

J. Y. Interpretation No.219 (September 25, 1987) *

ISSUE: Does Article 16 of the Regulation Governing the Customs Supervision of Containers violate Article 19 of the Constitution?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條); Articles 4 and 30 of the Customs Act (關稅法第四條、第三十條); Article 16 of the Regulation Governing the Customs Supervision of Containers (海關管理貨櫃辦法第十六條).

KEYWORDS:

principle of statutory tax payment (租稅法律主義), container (貨櫃), import duty (進口稅).

HOLDING: Article 16 of the Regulation Governing the Customs Supervision of Containers, amended and promulgated by the Ministry of Finance on October 16, 1976, was stipulated in accordance with principles as expressed in Article 30 of the Customs Act that the containers used for importing cargos shall be exempted from customs duty provided that they are to be re-exported abroad

解釋文：財政部中華民國六十五年十月十六日修正發布之海關管理貨櫃辦法，其第十六條係依關稅法第三十條盛裝貨物用之容器進口後在限期內復運出口者免徵關稅，及同法第四條貨物之持有人為納稅義務人之意旨而訂定。此種貨櫃如未於限期內復運出口，則向該貨櫃本身進口當時為其持有人之運送人或其代理人課徵關稅，與憲法第十九條租稅法律主義並無牴觸。

* Translated by Assistant Professor Y. K. Huang.

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

within a limited period, and also in accordance with Article 4 of the Customs Act which provides that the duty-payer of customs duty shall be the consignee of the imported goods. Therefore, in the case where the containers were not re-exported within the time limit, the customs duty shall be levied on the carrier or its agent since he was the holder of the containers at the time the containers were imported, and it does not contradict the principle of statutory tax payment as expressed in Article 19 of the Constitution.

REASONING: The Customs Import Tariff No. 8608, which was enacted and promulgated on August 30, 1980, stipulates that the containers imported from abroad with special design used for one or more kinds of transportation shall have a customs import tax of 30% levied on them. (It is tax free in accordance with the Customs Import Tariff Rules, amended on January 16, 1987.) The containers are receptacles used for keeping cargo. When they are imported separately from their carrying vessel, they are no longer the apparatus of that vessel.

解釋理由書：按自國外進口特別設計，且裝備有供一種或多種運輸方式運送之貨櫃，應徵百分之三十之關稅，中華民國六十九年八月三十日修正公布之海關進口稅則第八六〇八號定有明文（中華民國七十六年一月十六日修正之海關進口稅則已定為免稅）。貨櫃為盛裝貨物用之容器而與船舶分離進口時，已非船舶設備，如依進口當時海關進口稅則規定，應納關稅者，必須於進口後六個月內或於財政部核定之日期前，復運出口，始得免徵關稅；又關稅納稅義務人為收貨人、提貨單或貨物之持有人，關稅法第三十條第四條亦分別

In accordance with the Customs Import Tariff Rules for the time of importation, they can be exempted from customs duty provided that they are to be re-exported abroad within six months from the date of importation or before the date fixed by the Ministry of Finance. In addition, Articles 4 and 30 of the Customs Act provide that the duty-payer of customs duty shall be the consignee of the imported goods or the holder of the bill of lading or imported goods. Article 16 of the Regulation Governing the Customs Supervision of Containers, amended and promulgated by the Ministry of Finance on October 16, 1976, which stipulates that the carrier or its agent shall provide the Container Annual Guarantee to the Customs for declaring that the containers will be re-exported abroad within six months from the date of importation or before the date fixed by the Ministry of Finance and the carrier or its agent shall pay the import duty within three months in case they fail to re-export the containers within the time limit. This provision is made according to Articles 4 and 30 of the Customs Act and also complies with the international practice for

規定甚明。財政部於中華民國六十五年十月十六日修正發布海關管理貨櫃辦法，其第十六條有關貨櫃進口須由其運送人或其代理人向海關簽具貨櫃常年保結，保證於進口後六個月內或海關核定之日期前退運出口，逾期應由運送人或其代理人於三個月內繳納其進口稅捐之規定，係依據上開關稅法第三十條及同法第四條之意旨而訂定，與國際貨櫃報關慣例一致。此種貨櫃如未於限期內復運出口者，則向該貨櫃本身進口當時為其持有人之運送人或其代理人課徵關稅，與憲法第十九條租稅法律主義並無抵觸，至財政部七十二年一月七日⁽⁷²⁾台財關字第一〇二三八號函，並非確定終局裁判所適用之命令，置其內容已為海關管理貨櫃辦法所涵蓋，併此說明。

container customs brokering. Therefore, in the case where the containers were not re-exported within the time limit, the customs duty shall be levied on the carrier or its agent since he was the holder of the containers at the time the containers were imported, and it does not contradict the principle of statutory tax payment as expressed in Article 19 of the Constitution. It is to be noted here that, as to the Ministry of Finance's letter ruling at issue (72) Tai-Cai-Kuan-Tsu No. 10238 (January 7, 1983), it was not an administrative order applicable to conclusive judgment and its content was also covered by the Regulation Governing the Customs Supervision of Containers.