

ABSTRACT

A Study of Exercise of Discretion in the Administration of Customs Duty Suppressive Measures from the Fabric Case B.E. 2503–2504

In Thailand, it is generally accepted that among various sources of national income, customs duty comes to the forefront. However, it does not follow that measures in controlling the importation and exportation of goods are perfectly stringent and effective. Experience in the field for many a decade still indicates that there are some fraudulent acts practised by many to evade the duty. In the prevention and repression of the crimes of this nature, the Customs Department, the Police Department, and the Board of Tax Supervision are responsible. In practice, these official departments have discharged the given function satisfactorily, at least in their daily role, they serve as a deterrent against the spreading volume of the offences.

The Fabric Case B.E. 2503–2504, used as the basis for this discussion, is very informative, shedding much light on methods used in duty evasion, the causes of such evasions and some problems to which no solution has been offered at administrative level. Among the methods used in evasion, understatement of the price on the imported goods is frequently practised, resulting in smaller duty payments. This has drawn much attention from competent officials concerned. At the beginning of the Fabric Case, only the Police Department and the Customs Department had responsibility for the offence. According to the law, the offender shall be fined four times the understated price of the goods in question plus the duty, together with ten years imprisonment at the most. However, a special provision in the law empowered a committee composed of representatives from the Ministry of Finance, the Customs Department and the Police Department to settle such a case at their own discretion. In actual practice, this type of offenders is liable to be fined merely the amount of the difference between the actual price and the fictitious one, with duty included. Four times payment of the fine and imprisonment as mentioned above are accordingly suspended.

Even under such favourable circumstances, the Fabric Case wrong-doers still further asked for kind consideration with respect to the payment of the fine; they were willing to pay only the duty to be levied upon the goods in the case. They submitted appeals to various offices concerned, such as the Board of Tax supervision and the Prime Minister's Office. The Board of Tax Supervision concluded that the understatement of the goods' price was not really an evasion; it was only a false declaration subject to a smaller fine. Such a consideration is no doubt not in line with the governing principles of the Customs Department. To end the conflict, the matter had been brought to the attention of the Decree Commission. The Commission is of the opinion that the act as practised by the culprits in this case is an evasion subject to heavy penalties as enumerated in the law.

This decision by the Commission, it seemed bore no fruit. The offenders went on submitting their notes to authorities in higher levels and ignored the agreement made between them and the investigating officials. In the final stage, some of them submitted the appeals to Prime Minister Sarit Thanarat in his capacity as Director General of the Police Department, at that time. Their effort was successful when their appeals were directly submitted to the Prime Minister in the second time resulting in a fine smaller by several million baht than the one initially imposed at lower level.

As seen from this study, there are many unsettled problems in administrative circles, dealing with coordination, enforcement and particularly the discretion as used by high-ranking officials with and without the force of the law. This thesis is intended as merely a constructive discussion aiming at finding further solution to the said problems, with no prejudice against or for any person or departments concerned.

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