SPC Guiding Case No. 108: Zhejiang Longda Stainless Steel Co., Ltd. v. A.P. Moller-Maersk Co., Ltd. (Dispute over Contract of Carriage of Goods by Sea)

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on February 25, 2019.

Keywords

Civil / contract of carriage of goods by sea / contract modification / change of port / return of goods / defense right

Holding

In a contract of carriage of goods by sea, pursuant to Article 308 of the Contract Law, before the carrier delivers the goods to the consignee, the shipper has the right to require modification of the carriage contract, but the parties shall still determine their rights and obligations according to the principle of fairness prescribed by Article 5 of the Contract Law. When the shipper exercises this right, the carrier may correspondingly exercise a certain defense right. If modification of the contract of carriage of goods by sea is difficult to realize or would seriously affect the carrier's normal operation, the carrier may refuse the shipper's request to change the port or return the goods, but shall promptly notify the shipper of the reason why the modification cannot be carried out.

Basic Facts

In June 2014, Zhejiang Longda Stainless Steel Co., Ltd. ("Longda") exported a batch of stainless steel seamless products from Ningbo Port, China to Colombo Port, Sri Lanka, with a customs-declared value of USD 366,918.97. Longda booked space with A.P. Moller-Maersk Co., Ltd. ("Maersk") through a freight forwarder, and the goods in issue were loaded onto four containers and shipped on June 28 of the same year, with Longda requesting telex release at the time of shipment. On July 9, 2014, Longda sent an email to Maersk through the freight forwarder, stating that it had found the goods were shipped to the wrong destination and requesting a change of port or return of the goods. Maersk replied on the same day that, because the goods were less than two days from the destination port, a change of port could not be arranged, and that if a return was needed, it would reply after confirmation with the destination port. The next day, Longda's freight forwarder asked whether the goods could be returned on the original vessel, and Maersk replied the same day that "return on the original vessel is not operational; after the goods are discharged at the destination port, the current consignee needs to clear customs at the destination port, and then apply to the local customs for return. Only after customs approval can the return be arranged." On July 10, 2014, Longda again stated "this cargo needs to be returned precisely because customs clearance cannot be completed, so it is being returned to Ningbo; is there any other way?" Thereafter, Maersk did not reply to any more emails.

The goods in issue arrived at the destination port around July 12, 2014. At Longda's request, Maersk issued to it the full set of original bills of lading No. 603386880 on January 29, 2015. According to the bill of lading, the shipper was Longda, the consignee and notify party were both VENUS STEEL PVT LTD, the port of loading was Ningbo, China, and the port of discharge was Colombo. On May 19, 2015, Longda sent an email to Maersk stating that it had applied for return as required by Maersk. Maersk subsequently informed Longda that the goods in issue had been auctioned.

Source: https://www.danyoungcpa.com/spc-guiding-case-108-china/

Judgment

On March 4, 2016, the Ningbo Maritime Court rendered Civil Judgment (2015) Yong Hai Fa Shang Chu Zi No. 534, holding that Longda, because it had not taken effective measures such as collecting the goods itself, caused the goods in issue to be auctioned by customs, and the corresponding cargo loss risk should be borne by the company; it therefore dismissed Longda's claims. After the first-instance judgment, Longda appealed. On September 29, 2016, the Zhejiang High People's Court rendered Civil Judgment (2016) Zhe Min Zhong No. 222: revoking the first-instance judgment; and ordering Maersk to compensate Longda for cargo loss of USD 183,459.49 and interest within ten days of service of the judgment. The second-instance court held that, pursuant to Article 308 of the Contract Law, Longda had the right to request a change of port or return of the goods before Maersk delivered the goods. After Longda raised the return request, Maersk neither expressly refused to arrange the return nor notified Longda to handle the goods itself, so it should bear corresponding compensation liability for the cargo loss in issue, and the liability ratio was set at 50%. Maersk was dissatisfied with the second-instance judgment and applied to the Supreme People's Court for retrial. On December 29, 2017, the Supreme People's Court rendered Civil Judgment (2017) Zui Gao Fa Min Zai No. 412: revoking the second-instance judgment; and affirming the first-instance judgment.

Reasoning

The Supreme People's Court held that the provisions of the Contract Law and the Maritime Law on regulating maritime transport relations and vessel relations stand in the relationship between general law and special law. According to Article 89 of the Maritime Law, before the vessel sails from the loading port, the shipper may require rescission of the contract. In this case, Longda requested the carrier to return the goods or change the port during the carriage of the goods in issue by sea. Because the Maritime Law does not provide for the shipper's right to require modification of the carriage contract during the voyage, Article 308 of the Contract Law on the shipper's right to require modification of the carriage contract may apply in this case. Based on the basic principle of legal application that special law takes priority over general law, Article 308 of the Contract Law prescribes general carriage contracts, and when that provision is applied to a contract of carriage of goods by sea, it should be subject to the basic value orientation and mandatory provisions of the Maritime Law. The shipper's right to require modification of the carriage contract under Article 308 of the Contract Law shall not cause the interests of the parties to the contract of carriage of goods by sea to be manifestly unfair, nor cause the carrier to violate its obligations to other shippers such as arranging a reasonable route, nor deprive the carrier of its corresponding defense right regarding the performance of matters modifying the contract of carriage of goods by sea.

The basic principles prescribed in the General Provisions of the Contract Law are the criteria for the legislation of the Contract Law, the criteria applicable to the entire field of the Contract Law, and the basis of the specific systems and norms of the Contract Law. According to Article 308 of the Contract Law, before the carrier delivers the goods to the consignee, the shipper has the right to require modification of the carriage contract, but the parties shall still determine their rights and obligations according to the principle of fairness prescribed by Article 5 of the Contract Law. Carriage of goods by sea has the special characteristics of large transport volume, pre-planned voyage, and relatively fixed route. A shipper's request to change the port or return the goods is sometimes not only difficult to operate, but may also hinder the carrier's normal operation or cause great damage to other shippers or consignees of goods. Under such circumstances, requiring the carrier to unconditionally comply with the shipper's request to modify the carriage contract would be manifestly unfair. Therefore, under a contract of carriage of goods by sea, the shipper may not exercise the right to require modification without limit, and the carrier is not required to unconditionally comply with the shipper's instruction to modify in all circumstances. To reasonably balance the interests of the parties to the contract of carriage of goods by sea, while the shipper exercises the right to require modification, the carrier correspondingly enjoys a certain defense right. If modification of the carriage contract is difficult to realize or would seriously affect the carrier's normal operation, the carrier may refuse the shipper's request to change the port or return the goods, but shall promptly notify the shipper of the reason why the modification cannot

be carried out. If the carrier's defense regarding the reason for non-performance is established, the carrier's failure to carry out the shipper's instruction to return the goods or change the port is not improper.

The goods in issue were transported by international liner shipping, and the carrying vessel carried not only the four containers consigned by Longda but also many goods consigned by other shippers. The goods in issue were loaded and shipped on June 28, 2014, and arrived at the destination port around July 12, 2014. Longda only requested Maersk to return the goods or change the port on July 9, 2014. Maersk's defense that, with more than half the voyage already completed and only two or three days remaining before arrival at the destination port, it could not arrange a change of port due to the voyage and that return on the original vessel was not operational, was consistent with the facts of the case. That defense was established, and Maersk's failure to arrange the return or change of port was not improper.

After Maersk transported the goods in issue to the destination port, because no one collected the goods, discharging the goods to the dock of the destination port was consistent with Article 86 of the Maritime Law. On July 9, 2014, Maersk replied to Longda by email that the goods were less than two days from the destination port. Longda already understood the general time of arrival of the goods and clearly knew that the goods in issue had no one to collect them at the destination port, but did not take measures to handle the goods in issue for as long as eight months, causing them to be auctioned by customs. Although Longda claimed that Maersk failed to perform its duty of prudent care of the goods, it did not adduce evidence proving that Maersk had improperly cared for the goods. Longda's claim lacked basis. According to Article 86 of the Maritime Law, the expenses and risks arising after Maersk discharged the goods should be borne by the consignee, and Maersk, as the carrier, did not need to bear the corresponding risks.

Relevant Legal Provisions

Article 308 of the Contract Law of the People's Republic of China

Article 86 of the Maritime Law of the People's Republic of China

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.