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Washington, DC 20229

U.S. Customs and Border Protection

HQ H273946

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OT:RR:BSTC:CCR H273946 RMC

CATEGORY: Carriers

James Roussel
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Suite 3600
New Orleans, Louisiana 70170

RE: Reconsideration of HQ H268742 (Dec. 14, 2015); 46 U.S.C. § 55102; 19 C.F.R. § 4.80b; Coastwise Transportation

Dear Mr. Roussel:

This is in response to your March 11, 2016, request for reconsideration of Headquarters Ruling ("HQ") H268742, dated December 14, 2015. In HQ H268742, we held that the proposed transportation of a tugboat on a non-coastwise-qualified barge would violate 46 U.S.C. § 55102. After reviewing the additional arguments in your request for reconsideration, we affirm.

FACTS:

As explained in HQ H268742, the proposed transportation involves the M/V DOUGLAS B. MACKIE ("the Great Lakes tug"), a tugboat that Eastern Shipbuilding Group, Inc. is building in its shipyard in Panama City, Florida. In May 2016, the Great Lakes tug will be laden onboard a Norwegian, non-coastwise-qualified, submersible barge at Eastern Shipbuilding Group's shipyard in Panama City, Florida and towed by a coastwise-qualified vessel into international waters. Once in international waters, the barge will submerge and the Great Lakes tug will launch. A coastwise-qualified tugboat will then tow the Great Lakes tug to the Port of Panama City, Florida. At no point during this proposed movement will the Great Lakes tug move under its own power.

ISSUE:

Whether the proposed movement violates 46 U.S.C. § 55102.

LAW AND ANALYSIS:

The Jones Act, at 46 U.S.C. § 55102, states that "a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port" unless the vessel was built in the United States, documented under the laws of the United States, and owed by United States citizens. A "coastwise transportation" for purposes of the Jones Act occurs when "merchandise laden at a point embraced within the coastwise laws ('coastwise point') is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise." 46 U.S.C. § 55102(a). Coastwise points include the United States (except American Samoa, the Northern Mariana Islands, and the Virgin Islands), its territorial sea, and certain points on the outer continental shelf. *See* 46 U.S.C. § 55101; 43 U.S.C. § 1333(a). "Merchandise" includes "goods, wares, and chattels of every description" and extends to merchandise the importation of which is prohibited, articles owned by the government, and valueless material. *See* 19 U.S.C. § 1401(c); 46 U.S.C. § 55102(a). CBP has previously found that this definition of merchandise includes a vessel that is transported aboard another vessel. *See* Customs Service Decision ("C.S.D.") 85-9, dated November 21, 1984; HQ H113176, dated September 6, 1994; HQ H249186, dated May 30, 2014.

Here, consistent with our previous interpretations of "merchandise" for purposes of the Jones Act, we found that the Great Lakes tug is "merchandise" because it is a vessel that is transported on another vessel. We also found that the proposed movement of this merchandise is "coastwise transportation" because it involves the transportation of the Great Lakes tug between Eastern Building Company's Panama City, Florida shipyard and the Port of Panama City, Florida. Specifically, the Great Lakes tug will be laden on the Norwegian barge in Eastern Shipbuilding Group's Panama City, Florida shipyard, towed on the barge into international waters, unladen in international waters, and then towed to the Port of Panama City, Florida. As explained above, a vessel "may not provide any part" of the coastwise transportation of merchandise in the United States unless it was built in the United States, documented under the laws of the United States, and owed by United States citizens. Because the Norwegian barge would provide a "part" of the Great Lakes tug's coastwise transportation—specifically, the transportation from Eastern Building's shipyard to international waters—we held that the proposed movement would violate the Jones Act.

Your request for reconsideration asks us to reconsider this conclusion in light of three arguments. First, you argue that the three ruling letters cited above holding that "merchandise" includes a vessel that is transported on another vessel are distinguishable because they "did not discuss whether the carried vessels themselves were coastwise-qualified vessels." Second, you argue that HQ H268742 conflicts with a recent CBP decision holding that the coastwise laws were not violated when a non-coastwise-qualified drydock was used to transport a drilling rig from international waters to a coastwise point and back. And third, you argue that prohibiting the proposed movement is inconsistent with the purpose of the Jones Act.

With respect to your first argument, we agree that the "merchandise" at issue in C.S.D. 85-9, HQ H113176, and HQ H249186 was not a coastwise-qualified vessel. But a vessel that is transported on another vessel does not cease to be "merchandise" under the Jones Act simply because it is coastwise qualified. There is no basis either in the definition of "merchandise" or in our precedent to draw this distinction. The statutory language sweeps broadly to include "goods, wares, and chattels of every description" and even extends to merchandise the importation of which is prohibited, articles owned by the government, and valueless material. *See* 19 U.S.C. § 1401(c); 46 U.S.C. § 55102(a). Furthermore, the three rulings' conclusion that a vessel that is transported on another vessel is "merchandise" did not turn on the fact that the transported vessel was non-coastwise-qualified. We therefore find no basis to depart from the settled precedent in these three rulings simply because the merchandise at issue here will be a coastwise-qualified tug.

We also find no conflict between our conclusion in this case and HQ H269478. In that case, we held that the coastwise laws were not violated when a non-coastwise-qualified drydock was used to transport a drilling rig from international waters to a coastwise point and back. In Scenarios 1 and 2, no coastwise transportation occurred because the drilling rig would be laden and unladen at the same point in international waters. In Scenario 3, no coastwise transportation occurred when the drilling rig was laden on the drydock in international waters, unladen near a coastwise shipyard, moved to a quay with a coastwise-qualified vessel, reloaded onto the drydock, and unladen at the same location where it was laden. Here, by contrast, the Norwegian barge would provide a "part" of the Great Lakes tug's coastwise transportation between two different coastwise points: the Eastern Shipbuilding Group's shipyard and the Port of Panama City, Florida. As explained above, this constitutes coastwise trade in violation of the Jones Act.

Finally, although we are mindful of the purpose of the Jones Act, the text of the statute plainly prohibits a non-coastwise-qualified vessel from providing "any part" of coastwise transportation. *See* 46 U.S.C. § 55102. We cannot ignore the statutory language and permit the coastwise transportation that the Norwegian tug will provide in this case.

HOLDING:

Based on the information provided, the proposed transportation of a tugboat on a non-coastwise-qualified barge would violate 46 U.S.C. § 55102. HQ H268742 is hereby affirmed.

Sincerely,

Glen E. Vereb
Director, Border Security & Trade Compliance Division
Office of International Trade, Regulations and Rulings
U.S. Customs and Border Protection