

Summary of Constitutional Court Ruling No. 8/2557 (2014)

Dated 23rd April B.E. 2557 (2014)*

**Re: Whether or not section 7 of the Signboard Tax Act B.E. 2510 (1967)
was contrary to or inconsistent with section 41 of the Constitution.**

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1. Summary of background and facts

The Central Tax Court referred the objection of a plaintiff (Valai-Viroj For Society (2553) Company Limited) to the Constitutional Court for a ruling under section 211 of the Constitution. The facts in the application and supporting documents could be summarised as follows. The plaintiff installed a signboard which advertised a beverage which was the plaintiff's product and trademark. The plaintiff had already filed a tax return and paid the signboard tax. However, the plaintiff was of the opinion that the tax assessment was incorrect and unlawful. The plaintiff filed a charge against the Bangkok Metropolitan Administration and the Bangkok Governor as defendants in the Central Tax Court in order to revoke the tax assessment and return the tax to the plaintiff during the Central Tax Court's trial. The plaintiff claimed that section 7 of the Signboard Tax Act B.E. 2510 (1967) with respect to the provision that a signboard installed or displayed in its first year would give rise to a tax liability from the first date of installation or display until the end of year. Tax would be calculated in periods, each period lasting three months in a year. Tax would accrue from the period of installation to the final period of such year. The plaintiff argued that this provision violated individual right in property under section 41 of the Constitution. The plaintiff had installed the signboard for only 20 days. The calculation of signboard tax on a period basis resulted in the plaintiff paying taxes in excess of the day of installation. Thus, the plaintiff filed its motion for the Central Tax Court to refer the matter to the Constitutional Court for a ruling under section 211 of the Constitution on whether or not section 7 of the Signboard Tax Act B.E. 2510 (1967) was contrary to or inconsistent with section 41 of the Constitution.

2. The preliminary issue considered by the Constitutional Court

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 211 paragraph one of the Constitution.

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The Constitutional Court found as follows. Under this application, there was an objection that section 7 of the Signboard Tax Act B.E. 2510 (1967) was contrary to or inconsistent with section 41 of the Constitution. The Central Tax Court had to apply such provision to a case, and there had not yet been a ruling of the Constitutional Court in relation to such provision. The case was in accordance with the rules under section 211 paragraph one of the Constitution in conjunction with article 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the admittance of this application for consideration.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 7 of the Signboard Tax Act B.E. 2510 (1967) was contrary to or inconsistent with section 41 of the Constitution.

The Constitutional Court found that the Signboard Tax Act B.E. 2510 (1967) was enacted to authorise the local administration to collect revenues for itself. The revenues collected by the local administrative organisation would be used for public services for the benefit of the local people. Appropriate rules were provided for each tax type. Section 7 paragraph one provided that “the owner of a signboard is under a duty to pay signboard taxes. Signboard taxes are paid annually, except for a signboard installed or displayed for the first year, in which case tax accrues from the date of installation or display until the end of year and tax is calculated per period, each period lasting three months in a year and signboard tax accrues from the period of installation until the last period of the year...” Such provision provided that a trader or signboard owner had to pay taxes annually. There was an exception for the first year where signboard tax accrued from the date of installation or display until the end of year. Signboard tax was calculated per period in order to mitigate the tax obligation of the trader or signboard owner installed in the first year. Payment of signboard tax by a trader or signboard owner on a period basis could result in payment of taxes in excess of the actual installation of signboard, but after taking into account the benefits to be obtained by the local administration in applying the tax funds to developing the locality for the local people, the collection of signboard taxes under such provision was in accordance with the principle of collection convenience, certainty and fairness. The provision did not cause damage from use of a person’s property or caused individual rights in property recognized under section 41 of the Constitution to lose protection. Even though such provision was a measure prescribed by the state to be complied by a signboard owner, which had the character of limiting some rights in property, such restriction in individual rights in property was imposed pursuant to a provision which was generally applicable and only to the extent of necessity for the benefit of tax collection by the state. The essential substance of the rights and liberties provided under section 29 of the Constitution was not prejudiced. Moreover, the people benefitted in the form of public services provided by the local administration, and the signboard owner benefitted from the commercial advertisement sign. In addition, there were

measures to mitigate burden for tax liabilities from three thousand baht upwards by allowing for payment in three installments.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 7 of the Signboard Tax Act B.E. 2510 (1967) was neither contrary to nor inconsistent with section 41 of the Constitution.
