

J. Y. Interpretation No.321 (June 18, 1993) *

ISSUE: Is the Customs Act constitutional in providing that a taxpayer who fails to make full payment of the customs duties or to lodge an appropriate security therefor within the specified time limit shall be deprived of the opportunity of seeking administrative remedy?

RELEVANT LAWS:

Article 16 of the Constitution (憲法第十六條) ; Article 23 of the Customs Act (關稅法第二十三條) ; J. Y. Interpretations Nos. 224 and 288 (司法院釋字第二二四號及第二八八號解釋) .

KEYWORDS:

customs duties (關稅) , Customs House (海關) , security (擔保) , administrative (行政救濟) , right of action (訴訟權) , legal remedy (法律救濟) , tariff number (稅則號別) , duty-paying value (完稅價格) , review (複查) .**

HOLDING: The provision of Article 23 of the Customs Act as amended on June 29, 1986, to the effect that a taxpayer who fails to make full payment of the customs duties assessed by the Cus-

解釋文：中華民國七十五年六月二十九日修正公布之關稅法第二十三條之規定，使納稅義務人未能按海關核定稅款於期限內全數繳納或提供相當擔保者，喪失行政救濟之機會，係對人民

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**Contents within frame, not part of the original text, are added for reference purpose only.

toms or to lodge an appropriate security therefor within the specified time limit will be deprived of the opportunity to seek administrative remedy constitutes an unnecessary restraint on the people's right of instituting legal proceedings, and is inconsistent with the essence of Article 16 of the Constitution in protecting the people's right of instituting legal proceedings.

REASONING: It has been made clear by this Yuan in J. Y. Interpretations Nos. 224 and 288 that a provision requiring the payment of a portion of the tax or the lodgment of a security as a condition upon which a petition for review may be filed in a tax case makes a person unable to pay the tax or to furnish a security lose his opportunity of seeking legal remedy, thereby constituting an unnecessary restraint on the people's right to institute administrative appeal and suit, and is thus inconsistent with the essence of Article 16 of the Constitution. Article 23 of the Customs Act as amended on June 29, 1986, provides: "Where a taxpayer is dissatisfied with the tariff number, duty-paying value, amount of make-up duty payable or

訴訟權所為不必要之限制，與憲法第十六條保障人民訴訟權之意旨有所牴觸。

解釋理由書：有關稅捐案件中請複查時，以繳納一定比例之稅款或提供擔保為條件之規定，使未能繳納稅款或擔保之人喪失法律救濟之機會，係對人民訴願及訴訟權所為不必要之限制，與憲法第十六條之意旨有所不符，業經本院釋字第二二四號及第二八八號分別釋示在案。中華民國七十五年六月二十九日修正公布之關稅法第二十三條第一項：「納稅義務人如不服海關對其進口貨物核定之稅則號別、完稅價格或應補繳稅款或特別關稅者，得於收到海關填發稅款繳納證之日起十四日內，按稅款繳納證所列稅額繳納全部稅款，依規定格式，以書面向海關聲明異議，請求複查。但納稅義務人得經海關核准，提供相當擔保，免繳上開稅款」，第二項：「納稅義務人未依前項規定期限繳納稅

special duties, as the case may be, assessed by the Customs on his import goods, he may, upon full payment of the duty payable as shown in the certificate of duty payment, to be made within fourteen days from the date of receipt of such certificate issued by the Customs, file with the Customs a written statement of objection in the required form and apply for review. However, subject to approval by the Customs, the taxpayer may lodge an appropriate security in lieu of payment of the foregoing duty.” And the second paragraph of said article states: “A taxpayer who fails to pay the duty or lodge a security within the period specified in the preceding paragraph shall be deemed to have not applied for review.” While such provisions are designed to prevent frivolous applications for review for the purpose of delaying the payment of duty, they have no significance under our current system of administrative remedy, because the institution of the remedial proceeding has no effect in staying the enforcement of the original administrative act. They do, nevertheless, deprive those taxpayers who are unable to make full payment of the duty

款或提供擔保者，視為未請求複查」之規定，雖為防止受處分人任意請求複查以拖延繳納稅款，但依我國行政救濟制度，提起行政救濟並無停止原處分執行之效力，致上述規定，徒使未能於規定期限內繳納全部稅款或提供相當擔保之納稅義務人喪失行政救濟之機會，係對人民訴訟權所為不必要之限制，與憲法第十六條保障人民訴訟權之意旨有所牴觸。

or to put up an appropriate security within the specified time limit of the opportunity to seek administrative remedy, and impose an unnecessary restraint on the people's right of instituting legal proceedings, and are thus inconsistent with the essence of Article 16 of the Constitution in protecting the people's right of instituting legal proceedings.

Justice Chien-Tsai Cheng filed dissenting opinion.

Justice Chung-Sheng Lee filed dissenting opinion.

本號解釋鄭大法官健才、李大法官鐘聲分別提出不同意見書。