

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:)

ENRIQUE AYALA RODRIGUEZ)
dba Casillas Cigars)

Account Number: LR Q ET 91-289277
Case ID 530984

Petitioner)

Sacramento, Sacramento County

Type of Business:

Cigar store

Seizure Date:

February 2, 2010

Approximate Value of Products in Dispute:

\$127,484.00¹

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 Casillas Cigars located at 2020 16th Street, Suite A, Sacramento, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller’s permit SR KH 100-801294, for this location. Petitioner also holds a

¹ Consisting of 19 Casillas Cognac cigars, 97 Cuban Rounds cigars, 572 Torpedo cigars, 1,124 Torpedo cigars, 75 Double Corona Cognac cigars, 385 Robusto Cognac cigars, 52 Double Corona Maduro cigars, 29 25-count bundles of unknown 7 inch cigars, 173 Double Corona Vanilla cigars, 346 Rothchild Maduro cigars, 242 Rothchild cigars, 115 President Maduro cigars, 85 Presidente Cognac cigars, 64 Petitcetro cigars, 120 Corona Long cigars, 68 25-count bundles of Capa Habano 4 ½ inch cigars, 6 25-count bundles of Salomoncito Maduro 4 ½ inchcigars, 29 25-count bundles of Capa Maduro 4 ½ inch cigars, 99 25-count bundles of Churchill Hab. Mad. 7 inch cigars, 85 25-count bundles of Churchill Conerico 7 inch cigars, 33 25-count bundles of Capa Maduro 7 inch cigars, 34 25-count Capa Connecticut 5 ½ inch cigars, 33 25-count bundles Toro Hab. Mad. 6 ½ inch cigars, 33 25-count bundles of Canela Conerico 7 inch cigars, 64 25-count bundles of unknown 6 inch cigars, 8 25-count bundles of Toro Conerico 6 inch cigars, 9 25-count bundles of unknown 7 ½ inch cigars, 46 25-count bundles of Capa Conerico 6 ½ inch cigars, 96 25-count bundles of Capa Connecticut 7 inch cigars, 78 25-count bundles of Capa Habana 7 inch cigars, 61 25-count bundles of Torpedo 6 inch cigars, 34 25-count bundles of unknown

1 cigarette and tobacco products wholesaler license LW Q ET 90-104607 for this location, but does not
2 hold a distributor license.²

3 On February 2, 2010, ID conducted a cigarette and tobacco products inspection of this location.
4 Petitioner was on the premises and authorized the inspection. Petitioner stated that he did not sell
5 cigarettes and sold only tobacco products. When ID requested invoices for petitioner's purchases of
6 tobacco products for the previous twelve months, petitioner provided five purchase invoices issued by
7 licensed distributor Lovo Cigars. ID found that those invoices did not support a majority of
8 petitioner's tobacco products inventory. During the inspection, ID found two boxes containing a large
9 amount of cellophane wrapped, bundled cigars with shipping labels from Miami Tobacco Import &
10 Export, Inc. (Miami Tobacco) addressed to petitioner's store. ID observed that petitioner's storage
11 room had shelves filled with similarly wrapped cigars. Petitioner stated to ID that he purchased
12 tobacco products from Miami Tobacco only once, and provided ID with a Miami Tobacco invoice. ID
13 stated that a portion of petitioner's tobacco products inventory was listed on the Miami Tobacco
14 invoice. Upon further review of the Miami Tobacco invoice, ID found that Miami Tobacco was an
15 unlicensed out-of-state vendor, and that the Miami Tobacco invoice did not comply with the
16 requirements of Business and Professions Code section 22978.4 because it was missing a tax
17 statement. ID asked petitioner whether he had additional invoices and advised him to contact his
18 suppliers so that purchase invoices could be faxed to the store, but he did not do so.

19 ID seized the tobacco products not supported by invoices showing payment of tax, and issued
20 petitioner a Receipt for Property Seized and a Notice to Appear for alleged violations of Business and
21 Professions Code sections 22974, 22974.3, subdivision (b), 22980.2, subdivision (a), and 22978.1, and
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25 7 inch cigars, 40 25-count bundles of Churchill Imperial Naturales cigars, and 36 25-count bundles of Churchill Imperial
26 Claros 6 ½ inch cigars.

27 ² According to the Excise Taxes Division (ETD), petitioner applied for a distributor license, and account numbers LD Q ET
28 90-004622 and CP 50-004129 were created effective September 18, 2006. ETD states that petitioner did not complete the
application process for the distributor license because he advised ETD that he wanted a wholesaler license instead of a
distributor license. Therefore, ETD closed out account numbers LD Q ET 90-004622 and CP 50-004129 as "do not
operate" on May 14, 2010. ETD then issued to petitioner a wholesaler license with account numbers LW Q ET 90-104607
and TW 76-001021, effective June 1, 2010, for this location.

1 Revenue and Taxation Code section 30478. On March 24, 2010, ID served petitioner with a Notice of
2 Seizure and Forfeiture dated March 22, 2010, stating that tobacco products valued at \$147,805.75 were
3 seized and are subject to forfeiture under Business and Professions Code section 22974.3. Due to the
4 quantity of the tobacco products seized, a notice of seizure and forfeiture was posted on the Board's
5 website on March 24, 2010. (Rev. & Tax. Code, § 30437, subd. (b).)

6 Petitioner submitted a verified petition dated April 8, 2010, for release of all of the seized
7 tobacco products, and attached to the petition nine Lovo Cigars invoices. Petitioner stated that he
8 believed the seized tobacco products were tax paid. ID stated that it reviewed five of the nine Lovo
9 Cigars invoices during the inspection, and did not seize any tobacco products listed on those five
10 invoices. Based upon the remaining four Lovo Cigars invoices, ID determined that tax had been paid
11 on a portion of the seized tobacco products, and therefore returned those products, with an approximate
12 retail value of \$20,321.75, to petitioner, leaving products with an approximate retail value of
13 \$127,484.00 (\$147,805.75 - \$20,321.75) in ID's custody and remaining in dispute.

14 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not
15 shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
16 shown that those products were erroneously or illegally seized. ID states that a portion of the seized
17 products³ are listed on the Miami Tobacco invoice provided at the time of the inspection. ID states
18 that those products listed on the Miami Tobacco invoice cannot be returned because Miami Tobacco is
19 an unlicensed out-of-state vendor, and there is no evidence that tax has been paid on the products listed
20 on the Miami Tobacco invoice. ID states that the remaining tobacco products in question also cannot
21 be returned because those tobacco products are not listed on any of the provided invoices. ID states
22 that petitioner was provided Publication 78, "Sales of Cigarettes and Tobacco Products in California,"
23 when the Board issued petitioner's license, which informed petitioner that he must keep certain records
24 (e.g., purchase invoices), that the law prohibits possession of untaxed tobacco products, and that he
25 should only purchase tobacco products from licensed wholesalers or distributors.

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28 ³ Those products include 40 25-count bundles of Churchill Imperial Naturales cigars and 36 25-count boxes of Churchill
Imperial Claros cigars, with an approximate retail value of \$14,250.00.

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

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