SPC Guiding Case No. 5: Luwei (Fujian) Salt Import & Export Co., Ltd. Suzhou Branch v. Suzhou Salt Administration Bureau of Jiangsu Province (salt industry administrative penalty)

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Keywords

Administrative / administrative licensing / administrative penalty / reference to rules / salt industry administration

Holding

1. The laws and administrative regulations governing salt industry administration have not established the administrative license of a transport permit for industrial salt; local regulations or local government rules may not establish the transport permit for industrial salt as a new administrative license.

2. The laws and administrative regulations governing salt industry administration have not established administrative penalties for the operation of wholesale business in salt by enterprises other than salt companies; local government rules may not establish administrative penalties for such conduct.

3. Where local government rules establish licenses or penalties in violation of the provisions of law, the people's court shall not apply them in administrative adjudication.

Basic Facts

The plaintiff, Luwei (Fujian) Salt Import & Export Co., Ltd. Suzhou Branch ("Luwei Company"), alleged that the defendant, the Salt Administration Bureau of Suzhou City, Jiangsu Province ("the Suzhou Salt Administration Bureau"), based on the Implementation Measures of Jiangsu Province for the Salt Industry Administration Regulations (the "Jiangsu Salt Implementation Measures"), determined that Luwei Company's purchase and transport of industrial salt without approval was unlawful and imposed an administrative penalty on Luwei Company. Its specific administrative act had an erroneous enforcement subject and erroneous application of law. The Suzhou Salt Administration Bureau had no authority to administer industrial salt and no corresponding enforcement authority. According to the Notice on Improving the Measures for the Administration of the Supply, Marketing, and Pricing of Industrial Salt issued by the former State Planning Commission and the former State Economic and Trade Commission, the state had abolished the industrial salt transport permit and transport seal systems, and industrial salt was not an item restricted by the state for purchase and sale. The relevant provisions of the Jiangsu Salt Implementation Measures were inconsistent with the spirit of the above provisions, violating not only the State Council's Provisions on Prohibiting Regional Blockade in Market Economy Activities, but also the Administrative Licensing Law of the People's Republic of China ("the Administrative Licensing Law") and the Administrative Penalty Law of the People's Republic of China ("the Administrative Penalty Law"), and constituted the establishment of administrative licenses and penalties in violation of higher-level law. Luwei Company therefore requested that the court revoke Penalty Decision (Su) Yan Zheng Yi Ban [2009] No. 001-B made by the Suzhou Salt Administration Bureau.

The defendant, the Suzhou Salt Administration Bureau, argued that, under Article 4 of the State Council's Salt Industry Administration Regulations and Article 4 of the Jiangsu Salt Implementation Measures, it had the corresponding authority to impose salt administration penalties. The Jiangsu Salt Implementation Measures were formulated under the authorization of the Salt Industry Administration Regulations and were

authorized by regulations to be formulated, and were lawful and valid as a whole. The Suzhou Salt Administration Bureau's imposition of the administrative penalty in accordance with the provisions of the Jiangsu Salt Implementation Measures establishing the transport permit system was not improper. The Administrative Licensing Law and the Administrative Penalty Law both came into effect after the Jiangsu Salt Implementation Measures; under the principle of non-retroactivity of law in the Legislation Law of the People's Republic of China ("the Legislation Law"), the Jiangsu Salt Implementation Measures should still apply. Luwei Company's purchase of industrial salt without approval by the provincial salt company or the salt administration competent department violated the relevant provisions of the Salt Industry Administration Regulations. The penalty decision made by the Suzhou Salt Administration Bureau found the facts clearly, with conclusive evidence and correct application of regulations and regulatory documents and lawful procedures, and requested that the court dismiss Luwei Company's claims.

Upon trial, the court found that on November 12, 2007, Luwei Company purchased 360 tons of industrial salt from Jiangxi and other places. The Suzhou Salt Administration Bureau took the view that, when Luwei Company purchased, sold, and transported industrial salt, it should have handled an industrial salt transport permit in accordance with the Jiangsu Salt Implementation Measures, and that Luwei Company's purchase of industrial salt from outside the province without handling an industrial salt transport permit was suspected of unlawfulness. On February 26, 2009, after a hearing and collective discussion, the Suzhou Salt Administration Bureau determined that Luwei Company's purchase of salt products from outside the province without allocation by the Jiangsu Provincial Salt Company or approval by the salt administration competent department violated Article 20 of the Salt Industry Administration Regulations and Article 23 and Article 32(2) of the Jiangsu Salt Implementation Measures, and, pursuant to Article 42 of the Jiangsu Salt Implementation Measures, issued Penalty Decision (Su) Yan Zheng Yi Ban [2009] No. 001-B against Luwei Company, deciding to confiscate 121.7 tons of refined industrial salt and 93.1 tons of powdered salt illegally purchased by Luwei Company, and to impose a fine of RMB 122,363. Dissatisfied with the decision, Luwei Company applied to the Suzhou Municipal People's Government for administrative reconsideration on February 27. On April 24, the Suzhou Municipal People's Government issued Reconsideration Decision [2009] Su Xing Fu No. 8, affirming the penalty decision made by the Suzhou Salt Administration Bureau.

Judgment

On April 29, 2011, the Jinchang District People's Court of Suzhou, Jiangsu Province rendered Administrative Judgment (2009) Jin Xing Chu Zi No. 0027, revoking Penalty Decision (Su) Yan Zheng Yi Ban [2009] No. 001-B made by the Suzhou Salt Administration Bureau.

Reasoning

The effective judgment of the court held as follows. The Suzhou Salt Administration Bureau is the salt administration competent department of the Suzhou Municipal People's Government. Under Article 4 of the Salt Industry Administration Regulations and Articles 4 and 6 of the Jiangsu Salt Implementation Measures, it had the authority to administer salt business activities, including industrial salt, within Suzhou, and had lawful status as an enforcement subject.

When investigating and punishing salt industry violations, the Suzhou Salt Administration Bureau should apply lawful and valid legal norms. Article 79 of the Legislation Law provides that the effect of laws is higher than that of administrative regulations, local regulations, and rules, and that the effect of administrative regulations is higher than that of local regulations and rules. The Suzhou Salt Administration Bureau's specific administrative act involved administrative licensing and administrative penalties, and should have been implemented in accordance with the Administrative Licensing Law and the Administrative Penalty Law. Non-retroactivity of law means that the provisions of a law apply only to events and conduct occurring after the law takes effect, and do not apply to events and conduct occurring before the law takes effect. Article 83, paragraph 2 of the Administrative Licensing Law provides that, with respect to provisions on administrative licensing formulated before the implementation of this Law, the formulating organs shall clean them up in

accordance with the provisions of this Law, and those inconsistent with this Law shall cease to be enforced from the date of implementation of this Law. Article 64, paragraph 2 of the Administrative Penalty Law provides that regulations and rules on administrative penalties formulated before the promulgation of this Law that are inconsistent with this Law shall, from the date of promulgation of this Law, be revised in accordance with the provisions of this Law and be completed before December 31, 1997. Therefore, the Suzhou Salt Administration Bureau's defense of non-retroactivity of law could not be established. Under Article 15, paragraph 1 and Article 16, paragraph 3 of the Administrative Licensing Law, where laws and administrative regulations have already been formulated, local government rules may only make specific provisions on the implementation of an administrative license within the scope of administrative licensing matters established by laws and administrative regulations, and may not establish new administrative licenses. The laws and the Salt Industry Administration Regulations have not established the transport permit for industrial salt as an administrative license, and local government rules may not establish the industrial salt transport permit system. Under Article 13 of the Administrative Penalty Law, where administrative regulations have already been formulated, local government rules may only make specific provisions within the scope of the conduct, types, and ranges of administrative penalties established by the administrative regulations. The Salt Industry Administration Regulations have not established administrative penalties for the operation of wholesale business in salt by enterprises other than salt companies, and local government rules may not establish administrative penalties for such conduct.

In adjudicating administrative cases, the people's court applies laws, administrative regulations, and local regulations, and refers to rules. When the Suzhou Salt Administration Bureau imposed the administrative penalty on Luwei Company in the exercise of its authority, although it applied the Jiangsu Salt Implementation Measures, it failed to follow Article 79 of the Legislation Law on the hierarchy of legal effect and failed to comply with the relevant provisions of the Administrative Licensing Law and the Administrative Penalty Law, which constituted erroneous application of law and should be revoked in accordance with the law.

Relevant Legal Provisions

1. Article 15, paragraph 1 and Article 16, paragraphs 2 and 3 of the Administrative Licensing Law of the People's Republic of China.

2. Article 13 of the Administrative Penalty Law of the People's Republic of China.

3. Article 53, paragraph 1 of the Administrative Procedure Law of the People's Republic of China.

4. Article 79 of the Legislation Law of the People's Republic of China.

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