SPC Guiding Case No. 177: Hainan Lingao Yinghai Shipping Co., Ltd. v. Sansha City Fishery Administration Detachment (Administrative Penalty)

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

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Keywords

Administrative / administrative penalty / Convention on International Trade in Endangered Species of Wild Fauna and Flora / illegal transport / precious and endangered aquatic wild animals and their products / coral, giant clam

Holding

China is a contracting party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). All species of coral and giant clam listed in Appendices I and II of the Convention, whether live, dead, or in the form of related products, shall be protected in accordance with the law. Where an actor illegally transports coral and giant clam listed in Appendices I and II of the Convention, and the administrative authority imposes an administrative penalty pursuant to the Wildlife Protection Law and other relevant provisions, the people's court shall support it.

Basic Facts

The giant clam is a precious shellfish that mainly lives in tropical sea areas and is a key protected aquatic wild animal in China and worldwide. All nine species of giant clam are species listed in Appendix II of CITES, of which the giant clam (also known as the Ku's giant clam) is a Class I state-protected animal. On August 21, 2014, the Third Detachment of the Marine Police of the Hainan Provincial Public Security Border Defense Corps, in the course of patrol and control in the Sansha sea area, discovered that the "Yefeng 616" vessel belonging to Plaintiff Hainan Lingao Yinghai Shipping Co., Ltd. ("Yinghai Company") was illegally loaded with a large quantity of giant clam shells. It seized the vessel and handed the case to the Sansha Municipal Comprehensive Law Enforcement Bureau for initial investigation and handling. Later, because the case fell within the scope of authority of Defendant Sansha City Fishery Administration Detachment, the Sansha Municipal Comprehensive Law Enforcement Bureau transferred the case to the defendant for specific handling. After verification, the plaintiff did not hold a "Special Transport Permit for Aquatic Wild Animals," and the vessel involved was loaded with 250 tons of giant clam shells. Upon appraisal and assessment by professional institutions, 98% of the 250 tons of giant clam shells were giant clam, a Class I state-protected animal, and 2% were giant clam oyster (belonging to the family Tridacnidae), a species listed in Appendix II of CITES. The total value of the giant clam shells involved was RMB 373,500. On this basis, the defendant issued Administrative Penalty Decision Qiong San Sha Yu Zheng Fa Zi [2018] No. 01, imposing an administrative penalty on the plaintiff for the "Yefeng 616" vessel's transport of giant clam shells without holding a "Special Transport Permit for Aquatic Wild Animals," in violation of the Wildlife Protection Law of the People's Republic of China and other legal provisions: confiscation of the 250 tons of giant clam shells and a fine of RMB 1,120,500, equal to three times the value of the objects. The plaintiff refused to accept the decision and brought an administrative lawsuit before the Haikou Maritime Court, requesting that the administrative penalty decision be revoked.

Judgment

On November 30, 2018, the Haikou Maritime Court rendered Administrative Judgment (2018) Qiong 72 Xing Chu No. 14, holding that the administrative penalty decision made by the Sansha City Fishery Administration Detachment was based on clearly found facts, conclusive evidence, correct application of laws and regulations, and compliance with statutory procedures, and dismissed the litigation claims of Plaintiff Yinghai Company. After the judgment, Yinghai Company appealed. On April 10, 2019, the High People's Court of Hainan Province rendered Administrative Judgment (2019) Qiong Xing Zhong No. 125: the appeal was dismissed and the original judgment affirmed.

Reasoning

The effective judgment of the court held:

I. As a contracting party to CITES, China shall strictly and fully perform its Convention obligations, and shall protect in accordance with the law all species of coral and giant clam listed in Appendices I and II of the Convention, whether live, dead, or in the form of related products. The giant clam is a protected precious and endangered aquatic wild animal, and giant clam shells are aquatic wild animal products protected by Chinese law. According to Article 7, paragraph 3 of the Several Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Relevant Cases Occurring within the Sea Areas under the Jurisdiction of China (II) and Article 2 of the Regulations for the Implementation of the Protection of Aquatic Wild Animals of the People's Republic of China, all aquatic wild animal species listed as Class I and Class II state-protected under the List of State Key Protected Wild Animals, as well as all aquatic wild animal species listed in Appendices I and II of CITES, whether live, dead, or in the form of related products (any part of an aquatic wild animal and its derivatives), are protected by law. The giant clam involved in the case is a Class I state-protected animal under the List of State Key Protected Wild Animals, and the giant clam oyster is a species listed in Appendix II of CITES, and both are protected by law. Although the object of Yinghai Company's transport was giant clam shells, the shell of the giant clam, as a bivalve animal, is part of the animal, and therefore the giant clam shells should be found to be aquatic wild animal products protected under Article 2 of the Regulations for the Implementation of the Protection of Aquatic Wild Animals of the People's Republic of China. Yinghai Company's defense that the giant clams it transported were dead and therefore did not violate laws and administrative regulations could not be established.

II. The acts involved in the "industrial chain" of illegal development and utilization of wild animal resources, including illegal harvesting, purchase, transport, processing, and sale of precious and endangered wild animals and their products, all constitute violations and require the corresponding legal liability. The illegal transport of precious and endangered wild animals and their products is an important link in the "industrial chain" of illegal development and utilization of wild animal resources and should bear the corresponding legal consequences and liability. According to Article 23 of the Wildlife Protection Law of the People's Republic of China (2009 Amendment) in effect at the time of the case, Article 20 of the Regulations for the Implementation of the Protection of Aquatic Wild Animals of the People's Republic of China, and Article 29 of the Measures for the Special Permits for the Utilization of Aquatic Wild Animals of the People's Republic of China, transporting or carrying state key protected wild animals or their products out of the county must be approved by the wild animal administrative department of the people's government of the province, autonomous region, or municipality directly under the Central Government or a unit authorized by it, and the corresponding permit must be obtained. In this case, Yinghai Company transported the giant clam shells at issue from Sansha City to Hainan Island without approval and without obtaining the corresponding permit, which already constituted a violation. Therefore, the Sansha City Fishery Administration Detachment's imposition of a fine on it had a basis in laws and administrative regulations.

Relevant Legal Provisions

Article 33 of the Wildlife Protection Law of the People's Republic of China (2018 Amendment) (the case applied Article 23 of the Wildlife Protection Law of the People's Republic of China, 2009 Amendment).

Articles 2, 20, 28, and 48 of the Regulations for the Implementation of the Protection of Aquatic Wild Animals of the People's Republic of China (2013 Amendment).

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