

**Legal Opinion and Assessment of Experts
on the Case of Jude Shao Forging Value-added Tax Documents
and Evading Taxes**

On March 13, 2000, Shanghai Number One Intermediate People’s Court convicted Jude Shao of the crimes of forging value-added tax documents and evading taxes and handed out a sentence of sixteen years of fixed-term imprisonment with a supplementary sentence of deportation. After the announcement of the verdict of first instance, Jude Shao appealed. On June 6, 2000, Shanghai High People’s Court issued a ruling to affirm the original verdict. Jude Shao thereafter lodged a petition. On December 21, 2001, Shanghai High People’s Court ruled again that the reason for petition was not sufficient enough to warrant a retrial. Therefore, the original verdict was upheld. On January 28, 2002, Jude Shao petitioned to the Supreme People’s Court based upon the facts that he acquired new evidence that could prove that the trial court erred in the fact finding and therefore demanded a new trial. In order to facilitate a correct and just trial of this case, on April 23, 2003, Beijing Youbang Law Firm who had been retained by Shao as a counsel in petition procedure entrusted the Expert Advisory Committee on Hard and Complex Criminal Cases of the Research Center on Criminal Law Science of Renmin University that has been designated as “a national major research base”¹ to organize a group of national leading criminal law experts and conduct expert analyses and evaluation of the case of Jude Shao forging value-added tax documents and evading taxes.

A. The materials based upon which the invited criminal experts conducted their evaluation

The materials based upon which the experts conducted their evaluation and assessments include the followings:

1. Indictment of the Number One Branch of Shanghai People’s Procuratorate (document number is “*hu jian yi feng su (1998) No. 38*”);
2. Verdict of the Shanghai Number One Intermediate People’s Court (document number is “*(1999) hu yi zhong xing chu zi No. 61*”);
3. Criminal Ruling of the Shanghai High People’s Court (document number is “*(2000) hu gao xing zhong zi No. 63*”);
4. Notification of Dismissing Petition of Shanghai High People’s Court (document number is “*(2001) hu gao xing jian zi No. 30*”);
5. Petition letter of Jude Shao (dated December 28, 2000);
6. Petition letter of Jude Shao to the Supreme People’s Court (dated April 28, 2001);
7. Petition letter of Jude Shao to the Supreme People’s Court (dated May 30, 2001);
8. Petition letter of Jude Shao to the Supreme People’s Court (dated January 28, 2002);

9. The supplementary statement of Jude Shao on the importing fees paid by CBV Trading, Inc to Shanghai Shenyu Import & Export Company for the services of importing “vehicle-carrying medical CT” and payment of RMB 120,000 made to Mr. Chen Si’nuo (dated October 31, 2001).
10. The receipts of payment by CBV Trading, Inc. (dated May 31, 1996)
11. Application form for wiring money by CBV Trading, Inc (dated May 9, 1996).
12. The statement of Zhang Zhen on the payment receipt (made on May 31, 1996) of CBV Trading and on the application form for wiring money (made on May 9, 1996), (dated January 10, 2002).
13. Document on the loan of RMB 135,336.80 to Shanghai Shenyu Import & Export Company by CBV Trading, Inc. (dated September 16, 1997).
14. The statement of Fang Wenqing (dated October 23, 2001).
15. The check of CBV Trading, Inc payable to Shanghai Shenyu Import & Export Company (numbered BG733947).
16. The statement of Fang Wenqing (dated January 9, 2001).
17. The statement of Zhang Zhen on inventory form (dated August 16, 2002).
18. The statement of Xiang Weimin on inventory form (dated August 9, 2002).
19. The statement of Fang Wenqing on inventory form (dated August 8, 2002).
20. The transcript of questioning Zhou Weizhong by the investigation organ (dated June 8, 1998).
21. The transcript of questioning Lin Jihong by the investigation organ (dated April 30, 1998).
22. The transcript of questioning Xie Guangsheng by the investigation organ (dated August 9, 1998).
23. The transcript of questioning Sun Minsheng by the investigation organ (dated July 14, 1998).
24. The transcript of questioning Han Xin by the investigation organ (dated September 16, 1998).
25. The transcript of questioning Fang Wenqing by the investigation organ (dated April 5, 1998).
26. The transcript of questioning Zhou Zhuan by the investigation organ (dated June 9, 1998).
27. The transcript of questioning Guo Ming by the investigation organ (dated October 14, 1998).
28. The transcript of questioning Jiang Chao by the investigation organ (dated April 14, 1998).
29. The transcript of questioning Shao Jingwei by the investigation organ (dated July 29, 1998).
30. The transcript of Jude Shao’s interrogation by the investigation organ (the ninth interrogation dated April 25, 1998).
31. The transcript of Chen Si’nuo’s interrogation by the investigation organ (dated September 17, 1998).
32. The judicial auditing evaluation report on “the Case of Jude Shao, Chen Si’nuo, Han Xin Alleged of Forging Value-added Special Tax Documents and CBV Company Suspected of Evading Taxes”, issued by the Judicial Accounting Center of Shanghai, (document no. *(hu si hui zi (1999) no. 35)*).

33. 4 value-added special tax documents issued by Wanna Company to CBV Company.
34. 45 specifically designated value-added tax documents of Zhejiang Province, issued by Wanna Company.
35. "The document verifying the fees that Wanna Company (Shanghai) made to Chen Si'nuo".
36. "The document verifying the payment that Chen Si'nuo made to CBV Company".
37. 4 value-added tax documents issued by Shenyu Import and Export Company.
38. The purchase contract between CBV Company and Shenyu Company.
39. "Document verifying the fees that CBV Company paid Chen Si'nuo."
40. 44 air-ferrying bills of lading of imported tubes and 4 page inventory form.
41. The bill of lading, the receipt, agent contract, custom declaration form of medical imagers.
42. The audit reports of Jiahua Accounting firm of Shanghai (dated respectively on April 21, 1995, March 18, 1996, and March 5, 1997).

B. The general facts based upon which this expert evaluation was made and the major disputes involved

1. major contents contained in the criminal judgment of first instance, the ruling of second instance, and the notification of dismissing the petition.

The criminal judgment of Shanghai Number One Intermediate People's Court (document no. (1999) *hu yi zhong xing chu zi No. 61*) found that defendant Jude Shao, the principal person directly in charge of CBV Company and for the interests of the company, had instructed others to forge altogether 53 value-added tax documents, valued at RMB 8.02 million yuan, which eventually resulted in tax credit of total value at RMB 1.166 million yuan. From April 1994 to September 1997, while acting as the general manager of CBV Company and in charge of importing and selling medical instruments such as CT machines and CT tubes, the defendant Jude Shao forged and evaded state taxes valued at RMB 2.101 million yuan which accounted for 42.72 % of all the tax dues, by concealing the bank accounts, forging self-made receipts in foreign language, falsely balancing accounts by using purchase funds, as well as underdeclaring or failing to declare profits. Based upon the above facts, the defendant Jude Shao was convicted of the crime of forging value-added tax documents and sentenced to a fixed-term imprisonment of 15 years; and convicted of the crime of evasion of taxes and sentenced to a fixed-term imprisonment of one year and six months; combined to serve a fixed-term imprisonment of 16 years with supplementary sentence of deportation. The criminal ruling of Shanghai High People's Court (document no. (2000) *hu gao xing zhong zi No. 63*) found that the original criminal judgment was correct in law application and appropriate in sentence decision, the adjudication process had been properly followed and therefore the appeal was dismissed and the original judgment was affirmed. The notification on dismissing petition issued by Shanghai High People's Court (document no. (2001) *hu gao xing jian zi No. 30*) found that the reason for petition had no merits and did not satisfy the

requirements stated in Article 204 of the Criminal Procedure Law and therefore the original criminal judgment should be upheld.

2. The ground for Jude Shao to petition and the defense opinion of the counsel in the original trial.

According to the petition of Jude Shao, there are three custom import payment receipts valued respectively at RMB 400,000 yuan, RMB 135,000 yuan, and RMB 180,000 yuan which were ignored by the “judicial auditing evaluation report” for various reasons. In fact, the total amount have been paid is RMB 1.703 million yuan, which represents a full payment of all the tax dues including 17% value-added taxes for normal imported goods. The evidence refutes the allegation made by Chen Si’nuo against the defendant Jude Shao. Actually, Chen Si’nuo and Han Xin are the real culprits of the crimes alleged here. There were real business relations between CBV Company and Wanna Trading Company and Shanghai Shenyu Import & Export Company. Goods and money had been transacted between CBV and those two companies. Wanna and Shenyu companies forged the value-added tax documents for the purpose of smuggling goods. Therefore, the petitioner requested a retrial.

The defense counsels for the defendant Jude Shao in the first and second instances argued that Jude Shao lacked intentions as well as acts to instruct others to forge value-added tax documents, neither did the state lose tax revenue in the course of CBV Company business handlings. The court, therefore, did not have sufficient evidence to find Jude Shao guilty of the crime of forging value-added tax documents. As of the crime of evading taxes, CBV likewise had no criminal intention, neither did it commit any act of such crime. In addition, CBV Company had fully complied with the state regulations on corporate accounting management, therefore, the court too did not have enough evidence to convict Jude Shao of the crime of tax evasion.

3. Major disputes of the case

Based upon the judgments of first instance and second instance, the notification of dismissing petition and the grounds for Jude Shao’s petition, as well as the defense opinions presented by the counsels at first and second instances, the major disputes appear to be the followings: **a) Had Jude Shao instructed Chen Si’nuo to forge value-added special tax documents? b) Were there any real business transactions and cash flowing among CBV Company, Wanna Company, and Shenyu Company? c) Did the payments made by CBV to Wanna and Shenyu include the value-added tax dues to CBV?**

C. Experts’ Opinions on the nature of the case

After studying and deliberating on the disputed issues presented by both sides, this group of experts reached the conclusions as follows:

The evidence based upon which the judgment of first instance and the ruling of second instance were rendered were in fact not sufficient enough to prove that Jude Shao had factually instructed Chen Si'nuo to forge value-added tax documents. Neither could the evidence exclude the possibility that there was indeed the real business transaction and cash flowing between CBV Company and Wanna and Shenyu. The three pieces of new evidence produced by Jude Shao, if verified truthful, may prove that CBV had already paid all tax dues. Therefore, Jude Shao did not commit a crime of forging value-added tax documents. As of the crime of evading taxes, there is a need to conduct further investigation of the facts. Since the new evidence produced by Jude Shao has direct bearings on the fact-findings of the case and satisfies the requirements stated in Article 204 of the Criminal Procedure Law, the people's court should legally conduct a new trial accordingly.

1. Expert opinions on the crime of forging value-added documents by Jude Shao

According to Article 205 of the Criminal Law, the crime of forging value-added tax documents refers to the acts of forging for others, for oneself, having others forge, or leading others to forge value-added tax documents. So-called value-added tax refers to the business flowing tax imposed to the newly-created values or increased values incurred during the course of production or managing activities by tax payers. In accordance with the Interim Regulations on Value-added Tax of the People's Republic of China, all individuals and units whoever provide processing service, repairing and assembling services and importing or exporting service within the territory of the People's Republic of China, are the tax-payers of value-added taxes and should pay the value-added taxes. The percentage of such value-added tax for selling or importing general goods is normally 17%. The original trial court found that Jude Shao conducted the act of instructing others to forge value-added tax special documents. However, judging from the evidence described in the judgment of first instance, the ruling of second instance, and the notification of dismissing petition, (we) could not conclude sufficiently and convincingly that Jude Shao did instruct Chen Si'nuo. Given that CBV Company had paid all the tax dues, by contract, to Wanna Company and Shenyu Company, we may reasonably assume that Jude Shao had no knowledge of the activities of forging documents, therefore, should not be held responsible for the crime.

- a) the existing evidence could by no means prove sufficiently and convincingly that Jude Shao instructed others to forge value-added tax documents

The evidence upon which the original judgment relied to convict Jude Shao of the crime of forging value-added tax documents was merely the statement of Chen Si'nuo. Although the judgment also found that Jude Shao had confessed the crime, Jude Shao during the court trial denied all allegations and particularly in his appeal and petition denied the allegation that he had ever paid Chen Si'nuo for such forgery. Jude Shao indicated in the petition that the court adopted only one of the nine statements that he had made during the investigation stage, and disputed with the court on this selective

adoption of the statement. In this sense, the fact is “one’s word against another’s”. Besides, all acts of forgeries had been perpetrated by Chen Si’nuo (see the judgment of first instance). It is impossible to exclude the possibility that Chen Si’nuo, as a codefendant, had intention to elude the criminal liability by fabricating the fact of Jude Shao’s instigation which might well be false. Han Xin, another codefendant, committed forgeries directly through cooperation with Chen Si’nuo without alleging Jude Shao’s direct or indirect involvement (see the transcripts of Han Xin’s statement, September 16, 1998). Jude Shao claimed that he had never met with or even heard of Han Xin prior to the court trial. Other statements made by witnesses Zhou Weizhong, Lin Jihong, Sun Minsheng, Xie Guangsheng, Han Xin, and Zhou Zhu’an, could only prove that Chen Si’nuo had been in touch with those individuals and were short of proving that Jude Shao had any connection with the forgeries. Thus, the evidence upon which the original trial court relied to convict Jude Shao failed to prove sufficiently and convincingly that Chen Si’nuo’s forgeries had been instructed by Jude Shao. This fact is so vital to the conviction and criminal liability of the case and therefore should be carefully ascertained. By the principle “doubtful case being rather no case (*yi zui cong wu yuanze, or suspicion leading to no conviction*)”, the court should render a judgment in favor of Jude Shao without other convincing evidence.

- b) There were indeed business transaction and cash flowing among CBV Company and Wanna Company and Shenyu Company.

Whether or not there were business transactions and cash flowing among CBV and Wanna and Shenyu is a crucial element in determining whether Jude Shao had knowledge of the facts that Chen Si’nuo had forged value-added tax documents. If indeed such relationship existed, we might conclude that the principal-agent relationship between CBV Company and Wanna and Shenyu companies was appropriate. Therefore, we might indirectly exclude the possibility that Jude Shao had instructed Chen Si’nuo to forge value-added tax documents. Reversely, if such relationship did not exist or partially existed, we could assume that Jude Shao and Chen Si’nuo might have conspired to commit the crime.

Jude Shao claimed that CBV Company had entrusted Wanna and Shenyu as its import agents and provided them with the bills of lading after the medical equipments arrived in Shanghai from US. After clearing the custom on behalf of CBV Company, the above mentioned two companies then transferred to CBV Company the imported goods along with the value-added tax documents. If Jude Shao was truthful with this, the relationship between CBV Company and Wanna and Shenyu should be of contractual principal-agent. Furthermore, if an agent exceeds the authorization by the principal and violates law in the course of handling importing process, the principal—CBV Company should not be held liable for the illegal behaviors of the agent. The existing evidential materials could prove that CBV Company had indeed real business transactions and cash flowing with Wanna and Shenyu. The direct contact was Chen Si’nuo, the codefendant. Such evidence include: i) 44 air-ferrying bills of lading by which CBV Company shipped X-ray equipments to Shanghai; Jude Shao claimed that Wanna Company presented 48 value-added tax documents for those 44 bills of lading, total valued at RMB 5.02 million yuan; ii) the inventory forms of CBV Company; iii) the statements of Zhang Zhen, Xiang Weimin,

Fang Wenqing explaining the inventory situation; All of their statements indicated that the vast majority of those tubes for X-ray machines listed in the inventory forms were delivered by Chen Si'nuo in person or his deputies with his signature attached; iv) the bills of lading, receipts, agency contracts, records of custom clearance of the vehicle-carrying medical imagers and 8 air-ferrying bills of lading of medical tubes; Jude Shao claimed that for those imported goods, Shenyu Company presented to him 4 value-added tax documents, total valued at RMB 3 million yuan.

The above evidence suggested that CBV Company have business transactions and cash flowing with Wanna and Shenyu companies, namely, the two companies acted as its agents in clearing custom process during importing medical equipments. Moreover, the value-added tax documents corresponded to the bills of lading by which the goods had been imported.

- c) the new evidence provided by Jude Shao, if verified truthfully, may well prove that CBV Company had already made full payment of fees and tax dues related to imported goods, including value-added taxes.

The original trial court found that Jude Shao instructed others to forge 53 value-added tax special documents on behalf of CBV Company, total valued at RMB 8.028 million yuan, which amounted to the tax credit of RMB 1.166 million yuan. Meanwhile, the court found that Jude Shao paid Chen Si'nuo the amount of RMB 988,000 yuan as agent's commission and the fees for forging value-added tax documents, which was much lower than the normal cost for importing process. Jude Shao argued in the petition that the new evidence demonstrated that his company had made a full payment of all costs incurred in the normal import process including 17% value-added taxes. Moreover, he pointed to the fact that three payments were missing from the "judicial evaluation auditing report" for unknown reasons. The evidential materials proving three payments include: i) The payment receipt of CBV Company, dated May 31, 1996 and the application for payment of CBV Company, dated May 9, 1996 indicate that on May 31, 1996, CBV Company paid the amount of \$ 48,000. Zhang Zhen testified that during his employment at CBV Company in 1996, he wired, at the request of Jude Shao, to the United States the amount of \$ 48,000 (equal to RMB 400,564.80 yuan) in the name of Chen Si'nuo of Wanna Company (see the January 10, 2002 testimony of Zhang Zhen on the payment receipt of CBV Company dated May 31, 1996 and the explanation on the application for the payment of CBV Company, dated May 9, 1996). According to Zhang Zhen, the address, name, and bank account of the payee of the US were designated by Chen Si'nuo of Wanna Company. ii) The bank transfer record numbered AF831516 (dated September 16, 1997) also indicates that CBV Company paid RMB 135,336.8 yuan to Shenyu Company. Fang Wenqing testified (see the statement of Fang Wenqing on October 23, 2001) that the amount of RMB 135,336.80 bank transfer by CBV Company to Wanna Company was processed by him. After completion of the transfer, he sent by express mail a copy of the transfer to Zhu Chunfei, the manager of Shanghai Shenyu Company. iii) The check of CBV Company payable to Shenyu Company demonstrated that CBV Company did pay RMB 180,000 yuan to Shenyu Company. The testimony of Fang Wenqing (on January 9,

2001) stated that the check numbered BG733947 was issued by him around September 16, 1996, while he sent the check by express mail to Zhu Chunfei, manager of Shenyu Company. The above facts have been proven by the documentary evidence and the testimonies of the witnesses, therefore, should be trustful. If all above evidence were adopted and recognized by the court, the basic fact-findings in original judgment would not stand. Thus, the court should recognize that CBV Company had paid all its importing fees and tax dues including the value-added taxes.

In summary, the existing evidence could by no means prove that Jude Shao had instructed Chen Si'nuo to forge value-added tax special documents. CBV did have business transaction and cash flowing with Wanna and Shenyu companies. Therefore, the original trial court possessed insufficient evidence in finding Jude Shao guilty of the crime of forging value-added tax documents. If the new evidence provided by Jude Shao is proven truthful, he should be found not guilty of instructing others to forge value-added tax documents.

2. The allegation that CBV Company was involved in tax evasion needs further investigation.

The defense counsel of first instance trial argued that the most equipments sold by CBV were paid by installment. In addition, the buyers often delayed in payments. Some of the equipments had deficiencies and caused disputes. Therefore, those payments could only be viewed as temporary payments by accounting standard and CBV was legally allowed not to produce value-added tax documents. Meanwhile, as a foreign enterprise, CBV enjoyed tax credit and needed not to evade taxes. The judicial auditing report only examined the time period from January 1995 to June 1997, while the evasion of taxes covered the period from April 1994 to June 1998, which went beyond the auditing time period, lest many payments were recovered by CBV Company from buyers during the second half of 1996 to June 1998. The above defense arguments were not addressed by the judgment of first instance, neither were any judicial comments provided with regard to them. Since the above-mentioned fact has direct bearing on the founding whether or not CBV Company had committed any act of tax evasion, it should be further investigated. Only proven beyond reasonable doubt could the fact-findings of the case be objective and truthful and the evidence be clear and sufficient.

3. The court concerned should order to retry the case since the petition of Jude Shao is in compliance with the legal requirements prescribed by Article 204 of the Criminal Procedure Law.

Article 204 of the Criminal Procedure Law stipulates: "Where petitions of parties and their statutory agents and close relatives meet any of the following situations, the people's courts shall hold a retrial:

- 1) Where it has been proven by new evidence that there is actual error in the determination of facts in the original judgment or ruling;

- 2) Where there is untrue or inadequate evidence for the decision of punishment, or contradictions between major evidence that prove the facts of the case;
.....”

As discussed earlier, three new evidence provided by Jude Shao are not only reliable but also are corroborated by documentary evidence and testimonies of witnesses. In addition, the fact pending for proof has vital effects in determining whether or not the defendant should be liable for the crimes alleged. It falls squarely within the situations prescribed by Article 204 (1) and merits a new trial. Furthermore, the facts ascertained by the original trial court are unclear and the evidence not sufficient, which also satisfied the requirement for a retrial described by Article 204 (2). Hence, the court concerned should order a new trial according to the law.

Moreover, the participating experts unanimously agreed that “the judicial evaluation auditing report on the case of Jude Shao, Chen Si’nuo, Han Xin committing the crime of forging value-added tax special documents (document number *hu si kuai zi (1999) No. 35*)”, as a major evidence upon which the original court relied to ascertain the facts, were full of deficiencies. Among those deficiencies, three notable inappropriateness can be summarized as follows: i) (the report) obviously exceeded its legal mandate. Article 39, paragraph 2 of the General Principle of Judicial Evaluation Process, issued by the Ministry of Justice on August 31, 2001, stipulated that no judicial evaluation document is allowed to make determination of the nature of the case or ascertain the legal responsibility. Contrary to the legal stipulation, the report used the phrases such as “conspiring” and “taking advantage of the legal duty” to strongly suggest the nature of the case. The report further made determination of the facts of the case. It is obvious that the report exceeded its legal mandate as a judicial evaluation report. ii) the evidence were neither sufficient nor objective. A judicial auditing report should conduct an objective evaluation of accounts and cash flows involved. It also needs to evaluate the content and make an objective observation, and avoid to be influenced by the inferences and investigatory conclusion of the entrusted party. On the contrary, this report heavily relied on the transcripts produced in the course of investigation to draw the conclusion. Therefore, the report apparently endures certain degree of arbitrariness. Without conducting a full examination of all account materials, the evaluation auditing report could not be free of bias. iii) The materials under examination were incomplete. One of the new evidence Jude Shao produced was once listed as the material to be evaluated. However, no indication was given with regard to this piece of evidence in the report, which directly affected the conclusion of the report. Hence, the retrial court should provide a correct assessment of the judicial evaluation report and order a new evaluation of all accounts involved if necessary.

D. Evaluation Opinions and Conclusion

Summarizing the above discussions and analyses, the participating experts unanimously agreed that based up the materials provided by Youbang Law Firm, the following conclusion can be drawn:

The existing evidence can not prove sufficiently and convincingly that Jude Shao had instructed Chen Si'nuo and others to forge value-added special tax documents.

CBV Company did indeed have business transactions and cash flows with Wanna Company and Shenyu Company.

Three new evidence provided by Jude Shao are trustworthy, which if adopted legally by the court, can prove that CBV Company had made the full payment of its fees and tax dues incurred during the import process. Therefore, Jude Shao did not commit the crime of forging value-added special tax documents.

The allegation of CBV Company committing a crime of tax evasion needs a further investigation.

Jude Shao's petition satisfies the requirements stated in Article 204, hence, the court concerned should consider a new trial.

The above opinions are only for the reference of the relevant organs, especially the court that is reviewing the petition. Comments and criticisms are welcome.