

J. Y. Interpretation No.439 (October 30, 1997) *

ISSUE: Does Article 49 of the Customs Smuggling Control Act restrict the people's rights of lodging complaints and instituting legal proceedings, thus violating Article 16 of the Constitution and being void?

RELEVANT LAWS:

Articles 16 and 23 of the Constitution (憲法第十六條、第二十三條) ; Articles 49 and 49-1 of the Customs Smuggling Control Act (海關緝私條例第四十九條、第四十九條之一) .

KEYWORDS:

motion of objection (聲明異議), fine (罰鍰), tax payment (稅款), security (擔保), rights of lodging complaints and instituting legal proceedings (訴願及訴訟之權利), administrative remedy (行政救濟) .**

HOLDING: Article 49 of the Customs Smuggling Control Act (hereinafter the "Act") provides: "For a motion of objection, if nothing is attached or if the attached article is insufficient to offset the fine or leviable tax, the Customs may

解釋文：海關緝私條例第四十九條：「聲明異議案件，如無扣押物或扣押物不足抵付罰鍰或追徵稅款者，海關得限期於十四日內繳納原處分或不足金額二分之一保證金或提供同額擔保，逾期不為繳納或提供擔保者，其異議不

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require that a cash bond in the amount equal to one half of the originally levied amount or the underpaid amount be paid, or security in the equivalent amount be furnished, within 14 days. Failure to make payment or furnish security within the said time limit shall subject the objection to rejection.” Such provision causes the person who raises the objection but fails to pay the cash bond or furnish security in the equivalent amount within the statutory time limit to lose the chance of administrative remedy, which unnecessarily limits the people’s right of lodging complaints and instituting legal proceedings and conflicts with the intent of Article 16 of the Constitution to protect the people’s rights. Such provision shall no longer apply and the relevant part of J.Y. Interpretation No. 211 should be changed.

REASONING: Article 16 of the Constitution provides that the people shall have the right of lodging complaints and instituting legal proceedings. By lodging complaints, people may seek remedies according to the procedures legally set by the nation when their rights and interests

予受理」之規定，使未能於法定期限內繳納保證金或提供同額擔保之聲明異議人喪失行政救濟之機會，係對人民訴願及訴訟權利所為不必要之限制，與憲法第十六條所保障之人民權利意旨牴觸，應不再適用。本院釋字第二一一號解釋相關部分應予變更。

解釋理由書：憲法第十六條規定人民有訴願及訴訟之權利。就訴願而言，係在人民之權益遭受公權力侵害時可循國家依法所設之程序尋求救濟，使作成行政處分之機關或其上級機關經由此一程序自行矯正其違法或不當處分，以維持法規之正確適用，並保障人民之

are injured by the public authority, and the agency which makes the administrative decision or its superior agency can correct the illegal or improper decision through such procedures to ensure that the laws and regulations are correctly applied and that the people's rights and interests are protected. In accordance with Article 23 of the Constitution, such basic right shall not be restricted by law except when it is necessary to prevent infringement upon the freedom of other persons, to avert an imminent crisis, to maintain the social order, or to advance the public welfare. The provision that the administrative remedy against a decision of tax levy or imposition of a fine is conditioned on the payment of the whole or a certain percentage of the tax amount, or a fine or the furnishing of security causes the person who fails to make tax payment or furnish security to lose the remedy available under the law, which unnecessarily restricts the people's right to institute an action and administrative appeal and is inconsistent with the Constitution. This Yuan has consistently held such opinion since J.Y. Interpretation No. 224 was made (See J.Y.

權益。對此項基本權利，依憲法第二十三條規定，須為防止妨礙他人自由、避免緊急危難、維持社會秩序或增進公共利益所必要者，始得以法律限制之。有關課稅或罰鍰之處分，對之提起行政救濟時，以繳納全部或一定比例之稅款、罰鍰或提供擔保為條件之規定，使未能繳納或提供者喪失法律之救濟，係對人民訴訟及訴願權所為不必要之限制，與憲法有所不符，乃本院自釋字第二二四號解釋以來一貫之見解（參照本院釋字第二八八號、第三二一號解釋）。海關緝私條例第四十九條：「聲明異議案件，如無扣押物或扣押物不足抵付罰鍰或追徵稅款者，海關得限期於十四日內繳納原處分或不足金額二分之一保證金或提供同額擔保，逾期不為繳納或提供擔保者，其異議不予受理」之規定，固授權海關審酌具體案件，為適當之處分，以防止受處分人藉故聲明異議，以達拖延或逃避執行之目的。惟依同條例第四十九條之一規定，海關既得於處分書送達後，免提擔保逕行聲請法院假扣押或假處分，於原處分之執行，已屬可得確保，復無受處分人得聲請暫免繳納或暫免提供擔保之救助規定，將使無力繳納或提供擔保之受處分人喪失行政救濟之機會，是該條例第四十九條規定對

Interpretations Nos. 288 and 321). Article 49 of the Act provides: "For a motion of objection, if nothing is attached or if the attached article is not sufficient to offset the fine or leviable tax, the Customs may require that a cash bond in the amount equal to one half of the originally imposed amount or the insufficient amount be paid, or security in the equivalent amount be furnished, within 14 days. Failure to make payment or furnish security within the said time limit shall subject the objection to rejection." This provision authorizes the Customs to examine specific cases and take proper measures to prevent the person subject to the sanction from making a motion of objection expressly for the purpose of procrastinating or avoiding the enforcement. However, according to Article 49-1 of the Act, after the decision is served, the Customs may directly petition to the court for provisional attachment or preliminary injunction without furnishing security. Thus, the execution of the decision is secured. In addition, in the absence of a provision which allows the person subject to sanction to petition for temporary exemption from tax payment or fur-

人民訴願及訴訟之權利顯為不必要之限制，與憲法第十六條保障人民權利之意旨牴觸，應不適用。本院釋字第二一一號解釋相關部分，應予變更。

nishing security, those who are unable to pay the tax or furnish security would lose the administrative remedy. Therefore, the provision of Article 49 of the Act unnecessarily restricts the people's right of lodging complaints and instituting actions and contradicts the intent of Article 16 of the Constitution to protect the people's rights. Such provision shall no longer apply, and the relevant part of J. Y. Interpretation No. 211 should be revised