

People's Court of Beichen District, Tianjin City

Civil Judgment

[2012] Chen Min Chu Zi No. 914

Plaintiff: Global Steel, domiciled at 1st Khetwadi Lane, Shop No.3, Badrikashram Bldg, Near Alankar Cinema, Bombay-4, India

Legal representative: Satish Shantilal Chandan, executive partner.

Agent ad litem: Luo Benjian, lawyer of Shanghai Kaizheng Law Office.

Defendant: Tianjin Dongmao Special Steel Metal Materials Trade Co., Ltd., domiciled at Room 401, Door 2, Building 1, Tianyang Apartment, Beichen District, Tianjin.

Legal representative: Li Zhengdong, general manager.

Agent ad litem: Liu Runjie, lawyer of Tianjin Jinchun Law Office.

Agent ad litem: An Ning, lawyer of Tianjin Jinchun Law Office.

With respect to the case on dispute of the plaintiff Global Steel with the defendant Tianjin Dongmao Special Steel Metal Materials Trade Co., Ltd. (hereinafter referred to as Dongmao Company) over the contract for international sale of goods, after this court accepted the case, the acting judge Liu Hongyun exercised judicial power independently and adjudicated at court session publicly according to law. The plaintiff's agent ad litem Luo Benjian and the defendant's agent ad litem Liu Runjie appeared in court and joined the litigation. The case has now been finalized.

The plaintiff Global Steel alleged that on April 28, 2011, the plaintiff signed a contract for international sale of goods (contract No.: DMGS428) with the defendant, setting forth that the plaintiff purchased a batch of stainless steel coils from the defendant with the quality grade of SS304, width of 1500mm, thickness of 5mm and weight of 25 tons at the rate of CIF NHAVA SHEVA INDIA US\$3210/TON, amounting to US\$80250 in total. The transportation mode was sea transport with the port of shipment at Tianjin Xingang. The delivery period was within 15~20 days after receipt of advance payment. The terms of payment were 15% of advance payment made at first and residual payment made after the goods passed the inspection by the purchaser, both made through telegraphic transfer. After the execution of the sale contract, the plaintiff made the advance payment of US\$12037.50 to the defendant on May 3, 2011 and made the residual payment of US\$67617.50 on July 12, 2011 according to the contract. The defendant shipped the goods for transportation on July 26, 2011, and the goods arrived in Nhava Sheva India on August 16, 2011. During the period of handling import entry procedures for goods, the plaintiff was informed that the goods were short of weight and then negotiated with the defendant promptly. On September 3, 2011, after receiving the goods, the

plaintiff arranged the international inspection institute SGS to carry out inspection for the weight and quality grade of goods. The inspection result of SGS showed that 2 rolls of stainless steel coils delivered by the defendant were short of weight by 4.31 tons, with the thickness of 4.7mm and 4.6mm respectively and the quality grade below SS201, which were seriously inconsistent with the weight and quality conditions as specified by the sale contract, thus the plaintiff suffered a loss of US\$44365. The plaintiff made a claim against the defendant for the problem of short weight and quality of goods, but was declined by the defendant. Therefore, the plaintiff filed the claim and asked the court to order according to law: 1. the defendant shall compensate the plaintiff for loss of goods by US\$44365 and loss of interests (calculated based on the deposit interest rate of US dollar as specified by the People's Bank of China for the corresponding period from October 17, 2011 to the effective date of this judgment, at an exchange rate of US dollar to RMB of 1:6.37 on value date); 2. the litigation expense of the case shall be borne by the defendant.

In order to support the claim, the plaintiff submitted the following evidences:

Evidence 1: proforma invoice, which substantiated the relationship of sale contract between both parties and the agreement on quality and weight of goods.

Evidence 2: payment vouchers, which substantiated that the plaintiff had paid the defendant a total payment of US\$79655.

Evidence 3: bill of lading, which substantiated that the defendant shipped the goods to the plaintiff on July 16, 2011 and meanwhile substantiated that the grade of goods agreed in the contract was SS304.

Evidence 4: tracking records of container movement (with container No.), which substantiated that the goods arrived at the port of destination on August 16, 2011, and the plaintiff received the goods on September 3, 2011.

Evidence 5: weight inspection report, which substantiated that 2 rolls of stainless steel coiled plates delivered by the defendant were short of weight and seriously inconsistent with the weight agreed in the contract.

Evidence 6: weighbridge weighing receipt, which substantiated that there was a short weight result concerning the goods when weighed by the weighbridge.

Evidence 7: quality inspection report, which substantiated that the goods delivered by the defendant were disqualified in quality with the quality grade below SS201 and were seriously inconsistency with the quality agreed in the contract, thus indicating that the goods delivered by the defendant were extremely inferior in quality.

Evidence 8: e-mails, which substantiated that the plaintiff negotiated with the defendant on the

problems of short weight and quality of goods and filed a claim against the defendant, and the defendant acknowledged in the e-mails that there were problems with the said goods and told the plaintiff that the problems were caused by the supplier.

Evidence 9: lawyer's letter and certificate of entrustment sent to the defendant by the lawyer entrusted by the plaintiff, with the same purpose as evidence 8 to substantiate the process of negotiating on compensation.

Evidence 10: market price of SS201 and SS304 stainless steel coils, which substantiated that the price of SS201 stainless steel was only equivalent to half of that of SS304 grade and thus the value of goods actually delivered by the defendant was far below that agreed in the contract.

Evidence 11: materials for qualification of SGS, which substantiated that SGS had the qualification for appraisal.

The defendant Dongmao Company defended that the defendant had provided the plaintiff with qualified products according to the contract signed between both parties. Both parties signed a proforma invoice on April 28, 2011 at CIF term, and China Customs had inspected the goods. CIF term means the cargo is deemed to be delivered upon arrival at the port of destination. After the cargo arrives at the port, the risk of sale contract is transferred. The plaintiff had made the payment for goods upon receipt of goods, which substantiated that the goods did not have any problem. The defendant did not approve the appraisal institute selected by the plaintiff, and it did not agree with the inspection results. In a word, the defendant did not consent to the claim filed by the plaintiff.

In order to support the claim, the defendant Dongmao Company submitted the following evidences:

Evidence 1: proforma invoice, which substantiated that a contract was signed between both parties.

Evidence 2: customs declaration.

Evidence 3: packing list.

Evidence 4: dock receipt at the port of Xingang.

Evidence 5: insurance policy.

Evidence 6: bill of lading.

Evidence 7: certificate of origin. Evidences 2~7 comprehensively substantiated that the goods provided to the plaintiff were not short of weight before shipment and the quality was also qualified, indicating the defendant had fulfilled the obligations under the contract.

After conducting cross-examination in this court, the defendant Dongmao Company stated the following cross-examination opinions for those evidences submitted by the plaintiff: for evidences 1~4

and evidence 9, there was not any objection; for evidence 5, an objection was raised regarding its authenticity. In light of the particularity of sales, the plaintiff had already taken the delivery of goods and could not guarantee that the subject matter inspected was the goods provided by the defendant; even if the inspected goods were provided by the defendant, the responsibility for loss in weight should not be borne by the defendant as the risk of goods had been transferred to the plaintiff at the time when the goods departed from port of shipment. Because the contract specified that CIF term was adopted and the jurisdiction was in China, therefore, according to the applicable laws and the regulations of the Supreme Court in China, the appraisal institute shall be an institute with legal qualification in China, which should be designated by the court or selected by both parties. As the defendant was not clear about the existence of SGS, it had objection to its fairness and legitimacy, i.e. its inspection results should not be regarded as the basis for reaching a conclusion on this case. For evidence 6, an objection was raised regarding its authenticity. The reasons are as follows: firstly, it could not be confirmed that whether the said goods were those provided by the defendant or not; secondly, it was not clear that in which process the short of weight was caused. The cross-examination opinions for evidence 7 were the same as those for evidences 5 and 6. For evidence 8, the defendant alleged that the plaintiff could not use this evidence to substantiate that the defendant acknowledged that the goods were short of weight with disqualified quality, thus the defendant didn't agree with the purpose of evidence provided by the plaintiff. For evidence 10, the defendant claimed that the plaintiff should not use the price of SS201 to calculate the price of the said goods, and the price of SS304 online was also lower than that provided by the plaintiff. Besides, the market price of steel material fluctuated rapidly, therefore it could not be used for the purpose of reference. For evidence 11, there was not any objection against its authenticity, but the purpose of evidence shall not be agreed by the defendant.

The plaintiff Global Steel stated the following cross-examination opinions for those evidences submitted by the defendant Dongmao Company: for evidence 1, the proforma invoice provided by the defendant and the one provided by the plaintiff were substantially consistent with each other but still with some differences, so the proforma invoice provided by the plaintiff shall govern. For evidence 2, there was not any objection against its authenticity. The plaintiff claimed that being approved by the Customs could not substantiate the goods were not short of weight, since it was declared by the defendant unilaterally without actual inspection carried out by the Customs. For evidence 3, i.e., packing list, which was identical with the bill of lading, there was not any objection. For evidence 5, i.e., insurance policy, the plaintiff would approve if there was an original copy, but the insurance policy could not substantiate whether the goods were short of weight or not. For evidence 6, i.e., bill

of lading, there was not any objection. For evidence 7, i.e., certificate of origin, it could substantiate that the goods came from China only and could not play any demonstrative role in this case.

This court identified the facts by trial as follows: on April 28, 2011, the plaintiff Global Steel and the defendant Dongmao Company signed a contract for international sale of goods (contract No.: DMGS428), setting forth that the defendant Dongmao Company supplied the plaintiff Global Steel with SS304 stainless steel coils, with width of 1500mm, thickness of 5mm (actually 4.9mm) and weight of 25 tons at the rate of CIF NHAVA SHEVA INDIA US\$3210/TON, amounting to US\$80250 in total. The transportation mode was sea transport with the port of shipment at Tianjin Xingang. The delivery period was within 15~20 days after receipt of advance payment. The terms of payment were 15% of advance payment made through telegraphic transfer at first and residual payment made after the purchaser inspected the goods. After sale contract signing, the plaintiff Global Steel made the advance payment of US\$12037.50 to the defendant Dongmao Company on May 3, 2011 and made the residual payment of US\$67617.50 on July 12, 2011 according to the contract. The defendant Dongmao Company shipped the stainless steel coils on July 26, 2011, showing “shipper’s load and count, S.T.C. 2 packages hot rolled stainless steel coils, grade 304, 24,800 kilograms” on the bill of lading, and the stainless steel coils arrived at the port of Nhava Sheva India at 12:30 on August 16, 2011. The plaintiff Global Steel contacted the defendant Dongmao Company to discuss the problems of short weight, pre-checked grade and handling of loss from short weight through e-mail two times on September 2, 2011. After receiving the stainless steel coils on September 3, 2011, the plaintiff Global Steel entrusted the inspection institute SGS to carry out relevant inspection. SGS carried out inspection for the weight and other aspects of the stainless steel coils on September 12, 2011 with the result showing that the inspected thickness was 4.7mm and 4.6mm respectively, and issued a weight inspection report stating that the weight of stainless steel coils was 20,490 kilograms on December 9, 2011. SGS carried out inspection for the quality and other aspects of the stainless steel coils on October 8, 2011, and issued a quality inspection report stating that two pieces of stainless steel coils did not conform to SS304 grade and belonged to SS200 grade series, which could not be classified into any specific grade and should be below SS201 grade. During this period, the defendant Dongmao Company replied to the plaintiff Global Steel on September 15, 2011, stating that the supplier claimed that it could not offer enough weight because of low price and could bear the loss equivalent to 1 ton of goods, and then replied to the plaintiff Global Steel again on September 16, 2011, stating that it agreed to compensate the plaintiff for loss of US\$4,720. Later, both parties negotiated with each other on the compensation problem many times but the negotiations failed, so the plaintiff Global Steel submitted the claim to this court.

It was also found that SGS India Pvt. Ltd. was established on June 8, 1950, formerly known as “General Superintendence Company (India) Limited”, which was a limited liability company. It was later changed its name into “SGS India Pvt. Ltd.” on March 8, 1991 as a commercial organization engaging in service industry, focusing on quality inspection, sample analysis, etc.

The above facts were substantiated by the evidences provided by the plaintiff and the defendant and trial record.

This court holds that this case was a dispute over a contract for international sale of goods. Whereas the defendant was located within an area under our jurisdiction, according to the implicated jurisdiction principle of civil procedure law, this court may exercise jurisdiction over this case. Because both parties concerned did not select applicable law for treatment of contract dispute jointly in the contract for this case, according to Article 145 of the *General Principles of the Civil Law of the People's Republic of China* and relevant judicial interpretation, the applicable law shall be selected on the principle of closest connection. At present, the defendant of this case is in China, according to relevant legal regulations, China has the closest connection with this case and Chinese civil substantive law shall be the *lex causae* for this case. Both parties concerned do not have any objection against this.

This court hereby affirms that the sale contract signed between the plaintiff Global Steel and the defendant Dongmao Company was the true intention of both parties, and that its contents were legal and effective without breaching any mandatory provisions such as laws and administrative regulations. After signing the contract, the plaintiff Global Steel paid the defendant Dongmao Company an amount of US\$79,655 according to the contract, but the defendant Dongmao Company provided 20,490 kilograms of stainless steel coils with the quality grade below SS201 (not SS304 grade), thus its action breached the agreed quality and quantity for subject matter in the contract and constituted breach of contract. Therefore, this court supports the plaintiff’s claim against the defendant for compensation for loss of goods. For claim that the defendant Dongmao Company did not agree with the appraisal institute selected by the plaintiff and the defense against its inspection result, this court holds the following opinions: after receiving the subject matter of contract, the plaintiff promptly arranged SGS to carry out inspection. By investigation conducted by this court, it was found that SGS had inspection qualifications. Moreover, the plaintiff contacted the defendant Dongmao Company for relevant conditions such as short weight of subject matter, thus its action was proper in the execution of contract and inspection of subject matter. Therefore, this court does not support the defense of the defendant Dongmao Company in this aspect. For the claim made by the plaintiff for its loss of interests, this court holds that according to the provisions of “payment terms: 15% (US\$12037.5) in

advance, 85% (US\$68212.5) payable against the buyer's inspection" of the contract, the plaintiff should pay the defendant the residual payment of contract involved after the inspection of goods, but in fact the plaintiff paid the residual payment before the defendant fulfilled its obligations to deliver the goods. The plaintiff paid the goods payment in advance at its own will, but it requested the defendant to pay its loss of bank's interests arising from the above goods payment. In light of the above facts, this court holds that this claim of the plaintiff was not fair, and this court does not support it.

In summary, mediation over this case failed. According to Article 145 of the *General Principles of the Civil Law of the People's Republic of China*, Articles 8, 44.1, 60.1 and 107 of the *Contract Law of the People's Republic of China* and Articles 235 and 247 of the *Civil Procedure Law of the People's Republic of China*, this court adjudicates as follows:

1. The defendant Tianjin Dongmao Special Steel Metal Materials Trade Co., Ltd. shall make a compensatory payment of US\$43,368 to the plaintiff Global Steel within 5 days after the judgment becomes effective. {The source of this payment; [US\$43,368: ① US\$14,477.1: US\$3,210/ton x 4.51tons (25tons - 20.49tons) = US\$14,477.1; ② US\$28,890.9: 20.49tons x US\$1,410/ton (US\$3,210/ton - US\$1,800/ton) = US\$28,890.9]}.

2. Other claims filed by the plaintiff shall be dismissed.

If the obligation for payment is not made within the period specified by this judgment, then the interests of debt for the delayed period shall be paid doubly according to Article 229 of the *Civil Procedure Law of the People's Republic of China*.

The court acceptance fee of RMB 2,770 shall be borne by the defendant Tianjin Dongmao Special Steel Metal Materials Trade Co., Ltd. (which shall be paid to this court within 5 days after this judgment becomes effective).

Either party that refuses to accept this judgment may, within 30 days after service of this judgment (for the plaintiff), or within 15 days after service of this judgment (for the defendant), appeal to the No. 1 Intermediate People's Court of Tianjin Municipality by submitting an appeal petition to this court, the copies of which shall be prepared according to the number of people of the other party, and paying case acceptance fee to the No.1 Intermediate People's Court of Tianjin Municipality based on the amount of appeals it refuses to accept in this judgment. If the case acceptance fee is not paid within 7 days after the appeal period expires, the appeal will be deemed as having been withdrawn.

This copy is an authentic
duplicate of the original.

Acting judge: Liu Hongyun

April 18, 2012

Court clerk: Li Zhiyuan

