

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 20096667
Y. ALQADRI,)	CDTFA Case ID 562-838
dba 831 Smoke Shop and Vape #3¹)	
)	
)	

OPINION

Representing the Parties:

For Appellant:	Y. Alqadri
For Respondent:	Sunny Paley, Tax Counsel III
For Office of Tax Appeals:	Steven Kim, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 30438, Y. Alqadri (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying in part appellant’s petition for release of seized property (petition) dated October 19, 2019.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established that CDTFA erroneously or illegally seized tobacco products and that those products should be returned to appellant.

FACTUAL FINDINGS

1. Appellant, a sole proprietor, operates a smoke shop doing business as 831 Smoke Shop and Vape #3 located in Santa Cruz, California. Appellant has a valid California seller’s permit and a valid cigarette and tobacco products retailer’s license.

¹ CDTFA incorrectly identified appellant’s business name as 831 Smoke Shop and Vape #2 in its Appeals’ Bureau decision.

2. On September 26, 2019, CDTFA conducted a cigarette and tobacco retailer license inspection of appellant's business. Appellant provided purchase invoices to CDTFA for review, but CDTFA could not reconcile some of appellant's other tobacco products inventory with the invoices provided. CDTFA seized the unsupported products and issued appellant a civil citation for violations of Business and Professions Code (B&PC), section 22974 for failure to retain and provide one year of purchase invoices, and section 22974.3(b) for possession of untaxed tobacco products.
3. CDTFA served appellant with a Notice of Seizure and Forfeiture dated October 15, 2019, stating that CDTFA had seized products valued at \$1,073.37, and that the seized products were subject to forfeiture under Revenue and Taxation Code (R&TC) section 22974.3(b).
4. On October 19, 2019, appellant filed the petition, arguing that he provided sufficient supporting documentation for the seized products.
5. On August 10, 2020, CDTFA issued a decision granting the petition in part and denying the petition in part. Specifically, the decision states that the following will be returned to appellant: 43 Black & Mild Cigars; 12 boxes of Coastal Clouds Premium E-liquid vapor, 60ml; 5 boxes of Coastal Clouds Premium Salt Nicotine; 9 boxes of VGOD Premium Salt Nicotine; and 2 boxes of Twist E-liquid, 3%, 60 ml×2.
6. Appellant filed this timely appeal.
7. On June 29, 2021, the Office of Tax Appeals (OTA) requested additional briefing from both parties.
8. On September 7, 2021, CDTFA conceded that an additional 12 boxes of Coastal Clouds Premium E-liquid Vapor (60 ml) should be returned to appellant including: 3 boxes of Guava Punch, 3%; 3 boxes of Guava Punch, 6%; 3 boxes of Mango Berries, 3%; and 3 boxes of Mango Berries, 6%. Otherwise, CDTFA found that appellant had not provided supporting documentation for the following products: (1) 46 pouches of Swisher Sweets Cigarillos;² (2) 3 boxes of Coastal Clouds Premium E-liquid Vapor,

² The 46 pouches consist of the following flavors: 19 Arctic Ice, 12 Sweet Cream, and 15 Summer Twist.

60ml;³ (3) 4 boxes of Twist E-liquid, 3%, 60 ml x 2;⁴ and (4) 2 bottles of Twist E-liquid, 6%, 60 ml.⁵

9. On September 28, 2021, appellant submitted additional documentation, including a purchase report showing various purchases in 2018 and 2019.

DISCUSSION

A retailer of cigarettes and tobacco products must retain, at the business location, purchase invoices for the past 12 months that meet the requirements set forth in Business and Professions Code (B&PC) section 22978.4 and make available the purchase invoices to CDTFA for review upon inspection. (B&PC, § 22974.) B&PC section 22974.3(b) authorizes CDTFA to seize tobacco products on which tax is due but has not been paid from any retailer who possesses, stores, owns, or has made a retail sale of such products. (See also, Cal. Code Regs., tit. 18, § 4703.) It is presumed that tax has not been paid to CDTFA on all tobacco products in the possession of a retailer until the retailer provides proof of payment to CDTFA or a purchase invoice showing the retailer paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer. (B&PC, § 22974.3(b).) The burden of proof that tax has been paid on tobacco products shall be upon the retailer. (*Ibid.*)

Any person owning or claiming any interest in the property may file a verified petition with CDTFA stating his or her interest in the property and requesting the release or recovery of the property on the ground that the property was erroneously or illegally seized. (R&TC, § 30438.)

Here, CDTFA has conceded that appellant is entitled to the return of additional seized products, except for the following: (1) 46 pouches of Swisher Sweets Cigarillos, including 19 Arctic Ice, 12 Sweet Cream, and 15 Summer Twist; (2) 3 boxes of Coastal Clouds Premium E-liquid Vapor, 60 ml, including 1 each of Iced Apple Peach Strawberry, Guava Punch, and

³ The three boxes consist of the following flavors: one box of Iced Apple Peach Strawberry (3%), one box of Guava Punch (3%), and one box of Mango Berries (6%). CDTFA found that the invoices only supported three bottles of each aforementioned flavor (which CDTFA has already agreed to return to appellant), while CDTFA had seized four bottles of each flavor.

⁴ The four boxes consist of two boxes of Iced Pink Punch, and two boxes of Mango Cream Dream.

⁵ The two bottles are Mango Cream Dream.

Mango Berries; (3) 4 boxes of Twist E-liquid, 3%, 60 ml x 2, including 2 Iced Pink Punch and 2 Mango Cream Dream; and (4) 2 bottles of Twist E-liquid, 6 %, 60 ml, Mango Cream Dream.

Appellant contends that he only purchases tobacco products from legitimate wholesalers, and that he has provided sufficient supporting documentation to support that tax was paid on all his tobacco products inventory. For the Swisher Sweets Cigarillos products, appellant submitted several purchase invoices with various dates from July 2016, through January 2018. CDTFA noted that the seized Swisher Sweets Cigarillos products were manufactured on October 2018, November 2018, or February 2019, and that the date of the provided invoices did not reconcile with the manufacturing dates. Subsequently, appellant provided a purchase report indicating that appellant, on February 21, 2019, purchased one 15-count box of Arctic Ice and five 15-count boxes of Sweet Cream. OTA finds the purchase report sufficiently supports 15 pouches of Arctic Ice and 12 pouches of Sweet Cream Swisher Sweet Cigarillos were purchased with the tax paid. Therefore, OTA finds that CDTFA should return to appellant 15 pouches of Arctic Ice and 12 pouches of Sweet Cream Swisher Sweet Cigarillos. Accordingly, OTA finds that CDTFA correctly seized 4 pouches of Arctic Ice, and 15 pouches of Summer Twist Swisher Sweet Cigarillos.

For the Coastal Clouds Premium E-liquid Vapor, 60 ml products, appellant submitted a purchase invoice dated June 10, 2019, showing, as relevant here, the purchase of three boxes each of Iced Apple Peach Strawberry (3%), Guava Punch (3%), and Mango Berries (6%). However, CDTFA seized four boxes of each of the three flavors, and CDTFA has already conceded that three boxes of each of the three flavors should be returned to appellant. Therefore, OTA finds that CDTFA correctly seized three boxes of Coastal Clouds Premium E-liquid Vapor, 60 ml products, including one box each of Iced Apple Peach Strawberry (3%), Guava Punch (3%), and Mango Berries (6%).

For the Twist E-liquid products, appellant submitted purchase invoices dated December 24, 2018, and February 11, 2019, showing the purchase of various Twist E-liquid products. OTA notes that these invoices show the purchase of four boxes of “LEMON TWIST 2/120 ML 3 MG PUNCH” and two boxes of “LEMON TWIST 2/120 ML 3 MG MANGO.” However, based on these descriptions, it is unclear whether the listed products are the same as the four boxes of Twist E-liquid, 3%, 60 ml x 2, with two boxes of Iced Pink Punch and two boxes of Mango Cream Dream. OTA also notes that the invoices list other Twist E-liquid

products described as “Iced Pink Punch” and “Pink Punch Lemonade.” Appellant has not provided any clarification about the Twist E-liquid products in his response to our additional briefing request. Additionally, the provided invoices do not list any products that fit the description of two bottles of Twist E-liquid, 6%, 60 ml, Mango Cream Dream. Therefore, OTA finds that CDTFA correctly seized four boxes of Twist E-liquid, 3%, 60 ml x 2, and two bottles of Twist E-liquid, 6%, 60 ml, Mango Cream Dream.

HOLDING

Appellant has established that CDTFA should return erroneously or illegally seized tobacco products.

DISPOSITION

Appellant is entitled to release of seized products including those listed in CDTFA’s decision (i.e., 43 Black & Mild Cigars, 12 boxes of Coastal Clouds Premium E-liquid vapor (60 ml), 5 boxes of Coastal Clouds Premium Salt Nicotine, 9 boxes of VGOD Premium Salt Nicotine (60 ml), 1 box of Twist E-liquid, 3 60 ml x 2 and 2 bottles of Twist E-liquid (60 ml). Appellant is also entitled to an additional 12 boxes of Coastal Clouds Premium E-liquid Vapor (60 ml) as conceded during this appeal. Finally, appellant is entitled to the return of 15 pouches of Arctic Ice and 12 pouches of Sweet Cream Swisher Sweet Cigarillos as determined by OTA in this Opinion. Otherwise, CDTFA’s action is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 3/20/2023