

Case 1454: CISG: [1(1)(b);] 38; 39; 40; 44; 50; [74;] 77; 82; 83; 84

Italy: Tribunale di Modena

Tehran Parand v. SAPI Spa

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Original in Italian

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In 1996, an Iranian manufacturer of fine toilet soap purchased pure beef tallow, fit for the purpose of manufacturing high-quality toilet soap, from an Italian company. The product's specifications had been established in the purchase order and pro-forma invoices. The buyer intended to procure the raw material required for a full year production. The goods were shipped by sea and reached the buyer's factory several weeks after this latter had paid the agreed price through five letters of credit. When the buyer's representatives inspected the goods, first at the port of destination and subsequently at the buyer's premises, it turned out that the beef tallow supplied did not conform to the high-quality product agreed upon in the contract and it was unfit for the buyer's manufacturing activity. The buyer tried anyhow to make use of the goods, but it encountered severe problems and incurred substantial financial losses. The business disruption associated with the supply of non-conforming raw materials also harmed its commercial reputation and caused it to lose substantial market shares.

The buyer filed a criminal complaint for fraud as a result of which the individual who had acted on behalf of the seller in the transaction was convicted. During the proceedings, the court appointed experts ascertained that the goods actually delivered were a mixture of animal and vegetal fats, not conforming to the contractual specifications and unfit for manufacturing high quality toilet soap. Moreover, the quantity delivered was lower than the agreed amount. The criminal court awarded provisional damages to the buyer.

After the decision of the criminal court became final, the Iranian manufacturer commenced a civil proceeding against the seller and the individual who had acted on behalf of the seller in the transaction. The buyer argued that it was entitled to avoid the contract, or to obtain a substantial reduction of price, and to receive price re-payment and full damages compensation (in addition to the amounts already paid by the seller on the basis of the provisional damages awarded by the criminal court).

The court found that, pursuant to Article 82 CISG, the buyer could not avoid the contract, nor obtain restitution of the full price, since it had used and processed the goods, which could no longer be returned to the seller, as evidenced in the sworn report and damages evaluation made by the buyer's auditors.

The court, however, dismissed the defendants' argument that the buyer was not entitled to a price reduction since such request was late and time barred. According to the court, Articles 44 and 50 CISG do not set any time limit for the request to reduce the price; furthermore, pursuant to Article 40 CISG, the Italian seller was not entitled to rely on the provisions of Articles 38 and 39 CISG since it was well aware of the non-conformity of the beef tallow supplied. As a matter of fact, in the course of the criminal trial not only had been ascertained that the goods actually delivered were not conforming to the contractual specifications and unfit for the purpose, but one of the seller's representatives had admitted that he was aware that the beef tallow had been mixed to palm stearin.

The court further stated that the seller's breach of contract was proved by the evidence of the file and the undisputable outcome of the criminal trial and that pursuant to Article 83 CISG the buyer, although it had lost the right to avoid the contract, could still request a price reduction. As to the calculation of the price reduction, the court, applying Article 50 CISG, referred back to the conclusions of the criminal court appointed experts who had already determined the difference between the value of the goods actually delivered and the value that the conforming goods would have had. The court found that as per Article 84 CISG, legal interests shall be payable on that amount from the date of the payment of the purchase price to the settlement date.

Finally, the court awarded damages to the buyer, pursuant to Article 77 CISG, plus re-evaluation and legal interests from the date of the delivery of the goods to the date of the decision, and interest accrual. The court, however, dismissed the additional damages claim, considering that there was no evidence that the loss of market shares and damages to the commercial reputation that the buyer had raised in its submissions was exclusively attributable to the defendants' conduct nor that they could have foreseen such loss.