

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:)
)
MAIRAJ ALI,) Account Number: LW Q ET 90-104007
dba AM Complete Wholesale) Case ID 562696
)
Petitioner) Los Angeles, Los Angeles County

Type of Business: Tobacco wholesaler
Seizure Date: August 20, 2009
Approximate Value of Products in Dispute: \$328,508¹

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 and Special Operations Division (ISOD), and related documents. This matter was first scheduled for decision on the Board's August 23, 2011 nonappearance calendar, but petitioner requested an oral hearing. This matter was then scheduled for Board hearing on February 1, 2012, but petitioner requested a postponement because petitioner's representative needed additional time to prepare for the Board hearing.

UNRESOLVED ISSUE

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22978.2, subdivision (b). We conclude that the tobacco products should be forfeited.

¹ Consisting of 19,600 five-packs of Swisher Sweets cigars, 1,960 60-count boxes of Swisher Sweets cigars, 5,200 five-packs of Optimo cigars, 432 60-count boxes of Optimo cigars, 960 five-packs of Jewels cigars 2,200 five-packs of Phillies cigars 20 55-count boxes of Phillies cigars, 1,200 five-packs of Blackstone cigars, 120 25-count boxes of Blackstone cigars, 962 five-packs of Black & Mild cigars, 1,260 25-count boxes of Black & Mild cigars, 90 50-count boxes of Black & Mild cigars, 190 60-count boxes of Black & Mild cigars, 2,400 five-packs of King Edwards cigars, 2,400 eight-packs of Backwoods cigars, 1,000 seven-packs of Erik cigars, 48 50-count boxes of Garcia y Vega cigars, 36 20-count boxes of Garcia y Vega cigars, 2,448 pouches of Top roll-your-own (RYO) tobacco, 288 pouches of Kite RYO tobacco, 360 five-packs of Dutch Masters cigars, 2,016 American Spirit RYO tobacco, 24 tins of American Spirit RYO tobacco, 1,008 pouches of Bugler RYO tobacco, 36 cans of Bugler RYO tobacco, 108 cans of Top RYO tobacco, 48 cans of Drum RYO tobacco, 576 pouches of Drum RYO tobacco 144 cans of Bali RYO tobacco, 200 pouches of Bali RYO tobacco, 10 boxes of Days Work Chew, 48 cans of Zig Zag RYO tobacco, 288 pouches of Beech Hut chewing tobacco, 432 pouches of Levi

1 Petitioner, a sole proprietor, owned and operated AM Complete Wholesale located at 308 E.
2 3rd Street, Los Angeles, California. Petitioner held the cigarette and tobacco products wholesaler
3 license referenced above, and held seller's permit SR AA 101-017888, for this location.² Petitioner
4 did not hold a cigarette and tobacco products retailer or distributor license for this location.

5 On August 20, 2009, ISOD conducted a cigarette and tobacco products inspection of an
6 unlicensed second floor storage area located at 338 E. 3rd Street, Los Angeles, California. ISOD
7 selected this location for inspection because it had received information from the landlord indicating
8 that petitioner leased this location. Upon arrival, ISOD telephoned petitioner, who stated that he would
9 come to the building. Shortly thereafter, petitioner arrived and authorized the inspection. ISOD found
10 a large volume of tobacco products stored on the premises, which petitioner stated he had purchased
11 about two or three months previously. Petitioner stated that he leased the storage area when he made
12 this purchase of products because he did not have sufficient space to store the products at his store.

13 Petitioner was unable to produce purchase invoices to support any of his tobacco products
14 inventory at the inspected location. According to ISOD, petitioner indicated that he purchased the
15 tobacco products in his inventory from Buy-Rite Wholesale (Buy-Rite), with cash, without invoices, in
16 bulk, and at reduced prices. Upon further questioning, petitioner admitted that the reduced prices for
17 the tobacco products were due to the fact that the prices did not include excise tax. ISOD states that it
18 reviewed Board records and did not find Buy-Rite to be a licensed distributor or wholesaler. In
19 addition, ISOD states that during the inspection, it found a box containing tobacco products with a
20 shipping label addressed to "Ali," which originated in Las Vegas. Petitioner denied that he was the
21 "Ali" listed on the shipping label, and stated that all tobacco products stored at that location he
22 purchased locally from Buy-Rite.

23 ISOD seized all of the tobacco products, and issued petitioner a Receipt for Property Seized
24 and a Notice to Appear for alleged violations of Business and Professions Code sections 22978.1 and
25

26 Garrett chewing tobacco, 144 pouches of Redman chewing tobacco, 800 six-packs of Swisher Sweets cigars, 120 25-count
27 boxes of Garcia y Vega cigars, and 144 cans of W.E. Garrett and Sons chewing tobacco.

28 ² According to Board records, petitioner closed out its wholesaler license and seller's permit for this location effective
September 30, 2009. Subsequently, petitioner incorporated his business and effective October 1, 2009, the Board issued
seller's permit SR AA 101-293489 and wholesaler license LW Q ET 90-104444 to that business, AM Complete Wholesale,
LLC located at 417 E. 4th Street, Los Angeles, CA.

1 22978.2, subdivision (b). On December 15, 2010, ISOD served petitioner with a Notice of Seizure and
2 Forfeiture dated December 13, 2010, stating that tobacco products valued at \$328,508.00 were seized
3 and are subject to forfeiture under Business and Professions Code section 22978.2. Due to the quantity
4 of the tobacco products seized, a notice of seizure and forfeiture was posted on the Board's website on
5 November 16, 2009. (Rev. & Tax. Code, § 30437, subd. (b).)

6 Petitioner submitted a verified petition dated January 11, 2011, for release of all of the seized
7 products, and attached a large volume of purchase invoices issued in 2008 and 2009 by licensed
8 vendors Courtesy Wholesale, LA Price King, LMS International, Sanoor, Inc., Dhanraj Imports, Inc.,
9 Specialty Tobacco Inc., Mox, Inc., Pay-Less Wholesale, LA International, Kassir Co. Inc., JM
10 Tobacco, Inc., Fantasia Distribution, Inc., Bayside Distributing, Lignum 2, Inc., Yogi Wholesale Inc.,
11 Express Distribution, OM Wholesale, GL Trading, House of Tobacco, Express Distribution, Zoidian
12 Cigars, and Convenient Store, which indicate payment of tax on the tobacco products included
13 therein.³ Petitioner asserted that he does not purchase untaxed tobacco products. Petitioner states that
14 he did not purchase tobacco products from Buy-Rite, but was confused at the time of the inspection
15 and possibly misspoke. Petitioner states that he purchased tobacco products from licensed vendors as
16 evidenced by the invoices submitted with his petition. Petitioner also denies purchasing tobacco
17 products from out-of-state vendors. On March 11, 2011, petitioner submitted additional invoices from
18 Courtesy Wholesale, LA Price King, Convenient Store, Sanoor, Inc., LMS International, Pay-Less
19 Wholesale which ISOD reviewed in addition to the invoices provided with the petition.

20 ISOD states that all of the seized products were manufactured in 2009, meaning that none of
21 the seized products could be covered by the invoices issued in 2008. Furthermore, ISOD states that the
22 bulk of the invoices provided do not cover seized products at all, and that only a few invoices cover
23 products of the type in custody. Of those, ISOD states that invoices issued by LA Price King dated
24 June 2, 4, 18 and July 22, 2009, contain tobacco products of the type in custody that were all

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26 ³ Revenue and Taxation Code section 30438 provides that a petition for release of seized products must be filed within 20
27 days from the date of the Notice of Seizure and Forfeiture. Here, ISOD mailed the Notice of Seizure and Forfeiture on
28 December 15, 2010, and the petition was filed more than 20 days later (the date of the petition, January 11, 2011, is 27 days
after the date the notice was mailed). ISOD accepted the petition because petitioner claimed that he did not receive the
Notice of Seizure and Forfeiture, and ISOD could not definitively determine that the notice was properly mailed to
petitioner.

1 manufactured after the dates of the invoices. With respect to the few other products in custody that are
2 of the same type included on invoices dated February 13, 2009, issued by Courtesy Wholesale, and
3 March 23, 2009, issued by LMS International,⁴ ISOD asserts that those invoices do not support release
4 of any products based on petitioner's admission at the time of the inspection that he purchased all the
5 tobacco products from Buy-Rite without invoices and without payment of tax. As such, ISOD believes
6 that the only acceptable invoice would have to come from Buy-Rite. ISOD argues further that the box
7 originating from Las Vegas, which ISOD found during the inspection, indicates that petitioner
8 acquired tobacco products from out-of-state sources, without payment of tax. In sum, ISOD asserts
9 that the petition should be denied because petitioner has not shown that tax has been paid on the
10 tobacco products in question, and therefore petitioner has not shown that those products were
11 erroneously or illegally seized.

12 Business and Professions Code section 22978.2, subdivision (b), provides that, where a
13 wholesaler owns tobacco products for which tax is due but such tax has not been paid, the untaxed
14 tobacco products are subject to seizure and forfeiture and that wholesaler bears the burden of proving
15 that the applicable taxes have been paid to the Board either by proof of such payment, or by a purchase
16 invoice which complies with Business and Professions Code section 22978.4 and which shows that
17 applicable taxes have been paid. Petitioner has not presented invoices that even arguably cover the
18 substantial portion of the seized tobacco products, either because the invoices were issued before the
19 products in custody were even manufactured, or the invoices simply do not itemize products of the
20 type in custody. The only product that is even arguably covered by the invoices submitted by
21 petitioner consists of two cases of Optimo Peach boxes and 15 cases of Swisher Sweets grape
22 (Courtesy Wholesale) and one case of Bali Shag pouches and two cases of Phillies Blunts (LMS
23 International), with an estimated value of \$27,330.00. Petitioner already admitted that all of the
24 product held at the location inspected by ISOD was purchased at reduced prices because the product
25 was not tax paid. We do not accept petitioner's later retraction of that admission. We also agree with

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27 ⁴ ISOD states that the Courtesy Wholesale invoice includes two cases of Optimo Peach boxes and 15 cases of Swisher
28 Sweets grape, and the LMS International invoice includes one case of Bali Shag pouches and two cases of Phillies Blunts,
which are similar to products in custody.

1 ISOD that the box with tobacco products that had been shipped to “Ali” from outside California,
2 without any supporting invoice showing that tax had been paid, is further evidence that petitioner was
3 purchasing product for which the proper tax has not been paid. We conclude that the tobacco products
4 in custody were properly seized and they must be forfeited. Accordingly, we recommend that the
5 petition be denied.

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