
J.Y. Interpretation No. 216 (June 19, 1987)*

Judicial Review of Administrative Ordinances Case

Issue

Are the Ministry of Judicial Administration letters requiring courts to indicate on an auction notice the unpaid duties on imported goods with outstanding customs duties and requiring the purchaser to pay said duties before the goods may be delivered congruous with the intent of the Constitution to protect the people's property rights?

Holding

[1] The requirement that judges shall adjudicate independently according to law is specifically prescribed in Article 80 of the Constitution. Administrative rules adopted by various government agencies obligated to seek proper construction of laws may be applied by judges in the course of adjudication, who, not being bound thereby, may in a proper manner express their opinions in light of the law, as stated in Interpretation No. 137 of this Court. Ordinances issued by a judicial administration involving legal issues in adjudication are merely for the reference of judges, who, again, are not bound thereby in the course of adjudication. However, the rules cited by judges during the course of their adjudication may be subject to a party's application for constitutional interpretation under Article 4, Paragraph 1, Subparagraph 2, of the Council of Grand Justices Procedure Act.

[2] In respect of a mortgage created on any merchandise whose customs duties

* Translation and Note by Nigel N. T. LI

have not been paid, the mortgage interest certainly does not extend to what is covered by the unpaid customs duties on the merchandise, as Article 31, Paragraphs 2 and 3 of the Customs Act have clearly prescribed. Letter Ref. No. (65) Ming-Tze-09982, dated November 15, 1976, and Ref. No. Tai (67) Ming-Tze-06392, dated July 22, 1978, issued by the Ministry of Judicial Administration (former name of the Ministry of Justice), stipulate that the court of enforcement proceedings, when conducting a public auction of imported goods with outstanding customs duties, should state on the notice for public auction that there are unpaid customs duties on the goods, and that the purchaser must make the duty payment before the goods may be delivered and transferred. These two letters are in accordance with the provisions of the Customs Act and are not subject to the application of Article 55, Paragraph 3 of the same Act; thus, they have not encroached upon the interest of the mortgagee of movables and are necessary to secure the imposition of customs duties, and therefore they are not contrary to the constitutional safeguarding of property rights.

Reasoning

[1] The requirement that judges shall adjudicate independently according to law is specifically prescribed in Article 80 of the Constitution. Administrative rules adopted by various government agencies obligated to pursue the proper construction of laws may be applied by judges in the course of adjudication, who, not being bound thereby, may in a proper manner express their opinions in light of the law, as stated in Interpretation No. 137 of this Court. The provision that administrative ordinances issued by a judicial administration shall not intervene in adjudication is found in Article 90 of the Court Organization Act. Judicial administrations shall not put forth their own legal views and order judges to follow them in the course of adjudication. If any legal views are presented, they are for the judges' reference only and shall not bind judges in the course of

adjudication. However, the rules cited by judges during the course of their adjudication may be subject to a party's application for constitutional interpretation under Article 4, Paragraph 1, Subparagraph 2 of the Council of Grand Justices Procedure Act. We take the case accordingly.

[2] Article 31, Paragraphs 2 and 3 of the Customs Act clearly prescribes that imported goods, with either duties to be paid in installments or on credit, may not be transferred before the duties are fully paid, and that if a transfer is made through compulsory execution or by a specific permit, the transferee is allowed to continue paying the duties in installments or pay the duties on credit. Accordingly, in respect of a mortgage created on any goods whose customs duties have not been paid, the mortgage interest certainly does not extend to what is covered by the unpaid customs duties on the goods. If the transferee who may receive goods through compulsory enforcement proceedings is not granted permission to continue paying the duties in installments or place the duties on credit, he or she must make the duty payment before gaining custody of such goods. This mechanism differs from what is prescribed in Article 55, Paragraph 3 of the Customs Act, under which outstanding or unpaid duties take priority over common creditors' claims. Letters Ref. No. (65) Ming-Tze-09982, dated November 15, 1976, and Ref. No. Tai (67) Ming-Tze-06392, dated July 22, 1978, issued by the Ministry of Judicial Administration (former name of the Ministry of Justice), stipulate that the court of enforcement proceedings, when conducting a public auction of imported goods whose customs duties are on credit, shall state on the notice of public auction that there are unpaid customs duties on the goods, and that the purchaser must pay the duties before the goods may be delivered and transferred. These letters are in accordance with Article 31, Paragraph 2 and not subject to the application of Article 55, Paragraph 3; thus, they have not encroached upon the interest of the mortgagee of movables as a necessity to secure the imposition of customs duties, and they are therefore not contrary to

the constitutional safeguard of property rights.

Background Note by the Translator

In 1982, the Customs Administration cited two administrative ordinances of the Ministry of Justice to rule against the Petitioner, a bank, in a matter in which Customs Agency claimed that outstanding customs duties should prevail over the bank's right, which must be set aside, as the customs duties was a priority claim over the bank's claim for the same debtor's commodities. The bank filed a petition with the Constitutional Court for a ruling to invalidate the two ordinances as unconstitutional. The Constitutional Court found constitutional the views expressed in the two ordinances, but pointed out that in cases where an administrative ordinance is applicable, courts are not bound by the ordinance when exercising judicial powers, although they may base a judgment on an ordinance if they find the ordinance compliant with the laws. This interpretation is considered monumental, as it clarifies a longtime misunderstanding of J.Y. Interpretation No. 137, in which the Constitutional Court stated that a judge, who may not simply refuse to apply an administrative ordinance if it is indeed applicable to a case, can express his or her point of view as to the correct interpretation of law. In this J.Y. Interpretation No. 216, the Constitutional Court confirms that Interpretation No. 137 should be understood as espousing the same principle as Interpretation No. 216. It helps to vindicate judicial independence from the executive branch while deferring to the court undertaking judicial review to decide whether an administrative ordinance complies with existing laws.