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STATE OF CALIFORNIA
OFFICE OF TAX APPEALS
400 R STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT
JANUARY 23, 2018

PETITION FOR RELEASE OF SEIZED PROPERTY HEARING
NATOMAS WINE AND SPIRITS, INC.
NO. 1033891

Reported by: Kathleen Skidgel
CSR No. 9039

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P R E S E N T

Panel Lead: Jeffrey Margolis
Acting Presiding
Administrative Law Judge

Panel Members: Alberto Rosas
Administrative Law Judge

Grant Thompson
Administrative Law Judge

Office of Tax
Appeals Staff: Claudia Lopez
Staff Services Manager II

Dana Holmes
Ombudsperson

Appearing for Taxpayer: Jas Hundal
Representative

Appearing for Department
of Tax and Fee
Administration: Pam Bergin
Tax Counsel

Stephen Smith
Tax Counsel

Jay Keffelew
Representative

---oOo---

1 400 R STREET, HEARING ROOM

2 SACRAMENTO, CALIFORNIA

3 JANUARY 23, 2018

4 ---oOo---

5 JUDGE MARGOLIS: We are on the record today
6 in the matter of the petition for release of
7 recovered property under Revenue and Taxation Code
8 30438, submitted by Natomas Wine and Spirits.

9 This is appeals case ID number 1033891.
10 The date is January 23rd, 2018. The time is 9:20
11 a.m., and this hearing is being held in Sacramento,
12 California at 400 R Street, before Judges Jeffrey
13 Margolis, Grant Thompson and Alberto Rosas at the
14 Office of Tax Appeals.

15 Will the parties please identify themselves
16 for the record? Petitioner first.

17 MR. HUNDAL: Jasmeet Hundal, Natomas Wine
18 and Spirits.

19 JUDGE MARGOLIS: Okay. Could you move the
20 microphone closer to you or maybe move your seat
21 over so our court reporter can hear better. Thanks.

22 MR. HUNDAL: Jasmeet Hundal, from Natomas
23 Wine and Spirits.

24 JUDGE MARGOLIS: Okay, thank you.
25 For respondent?

26 MS. BERGIN: Pamela Bergin from the
27 California Department of Tax and Fee Administration,
28 and with Steve Smith and Jay Keffelew.

1 JUDGE MARGOLIS: Okay, thank you very much.

2 Before we get to opening statements, we'd
3 like to go over the exhibits, to which there's
4 primarily no objection. We've identified for the
5 record the following exhibits:

6 Exhibit 1 is the verified petition for
7 release or recovery of property dated August 11th,
8 2017. Attached to it is a picture of a box of
9 tobacco product, a receipt for seized product and
10 the envelope postmarked.

11 Is there any objection to Exhibit 1 being
12 moved into evidence?

13 MS. BERGIN: No objection.

14 JUDGE MARGOLIS: Okay, it'll come into
15 evidence.

16 We have Exhibit 2, which was submitted
17 today, which appears to be a printout of sales from
18 Pitco warehouse to Natomas Wine and Spirits. The
19 document is seven pages long.

20 Is there any objection to this being
21 admitted into evidence?

22 MS. BERGIN: No objection.

23 JUDGE MARGOLIS: And we have exhibits --
24 Exhibit A, Respondent's Exhibit A, which is also
25 receipts for seized property.

26 Is there any objection to that being
27 admitted into evidence?

28 MS. BERGIN: No objection.

1 JUDGE MARGOLIS: Exhibit B is a civil
2 citation issued to Mr. Hundal.

3 Is there any objection to that being
4 admitted into evidence?

5 MS. BERGIN: No objection.

6 JUDGE MARGOLIS: Okay. Mr. Hundal, there's
7 no objection from you either, correct?

8 MR. HUNDAL: No, sir.

9 JUDGE MARGOLIS: Okay. Exhibit C is a
10 letter entitled Notice of Seizure and Forfeiture,
11 dated June 28th, 2017.

12 Is there any objection to that?

13 MR. HUNDAL: No, sir.

14 JUDGE MARGOLIS: No objection. That will
15 be moved into evidence.

16 Exhibit D is three pages of a verified
17 petition and a photograph submitted by petitioner.

18 Is there any objection to that going into
19 evidence, Mr. Hundal?

20 MR. HUNDAL: No, sir.

21 JUDGE MARGOLIS: Now, Exhibit E, that's a
22 Board of Equalization Publication 78 from February
23 2006 entitled Sales of Cigarettes and Tobacco
24 Products in California.

25 Before that -- there's no dispute that
26 that's an authentic document. I just want to make
27 sure, why are you claiming that is relevant here?
28 Or you don't care if it goes in or not; is that

1 correct?

2 MS. BERGIN: It doesn't matter to me if it
3 goes in or not. I will just say this is something
4 that's provided to taxpayers when they apply for
5 seller's permits and a cigarette and tobacco license
6 with us. And so I assume it was in the file because
7 it was provided to the taxpayer and that's why it's
8 in the file, to show that he had notice of what the
9 cigarette and tobacco laws are.

10 JUDGE MARGOLIS: Okay. Mr. Hundal, did you
11 receive this when you applied for your license; do
12 you recall receiving this when you applied for your
13 license?

14 MR. HUNDAL: To be honest, I don't remember
15 that. Maybe yes, but I don't know.

16 JUDGE MARGOLIS: Well, if you don't recall
17 and you don't care if it goes in or not, we'll just
18 keep it out of the record then, it won't be
19 admitted.

20 MS. BERGIN: That's fine.

21 JUDGE MARGOLIS: Okay. And we stipulated
22 off the record that the issue to be decided today is
23 whether or not the seized tobacco products, whether
24 the California tobacco taxes were paid on those
25 products; is that correct?

26 MR. HUNDAL: (Inaudible response.)

27 JUDGE MARGOLIS: That's a yes? I'm
28 seeing --

1 MR. HUNDAL: One more time, please.

2 JUDGE MARGOLIS: The issue that we're
3 deciding today is whether or not the tobacco
4 products that were seized from you, whether or not
5 tobacco taxes had been paid to them.

6 MR. HUNDAL: That's right, yes.

7 JUDGE MARGOLIS: Okay, thank you.

8 Mr. Hundal, our court reporter can only
9 record verbal responses, not nods of the head. So
10 if you can try to respond audibly, that will help
11 her out a lot.

12 MR. HUNDAL: Sure.

13 JUDGE MARGOLIS: Okay. With that, I guess,
14 let's proceed.

15 Mr. Hundal, if you could, as we discussed
16 off the record we're going to -- you know, you're
17 allowed to make opening statements. But to make
18 this proceeding run more smoothly, we're going to
19 swear you in first so you won't have to repeat
20 yourself by testifying and then making a separate
21 opening statement. You can make your opening
22 statement as part of your testimony.

23 So if you could stand and raise your right
24 hand, please.

25 Do you solemnly swear that the testimony
26 you're about to give is the truth, the whole truth
27 and nothing but the truth?

28 MR. HUNDAL: Yes, sir.

1 JUDGE MARGOLIS: Thank you. You may be
2 seated.

3 So Mr. Hundal, this is your opportunity to
4 tell your side of the story and explain why you
5 think that you paid taxes for this tobacco product
6 and the CDTFA seizure of your tobacco products was
7 wrong.

8 MR. HUNDAL: So on June 27th we got this
9 product from the Pitco store. And as I declared in
10 my original clarification that everything was bought
11 from Pitco inside the store. There was no
12 transaction done outside. And all the product has
13 been taxed and paid.

14 JUDGE MARGOLIS: Okay. And can you explain
15 the -- what the invoice that you submitted, Exhibit
16 2 is for the record?

17 MR. HUNDAL: This is a printout from Pitco
18 for the 12 boxes of Dutch Honey Fusion.

19 JUDGE MARGOLIS: And --

20 MR. HUNDAL: This was a ticket, I think,
21 they didn't have that time.

22 JUDGE MARGOLIS: Okay. Are these the 12
23 boxes that you believe were seized from your
24 property, from Natomas Wine and Spirits?

25 MR. HUNDAL: Yes, sir.

26 JUDGE MARGOLIS: Is there anything else you
27 want to add or anything else you want to say here?

28 MR. HUNDAL: No, sir. Just, we respect the

1 laws, we go according to the laws. But this is,
2 sometimes it happens, like, um -- but we still
3 respect the law and whatever. We respect the Board
4 of Equalization also.

5 So this is what I have to say. We -- I did
6 not buy anything outside of Pitco.

7 JUDGE MARGOLIS: Okay. I have a few
8 questions for you. Is this the first time that you
9 were audited by the Board of Equalization and had
10 people come to your premises?

11 MR. HUNDAL: Sir, this is the first time.
12 And just like about three weeks ago the management
13 was seen over there, around three weeks ago. And we
14 were -- we were added in the corporation as new
15 management on June 3rd. But since corporation, we
16 were added as new management, management.

17 JUDGE MARGOLIS: Okay.

18 MR. HUNDAL: We were new, we knew some of
19 the laws. But yes, we know everything now, what we
20 are supposed to do, what we are not supposed to do.

21 I say like, whatever happened is like, it
22 was innocent incident, whatever happened, because we
23 were totally new, we didn't know about it.

24 JUDGE MARGOLIS: Okay. I have some more
25 questions but, Ms. Bergin, you're entitled to
26 cross-examine Mr. Hundal if you have any
27 questions.

28 MS. BERGIN: Would you like me to make an

1 opening statement?

2 JUDGE MARGOLIS: No. I just want to give
3 you the opportunity to ask questions of him now, and
4 then I'll permit you to make your opening statement
5 and present your testimony.

6 MS. BERGIN: Sure. Maybe just a couple of
7 questions.

8 JUDGE MARGOLIS: Go ahead.

9 MS. BERGIN: Mr. Hundal, did you have a
10 partnership at this same location prior to this
11 corporation?

12 MR. HUNDAL: No. We got this partnership
13 on June 3rd. We are totally fresh.

14 MS. BERGIN: Prior to this business, you
15 didn't have a partnership in another cigarette and
16 tobacco business?

17 MR. HUNDAL: No, ma'am. Never. I have a
18 trucking company. I don't have any tobacco or other
19 company.

20 MS. BERGIN: Would it surprise you that our
21 records indicate that you did and that you were
22 audited and that you actually had a very clean
23 record?

24 MR. HUNDAL: I'm sorry?

25 MS. BERGIN: You had a clean record with us
26 as a cigarette and tobacco license holder previously
27 as another partnership. You were investigated --
28 you were inspected and had a clean record. It's

1 good. It's good.

2 MR. HUNDAL: I thought they were saying
3 like I had another company or something. But I
4 don't own any liquor store or any tobacco store.

5 MS. BERGIN: Okay. When you purchased the
6 boxes of Dutch Master cigars from Pitco, did you
7 purchase one box or two boxes?

8 MR. HUNDAL: Ma'am, I don't remember
9 that.

10 MS. BERGIN: Our --
11 That's all I have.

12 JUDGE MARGOLIS: Okay. So you've never had
13 your property inspected by the Board of Equalization
14 before for cigarette taxes; is that correct?

15 MR. HUNDAL: No. Yes, it was correct.

16 JUDGE MARGOLIS: Okay. And how long were
17 you in business at this location?

18 MR. HUNDAL: This is a old location, old
19 business, been there for a long time. But on June
20 3rd we were the new partners in there. So we are
21 the active partners in there.

22 JUDGE MARGOLIS: Okay. And do my fellow
23 judges have any questions?

24 JUDGE THOMPSON: I don't have any
25 questions.

26 JUDGE MARGOLIS: Okay. Let's go to the
27 page of Exhibit 2, I think it's the next to the last
28 page, that talks about the Dutch Honey Fusion

1 cigarettes. I believe those are the cigarettes that
2 were seized; is that correct?

3 MS. BERGIN: That is correct.

4 JUDGE MARGOLIS: Okay. So is it your
5 testimony that -- Mr. Hundal, that these are the
6 cigarettes that were seized from you, the ones
7 reflected on the next to last page of Exhibit 2?

8 MR. HUNDAL: So this is the boxes probably
9 which was seized, Honey Dutch Fusion.

10 JUDGE MARGOLIS: Okay. And it was a
11 little -- your photograph was a little bit hard to
12 read that was attached to your verified petition.
13 If we need a more clearer copy of that, would that
14 be possible to get that?

15 MR. HUNDAL: Sir, I'm not sure I have the
16 picture, but there's one clear copy in there.
17 There's two pictures.

18 JUDGE MARGOLIS: Would you have a clearer
19 copy?

20 MS. BERGIN: I have a pretty clear copy if
21 you would like to look at it.

22 JUDGE MARGOLIS: Yes, I would. You may
23 approach the bench.

24 This is a little bit better.

25 MS. BERGIN: It's really small print on the
26 label.

27 JUDGE MARGOLIS: Okay. Well, if you have
28 nothing further, Mr. Hundal, I'll turn it to the

1 CDTFA to make an opening statement and present any
2 evidence.

3 Go ahead.

4 MS. BERGIN: Thank you. I just want to,
5 for the record, lay the law out briefly.

6 The law is pretty clear that the untaxed
7 cigarettes and tobacco products are always subject
8 to search and seizure. The Cigarette and Tobacco
9 Products Licensing Tax Law requires that the CDTFA
10 seize tobacco products in which tax is due but
11 hasn't been paid. And it's presumed under the
12 licensing act that tax hasn't been paid unless the
13 retailer possessing the products can provide a
14 purchase invoice showing that he purchased
15 tax-included product from the licensed distributor
16 or wholesaler. And the retailer bears the burden of
17 proving the tax has been paid. And generally, as I
18 said, that's by an invoice.

19 In this case Mr. Hundal hasn't provided an
20 invoice that shows that tax has been paid on the
21 cigars at issue. What we have today, Exhibit B, is
22 a printout which looks like maybe a sales receipt or
23 something from Pitco, which is a licensed
24 distributor and wholesaler in California. And what
25 it shows is 12 boxes of Dutch Masters cigars.

26 During the inspection back in June we found
27 two cases and each case has 12 boxes of Dutch
28 Masters. And so one of the cases was supported, and

1 it would be again supported by this same printout;
2 and there was an actual invoice for it that we
3 accepted. But the other case of Dutch Masters
4 cigars was not supported by invoices.

5 And at the time when the inspectors
6 questioned Mr. Hundal, he stated that he had
7 purchased the extra box from another customer in the
8 store, not from Pitco itself, because apparently
9 Pitco has some sort of a limit on how many boxes
10 retailers can purchase at one time. So he made an
11 arrangement with another customer to purchase a box
12 of cigars -- case of cigars, excuse me, in the
13 parking lot, which he did. And he didn't receive an
14 invoice from it, from the other customer.

15 We offered him an opportunity, or staff at
16 the time offered him an opportunity to call his
17 corporate office to look for the invoices if there
18 were any. He said that there weren't invoices, that
19 he didn't know the customer to try to get another
20 invoice from him.

21 So as far as we're concerned there is no
22 invoice that supports this box, this case. And
23 unfortunately, this didn't show anything other than
24 12 boxes were purchased on that date, which we've
25 already accepted that they were.

26 In the absence of a purchase invoice in
27 this case, it's our position that these cigars can't
28 be returned.

1 Thank you.

2 JUDGE MARGOLIS: Okay. Now that you're
3 done with your opening statement, would you like to
4 introduce any evidence to support your contentions?

5 MS. BERGIN: I can -- I'm happy to show our
6 investigative report that was initially done by our
7 inspectors. I don't know if that's something that
8 you've seen or -- I don't know --

9 JUDGE MARGOLIS: Do you have a sufficient
10 number of copies of those documents here today?

11 MS. BERGIN: I don't.

12 JUDGE MARGOLIS: Okay. Do you have any
13 testimony to give to support your allegations?

14 MS. BERGIN: I don't have the inspector
15 here who did the inspection.

16 JUDGE MARGOLIS: Okay. Well, why don't we
17 go off the record and make copies of the documents
18 you do have today.

19 MS. BERGIN: Sure.

20 JUDGE MARGOLIS: So we'll take a 10-minute
21 recess. And then we'll take a look at those and
22 we'll give Mr. Hundal a chance to respond to the
23 documents and to her allegations.

24 Thank you. We're in recess.

25 (Whereupon a break was taken from 9:35 a.m.
26 until 9:51 a.m.)

27 JUDGE MARGOLIS: We are back on the record
28 in the matter of Natomas Wine and Spirits.

1 I believe that the investigative report,
2 which we will mark as exhibit next in order --
3 that's F, Exhibit F -- has been circulated.

4 Mr. Hundal, have you had a chance to read
5 it?

6 MR. HUNDAL: Yes, sir, I've gone through
7 it. Not read all of the stuff, but --

8 JUDGE MARGOLIS: Well, I think you should
9 take a minute and read everything, yeah.

10 You should read everything because I want
11 to ask you whether you object to admitting this
12 document.

13 I assume that the witness who made this
14 document is not here, correct?

15 MS. BERGIN: That's correct, he's not
16 here.

17 MR. HUNDAL: Can I request you, before we
18 go this?

19 JUDGE MARGOLIS: Yes.

20 MR. HUNDAL: I was under the impression
21 that I'm here for the citation to defend myself on
22 the citation part. But I was not aware that I'm
23 here to get the seized product back. I don't want
24 the seized product back.

25 So it's -- I think there was a confusion
26 because I was not clear on that.

27 JUDGE MARGOLIS: Okay.

28 MR. HUNDAL: I don't want the seized

1 product back.

2 JUDGE MARGOLIS: Okay. Are you sure of
3 that, Mr. Hundal?

4 MR. HUNDAL: Yes, sir.

5 JUDGE MARGOLIS: Okay. Ms. Bergin, you'll
6 be dealing with the civil citation separate from
7 that?

8 MS. BERGIN: The department deals with
9 that, it's not the legal office. It's the excise
10 department, special taxes department at CDTFA. It's
11 a phone conference.

12 But I've explained to Mr. Hundal what that
13 process looks like. And it's my understanding that
14 he was unaware of what was going to happen today.
15 So he was worried about his record, the citation
16 record on his license, not the product.

17 JUDGE MARGOLIS: Well, won't the outcome of
18 this case affect how the citation is resolved?

19 MS. BERGIN: Not necessarily.

20 JUDGE MARGOLIS: Not necessarily, but it
21 may?

22 MS. BERGIN: So, as I've explained to Mr.
23 Hundal, for a first-time offense in a citation
24 hearing I don't know -- I can't say exactly what the
25 outcome would be. But with his situation, if he
26 explains his side of the story, it would be a minor
27 infraction, if at all.

28 But they don't -- the citation officer

1 doesn't look to whether -- not necessarily whether
2 the product was returned or not because it's really
3 about the citation of not having an invoice at the
4 store, which I don't think there's a dispute that he
5 did not have an invoice at the store. That's the
6 citation.

7 Another citation is making a purchase from
8 an unauthorized person. Mr. Hundal may or may not
9 dispute that at that hearing. I think he was trying
10 to dispute it here earlier. But just because he
11 waives his right here or if this proceeding went
12 forward and he ultimately lost in this proceeding,
13 that would not necessarily have a negative impact on
14 his citation.

15 JUDGE MARGOLIS: Did he also receive a
16 citation for selling untaxed cigarettes or was it
17 purchasing from someone who was not licensed?

18 MS. BERGIN: It was three --

19 JUDGE MARGOLIS: Three different citations?

20 MS. BERGIN: -- violations. One citation,
21 three violations: One was untaxed cigarettes; one
22 was not having any purchase invoices onsite; and one
23 was making a purchase from an unauthorized person.

24 JUDGE MARGOLIS: Okay, let's -- we're going
25 to confer amongst ourselves for a second. Excuse us
26 for a minute.

27 (Discussion held off the record.)

28 JUDGE MARGOLIS: Mr. Hundal, if it's your

1 decision to withdraw your appeal for a return of
2 your cigarette products, you're permitted to do
3 that. Is that what you'd like to do?

4 MR. HUNDAL: Yes, sir.

5 JUDGE MARGOLIS: The appeal is withdrawn
6 and this hearing is adjourned. Thank you very
7 much.

8 (Whereupon the proceedings concluded at
9 9:56 a.m.)

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, Kathleen Skidgel, Hearing Reporter for the California State Office of Tax Appeals certify that on January 23, 2018 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 19 constitute a complete and accurate transcription of the shorthand writing.

Dated: February 21, 2018

KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter