Dispute Related to the Requirements for Parcel Inspection and Acceptance*

Company A (the Plaintiff) made a contract for the sale and purchase of a TIANGONG automatic wheel loader with the Provincial Administration Organization (PAO) (the Defendant No. 1) on 1st December, B.E. 2551 (2008). Later, Company A transferred and delivered the wheel loader to the PAO but the Inspection and Acceptance Committee did not accept such wheel loader and required Company A to test its efficiency at the actual site for 10 days. Company A disagreed to do so and sent a notice to the PAO requiring the payment for such wheel loader and damages arising from the delayed payment. Then, the Inspection Committee proposed opinions to the Chief Executive of PAO (the Defendant No. 2) that the wheel loader contract should be terminated since Company A refused to perform the efficiency and capacity testing of the wheel loader at the actual site. The PAO, then, gave the written notice dated 10th May, B.E. 2553 (2010) to terminate the wheel loader sale and purchase contract. As a result, Company A filed a case with the Administrative Court order the PAO and the Chief Executive of PAO making payment including interest to Company A.

The Supreme Administrative Court held that, according to the sale and purchase contract, apart from requiring Company A to transfer and to deliver the wheel loader to the PAO and the Chief Executive of PAO, Company A as a seller was required to guarantee that the wheel loader had the quality and specifications as stipulated in the contract upon inspection, but the general commercial practice for the inspection and testing of the wheel loader was to test the primary functions on the date of delivery. Therefore, when the PAO required Company A to test the efficiency of the wheel loader at the actual site for 10 days, such inspection was beyond the said practice. If the PAO would like to proceed as such, the specific condition should be stipulated in the contract. Despite incompliance of the Plaintiff, the PAO might not claim such event as a termination cause. Moreover, during procurement through the e-auction process, prior to submissions of bids through the electronic means, Company A passed a technical standard test; and prior to the execution of the sale and purchase contract with Company A, the e-Auction Committee would know that such wheel loader was branded TIANGONG and had never been sold in Thailand. However, the PAO chose not to stipulate the efficiency inspection as a condition under the contract prior to

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the Inspection and acceptance. Consequently, it might not be claimed that Company A should test the efficiency of the wheel loader for 10 days since such inspection was not a testing or inspection under Clause 64 of the Regulation of the Ministry of Interior on Parcels of Local Government, B.E. 2535 (1992). Due to the aforementioned reasons, when Company A did not cause any event of default resulting in the right to termination, the notice to terminate the wheel loader sale and purchase contract dated 10th May, B.E. 2553 (2010) was an unlawful termination.

After the termination by the PAO, Company A repossessed the wheel loader and the PAO did not maintain the wheel loader for use. According to Section 391 of the Civil and Commercial Code, when terminated, the parties shall restore the other to the former condition. Hence the PAO might not be forced to make payment for the wheel loader to Company A. Nevertheless, since Company A suffered from damage, damages of Baht 250,000 should be specified for Company A together with the interest of 7.5 percent per year from 10th May, B.E. 2553 (2010) onwards until the payment was made in full under Section 224 of the same Code.

(Supreme Administrative Court Judgment No. A. 198/2561)