

The Wxercise of the Sea Shipper's Right of Control

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Abstract

International trade contracts and the contract of carriage of goods by sea have a close relationship, the right to stop midway is an important means of relief for the seller as the shipper in the face of the buyer's breach of contract and other circumstances. Zhejiang Longda Stainless Steel Company v. Maersk case was heard by Ningbo Maritime Court, Zhejiang Provincial High People's Court and the Supreme People's Court three times, which can be seen to have some reference value. Through the analysis of the facts of the case, the main thrust of the decision, for the guidance of China as the seller of the shipping shipper how to effectively exercise the right to stop midway, providing a more important insight.

Keywords

Right of Control; Article 829 of The Civil Code; Principle of Fairness.

1. Introduction

The right of stoppage in international trade practice refers to the seller of the sale contract in the buyer's default or payment can not be and the goods have not been delivered to the consignee, by retrieving the goods to protect their rights and interests of a practice. China's law has different provisions on the right of stopping the shipment, mainly in Article 829 of the Civil Code "Before the carrier delivers the goods to the consignee, the shipper may request the carrier to suspend transportation, return the goods, change the place of arrival or hand over the goods to another consignee, but shall compensate the carrier for the resulting loss". The full exercise of the right to stop the carriage in transit may seem to require only the shipper to make a request before the goods reach the consignee, but in practice it should also take into account what mode of transport the goods take, and at what stage of the transport process.

Zhejiang Longda Stainless Steel Co., Ltd., the main focus of the dispute over the contract of carriage of goods by sea and through the waters of the sea is precisely the right to stop midway, the verdict of the case can be described as a series of twists and turns. Ningbo Maritime Court ruled against the plaintiff Lunda in the first instance, and then the Zhejiang Provincial High People's Court ruled in the second instance that the defendant Maersk bear 50% of the compensation liability. The Supreme People's Court later referred the case to the Civil Procedure Law, Article 200, item 6, "the original judgment or ruling of the application of law is really wrong", and in the re-trial judgment: "the second trial judgment ordered Maersk to bear half of the loss of the goods involved, the lack of factual basis, the application of law is improper, should be corrected. The second trial judgment ordered Maersk to bear half of the loss of the goods in question, lack of factual basis and improper application of law, should be corrected. The first trial verdict applied the provisions of the judicial interpretation of unbilled release of goods, and the facts of the case and the disputed legal issues are not consistent, should be corrected, but the verdict is correct and can be upheld." Finally the Supreme People's Court upheld the first instance judgment on the basis of the principle of fairness as stipulated in Article 5 of the Contract Law.

Although China is not a common law country, jurisprudence does not belong to the source of law, even all kinds of guiding cases and typical cases strictly speaking. However, the decision of

the Supreme People's Court will often have some influence on other people's courts at all levels to judge similar cases, especially if the Supreme People's Court's decision is upgraded to a guiding case, the influence will be greater according to the case guidance system. In view of this, I think the significance of in-depth analysis of the case is two: first, the case of the first trial, the second trial, and the retrial of the judgment for the disputed facts were applied to different legal norms, including the Civil Code, the Maritime Law, and the judicial interpretation of the release of goods without a bill of lading, which may lead to the relevant parties involved in maritime trade can not accurately predict the application of the law and the corresponding legal consequences when disputes arise; second, the case for the future The analysis of this case can help guide the parties in similar cases to make reasonable requests according to the actual situation so as to effectively exercise the right of stopping the shipment.

2. Summary of the case and the main points of the decision

2.1. Summary of the case

In June 2014, Lunda exported a batch of steel to Colombo, Sri Lanka by CIF and booked four containers to Maersk through freight forwarder. on July 9, Lunda informed Maersk by email that the destination port of its goods was wrong and requested to change the port or return the shipment. Maersk replied on the same day that it had arrived at the destination port in less than two days and could not change the port, and that it needed to confirm with the destination port before returning the shipment.

On July 10, Lunda asked Maersk through its freight forwarder whether the goods can be returned to the original ship, Maersk replied that "the original ship is not operational, after the goods are unloaded at the port of destination, the current consignee needs to apply to the local customs to return the goods after customs clearance at the port of destination. Only after the customs approval, can arrange the return shipment". Subsequently, Lunda company also proposed "this cargo to arrange for the return of the goods, is because the customs clearance can not be cleared, so it is returned to Ningbo, there are other ways". On March 13, 2015, the goods were auctioned by customs at the port of destination.

2.2. The gist of the decision

The courts of both trials and retrial did not dispute the factual issues and both found that Chinese law should be applied. The core controversy of this case focuses on two aspects. Firstly, whether Maersk should arrange for the cargo to be re-reported or returned. Ningbo Maritime Court held in the first instance that the claim of Lunda that Maersk failed to arrange for the change of port or return of its cargo was a violation of its legal obligations, but lacked valid evidence and insufficient reasons, so it was not supported. The Zhejiang High People's Court held in the second instance that the Maritime Law did not provide for the right of stopping the shipment midway and the Contract Law should be applied. According to Article 308 of the Contract Law, Lunda had the right to request Maersk to arrange for its transfer to another port or return the shipment. Interestingly, the Supreme People's Court held in the retrial judgment that although Article 308 of the Contract Law should be applied in this case, the parties still had to allocate their rights and obligations in accordance with the equitable principles stipulated in Article 5 of the Contract Law. The Supreme People's Court further explained that: the maritime cargo transportation has the special characteristics of large transportation volume, voyage is prepared in advance, voyage is relatively fixed, etc., the shipper requires the carrier to unconditionally perform the right to stop midway sometimes not only is not easy to operate, and may even seriously affect the interests of the carrier and other shippers. In this case, the shipper requested the carrier to change the port or return the shipment when the ship arrived

at the destination port less than two days ago, which was against the principle of fairness and the court did not support it.

Secondly, whether Maersk should be liable for Lunda's losses. In this case, the goods arrived at the port of discharge and stayed for eight months, and then were auctioned by the local customs. Ningbo Maritime Court of the first instance, according to the "judicial interpretation of the release of goods without a bill of lading", Article 8, "the carrier to the port of the goods more than the period prescribed by law, no one to declare to the customs, by the customs and sold in accordance with the law, or the court ruled that the auction of the goods retained by the carrier, the carrier claims exemption from the responsibility of delivery of goods, the people's court shall be supported", that Maersk shall not be liable for compensation. The Supreme People's Court supported the verdict, but held that the court of first instance applied the wrong law, because the dispute arose from the fact that no one picked up the goods at the port of destination, resulting in the goods being auctioned by customs, and there was no fact of releasing the goods without a bill of lading. In addition, Lunda claimed that Maersk had improperly controlled the goods without evidence, and Lunda itself, as the shipper, did not take any measures for eight months after the goods arrived at the port. According to Article 86 of the Maritime Law, "If no one picks up the goods at the port of discharge or the consignee delays or refuses to pick up the goods, the captain may unload the goods in the warehouse or other appropriate place, and the resulting costs and risks shall be borne by the consignee", Maersk, as the carrier, does not need to bear any responsibility.

3. The Effective Exercise of The Right To Stop Midway

The right of stoppage was firstly a system under common law, the British Sale of Goods Act 1979, the United States Uniform Commercial Code, the United States Federal Bill of Lading Act, etc. have detailed provisions on it. By analyzing the relevant provisions of the above-mentioned laws, it can be seen that the right of stoppage is based on the contract of sale, the unpaid seller's right to request the carrier to stop the goods that are no longer in its possession. For example, section 45 of the UK Sale of Goods Act 1979 specifies the period of carriage and section 46 specifies how the right of stoppage is to be exercised, i.e. the uncompensated seller claims the right to give notice to the carrier or other principal in actual possession of the goods. Upon receipt of the notice, the carrier, etc., will redeliver the goods to the seller as instructed. The UCC has similar provisions.

Our provisions on the right of stopover are found in Article 829 of the Civil Code. Firstly, the right of stopover is a right that arises from the contract of carriage and is exercised by the shipper. In other words, the shipper can unilaterally request the carrier to suspend transportation, return the goods, change the place of arrival or hand over the goods to another consignee without giving reasons to the carrier, and the time for the shipper to exercise this right is not specified. The time for the shipper to exercise this right is not clearly defined, and the carrier seems to be obliged to agree to such requests. Finally, Article 829 of the Civil Code does not provide for the legal consequences of the carrier's violation of this article, and the book "Interpretation of the Contract Law of the People's Republic of China" prepared by the Legal Working Committee of the Standing Committee of the National People's Congress only states that the carrier shall notify the shipper in time if it cannot execute the shipper's instructions, but does not explain more about the consequences of failure to execute.

3.1. Shipper identification

The subject of the rights under Article 829 of the Civil Code is the shipper. According to Article 42 of the Maritime Law, the shipper is divided into the actual shipper and the contracting shipper. In trade practice and maritime practice, the identity of the shipper under different trade terms also differs. For example, if the buyer arranges transportation under FOB price

terms, the buyer is the contracting shipper. If the seller hands over the goods directly to the carrier entrusted by the buyer or delivers the goods to obtain the positive and negative yard receipts, the seller can be the actual shipper. Once the seller can not pay the situation, the buyer can request the carrier to return or change the port in accordance with its identity as the actual shipper, and the CIF price conditions by the seller to arrange transport, the seller of course enjoys the identity of the contracting shipper, but also logical to exercise the right of stoppage in case of necessity.

It is well known that the seller is often in a weak position under FOB price conditions. For the reason of protecting China's exporters, the Supreme People's Court in previous trials tended to identify the seller who actually delivered the goods as the actual shipper in all cases. If the seller delivers the goods to the carrier through the form of an agent, when the seller's agent hands over the goods to the carrier in the name of the seller or the agent's name, there is evidence that the seller expressly requests the agent to hand over his goods to the carrier, usually such FOB seller is also recognized as the actual shipper.

In addition, as the FOB seller of the actual carrier to exercise the right to stop shipping in accordance with Article 829 of the Civil Code, must obtain the bill of lading as a prerequisite. The bill of lading is an important proof of the contract of carriage of goods by sea, such as the actual shipper only holds the cargo receipt, then the carrier is likely to defend with the actual shipper does not exist between the contract of carriage.

3.2. Application of the principle of fairness

The principle of fairness is the basic principle of contract law, which belongs to the guideline of interpreting and supplementing contract law. When there are loopholes in the contract law, it can be supplemented according to the basic principles to avoid obvious deviations in the adjudication results. The principle of fairness emphasizes that the value between one party's payment and the other party's payment should be equal and the risk should be reasonably distributed. The logic of the Supreme People's Court's argument in applying the equitable principle in this retrial decision is as follows.

First of all, the Maritime Law does not provide for the right of stopping mid-shipment, while Article 829 of the Civil Code was formulated without taking into full consideration the legal system of bills of lading and international shipping practice, thus failing to fully and reasonably regulate the international carriage of goods by sea.

Secondly, considering the actual situation of this case and international shipping, the liner transported large volume, fixed voyage, usually have other owners of the goods on board, the shipper is only two days away from the port of destination to ask the carrier to change the port, does not have operability. At the same time, China's "direct return of imported goods management measures," for example, the provisions of the goods before customs clearance must follow strict conditions for the return of "goods into the territory, before the completion of customs clearance procedures, one of the following circumstances, the parties concerned can apply to the customs of the goods for direct return procedures: (a) because of national trade management policy adjustment, the consignee can not provide relevant (A) because of the national trade management policy adjustment, the consignee can not provide the relevant documents; (B) is the wrong issue, misloading or overloading of goods, the consignor or carrier can provide written proof of instruments; (C) the consignee or consignor agreed by consensus to return the consignment, the consignee or consignor can provide written proof of consent to return the consignment; (D) the trade dispute, can provide a court judgment has been in effect, the arbitration body arbitration decision or non-disputable and valid proof of ownership of the goods. (E) the goods are damaged or the state inspection and quarantine failed to provide the national inspection and quarantine department issued by the relevant inspection certificate. So

Lunda's return request is also not feasible. The shipper's two requirements have increased the carrier's risk.

Finally, Article 829 of the Civil Code is supplemented by the principle of fairness of the Civil Code, that is, the carrier shall fulfill the shipper's instruction to change port, return shipment, etc., but at the same time the shipper shall not violate the principle of fairness. Therefore, the carrier in this case can reasonably refuse the shipper's request to change the port and return the shipment, and is not liable for compensation.

According to this logic, any liner transportation has the above-mentioned characteristics, and for most cargo owners their cargo will only occupy part of the space on board. The shipper must follow the principle of fairness when exercising the right of stoppage in accordance with Article 829 of the Civil Code, and should give due consideration to the reasonableness and operability of the time when giving orders to the carrier to change ports and return shipments. Whether the shipper's instruction is contrary to the principle of fairness should also be determined in the light of the specific circumstances of each case. For example, if the change of port is made within the fixed port of call according to the schedule of liner and the change fee is paid, or if the change of port order is not within the schedule, but the liner company provides transfer service and the shipper agrees to pay the fee and issue the change of port guarantee, such cases should be considered as reasonable requirements in accordance with the fair principle. For example, if the relevant laws and regulations of the port country meet the conditions of return before customs clearance, and the shipper has prepared all relevant documents and papers, it should also be recognized as a reasonable request and arranged for return.

4. Conclusion

First, China Civil Code under the right to stop shipping can only be exercised by the shipper of the contract of carriage, and to the existence of the contract of carriage between the carrier and the shipper as a prerequisite. China's many international trade shippers should actively through various ways to obtain the identity of the shipper, such as FOB prices under the conditions of the seller should actively participate in booking activities, request the shipper column in the bill of lading signed and must be obtained bill of lading.

Secondly, if the shipper wants to fully and effectively form the right to stop mid-shipment, it cannot only consider the conditions of exercise as stipulated in Article 829 of the Civil Code, but must take into account the principle of fairness and must not unnecessarily increase the risk of the carrier. In practice, if there is a need to change ports or withdraw shipments, the following principles should be followed: firstly, active communication should be made with the carrier to explore the acceptability and feasibility of the program. Secondly, try to change the port within the port of call of the liner, and inform the carrier as early as possible; if you need to return the cargo, you should consult the relevant laws and policies of the port country in detail, and prepare all the required documents and papers. Finally, if the carrier reasonably rejects the relevant requirements and there is a risk of no one picking up the goods at the port of destination, the shipper should actively fulfill its obligations and properly dispose of the goods as early as possible to avoid the consequences of the goods being auctioned and not being compensated.

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