

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ESA Groceries, Inc. : AFFIDAVIT OF MAILING
for a Hearing on the Denial of a License as a :
Wholesale Dealer of Cigarettes. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon ESA Groceries, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

ESA Groceries, Inc.
c/o Shelly Abul Mubdi
91-40 Lamont Avenue
Elmhurst, NY 11373

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of July, 1984.

David Parchuck

Shelly Abul Mubdi
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 26, 1984

ESA Groceries, Inc.
c/o Shelly Abul Mubdi
91-40 Lamont Avenue
Elmhurst, NY 11373

Dear Sir:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 478 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 Months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
ESA GROCERIES, INC.	:	DECISION
for a Hearing on the Denial of a License as a	:	
Wholesale Dealer of Cigarettes.	:	

Petitioner, ESA Groceries, Inc., 118 Third Avenue, New York, New York 10003, filed a petition for a hearing on the denial of a license as a wholesale dealer of cigarettes (File No. 40652).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1984 at 1:15 P.M. Petitioner appeared by its president, Shelley Abdul Mubdi. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether a license as a wholesale dealer of cigarettes pursuant to Article 20 of the Tax Law should be issued to ESA Groceries, Inc.

FINDINGS OF FACT

1. On October 19, 1982, petitioner, ESA Groceries, Inc., filed an "Application For License As A Wholesale Dealer of Cigarettes" with the Cigarette Tax Unit of the Special Investigations Bureau.

2. By a letter dated November 12, 1982, the Special Investigations Bureau advised petitioner that its "application for license as a wholesale dealer of cigarettes has been denied for cause". No explanation was provided, although petitioner was advised that it was entitled to a hearing concerning the denial of its application.

3. By a letter dated December 7, 1982, Shelley Abdul Mubdi, petitioner's president, requested a hearing to review the denial of petitioner's application for a license as a wholesale dealer of cigarettes.

4. It appears that it was not until petitioner received the answer dated May 16, 1983 to its perfected petition that it was provided with an explanation of the reason its application for license as a wholesale dealer of cigarettes was denied. According to the answer, Shelley Abdul Mubdi, petitioner's president, "was arrested at 211 E. 14th Street and charged with, Possession of Untaxed Cigarettes, in that 500 cartons of cigarettes bearing a forged New York State Cigarette Tax Stamp were knowingly stored, placed, sold or offered for sale in said store".

5. Petitioner was formed in August, 1979 and operates a candy and grocery store at 211 East 14th Street, New York City, New York 10003, where it also sells cigarettes. It has a retail cigarette sales license from the City of New York. Petitioner also has a store at 118 Third Avenue, New York City, New York 10003, where it does not sell cigarettes and where petitioner planned to operate a wholesale cigarette business.

6. Vincent Salmone, an excise tax investigator, testified that he discovered 520 cartons of cigarettes which had counterfeit cigarette tax stamps¹ at petitioner's store on East 14th Street. The cigarettes were confiscated, and Mr. Mubdi was arrested. However, criminal charges against Mr. Mubdi were dismissed.

¹ The investigator could not recall in what way the stamps on the cigarettes confiscated were different from valid stamps. He noted that "it could be the design of the stamp or it could be the lettering in the wording, one letter might be off as compared to the legal stamp. Or the design of the eagle or certain parts of the stamp wouldn't be just right as compared to a legal stamp." He noted further that the average person would not be able to distinguish the counterfeit stamp on the cigarettes confiscated from valid stamps.

7. Shelley Abdul Mubdi is an educated man who has a master's degree in biochemistry from Dacca University, then Pakistan, now Bangladesh. He was employed as a pharmaceutical chemist and marketing manager for Eli Lilly & Co. and Imperial Chemical Industries, Ltd., in Asia and Europe. In 1976, he emigrated to the United States.

8. Mr. Mubdi testified that two or three days before the inspection which uncovered the cigarettes with counterfeit stamps:

"(A man) about age 26, came and told me he had a store in Brooklyn. He is going out of business. He is going to Israel and selling his stock and he offered his stock (cigarettes) twenty cents less than the normal price, at that time... (H)e brought a carton -- a case of cigarettes from his car and showed me and we checked and saw that there was what said New York State. I said all cigarettes must have this stamp. We checked at the car. All cigarettes had the stamp."

Mr. Mubdi paid \$2,700.00 in cash to the man from Brooklyn because, according to Mr. Mubdi, this man said he was leaving for Israel and would not take a check.

9. Mr. Mubdi's testimony that he did not know that the cigarettes purchased from the man from Brooklyn bore counterfeit tax stamps was credible. Furthermore, Mr. Mubdi's purchase of cigarettes from an unknown stranger on behalf of petitioner was an isolated incident. Petitioner normally purchased its supply of cigarettes from a licensed wholesaler, Amsterdam Tobacco, Inc., 1614 Amsterdam Avenue, New York City, New York 10031.

CONCLUSIONS OF LAW

A. That licensing of a corporation as a wholesale dealer of cigarettes pursuant to Article 20 of the Tax Law requires consideration of the qualifications of the corporate principals. Matter of Wilson's & Conklin's Modern Vending, Inc., State Tax Commission, August 22, 1977.


B. That Mr. Mubdi, petitioner's president, has demonstrated that his purchase and possession of untaxed cigarettes (although imprudent) was unknowing and unintentional. Therefore, the arrest, without conviction, of Mr. Mubdi for possession of untaxed cigarettes, is an insufficient basis for denying petitioner's application for a wholesale cigarette license. Cf. Matter of Eagle Vending Corp., State Tax Commission, June 14, 1977.

C. That the application of ESA Groceries, Inc. for a license as a wholesale dealer of cigarettes is granted.

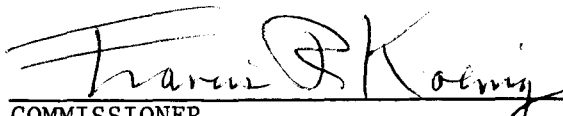
DATED: Albany, New York

JUL 26 1984

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

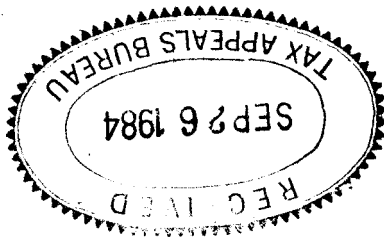
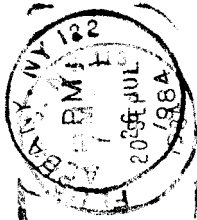
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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED

P 440 977 228

MAIL



ESA Groceries, Inc.
c/o Shelly Abul Mubdi
91-40 Lament Avenue
Elmhurst, NY 11373



CHECK NO.

626081

☐ HOLD

DATE

8/28/84

1ST NOTICE

2ND NOTICE

RETURN

8-15

Detached from
PS Form 3849-A
Oct. 1980

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 26, 1984

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C. That the application of ESA Groceries, Inc. for a license as a wholesale dealer of cigarettes is granted.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 26 1984


PRESIDENT


COMMISSIONER


COMMISSIONER