

J. Y. Interpretation No.211 (December 5, 1986) *

ISSUE: Does Article 49 of the Customs Smuggling Control Act violate Articles 7 and 16 of the Constitution?

RELEVANT LAWS:

Articles 7 and 16 of the Constitution (憲法第七條、第十六條) ; Article 49 of the Customs Smuggling Control Act (海關緝私條例第四十九條) .

KEYWORDS:

right of equality (平等權), protest (聲明異議), administrative litigation (行政訴訟) .**

HOLDING: The right of equality provided in Article 7 of the Constitution is to protect the substantial equality of the legal position of the people. It does not restrict the competent authority, with due authorization by the law, from rendering reasonably different treatments by reference to the differences de facto of any particular case and the purposes of legislation. The purpose protest of Article 49 of the Customs Smuggling Control Control

解釋文：憲法第七條所定之平等權，係為保障人民在法律上地位之實質平等，並不限制法律授權主管機關，斟酌具體案件事實上之差異及立法之目的，而為合理之不同處置。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繳稅款者，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，旨在授權

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Act, which provides that “For any cases, and in case no goods were seized or the goods seized were not sufficient to pay for the fine or the short-paid duty, the Customs may order the person to pay in deposit, within 14 days, half of the original fine or insufficient amount or furnish an adequate security equal to the same amount. In case no payment was made or no security was furnished within the prescribed time limit, that protest will not be accepted”, is to authorize the Customs, after examination, and subject to the particular facts, to render appropriate punishment. This is to prevent the person subjected to administrative punishment, by submitting a protest, from delaying or evading the execution of duty payment and punishment, and is also to fulfill the Customs policy of preventing smuggling, which is necessary to promote the public interest and not contrary to Articles 7 and 16 of the Constitution. In addition, some of the wording in the section on administrative litigation procedure stipulated in the Act is imprecise and should be examined and amended in order to concur with the preservation of administrative execu-

海關審酌具體案情，為適當之處分，以防止受處分人藉故聲明異議，拖延或逃避稅款及罰鍰之執行，為貫徹海關緝私政策、增進公共利益所必要與憲法第七條及第十六條尚無牴觸。又同條例所定行政爭訟程序，猶有未盡週詳之處，宜予檢討修正，以兼顧執行之保全與人民訴願及訴訟權之適當行使。

tion and the adequate exercise of the rights of administrative appeal and litigation of the people.

REASONING: Article 7 of the Constitution, which provides “All citizens of the Republic of China, irrespective of sex, religion, race, class or party affiliation shall be equal before the law,” is to protect the substantial equality of the legal position of the people. It does not restrict the competent authority, with due authorization by the law, from rendering reasonably different treatments by reference to the differences de facto of any particular case and the purposes of legislation. Article 49 of the Customs Smuggling Control Act provides that “For any protest cases, and in case no goods were seized or the goods seized were not sufficient to pay for the fine or the short-paid duty, the Customs may order the person to pay in deposit, within 14 days, half of the original fine or insufficient amount or furnish an adequate security equal to the same amount. In case no payment was made or no security was furnished within the prescribed time limit, that protest will not be

解釋理由書：按憲法第七條規定：「中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等。」係為保障人民在法律上地位之實質平等，並不限制立法機關在此原則下，為增進公共利益，以法律授權主管機關，斟酌具體案件事實上之差異及立法之目的，而為合理之不同處置。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繳稅款者，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，其中「得」字以下部分，旨在授權海關妥慎斟酌聲明異議案件之具體案情，而為應否限期命受處分人提供擔保之裁量，以防止受處分人藉故聲明異議，拖延或逃避稅款及罰鍰之執行。非謂不問有無必要海關均得命受處分人繳納保證金或提供擔保。此項規定雖使受處分人之救濟機會，受有限制，但既係針對無扣押物或扣押物不足抵付罰鍰或追繳稅款之受處分人，在原處分並無顯屬違法或不

accepted.” The wording that follows the word “may” is meant to authorize the Customs, after examination, and subject to the particular facts, to render appropriate punishment. This is to prevent the person subjected to administrative punishment, by submitting a protest, from delaying or evading the execution of duty payment and punishment. It is not that Customs shall whatsoever order the person subjected to administrative punishment to pay a deposit or furnish the security needed. Though this provision limits the opportunity for relief of the person subjected to administrative punishment, it aims to prevent the person subjected to administrative punishment, who have no goods seized or whose goods seized were not sufficient to pay for the fine or the short-paid duty, from submitting a protest deliberately under the circumstance that the original administrative punishment was not obviously contrary to law or did not constitute undue punishment. It aims to fulfill the Customs policy of preventing smuggling, which is necessary to promote the public interest and is not contrary to Articles 7 and 16 of the Constitution. As

當之情形下，藉故聲明異議者而設，乃為貫徹海關緝私政策、增進公共利益所必要，與憲法第七條及第十六條尚無牴觸。至受處分人對於海關先命繳納保證金或提供擔保之處分提起訴願及行政訴訟時，受理訴願之機關或行政法院應依前開說明，審酌該處分是否合法適當，於此情形，如海關追徵或處罰之原處分顯屬違法或不當者，上級行政機關得本於行政監督權為適當之處置，乃屬當然。又海關緝私條例所定行政爭訟程序，有未盡週詳之處，致執行上易生偏差，宜予檢討修正，以兼顧執行之保全與人民訴願及訴訟權之適當行使，併此指明。

to the person subjected to administrative punishment submitting administrative appeal or litigation against the administrative punishment on paying a deposit or furnishing the security, the administrative authority accepting the administrative appeal or the administrative court shall, subject to the above-mentioned, examine and determine whether that administrative punishment was illegal or improper. Under this circumstance, in case it is found that the Customs' original administrative punishment on supplementary levying or punishment was illegal or undue, the higher administrative authority may put it to proper disposition, subject to its power of supervision over the relevant administrative authority. In addition, it is to be noted here that some of the wording in the section on administrative litigation procedure stipulated in the Customs Smuggling Control Act is imprecise and may cause deviation in the administrative execution; thus, such wording should be examined and amended in order to concur with the preservation of administrative execution and the adequate exercise of the rights of administrative appeal and litigation of the people.

Justice Tieh-Cheng Liu filed dissenting
opinion.

本號解釋劉大法官鐵錚提出不同
意見書。