

The High People's Court of Hainan Province
Administrative Judgment

(2019) Qiong Xing Zhong No. 125

Appellant (Plaintiff of First Instance): Hainan Lingao Yinghai Shipping Co., Ltd. Domicile: Kunshe Village Committee, Xinying Town, Lingao County, Hainan Province.

Legal Representative: ZHENG Xiaohua, Executive Director.

Agent ad litem: LI Jiabin, lawyer from Beijing Denton (Haikou) Law Office. Agent ad litem: ZHU Jiajun, lawyer from Beijing Denton (Haikou) Law Office.

Appellee (Defendant of First Instance): the Fisheries Administration Squad of Sansha City. Domicile: Yongxing Island, Sansha City, Hainan Province. Person in Charge: YI Yaqi, Squad leader.

Agent ad litem: GUO Yiquan, Male, staff of the Fisheries Administration Squad of Sansha City.

Agent ad litem: LIN Yingzi, lawyer from Hainan Ruilai Law Firm. In the administrative penalty case between appellant, Hainan Lingao Yinghai Shipping Co., Ltd. (hereinafter referred to as "Yinghai Shipping Company") and appellee, the Fisheries Administration Squad of Sansha City, Yinghai Shipping Company disagreed with the administrative judgement made by the Haikou Maritime Court (2018) Qiong 72 Xing Chu No.14 (hereinafter referred to as "First Instance Judgment") and appealed to this Court. The Court accepted the case on January 30, 2019, and formed a collegial bench in accordance with the law to hear the case. After reviewing the case files, making investigations and inquiring of the parties concerned, the collegial bench held that the case may be handled without holding a hearing because it held that neither party provided new facts, evidence or reasons. The trial of this case has been concluded.

The Decision on Administrative Penalty ([2018] No.01, Penalty, Sansha Fisheries Administration, Hainan) issued by the Fisheries Administration Squad of Sansha City on February 1, 2018 (hereinafter referred to as the "sued Decision on Administrative Penalty") contains the following main contents: Yinghai Shipping Company's transport of 250 tons of giant clam shells by the transport ship "Ye Feng 616" without the special license for transportation of aquatic wild animals violated Article 23 of *the Law of the People's Republic of China on the Protection of Wild Animals* (hereinafter referred to as "*the Law on the Protection of Wild Animals*"), Articles 18 and 20 of *the Regulations of the People's Republic of China on the Protection of Aquatic Wild Animals*

(hereinafter referred to as "*the Regulations on the Protection of Aquatic Wild Animals*"), and Article 29 of *the Measures of the People's Republic of China for Special Licenses for Exploitation of Aquatic Wild Animals* (hereinafter referred to as "*the Measures for Special Licenses for Exploitation of Aquatic Wild Animals*"). According to Paragraph 3 of Article 3 and Article 28 of *the Regulations on the Protection of Aquatic Wild Animals*, and Paragraph 3 of Article 28 of *the Measures of Hainan Province for implementing the Law of the People's Republic of China on the Protection of Wild Animals*, this Squad decides to issue to Yinghai Shipping Company an administrative penalty to: 1. confiscate 250 tons of giant clam shells; 2. impose a fine of 1,120,500 Yuan, which is three times of the actual value of the confiscated shells. This Squad also orders immediate correction of illegal acts.

Yinghai Shipping Company filed a litigation with Haikou Maritime Court and claimed that the decision on administrative penalty should be set aside, as the sued Decision on Administrative Penalty infringed upon its legitimate rights and interests.

After hearing, Haikou Maritime Court finds the following case facts:

On August 21, 2014, when the Third Coast Guard Brigade of Hainan Provincial Public Security Frontier Force (hereinafter referred to as the "Third Coast Guard Brigade") was making inspections in sea areas of Zhongjian Island in Sansha City, it discovered that the ship "Ye Feng 616", which was owned by Yinghai Shipping Company and loaded with giant clam shells, was carrying them back to Hainan Island for sale. On September 5, the Marine Police Third Branch transferred the case of Yinghai Shipping Company's illegal transport of giant clam shells to the Sansha City Comprehensive Law Enforcement Bureau for investigation and handling.

On September 13, 2014, the Fisheries Administration Squad of Sansha City initiated investigation into the case of Yinghai Shipping Company's illegal transport of giant clam shells, and on that same day, made inquiries of the captain of "Ye Feng 616" and the manager of Yinghai Shipping Company, and on September 24, weighed the giant clam shells involved in the case at the wharf of the Third Coast Guard Brigade and the weight was 250 tons.

On April 8, 2015, the Fisheries Administration Squad of Sansha City entrusted Institute of Oceanology, Chinese Academy of Sciences (hereinafter referred to as the "IOCAS") to authenticate the species of the giant clam shells involved in this case. On April 14, IOCAS issued an Authentication Report, indicating that 98% of the giant clam shells involved in this case are *Tridacna gigas* and 2% are *Hippopus hippopus*. On April 21, the Fisheries Administration Squad

of Sansha City authorized the Price Certification Center of Hainan Province to determine the price of giant clam shells involved in this case. On May 12, the Price Certification Center of Hainan Province issued the Conclusion Letter for the Price Appraisal, according to which the total price of giant clam shells involved in this case is 373,500 Yuan.

On October 24, 2017, the Fisheries Administration Squad of Sansha City held a hearing of the case. On October 30, it issued the Advance Notice on Administrative Penalty ([2017] No.10, Penalty, Sansha Fisheries Administration, Hainan), and served the notice through posting on November 3 and November 8 respectively in conjunction with the Lingao County Fisheries Administration Station and Lingao County Xinying Public Security Frontier Station at the domicile of Yinghai Shipping Company, and the residential address of its legal representative. On November 26, the notice was served by public announcement in Hainan Daily. On February 1, 2018, the Fisheries Administration Squad of Sansha City issued the Decision on Administrative Penalty ([2018] No.01, Penalty, Sansha Fisheries Administration, Hainan), and served the Decision through posting on February 2 in conjunction with the Lingao County Fisheries Administration Station and Lingao County Xinying Public Security Frontier Station at the domicile of Yinghai Shipping Company. On March 1, the Decision was served by public announcement in Hainan Daily.

It was also ascertained that, for suspected criminal offence, the case was transferred on February 3, 2015 by the Sansha City Comprehensive Law Enforcement Bureau, and on July 10, 2015 and March 8, 2016 respectively by the Fisheries Administration Squad of Sansha City to the public security organ for investigation. On March 14, 2016, the Fisheries Administration Squad of Sansha City applied to the Sansha City Sansha Islands People's Procuratorate for supervision over the public security organ's failure to file the case. On September 14, 2017, the Sansha City Sansha Islands People's Procuratorate issued the Notice of Review Opinions on Reasons for Not Filing a Case ([2017] No.01, Review on Not to File, Sansha Islands People's Procuratorate).

The Haikou Maritime Court held that:

1. Whether Yinghai Shipping Company's conduct constituted illegal transport of aquatic wild animal products of national priority protection

According to the facts ascertained, Yinghai Shipping Company transported giant clam shells by the transport ship "Ye Feng 616" from sea areas of Zhongjian Island in Sansha City to Hainan Island without holding the special license for transportation of aquatic wild animals approved and

issued by the competent authority. The giant clam shells weighed 250 tons, and 98% of the giant clam shells are *Tridacna gigas* (first class national protected animal) and 2% are *Hippopus hippopus* (second class national protected animal). The aforesaid facts were evidenced by the inquiring records, a list of evidence registered and kept, a list of temporarily detained properties, and a weighing detail list of giant clam shells, etc. Therefore, the conduct of Yinghai Shipping Company constituted illegal transport of aquatic wild animal products of national priority protection.

Although Yinghai Shipping Company claimed that its conduct did not violate Article 18 of *the Regulations on the Protection of Aquatic Wild Animals*, in the sued Decision on Administrative Penalty by the Fisheries Administration Squad of Sansha City, the nature of Yinghai Shipping Company's illegal conduct was specified as illegal transport of aquatic wild animal products of national priority protection, and the sued Decision on Administrative Penalty was also made against its illegal transport of aquatic wild animal products of national priority protection. Therefore, whether the conduct of Yinghai Shipping Company violated Article 18 of *the Regulations on the Protection of Aquatic Wild Animals* and whether the Fisheries Administration Squad of Sansha City invoked Article 18 of *the Regulations on the Protection of Aquatic Wild Animals* in its sued administrative penalty decision do not affect determination of the nature of conduct involved in this case by the Fisheries Administration Squad of Sansha City. Therefore, it cannot be upheld accordingly that the sued administrative penalty decision is wrong.

Yinghai Shipping Company also claimed that its transport of giant clam shells was necessary for ballast operations at sea, and therefore did not constitute illegal transport of aquatic wild animal products. However, when inquiring and investigating the captain and crew member of "Ye Feng 616" and the manager of Yinghai Shipping Company, they all admitted the fact that they had, without permission of the relevant authorities, collected giant clam shells from the sea areas of Zhongjian Island in Sansha City with the intention to carry those back to Hainan Island. The above inquiring records and the evidence collected by the Fisheries Administration Squad of Sansha City could mutually corroborate with each other. Therefore, this claim by Yinghai Shipping Company cannot be upheld.

Yinghai Shipping Company also claimed that the giant clam shells they transported were not live animals so they did not infringe any legal interests thereof. In response to such argument of Yinghai Shipping Company, this Court would like to clarify that the legal protection of aquatic

wild animals in our country involves all aspects, not only limited to the fishing, killing, etc. of live wild animals, but also correspondingly including the purchase, sale, breeding, transport, collecting, digging etc. of protected aquatic wild animals. This is also the reason and the spirit of legislation that all illegal activities of collecting, digging, transport and carrying giant clams and products made out of them shall be punished in accordance with relevant laws and regulations. No matter the giant clams transported by Yinghai Shipping Company were living or dead, such conduct violated the provisions of *the Law on the Protection of Wild Animals* and *the Regulations on the Protection of Aquatic Wild Animals*, and infringed upon the legitimate interests protected by relevant laws. Therefore, this claim by Yinghai Shipping Company has no legal basis.

2. The issue of whether the sued decision on administrative penalty made by the Fisheries Administration Squad of Sansha City exceeded the prescribed time limit severely

On September 13, 2014, the Fisheries Administration Squad of Sansha City filed the case of Yinghai Shipping Company's illegal transport of giant clam shells and issued the sued Decision on Administrative Penalty on February 1, 2018. During the investigation, the Fisheries Administration Squad of Sansha City entrusted an institute to authenticate the species on April 8, 2015 and authorized an entity to determine the price on April 21; the case was transferred to the public security organ for investigation on February 3, 2015, July 10, 2015 and March 8, 2016. In March, 2016, the Fisheries Administration Squad of Sansha City applied to the People's Procuratorate for supervision over the public security organ's failure to file the case. On September 14, 2017, the People's Procuratorate issued the Notice of Review Opinions on Reasons for Not Filing a Case, indicating the end of relevant procedures. The above-mentioned matters such as species authentication, price determination and case transfer objectively delayed the review and handling process, and the time consumed shall be deducted from the period for handling the case. In addition, the period for the Fisheries Administration Squad of Sansha City to serve relevant documents by means of public announcement during the investigation of the case shall also be deducted from the period for handling the case. Considering the above factors, we can see from the facts of the case and the specific content of the sued Administrative Penalty Decision that: whether the time for the Fisheries Administration Squad of Sansha City to handle the case exceeded Article 41 of *the Provisions on the Procedure for Agricultural Administrative Punishment* does not affect the correctness of the decision of administrative punishment made by it. Even if the Fisheries Administration Squad of Sansha City handled the case beyond the statutory

time limit, and there were procedural flaws, such relevant flaws did not affect the significant procedural rights of Yinghai Shipping Company. It should not be deemed that the Administrative Penalty Decision was wrong and should be revoked based on these. Therefore, the relevant claims of Yinghai Shipping Company lack factual and legal basis.

3. The issue of whether the Authentication Report has major flaws

Yinghai Shipping Company claimed that the Authentication Report has significant flaws in procedures and contents, and should not be the basis for administrative punishment. The Authentication Report was issued by the Institute of Oceanology, Chinese Academy of Sciences (hereinafter referred to as the "IOCAS"), which was appointed by the Ministry of Agriculture to authenticate endangered species of aquatic wild animals and plants. The Fisheries Administration Squad of Sansha City also explained the method and process used in the authentication before the court. Yinghai Shipping Company was informed of the main contents of the Authentication Report via the Advance Notice on Administrative Penalty. Yinghai Shipping Company, due to its own reasons, failed to make a statement or defend itself or apply for a hearing in the process of making the decision on administrative penalty. Also, Yinghai Shipping Company was unable to provide evidence to prove that the Authentication Report contains errors or defects in its contents or procedures which are sufficient to affect its material procedural or substantive rights. This claim of Yinghai Shipping Company lacks factual and legal basis.

Yinghai Shipping Company further claimed that the Fisheries Administration Squad of Sansha City did not entrust an institution to carry out the species authentication until April 8, 2015, much later than the date (i.e. September 13, 2014) it registered and kept the giant clam shell involved in this case, which exceeded the time limit stipulated in *the Provisions on the Procedure for Agricultural Administrative Punishment*. Meanwhile, the entrustment was separate entrustment for the same matter under the circumstance that the public security organ already entrusted species authentication and formed authentication opinions, which was unreasonable. In respect of the above claims of Yinghai Shipping Company, first of all, based on the evidence submitted by both parties, the public security organs already entrusted an institution to carry out species authentication before the Fisheries Administration Squad of Sansha City entrusted IOCAS for the same purpose. Therefore, it cannot be considered in isolation as to when Fisheries Administration Squad of Sansha City entrusted the authentication. Secondly, considering that the Hainan Academy of Marine and Fishery Sciences was not qualified to authenticate endangered species of aquatic

wild animals in 2015, and such authentication cannot be used as the basis for the Fisheries Administration Squad of Sansha City to handle the case, it is appropriate for the Fisheries Administration Squad of Sansha City to entrust a qualified institution to carry out the authentication. Therefore, the relevant claims of Yinghai Shipping Company lack factual and legal basis.

4. The issue of whether the service procedures of legal documents in this case were illegal

Yinghai Shipping Company claimed that the service procedures of the Fisheries Administration Squad of Sansha City were illegal and infringed upon its rights. According to Article 40 of *the Law of the People's Republic of China on Administrative Penalty*, administrative authorities shall serve legal documents in accordance with the relevant provisions of the Civil Procedure Law. Article 52 of *the Provisions on the Procedure for Agricultural Administrative Punishment* also regulates the service of relevant documents. In this Case, since neither Yinghai Shipping Company nor its legal representative was operating or residing in its domicile, the Fisheries Administration Squad of Sansha City was unable to serve the relevant documents to Yinghai Shipping Company by direct delivery, mail etc. In view of this, the Fisheries Administration Squad of Sansha City published service announcement in Hainan Daily on November 26, 2017 and March 1, 2018 respectively, and served the Advance Notice on Administrative Penalty and the Decision on Administrative Penalty to Yinghai Shipping via public announcement. Therefore, the Fisheries Administration Squad of Sansha City served the Advance Notice on Administrative Penalty and the Decision on Administrative Penalty to Yinghai Shipping Company in accordance with the law after it issued them, and Yinghai Shipping Company failed to provide evidence to prove that the Fisheries Administration Squad of Sansha City illegally served them or relevant documents were not served on Yinghai Shipping Company. Yinghai Shipping Company's related claims lack factual and legal basis.

To sum up, the facts of the sued Decision on Administrative Penalty are clear, the evidence is conclusive, the applicable basis is correct, the procedures are legal, and the handling is appropriate. Pursuant to Article 69 of *the Administrative Procedure Law of the People's Republic of China*, the court held that the claims of Yinghai Shipping Company be dismissed. The first instance judgement also determined which party to bear the case acceptance fee and informed both parties of the right to appeal.

Yinghai Shipping Company appealed within the statutory time limit, requesting: 1. to revoke

the judgment of first instance; 2. to change the original judgment to support all claims of Yinghai Shipping Company; and 3. the Fisheries Administration Squad of Sansha City to bear the litigation costs.

Facts and grounds of the appeal: 1. The facts ascertained in the Decision on Administrative Penalty are wrong and the evidence is insufficient. The giant clam shells transported by Yinghai Shipping Company were dead, therefore Yinghai Shipping Company did not violate any of the legal interests protected under *the Regulations on the Protection of Aquatic Wild Animals*, Its transport of giant clam shells was necessary for ballast operations at sea, no interests were obtained and the act was trivial. Institute of Oceanology, Chinese Academy of Sciences' Authentication Report did not explain the authentication methods, ideas and procedures, and the inspection target was not confirmed by Yinghai Shipping Company. The authentication opinions on the species shall not be used as the basis for penalty. 2. The Fisheries Administration Squad of Sansha City failed to inform the species authentication entrustment in accordance with Item 1, Article 35 of *the Provisions on the Procedure for Agricultural Administrative Punishment*, and the sued administrative penalty decision was made beyond the statutory time limit, violating the statutory procedures.

The Fisheries Administration Squad of Sansha City submitted its defense within the statutory time limit, requesting to reject the appeal of Yinghai Shipping Company.

Facts and grounds of the defense: 1. The facts ascertained in the Decision on Administrative Penalty are clear and the evidence is conclusive. It is clearly provided in *the Provisions of the Supreme People's Court on Several Issues concerning the Trial of the Relevant Cases Occurring in Maritime Space under the Jurisdiction of China (II)* that the giant clam shells include both living and dead bodies. GUI Jianhai and GUI Zaiwang both admitted the fact that they collected giant clam shells from the sea areas of Zhongjian Island in Sansha City with the intention to carry those back to Hainan Island. In addition, the method of transport giant clam shells did not comply with the ballast requirements for operation at sea. 2. In respect to the Decision on Administrative Penalty, the application of Article 28 of *the Regulations on the Protection of Aquatic Wild Animals*, and Paragraph 3, Article 28 of *the Measures of Hainan Province for implementing the Law of the People's Republic of China on the Protection of Wild Animals* is correct. 3. The procedures for making the decision on the administrative penalty are lawful. For possible and suspected criminal offence, the case of Yinghai Shipping Company's illegal transport of giant clam shells was

transferred by the Fisheries Administration Squad of Sansha City to the public security organ for investigation for multiple times, and such transfers are appropriate. Before making the Decision on Administrative Penalty, the Fisheries Administration Squad of Sansha City issued and served the Advance Notice on Administrative Penalty, which protected the rights of the Yinghai Shipping Company and is in compliance with laws.

The Court ascertains that the Authentication Report issued by the Institute of Oceanology, Chinese Academy of Sciences stated: Giant Clam, also known as *Tridacna gigas*, is a first class national protected animal; *Hippopus hippopus* is a second class national protected animal.

On September 13, 2014, the Fisheries Administration Squad of Sansha City kept the giant clam shells involved in this case at the wharf of the Third Coast Guard Brigade, and prepared a list of registered and kept evidence, as well as a list of temporarily seized properties, which was served to GUI Zaiwang, the captain of "Ye Feng 616". On September 24, upon the entrustment of GUI Jianhai, the manager of Yinghai Shipping Company, SU Hongjian cooperated with the Fisheries Administration Squad of Sansha City to weigh the giant clam shells involved in this case. The Third Coast Guard Brigade witnessed on the spot. SU Hongjian signed and fingerprinted the weighing detail list of giant clam shells. The giant clam shells involved in this case were kept at the Sansha Wenchang Affairs Administration after being weighed.

During the inquiry by the court, Yinghai Shipping Company acknowledged that the public security organ already notified them before the public security organ entrusted the Hainan Academy of Marine and Fishery Sciences to carry out species authentication of the giant clam shells involved in this case. On December 11, 2014, Sansha Municipal Ocean and Fisheries Bureau approved an extension of the handling period of this case for one year after being applied by the Fisheries Administration Squad of Sansha City. On September 14, 2017, the Sansha City Sansha Islands People's Procuratorate issued the Notice of Review Opinions on Reasons for Not Filing a Case ([2017] No.01, Review on Not to File, Sansha Islands People's Procuratorate), holding that the reasons for not filing a case were tenable.

The subject matter of review in this case is whether the Decision on Administrative Penalty is lawful. Considering the Decision on Administrative Penalty, the judgment of first instance, and the arguments and defenses of both parties during the second instance, this court holds that the focus of dispute in this case is: I . Whether the facts are clear and whether evidence is conclusive for the Decision on Administrative Penalty to determine Yinghai Shipping Company's illegal

transport of wild animals of national priority protection; II. Whether the Decision on Administrative Penalty violates legal procedures. The analysis is as follows:

I. The issue of whether the facts are clear and whether evidence is conclusive for the Decision on Administrative Penalty to determine Yinghai Shipping Company's illegal transport of wild animals of national priority protection.

In Paragraph 3, Article 7 of *the Supreme People's Court on Several Issues concerning the Trial of the Relevant Cases Occurring in Maritime Space under the Jurisdiction of China (II)*, it is stipulated that "The term 'corals and giant clams' as referred to in these Provisions means all kinds of corals and giant clams under the first-grade and second-grade state conservation in the List of Wildlife under State Priority Conservation and in Annexes 1 and 2 to *the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, including living and dead bodies." Article 2 of *the Regulations of the People's Republic of China on the Protection of Aquatic Wild Animals* provides "For the purpose of these Regulations, aquatic wild animals are rare and endangered aquatic wild animals; and products of aquatic wild animals are any part of aquatic wild animals and their derivatives." *Tridacna gigas* is a first class national protected animal in the List of Wildlife under State Priority Conservation; and *Hippopus hippopus* a species in Annex 2 of *the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, therefore both of them are protected under laws. In this case, giant clam shells transported by Yinghai Shipping Company are part of giant clams, and are products of aquatic wild animals under legal protection as stipulated in Article 2 of *the Regulations of the People's Republic of China on the Protection of Aquatic Wild Animals*. Yinghai Shipping Company's reasons for appeal that the giant clam shells transported by it were dead, and therefore they did not violate any of the legal interests protected under *the Regulations on the Protection of Aquatic Wild Animals*, are apparently inconsistent with the above regulations. As to Yinghai Shipping Company's claim that its transport of giant clam shells was necessary for ballast operations at sea, no interests were obtained and the act was trivial, it lacks basis.

Article 23 of *the Law of the People's Republic of China on the Protection of Wild Animals*, which came into effect on August 27, 2009, stipulates that "The transportation or carrying of wildlife under special state protection or the products thereof out of any county must be approved by the department of wildlife administration under the government of the relevant province, autonomous region or municipality directly under the Central Government, or by a unit authorized

by the same department." Articles 20 of *the Regulations of the People's Republic of China on the Protection of Aquatic Wild Animals*, and Article 29 of *the Measures of the People's Republic of China for Special Licenses for Exploitation of Aquatic Wild Animals* provide that the cross-county transportation of wildlife under special protection by the State or the products thereof shall be approved and a corresponding permit shall be obtained. In this case, Yinghai Shipping Company did not object to its failure to obtain approval and a corresponding permit for the transportation of giant clams from Sansha City to Hainan Island. The Fisheries Administration Squad of Sansha City collected evidence such as on-site photos, inquiring records, a list of registered and kept evidence, a list of temporarily seized properties, the weighing detail list, the Authentication Report and the Conclusion Letter for the Price Appraisal and those evidence also prove that Yinghai Shipping Company committed the above acts in violation of the laws, administrative regulations and departmental rules.

The existing laws and regulations do not require the species authentication opinion to specify the authentication methods, ideas and procedures. The Fisheries Administration Squad of Sansha City served the Advance Notice on Administrative Penalty according to the law, which covered the main contents of the authentication opinions, and explained the authentication methods and processes of the Institute of Oceanology, Chinese Academy of Sciences in the court hearing of the first instance. The Fisheries Administration Squad of Sansha City prepared a list of registered and kept evidence and a list of temporarily seized properties. and SU Hongjian (entrusted by Yinghai Shipping Company) signed and fingerprinted the weighing detail list of giant clam shells while the Third Coast Guard Brigade witnessed on the spot. Also, the Authentication Report issued by the Institute of Oceanology, Chinese Academy of Sciences stated the location of the authentication was at the seizure site. The above evidence is sufficient to prove that the species authentication target in the entrustment by the Fisheries Administration Squad of Sansha City is indeed the giant clam shells involved in this case. Yinghai Shipping Company claimed that the inspection target was not confirmed by it but could not provide evidence to prove that the species of authentication target were not giant clams involved in the case, therefore its claim that the authentication opinions on the species shall not be used as the basis for penalty cannot be established.

In relation to Yinghai Shipping Company's claims for appeal that the giant clam shells transported by Yinghai Shipping Company were dead, its transport of giant clam shells was necessary for ballast operations at sea and the authentication opinions on the species shall not be

used as the basis for penalty, these cannot be supported by this court. Regarding the Fisheries Administration Squad of Sansha City's defense opinions that no matter the giant clams transported by Yinghai Shipping Company are living or dead, they are under the protection of laws, and Yinghai Shipping Company's illegal transport of giant clam shells is subject to administrative penalty, these can be established and this court adopt and agree with them. Judgment of the first instance determined that *Hippopus hippopus* are second class national protected animal which is wrong, and this court rectify hereby; it also determined that Yinghai Shipping Company constituted illegal transport of aquatic wild animal products of national priority protection and is subject to penalty, which is agreed to and affirmed by this court.

II. The issue of whether the Decision on Administrative Penalty violated legal procedures

According to Item 1, Article 35 of *the Provisions on Procedures for Agricultural-related Administrative Penalties*, if an agricultural administrative penalty authority decides to authenticate the evidence registered and kept in advance, it shall inform the party concerned. The purpose is to fully protect the administrative counterpart's right to be informed during the procedures of administrative penalty. In this case, the public security organ already informed Yinghai Shipping Company before entrusting an institution to carry out the authentication over the giant clams involved in the case. The case of Yinghai Shipping Company's illegal transport of giant clams was transferred to the Fisheries Administration Squad of Sansha City for investigation and handling, and because the previous authentication opinion had defects, it authorized a qualified authentication institution to authenticate were registered and kept giant clams involved in this case which were transferred from the public security organ, and served the Advance Notice on Administrative Penalty according to the law, which covered the main contents of the authentication opinions. Therefore, Yinghai Shipping Company's right to be informed of the authentication to be conducted over the giant clams involved in the case has not been affected.

The Law of the People's Republic of China on Administrative Penalty does not prescribe the time limit for handling administrative penalty cases. Article 41 of *the Provisions on Procedures for Agricultural-related Administrative Penalties* provides that "A decision on the handling of an agricultural administrative penalty case shall be made within three months from the day when the case is put on file. In case no decision can be made within three months under special circumstances, the time limit may be extended to one year upon approval of the agricultural administrative penalty organ at the next higher level." In this case, the Fisheries Administration

Squad of Sansha City filed the case for investigation on September 13, 2014; on December 11, 2014, the handling period was extended for one year upon approval, and the handling period shall end on September 12, 2015. During this time, the period of entrusted authentication and service by public announcement should be deducted in accordance with the law, and also the period of case transfer may be deducted in accordance with the law. The decision to impose an administrative penalty was made on February 1, 2018 and within a year, which also conforms to *the Provisions on Procedures for Agricultural-related Administrative Penalties*.

In respect to the reasons for the appeal by Yinghai Shipping Company, including that it was not informed of the authentication to be conducted over evidence, the Fisheries Administration Squad of Sansha City's case handling time exceeded the time limit, the Decision on Administrative Penalty violated legal procedures cannot be established and supported by this court. Regarding the Fisheries Administration Squad of Sansha City's defense opinions that the procedures for making the decision on the administrative penalty are lawful, these can be established and this court adopt and agree with them. The judgment of first instance affirmed that the Decision on Administrative Penalty was correct and it did not affect the material procedural rights of Yinghai Shipping Company, and this court hereby agree and affirm.

Above all, the grounds for appeal by Yinghai Shipping Company were untenable and should be rejected. The decision on administrative penalty made by the Fisheries Administration Squad of Sansha City was based on clear facts and conclusive evidence, proper law and regulation applications, and complied with legal procedures. The facts ascertained in the judgment of first instance were basically clear, the application of laws and regulations was correct, and the judgment was not improper, and should be sustained. According to Item 1, Paragraph 1, Article 89 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 second instance is 50 Yuan, which shall be borne by the appellant Hainan Lingao Yinghai Shipping Co., Ltd.

This judgment shall be final.

Presiding Judge WANG Jun

Judge ZHANG Shuang

Judge FENG Kun

April 10, 2019

Judge Assistant: CHEN Enhua

Clerk: WANG Junjie