

Summary of the Constitutional Court Ruling No. 50/2544

Dated 27th November B.E. 2544 (2001) *

Re : The Central Tax Court referred the objection of the plaintiff (Thai Wiwatkeha Company Limited) in Case No.143/2542 to the Constitutional Court for a ruling under section 264 of the Constitution.

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1. Background and summarized facts

The applicant was a plaintiff in Tax Case No. 143/2542 who filed a claim against the Revenue Department, the first defendant, Mr. Anant Sirisaengthaksin, the second defendant, Mr. Dean Dogarem, the third defendant and Mr. Juthatuch Jongsatean, the fourth defendant, at the Central Tax Court on 9th July B.E. 2542.

The Central Tax Court have stated the cases of both parties and set an appointment for the examination of the plaintiff's witnesses on 25th February B.E. 2543 (2000). However, the plaintiff did not submit a list of witnesses 30 days prior to the day of case statement and therefore submitted a list of witnesses to the Court on 17th February B.E. 2543, reasoning that a list of witnesses had been submitted to the Court but from an examination of the case documents, the plaintiff could not find the list of witnesses which it had entrusted on a paralegal to submit to the Court. The paralegal had left the position for a number of months which resulted in a misplacement of the document. The Central Tax Court held that such an argument was not a cause under the law which could be raised in order to submit a list of witnesses and therefore dismissed the plaintiff's submissions. The plaintiff submitted an application, dated 2nd March B.E. 2543 (2000), to the Central Tax Court stating that section 20 of the Act on Establishment of the Tax Court and Tax Case Procedure, B.E. 2528 (1985) and clause 10 of the Rules on Tax Cases, B.E. 2539 (1996), which stipulated that the parties submit a list of witnesses to the Court prior to the date of case statement by at least 30 days, and when such period for submitting a list of witnesses expired, if the party who did not submit a list of witnesses to the Court could satisfy the Court that there was a reasonable cause for the inability to submit a list of witnesses within such a time limit, etc., the party could submit an application together with the list of witnesses at any time before the judgment of the case and rely on such evidence, were provisions inconsistent with the Constitution. The provisions were biased in granting rights

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to the State and/or the Revenue Department and were a restriction of the plaintiff's rights because in general civil cases, every person had equal rights under the law, being submission of the list of evidence should be made 7 days prior to the examination of the witnesses. Therefore, section 20 of the Act on Establishment of the Tax Court and Tax Case Procedure, B.E. 2528 (1985) and clause 10 of the Rules on Tax Cases, B.E. 2539 (1996) were contrary to or inconsistent with the Constitution which provided for equality of persons under the law. A request was therefore made for the matter to be referred to the Constitutional Court for consideration. The Central Tax Court considered the application and issued an order to refer the application to the Constitutional Court for further consideration.

2. Preliminary issue

A preliminary issue to be considered was whether or not the Constitutional Court could accept the application for consideration under section 264 of the Constitution.

The Constitutional Court held that the application which stated that "... section 20 of the Act on Establishment of Tax Court and Tax Court Procedure, B.E. 2528 (1985) and clause 10 of the Rules on Tax Cases, B.E. 2539 (1996) were inconsistent with the Constitution which provided that all persons shall be equal under the law..." could be understood as meaning that the provisions were inconsistent with section 30 paragraph one of the Constitution. The application was therefore accepted for consideration under section 264 of the Constitution.

3. The issues considered by the Constitutional Court

The first issue was whether or not section 20 of the Act on Establishment of Tax Court and Tax Court Procedure, B.E. 2528 (1985) was contrary to or inconsistent with section 30 of the Constitution.

The second issue was whether or not clause 10 of the Rules on Tax Cases, B.E. 2539 (1996), in relation to the provisions on application for permission to submit a list of witnesses prior to judgment, was contrary to or inconsistent with section 30 of the Constitution.

On the first issue, the Constitutional Court held that section 20 of the Act on Establishment of Tax Court and Tax Court Procedure, B.E. 2528 (1985) was a provision which empowered the Chief Justice of the Central Tax Court, with the approval of the President of the Supreme Court, to issue rules on judicial procedures and hearing of evidence for application only to the Tax Courts. Section 20 of the said Act did not contain provisions on the equality of persons under the law or an unjust discrimination against a person. There was also no provision which could be understood as discrimination under section 30 of the Constitution. Therefore, section 20 of the Act on Establishment of Tax Court and Tax Court Procedure, B.E. 2528 (1985) was neither contrary to nor inconsistent with section 30 of the Constitution.

On the second issue, the Constitutional Court held that clause 10 of the Rules on Tax Cases, B.E. 2539 (1999), issued under section 20 of Act on Establishment of Tax Court and Tax Court Procedure, B.E. 2528 (1985), was not a law enacted by the exercise of legislative powers. The provision was therefore not a provision of law within the meaning in section 264 of the Constitution and not within the powers of the Constitutional Court to consider.

4. Ruling of the Constitutional Court

The Constitutional Court held that:

(1) Section 20 of the Act on Establishment of Tax Court and Tax Court Procedure, B.E. 2528 (1985) was neither contrary to nor inconsistent with section 30 of the Constitution.

(2) Clause 10 of the Rules on Tax Cases, B.E. 2539 (1996), in relation to the provisions on the application for permission to submit a list of witnesses prior to judgment, was not a law enacted by an organ exercising legislative powers. The provision was therefore not a provision of law within the meaning in section 264 of the Constitution that the Constitutional Court could consider
