SPC Guiding Case No. 205: Third Branch of Shanghai Municipal People's Procuratorate v. Langxi Huayuan Solid Waste Disposal Co., Ltd., Ningbo Hi-tech Zone Mitai Trading Co., Ltd., Huang Deting, and Xue Qiang (Environmental Pollution Civil Public Interest Litigation)

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 December 30, 2022.

Keywords

Civil / environmental pollution civil public interest litigation / solid waste / smuggling / disposal expenses

Holding

1. Where an infringer smuggles solid waste, causing ecological environment damage or posing a major risk of polluting the environment or damaging the ecology, and a state-designated organ or an organization prescribed by law requests that it bear ecological environment tort liability in accordance with law, the people's court shall uphold such request. Where an infringer who was not sentenced to criminal liability in the criminal case arising from the same act claims that it should not bear ecological environment tort liability, the people's court shall not uphold such claim.

2. The harmless disposal of solid waste that has illegally entered the country and cannot be returned for objective reasons is a necessary measure to prevent the occurrence and expansion of ecological environment damage, and the reasonable expenses incurred shall be borne by the infringer. Where the infringer argues, as a defense, that the solid waste has been seized and confiscated by the administrative law enforcement organ and that the disposal expenses should be included in the administrative law enforcement costs, the people's court shall not uphold such defense.

Basic Facts

The court found upon trial: In early 2015, the legal representative of Langxi Huayuan Solid Waste Disposal Co., Ltd. ("Huayuan Company") contacted Huang Deting, intending to purchase imported copper-containing solid waste. Huang Deting then contacted Chen Yajun, the actual operator of Ningbo Hi-tech Zone Mitai Trading Co., Ltd. ("Mitai Company"), and Xue Qiang, and agreed on a division of labor to carry out the import of copper-containing solid waste. In September of the same year, Xue Qiang organized a shipment of 138.66 tons of copper sludge in South Korea. Mitai Company prepared false customs declaration documents under the name of copper ore sand, and informed Huayuan Company of the imported goods list by fax and other means. Huayuan Company paid Mitai Company the purchase price of RMB 458,793.90 based on the quotation in the goods list, and then Huang Deting handled the customs declaration for import at Shanghai Port. Subsequently, the shipment of solid waste was seized by customs and detained in the port area, and could not be returned, endangering China's ecological environment security. The Shanghai Municipal Solid Waste Management Center held that the copper sludge in issue contained a large amount of heavy metals and should be strictly managed, and entrusted a unit with a hazardous waste operation permit to carry out harmless disposal. Upon assessment by the Shanghai Municipal Price Certification Center, the disposal expenses for the copper sludge in issue were RMB 1,053,700.

It was further found that, on December 25, 2017, the Third Branch of the Shanghai Municipal People's Procuratorate initiated a public prosecution before the Shanghai Third Intermediate People's Court against

Mitai Company, Huang Deting, and Xue Qiang for jointly smuggling solid waste whose import was prohibited by the state. On September 18, 2018, the Shanghai Third Intermediate People's Court rendered Criminal Judgment (2018) Hu 03 Xing Chu No. 8, sentencing Mitai Company for the crime of smuggling waste and imposing a fine of RMB 200,000; sentencing Huang Deting for the crime of smuggling waste and imposing fixed-term imprisonment of four years and a fine of RMB 300,000; and sentencing Xue Qiang for the crime of smuggling waste and imposing fixed-term imprisonment of two years and a fine of RMB 50,000. The criminal judgment had become effective.

Judgment

On September 5, 2019, the Shanghai Third Intermediate People's Court rendered Civil Judgment (2019) Hu 03 Min Chu No. 11: defendants Mitai Company, Huang Deting, Xue Qiang, and Huayuan Company shall, within ten days after the judgment took effect, jointly and severally compensate the disposal expenses of RMB 1,053,700 for the illegally imported solid waste (copper sludge), to be paid into the special public interest litigation account of the Third Branch of the Shanghai Municipal People's Procuratorate. Huayuan Company was dissatisfied and appealed. On December 25, 2020, the Shanghai Higher People's Court rendered Civil Judgment (2019) Hu Min Zhong No. 450: dismissing the appeal and affirming the original judgment.

Reasoning

The court's effective judgment held that the fact that an actor was not sentenced to criminal liability in the waste smuggling crime case did not mean that it necessarily did not need to bear civil liability in the civil public interest litigation. Whether civil liability should be borne needs to be judged in accordance with civil legal norms, and where the corresponding elements of civil liability are satisfied, civil compensation liability should still be borne. In this case, the relevant evidence could prove that Huayuan Company, Mitai Company, Huang Deting, and Xue Qiang had jointly discussed the import of copper sludge, and that Huayuan Company was the demander and initiator of the import of copper sludge, and that they had a common intent to infringe, satisfying the elements of jointly committing an environmental civil infringement.

For solid waste whose import is prohibited by the state and that has illegally entered the country, even if it has been seized and has not yet caused actual ecological environment damage, where there is a major risk of infringing national ecological environment security, the infringer should still bear civil liability for eliminating the danger. The relevant actors should first bear the legal liability of returning the solid waste and bear the return costs themselves. Where the solid waste cannot be returned, the ecological environment safety hazards and impacts still objectively exist, and the actor should not be exempted from the legal liability of eliminating the pollution risk merely because the waste cannot be returned. Therefore, in this case, the four defendants should jointly bear civil liability for eliminating the danger.

With respect to solid waste that has illegally entered the country and remains within the territory, harmless disposal is a necessary measure to eliminate the danger, and the corresponding disposal expenses should be borne by the infringers. To prevent the occurrence of ecological environment damage, the actors should bear the expenses incurred in taking reasonable preventive and disposal measures to stop the infringement and eliminate the danger. The copper sludge in issue could not be returned, and to eliminate the danger of environmental pollution, it was necessary to entrust a relevant professional unit to carry out harmless disposal, which was a necessary and reasonable preventive disposal measure. The relevant expenses were expenses incurred to eliminate the danger of pollution, and Huayuan Company and the other parties should bear joint and several compensation liability. The infringers' defense that the solid waste had been seized and confiscated by the administrative law enforcement organ and that the disposal expenses should be included in the administrative law enforcement costs should not be upheld.

Relevant Legal Provisions

Source: https://www.danyoungcpa.com/spc-guiding-case-205-china/

Articles 179 and 187 of the Civil Code of the People's Republic of China (the case applied Articles 4 and 15 of the Tort Liability Law of the People's Republic of China, effective July 1, 2010).

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.