

1 boxes from the Silver SUV, which appeared to be boxes of Swisher Sweets cigarillos and handed those
2 boxes to the other man, who took those boxes into the store. ID then entered petitioner's business to
3 conduct the inspection. Petitioner's employee Mr. Dilbagh Singh was on the premises, and contacted
4 partner Mr. Vikram Vohra by telephone, who authorized the inspection. During his conversation with
5 ID, Mr. Vohra stated that he purchases only from licensed vendors O.K. Sales and MTC. Mr. Vohra
6 also stated that some purchase invoices for were located in the store and some invoices for 2009 were
7 located at another store at 902 E. Shields Avenue (hereafter referred to as Shields location).² Mr.
8 Vohra stated that he would come to the store and bring the purchase invoices. During the inspection,
9 ID found that all cigarettes in petitioner's inventory were properly stamped. Mr. Singh provided ID
10 with a box of invoices from O.K. Sales and MTC for the months of January 2010 through August
11 2010. Subsequently, Mr. Vohra arrived at the store with additional purchase invoices. ID asked Mr.
12 Vohra if petitioner transfers cigarettes from its other store locations, and Mr. Vohra responded yes. ID
13 also asked if petitioner transfers tobacco products from other store locations, and Mr. Vohra responded
14 no. ID reviewed the provided invoices and found that those invoices did not support two boxes of 60-
15 count Swisher Sweets Grape cigarillos manufactured in April 2010 and one box of 60-count Swisher
16 Sweets Wine cigarillos also manufactured in April 2010. ID asked where petitioner purchased the
17 Swisher Sweets Grape cigarillos, and Mr. Vohra stated that petitioner purchased those cigarillos from
18 either O.K. Sales or MTC.

19 ID telephoned MTC and asked if petitioner purchased any 60-count boxes of Swisher Sweets
20 Grape cigarillos from April through August 19, 2010. MTC stated that its records show only one
21 purchase of Swisher Sweets Grape cigarillos on January 8, 2010, which is prior to the manufacture
22 date of the Swisher Sweets Grape cigarillos in question. ID also telephoned O.K. Sales and asked if
23 petitioner purchased any 60-count boxes of Swisher Sweets Grape cigarillos from April through
24 August 19, 2010. O.K. Sales stated that petitioner purchased a box of Swisher Sweets Wine cigarillos
25 on May 17, 2010 and another box on July 19, 2010. ID found that the information from O.K. Sales
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28 ² According to Board records, petitioner owns several other store locations including Fast 'N' Ezy #4 located at 902 E. Shields Avenue, Fresno, California, with license LR Q ET 91-269729.

1 and MTC could potentially support the box of Swisher Sweets Wine cigarillos in question, but did not
2 support the two boxes of Swisher Sweets Grape cigarillos.

3 ID informed Mr. Vohra that it observed a man remove three boxes of Swisher Sweets cigarillos
4 from a Silver SUV and hand them to another man, who brought those cigarillos into the store. Mr.
5 Vohra admitted that he owned the SUV, but denied bringing any boxes of Swisher Sweets into the
6 store. ID asked Mr. Vohra who was working at the store, and Mr. Vohra stated that only he and Mr.
7 Singh were at the store. Upon further discussion, Mr. Vohra admitted that earlier he brought two
8 boxes of Swisher Sweets Grape cigarillos and one box of Swisher Sweets Wine cigarillos from
9 petitioner's Shields location. Mr. Vohra stated that petitioner purchased the products from O.K. Sales
10 for the Shields location, but the purchase invoice was located at that store. ID asked Mr. Vohra if he
11 had any transfer documentation, and he responded no.

12 ID asked Mr. Vohra how many boxes of Swisher Sweets Grape cigarillos did he sell in a week
13 at the Shields location, and he stated that he sells one box a week. ID telephoned O.K. Sales to find
14 out how many boxes of Swisher Sweets Grape cigarillos petitioner purchased for the Shields location
15 for the period of April 2010 through August 19, 2010. O.K. Sales stated to ID that petitioner
16 purchased only seven boxes of Swisher Sweets Grape cigarillos during this 20 week period. ID
17 informed Mr. Vohra that according to O.K. Sales petitioner had not purchased enough Swisher Sweets
18 Grape cigarillos to support Mr. Vohra's statement of selling one box a week. ID therefore concluded
19 that it was unlikely that petitioner purchased the tobacco products in question from O.K. Sales.

20 ID seized the tobacco products not supported by invoices showing payment of tax and issued
21 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and
22 Professions Code sections 2294 and 22974.3, subdivision (b). On August 25, 2010, Mr. Vohra
23 provided ID with three O.K. Sales invoices dated May 10, May 14, and May 17, 2010, that list
24 petitioner's other Shields location as the purchaser. ID stated that these three invoices show that
25 petitioner purchased a total of seven 60-count boxes of Swisher Sweets Grape cigarillos and one 60-
26 count box of Swisher Sweets Wine cigarillos. ID stated that according to Mr. Vohra, he sold one box
27 of Swisher Sweets Grape cigarillos a week at the Shields location. As such, over a 20 week period, ID
28 asserts that petitioner would have purchased at least 20 boxes of Swisher Sweets Wine Grape cigarillos

1 for the Shields location. ID also stated that there is no documentary evidence such as transfer records
2 to support petitioner's contention that it transferred tobacco products from the Shields location to Palm
3 Bluffs. Therefore, ID concluded that the three invoices Mr. Vohra provided do not support the tobacco
4 products in question. On September 16, 2010, ID served petitioner with a Notice of Seizure and
5 Forfeiture dated September 13, 2010, stating that tobacco products valued at \$180.00 were seized and
6 are subject to forfeiture under Business and Professions Code section 22974.3.

7 Petitioner submitted a verified petition dated October 6, 2010, for release of all of the seized
8 tobacco products. Petitioner contended that it transferred the tobacco products in question from Fast
9 'N' Esy #4 to Palm Bluffs, and the products are tax paid. Petitioner also attached the previously
10 submitted O.K. Sales invoices dated May 10, 14, and 17, 2010.

11 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not
12 shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
13 shown that those products were erroneously or illegally seized. ID states that the O.K. Sales invoices
14 dated May 10, 14, and 17, 2010, contain the tobacco products in question, but those invoices list
15 petitioner's Shield location as the purchaser. ID states that the provided purchase invoices with sales
16 to petitioner's other store location do not show that tax has been paid on the tobacco products in
17 question because there is no documentary evidence such as transfer records to establish that the
18 tobacco products listed on those invoices were transferred from the Shields location to Palm Bluffs.

19 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
20 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
21 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
22 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
23 which complies with Business and Professions Code section 22978.4 and which shows that applicable
24 taxes have been paid. Here, petitioner has not presented invoices showing that tax has been paid on the
25 seized tobacco products. In addition, we note that even though the May 10, 14, and 17, 2010 invoices
26 billed to petitioner's Shields location may show that the tobacco products listed therein are tax paid,
27 petitioner has not presented any transfer documentation showing that the tobacco products in question
28 came from the Shields location. Therefore, those products were properly seized and they must be

1 forfeited. Accordingly, we recommend that the petition be denied.

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

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