

The Supreme People's Court of The People's Republic of China

Notice of Rejection of Appeal

(2002) xing jian zi No.152-1

JUDE SHAO:

You did not accept the criminal verdict of (1999) hu yi zhong xing chu zi No.61 by Shanghai No.1 Intermediate People's Court which found you guilty of Falsely Issue VAT Invoices with a sentence of fifteen years in prison, guilty of Tax Evasion with a sentence of one and half years in prison; and decided to execute a combined sentence of 16 years and to expel you afterwards. Nor did you accept the rulings of (2000) hu gao xing zhong zi No. 63 and (2001) hu gao xing jian zi No.30 by Shanghai High People's Court, and filed appeals to this court arguing that there existed new evidence to prove the facts determined in the original verdict were erroneous and your actions did not constitute the crime of Falsely Issuing VAT Invoices.

This court has ordered up your case file for review and found your appeal arguments can not stand. The reasons are:

First, the original verdict has had clear facts and sufficient evidence to prove that you have committed the crime of Falsely Issuing VAT Invoices. The original verdict's finding of your guilty of Falsely Issuing VAT Invoices was based on three facts: 1) you, through Chen Si-nuo, let Shanghai Wanna Trading Co., Ltd. (hereinafter referred as Wanna Company) issue 4 VAT invoices falsely to Shanghai CBV Trading Co., Ltd. (hereinafter referred as CBV Company) in the amount of about RMB 97,000; 2) you, through Chen Si-nuo and Han Xin, let other people and 10 companies in Hangzhou issue 45 VAT invoices falsely to CBV Company in the amount of about RMB 633,000; 3) you, through Chen Si-nuo, let Shanghai Shen-yu Import and Export Co., Ltd. (hereinafter referred as Shen-yu Company) issue 4 VAT invoices falsely to CBV Company in the amount of about RMB 435,000. Altogether from above, 53 VAT invoices had been issued falsely and about RMB 1,160,000 in taxes had been deducted by CBV Company as paid. The above three facts can be proved not only by physical evidence (the VAT invoices) with the corroborated statements, confessions made by witnesses Lin Ji-hong, Sun Min-sheng, You Jian, and Co-defendants Chen Si-nuo and Han Xin, but also by your confessions during the police interrogation and the <<Judicial Accounting Audit Report>> issued by the Shanghai Judicial Accounting Auditing Center.

Second, your actions did constitute the crime of Falsely Issuing VAT Invoices. You knew the VAT invoices supplied by Chen Si-nuo had been issued falsely yet accepted them for deduction at the tax bureau. This action fits the objective characteristic of "let other issue falsely for oneself" required by the crime of Falsely Issuing VAT Invoices. At the same time, testimonies given by witnesses Xiang Wei-min, Fang Wen-qing, You Jian and Zhang Xiao-lu at the trial also proved that you had been the person responsible for CBV Company's general operations including Sales, marketing, financing, personnel, etc., and the business between CBV Company and Chen Si-nuo had been handled by you yourself. Thus, your argument of having no criminal intent nor motive can not be established.

Further, the three so-called "new evidence" supplied by you can not overturn the criminal facts of Falsely Issuing VAT Invoices determined by the trial court in the original verdict. In order to prove that there had been actual transfers of goods and payments between CBV Company and Wanna Company, Shen-yu Company, you submitted three payment records as the "new evidence" in your

appeal, which included the copy of the “Receipt for payment of RMB 400,000 in importation fees”, the copy of the “Receipt for payment of RMB 135,000 in importation fees”, and the copy of the “Receipt for payment RMB 180,000 in importation fees”. Upon examination, none of these materials can prove the transfer of goods between CBV Company and Wanna Company, Shen-yu Company for the 8 VAT invoices in the above mentioned facts 1) and 3). Thus, because these “new evidence” lacked relevancy with regard to the facts of Wanna Company and Shen-yu Company issuing VAT invoices falsely to CBV Company, this court does not accept them.

In conclusion, this court believes that your appeal did not meet the requirement of a retrial set forth in article 204 of <<Criminal Procedure Law of the People’s Republic of China>> and the original verdict should be upheld.

So notified.

November 22, 2004

***The Supreme People’s Court
of
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(official seal affixed)