

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>NAILIA HAIDER</b>	:	SMALL CLAIMS DETERMINATION DTA NO. 820362
for Revision of a Determination or for Refund of Cigarette Tax under Article 20 of the Tax Law for the Period Ended September 9, 2003.	:	

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Petitioner, Nailia Haider, 438 May Street, Naugatuck, Connecticut 06077, filed a petition for revision of a determination or for refund of cigarette tax under Article 20 of the Tax Law for the period ended September 9, 2003.

A small claims hearing<sup>1</sup> was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 400 Oak Street, Garden City, New York on July 24, 2006 at 1:30 P.M. Petitioner appeared by Mohammad S. Pasha. The Division of Taxation appeared by Mark F. Volk, Esq. (Paula Tunkel).

Since neither party reserved time for the submission of post-hearing briefs, the three-month period for the issuance of this determination commenced as of the date the small claims hearing was held.

**ISSUE**

Whether the Division of Taxation properly determined that petitioner was a person in possession of or had control of 100 cartons of unstamped or illegally stamped cigarettes and, as such, was liable for a penalty in the sum of \$14,250.00 imposed pursuant to Tax Law § 481(1)(b)(i).

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<sup>1</sup> At petitioner's request, the small claims hearing held herein was combined with the petition filed by her brother Ajaz Pasha Moughal under DTA # 820363. Although one record was made for both matters, separate determinations have been issued based on the combined hearing.

***FINDINGS OF FACT***

1. In July 2003, United States Customs Service<sup>2</sup> inspectors at John F. Kennedy (“JFK”) Airport determined that six large boxes which had been mailed from Pakistan contained cartons of cigarettes. Two of the boxes were addressed to petitioner Nailia Haider’s husband, Sayjad Haider (a/k/a Mohammed Sayjad Haider), at 538 Graham Avenue, Apt. 3, Brooklyn, New York. The other four boxes, two each, were addressed to petitioner’s brothers, Ali Moughal, at 538 Graham Avenue, Apt. 1, Brooklyn, New York and Ajaz Pasha Moughal at 94-42 46 Avenue, Elmhurst, New York.

2. The U.S. Customs Service did not allow the six boxes to clear through customs, but instead informed the Division of Taxation (“Division”) of the existence of the six boxes of cigarettes. On July 24, 2003, an investigator from the Division opened all six boxes at JFK Airport and discovered that each box contained 50 cartons of Benson & Hedges cigarettes. None of the packages of cigarettes contained New York State tax stamps. All six boxes were resealed.

3. The Division, in conjunction with United States Postal Service authorities, arranged for a controlled delivery of the six boxes of unstamped cigarettes to take place on September 9, 2003. On this date, a United States Postal Service employee delivered the four boxes of unstamped cigarettes which were addressed to the 538 Graham Avenue, Brooklyn, New York address. The postal employee brought all four boxes to the first floor and made contact with Uzma Moughal, the wife of Ali Moughal. Ali Moughal was not present at the time the postal service employee attempted to make delivery of the two boxes of unstamped cigarettes which were addressed to him and therefore the postal service employee had Uzma Moughal sign for the two boxes. Uzma Moughal next called her sister-in-law, petitioner Nailia Haider, and instructed her to come to the first floor since a postal service employee had two boxes addressed to her husband. Mohammed Sayjad Haider, like Ali Moughal, was not present when the two boxes of

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<sup>2</sup> The United States Customs Service (now part of U.S. Customs and Border Protection) is the portion of the Federal government dedicated to keeping illegal products outside of U.S. borders.

unstamped cigarettes were delivered and therefore his wife, petitioner Nailia Haider, signed the postal delivery receipt. The postal service employee then exited the building.

4. Immediately after the postal service employee left the building, inspectors from the Division entered and seized all four unopened boxes of unstamped cigarettes. Petitioner was read her Miranda rights, which she waived, and she and Uzma Moughal were then questioned regarding their knowledge of and involvement with the unstamped cigarettes. The investigator who questioned petitioner testified that petitioner indicated that the boxes contained cigarettes which were for her brother, Ali Moughal (Uzma Moughal's husband) and that her brother Ali handled all the cigarettes. The investigator further indicated that Uzma Moughal stated that she had no idea what was contained in the boxes.

5. Based on his interrogation of petitioner, the Division's investigator concluded that she "reached that threshold for arrest when she told us that all four boxes were for her brother, that he handles the cigarettes. . . ." Accordingly, petitioner was placed under arrest and criminal charges were filed under Tax Law § 1814. The criminal charges were adjourned in contemplation of dismissal and said charges were ultimately dismissed. No criminal charges were brought against Uzma Moughal.

6. Petitioner and her husband immigrated to the United States in 1993. Mrs. Haider has the equivalent of a high school education from Pakistan and she has limited ability to speak and understand the English language. Petitioner has never worked outside the house and has always been a stay-at-home mother raising her two children. During the period in question, petitioner's husband, Mohammed Sayjad Haider, worked in Bridgeport, Connecticut and also attended college there. Mr. Haider stayed in Bridgeport, Connecticut during the work week and returned home only on weekends so it would be normal for petitioner to sign for and accept any packages addressed to her husband.

7. At the hearing, petitioner testified that when she went to the first floor to sign for the two boxes of unstamped cigarettes which were addressed to her husband, Uzma Moughal told

her that she thought that the boxes might contain cigarettes for Ali Moughal, Uzma's husband and petitioner's brother. Petitioner testified that she willingly gave the information she received from Uzma Moughal regarding the contents of the boxes and who the actual intended recipient was to the Division's investigator during the interrogation, but that she had no actual first-hand knowledge of the accuracy or truthfulness of these statements.

8. It is undisputed that Ali Moughal was involved in the operation of a retail deli/grocery store business and that this operation has been caught on several occasions selling unstamped Benson & Hedges cigarettes, the same brand of cigarettes found in the two boxes addressed to petitioner's husband. Petitioner and her husband do not smoke and have never been involved in either owning or operating a retail business involved in the sale of cigarettes or tobacco products.

9. Neither petitioner nor her husband have previously been cited or charged for any violation of the Tax Law with respect to cigarette taxes. There is no evidence introduced from United States Postal Service records to prove, or even suggest, that petitioner or her husband have, previous to September 9, 2003, received packages or boxes from Pakistan. The record herein does not contain the investigator's written report, the Tax Enforcement Referral Report or a property receipt/release. The only documentary evidence offered by the Division in this matter was the Notice of Determination and its Answer to the petition.

10. On November 24, 2003, the Division issued a Notice of Determination to petitioner asserting that she was liable for a civil penalty in the sum of \$14,250.00. The penalty was imposed pursuant to Tax Law § 481(1)(b)(i) at the maximum rate of \$150.00 per carton for 95 cartons of unstamped cigarettes. Although 100 cartons of unstamped cigarettes were found, Tax Law § 481(1)(b)(i) provides that the penalty of \$150.00 per carton be imposed for every carton in excess of five cartons of unstamped or unlawfully stamped cigarettes. The Division did not issue a Notice of Determination to Uzma Moughal asserting a civil penalty against her for her possession of 100 cartons of unstamped cigarettes.

***CONCLUSIONS OF LAW***

\_\_\_\_\_A. Tax Law § 481(1)(b)(i) provides, in pertinent part, that “the commissioner may impose a penalty of not more than one hundred fifty dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person . . . .” The penalty imposed by Tax Law § 481(1)(b)(i) can be waived in whole or in part by the commissioner in the commissioner’s discretion (Tax Law § 481[1][b][iii]).

B. In my view, the determination as to petitioner’s liability for the civil penalty imposed under Tax Law § 481(1)(b)(i) turns on whether she knowingly possessed or had control of the unstamped cigarettes in question. Although the Division’s investigator testified that petitioner knew the two boxes contained cigarettes for her brother, I find that the statements made by petitioner to the investigator were based solely on information given to her by Uzma Moughal, her sister-in-law, at the time the cigarettes were delivered. It is clear that petitioner is not proficient in either speaking or understanding the English language and under the stressful circumstances encountered on September 9, 2003, it is easy to see how she may not have clearly expressed herself to the investigator. The unstamped cigarettes in question were not addressed to petitioner, she had no first-hand knowledge that the boxes contained unstamped cigarettes, there is no evidence to prove or suggest that petitioner was in some way involved with the purchase, sale, transportation or distribution of the cigarettes and there is no indication that petitioner was previously involved in the possession or control of unstamped cigarettes. Petitioner merely signed for the boxes in her husband’s absence, an action most spouses would perform without a second thought. Carefully considering the entire record, I believe it is fair and equitable (Tax Law § 2012) to find that petitioner was not in possession or control of the 100 cartons of cigarettes which were addressed to her husband.

C. The petition of Nailia Haider is granted, and the Notice of Determination dated November 24, 2003 is canceled.

DATED: Troy, New York  
October 23, 2006

/s/ James Hoefer  
PRESIDING OFFICER

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