

Chinese Supreme Court: consignor is responsible for container detention charge in destination port when nobody takes delivery of cargo

Due to various commercial reasons, carriers may now and then meet with problems that the consignee abandons cargo and nobody takes delivery of cargo in destination port. Under such circumstance, it may be a problem for carriers that how to protect its legal interest regarding the container detention charge incurred thereby. Recently, our law firm successfully helped a carrier to claim against a consignor for the container detention charge, and the Chinese Supreme Court inked a landmark judgment in favor of carrier. Related information in this respect can be summarized as below for the attention of the Members and the Club:

Facts of this case

On Dec. 20, 2012, consignor A (a Chinese company) concluded a sales contract with a foreign company B for sale of a batch of cargo and A then entrusted a forwarder C to handle the export transportation matters. Afterwards, carrier D received entrustment of another forwarder E to carry the involved cargo and issued the B/L, which recorded that: shipper F; consignee B; port of loading Tianjin Xingang; port of discharge Melbourne, Australia. Clause two of the back clauses in the B/L provided that the carrier's charging standard for container detention charge incorporated into B/L. On March 8, 2010, the said cargo arrived at Melbourne and on March 15, 2010 the consignee B issued a letter to abandon the cargo. On March 22, 2010, consignor A issued a letter to carrier D to abandon the cargo and entrusted D to handle all the matters relating to disposal of cargo in discharge port. Carrier D then found a new buyer to the cargo and part of the sale proceeds were used to compensate the port charges etc. D then claimed A and forwarder E for the container detention charge at AUD70,940.

First instance trial by Tianjin Maritime Court

In first instance trial, Tianjin Maritime Court decided that:

1. Performance of carriage of goods by sea contract needs cooperation of the carrier and shipper in good faith, and the shipper should ensure that the related parties would take delivery of cargo at discharge port so as to assist the carrier to complete its duty of delivery of cargo.
2. As per Art. 88 of Chinese Maritime Code, if nobody takes delivery of cargo within 60 days from the next day of the ship's arrival at the port of discharge, the carrier may apply to the court for an order on selling the goods by auction; the proceeds from the auction sale shall be used to pay off the expenses for the storage and auction sale of the goods, the freight and other related charges to be paid to the carrier; if the proceeds fall short of such expenses, the carrier is entitled to claim the difference from the shipper.

3. In this case, the shipper and consignee both issued letter for abandoning the cargo and the carrier should be entitled to pursue recourse claim against shipper. Whereas, because E was just a forwarder and it had no fault in this case, claim against E should be rejected.

Appeal instance trial by Tianjin High People's Court

4. A lodged appeal to Tianjin High People's Court and stated that it was the seller of the cargo and the container detention charge should just be claimed against the consignee. A's letter regarding abandoning the cargo was just to assist the carrier to dispose the cargo and it should not change the fact that the person liable for the container detention charge should be the B/L shipper F or consignee B.

5. Tianjin High People's Court decided that:

- (1) A was the seller of the cargo; the letter for abandoning cargo, the sales invoice, packing list, and the customs declaration form could prove that A was the consignor of the cargo.

- (2) As per Art. 42 of Chinese Maritime Code, "Shipper" means the person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea.

- (3) As such, A was the shipper and since the involved B/L had not been negotiated to consignee and the consignee refused to take delivery of cargo, the transport contract as evidence by B/L had not been transferred to consignee. Therefore carrier D was entitled to claim against shipper A for the container detention charge.

Retrial instance trial by Chinese Supreme Court

6. A further lodged application for retrial to Chinese Supreme Court and stated that it had no carriage of goods by sea contract with D and the claim against A should be dismissed.

7. Chinese Supreme Court decided that:

- (1) As per the sales invoice, packing list, entrustment letter for transport of export cargo, and the customs declaration form etc, it could be ascertained that B was the seller and consignor of this cargo. A had no objection regarding the fact that this cargo was entrusted by it to the forwarder C and then there were a serial of sub-entrustment to other forwarders. As such, it was correct to identify A as the shipper as per Art. 42 of Chinese Maritime Code.

(2) In terms of the issue of whether A should be liable for the container detention charge in discharge port, in this case the consignee refused to take delivery of cargo, the involved B/L had not been negotiated to consignee, and the transport contract as evidence by B/L had not been transferred to consignee. Therefore, it is correct to hold A liable for container detention charge in discharge port.

Our observation on this case and comment

It may be a tricky matter regarding how to protect the carrier when nobody takes delivery of cargo at discharge port and how to claim for compensation regarding the container detention charge. In this case, it also involves a complicated issue of identification of shipper, privity of contract and transference of carriage contract as evidences by B/L etc. China now has a common law style “case guidance system” and although there is no *stare decisis* doctrine in Chinese law, cases handled by Chinese Supreme Court will play more and more important role to guide lower courts in respect of handling similar cases. Plainly, this case should be a welcomed decision in the long winter of the shipping industry and carriers can use it as legal weapon in similar occasions to protect their legitimate interests.

Case Citation : [2012]MSZ No.1242, dated Oct. 29, 2012

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