

**Oceanglobe Container Services Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-27-1998

**Reported in :** (1998)LC277Tri(Mum.)bai

**Appellant :** Oceanglobe Container Services

**Respondent :** Cc

**Judgement :**

1. The question for decision in this appeal is whether compressors fitted to the refrigerator marine containers ("reefer containers" as they are popularly known), are ship's stores within the meaning of Sub-clause (d) of para 11 of the Imports (Control) Order, 1955. In the order impugned in the appeal, the Collector has held that these are not ship stores for the reasons that containers are not part of the ship and therefore, parts of such containers would not be part of ships, and hence confiscated the compressors imported for being fitted on to such containers with an option to redeem them on payment of fine.

2. Advocate for the appellant says that reefer container is used for transportation of refrigerated cargo and since such refrigeration cannot be maintained in the container without electricity supplied from the ship generators, the compressor and other such parts are ship stores. He says that the containers can not be differentiated as being other than parts of ships.

3. Marine container is used to transport the cargo on the seas.

Refrigerator containers is so adopted by provision of compressor and other refrigerating equipment as to ensure that perishable cargo can be carried in such containers at the required temperature. Now the fact that a marine container is necessarily to be carried on board the ship does not by itself make it part of a ship. By extending this principle we would come to a position in which all the cargo carried on a ship, the crew in the case of a passenger ship would be part of a ship. In point of fact, it is not correct to say a marine container is used only or principally to transport cargo on board the ship. Marine containers are so designed as to be used and in fact are used what is called multi product transport. Such containers, loaded with the cargo or sometimes unloaded are carried on the ship of their unloading elsewhere, they are carried by rail or road to the destination of the consignee or consignor of the goods. Therefore, for a considerable part of the time in which they are used, such containers are not necessarily carried on board a ship. By a further exposure of the principle adopted by the appellant, it would follow that such containers would be part of the trucks, or trains on which they are carried. Such an absurd conclusion can obviously not be countenanced. The fact of electricity being supplied to the container from the ship would not make it part of a ship by more than a domestic lamp is a part of hydro electric plant because it draws electricity produced by the plant.

4. Advocate for the appellant relies upon a letter dated 6th August, 1983 written by the Ministry of Shipping and Transport to the Secretariat, Industrial Approvals, Ministry of Industry. In this letter, the Director Mechanical of the Ministry says that marine container is considered to be the part of the ship. The director does not advance any reasoning for this statement. He does not say who consider it as the part of the ship and in what circumstances. The technical qualification of the writer and his competence to make such a statement are also not known. The letter appears to have been written in the context of the registration or approval of the appellant's company as 100% foreign exchange earning unit in order to give exemption from import duty. We cannot accept a simple unsupported assertion made by a person whose competence in matters of shipping has not been established as evidence in deciding the scope of the term "ship stores" in the Import Trade Control Order.

5. The fact that drilling equipment is considered to be ship stores when intended for fitment on drilling rigs by the Bombay High Court in *Amarship Management Pvt. Ltd. v. Union of India* - 1996 (86) E.L.T. 15 (Bom.) has no relevance to the facts of the present case. The function of a drilling rig obviously to drill rig and drilling equipment would necessarily be considered to be part of such rig. Advocate for the appellant also places reliance on the observation of this Tribunal in *A.P. Muller (Maersk Line) v. Commissioner of Customs* -1994 (69) E.L.T.425 (Tribunal) in which the single member Bench in para 13 held that when a container is supplied by a shipping agency and company loading goods meant for transport by that agency, it ought to be considered as receptacle for the purposes of transport and an extended portion of ship's gear and not for the purpose of packing as is contemplated under Section 118(a) of the Act. The decision was rendered in the context of an appeal against an order consicating the container in terms of Section 11(B) of the Act, as a package. From the fact of the case, emphasised in para 13, it is clear that the Bench was making a distinction between a package in Section 118(a) and a marine container.

It was in that context that the Bench considered the goods to be an extended portion of the ship's gear and not a package under Section 118(a). The decision therefore has necessarily to be confined to the facts of that appeal.

6. It was contended in the alternative that the provisions of Entry 12 of Appendix 6 of the Import Policy would apply. The Policy permits import freely without a licence of capital goods, components, raw materials, components by ship repairing units registered with the Directorate General of Shipping, Bombay. The Collector has already considered this plea but refused to accept it on the ground that evidence of registration with the Directorate General Shipping by the appellant was not produced. We see no reason to interfere with this finding.

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