

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

SHAH MART LLC

v.

COMMISSIONER OF REVENUE

Docket Nos. C350386 & C350387

Promulgated:
February 26, 2026

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the decisions of the Commissioner of Revenue (“appellee” or “Commissioner”) to suspend for 90 days a cigarette and smokeless tobacco retailer’s license and a cigar and smoking tobacco retailer’s license, both held by Shah Mart LLC (“appellant”).

Commissioner Good heard these appeals. Chairman DeFrancisco and Commissioners Elliott, Metzger, and Bernier joined her in the decisions for the appellee.

These findings of fact and report are made at the request of the appellant pursuant to 831 CMR 1.34.

John E. Pearson, Esq., for the appellant.

Eugene Langner, Esq., and *Wendi Safran*, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence during the hearing of these appeals, the Appellate Tax Board (“Board”) made the following findings of fact.

At all times relevant to these appeals, the appellant was a Massachusetts limited liability company managed by Faisal Syed. The appellant operated a small convenience store located in West Springfield that was licensed to sell products that are subject to the Massachusetts tobacco excise, specifically cigarettes and smokeless tobacco, and cigars and smoking tobacco.

On October 30, 2023, the Massachusetts Department of Revenue (“DOR”) issued a notice to the appellant stating that the Commissioner was suspending the cigarette/smokeless tobacco retailer’s license held by the appellant for a period of 90 days as of November 29, 2023.¹ The letter justified suspension of the license for violations of the following: (a) G.L. c. 64C, § 34, which prohibits the holding for sale, offering for sale, sale, or possession with intent to sell, of cigarettes in Massachusetts that are not stamped with a Massachusetts cigarette stamp; (b) G.L. c. 64C, § 35, which prohibits the knowing possession, delivery or transportation, of unstamped cigarettes in Massachusetts; and (c) G.L. c. 64C, § 33, which prohibits cigarette retailers from accepting deliveries of unstamped or improperly stamped packages of cigarettes and requires that cigarette retailers immediately return to their supplier all unstamped or improperly stamped cigarettes.

Also on October 30, 2023, the DOR issued a notice to the appellant stating that the Commissioner was suspending the cigar/smoking tobacco retailer’s license held by the appellant for a period of 90 days as of November 29, 2023.² The letter justified suspension of the license for violations of the following: (a) G.L. c. 64C, § 7B(b), which

¹ The license suspensions have been inoperative during the pendency of these appeals pursuant to G.L. c. 62C, § 68, which states: “During the pendency of any such appeal the decision of the commissioner so appealed from shall, unless otherwise ordered by said board, be inoperative.”

² See *supra*, note 1.

imposes an excise of 40 per cent of the wholesale price on all cigars and smoking tobacco at the time it is manufactured, purchased, imported, received or acquired in the Commonwealth; (b) G.L. c. 64C, § 7B(c), which deems every cigar retailer liable for the collection of the excise on cigars and smoking tobacco in their possession at any time; (c) G.L. c. 64C, § 7B(l)(1), which prohibits acting as a cigar distributor without a license and from purchasing or possessing any cigars and smoking tobacco from an unlicensed cigar distributor or unlicensed cigar retailer; and/or (d) G.L. c. 62C, § 16 (c 1/2), which requires licensees to file with the Commissioner a return stating the quantity of cigars and smoking tobacco sold

The Commissioner exercised his authority to suspend the referenced licenses under G.L. c. 62C, § 68 (“§ 68”), specifically § 68(5), which authorizes the Commissioner to suspend or revoke a tobacco license if, among other reasons, “the licensee has willfully failed to comply with any provision of the Commonwealth’s tax laws.”

On November 9, 2023, the appellant filed timely appeals with the Board.³ The appellant also filed the appropriate surety bond in accordance with § 68. Based on the above facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeals.

The suspensions in question arose from an inspection conducted on October 17, 2023, by DOR Tax Examiner Blake Russo. The inspection resulted in the seizure of 8 packs of unstamped menthol cigarettes and \$168 retail value of unstamped flavored cigar products. This was the appellant’s second violation. The first violation arose from an

³ While the petitions were stamped as having been docketed by the Board on November 14, 2023, the envelopes containing the petitions each bore a United States Postal Service postmark of November 9, 2023. Pursuant to G.L. c. 58A, § 7, the Board considered the date of the postmark to be the date of filing.

inspection in September 2021, which resulted in the seizure of 126 packs of cigarettes, \$95.94 retail value of smokeless tobacco, \$4,647.84 retail value of cigars, \$233.82 retail value of smoking tobacco, and \$1,936.80 retail value of electronic nicotine delivery system products. The first violation resulted in 30-day suspensions of the appellant's cigarette/smokeless tobacco retailer's license, its cigar/smoking tobacco retailer's license, and its electronic nicotine delivery system products retailer's license.

The appellant presented its case in chief through the testimony of Mr. Syed and the submission of documents. Mr. Syed admitted that, at the time of the inspection, the appellant had in its possession 8 packs of menthol-flavored cigarettes, which bore New Hampshire stamps. The Board took notice of the fact that flavored nicotine products have been banned for sale in Massachusetts since June 2020. See 105 CMR 665.010(D). Mr. Syed testified that these menthol packs were not for sale but were held for his father, who would stop by the store for cigarettes. He testified that the appellant paid Massachusetts excises on all the other products that were purchased and held for sale at the store. The appellant offered as evidence copies of invoices for numerous products showing that Massachusetts excise was charged and collected.

The appellee presented its case in chief through the testimony of Mr. Russo and the submission of documents, including inspection reports with supporting documentation from the violations in September 2021 and October 2023. Mr. Russo testified that, during the inspection in October 2023, he observed several packs of Newport Menthol cigarettes in an open carton stored in an unlocked cabinet located behind the sales counter, close to the register area. Upon his closer inspection, Mr. Russo noted that these cigarette packs bore New Hampshire excise stamps. Mr. Russo stated that he questioned Mr.

Syed about these cigarettes, and he further testified that Mr. Syed stated that they were sent to him in error and that he would be returning these products to the vendor. Mr. Russo testified that “a few” packs of cigarettes were missing from the carton containing the 8 packs of Newport Menthol cigarettes.

Mr. Russo testified that, aside from the cigarette packs, the appellant was able to produce invoices for most of the products located on premises. However, Mr. Russo did find 96 flavored cigars on the premises, which products are also illegal for sale in Massachusetts and did not bear a Massachusetts excise stamp. The Board found Mr. Russo’s testimony to be credible.

As will be further explained in the following Opinion, the Commissioner is charged with enforcing § 68, the statute pertaining to regulation of licenses for tobacco products. Internal DOR guidelines for tobacco excise infractions, which DOR employs to ensure consistency in its enforcement of § 68, allow 90-day license suspensions for second-time infractions involving less than 50 packs of cigarettes and less than \$429.98 wholesale value of cigar products. The violations on October 17, 2023 were the appellant’s second violations of both cigarette and cigar products, and the seized products fit within the recommendations for 90-day suspensions of the cigarette and cigar retail licenses.

Section 68 gives the Board equitable powers to grant relief from these penalties. The appellant asks for leniency in these appeals, citing the relatively small amounts of products found at the store and the appellant’s lack of violations between the first and second violations as well as after the second violation. However, the Board did not find credible Mr. Syed’s testimony that the products were not being held for sale by the appellant, considering that Mr. Syed claimed a different reason for holding the cigarettes

at the time of the inspection. Moreover, as a few packs of menthol cigarettes were missing, and as flavored cigars were also located elsewhere on the premises, the Board was not persuaded that the untaxed products were mistakenly sent to the appellant and not being held for sale by the appellant. In any event, the appellant had the untaxed items in its possession, in violation of G.L. c. 64C, § 35 and G.L. c. 64C, § 7B(c).

Based on the evidence advanced at the hearing, and for the reasons stated more fully in the Opinion, the Board declined to exercise its equitable powers to reverse the license suspensions. Accordingly, the Board issued decisions for the appellee in the instant appeals.

OPINION

The Commissioner is authorized by § 68 to “suspend or revoke” a retailer’s tobacco license for, among other offenses, “willfully fail[ing] to comply with any provision of the tax laws of the commonwealth.” The statute affords discretion to the Commissioner and his delegees in suspending and revoking retail tobacco licenses for any failure to pay the requisite excise.

In this case, the Board found and ruled that the appellant willfully failed to pay excises imposed by G.L. c. 64C, §§ 6, 7A, 7B, and 7C. The invoices introduced by the appellant failed to account for all tobacco products possessed by the appellant, specifically the flavored products, banned for retail sale in Massachusetts, that were seized. The appellant presented no credible evidence that excises were paid on all the seized items, and, in fact, did not argue that excises had been paid on the seized items. Moreover, this was the appellant’s second offense.

Section 68 grants the Board the power to review a license suspension or revocation and “grant such relief as may be equitable.” The Board did not find Mr. Syed’s testimony denying that the items were held for sale to be credible and further found and ruled that no circumstances existed here to warrant exercising the equitable powers granted to it under this provision. Given that § 68 grants the Commissioner broad authority to suspend or revoke a retailer’s license for failure to pay excises on tobacco products, and absent any credible evidence that the untaxed, banned items were not being held for sale in the store, the Board found and ruled that the Commissioner’s 90-day suspensions of the appellant’s cigarette/smokeless tobacco retailer license and its cigar/smoking tobacco retailer’s license were authorized by the provisions of § 68.

Accordingly, the Board issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: 

Mark J. DeFrancisco, Chairman

A true copy,

Attest: 

Clerk of the Board