



Act 2007. All were individually charged as principals and not as parties. The particulars were that they did knowingly import into Tonga tobacco (Qixiang Huang 12.6 kilograms) (Yunbing Huang 7.5 Kilograms) (Jinbao Liu 7.6 kilograms ) with the intention to defraud the Revenue. In so far as count 2 was concerned, it was alleged that on or about 14<sup>th</sup> April 2015 at Fua'amotu International Airport they did fail to declare to Customs in their passenger declaration form that, he or she, was importing Tobacco that was in excess of the personal concession.

- [2] The trial commenced on the 17<sup>th</sup> May 2016 and with some adjournments, the hearing ended with submissions on the 28<sup>th</sup> May 2016, at the conclusion of which the case was adjourned for verdicts to be given on the 3<sup>rd</sup> June, 2016. All accused gave evidence.

## **THE LAW**

### **Smuggling**

- [3] In order for me to convict an accused of the offence of smuggling, I must be satisfied considering the evidence admissible against each accused individually first that the accused imported goods into Tonga and secondly that that this was with the intention of defrauding the Revenue.
- [4] Section 117 of the of the Customs and Management Act states that the onus of proof shall lie with the accused in any smuggling prosecution.

In order for there to be an acquittal I have to be satisfied on the balance of probabilities (that is more probable or more likely than not) either that the accused did not import good into Tonga or' if I am satisfied that the accused did that, on balance

of probability this was not done with the intention of defrauding the Revenue.

To import means to bring goods or cause goods to be brought into the Kingdom (statutory definition )

Time of Importation means the time that an aircraft carrying imported goods with the intention to discharge cargo arrives at the first airport or port within the Kingdom. (Statutory definition)

### **False Declaration**

[5] In order for me to convict on an offence of failure to make a declaration I must be satisfied in relation to each accused considered separately that he or she beyond any reasonable doubt failed to make a declaration in his or her Customs passenger arrival or declaration form that he or she was importing into Tonga tobacco that was in excess of the personal concession.

The personal concession in Tonga as recorded in the passenger arrival form is; from the 14<sup>th</sup> August, 2013, reduced from 500 grams (500 cigarettes) to 250 grams (250 cigarettes) for persons over 18 years of age.

Declaration means the provision of all information to Customs whether verbal in a document, or in electronic form by a person relating to imported goods. (statutory definition)

## THE EVIDENCE

### Fa'one Bloomfield

[6] Mr Bloomfield was a customs officer who was also an intelligence officer. He explained that a person is allowed to import 250 grams of tobacco which is one sleeve of ten packets of 20 cigarettes duty free. He said goods were seized if they had not been declared and were in excess of the concession. Tobacco for health reasons was subject to regulation. He said authorities in Fiji had reported by email to Customs in Tonga that there were inbound passengers, the accused, who were bringing in their luggage a large quantity of tobacco in Chinese tea bags. Accordingly, customs officers, Mr Bloomfield and Michael Cokanasinga waited for the flight to arrive, at Fua'amotu International Airport on the 14<sup>th</sup> April 2015 and obtained the arrival cards of the three accused. None of the passenger's arrival cards indicated an amount of tobacco over the concession as the passenger was required to declare if importing tobacco in excess of the concession (which was printed on the back of the arrival card as 250 grams or 250 cigarettes), and described by officers as one sleeve of 10 packets of cigarettes. In each case, the box had been ticked that signified tobacco in excess of the concession was not being imported. After that, the accused were asked in Tonga whether they carried tobacco with them. Mr Huang responded he was not and there was no response from the others. He said Mr Huang did most of the talking for them. He said the question had been asked by himself and the legal officer in Tonga. The accused were altogether. They were asked separately. He said each was carrying their hand luggage only on the 14<sup>th</sup> April 2015. He said there were sleeves of tobacco within the allowance. It became clear that the luggage they were carrying was not all the luggage that they had brought with them from China. He said they had informed Customs that their luggage was not all there and they gave Customs the tag numbers. He said

the accused arrived on the 16<sup>th</sup> April at different times to pick up their luggage. Yun Bing Huang and Jinbao Liu, who are husband and wife, were the first to arrive about 3pm. Other items, medicines and food, were also seized. He said that Mr Liu had informed him during the opening of the suit cases that there was tobacco in his suitcase. There were six bags in the two suitcases belonging to Mrs Huang and Mr Liu. They were issued a seizure notice. The tobacco was handed over to the police.

- [7] The accused, Qixiang Huang, came shortly after and identified his luggage at Customs. They found five packets of tea containing tobacco and also seized them. On the 17<sup>th</sup>, Mr Huang came back and obtained more luggage which contained two further bags of tobacco in tea bags. Because these had not been weighed, these were not at the hearing the subject of inclusion by the prosecution in the case against Mr Huang, the weight of tobacco in his case being limited to the five bags found and weighed on the 16<sup>th</sup> April, 2015.
- [8] He said other officers were present during the searches, Officer Kepueli Ve'a and Esafe Huni. Photographs of this process were admitted by consent.
- [9] Under cross-examination, he said to Mr Tu'utafaiva that the email from Fiji had been the basis or objective of the operation to prove and find evidence. He confirmed that they had waited at the Customs checkout area to wait for the accused and obtained their passports and arrival cards. He said he had asked whether they had tobacco when each presented their arrival card. One of the persons in the group of four did not have tobacco with them. The accused had tobacco but within the amount of the concession. He said to Mr Tu'utafaiva that he had heard one of the officers ask Qixiang Huang whether he had tobacco in Tongan and he had replied no. It was put to the witness that the

real reason Huang had said this was because he thought he meant in the luggage he was currently holding. He said when Liu was asked he was not able or unable to answer and it was Mr Huang that answered most of the questions for the three. He said Mr Liu had not given an answer. Similarly, he said Yunbing Huang did not give an answer. He said he had asked Mr Liu on the 16<sup>th</sup> whether he had tobacco in his luggage and he had replied yes. It was Mr Huang who had answered, he said, for Yunbing Huang. He said the tobacco with Yunbing Huang belonged to him and he was cross-examined by Mr Tu'utafaiva on this point because this assertion of Huang's involvement was not included in his earlier statement. He agreed that he was mistaken about this. He could not recall whether he had asked this of Mr Huang.

[10] He said later, however, that on the 14<sup>th</sup> there was no excess baggage, and that it was on the 16<sup>th</sup> that tobacco was discovered in their luggage. He also appeared to affirm that it was on the 16<sup>th</sup> that Mr Huang had said all the tobacco that had been found belonged to him. I consider for reasons given below that he had likely confused in his recollection of this event the person involved as being not Mr Huang but Mr Lui who asserted, in his evidence, that the tobacco contained in Yunbing Huang's luggage was his. Mr Bloomfield added that on the 14<sup>th</sup> none of the accused had indicated they had any difficulty answering questions.

#### Michael Cokanasinga

[11] Michael Cokanasinga was the principal revenue officer with Customs. He was present after receiving the email from Fiji when the passengers arrived on the 14<sup>th</sup> April, 2015. He said cigarettes within the personal concession had been located. The amount he said that would have been lost to the Revenue for the excess tax

and consumption tax on the total of the imported tobacco weighed was \$8000 pa'anga.

#### Mosese Hungalu

[12] Mosese Hungalu was a police officer. He attended Customs on the 16<sup>th</sup> April when the accused were present and their bags were searched, having arrived late from Fiji. Each of the accused Liu and Yunbing had three packets each. 7.5 Kilos he said came from Yunbing Huang's bag and also 7.5 kilos from Jinbao Liu's luggage. From Mr Huang's luggage came five packets of tobacco, two being 1.7, one 1.9, one 1.75, and one 2.5 kilos. (7.85 Kilos) The packets found on the 17<sup>th</sup> were not weighed, and the prosecution withdrew these from consideration in the case of Mr Huang. He said Yunbing Huang and Jinbao Liu had been arrested for smuggling. He said that Mr Huang had arrived on the 16<sup>th</sup> shortly after the others. He had also been arrested. He said the tobacco was packed and transferred for safe storage to the police station from Customs. He had conducted the weighing process with another officer and was able to confirm at the time he had checked that the figures were accurate. All accused gave evidence.

#### Qixiang Huang

[13] Mr Huang was aged 50 and was married with one child. He had arrived in Tonga in 2009 and operated a shop in Fahefa. He lived there with his wife. He had many other relatives in Lapaha and Hoi. He smoked cigarettes. He travelled to China on the 30th January 2015 with his wife and relatives. That was for the Chinese New Year and to visit relatives. He said he went back to China in 2012. He seemed to say first Jinbao Liu was a relative and then retracted that. He did not stay with the other two defendants in 2015 in China.

[14] He said he brought the tobacco in a Chinese market for about 4 Tongan pa'anga a kilo. They were given to him in a plastic bag. He said he brought it for his own use and to give to friends and relatives as gifts. He said he had put the tobacco into tea bags. They had been in transparent plastic bags because the bags were easy to break and he wanted the air out by vacuum to make the tea bags smaller for travel and to preserve the tobacco. He denied concealing it. He said he had told Customs it was tobacco. He said he brought also candies and food. He said he had been in Fujian in China and travelled back on the 13th April 2015. He said he had told Customs in Fiji that he was carrying tobacco and he was told that they could only take small bags and laptops with them to Tonga and their bags would be carried the next day. The aircraft was too small to carry the entire luggage. He said some bags of tobacco had been wrapped in clothes to keep the packets safe so that they would not rip and spread the tobacco in the luggage.

[15] He admitted to filling out part of the passenger arrival card and in doing so he had borrowed and used another passenger's card. He said he changed the name and then finished the form. He denied knowingly making a false declaration because he said he did not know English. He responded to the question when asked about Mr Bloomfield asking him whether he was carrying tobacco when he arrived and saying no, that when we arrived everything moved so fast that he knew he was only carrying the laptop even the food was in the check in luggage. He said because he wasn't carrying tobacco at the time that he had said no.

[16] He said when he went to Customs on the 16th he told them there was tobacco in the bag. He said there were many Customs officers present. He said he was arrested and that he was spoken to in Tonga. Other goods were taken as well as the tobacco that



was seized. He said he did not ask anything of Customs when he gave them the arrival form, on the 14<sup>th</sup> April, 2015.

[17] Under cross-examination, he said he had studied English for two years in school. He admitted to be aware of arrival cards when entering China. He knew he could not carry explosives and he knew there were limits on alcohol. He said he did not know what the limits for tobacco were in China because he never brought tobacco into China because it was cheap in China. He said he brought one sleeve of cigarettes not from the duty free but at a Chinese shop in 2015. He knew what a duty free shop was. He denied he knew there were limits on tobacco when he entered a country. He did not know there were limits in any country but China. He said that at the place where they vacuum pack there were only tea bags. He denied that he had attempted to conceal the tea bags in clothing. He denied being related to either Jinbao Liu or his wife Yunbing Huang. He said the packaging was different in the tea bags he used, and theirs. He said he did not know where they vacuum pack their packets, he had just packed his. He said it was just a coincidence they all had tobacco in tea packets. He said he knew Customs in Fiji were interested because of the volume of tobacco he had. He denied, however, that, he had known that, if he had more tobacco than allowed, he would have to pay tax. He said he knew Customs were there to inspect whether drugs or food were carried. He knew wholesalers of goods had to pay tax when they import them and his shop brought from Tonga wholesalers. And that, he said, included tobacco.

[18] He admitted he had a sleeve of 10 packets of cigarettes in his hand luggage on entry on the 14<sup>th</sup> but did not know that was the legal limit in Tonga for not paying duty. It was just a coincidence he said that he had brought that amount into Tonga. He said he he should not pay tax on that amount of tobacco because he was

going to give it away as gifts to friends. He said he had heard in the Chinese airport they could bring only two bottles of liquor in, but he had made no inquiry concerning tobacco. He said he thought he could bring in as much as he wanted. He then said he knew it was only if imported for business and not personal or giving it away that duty was attracted. He said on the 16th he had been asked by Customs if he was carrying tobacco after they had opened his bag but before they had opened the tea bags. He said he knew the importance of telling the truth in the arrival card. Then, he said, I could not communicate with them so I just gave them the arrival card. He said some of the officers spoke in Tongan some in English. He then said he did not know whether the arrival card was a serious document he was handing over. He said, on this point, 'I don't know I just want to make sure that I don't carry any dangerous item if I knew I would not have copied another person's card.' They had his luggage and so long as he could go it meant his luggage is OK. He then said he was not familiar with arrival cards and said the one in 2012 was in Tongan and Chinese. He said later in re-examination he thought arrival cards only applied to drugs or explosive items. He said he was not relatives with the defendants, and, although they were friends, it was only a coincidence they went to China. He had not seen them in China. There had been no discussion about putting tobacco into tea bags. He again said he had just copied another passengers' arrival form on the customs and quarantine declaration portions.

**Yunbing Huang.**

[19] She is the wife of the third accused Jinbao Liu. She said she had not packed her bags but her husband had done it for her. She did not know there was tobacco in her bags. She did not speak English. She ran a shop in Lapaha. She had travelled to China in 2013 having come to Tonga seven years ago. She said her

husband had made out her arrival card, and she even appeared to deny signing it. She did not smoke and she said she was not carrying any cigarettes with her. She said she did not know whose writing was on the form. She denied seeing the form. She said she asked her husband to help with questions on the 16th. She said she knew all three accused came from the same province in China. She said she did not know anything about tobacco limits on importations but did on alcohol. She said that the first time she saw bags of tobacco was in Fiji. She denied buying the tobacco found in her bag. She said her husband signed her signature and she could not write.

Jinbao Liu

[20] He was married to Yunbing Huang and had been in Tonga since 2005-6. He was employed in a shop. He knew Qixiang Huang but only after they came to Tonga. He left school at 14. He spoke Chinese. He could not read Tongan. His language was shop language Tongan. He did not understand English. He had returned twice to China. He was a smoker. He denied any understanding between he and Mr Huang to go to China. They met in the airport by coincidence. He did not stay with him in China. He said the tobacco in his wife's luggage was his. He brought it in the market and it was about 3-4 pa'anga a kilo. It had been packed in a clear bag. He had it for his own use not to give to relatives. He asked the manager how he can seal it so it cannot go bad. He then took it to a tea shop to seal the packets. He asked him to vacuum pack it. He wanted to make the space smaller for relatives to use. He said he had six packets and put them in his wife's luggage. He had wrapped the tea bags in clothes because if heavy items were placed on them they might break. He said he did not understand the language on the arrival card. He borrowed the other passenger's card next to him and copied the information and did the same with his wife's. He

copied personal information from passports of his and his wife's. The rest of the information came from the passenger's form. His wife was sitting beside him. He said his wife could not read the information. She, he said, signed her signature. He said he could not communicate with airline people and had always copied other persons' cards when he travelled. He said he was not asked by the airport people whether he had tobacco when he arrived. He said he gave both he and his wife's cards to the custom's officer. He did not tell the customs officer she had difficulty with the cards. He said there was no reason to tell them because our luggage was normal. There were no dangerous items in them.

[21] He said on the 16th, that he had told Customs the tobacco in his wife's luggage was his. Under cross-examination, he said that he had not read the contents of arrival cards even in Chinese because he did not carry tobacco, then. He did not know what the concession for tobacco was in Tonga. He did not carry any cigarettes into Tonga. He had not had conversations with Mr Huang about tobacco. He denied knowing about wholesale taxes on imported goods. He said he worked for a retailer. He said he was aware tobacco is subject to a tax at the wharf. He denied consulting with Mr Huang about what he should do with his arrival card. He agreed he had never said to anybody when he was on the plane or in immigration that he did not understand the form. He agreed that simply copying another person's information was not providing a true document. He also said he had discussed part of the form relating to his visa with a Chinese passenger. He said he had not asked the neighbouring passenger whose card he had, when it came to the customs section, because he was not carrying drugs so he just copied his form. He agreed he had not volunteered to Customs there was tobacco in his other luggage. He said they didn't ask us they just let us go. He did not volunteer there was tobacco in the other luggage because there were so many people there; they just checked our

bag and let us go. He said he didn't tell them it was in the other luggage because they had not arrived. He said there had been no communication between he and Mr Huang as to how they should approach Tongan Customs after the tobacco had been found in Fiji.

## **SUBMISSIONS**

[22] Both counsel submitted I should find for their respective positions. Mr Kefu submitted that it was no mere coincidence that both Mr Liu and Mr Huang had both imported large amounts of tobacco as tea. Both did this so, he submitted as to conceal the true position. He submitted that Mr Huang knew the concession and this was evidenced at least in his case by the fact that he had brought in one sleeve of cigarettes which was the concession. He submitted, in any event they were retailers and would know about duty on imported goods. Mr Huang appeared to admit that if he imported tobacco for personal use then there should be no tax and only tax if he intended to sell it. Mr Liu admitted he knew there was an imported tax on tobacco. They had travelled to and from China on more than one occasion and he submitted would be familiar with duty free and concessions. As smokers, he submitted they would be interested in and familiar with concessions on tobacco. He submitted they would know the importance as travellers of arrival documents and filling them out carefully. He submitted if they did not know of these requirements or had difficulty with the forms then they could have made inquiries and did not do so because of fear that they would be told that they had to pay tax on the tobacco at the border. He contended that all were wilfully blind, if I did not find that they knew of the concession in fact which, he submitted, I should. He submitted that all the accused should be treated in the same way; all were guilty of smuggling and making a false declaration. The fact that admissions were made to customs

officers on the 16<sup>th</sup> of the existence of tobacco did not alter the fact that the accused had made false declarations earlier concerning the tobacco they had caused to be imported into Tonga, and knew was amongst the baggage that had left with them from China intended for Tonga.

[23] Mr Tu'utafaiva candidly submitted that credibility issues emerged here which I had to resolve and to that extent it was for me whether and to what extent I accepted the evidence of the accused. He emphasised the language difficulties and the fact the arrival form was in English. He urged me on all the evidence to find that on balance the accused did not smuggle tobacco. They had been honestly ignorant of the concession on tobacco; they had not understood because of their lack of English the requirements of the flight arrival card and had done their best to fill them out, using another passenger's arrival card to assist. He emphasised that, at the time they arrived, they had only hand luggage and there was no illegal tobacco contained in that. This adequately explained, he submitted, any denial by the accused that they were carrying excess tobacco either in the flight arrival form or independently when asked. He submitted I should accept there was mere coincidence in the accused's conduct, that each Huang and Liu had independently taken steps to process tobacco in tea bags and that there had been no collaboration between them even though they were friends, had gone on the same flights together and were from the same province in China. He argued that both had admitted to Customs on the 16<sup>th</sup> April that there was tobacco in their bags and that the importation arose on 16<sup>th</sup> when their luggage arrived in Tonga. What they told Customs concerning the presence of tobacco prior to the search amounted to declarations which supplemented or varied their non-disclosure in the flight arrival documents of the 14<sup>th</sup>. He submitted that I should treat disclosure on the 16<sup>th</sup> as a verbal declaration under the statutory

definition of declaration, and this negated any omission to declare the presence of excess tobacco on the 14<sup>th</sup> in the flight document and also negated any inference of importing with intent to defraud the Revenue. He submitted that on balance I should accept that they did not smuggle the tobacco into Tonga. He also submitted that they had not, beyond reasonable doubt, knowingly made false declarations in their arrival cards concerning tobacco because, on the 14<sup>th</sup> April, they did not have excess tobacco in their hand luggage and they had difficulties with the forms. They had told Customs other bags were coming and given them the tags for the bags. He submitted that this was an additional reason why I should draw the inference that they were not intending to defraud the Revenue and smuggle. They had, he contended, genuine difficulty with the arrival forms and were not carrying explosives or drugs as to which they knew Customs would be interested. They had not beyond reasonable doubt knowingly turned a blind eye to their obligations, either.

### **FINDINGS**

[24] I did not believe either Mr Huang or Mr Liu when they said it was a mere coincidence that they had both imported tobacco into Tonga in tea bags for the same reasons namely to vacuum pack it so it was compressed and preserved. I heard no evidence that this was common practice amongst persons from China importing into this or any other country. Both men are friends. It was certainly, if it were not planned, a remarkable coincidence that they departed on the same day and had returned to Tonga on the same day, staying in the same province of China without seeing each other, or discussing the importation of a large amount of tobacco vacuum packed in tea bags. I consider it is too much of a coincidence that both arrived with large amounts of tobacco in tea bags to believe that this was simply a mere coincidence. Further, neither declared the tobacco in the arrival

document was beyond the concessional allowance and both used the same explanation for completing the flight arrival form namely that they had adopted information contained in another passenger's card when it came to customs and quarantine disclosures. Their explanations were virtually identical and were in my view again not mere coincidence, but contrived. I consider their explanations were false and told to deliberately distance themselves from the most obvious available inference that they had imported a large amount of tobacco in tea bags so that if their bags were opened the true nature of their contents would be concealed and they would not have to pay duty; that is they were smuggling tobacco into the country.

[25] Both men were smokers. Both men, I consider, from their experience with international travel from here to China and return on more than one occasion would have been more than interested, as a matter of common sense and experience, about concessions on tobacco in Tonga where they were to return. I consider that both men were well aware of the concession. In Mr Huang's case, he brought in with him one sleeve of 250 cigarettes which is the concessional amount. That suggests he knew the concession. If he knew that, then I have no doubt this information would have been communicated to Mr Liu. After Fiji had discovered the tobacco in their bags, I consider it highly likely they would have discussed what they should do when they came to enter Tonga. They were not despite, their limited formal education, unintelligent and they had experience in retail for a number of years in Tonga. I consider it very unlikely they would have brought such a large amount of tobacco into Tonga without knowing what the concession was despite their protestations to the contrary.

[26] I find that both men deliberately did not reveal to Customs that they were carrying tobacco in large amounts in their luggage



that had been delayed. The adverse inference that I draw from their silence of carrying tobacco in their flight arrival forms is that they were both hoping that their luggage would pass at a later stage, with the tobacco undetected. They must have appreciated when a large number of customs officers were present and about to inspect their luggage on the 16<sup>th</sup> April when they arrived to pick it up, that, as in Fiji, the fact that they had tobacco would be likely ascertained on inspection and so both took the only available course of admitting to its presence. In so far as the issue of whether there is any conflict between Officer Bloomfield and Mr Liu as to whether the latter was asked about tobacco on entry on the 14<sup>th</sup>, I prefer the evidence of Mr Bloomfield. Customs had been informed by Fiji earlier that these accused were bringing into Tonga a large amount of tobacco in tea bags. An obvious question for him to ask of all the accused who were together on arrival in Tonga in Customs was whether they were carrying tobacco. An honest answer would have been, tobacco is in our bags which have been temporarily delayed as all accused knew. However, it seems neither Lui or Mrs Huang responded, although Mr Huang may have answered on their behalf. In these circumstances, I view the evidence as insufficiently clear as to their response if any to Customs officer's questions as to whether they were carrying tobacco on the 14 to draw any adverse inference against them; but not so Mr Huang who I am satisfied did deny the existence of tobacco. I disagree with Mr Tu'utafaiva's submission however, that their admission to having tobacco on the 16<sup>th</sup> in any way could be said to be incorporated into or vary the false or misleading information they gave in their passenger arrival cards concerning the importation of excess tobacco. In my view, it was the information given in the arrival card which governed their arrival and the importation of the tobacco carried from China which would arrive on an available later flight, but had been intended by them to have arrived in Tonga with them on the 14<sup>th</sup> April. It may be that the

time of the actual importation into Tonga was the 16<sup>th</sup> April under the definition of the time of importation given in the Act, but the accused Liu and Huang had arranged for the importation or had caused it to take place much earlier when they left China with tobacco in their luggage. It was a mere unforeseen contingency that they and their luggage were separated, and they knew full well it was expected to arrive in Tonga separately when they would receive it. The answers given to the contrary in the flight documents of Mr Huang and Mr Lui and Mr Huang's denial to Customs on the 14<sup>th</sup> that tobacco was being carried were deceptive and calculated to mislead Customs. I do not consider that an admission by them subsequently that tobacco was carried in the bags shortly before the bags were to be opened by Customs on the 16<sup>th</sup> April, was a declaration that made good what they had omitted to reveal in their arrival card, namely that they were carrying more than the concessional amount of tobacco in their luggage which had left with them from China, and was expected to arrive in Tonga, its place of intended destination.

[27] I also consider that their evidence, which was to the same effect concerning arrival cards was so coincidental, as I have said, as to leave me with the impression that their approach to this issue had been the subject of discussion at some stage between the two despite Mr Liu denying this. Both men had travelled quite extensively, as Mr Kefu stressed, and I consider were not unintelligent. I find they must have known the importance of the documents they signed and the importance of being accurate in the information they gave. I consider that both deliberately chose not to fill in the concession correctly as to tobacco and indeed I do not accept their evidence about being ignorant as to tobacco concessions, as I have said also. In my view, and having heard them give their evidence at considerable length, I formed the view that they would not have been as naive or stupid as to

bring in such a large amount of tobacco without first knowing what the concession was. It may well be that they have only a limited amount of English but I have no doubt they well knew the importance of accuracy in the document. I do not believe their explanations they simply copied another passenger's information in relation to the customs and quarantine information. Both gave what I regard as a convenient explanation in some misguided belief that this met with their obligations. In any event, both could have chosen to ask the passenger whose card they borrowed (being Chinese), or another Chinese passenger who spoke English what the contents of the customs and quarantine required but apparently did not do so, if indeed that part of their evidence was true, which I doubt.

[28] I also confirm that I found both accused generally deceptive and for all the reasons given above I do not accept their evidence that they did not intend to smuggle tobacco into this country with the purpose of avoiding excise that is defrauding the Revenue. Accordingly, they have not discharged their onus of satisfying me that they did not intend to defraud Customs on the balance of probability when they caused tobacco in excess of the concession to be imported into Tonga. The tobacco I find was in excess of the concession in the case of both men. In the case of Mr Liu it was 15 kilograms he being responsible I accept for the tobacco also located in his wife's bag and in the case of Mr Huang 7.85 kilograms. Because of the nature of Mr Liu and Ms Huang's defence, and my findings below, I see no prejudice in the Crown applying now for a late amendment to the particulars of weight of tobacco in Mr Liu's case, being increased to 15 kilograms.

[29] As I have said above, I do not accept their evidence that they did not knowingly fill out a false declaration as to the tobacco that they were importing. I do not believe they would not have taken

steps to ascertain what they were required to declare before signing their declarations despite their protestations that were ignorant of its contents because of their lack of understanding of English. Their answers independently given that the only matters they anticipated Customs were concerned about were explosive material, food or drugs but not tobacco were in my view convenient. If, as they claimed they were ignorant of English, then their failure to make inquiry especially after they plainly had been made aware that Fijian customs were concerned about the amount of tobacco they carried, and when they could readily have made inquiry on arrival, I find was a deliberate omission because they knew full well that the amount they carried or imported was well above the concessional amount that could be brought into Tonga, and would have to be disclosed on the arrival card, and duty paid. Giorgianni v The Queen 156 CLR 473, 482-483 per Gibbs CJ on wilful blindness) Accordingly, I find beyond reasonable doubt both men guilty also of making a false declaration on their arrival cards.

[30] I find, however, the position of Yun Bin Huang to be different, as I have foreshadowed in my comments in para 28. Although she was, I considered a poor witness, if not evasive at times, and I am suspicious about the extent of her involvement and knowledge, I accept that her husband, as he said, was responsible for buying and placing the tobacco found in her bag unknown to her. He said it was his and I am satisfied he told Customs this on the 16th April, 2015 when the bags were produced as he said. I accept he claimed responsibility for the tobacco in her bag on that date. As such, I do not find that she was responsible for importing the tobacco, a fact she had denied. She was not a smoker. I do not consider that she is guilty of smuggling.

[31] In relation to the false declaration, I am satisfied that she has little knowledge of English and though she may have been stupid, negligent or even reckless in allowing her husband to fill in her arrival form, on her behalf, I do not consider that she knowingly made a false declaration concerning tobacco, in these circumstances. It was not her importation as I have found but her husband's and she plainly relied on her husband to fill out the details on a form which was plainly beyond her comprehension. If the tobacco was not hers in her bag then I do not think the fact that she did not declare the tobacco content in her declaration amounted to a knowingly false statement beyond reasonable doubt in the circumstances of this case. I find her not guilty also of making a false declaration concerning the tobacco.

### **VERDICTS**

[32] I find Mr Huang and Mr Liu guilty of the offence of smuggling contrary to section 92(1) (a) of the Customs and Excise Management Act 2007 and making a false declaration contrary to section 97 of the Customs and Excise Management Act 2007 and they are convicted on both counts. I find Mrs Yunbing Huang not guilty on both smuggling and making a false declaration and she is acquitted on both counts.

I record that in Mr Liu's case, Mr Kefu did apply to change the Particulars of weight to 15 Kilograms and I granted this to reflect the evidence.

**DATED: 2 JUNE 2016**

  
C. B. Cato  
**JUDGE**