

J. Y. Interpretation No.698 (March 23, 2012) *

- ISSUE:**
1. Is it unconstitutional that the Commodity Tax Act provides that a color television set shall be subject to commodity tax ?
 2. Is it unconstitutional that Ministry of Finance Ordinance provides that if a display and a tuner are not removed together from the manufacturer's premises at the same time, the items shall not be deemed a taxable "color television set" and therefore are not subject to commodity tax ?

RELEVANT LAWS:

Articles 7 and 19 of the Constitution (憲法第七條、第十九條) ; Subparagraph 2, Paragraph 1, Article 11 of the Commodity Tax Act (貨物稅條例第十一條第一項第二款) ; Subparagraph 1, Article 32 of the Commodity Tax Act (as amended on May 7, 1997 and effective on January 1, 2002) (貨物稅條例第三十二條第一款 (中華民國八十六年五月七日修正公布、九十一年一月一日施行)) ; Ministry of Finance Directive Tai-Tsai-Suei No.09604501870 (June 14, 2007) (財政部九十六年六月十四日台財稅字第 0 九六 0 四五 0 一八七 0 號函) ; Ministry of Finance Directive Tai-Tsai-Suei No.57275 (August 7, 1984) (財政部七十三年八月七日台財稅第五七二七五號函) ; Ministry of Finance Ordinance Tai-Tsai-Suei No.0920455616 (Novem-

* Translated by Wei-Feng Huang.

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ber 18, 2003) (財政部九十二年十一月十八日台財稅字第 0 九二 0 四五五六一六號令)。

KEYWORDS:

Commodity Tax (貨物稅), Color Television Set (彩色電視機), Color Display (彩色顯示器), TV Tuner (電視調諧器), Removal from the Manufacturer's Premises at the same time (併同產製出廠), Main Function (主要功能), Consumers' Recognition (消費者認知), Principle of Equality (平等原則), Principle of Taxation by Law (租稅法定主義)。**

HOLDING: The provision of Subparagraph 2, Paragraph 1, Article 11 of the Commodity Tax Act that "Taxable items and tax rates for electric appliances are as follows:..... 2. Color television sets: taxed on an ad valorem basis at 13%." is not in contravention of the principle of equality under Article 7 of the Constitution.

Ministry of Finance Ordinance Tai-Tsai-Suei No.09604501870 (June 14, 2007) is not in contravention of the principle of taxation by law and the principle of equality by providing that: "(1)

解釋文：貨物稅條例第十一條第一項第二款規定：「電器類之課稅項目及稅率如左：……二、彩色電視機：從價徵收百分之十三。」與憲法第七條平等原則並無抵觸。

財政部中華民國九十六年六月十四日台財稅字第 0 九六 0 四五 0 一八七 0 號令：「一、貨物稅條例第十一條第一項第二款規定之彩色電視機須同時具備彩色顯示器及電視調諧器二大主要

a color television set as set forth in Sub-paragraph 2, Paragraph 1, Article 11 of the Commodity Tax Act is required to be equipped with two key component parts at the same time, namely, a color display and a TV tuner; (2) if a manufactured or imported color display is not equipped with a TV tuner and its product name, operation manual as well as packing do not identify it as a TV, and if its removal from the manufacturer's premises (or if its importation) is not combined with a machine that possesses a TV tuner function, it shall not be deemed a taxable "color television set" because it cannot receive TV/video signals and broadcast TV programs, and therefore is not subject to commodity tax upon removal from the manufacturer's premises or upon importation; (3) if a manufactured or imported TV tuner alone or a machine equipped with a TV tuner function, and its main body is not equipped with a TV display, and if its removal from the manufacturer's premises (or if its importation) is not combined with a TV display at the same time, it shall not be subject to commodity tax upon removal from the manufac-

部分。二、廠商產製（或進口）之彩色顯示器，本體不具有電視調諧器（TV Tuner）裝置，且產品名稱、功能型錄及外包裝未標示有電視字樣，亦未併同具有電視調諧器功能之機具出廠（或進口）者，因無法直接接收電視視頻訊號及播放電視節目，核非屬彩色電視機之範圍，免於出廠（或進口）時課徵貨物稅。三、廠商產製（或進口）電視調諧器或具有電視調諧器功能之機具，本體不具有影像顯示功能，且未併同彩色顯示器出廠（或進口）者，亦免於出廠（或進口）時課徵貨物稅。」部分，與租稅法律主義及平等原則尚屬無違。

turer's premises or upon importation.”

REASONING: Taking Supreme Administrative Court order T.T. 4224 (Supreme Administrative Court, 2008) (the “order in dispute”) as a final and conclusive judgment, Petitioner requested an interpretation on the constitutionality of the Court’s application of Subparagraph 2, Paragraph 1, Article 11 of the Commodity Tax Act, Ministry of Finance Ordinance Tai-Tsai-Suei No.09604501870 (June 14, 2007) (the “ordinance in dispute”) and Article 32 of the Commodity Tax Act which was amended and promulgated on May 7, 1997 and became effective on January 1, 2002, to the order in dispute. Examination of the order in dispute shows that Petitioner failed to concretely specify the reasons why Taipei High Administrative Court decision No. 96-Su-Tzu-517 failed to apply the law, applied it improperly, or violated it, and so ruled that the appeal should not be deemed lawful, and on procedural grounds overruled the appeal. Consequently, this Yuan opined that Taipei High Administrative Court decision

解釋理由書：聲請人以最高行政法院九十七年度裁字第四二二四號裁定（下稱系爭裁定）為確定終局裁判，認其所適用之貨物稅條例第十一條第一項第二款、財政部九十六年六月十四日台財稅字第0九六0四五0一八七0號令（下稱系爭令）及八十六年五月七日修正公布、九十一年一月一日施行之同條例第三十二條有違憲疑義，聲請解釋憲法。查系爭裁定以聲請人未具體表明臺北高等行政法院九十六年度訴字第五一七號判決有何不適用法規、適用法規不當或其他違背法令之情形，而認上訴為不合法，從程序上裁定駁回上訴，應以上開臺北高等行政法院判決為本件聲請之確定終局判決。次查系爭令形式上雖未經確定終局判決所援用，惟確定終局判決所審酌之財政部七十三年八月七日台財稅第五七二七五號函及九十二年十一月十八日台財稅字第0九二0四五五六一六號令，其內容實質上為確定終局判決時已發布實施之系爭令所涵括（財政部於發布系爭令之同時廢止上開二函令），應認系爭令業經確定終局判決實質援用（本院釋字第三九九號、第五八二號、第六二二號及

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No. 96-Su-Tzu-517 should be the final and conclusive judgment, based on which this petition at issue has been filed. Although the Court did not formally cite the ordinance in dispute when rendering its final judgment, the rationale and wording employed in the two administrative orders, i.e., Ministry of Finance Directive Tai-Tsai-Suei No.57275 (August 7, 1984) and Ministry of Finance Ordinance Tai-Tsai-Suei No.0920455616 (November 18, 2003) (collectively, the “two administrative orders”) as the basis for its reasoning, are identical with the contents of the ordinance in dispute (the ordinance in dispute was promulgated at the same time when the two administrative orders were abolished). Therefore, the ordinance in dispute should, thus, be deemed to have been applied, in substance, by the final and conclusive judgment (See J.Y. Interpretations Nos. 399, 582, 622 and 675).

Subparagraph 2, Paragraph 1, Article 11 of the Commodity Tax Act provides that: “Taxable items and tax rates for electric appliances are as follows: 2. Color television sets: taxed on an

第六七五號解釋參照)，合先敘明。

貨物稅條例第十一條第一項第二款規定：「電器類之課稅項目及稅率如左：……二、彩色電視機：從價徵收百分之十三。」（下稱系爭規定）查立法者選擇對彩色電視機課徵貨物稅，而未

ad valorem basis at 13%.” (the “rule in dispute”) and the legislative choice to impose commodity tax on color television sets but not on other electric appliances equipped with color-videocapture function is based on national tax, industrial policy, and energy-saving considerations and does not exceed the scope of legislative discretion. Therefore, it is neither abusive nor contrary to the principle of equality under the Constitution (See J.Y. Interpretation No. 697).

To assist its subordinate agencies to unify recognition of the definition of color TV sets as defined by the rule in dispute, Ministry of Finance issued the ordinance in dispute to clarify that: “(1) a color television set stipulated in Subparagraph 2, Paragraph 1, Article 11 of the Commodity Tax Act is required to be equipped with two key component parts at the same time, namely, a color display and a TV tuner; (2) if a manufactured or imported color display is not equipped with a TV tuner and its product name, operation manual as well as packing do not identify it as a TV, and if its removal

對其他具有彩色收視功能之電器產品課徵貨物稅，原寓有國家稅收、產業政策、節約能源等多種考量，並未逾越立法裁量之範圍，尚難謂為恣意，與憲法平等原則無違（本院釋字第六九七號解釋參照）。

財政部為協助所屬機關統一認定系爭規定所稱彩色電視機，以系爭令釋示：「一、貨物稅條例第十一條第一項第二款規定之彩色電視機須同時具備彩色顯示器及電視調諧器二大主要部分。二、廠商產製（或進口）之彩色顯示器，本體不具有電視調諧器（TV Tuner）裝置，且產品名稱、功能型錄及外包裝未標示有電視字樣，亦未併同具有電視調諧器功能之機具出廠（或進口）者，因無法直接接收電視視頻訊號及播放電視節目，核非屬彩色電視機之範圍，免於出廠（或進口）時課徵貨物稅。三、廠商產製（或進口）電視調諧器或具有電視調諧器功能之機具，本體不具有影像

from the manufacturer's premises (or if its importation) is not combined with a machine that possesses a TV tuner function, it shall not be deemed a taxable "color television set" because it cannot receive TV/video signals and broadcast TV programs, and therefore is not subject to commodity tax upon removal from the manufacturer's premises or upon importation; and (3) if a manufactured or imported TV tuner alone or a machine equipped with a TV tuner function, and its main body is not equipped with a TV display, and if its removal from the manufacturer's premises (or if its importation) is not combined with a TV display at the same time, it shall not be subject to commodity tax upon removal from the manufacturer's premises or upon importation." Examination of the purpose of this ruling shows that because a color TV consists of a display unit and a tuner, if a display unit does not identify itself as a TV and its removal from the manufacturer's premises is not combined with a tuner, it shall not be deemed a "color television set", and therefore not be subject to commodity tax upon removal from the

顯示功能，且未併同彩色顯示器出廠（或進口）者，亦免於出廠（或進口）時課徵貨物稅。……」查其意旨，乃以彩色電視機可分為顯示器及電視調諧器二大主要部分，倘顯示器未標示電視字樣，二者亦未併同出廠，即非屬彩色電視機之範圍，免於出廠時課徵貨物稅。上開令釋既未不當擴張應稅貨物之定義，又未對其他情形造成差別待遇，應不違反租稅法律主義及平等原則。惟鑑於彩色電視機相關產品日新月異，主管機關宜考量貨物稅性質及消費大眾對於單一或組合之相關產品於出廠時主要功能之認知等，訂定較為明確之課徵貨物稅認定標準，以利遵行。

manufacturer's premises. Given that the ordinance in dispute did not improperly expand the definition of taxable commodities nor lead to discrimination, it is not in contravention of the principle of taxation by law and the principle of equality. Owing to the evolution of color TV related products and taking into consideration the nature of commodity tax and consumers' recognition of the main functions of a given single product or a combination of products upon their removal from the manufacturer's premises, the authorities should enact more specific standards so that the taxpayers may better determine which products are subject to commodity tax and hence facilitate compliance.

The provision of Paragraph 1, Article 32 of the Commodity Tax Act which was amended and promulgated on May 7, 1997 and became effective on January 1, 2002, that: "In any of the following circumstances, the taxpayer shall be pursued for payment of taxes and fined from 5 to 15 times the amount of tax evaded: 1. Failing to complete necessary registration in compliance with Article 19, and

八十六年五月七日修正公布，九十一年一月一日施行之貨物稅條例第三十二條第一款規定：「納稅義務人有左列情形之一者，除補徵稅款外，按補徵稅額處五倍至十五倍罰鍰：一、未依第十九條規定辦理登記，擅自產製應稅貨物出廠者」，與憲法第二十三條比例原則尚無抵觸，業經本院釋字第六九七號解釋在案，無再為解釋之必要，併此指明。

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illegally manufacturing commodities subject to commodity tax.” is not in contravention of the principle of proportionality under Article 23 of the Constitution. Since J.Y. Interpretation No. 697 has been given by this Yuan to the same effect, it is thus not necessary to repeat what is written therein.

Justice Si-Yao Lin filed concurring opinion.

Justice Ching-You Tsay) filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Chi-Ming Chih filed dissenting opinion in part.

EDITOR’S NOTE:

Summary of facts: The Petitioner, A Co., failed to apply to the collection authority for registration as a taxable commodity manufacturer and failed to register the taxable commodities before

本號解釋林大法官錫堯提出協同意見書；蔡大法官清遊提出協同意見書；黃大法官茂榮提出協同意見書；葉大法官百修提出協同意見書；陳大法官春生提出協同意見書；池大法官啟明提出部分不同意見書。

編者註：

事實摘要：聲請人 A 公司未辦理貨物稅廠商及產品登記，生產電漿顯示器、液晶顯示器及電視調諧器等產品，銷售予 B 公司。財政部臺北市國稅局認，A 公司將顯示器及調諧器二種彩色

it started production of Plasma Display Panels, Liquid Crystal Displays and TV tuners, which it sold to B. Taipei National Tax Administration held that A Co., by removing the two key component parts, i.e., display and tuner, of color TV sets from its manufacturing premises at the same time for sales, was thus obliged to pay commodity tax. It was decided that A Co., should make up the commodity tax at the amount of NT\$ 48,204,052, and, pursuant to Subparagraph 1, Article 32 of the Commodity Tax Act, be fined 10 times the sum of tax evaded, namely, NT\$ 482,040,500.

Petitioner asserted that the products at issue were not subject to commodity tax, and therefore, initiated administrative litigation, but the suit was finally and conclusively rejected. Petitioner applied for interpretation on the constitutionality of the Court's application of Subparagraph 2, Paragraph 1, Article 11 of the Commodity Tax Act, Ministry of Finance Ordinance Tai-Tsai-Suei No.09604501870 (June 14, 2007) and Article 32 of the Commodity Tax Act which

電視機之主要部分併同出廠銷售，該等產品已屬彩色電視機，應徵貨物稅，核定應補稅款 48,204,052 元，並依貨物稅條例 32 條第 1 款規定，處 10 倍罰鍰 482,040,500 元。

聲請人主張該等產品非屬應稅貨物，經提起行政訴訟敗訴確定後，認裁判所適用之貨物稅條例第 11 條第 1 項第 2 款、財政部 96 年 6 月 14 日台財稅字第 09604501870 號令及 86 年 5 月 7 日修正公布、91 年 1 月 1 日施行之同條例第 32 條規定有違憲疑義，聲請解釋。

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was amended and promulgated on May 7, 1997 and became effective on January 1, 2002, to the final and conclusive judgment.