

The High People's Court of Guangxi Zhuang Autonomous Region
Administrative Judgment

(2018) Gui Xing Zhong No. 1163

Appellant (Plaintiff of First Instance): Beihai Naizhi Marine Science and Technology Co., Ltd., domiciled at Sushankuang, Xinggang Town, Tieshangang District, Beihai City.

Legal Representative: LI Naizhi, general manager of this Company

Agent ad litem: LIU Yeguang, lawyer of Guangxi Huibaichuan Law Firm.

Agent ad litem: YAO Zhaofeng, intern of Guangxi Huibaichuan Law Firm.

Appellee (Defendant of First Instance): the Beihai Marine and Fisheries Bureau, domiciled at No. 34, Guizhou Road, Beihai City.

Legal Representative: SUN Xu, Director General of the Bureau.

Head of Administration: LIN Guanghan, Deputy Director General of the Bureau.

Agent ad litem: GUAN Hanming, a staff member of the Bureau.

Agent ad litem: MAN Yaozhi, lawyer of Guangxi Haixin Law Firm.

Third Party of First Instance: Beihai Yufeng Mariculture Co., Ltd., domiciled at Shop No.2, Building No.1, Haitian Garden, No. 29, Xizang Road, Beihai City.

Legal Representative: ZHAO Zhulian, General Manager of the Company.

The appellant, Beihai Naizhi Marine Science and Technology Co., Ltd. (herein after referred to as "Naizhi Company"), appealed to this court against (2018) Gui 72 Xing Chu No.2 Administrative Judgment of Beihai Maritime Court, with regard to the case of a marine administrative penalty with the appellee, the Beihai Marine and Fisheries Bureau (hereinafter referred to as "Beihai Marine Fisheries Bureau"), and the third party of first instance, Beihai Yufeng Mariculture Co., Ltd. (hereinafter referred to as "Yufeng Company"). After accepting this case, the Court formed a collegial bench according to applicable laws and heard the case in a public hearing on December 27, 2018. The legal representative of the appellant, or Naizhi Company, LI Naizhi, its agent ad litem, LIU Yeguang, the head of administration of the appellee, or the Beihai Marine Fisheries Bureau, LIN Guanghan, and its agent ad litem GUAN Hanming and MAN Yaozhi appeared in the Court and participated in the proceedings. The third party in the trial of the first instance, Yufeng Company, was summoned by this Court according to applicable laws and refused to participate in the proceedings without justified cause. The court tried in absentia. The case has now been concluded.

The court of first instance found that on June 1, 2013, Yufeng Company and the Group of Shitoubu Village, Xinggang Town, Tieshangang District, Beihai City entered into the Rural Land Lease Contract (hereinafter referred to as "Rural Land Lease Contract"), pursuant to which it is agreed that the Shitoubu Village Group will lease the vacant land by the sea in Shitoubu Village to Yufeng Company from May 2013 to May 30, 2028. The plot is located by the sea in Shitoubu Village, with a shelter on the left, Beilin Wharf on the right, the front is flush with the seawall road, 100 meters along the street, 145 meters deep coastal advance, a total of 21.78 mu (1.452 hectares), used as a seafood frozen site. The contract also stipulated the relevant rights and obligations of both parties, such as the lease fee. The coastal vacant land covered by the contract was actually a shallow marine mudflat, which is considered to be the sea area and is located outside the coastline (see page 50 of the evidence submitted by the Beihai Marine Fisheries Bureau, the blue line being the coastline). During July 2013 and September 2013, Yufeng Company hired others to extract sand to fill the sea area involved in the case, forming sand piles. However, no measures were taken to prevent the sand from being lost or washed away by sea water. Some of the piles of sand were exposed to the water during the spring tide. On May 12, 2016, Naizhi Company and Yufeng Company entered into the Land Contract Transfer Agreement (hereinafter referred to as "Land Contract Transfer Agreement"), pursuant to which it was agreed that Yufeng Company would transfer the relevant rights and obligations in the aforementioned contract to Naizhi Company at a price of 1,200,000 Yuan, and Naizi Company obtained Yufen Company's rights in the original contract. When the Land Contract Transfer Agreement was signed, part of the sand piles filled by Yufeng Company was washed away by sea water. During July 2016 and September 2016, Naizhi Company leveled the sand piles that Yufeng Company had filled in the area, used machines and vehicles to transport soil, construction waste from the outside to level the site, constructed the wharf (commonly known as a temporary wharf), formed the status quo upon the Beihai Marine Fisheries Bureau' investigation of the case, and prepared to build a refrigeration plant.

In November 2016 and December 2016, the Beihai Marine Fisheries Bureau received a circular from the Ninth Detachment of China Maritime Surveillance on the law enforcement inspection of Tieshan Port Sea Area, and a letter from the office of the Standing Committee of Beihai Municipal People's Congress, reflecting that there is a new land reclamation project in the sea area near Shitoubu Village, suspected of illegally occupying the sea area without obtaining the right touse the sea areas. On October 8, 2017, the Beihai Marine Fisheries Bureau filed a case

against such land reclamation for investigation. During October 20, 2016 to January 19, 2018, the Beihai Marine Fisheries Bureau conducted investigations to find out the above-mentioned suspected violations of *the Law on the Management of Sea Area Use of the People's Republic of China*, investigated and inquired LI Naizhi, the legal representative of Nazhi Company, LI X, the Party Secretary of Shitoubu Community in Tieshangang District, and relevant personnel XU X, LIN X and LI Naiguang, and made transcripts of these inquiries. On January 16, 2018, The Beihai Marine Fisheries Bureau issued Beihai Yu Ze [2017] No.09 Notice of Order to Cease Illegal Conduct and Beihai Yu Jian [2017] No. 09 Notice of Inspection to Naizhi Company, ordered Naizhi Company to immediately stop illegally occupying the sea area, informed Naizhi Company that the Beihai Marine Fisheries Bureau would conduct inspection from that day on its occupation of the sea area in Shitoubu, and requested Naizhi Company to cooperate with such inspection. On the same day, the Beihai Ocean and Fisheries Comprehensive Law Enforcement Detachment, as Beihai Marine Fisheries Bureau's subordinate, commissioned the Guangxi Zhuang Autonomous Region Geographical Conditions Monitoring Institute to survey and identify the sea area occupied by Naizhi Company and LIN X. It is required to measure the actual area where the project has changed the use of the sea area and indicate the specific location. On January 22, the Guangxi Zhuang Autonomous Region Geographical Conditions Monitoring Institute issued the Report on Survey and Demarcation of the Temporary Wharf of the Sea Area Illegally Occupied by Beihai Naizhi Marine Science and Technology Co., Ltd., The sea area used by Naizhi Company is measured to be 0.3804 hectares, and the survey map of the sea area used by the temporary wharf illegally occupied by Naizhi Company is attached. On January 20, the case officers of the Beihai Marine Fisheries Bureau made a report on the conclusion of the investigation, suggesting that Naizhi Company be imposed an administrative penalty of "ordering to return the illegally occupied sea area, and pay 10 times of the sea area usage fee of the occupied sea area during the period of the illegal occupation, which shall be 1,711,800 Yuan". On January 26, the Beihai Marine Fisheries Bureau organized the Joint Hearing Committee for Maritime Violation Cases to conduct a joint hearing on the administrative penalty of the case. The results of the discussion were as follows: Naizhi Company be imposed an administrative penalty of "ordering to return the illegally occupied sea area, restore the sea to its original conditions, and pay 15 times of the sea area usage fee of the occupied sea area during the period of the illegal occupation, which shall be 2,567,700 Yuan". On January 31, the Beihai Marine Fisheries Bureau made an approval form for administrative penalty

opinions. The penalty opinions of the case handling officers had consistent opinions with the joint hearing opinions on January 26. The reviewers and approvers all plan to agree to the penalty opinions. On the same day, the Beihai Marine Fisheries Bureau produced the Notice of Hearing on Administrative Penalty of Beihai Yu Ting Gao [2017] No.09, informing Naizhi Company that it has the right to make representations, defenses and apply for hearings within three days from the date of receipt of the notice. On February 1, the Beihai Marine Fisheries Bureau served the notice to Naizhi Company, listened to its representations and defenses, and made transcripts on such representations and defenses. On February 5, Naizhi Company submitted a hearing application to the Beihai Marine Fisheries Bureau. On March 6, the Beihai Marine Fisheries Bureau held a hearing. The investigators put forward the facts, evidence and administrative penalty suggestions of Naizhi Company's suspected violation of the law, and Naizhi Company conducted defenses and cross-examinations. On March 9, the presiding officer on the hearing and the hearing officer produced an administrative penalty hearing report. On March 23, the Beihai Marine Fisheries Bureau organized the Joint Hearing Committee for Maritime Violation Cases to conduct a second joint hearing of the administrative penalty in this case. It believed that the facts of Naizhi Company's violation of the law were clear, the evidence was conclusive, the procedures were legitimate, the application of the law was correct, and the penalties were appropriate. It further believed that the factual reasons and evidence presented by Naizhi Company are untenable and shall not be adopted, and it is proposed to issue the same administrative penalty opinion as the first joint hearing. On April 8, the Beihai Marine Fisheries Bureau issued Beihai Yu Chu Fa [2017] No. 09 Administrative Penalty Decision (hereinafter referred to as "Administrative Penalty Decision No.09"), and imposed the following administrative penalties on Naizhi Company: order to return the illegally occupied sea area, restore the sea area to its original conditions, and pay 15 times of the sea area usage fee of the occupied sea area during the period of its illegal occupation, which shall be 2,567,700 Yuan. It is required that Naizhi Company pay the fine within 15 days upon its receipt of the penalty decision. But at the time of the trial, Naizhi Company has not paid the fine according to the penalty decision. Naizhi Company refused to accept the administrative penalty and filed a lawsuit with the Court of First Instance to set aside the Administrative Penalty Decision No. 09 made by the Beihai Marine Fisheries Bureau.

The court of first instance held that: this case is an administrative lawsuit brought by Naizhi Company alleging that the Beihai Marine Fisheries Bureau illegally imposed the administrative

penalty regarding the use of sea areas, and this is a dispute on maritime administrative penalty. Based on the arguments of the parties, the focus of the dispute in this case is as follows: I . Whether Naizhi Company conducted the action of land reclamation and occupied the sea area involved in the case; II . Whether the Beihai Marine Fisheries Bureau violated the due process of law in conducting the survey and demarcation of the sea area, and whether the administrative penalty imposed by the Beihai Marine Fisheries Bureau violated the due process of law; III. If Naizhi Company illegally conducted land reclamation and occupied the sea area involved in the case, whether it is obviously improper for the Beihai Marine Fisheries Bureau to impose a fine of 15 times the amount of the sea area usage fee of the occupied sea; IV. Whether there is a selective enforcement of the Beihai Marine Fisheries Bureau, and whether there is administrative omission against Yufeng Company.

I . Whether Naizhi Company conducted the action of land reclamation and occupied the sea area involved in the case. Naizhi Company conducted the action of land reclamation and occupied the sea area involved in the case for the following reasons: First, Naizhi Company entered into the Land Contract Transfer Agreement with Yufeng Company and obtained the relevant rights in the Rural Land Lease Contract between Yufeng Company and Shitoubu Village Group for the purpose of obtaining the actual right of use of the sea area involved in the case, and building the refrigeration plant after transformation. In fact, Naizhi Company obtained and took over the work of Yufeng Company, that is, the sand pile formed by pumping sand and dredging in 2013, and actually used and managed the sea area, constituting the action of occupying the sea area. Second, LI Naizhi, the legal representative of Naizhi company, admitted several times during the investigation by the Beihai Marine Fisheries Bureau that his company used its own forklift, hook and other machinery, brought soil and construction waste in from the outside and the sand piles formed by the Yufeng Company were leveled and enriched. A temporary wharf was formed, and part of the sea area has been newly filled to the southwest of the temporary wharf, and a sandbag cofferdam and revetment have been built on the sea side to the north of the temporary wharf. The actions of Naizhi Company, such as leveling and filling site and cofferdam revetment, are the continuation and consolidation of Yufeng Company's sand-blowing and reclamation, and finally formed the status quo of the land. This fact is confirmed by the law enforcement inspection report of the Ninth Detachment of China Maritime Surveillance, the suspicious area inspection report of the Beihai Sea Area Use Dynamic Supervision Center, LI Naizhi's representation, the testimony of

multiple other witnesses, and on-site photos etc., which could mutually be corroborated with each other. This fact is also consistent with the situation verified by the court of first instance on site. This shows that Naizhi Company has been engaged in land reclamation. Third, from the results of leveling and reclamation, Naizhi Company organized the implementation of cofferdams, transported soil and construction waste from outside, and leveled the site and formed the status quo of the land area. According to Guo Hai Guan Zi [2008] No. 273 "Notice of the State Oceanic Administration on Printing and Distributing the Classification System for the Use of Sea Areas and the Regulations for Marine Registration Surveys", "2.5 land reclamation refers to the way of using the sea that constructed dikes enclosed sea areas, filled up land and formed the effective shoreline", the leveling, reclamation and cofferdam actions of Naizhi Company constitute land reclamation. Fourth, Naizhi Company's reclamation and leveling of the site to form land changed the marine environment of the sea area involved, resulting that the nature of the sea area changed and the original marine function was lost, therefore, it has actually occupied the sea area. Although Naizhi Company did not further build a refrigeration plant, Naizhi Company used the site from June 2016 to January 2018. At first, Naizhi Company leveled and filled the site with soil for three months. After being ordered to stop by the Beihai Marine Fisheries Bureau, the site was used for fishing repair (see pages 18-19 of the evidence submitted by the Beihai Marine Fisheries Bureau). Naizhi Company's occupation of the sea area was in a continuous state.

II. Whether the Beihai Marine Fisheries Bureau violated the due process of law in conducting the survey and demarcation of the sea area, and whether the administrative penalty imposed by the Beihai Marine Fisheries Bureau violated the due process of law. Naizhi Company alleged that the Beihai Marine Fisheries Bureau organized the survey and demarcation of the sea area involved in the case on January 19, 2018 without prior notice, which constitutes a serious violation of the due process, and the claim of Naizhi Company is not tenable. First, *the Law of the People's Republic of China on Administrative Penalty* does not provide procedures on surveys and inspections. Article 15 of *the Measures for Implementation on Maritime Administrative Punishments* stipulates that "there shall be no fewer than two maritime supervisors present in the investigation of cases or in inspections, who shall show their certificates of law enforcement to the parties concerned. They may make investigations or inspections in any of the ways as described below: (i) entering into the scene of violation to make surveys and inspections, consulting or duplicating relevant materials, and making video records or taking pictures of the scene of violation. Written records

shall be made for the relevant surveys and inspections, which shall be signed or sealed by those under the survey or inspection or any other witnesses..... (iii) the professional or technical matters such as measuring, monitoring, testing or authenticating, etc. may be entrusted to the eligible institutions to make relevant reports. Such report may be used as evidences." Therefore, the enforcement organ of marine administrative penalty has no statutory obligation to notify the parties before conducting an inspection or survey. Second, on January 16, 2018, the Beihai Marine Fisheries Bureau issued Beihai Yu Jian [2017] No. 09 Notice of Inspection to Naizhi Company, which clearly requested Naizhi Company to cooperate in the inspection. In the interrogation transcript made by the case officer on the legal representative of Naizhi Company, LI Naizhi, it was asked whether LI Naizhi was willing to come to the scene to identify the boundaries, but he refused on the grounds that he did not have time. It can be seen that Naizhi Company did not actively cooperate with the investigation. Third, the Beihai Marine Fisheries Bureau invited LIN X as a witness to identify the boundary sites during the inspection. Only Naizhi Company and LIN X actually used and managed the sea area involved in the case. It was legitimate and reasonable for the Beihai Marine Fisheries Bureau to invite LIN X to be a witness. And LI Naizhi also confirmed LIN X's identification of the boundary sites in the transcript of the inquiry made by the Beihai Marine Fisheries Bureau shortly after the end of the investigation, on the same day. Naizhi Company's claim that LIN X did not know he was asked to identify the boundary site of the sea area enclosed and occupied by Naizhi Company is not valid. Only Naizhi Company and LIN X actually use and manage the sea area involved in the case and the adjacent sea area, and LIN X clearly knows the boundary between them. Moreover, the on-site records of the inspection have clearly records for measurement of the three areas: the area under LIN X's management and use, the area under LI Naizhi's (Nazhi Company) management and use, and the pond shrimp raising area of LIN X. The final determination of Naizhi Company's land reclamation and occupation of the sea area has also deducted the area with relevant land documents. According to the survey and demarcation report, the area of the sea area reclaimed and occupied by Naizhi Company is 0.3804 hectares.

Naizhi Company claimed that the Beihai Marine Fisheries Bureau did not file a case for investigation pursuant to applicable laws, which is inconsistent with the facts. On October 8, 2017, the Beihai Marine Fisheries Bureau investigated and filed a case regarding Naizhi Company's land reclamation activities. Although LI Naizhi was the party recorded on the filing approval form at

that time, with the deepening of the investigation, the Beihai Marine Fisheries Bureau has changed Naizhi Company into a party to the case, which is also in consistent with the objective situation. Naizhi Company claimed that the Beihai Marine Fisheries Bureau made an administrative penalty decision on January 31, 2018, without informing Naizhi Company of its rights to make representations, defenses, and request for a hearing in accordance with the laws, and the penalty is not valid according to the laws. Such claim is inconsistent with the facts. On January 31, the Administrative Penalty Opinions Examination and Approval Form prepared by the Beihai Marine Fisheries Bureau was only an internal proposed penalty opinion, which was not made externally and had no external legal effect. The Beihai Marine Fisheries Bureau did not make an administrative penalty decision until April 8. The Beihai Marine Fisheries Bureau guaranteed the rights of Naizhi Company to make representations, defenses and request for a hearing in accordance with the laws, and prepared corresponding transcripts. Naizhi Company claimed that the presiding officer did not make written penalty opinions after the hearing, and that the presiding officer, participants, and administrative penalty examining officers of the two collective discussions held by the Beihai Marine Fisheries Bureau did not comply with the law. After the second collective discussion, the presiding officer appointed the relevant personnel to issue a penalty decision, which was excess of power. These series of claims were not tenable. The additional evidence 20 submitted by the Beihai Marine Fisheries Bureau is the Administrative Penalty Hearing Report made by the presiding officer and the hearing officer, which was reported at the second joint hearing of the case on March 23, 2018. The first joint hearing organized by the Beihai Marine Fisheries Bureau on January 26 and the second joint hearing organized by the Beihai Marine Fisheries Bureau on March 23 are joint hearings of serious maritime administrative violation cases as prescribed in Article 21 of *the Measures for Implementation on Maritime Administrative Punishments*. According to *the Measures for the Implementation on Marine Administrative Punishments* and the relevant guiding opinions on marine administrative law enforcement issued by the China Marine Surveillance, the joint hearing of a case is a specific detailed provision for collective discussion by the heads of administrative organs as provided for Paragraph 2 of Article 38 of *the Law of the People's Republic of China on Administrative Penalty*. Article 3 of *the Measures for the Implementation on Marine Administrative Punishments* stipulates that "The department of maritime administration of the people's government on various levels above the county level is the organ for enforcing maritime administrative punishments according

to law (hereafter referred to as "enforcing organ"). Where a maritime supervision section is established within the enforcing department, the work of maritime administrative punishments shall be specifically undertaken by the Chinese maritime supervision section affiliated thereto. Where no maritime supervision section has been established therein, the work shall be implemented by the maritime administration department on the same level. The Chinese maritime supervision organs enforce maritime administrative punishments in the name of the maritime administration department on the same level." On December 29, 2017, the Beihai Marine Fisheries Bureau issued Beihai Yu Fa [2017] No.46 of the Circular of the Beihai Marine and Fisheries Bureau on Adjusting the Members of the Joint Hearing Committee for Maritime Violation Cases, according to which the members of the joint hearing committee of the Beihai Marine Fisheries Bureau are determined, and the circular is the authorization of the authority for joint hearing of serious maritime violation cases. The composition of the members of the Joint Hearing Committee conforms to the spirit stipulated in State Oceanic Administration [2003] No. 202 of Working Rules for the Joint Hearing of Serious Maritime Violation Cases. As a result of institutional reform, the former Beihai City Detachment of China Marine Surveillance and Fishing Administration and Port Supervision Detachment of Beihai City were merged into the Marine and Fisheries Comprehensive Law Enforcement Detachment of Beihai City, bearing the name of the Beihai City Detachment of China Marine Surveillance. Although the former leaders of the Beihai City Detachment of China Marine Surveillance have not already taken up positions in the Marine and Fisheries Comprehensive Law Enforcement Detachment of Beihai City, they still assume the corresponding leadership responsibilities of the former marine administrative law enforcement and are still the relevant person-in-charge of the marine supervision organization of Beihai City. LI Wenli, as the head of the Beihai City Detachment of China Marine Surveillance and deputy director of the joint hearing committee, presided over the joint hearing meeting, which was in accordance with the law. As a result, the members of the Joint Hearing Committee for Serious Maritime Violation Cases of the Beihai Marine Fisheries Bureau included the deputy responsible person in charge of marine administrative law enforcement, the responsible person of the marine supervision institution that undertakes administrative punishment, and the responsible persons involved in the charge of the commission. The composition of personnel conformed to Paragraph 2 of Article 38 of *the Law of the People's Republic of China on Administrative Penalty*. The Beihai Marine Fisheries Bureau signed the examination opinions of Administrative Penalty Opinions Examination and Approval

Form on January 31, 2018 by WEI Xin, the head of the Ocean and Fisheries Comprehensive Law Enforcement Detachment of Beihai City, which belongs to the Beihai Marine Fisheries Bureau, plan to agree to the penalty opinions of the handling officers. The review procedures before the person in charge of the Beihai Marine Fisheries Bureau making a penalty decision was completed. WEI Xin has long served as a Squad leader of the Fishing Administration and Port Supervision Detachment of Beihai City. After the merger of marine law enforcement departments and fishery law enforcement departments, WEI Xin is the current head of the Ocean and Fisheries Comprehensive Law Enforcement Detachment of Beihai City and was not reviewing administrative penalty decisions for the first time. The review of administrative penalty by the Beihai Marine Fisheries Bureau conformed to Paragraph 3 of Article 38 of *the Administrative Penalty Law of the People's Republic of China*. After the second joint hearing, LI Wenli, the presiding officer, asked the case handling officers to issue a decision of administrative penalty to the parties according to the results of the hearing according to legal procedures, which is legitimate and reasonable, and there was no excess of power.

III. If Naizhi Company has illegally reclaimed and occupied the sea areas involved, whether it is obviously improper for the Beihai Marine Fisheries Bureau to impose a fine of 15 times the amount of the sea area usage fee of the occupied sea. Naizhi Company occupied 0.3804 hectares of sea area after leveling and filling the sea area involved in the case in 2016. Its behavior changed the original appearance of the marine environment, destroyed the marine ecological environment, and affected the production and life of local fishermen. After being investigated and punished, Naizhi Company did not take the initiative to reduce or eliminate the harmful consequences of its reclamation. In accordance with Article 42 of *the Law on the Management of Sea Area Use of the People's Republic of China* stipulating the imposition of a fine of not less than 10 times but not more than 20 times the amount of the sea area usage fee of the occupied sea area, the Beihai Marine Fisheries Bureau's decision to impose a penalty of 15 times the amount of the sea area usage fee of the occupied sea area does not violate the relevant provisions of Chapter 4 of *the Law of the People's Republic of China on Administrative Penalty* on the application of administrative penalties, and is in accordance with the general penalties in the range of administrative penalties instead of the heavier penalties in the Several Opinions on Further Regulating the Exercise of Discretion in Maritime Administrative Punishment of the China Marine Surveillance. It is not improper for the Beihai Marine Fisheries Bureau to impose on Naizhi Company a fine of 15 times

the amount of the sea area usage fee of the occupied sea area. And the amount of the fine calculated in accordance with the Cai Zong [2007] No.10 Notice of the Ministry of Finance and the State Oceanic Administration on Strengthening the Administration of Collection of Sea Area Usage Fee is correct.

Whether there is selective enforcement of the Beihai Marine Fisheries Bureau, and whether there is administrative omission against Yufeng Company. On August 10, 2017, the Beihai Marine Fisheries Bureau already filed a case against ZHAO Zhulian. There is no selective enforcement of the law, and this issue, together with the issue that whether there is administrative omission of the Beihai Marine Fisheries Bureau against Yufeng Company, is beyond the scope of review of this case.

Given all that, the administrative action being sued in this case is a maritime administrative penalty. Naizhi Company conducted reclamation activities without obtaining the right to use sea areas and illegally occupied the sea area of 0.3804 hectares. The Beihai Marine Fisheries Bureau has the power of marine administrative penalty. The facts ascertained by its administrative penalty decision No. 09 are clear, the evidence is conclusive, the applicable laws and regulations are correct, and it complies with legal procedures. In accordance with Article 69 of *the Administrative Procedure Law of the People's Republic of China*, and Paragraph 2 of Article 79 of *the Interpretation of the Supreme People's Court on the Application of Administrative Procedure Law of the People's Republic of China*, the court of first instance decided: The claims of Naizhi Company were dismissed. The case acceptance fee is RMB 100, which shall be borne by Naizhi Company.

Naizhi Company appealed against the judgment of first instance, alleging that: (i) the fact found by the Administrative Penalty Decision No. 09 that Naizi Company had not obtained the right to use the sea area and occupied and reclaimed 0.3804 hectares of land in Shitongbu lacked evidence to prove. First of all, the reclamation of the sea area involved occurred between June 1, 2013 and May 12, 2016. The land reclamation was conducted by Yufeng Company. After Yufeng Company entered into the Rural Land Lease Contract with the Shitubu Villagers Group on June 1, 2013, it reclaimed the sea area involved in this case. And Naizhi Company did not conduct any reclamation after it entered into the Land Contract Transfer Agreement with Yufeng Company on May 12, 2016. These facts are visually reflected in aerial images from 2015 and 2017 provided by the Beihai Marine Fisheries Bureau. The main differences between the two aerial maps are as

follows: First, the area of reclamation in the direction of the inland sea in 2017 is larger than the original, but this part belongs to the sea area with the legal right to use, and does not fall in the scope of penalty in this case. Second, the deep pit formed by the Yufeng Company and a small corner to the north of the involved sea area were filled in, but both were filled by LIN X. Secondly, the reclaimed sea area involved in the case has become a road and public activity place after being filled up, and any unit or individual can freely use it. According to the Wei Hai Guan Zi [2008] No. 273 of Sea Area Use Classification System, the definition of sea area use refers to continuous exclusive use of the sea for more than three months in a specific sea area, but the Beihai Marine Fisheries Bureau has not been able to provide corresponding evidence to prove that Naizhi Company has the above illegal use of the sea. Based only on LI Naizhi's representations and the testimonies of LI X, Xu X, LI Naiguang, LIN X and others, the Beihai Marine Fisheries Bureau determined that Naizhi Company conducted land reclamation of 0.3804 hectares of sea area. The evidence was insufficient; (ii) The first-instance judgment regarding the fact that Naizhi Company occupied and reclaimed the sea was a re-identification of the facts of the case and violated the administrative case trial regulations. First of all, the chief handling person of the first instance organized both parties to conduct an on-site investigation before the hearing, but failed to make a record of the on-site investigation in accordance with the law. However, the factual determination of the first instance judgment stated that it was "consistent with the situation verified by the court in the on-site investigation". Secondly, the first-instance judgment found that Yufeng Company did not illegally conduct reclamation in this case, and that Naizhi Company took over the work results of Yufeng Company and carried out the conduct of reclamation, all of which was a subjective judgment of the chief handling person of the first instance; (iii) Notwithstanding the fact of illegal occupation of 0.3804 hectares of reclamation in this case, the Beihai Marine Fisheries Bureau shall impose penalties on all those who have committed illegal occupation and reclamation, However, it is wrong and unjust for the Beihai Marine Fisheries Bureau to ask Naizhi Company to bear full legal responsibility for illegally occupying the reclamation area when it is fully aware of the existence of illegal activities by Yufeng Company; (i v) The procedure by which the Beihai Marine Fisheries Bureau made the penalty decision in this case is a major violation of the procedures of law. First, judging from evidence such as the investigation termination report, collective discussion transcripts, and administrative penalty opinion approval form submitted by the Beihai Marine Fisheries Bureau, the administrative penalty decision in this case was made on

January 31, 2018, but the Beihai Marine Fisheries Bureau failed to inform Naizhi Company of its relevant rights in accordance with the law before it make the penalty decision, which is in violation of Article 31 and Article 32 of *the Law of the People's Republic of China on Administrative Penalty*. According to the Article 41 of *the Law of the People's Republic of China on Administrative Penalty*, the penalty decision was invalid. Secondly, the Beihai Marine Fisheries Bureau' joint discussion was presided by LI Wenli, which violated Article 38 of *the Law of the People's Republic of China on Administrative Penalty*. According to this article, the penalty should be examined by the head of the Beihai Marine Fisheries Bureau and should be subject to collective discussion. However, in this case, the officer LI Wenli presided over the collective discussion decision; After the hearing, the presiding officer did not issue a written penalty opinion in accordance with the law, which violated Article 34 of *the Measures for Implementation on Maritime Administrative Punishments*; after the second collective discussion, the presiding officer LI Wenli directly designated relevant personnel to issue a penalty notice, which is an excess of power. According to Article 38 and Article 43 of *the Law of the People's Republic of China on Administrative Penalty*, the penalty decision should be made after the hearing. Third, the members who participated in the collective discussion and made decisions did not comply with the law. According to Article 38 of *the Administrative Penalty Law of the People's Republic of China*, the persons participating in the collective discussion and decision of administrative punishment shall be members of the leadership team of the administrative organ. In practice, they are generally composed of members of the leadership team and the main case handling persons. In this case, among the people who participated in the collective discussion and decision, except for LIN Guanghan as a member of the leadership of the Beihai Marine Fisheries Bureau and GUAN Hanming as the main case handling person, the identity of the other participants was not clearly stated; the authorized representative of the Beihai Marine Fisheries Bureau participated in the second collective discussion, which is a procedural flaw; Paragraph 3 was added to Article 38 of the amended *Administrative Penalty Law of the People's Republic of China*, and the Beihai Marine Fisheries Bureau has not specified whether the administrative penalty examination officers have obtained legal professional qualifications through the national unified legal professional qualification examination. In addition, the reporting procedure for surveying and demarcating the sea areas involved is a serious violation of the law and cannot be used as the basis for determining the case. The survey organization shall be identified by the owner, that is, the relevant personnel

of the Naizhi Company. LIN X was not informed of the situation, where the Beihai Marine Fisheries Bureau has requested the demarcation, he is unaware that the Beihai Marine Fisheries Bureau asked him to indicate the boundary sites of the sea area reclaimed and occupied by the Naizhi Company, In the on-site record, the boundary refers to the boundary of the sea area to which Naizhi Company was assigned the contractual rights of Yufeng Company, instead of the boundary area of the area to be reclaimed and occupied by Naizi Company. The survey organization's determination of the area illegally reclaimed by Naizhi Company based on the boundary site identified by LIN X is obviously wrong. The judgment of first instance, which held that the procedure for deciding administrative penalty No. 09 was lawful, violated the facts and provisions laws. In summary, the appellant request that: 1. Revoke the judgment of first instance; 2. Revoke the Administrative Penalty Decision No. 09 issued by the Beihai Marine Fisheries Bureau.

The Beihai Marine Fisheries Bureau replied that: (i) Naizhi Company believes that the Administrative Penalty Decision No. 09 of the Beihai Marine Fisheries Bureau finding its reclamation activities has no factual basis, is inconsistent with the objective facts, and should not be accepted. According to the testimony of LI Naiguang, LI X, XU X, LIN X, ZHAO Zhulian and others, it can be confirmed that after Yufeng Company signed the Rural Land Lease Contract with the Shitoubu Village Group in June 2013, it hired LI Naiguang to organize sand extraction and land reclamation. The method of land reclamation is to use sand pumping machinery to extract sea sand from the ocean for land reclamation, and a sand pile of sea sand is formed on the site, and no usable site is formed. The sand pumping and reclamation behavior of Yufeng Company was stopped in September, 2013. In May 2016, after Naizhi Company signed the Land Contract Transfer Agreement with Yufeng Company, it was assigned the rights and obligations of the land lessee of Yufeng Company, and implemented new illegal acts of land reclamation. It transported soil and construction waste from the outside to enclose and reclaim the sea area, and used tapes to pave the edge of the reclamation site, forming the fact of the cofferdam of the sea. The representation of LI Naizhi, the legal representative of Naizhi Company, also corroborates the testimony of the above witnesses, and the above facts are consistent with the present situation of the land surveyed and inspected on-site. (ii) The Beihai Marine Fisheries Bureau's Administrative Penalty Decision No. 09 did not violate legal procedures. First, before making the penalty decision in this case, the Beihai Marine Fisheries Bureau held a collective discussion on January 26, 2018 and made the Examination and Approval Form of Administrative Penalty Opinions on January 31,

2018. The Notice of Hearing on Administrative Penalty was served by the Beihai Marine Fisheries Bureau on February 1, 2018 to Naizhi Company, inform it of the penalty decision to be made and that it has the right to represent, defense and request for a hearing. Subsequently, the Beihai Marine Fisheries Bureau actually organized a hearing on the application of Naizhi Company. After the hearing, the Beihai Marine Fisheries Bureau again organized a collective discussion on March 23, 2018, before finally making the penalty decision in this case, and on April 8, 2018 re-approved and issued the decision. There is no factual basis that Naizhi Company claimed that the Beihai Marine Fisheries Bureau made the penalty decision on January 31, 2018 without informing it of its right to defense and request for a hearing according to law. Secondly, Nazhi Company alleged that the collective discussion chaired by LI Wenli violates legal procedure, and its allegation has no corresponding legal basis. In accordance with Article 1 of the Notice on the Centralized Enforcement of Maritime Administrative Punishment by China Marine Surveillance and Article 3 of *the Measures for Implementation on Maritime Administrative Punishments*, the Beihai Marine Fisheries Bureau is the marine administrative penalty organ, and the specific marine administrative punishment work is undertaken by Beihai City Detachment of China Marine Surveillance, which should also perform the duties of law enforcement procedures according to law. As a result of institutional reform, the former Beihai City Detachment of China Marine Surveillance and Fishing Administration and Port Supervision Detachment of Beihai City were merged into the Marine and Fisheries Comprehensive Law Enforcement Detachment of Beihai City, bearing the name of the Beihai City Detachment of China Marine Surveillance. Therefore, during the process of collective discussion, LI Wenli, head of the Beihai City Detachment of China Marine Surveillance, acted as the principal responsible person of the detachment. The leaders of the detachment, other law enforcement personnel, law enforcement officers of other agencies of the China Marine Surveillance and the responsible persons of the Beihai Marine Fisheries Bureau were organized to participate in the discussion, and the penalty opinions were formed by voting, which conformed to the procedural provisions on collective discussion in *the Law of the People's Republic of China on Administrative Penalty*. Again, Naizhi Company's claim that the participants in collective discussion do not meet the legal requirements has no legal basis. Article 38 of *the Law of the People's Republic of China on Administrative Penalty* only provides for the procedure of collective discussion, but does not specify the composition of the participants. Who should participate in the discussion and when is an internal matter of the administrative organ. In fact, the two collective

discussions organized by the Beihai Marine Fisheries Bureau brought together staff with rich experience in marine law enforcement. ZHANG Yong, leader of the Guangxi General Team, and YU Xingshu, a law enforcement officer from the Ninth Detachment of Maritime Supervision of other marine supervision units, were also invited to participate. The facts of the case, evidence and basis for penalty were discussed, which provided sufficient reference for the head of the administrative organ to make a decision. (iii) The Administrative Penalty Decision No. 09 made by the Beihai Marine Fisheries Bureau has clear facts, conclusive evidence, legal procedures, and correct application of laws, and should be maintained. The Beihai Marine Fisheries Bureau applied the general procedures of general administrative penalties to the investigation and handling of this case, and fulfilled the lawful implementation of case filing, investigation, survey, inspection, entrusted appraisal, collective discussion, informing the counterparty, advance notice of the proposed penalty conclusion, notice of hearings, re-collective discussion, etc., the facts of the entire case were investigated, and the legal rights of Naizhi Company were protected in accordance with the law. The penalty procedure complies with Article 31, Article 36 to Article 41, Article 42 and Article 43 of *the Administrative Penalty Law of the People's Republic of China*, Article 12 of *the Interim Provisions on the Time Limits for Investigation and Prosecution of Maritime Violation Cases* and relevant provisions of *the Measures for Implementation on Maritime Administrative Punishments*, the entity handling has facts and legal basis. The facts ascertained in the judgment of first instance are clear, the procedures are legal, and the application of the law is correct. In summary, the appellee requests that: the appeal of Naizhi Company shall be dismissed and the original judgment shall be upheld.

The third party of first instance, Yufeng Company, did not appear in court to participate in the proceedings, nor did it submit a written reply to this court.

During trial of the second instance, Naizhi Company, the appellant, raised the following objections to the facts identified in the first instance: 1. The finding that "Between July and September of the same year, Yufeng Company hired others to extract sand to reclaim the sea area involved in the case, forming sand piles, but did not take measures to prevent the sand from being lost or washed away by sea water. The mounds of sand are partly out of the water at spring tide" is incorrect and there is no corresponding evidence to prove the determination. In fact, the pile of sand filled by Yufeng Company was 3 to 4 meters above the water surface. 2. The finding that "when the transfer agreement was signed, part of the sand pile filled by the Yufeng Company was

washed away by sea water" is incorrect, and claimed that there is no evidence to prove that the sand piles were washed away. 3. The finding that "Between July and September 2016, Naizhi Company leveled the sand piles that Yufeng Company had filled in the sea area, and used machinery and vehicles from the external to transport soil and construction waste for site leveling, and constructed a wharf (commonly known as a temporary wharf), formed the status quo when the Beihai Marine Fisheries Bureau investigated and dealt with this case, prepared to build a refrigeration plant" is incorrect, and claimed that there is no evidence to prove the determination, and Naizhi Company did not bring in soil and construction waste from the outside for site leveling; 4. The finding that "the Beihai Marine Fisheries Bureau commissioned the Guangxi Zhuang Autonomous Region Geographical Conditions Monitoring Institute to survey and identify the area of sea occupied by Naizhi Company and LIN X by the Ocean and Fisheries Comprehensive Law Enforcement Detachment of Beihai City, as its subordinate" is incorrect, and argued that there was no action of occupying sea areas by Naizhi Company. 5. The finding that "the Beihai Marine Fisheries Bureau organized a joint hearing committee for maritime violation cases to conduct a joint hearing of the administrative penalty of the case. The results of the discussion were as follows: propose to impose an administrative penalty on Naizhi Company of 'ordering to return the illegally occupied sea area, restore the sea to its original conditions, and pay 15 times of the sea area usage fee of the occupied sea area during the period of the illegal occupation, which shall be RMB 2,567,700.'" is incorrect, and alleges that there is no "propose" in the results of the discussion. 6. The finding that "propose to make the same administrative penalty opinion as the first joint meeting" is incorrect, and claimed that there is no such record in the transcripts of the joint hearing, instead, the court of first instance decided on its own.

This Court, upon examination, finds that, with respect to first and second objections of Naizhi Company, the transcripts of its investigation into ZHAO Zhulian, LI Naiguang and LI X, submitted by the Beihai Marine Fisheries Bureau in the first instance, can prove that from July 2013 to September 2013, Yufeng Company hired LI Naiguang and others to extract sea sand and reclaim the area in question, formed sand piles, but did not carry out other acts. However, the judgment of first instance found that "part of the sand pile surfaced at the time of the spring tide" and "when the transfer agreement was signed, part of the sandpile filled by the Yufeng Company was washed away by sea water", there is no relevant evidence to support that, Naizhi Company also did not recognize them in the investigation. Those two objections are partially held by this Court. With

regard to the third objection raised by Naizhi Company, it can be confirmed by the records of the investigation conducted by the Beihai Marine Fisheries Bureau over LI Naizhi, the legal representative of the Naizhi Company, where LI Naizhi admitted on several occasions that his company had levelled the sand piles that Yufeng Company had filled in the area between July 2016 and September 2016, used machinery and vehicles from the outside to transport soil, construction waste site leveling, and constructed a wharf (commonly known as temporary wharf), planning to build a refrigeration plant. The judgment of first instance concluded that the above facts accord with objective circumstances. As for the fourth objection raised by Naizhi Company, the judgment of first instance only objectively stated the specific content of the commission, and it was not improper. Therefore, the objection of Naizhi company was not tenable. With regard to the fifth objection raised by Naizhi Company, the result of the discussion on January 26 is the conclusion of the internal review, instead of an administrative action which is ultimately effective to the outside, and it is not improper to express as "propose" in the judgment of the first instance. This factual objection is not tenable. As to the sixth objection raised by Naizhi Company, on March 23, 2018, The Beihai Marine Fisheries Bureau organized the second joint hearing of the administrative penalty of the case, and formed a transcript of the joint hearing (collective discussion after the hearing) of this case. Article 7 of the transcript "Handling Opinions": (i) The proposed penalty opinion is "... It shall be ordered to return the illegally occupied sea areas, restore the sea areas to their original conditions, and also pay 15 times of the sea area usage fee of the occupied sea area during the period of the illegal occupation, which shall be 2,567,700 Yuan", the proposed penalty is consistent with the penalty discussed by the Beihai Marine Fisheries Bureau at its first joint hearing on January 26, 2018. Therefore, Naizhi Company's objection cannot be established.

In the trial of second instance, no new evidence was submitted by either party. This court affirms that the evidence confirmed in the first instance judgment is legitimate and valid, and may be used as the basis for deciding this case. However, the judgement of first instance, based on the available evidence, concluded that "part of the sandpile was above the water at the time of the spring tide" and "when the transfer agreement was signed, part of the sandpile filled by the former Yufeng Company was washed away by sea water." This court will not confirm such determination because the basis is insufficient. Apart from these, the facts confirmed by the court of first instance are consistent with those found by this court, and this court affirms them according to law.

The focus of dispute in the trial of second instance is whether it is lawful for the Beihai Marine

Fisheries Bureau to issue the Administrative Penalty Decision No.09.

The Court holds that: I . Whether the facts are clear and the evidence is sufficient for the Beihai Marine Fisheries Bureau to issue the Administrative Penalty Decision No.09.

The identification of the subject of violation. Paragraph 2 of Article 3 of *the Law on the Management of Sea Area Use of the People's Republic of China* stipulates that "Any entity or individual that intends to use the sea areas is required to obtain the right to their use in accordance with law." Paragraph 2 of Article 4 of Law of the People's Republic of China on the Administration of the Use of Sea Areas stipulates that "The State exercises strict control over the activities relating to the use of the sea areas that may alter their natural attributes, such as filling sea areas and reclaiming land from them." In this case, After Naizhi Company and Yufeng Company entered into the Land Contract Transfer Agreement on May 12, 2016, without obtaining the right to use the sea area, Naizhi company used machinery and vehicles to transport soil and construction waste from outside to fill and level the sand piles filled by Yufeng Company on the sea area involved in the case and formed a temporary wharf. Naizhi Company proposed to build a refrigeration plant and continued to use it until the Beihai Marine Fisheries Bureau issued a suspension notice. The above facts are confirmed by the interrogation transcripts and on-site transcripts of LI Naizhi, ZHAO Zhulian, LIN X, LI Naiguang and others, and the Land Contract Transfer Agreement submitted by the Beihai Marine Fisheries Bureau. Among them, LI Naizhi, the legal representative of the company, has repeatedly acknowledged the fact that the company has leveled and filled the sea area involved in the case in the transcripts of inquiries made by the Beihai Marine Fisheries Bureau. Therefore, Naizhi Company's claim that the sea area involved in the case was filled by Yufeng Company and that it was not the subject of the illegal occupation of the sea areas cannot be established. The Beihai Marine Fisheries Bureau has identified Naizhi Company as the subject of maritime administrative violations with sufficient evidence. Naizhi Company also maintained that even if there is illegal act of filling the sea area, Yufeng Company also had illegal acts of filling in the same sea area. The damage is caused by both acts, and Naizhi Company should not bear all the administrative legal responsibility. In this regard, the court held that Yufeng Company filled the sea area involved in the case by pumping sand, forming sand piles, and did not form a shoreline, and there was no evidence to prove that it had carried out leveling and cofferdam. After signing the transfer agreement with Naizhi Company, Yufeng Company did not use the sea area involved in the case, while Naizhi Company began to take up the occupation of sea area by leveling and

filling the area after the signing of the agreement. Naizhi Company conducted filling, leveling and cofferdam of the sea area involved in the case by transporting soil and construction waste from outside. The time, manner and nature of the two acts were different, therefore, Naizhi Company and Yufeng Company did not commit the same illegal act together. Yufeng Company and Naizhi Company have no subjectively intention to commit acts together. Objectively, they belong to two independent acts and should be dealt with separately. The Beihai Marine Fisheries Bureau has also filed a separate case for investigation into the issue involving Yufeng Company. Therefore, Administrative Penalty Decision No. 09 determines that Naizhi Company shall bear administrative legal responsibility, and it is correct to identify Naizhi Company as the illegal subject. This court will not accept Naizhi Company's above claims as they lack legal basis.

The Nature of the Violations and the Determination of the Occupied Sea Area. Naizhi Company used the soil and construction waste from outside to level and enrich the sand piles on the sea area involved in the case to form a temporary wharf. Cofferdam and bank revetment facilities are set up on the side of the wharf, which eventually form the current land status. According to Guo Hai Guan Zi [2008] No. 273 "Notice of the State Oceanic Administration on Printing and Distributing the Classification System for the Use of Sea Areas and the Regulations for Marine Registration Surveys", "2.5 land reclamation refers to the way of using the sea that constructed dikes enclosed sea areas, filled up land and formed the effective shoreline", the leveling, reclamation and cofferdam actions of Naizhi Company constitute land reclamation. After surveying and demarcating by the Guangxi Zhuang Autonomous Region Geographical Conditions Monitoring Institute, the area illegally filled by Naizhi Company is 0.3084 hectares of sea area. The determination has deducted the area with relevant land documents. Therefore, the facts confirmed by the Beihai Marine Fisheries Bureau on the nature of the violations and the area of the reclamation are clear, and the evidence is conclusive.

II. Whether the Beihai Marine Fisheries Bureau complied with legitimate procedures in making the Administrative Penalty Decision No. 09.

In the process of handling the administrative penalty of this case, the Beihai Marine Fisheries Bureau performed the procedures of case filing,, investigation, survey, inspection, inquiry, entrusted appraisal, informing the counterpart of his rights, informing in advance the conclusion of the proposed penalty, organizing hearings, and collective discussions. It conformed to the relevant procedural provisions on *the Law of the People's Republic of China on Administrative*

Penalty and the Measures for Implementation on Maritime Administrative Punishments. Naizhi Company claimed that the Beihai Marine Fisheries Bureau' survey and demarcation procedures were illegal. In this regard, the Court held that, Article 15 of *the Measures for Implementation on Maritime Administrative Punishments* stipulates that "there shall be no fewer than two maritime supervisors present in the investigation of cases or in inspections, who shall show their certificates of law enforcement to the parties concerned. They may make investigations or inspections in any of the ways as described below: (i) entering into the scene of violation to make surveys and inspections, consulting or duplicating relevant materials, and making video records or taking pictures of the scene of violation. Written records shall be made for the relevant surveys and inspections, which shall be signed or sealed by those under the survey or inspection or any other witnesses..... (iii) the professional or technical matters such as measuring, monitoring, testing or authenticating, etc. may be entrusted to the eligible institutions to make relevant reports. Such report may be used as evidences." Therefore, the enforcement organ of marine administrative penalty has no statutory obligation to notify the parties before conducting an inquest or survey. Second, on January 16, 2018, the Beihai Marine Fisheries Bureau issued Beihai Yu Jian [2017] No. 09 Notice of Inspection to Naizhi Company, which clearly requested Naizhi Company to cooperate in the inspection; In the interrogation transcript made by the case officer on the legal representative of Naizhi Company, LI Naizhi, it was asked whether LI Naizhi was willing to come to the scene to identify the boundaries, but he refused on the grounds that he did not have time. It can be seen that Naizhi Company did not actively cooperated with the investigation. Third, the the Beihai Marine Fisheries Bureau invited LIN X as a witness to identify the boundary sites during the inquest. Only Naizhi Company and LIN X actually used and managed the sea area involved in the case. It was legitimate and reasonable for the Beihai Marine Fisheries Bureau to invite LIN X to be a witness. And LI Naizhi also confirmed LIN X's identification of the boundary sites in the inquiry by the Beihai Marine Fisheries Bureau. On January 16, 2018, the Beihai Ocean and Fisheries Comprehensive Law Enforcement Detachment, as Beihai Marine Fisheries Bureau's subordinate, commissioned the Guangxi Zhuang Autonomous Region Geographical Conditions Monitoring Institute to survey and identify the sea area occupied by Naizhi and LIN X. Guangxi Zhuang Autonomous Region Geographical Conditions Monitoring Institute issued a sea area survey and demarcation report, determining that Naizhi company illegally occupied a sea area of 0.3084 hectares. The law enforcement procedures of the Beihai Marine Fisheries Bureau complied

with the Article 15 of *the Measures for Implementation on Maritime Administrative Punishments*.

Whether the Beihai Marine Fisheries Bureau guaranteed the rights of Naizhi Company to obtain its rights of representations, defenses, and request for hearing before making a penalty decision. Naizhi Company asserted that the Beihai Marine Fisheries Bureau made an administrative penalty decision on January 31, 2018, and failed to protect its rights of representation, defense, and request for hearing in accordance with the law. In this regard, this court holds that after the first joint hearing on January 26, 2018, the Beihai Marine Fisheries Bureau produced the Administrative Penalty Opinions Examination and Approval Form on January 31, 2018. The penalty opinions contained in the approval form only belong to the proposed penalty opinions within the Beihai Marine Fisheries Bureau and does not belong to an externally legally effective document. On the same day, the Beihai Marine Fisheries Bureau delivered the Administrative Penalty Hearing Notice to Naizhi Company, informing it of the administrative penalty decision that the Beihai Marine Fisheries Bureau intended to make, and informing it of the rights of representations, defense, and request for hearing in accordance with the law. On February 1, 2018, the Beihai Marine Fisheries Bureau heard the representations and defenses of LI Naizhi, the legal representative of Naizhi Company, and produced the transcript of such representations and defense. On March 6, 2018, the Beihai Marine Fisheries Bureau organized a hearing based on the request of Naizhi Company, and produced the transcript of Administrative Penalty Hearing, and heard the opinions of case handlers and Naizhi Company in accordance with the law. On March 23, 2018, the Beihai Marine Fisheries Bureau conducted the second joint hearing. The administrative penalty decision No. 09 was made on April 8, 2018, and it was served to Naizhi Company on the same day. Therefore, the aforesaid claims made by Naizhi Company have no factual basis and this court does not support them.

Whether the Beihai Marine Fisheries Bureau's collective discussions violated statutory procedures. Naizhi Company maintained that the presiding officer failed to produce a written penalty opinion after the hearing, and that the presiding officer, members and examiners of the administrative penalty of the Beihai Marine Fisheries Bureau violated Article 38 of *the Law of the People's Republic of China on Administrative Penalty*, and it constituted an excess of power for the presiding officer to designate the relevant personnel to issue a penalty decision after the second joint hearing. In this regard, this Court holds that, the Administrative Penalty Hearing Report submitted by the Beihai Marine Fisheries Bureau is a written opinion made after the hearing and

reported at the second joint hearing of the case on March 23, 2018. *The Law of the People's Republic of China on Administrative Penalty and the Measures for Implementation on Maritime Administrative Punishments* shall be applied in this case for the administrative act being sued is an act of maritime administrative penalty. Article 3 of *the Measures for the Implementation on Marine Administrative Punishments* stipulates that "The department of maritime administration of the people's government on various levels above the county level is the organ for enforcing maritime administrative punishments according to law (hereafter referred to as "enforcing organ"). Where a maritime supervision section is established within the enforcing department, the work of maritime administrative punishments shall be specifically undertaken by the Chinese maritime supervision section affiliated thereto. Where no maritime supervision section has been established therein, the work shall be implemented by the maritime administration department on the same level. The Chinese maritime supervision organs enforce maritime administrative punishments in the name of the maritime administration department on the same level." Article 21 of *the Measures for the Implementation on Marine Administrative Punishments* stipulates that "If a case for which maritime administrative punishments are to be meted out is complex in circumstances or is a serious violation as provided for in Article 41 of the present Measures, the enforcing authorities shall arrange for a joint hearing of the case." Combined with the relevant guiding opinions on marine administrative law enforcement issued by the China Marine Surveillance, the joint hearing of a case stipulated in the provisions above is a specific detailed provision for collective discussion by the heads of administrative organs as provided for in Paragraph 2 of Article 38 of *the Law of the People's Republic of China on Administrative Penalty*. According to the above provisions, China's marine supervision institutions have the responsibility of undertaking marine administrative penalties. LI Wenli, as the head of the Beihai City Detachment of China Marine Surveillance and deputy director of the joint hearing committee, his presiding over a joint hearing (that is, collective discussion) does not violate Article 38 of *the Administrative Penalty Law of the People's Republic of China*. On December 29, 2017, the Beihai Marine Fisheries Bureau issued Beihai Yu Fa [2017] No.46 of the Circular of the Beihai Marine and Fisheries Bureau on Adjusting the Members of the Joint Hearing Committee for Maritime Violation Cases, according to which the members of the joint hearing committee of the Beihai Marine Fisheries Bureau are determined, and the circular is the authorization of the authority for joint hearing of serious maritime violation cases. The composition of the members of the Joint Hearing Committee conforms to the

stipulations in State Oceanic Administration [2003] No. 202 of Working Rules for the Joint Hearing of Serious Maritime Violation Cases. The Beihai Marine Fisheries Bureau signed the examination opinions of Administrative Penalty Opinions Examination and Approval Form on January 31, 2018 by WEI Xin, the head of the Marine and Fisheries Comprehensive Law Enforcement Detachment of Beihai City, which belongs to the Beihai Marine Fisheries Bureau, to agree to the penalty opinions of the handling officer. The review procedures before the person in charge of the Beihai Marine Fisheries Bureau making a penalty decision has been completed. There is no evidence indicating that WEI Xin was reviewing administrative penalty decisions for the first time. Naizhi Company failed to provide evidence to prove that the collective discussion presiding officer, members and examiners violated the provisions of Article 38 of *the Administrative Penalty Law of the People's Republic of China*, and this Court dismissed this claim of Naizhi Company. At the end of the second joint hearing of the case, the presiding officer requested the case handling officer to issue a decision on administrative penalty to the parties according to the results of the hearing according to legal procedures, which is legitimate and reasonable, and there was no excess of power as claimed by Naizhi Company.

III. Whether the Application of Laws and Regulations in the Administrative Penalty Decision No. 09 Made by the Beihai Marine Fisheries Bureau is Correct, and Whether the Result of Penalty is Appropriate.

Article 42 of *the Law of the People's Republic of China on the Administration of Sea Areas* stipulates that "Entities or individuals that, without approval or with approval obtained through deception, illegally occupy sea areas shall be instructed to return the illegally occupied sea areas and restore them to their original state, their illegal gains shall be confiscated, and they shall also be fined not less than 5 times but not more than 15 times the fees payable for the sea areas during the period of their illegal occupation. Entities or individuals that, without approval or with approval obtained through deception, enclose or fill sea areas shall, in addition, be fined not less than 10 times but not more than 20 times the fees payable for the sea areas during the period of their illegal occupation." This provision stipulates that the illegal occupation of sea areas and the illegal reclamation and encirclement of the sea shall bear administrative legal liabilities. There are heavier penalties for illegal reclamation because reclamation activities will have a direct impact on the natural shape, environment, function and other attributes of the sea area. In this case, Naizhi Company leveled and reclaimed the sea area involved in this case in 2016, covering an area of

0.3804 hectares of the reclaimed sea area. Its behavior changed the natural attributes of the sea area. After being investigated and punished, Naizhi Company did not take the initiative to take measures to mitigate or eliminate the harmful consequences of its reclamation from the sea, and there are no lighter or mitigated penalties. In accordance with Article 42 of *the Law of the People's Republic of China on the Administration of Sea Areas* stipulating the imposition of a fine of not less than 10 times but not more than 20 times the amount of the sea area usage fee of the occupied sea area, the Beihai Marine Fisheries Bureau's decision to impose a penalty of 15 times the amount of the sea area usage fee of the occupied sea area does not violate the relevant provisions of Chapter 4 of *the Law of the People's Republic of China on Administrative Penalty* on the application of administrative penalties, and is in accordance with the general penalties in the range of administrative penalties instead of the heavier penalties in the Several Opinions on Further Regulating the Exercise of Discretion in Maritime Administrative Punishment of the China Marine Surveillance. It is not improper for the Beihai Marine Fisheries Bureau to impose on Naizhi Company a fine of 15 times the amount of the sea area usage fee of the occupied sea area. And the amount of the fine calculated in accordance with the Cai Zong [2007] No.10 Notice of the Ministry of Finance and the State Oceanic Administration on Strengthening the Administration of Collection of Sea Area Usage Fee is correct. The penalty is appropriate, and there is no incorrect application of laws and regulations.

Above all, the first instance judgment was based on clear facts, correct application of law, and legitimate procedures. The grounds for the appeal of the appellant, Naizhi Company, could not be established and thus were not upheld by this Court. In accordance with Article 89, Section 1(1) of *the Administrative Procedure Law of the People's Republic of China*, the judgment is as follows:

The appeal is dismissed and the original judgment is upheld.

The case acceptance fee of 100 Yuan shall be borne by the appellant, Beihai Naizhi Marine Science and Technology Co., Ltd..

This judgment shall be final.

Presiding Judge ZHANG Hui

Judge JIANG Xinjiang

Judge XIONG Mei

June 26, 2019

Judge Assistant PENG Shaozheng

Clerk LUO Yushan