

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:)

ISMAIL AHMAD KARAJAH,)
dba Farah Smoke Shop)

Account Number: LR Q ET 91-259169
Case ID 534141

Petitioner)

San Francisco, San Francisco County

Type of Business: Smoke shop

Seizure Date: February 10, 2010

Approximate Value: \$78.00¹

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 the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b). We conclude that the tobacco products should be forfeited.

Petitioner, a sole proprietor, owns and operates Farah Smoke Shop located at 2345 Mission Street, Suite D, San Francisco, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller’s permit SR BH 100-468617, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this sole proprietorship.²

On February 10, 2010, ID conducted a cigarette and tobacco products inspection of this location. Petitioner’s cashier, Mr. Mohamed Farah, was on the premises and authorized the inspection.

¹ Consisting of two 60-count boxes of Swisher Sweets Wine flavored cigarillos.

² According to Board records, petitioner is president of I. K. Distributor, Inc., which holds distributor license LD Q ET 90-005494 and lists its business address as 2345 Mission Street, Suite D, San Francisco, California – the same as Farah Smoke Shop.

1 ID found that all cigarettes were properly stamped. When ID requested invoices for petitioner's
2 purchases of cigarettes and tobacco products for the previous twelve months, Mr. Farah provided ID
3 with a limited number of invoices, and contacted petitioner to request that he come to the store.
4 Shortly thereafter, petitioner arrived at the store, and ID asked petitioner where he purchased his
5 cigarettes and tobacco products. Petitioner stated that he purchased from licensed vendors JMG,
6 Bargain Line, Pitco, Geary, and Hit, Inc. Petitioner also provided ID with invoices issued by licensed
7 vendor W&T Distributor in 2009. ID found that the provided invoices did not support six boxes of 60-
8 count Swisher Sweets cigarillos and one 60-count box of Optimo cigarillos. ID asked petitioner to
9 provide invoices for the Swisher Sweets and Optimo cigarillos in question. Petitioner stated that he
10 purchased those tobacco products sometime ago in 2009. However, ID stated that those products were
11 manufactured in January 2010. ID asked petitioner if he sold the tobacco products in question to
12 himself using his distributorship I. K. Distributor, Inc., and petitioner stated that he did not. ID asked
13 petitioner if he stored any cigarettes or tobacco products for I. K. Distributor, Inc. at Farah Smoke
14 Shop, and petitioner stated that he stored the cigarette and tobacco inventory for I. K. Distributor, Inc.
15 in his van. Petitioner stated to ID that he was unable to find any purchase invoices for the tobacco
16 products in question.

17 ID seized the tobacco products not supported by invoices showing payment of tax, and issued
18 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and
19 Professions Code sections 22974 and 22974.3, subdivision (b). On February 22, 2010, petitioner
20 provided ID with an invoice from MB tobacco (invoice number 20691) dated January 9, 2010. On
21 February 23, 2010, ID contacted Mr. Mutahar Al-Eryani, sales manager and co-owner of MB Tobacco,
22 who stated to ID that he personally delivered the tobacco products listed on MB Tobacco invoice
23 number 20691 to petitioner on January 9, 2010. On February 25, 2010, ID spoke with petitioner by
24 telephone and stated that it would be returning a portion of the seized tobacco products to petitioner
25 based upon the provided MB Tobacco invoice, but stated that this invoice did not support the return of
26 two 60-count boxes of Swisher Sweets Wine flavored cigarillos. Based upon the MB Tobacco invoice,
27 ID returned to petitioner four 60-count boxes of Swisher Sweets cigarillos and one 60-count box of
28 Optimo cigarillos, but stated to petitioner that he needed to provide an invoice dated later than the

1 January 9, 2010 MB Tobacco invoice for the other two boxes of Swisher Sweets because those tobacco
2 products were manufactured on January 11, 2010, after the date of the MB Tobacco invoice. On May
3 5, 2010, ID served petitioner with a Notice of Seizure and Forfeiture dated May 3, 2010, stating that
4 tobacco products valued at \$78.00 were seized and are subject to forfeiture under Business and
5 Professions Code section 22974.3. Petitioner submitted a verified petition dated May 16, 2010, for
6 release of all of the seized tobacco products, and attached to the petition a MB Tobacco invoice dated
7 December 19, 2009, and also the MB Tobacco invoice dated January 9, 2010, that was previously
8 reviewed by ID.

9 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not
10 shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
11 shown that those products were erroneously or illegally seized. ID states that MB Tobacco invoices
12 dated December 19, 2009, and January 9, 2010, do not support the Swisher Sweets Wine flavored
13 cigarillos in question because those tobacco products have a manufacture date of January 11, 2010,
14 which is after the date of MB Tobacco invoices.

15 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
16 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
17 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
18 applicable taxes have been paid. Here, petitioner provided MB Tobacco invoices dated December 19,
19 2009, and January 9, 2010, which list the tobacco products in question. However, the tobacco products
20 in question have a manufacture date of January 11, 2010, which is after the date of the MB Tobacco
21 invoices. Therefore, we conclude that these invoices do not support the seized tobacco products.
22 Petitioner has not presented any additional invoices showing that tax has been paid on the seized
23 tobacco products. Therefore, those products were properly seized and they must be forfeited.
24 Accordingly, we recommend that the petition be denied.

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