

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

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:)
)
)
SURINDER SINGH,)
dba Stop N Buy)
)
)
Petitioner)

Account Number: LR Q ET 91-288132
Case ID 506263

San Jose, Santa Clara County

Type of Business: Convenience store
Seizure Date: May 27, 2009
Approximate Value of Products in Dispute: \$561.25¹

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. This matter was scheduled for decision on the Board’s December 15, 2009 consent calendar, but was pulled from that calendar by Honorable Bill Leonard. This matter has thus been rescheduled as an adjudicatory item.

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 Stop N Buy located at 1601 Tully Road, San Jose, California. Petitioner holds the cigarette and tobacco products retailer license referenced above and seller’s permit SR GH 100-308618, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On May 27, 2009, ID conducted a cigarette and tobacco products inspection of this location. Petitioner was on the premises and authorized the inspection. ID found that all cigarettes were

¹ Consisting 125 pouches of Top roll-your-own (RYO) tobacco.

properly stamped. ID reviewed the purchase invoices petitioner provided and found that they did not support all of the Top and Midnight Special tobacco products manufactured in January 2009 in petitioner's inventory. Petitioner provided ID with two additional invoices issued by licensed vendor Pitco, both dated March 12, 2009. One invoice listed Stop N Buy as the purchaser and ID accepted the products listed on that invoice as tax paid. The other invoice, however, listed Mi Rancho Market as the purchaser. Petitioner explained that his sister owns Mi Rancho Market and that he purchased the Midnight Special tobacco for her, but she told him that he purchased too much, so he ended up keeping some of the Midnight Special tobacco at his store. ID did not, at that time, accept this invoice as supporting any other tobacco products in petitioner's inventory as tax paid.

ID seized the tobacco products not supported by invoices showing payment on tax, and issued petitioner a Receipt for Property Seized and Civil Citation 5626 for alleged violations of Business and Professions Code sections 22974 and 22974.3, subdivision (b). Subsequently, ID served petitioner with a Notice of Seizure and Forfeiture dated June 17, 2009, which states that tobacco products valued at \$973.09 were seized and are subject to forfeiture under Business and Professions Code section 22974.3.

Petitioner submitted a verified petition dated July 11, 2009, for release of all of the seized tobacco products, and attached to the petition his Pitco card for Mi Rancho Market and two Pitco invoices to prove that tax was paid on the tobacco products. Petitioner provided an explanation of how the Pitco cashier mistakenly scanned the 12 boxes (96 pouches) of Midnight Special tobacco intended for Stop N Buy onto the Mi Rancho Market invoice. Based on those invoices, ID determined that tax had been paid on the 96 pouches of Midnight Special tobacco, and therefore returned those products, with an approximate retail value of \$411.84, to petitioner, leaving only the 125 pouches of Top roll-your-own (RYO) tobacco with an approximate retail value of \$561.25 ($\$973.09 - \411.84) in ID's custody and remaining in dispute.

In its Reply to Petition, ID asserts that the petition should be denied and the tobacco products remaining in custody should be forfeited because the invoices provided do not show that tax has been paid on the Top RYO tobacco that remain in custody, and therefore petitioner has not shown that those products were erroneously or illegally seized. ID states that during the inspection 10 twelve-pouch

boxes of Top RYO tobacco were found in a case and five pouches were found behind the counter. ID states that all of the seized Top RYO tobacco has a manufacture date that corresponds to the date of manufacture on the case, so ID believes that petitioner purchased those products by the case. ID states, however, that the provided purchase invoices do not show the purchase of a case of Top RYO tobacco, but instead list individual boxes.

Business and Professions Code section 22974.3, subdivision (b), provides that, where a 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 that person bears the burden of proving that the applicable taxes have been paid. Here, petitioner has not presented invoices showing that tax has been paid on the tobacco products remaining in custody. Therefore, those products were properly seized and they must be forfeited. Accordingly, we recommend that the petition be denied with respect to the tobacco products remaining in custody.

Summary prepared by Cindy Chiu, Tax Counsel