

Case 841: CISG 31 (a)

Italy: Supreme Court of Cassation – Civil Division B,

SAS v. GP, SpA

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Original in Italian

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An Italian seller and a French buyer entered into a contract for the sale of coloured synthetic fabrics to be used by the buyer for the manufacture of bags. The final products, however, were seriously defective and the buyer sued the seller before the French Court of Nanterre. The buyer obtained an expert judgement that declared the products defective, verified the responsibilities of the seller and determined the amount of damages.

Ten years after this decision, the seller sued the buyer before the Italian Court of Prato in order to obtain limitation of action as far as a warranty on the products was concerned. In response, the buyer claimed that the Italian judge lacked jurisdiction, since the place of delivery of the goods was in France, as established by the contract.

The Italian Court of Prato declared its jurisdiction and later on the Italian Court of Appeal of Florence confirmed the decision of the Court of Prato. Both Courts affirmed the Italian jurisdiction by virtue of CISG article 31, which states: “If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists: (a) if the contract of sale involves carriage of the goods – in handing the goods over to the first carrier for transmission to the buyer.” In accordance with this article, the delivery had to be considered as having been carried out in Italy.

The buyer appealed to the Italian Supreme Court, which also dismissed the appeal. The Court’s opinion was again based on CISG article 31 (a). The Court dismissed the seller’s argument that CISG article 31 (a) applied only if the contract did not indicate any place of delivery. If this interpretation were to be accepted, it would imply that contracts of international sales of goods involving carriage of the goods did not require the indication of the place of delivery of the goods. As a result, CISG article 31 (a) would end up being a default rule. In current and past commercial practice, however, the place of delivery was always determined by the parties and article 31 (a) simply made it clear that the seller’s obligation to deliver the goods was always fulfilled by handing the goods over to the first carrier, if the contract did not provide otherwise. Since, in the case in question, the first carrier was based in Italy, the relevant obligation was thus performed in Italy.

The Court added that in the case of international sales involving transportation of goods, European Council Regulation (EC) No. 44/2001 provided that the place of delivery was where the goods were transmitted to the carrier. In the case in question, that place was in Italy; Italian jurisdiction was therefore also applicable, pursuant to EC Regulation No. 44/2001.