

J. Y. Interpretation No.216 (June 19, 1987) *

ISSUE: Are the MOJA letters stipulating that the court in conducting a public auction of imported goods with customs duties on credit shall reveal in an auction notice the unpaid duties existing thereon, and the purchaser thereof must pay the said duties before the goods may be delivered congruous with the intent of the Constitution to protect the people's property rights?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條), Articles 31 and 55 of the Customs Act (關稅法第三十一條及第五十五條) .

KEYWORDS:

administrative ordinances (行政命令), administrative construction (行政解釋), property rights (財產權) .**

HOLDING: The provision that judges shall adjudicate independently according to law is specifically prescribed in Article 80 of the Constitution. Administrative rules adopted under the duty of seeking proper construction of laws by various government agencies may be applied

解釋文：法官依據法律獨立審判，憲法第八十條載有明文。各機關依其職掌就有關法規為釋示之行政命令，法官於審判案件時，固可予以引用，但仍得依據法律，表示適當之不同見解，並不受其拘束，本院釋字第一三七號解釋即係本此意旨；司法行審判上之法律

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

by judges in the course of adjudication, who, not being bound thereby, may in a proper manner, express their opinion in light of the law, as stated in Interpretation No. 137 of this Court. Ordinances issued by a judicial administration involving legal issues in the business of adjudication are merely references for judges, who again, are not bound thereby in the course of adjudication. However, the rules, if and when cited by judges during the course of their adjudication, may be subject to a party's application for constitutional interpretation under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act.

In respect of the mortgage created on any merchandise whose customs duties have not been cleared, the mortgage interest certainly does not extend to what has been covered by the unpaid customs duties on the merchandise, as Paragraphs 2 and 3 of Article 31 of the Customs Act have clearly prescribed. The letters, Ref. Nos. (65) Ming-Tze-09982, dated November 15, 1976, and Tai (67) Ming-Tze-06392, dated July 22, 1978, issued by the

政機關所發司法行政上之命令，如涉及見解，僅供法官參考，法官於審判案件時，亦不受其拘束。惟如經法官於裁判上引用者，當事人即得依司法院大法官會議法第四條第一項第二款之規定聲請解釋。

就關稅未繳清之貨物取得動產抵押權者，其擔保利益自不能存在於該貨物未繳之關稅上，此觀關稅法第三十一條第二項、第三項規定甚明。前司法行政部六十五年十一月十五日台（六五）函民字第○九九八二號及六十七年七月廿二日台（六七）函民字第○六三九二號函提示執行法院，於拍賣關稅記帳之進口貨物時，應將該貨物未繳關稅情形，於拍賣公告內載明，並敘明應由買受人繳清關稅，始予點交，此項函示，

former Ministry of Judicial Administration, stipulate that the court of enforcement proceedings, when conducting a public auction of imported goods with customs duties on credit, will state in the notice for public auction that there are unpaid customs duties on the goods, and that the purchaser thereof must clear the duty payment before the goods may be delivered and transferred. These letters are in accord with the provisions of the above-cited Act and are not subject to the application of Article 55, Paragraph 3, of the same Act; thus, they have not encroached upon the interest of the mortgagee of movables as a necessity to secure the imposition of customs duties, and therefore are not contrary to the constitutional safeguard of property rights.

REASONING: The provision that judges shall adjudicate independently according to law is specifically prescribed in Article 80 of the Constitution. Administrative rules adopted under the duty of pursuing the proper construction of laws by various government agencies may be applied by judges in the course of adjudication.

核與上開法條意旨相符，不屬同法第五十五條第三項規定之範圍，既未侵害動產抵押權人之權益，亦為確保關稅之稽徵所必要，與憲法保障人民財產權之本旨，並無牴觸。

解釋理由書：法官依據法律獨立審判，不受任何干涉，憲法第八十條載有明文。各機關依其職掌就有關法規為釋示之行政命令，法官於審判案件時，固可予以引用，但仍得依據法律，表示適當之不同見解，並不受其拘束，本院釋字第一三七號解釋即係本此意旨；司法行政機關所發行政上之命令，

cation, who, not being bound thereby, may in a proper manner express their opinion in light of the law, as stated in Interpretation No. 137 of this Court. The provision that administrative ordinances issued by a judicial administration shall not intervene in adjudication is specifically prescribed in Article 90 of the Court Organic Act. Judicial administrations shall not put forth their own legal views and order judges to follow such views in the course of adjudication. If any legal views are presented, they are references for judges only and shall not bind judges in the course of adjudication. However, the rules, if and when cited by judges during the course of their adjudication, may be subject to a party's application for constitutional interpretation under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act. We take the case accordingly.

The provisions that imported goods, with either duties to be paid in installments or with credit, may not be transferred before the duties are fully paid, and that if a transfer is made through compul-

不影響於審判權之行使，為法院組織法第九十條所明定。司法行政機關自不得提示法律上之見解而命法官於審判上適用，如有所提示，亦僅供法官參考，法官於審判案件時，不受其拘束。惟上述各種命令，如經法官於裁判上引用者，當事人即得依司法院大法官會議法第四條第一項第二款之規定聲請解釋。本件聲請，依上開說明，應予受理。

分期繳稅或稅款記帳之進口貨物，於關稅未繳清前，不得轉讓，其經強制執行或專案核准者，准由受讓人繼續分期繳稅或記帳，關稅法第三十一條第二項、第三項規定甚明。依此規定，

sory execution or with a specific permit, the transferee is allowed to continue paying the duties in installments or pay the duties with credit, are prescribed clearly in Article 31, Paragraphs 2 and 3, of the Customs Act. Accordingly, in respect of the mortgage created on any goods whose customs duties have not been cleared, the mortgage interest certainly does not extend to what is covered by the unpaid customs duties on the goods. If the transferee who may receive goods through compulsory enforcement proceedings is not granted permission to continue paying the duties in installments or place the duties on credit, he must clear the duty payment before gaining custody of such goods. This mechanism is different from what is prescribed in Article 55, Paragraph 3, of the same Act, under which outstanding or unpaid duties are preferred to common creditors' claims. The letters, Ref. Nos. (65) Ming-Tze-09982, dated November 15, 1976, and Tai (67) Ming-Tze-06392, dated July 22, 1978, issued by the former Ministry of Judicial Administration, stipulate that the court of enforcement proceedings, when conducting a public auction of

就未繳清關稅之貨物取得動產抵押權者，其擔保利益自不能存在於該貨物未繳之關稅上，其因強制執行而受讓該項貨物者，如未獲准繼續分期繳稅或記帳，自須繳清稅款，始可取得貨物，此與同法第五十五條第三項規定係指應繳或應補繳之關稅，就上述情形以外之納稅義務人所有財產受償，僅較普通債權優先者不同。前司法行政部六十五年十一月十五日台（六五）函民字第○九九八二號及六十七年七月二十二日台（六七）函民字第○六三九二號函提示執行法院，於拍賣關稅記帳之進口貨物時，應將該貨物未繳關稅情形，於拍賣公告內載明，並敘明應由買受人繳清關稅，始予點交，此項函示，核與關稅法第三十一條第二項、第三項之意旨相符，不屬同法第五十五條第三項規定之範圍，既未侵害動產抵押權人之權益，亦為針對關稅特性，確保關稅之稽徵所必要，與憲法保障人民財產權之旨，並無牴觸。

imported goods whose customs duties are on credit, shall state in the notice of public auction that there are unpaid customs duties on the goods, and that the purchaser thereof must pay the duties before the goods may be delivered and transferred. These letters are in accord with Article 31, Paragraph 2, and not subject to the application of Article 55, Paragraph 3 of the same Act; thus, they have not encroached upon the interest of the mortgagee of movables as a necessity to secure the imposition of customs duties, and therefore are not contrary to the constitutional safeguard of property rights.

Justice Chung-Sheng Lee filed dissenting opinion.

本號解釋李法官鐘聲提出不同意見書。