

J. Y. Interpretation No.257 (April 6, 1990) *

ISSUE: Is the provision of the Regulation Governing the Levy of Commodity Tax, which has treated imported compressors used in the assembly of vehicular air conditioners/heaters as being in the category of air conditioners and levied commodity tax accordingly, unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; Articles 4, Paragraph 1, Subparagraph 16, 12, 16, Paragraph 2 and 22 of the Commodity Tax Act (貨物稅條例第四條第一項第十六款、第十二條、第十六條第二項、第二十二條) ; Article 103-1, Paragraph 2, Subparagraph 6, of the Regulation Governing the Levy of Commodity Tax (貨物稅稽徵規則第一百零三條之一第二項第六款) .

KEYWORDS:

levy of commodity tax (貨物稅之徵收) .**

HOLDING: The former Article 4, Paragraph 1, Subparagraph 16, of the Commodity Tax Act was intended to levy commodity tax on “any and all air conditioners or heaters that regulate tempera-

解釋文：貨物稅條例修正前第四條第一項第十六款(三)，係就「凡用電力調節氣溫之各種冷氣機、熱氣機等」電器類課徵貨物稅之規定。行政院於中華民國六十四年七月二十一日修正

* Translated by Vincent C. Kuan.

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ture by means of electric power.” Article 103-1, Paragraph 2, Subparagraph 6, of the Rules Governing the Levy of Taxes on Commodity, as amended and promulgated by the Executive Yuan on July 21, 1975, provides that imported compressors used in the assembly of vehicular air conditioners are treated as being in the category of air conditioners and commodity tax should be levied accordingly. Undoubtedly, the term used therein is not entirely consistent with the provision of the Commodity Tax Act first mentioned above. However, the said Regulation considers that compressors of the kind are not only the primary machine parts of air conditioners/heaters, but are also intended for use in the assembly of vehicular air conditioners/heaters only, that they still fall in the category of electrical appliances as provided for under said Act, and that the relevant taxpayers are not liable for additional tax burden because no more commodity tax would be levied upon completion of such air conditioners/heaters. The aforesaid Regulation has treated imported compressors used in the assembly of vehicular air condition-

發布之貨物稅稽徵規則第一百零三條之一第二項第六款規定，對於國外進口裝配汽車冷暖氣機用之壓縮機，按冷暖氣機類徵收貨物稅，固與貨物稅條例首開條文之用語未盡相符。惟該規則係以此種壓縮機不僅為冷暖氣機之主要機件，且祇能供裝配汽車冷暖氣機之用，仍屬上開條例所規定之電器類範圍，而於冷暖氣機裝配完成後，並不再課徵貨物稅，無加重人民納稅義務之虞。上述規則將汽車冷暖氣機用之壓縮機，依冷暖氣機類課徵貨物稅，亦為簡化稽徵手續，防止逃漏稅捐及維持課稅公平所必要，與憲法第十九條尚無牴觸。

ers/heaters as being in the category of air conditioners and levied commodity tax accordingly for the purposes of simplifying the collection procedure, preventing tax evasion and maintaining equality of taxation, which does not contradict Article 19 of the Constitution.

REASONING: The former Article 4, Paragraph 1, Subparagraph 16, of the Commodity Tax Act was intended to levy commodity tax on “any and all air conditioners or heaters that regulate temperature by means of electric power.” In addition, Articles 12 and 16 thereof provide, respectively, “The commodity tax shall be levied on any and all goods imported from abroad that are subject to such commodity tax, the taxable amount of which is determined based on the valuation made by the Customs, plus any import duties levied thereon,” and “[The commodity tax] for the goods imported from abroad shall be levied by the Customs at the same time customs duties are levied.” Pursuant to Article 22 of said Act, as well as Article 103-1, Paragraph 2, Subparagraph 6, of the Rules Governing

解釋理由書：貨物稅條例修正前第四條第一項第十六款(三)，係就「凡用電力調節氣溫之各種冷氣機、熱氣機等」電器類課徵貨物稅之規定。又同條例第十二條及第十六條第二項分別規定：「凡由國外輸入應課貨物稅之貨物，應按照海關估價，加繳納進口稅捐後之總價徵收貨物稅」，「國外輸入之貨物，由海關於徵收關稅時代徵之」。行政院依同條例第二十二條，於中華民國六十四年七月二十一日修正發布之貨物稅稽徵規則第一百零三條之一第二項第六款：「國外進口裝配汽車冷暖氣機用之壓縮機，應按照海關核定之關稅完稅價格加計關稅及其他進口稅捐之總額，乘以四倍作為貨物稅之完稅價格徵收貨物稅，並發給鉛質貨物稅查驗證」，係對於國外進口裝配汽車冷暖氣機用之壓縮機，折算課徵冷暖氣機貨物稅，所為之補充規定，固與貨物稅條例

the Levy of Taxes on Commodity, as amended and promulgated by the Executive Yuan on July 21, 1975, which provides, “ In respect of the imported compressors used in the assembly of vehicular air conditioners, the commodity tax shall be levied and the duty-paying value shall be determined by multiplying the aggregate amount of the duty-paying value of customs duty as determined by the Customs plus other import duties by four. In addition, an aluminum certificate of inspection for commodity tax shall be issued thereafter.” The foregoing is supplementary to the provision related to the conversion of commodity tax for the imported compressors used in the assembly of vehicular air conditioners/heaters into that for air conditioners/heaters. Undoubtedly, the term used therein is not entirely consistent with the provision of the Commodity Tax Act first above mentioned. However, the said Regulation considers the nature of such compressors as unusual in that compressors of the kind are not only the primary machine parts for air conditioners/heaters, but also intended for use in the assembly of vehicular air

首開條文之用語未盡相符。惟該規則係以此種壓縮機，性質特殊，不僅為冷暖氣機之主要機件，且祇能供裝配汽車冷暖氣機之用，仍屬上開條例修正前第四條第一項第十六款(三)所規定之電器類範圍，而汽車冷暖氣機各組件，又係散裝於汽車內，無單一固定之形體，如不對此種壓縮機，課徵汽車冷暖氣機之貨物稅，則對於以化整為零方式進口之汽車冷暖氣機各部機件，即難以課徵貨物稅，而同時或先後進口其他汽車冷暖氣機用之零組件或進口壓縮機裝配完成汽車冷暖氣機後，均不再課徵貨物稅，其原所課徵者，既屬法有明文之冷暖氣機類之貨物稅，並未新增稅目或變更原定稅率，無加重人民納稅義務之虞，上述規則亦為簡化稽徵手續、防止逃漏稅捐及維持課稅公平所必要，與憲法第十九條尚無牴觸。

conditioners/heaters only, that they still fall in the category of electrical appliances as provided for under the former Article 4, Paragraph 1, Subparagraph 16(3), of said Act. Furthermore, the various components of a vehicular air conditioner/heater are not in one piece and in one fixed form while in an automobile. If no commodity tax for vehicular air conditioners/heaters is levied on such compressors, it would be difficult to impose commodity tax on such various machine parts and components for vehicular air conditioners/heaters as are imported by dividing up the whole into separate parts. Besides, the other parts and components for vehicular air conditioners/heaters that are imported concurrently with, or prior or subsequent to, such compressors or the air conditioners/heaters whose assembly has been completed would not be subject to additional commodity tax. Since the original commodity tax is levied on air conditioners/heaters, which is clearly prescribed by law, and no additional taxable item is added or original tax rate is changed, the relevant taxpayers are not liable for any additional tax burden. The aforesaid Regulation is also

for the purposes of simplifying the collection procedure, preventing tax evasion and maintaining equality of taxation, and hence is not in conflict with Article 19 of the Constitution.

Justice Chih-Peng Lee filed dissenting opinion, in which Justice Rui-Tang Chen joined.

本號解釋李大法官志鵬、陳大法官瑞堂共同提出不同意見書。