also fall under the same sentencing framework. Section 128D is framed in very broad terms (“is in any way concerned in any fraudulent evasion of, or attempt to fraudulently evade”) and does not target any specific step in the smuggling chain. Any specific step in the smuggling chain is also likely to amount to a

concurrent offence under s 128D. Section 128E deals in essence with a failed attempt to import dutiable or prohibited goods.

51 However, the offences under s 128J (offences in relation to duty-free allowances) and s 128K (offences in relation to illegal removal of goods from customs control, *etc*, and carrying on of certain activities without licence) appear to be rather different in nature from the core steps that make up the smuggling chain. We therefore reserve our decision on the applicability of the *Yap Ah Lai* framework concerning these two provisions until an appropriate case arises in the future. We note the Prosecution's statement to us that these provisions were not invoked frequently and most of the cases would already fall within ss 128D and 128I of the Customs Act.

52 To summarise our above findings:

- (a) The sentencing courts should no longer apply the *Pang Shuo* sentencing framework.
- (b) The *Yap Ah Lai* sentencing framework should apply to the offences from ss 128D to 128I of the Customs Act. This would include the provisions which are the subject of the present Appeals.
- (c) We reserve our decision on the applicability of the *Yap Ah Lai* framework (or any other appropriate framework) for offences under s 128J and s 128K of the Customs Act.

Issue 2: Application of the relevant sentencing framework to the present Appeals

53 In *Yap Ah Lai* (at [29]–[32]), it was held that there were at least four key factors relevant to sentencing for offences under the Customs Act:

- (a) the quantity of tobacco products imported (the primary factor in determining the length of sentence as reflected in the benchmark sentencing ranges);
- (b) the repetition of the offence;
- (c) whether the offender acted on his own or was involved in a syndicated operation; and
- (d) the extent of the offender’s role in the smuggling enterprise (such as the level of ownership, management, control and responsibility in the hierarchy of a smuggling syndicate).

Other factors include the impact and timeliness of the offender’s guilty plea (*Pang Shuo* at [42]) and the age of the offender (*Pang Shuo* at [43]; *Yap Ah Lai* at [88]–[89]). Applying these factors and the benchmark sentencing ranges laid out in *Yap Ah Lai* to the present Appeals, we do not think that the sentences imposed on Syed or Bhawal were manifestly excessive in any way.

Whether the sentence imposed on Syed was manifestly excessive

54 Syed was sentenced to a global sentence of 31 months’ imprisonment by DJ Soh for the Delivery Charge and Storage Charge. This consisted of consecutive sentences of 11 months’ imprisonment and 20 months’ imprisonment respectively. This sentence was clearly not manifestly excessive

and perhaps may be too lenient as it was apparent that the individual sentences imposed for the Delivery Charge and Storage Charge fell well below the indicated starting range under the *Yap Ah Lai* framework. The indicative starting points would have been 18 to 24 months' imprisonment and 30 to 36 months' imprisonment respectively.

55 For mitigating factors, Syed was a first-time offender who pleaded guilty at the earliest opportunity and did not have any related antecedents. Syed did not have any management control of the smuggling operations and his role was limited to being the paid worker who delivered and stored the duty unpaid cigarettes on the instructions of another person. Although Syed argued that imprisonment would cause financial hardship to his family, it is established law that the impact on livelihood and hardship caused to the family by the imposition of a sentence should be given little weight unless there are exceptional circumstances (*Kwan Weiguang v Public Prosecutor* [2022] 5 SLR 766 at [85]; *CCG v Public Prosecutor* [2022] SGCA 19 at [6]; *Yap Ah Lai* at [84]). There were also four other offences taken into consideration (three GST-related) for the purposes of sentencing which would ordinarily warrant an uplift in sentence.

56 The Delivery Charge and Storage Charge were unrelated and do not form part of a single transaction given that they concerned different steps in the chain of smuggling (delivery and storage), different bundles of cigarettes and different vehicles (Van 1 and Van 2). Hence, DJ Soh was correct to find that the sentences should run consecutively.

57 Based on the *Yap Ah Lai* framework, the consecutive sentences ought to have been between 48 months' and 60 months' imprisonment, which is much

higher than the 31 months' imprisonment imposed. Therefore, it could not be contended that Syed's global sentence of 31 months' imprisonment was manifestly excessive for the offences involving a total weight of 683.657kg of duty unpaid cigarettes. Accordingly, we dismissed Syed's appeal in HC/MA 9067/2023/01.

Whether the sentence imposed on Bhawal was manifestly excessive

58 Applying the *Yap Ah Lai* framework to Bhawal's case, the indicative starting range for the Excise Duty Charge would be six to 12 months' imprisonment for 90.367 kg of duty unpaid cigarettes. Bhawal was sentenced to 40 weeks' (or approximately 9.2 months') imprisonment by DJ Ng. We found that this sentence was within the range and was not manifestly excessive.

59 DJ Ng considered all relevant mitigating and aggravating factors. The only mitigating factors were that Bhawal was a first-time offender and he did not have related antecedents.

60 While Bhawal did plead guilty eventually, this was only done on the first day of a four-day trial and after multiple rounds of court mentions and pre-trial conferences lasting about one year. The unduly late guilty plea indicated a lack of remorse which would attract an upward adjustment in the sentence. Despite this, DJ Ng merely imposed a sentence that was in the middle of the sentencing range of six to 12 months' imprisonment for 90.367kg of duty unpaid cigarettes.

61 DJ Ng also took into account the fact that Bhawal was in remand for about seven weeks prior to being released on bail and adjusted the sentence downwards to 33 weeks' imprisonment. Further, there was also the GST Charge for which a concurrent sentence of ten weeks' imprisonment was imposed. As

it was generally inappropriate to impose consecutive terms of imprisonment for the offences of evading excise duty and GST on the same goods, the final sentence would usually be the sentence imposed in respect of the excise duty charge (*Yap Ah Lai* at [57(e)]). Nevertheless, there was a second charge for which imprisonment was also imposed.

62 Bhawal referred to an unreported case in the Singapore Customs Media Release involving two Chinese nationals (where the total weight of duty unpaid cigarettes was not stated). Bhawal asserted that the two Chinese nationals were estimated to have dealt with 339kg worth of duty unpaid cigarettes in the delivery of 1,873 cartons of duty unpaid cigarettes but only received four months' imprisonment. This assertion turned out to be factually incorrect. The Prosecution clarified at the hearing that the case file showed that the two Chinese nationals were only charged with delivering 144 cartons amounting to 30.760kg of duty unpaid cigarettes. We note that the four months' imprisonment imposed would comport with the *Yap Ah Lai* framework.

Conclusion

63 For the reasons set out above, we dismissed the two Appeals.

64 We thank all counsel for their able assistance in these appeals. In particular, we thank Mr Trachsel for his voluntary assistance and his comprehensive and clear submissions on the appropriate sentencing framework.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

Appellant-in-person for HC/MA 9067/2023/01;
Skandarajah S/O Selvarajah (M/S S Skandarajah & Co) for the
appellant in HC/MA 9103/2023/01;
Isaac Tan, Agnes Chan and Lim Shin Hui (Attorney-General's
Chambers) for the respondent in HC/MA 9067/2023/01 and HC/MA
9103/2023/01;
Jonathan Trachsel (Allen & Gledhill LLP) as Young Independent
Counsel.
