SPP Guiding Case No. 183: Administrative Public Interest Litigation Urging Regulation of Tax Supervision in the Refined Oil Sector (Shengzhou, Zhejiang)

Dan Young Business Consultancy — www.danyoungcpa.com

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

Keywords

Administrative public interest litigation, pre-litigation procedure; protection of state property; tax evasion; non-standard oil; big data legal supervision model.

Holding

For circumstances such as the illegal sale and use of "non-standard oil" that evade taxes and cause loss of state property, the procuratorial organ may, through the legal supervision path of "analyzing individual cases, sorting out elements, building a model, supervising similar cases, and achieving source governance," build a big data legal supervision model, use legal supervision to support law-based administration, and pool the law enforcement and judicial forces for the protection of state property.

Basic Facts

In response to the problems — strongly reported by the public and exposed by the news media — of "non-standard oil" (a general term for all illegal oil products other than regular refined oil, including illegal oil of unclear source, non-compliant channels, substandard quality, or tax-evading oil) endangering public safety and polluting the atmospheric environment, in August 2019 the People's Procuratorate of Shengzhou City, Zhejiang Province (hereinafter the "Shengzhou Procuratorate") deployed and launched a special legal supervision activity for the comprehensive rectification of "non-standard oil." It discovered that some oil-consuming enterprises in logistics, transport, engineering and infrastructure construction purchased and used "non-standard oil" in large quantities in violation of regulations and carried out non-compliant deductions using non-refined-oil value-added tax invoices; some gas stations sold "non-standard oil" in large quantities through "sales without invoices" and off-book transactions, thereby evading tax supervision.

Procuratorate Performance of Duties

In December 2019, the Shengzhou Procuratorate filed and investigated the case concerning the damage to public interests caused by unlicensed and unregistered refueling points discovered during the special legal supervision activity. Seizing on the characteristic that oil-consuming enterprises recorded their oil purchase funds as operating costs in their accounts for tax deduction, the Procuratorate explored the use of big data thinking and cross-matched administrative supervision data from multiple departments, locking in 72 oil-consuming enterprises that used non-refined-oil value-added tax invoices for deduction. The invoice product names involved nine types of oil products, including "compound diesel," "heat transfer oil," and "light cycle oil," with a total involved value of more than 62 million yuan. The above oil-consuming enterprises improperly deducted taxes by using non-refined-oil invoices as refined-oil value-added tax invoices, causing a loss of state tax revenue and harming state interests. On March 20, 2020, the Shengzhou Procuratorate delivered a procuratorial recommendation to the tax department, suggesting rectification of the illegal phenomenon of non-refined-oil invoices not conforming to their actual use and product names, so as to effectively prevent and control tax risks. After receiving the procuratorial recommendation, the tax department performed its tax supervision duties in accordance with the law and urged the enterprises involved to make up additional taxes and fees totaling 10.0811 million yuan, effectively regulating the order of the refined-oil consumption-end market.

Through investigation, the Shengzhou Procuratorate found that "non-standard oil" not only had prominent problems of improper value-added tax deduction at the consumption end, but also had problems of tax evasion at the sales end. Some gas stations, in the process of selling "non-standard oil," evaded supervision through "sales without invoices" and off-book transactions, causing a substantial loss of state tax revenue. Using the trajectory data of oil tanker trucks as a breakthrough point, the Shengzhou Procuratorate extended its supervision perspective from the terminal consumption market to the front-end sales market. With the support of higher-level procuratorial organs, the Shengzhou Procuratorate cooperated with relevant scientific research institutions to design and develop a comprehensive rectification supervision model for "non-standard oil" (hereinafter the "supervision model"). Based on the logistics and transport patterns of "non-standard oil," the supervision model calculated the actual taxable sales revenue of gas stations and cross-analyzed it with the supervision data of the tax department, thereby locking in leads on tax evasion. Through the supervision model, the Shengzhou Procuratorate screened a certain gas station and calculated that, from January to August 2021, there was a large discrepancy between the taxable sales revenue self-declared by the gas station and its actual taxable sales revenue. In response to the newly discovered circumstances of the gas station selling "non-standard oil" and evading taxes to the detriment of state interests, on October 11, 2021, the Shengzhou Procuratorate issued a procuratorial recommendation to the tax department, suggesting the adoption of effective measures to recover the gas station's evaded taxes and standardize the tax declaration work of gas stations. After receiving the procuratorial recommendation, the tax department formed a special task force to carry out investigation and imposed an administrative penalty ordering the gas station involved to make up taxes and fees and to pay a fine totaling 6.05 million yuan.

In August 2021, the People's Procuratorate of Zhejiang Province deployed a province-wide special supervision activity against the illegal sale and use of "non-standard oil." By the end of 2022, the procuratorial organs of Zhejiang had urged the tax department to recover taxes totaling more than 280 million yuan; through the supervision model, 93 leads on illegal refueling points were also discovered and transferred to the relevant departments for handling in accordance with the law. Driven by the procuratorial organs of Zhejiang Province, the province upgraded the supervision model into a digital multi-scenario application for "comprehensive intelligent governance of refined oil" involving 17 provincial-level departments, including taxation, procuratorial, and transport departments, standardizing the tax supervision order of refined oil and facilitating "whole-chain" digital closed-loop management of the province's refined-oil market.

Guiding Significance

(1) Supervising and rectifying tax evasion is an important aspect of handling public interest litigation cases in the field of protection of state property. The scope of supervision in the field of protection of state property is broad, and procuratorial organs should pay attention to applying systematic thinking and identifying the right entry point for supervision. Tax, as an important component of state fiscal revenue, affects all aspects of the socialist market economy, and handling tax-related cases well is of great significance. In response to the problems in the "non-standard oil" field — such as concealed tax evasion, difficulty of administrative supervision, and long industrial chains — procuratorial organs should adhere to a problem-oriented approach, carry out deep and solid source governance, and proceed from standardizing the invoicing behavior at the consumption end of "non-standard oil" to severely punishing tax evasion at the sales end, so as to use legal supervision to support administrative organs in administering in accordance with the law and protect the safety of state property.

(2) Procuratorial organs should enhance big data thinking in handling public interest litigation cases and improve the quality and effectiveness of legal supervision by building big data legal supervision models. For universal social governance problems discovered in the performance of duties, procuratorial organs should attach great importance to the collection and organization of relevant data — especially data lawfully collected and with unified standards — extract characteristic elements for data analysis, integrate them into

Source: https://www.danyoungcpa.com/spp-guiding-case-183-china/

the rules and procedures for handling public interest litigation cases, and convert them into a "language" recognizable by computers, that is, give full play to the multiple roles of big data legal supervision models in discovering leads, investigating and collecting evidence, fixing evidence, and providing problem-solving solutions, so as to realize the transition from handling individual cases to supervising similar cases.

(3) While performing duties in accordance with the law and proactively, procuratorial organs should also pay attention to coordination and cooperation with administrative organs to improve the effectiveness of social governance. Procuratorial organs and administrative organs share the same goal in protecting state interests and the public interest. In handling cases, procuratorial organs should ground themselves in their function of legal supervision, give play to the function of public interest litigation prosecution in coordinating and unifying the collaborative governance of multiple subjects, and help administrative organs to further promote systematic and comprehensive governance, so as to genuinely convert the institutional advantages of public interest litigation into social governance effectiveness.

Relevant Legal Provisions

Administrative Litigation Law of the People's Republic of China (amended in 2017), Article 25, paragraph 4.

Law of the People's Republic of China on the Administration of Tax Collection (amended in 2015), Articles 5, 25, paragraph 1, and 63, paragraph 1.

Measures of the People's Republic of China for the Administration of Invoices (revised in 2019), Articles 4 and 22.

Implementation Rules for the Measures of the People's Republic of China for the Administration of Invoices (amended in 2019), Articles 28 and 34.

Measures for the Dynamic Supervision and Administration of Road Transport Vehicles (amended in 2016), Articles 3, 13, 20 and 28 [currently Articles 3, 12, 19 and 27 of the Measures for the Dynamic Supervision and Administration of Road Transport Vehicles (amended in 2022)].

Rules for the Handling of Public Interest Litigation Cases by People's Procuratorates (effective in 2021), Article 75, paragraph 1.

Disclaimer: This document is an unofficial English translation of the original Chinese guiding case, provided for reference purposes only. While every effort has been made to ensure accuracy, the Chinese-language version is the sole authoritative text. This translation does not constitute legal advice, and no liability is accepted for any reliance placed upon it. For matters with legal implications, please consult the official Chinese source and seek qualified professional advice.