

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Release of)
Seized Property Under the Cigarette and)
Tobacco Products Tax Law and the Cigarette)
and Tobacco Products Licensing Act of 2003 of:)

CRC/TR CORP.,)
dba Cigarettes Cheaper)

Account Number: LR Q ET 91-302097
Case ID 537954

Petitioner)

Santa Rosa, Sonoma County

Type of Business: Smoke shop

Seizure Date: March 29, 2010

Approximate Value of Products in Dispute: \$297.00¹

We have not held an appeals conference in this matter. This summary is prepared based on the information contained in the Petition, Reply to Petition of the Investigations Division (ID), and related documents.

UNRESOLVED ISSUE

Issue: Whether cigarettes and tobacco products should be forfeited because they are described by Business and Professions Code sections 22974.3, subdivisions (a) and (b). We conclude that the seized cigarettes and tobacco products should be forfeited.

Petitioner, a corporation, owns and operates Cigarettes Cheaper located at 451 Stony Point Road, Santa Rosa, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller’s permit SR Y JH 101-072955, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On March 29, 2010, ID conducted a cigarette and tobacco products inspection of this location. Petitioner’s manager, Mr. Bashir Khan, was on the premises and authorized the inspection. During the inspection, ID found 10 packages of unstamped Smokin Joes cigarettes. ID stated the remaining cigarettes in petitioner’s inventory were properly stamped. When ID requested invoices for

¹ Consisting of 8 25-count boxes and 85 White Owl cigarillos and 10 packages of Smokin Joes cigarettes.

1 petitioner's purchases of cigarettes and tobacco products for the previous 12 months, Mr. Khan
2 provided some invoices, but ID found that those invoices did not support a portion of petitioner's
3 tobacco products inventory. ID telephoned petitioner's president Mr. Tariq Mohammed Rasuli, who
4 stated that he was unable to provide any additional invoices.

5 ID seized the unstamped cigarettes and tobacco products not supported by invoices showing
6 payment of tax and issued petitioner a Receipt for Property Seized and a Civil Citation for alleged
7 violations of Business and Professions Code sections 22974, 22974.3, subdivision (a)(1), and 22974.3,
8 subdivision (b). On June 21, 2010, ID served petitioner a Notice of Seizure and Forfeiture dated June
9 14, 2010, stating that cigarettes and tobacco products valued at \$775.00 were seized and are subject to
10 forfeiture under Business and Professions Code section 22974.3.

11 Petitioner submitted a verified petition dated June 28, 2010, for release of all of the seized
12 cigarettes and tobacco products. Petitioner stated that the seized cigarettes were a part of a cigarette
13 display. Petitioner also stated that its invoices for the seized tobacco products were misplaced at the
14 time of the inspection and attached to the petition invoices issued by Cleopatra Smokes, Inc., Naser
15 Distributor, Inc. (Naser), Swedish Match Your OTP Leader (Swedish Match), and Habib Import, Inc.
16 (Habib). ID stated that the Cleopatra Smokes, Inc. invoice did not contain any of the seized products.
17 ID stated that Swedish Match invoice contains an exchange of older products for White Owl tobacco
18 products. However, the Swedish Match invoice lists the purchaser as Sonora Cigarettes Store, and
19 there is no documentation such as transfer records showing that the products listed on the Swedish
20 Match invoice were transferred from Sonora Cigarettes Store to Cigarettes Cheaper.² Therefore, ID
21 stated that the Cleopatra Smokes, Inc. and Swedish Match invoices do not support the return of any of
22 the seized tobacco products. ID stated that it reviewed the invoices from licensed vendors Habib and
23 Naser and determined that those invoices supported a portion of the seized products as tax paid, and
24 therefore returned those products, with an approximate retail value of \$350.00 to petitioner. On
25 August 25, 2010, petitioner submitted an additional Cleopatra Smokes, Inc. invoice to ID. Based upon
26 that additional invoice, ID determined that tax had been paid on a portion of the remaining tobacco
27

28 ² Petitioner owns and operates Sonora Cig Store located at 1171 Mono Way, Sonora, California and holds license LR Q ET
91-304738 effective July 10, 2008, for this location.

1 products in inventory, with an approximate retail value of \$128.00, leaving products with an
2 approximate retail value of \$297.00 (\$775.00 - \$350.00 - \$128.00) in ID's custody and remaining in
3 dispute.

4 In its Reply to Petition, ID asserts that the petition should be denied. ID states that petitioner
5 has not shown that tax has been paid on the cigarettes in question, and therefore petitioner has not
6 shown that those products were erroneously or illegally seized. In addition, ID states that petitioner
7 has not shown that tax has been paid on the seized tobacco products, and therefore it has not shown
8 that those products were erroneously or illegally seized. ID further states that petitioner was provided
9 Publication 78, "Sales of Cigarettes and Tobacco Products in California," when the Board issued
10 petitioner's license, which informed petitioner that the law prohibits the possession of untaxed
11 cigarettes and tobacco products.

12 Business and Professions Code section 22974.3, subdivision (a), provides for seizure and
13 forfeiture of unstamped cigarettes from a retailer or any other person who possesses, stores, or owns
14 such items at the retail location. Unstamped cigarettes for these purposes includes a package of
15 cigarettes that does not bear a tax stamp as required by the Cigarette and Tobacco Products Tax Law.
16 (Bus. & Prof. Code, § 22971, subd. (m).) Here, the cigarettes in question were unstamped. Therefore,
17 those cigarettes were properly seized and must be forfeited.

18 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
19 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
20 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
21 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
22 which complies with Business and Professions Code section 22978.4 and which shows that applicable
23 taxes have been paid. Here, petitioner has not presented invoices showing that tax has been paid on the
24 seized tobacco products remaining in custody. Therefore, those products were properly seized and
25 they must be forfeited.

26 Accordingly, we recommend that the petition be denied with respect to the cigarettes and
27 tobacco products remaining in custody.

28 Summary prepared by Cindy Chiu, Tax Counsel III (Specialist)