

Case 462: CISG 49

Russian Federation: Tribunal of International Commercial Arbitration the Russian Federation Chamber of Commerce and Industry

Arbitral award in case No. 3/1996

13 May 1997

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Rozenberg (Moscow, Statut), 1998, p. 198

<http://cisgw3.law.pace.edu/cases/970513r1.html> (English translation)

Abstract prepared by Alexander Komarov, National Correspondent

Under a contract concluded in December 1984 between a Russian company, the buyer, and a Canadian firm, the seller, the buyer made a prepayment to the seller of 60 per cent of the value of the goods to be supplied in February 1995. The seller made a partial delivery, substantially after the contracted delivery date, and the value of the goods delivered was less than the prepayment made by the buyer. The buyer sought restitution amounting to the difference between the sum paid by it and the value of the goods delivered and also sought the payment of liquidated damages, as provided for in the contract. The seller expressed willingness to deliver the balance of the goods. The buyer rejected the seller's offer on the grounds that it no longer needed the undelivered goods.

1984年12月に買主であるロシアの会社と売主であるカナダの会社との間で締結された契約に基づき、買主は売主に対して1995年2月に供給されるべき物品の価格の60%を前払いした。売主は、契約で合意された引渡日から大幅に遅れて一部の引渡しを行ったが、引き渡された物品の価値は買主が前払いした金額を下回るものであった。買主は支払った金額と引き渡された物品の価値の差額の返還を求めるとともに、契約に規定された損害賠償の支払いを求めた。売主は残りの物品の引渡しの意思を示した。買主は、もはや未引渡の物品は不要であるとして、売主の申し出を拒否した。

The tribunal found that the buyer's refusal to accept delivery of the goods that had not been delivered in time was in accordance with article 49 CISG. Consequently, the buyer was entitled to seek the return of part of the prepayment. Given that the seller's failure to perform its obligation to deliver on time caused the buyer economic

loss, the tribunal ruled that the seller must pay also compensation in the amount provided for under the contract in cases of late delivery.

仲裁廷は、適時に引き渡されなかった物品の引渡しの受領を買主が拒否することは、CISG49 条に従ったものであると認定した。この結果、買主には前払金の一部の返還を求める権利が認められた。売主が適時に引き渡す義務の履行を怠ったことから買主が経済的な損失を被ったとして、仲裁廷は、売主は引渡し遅延の場合には契約において規定された額の賠償金も支払わなければならないと命じた。