



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

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January 10, 1974

Ringsby United
P. O. Box 192
Littleton, Colorado 80120

Attention: Wayne Lucora
Vice President - Traffic

Gentlemen:

We refer again to your letter of October 5, 1972, requesting review of the disallowance of your claims for additional freight charges relating to five truckload shipments of Government property transported for the Air Force from Brooks & Perkins, Inc., Cadillac, Michigan, to McChord Air Force Base, Washington, during 1970.

Five Government bills of lading (GELs) are involved: F-6375305, August 10, 1970; F-6375313, August 20, 1970; F-6373525, July 17, 1970; F-6373519, July 16, 1970; and F-6375304, August 7, 1970. In the appropriate column on each of these GELs, the commodity is described as aerial delivery platforms. Consistent with the annotations appearing thereon, "NMFC 146510," your company originally billed and was paid charges derived from the class 45 truckload rating named in item 146510 of National Motor Freight Classification (NMFC) 1-11, MF-100 13. Your claims for supplemental charges in the total amount of \$11,442.96 are based on the applicability of a class 125 truckload rating named in item 150370 of the classification.

The commodity covered by item 146510 is described as aerial delivery platforms and the commodity covered by item 150370 is described as "Pallets, Platforms or Skids, for lift trucks, aluminum, with or without wooden or steel reinforcement, see item 265." Item (Rule) 265 contains a definition of pallets, platforms, racks or skids, elevating or lift truck.

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Effective March 2, 1973, subsequent to the dates on which these shipments moved, a new classification description was published in Supplement 4 to NMFC A-13. The new item, 157520, naming a class 40 truckload rating, provides a commodity description for "Platforms, aircraft cargo shipping and handling, NOI, aluminum, with solid wood core, with tiedown rings, see Note, item 157522, in crates or in bundles." The note states that the item:

"Applies only on platforms designed to be used in conjunction with aircraft and vehicles equipped with surface conveyor casters or rollers."

There appears to be no dispute that this description would cover the articles shipped.

In its settlement certificates disallowing your claims, our Transportation and Claims Division notes that the commodity actually shipped would have been covered by the description in item 157520, but recognizing that the item was not in effect on the critical dates, the rating in item 146510 was considered applicable in rating the shipments on the theory that the commodity actually shipped was most closely analogous to the description in item 146510. This basis for rating the shipment derives from item (Rule) 421 of NMFC A-11, providing for classification by analogy, which reads in pertinent part as follows:

"The class for any article not provided for either by its specific name or embraced in an NOI item, shall be the class provided in the classification for an article which, in the carrier's judgment, is the most analogous.* * *."

Your "balance due" bills and letter of October 5, 1972, show that the change in commodity description on the GBLs from aerial delivery platforms to pallets for lift trucks was based on a letter, dated December 1, 1970, from Defense Contract Administration Services Region, Detroit (DCASR) to

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Great Lakes Express, the origin carrier, which was ultimately derived from an opinion of the National Classification Board. The DCASR letter changed the classification description on various GBLs, including those in issue, to read "pallets, for lift trucks, aluminum with wooden reinforcements, not interlaced, NHFC Item 150370." The National Classification Board stated that its opinion of February 13, 1970, holding that item 150370 was the proper classification for articles described as aerial delivery platforms, was based on review of a description booklet apparently submitted by the Motor Carrier Inspection and Weighing Bureau, Detroit, Michigan.

There is nothing in the record before us showing that the evidence considered by the Board relates to the specific articles shipped on the GBLs in issue. In any event the Board's opinion would not be controlling. Compare Coating Products v. T. Porto & Sons, Inc., 63 M.C.C. 766, 768 (1955).

We found it necessary to investigate the actual identity of the article transported. On November 23, 1973, DCASR furnished copies of DD Form 250, "Material Inspection and Receiving Report," that correspond to the five GBLs involved here. Each form describes the article inspected and received as FSN 16700204896CT Pallet Cargo HCU 6/E, Type I. Each shows Brooks & Perkins as the contractor; Cadillac, Michigan, as the shipping point, and F 09603-69-A-0039-0003 as the contract number.

Item 1 of the referenced contract describes the supplies as "1670-820-4896CT Pallet, Cargo Aircraft, HCU-6/E, Type I in accordance with MIL-P-27443E (USAF) dated 67 Feb 24 as amended . . ." The reference "MIL-P-27443E" relates to Military Specifications.

Paragraph 1.2 of the specifications shows that they cover Type I - 10,000 pounds capacity designated, HCU-6/E, in addition to Type II, designated HCU-12/E and Type III, designated HCU-10/C. Paragraph 3.4.3 of the specifications states that the articles would be constructed as an integral

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unit of bonded sandwich construction consisting of two surfaces of aluminum sheets bonded to a core of balsa wood. Paragraph 3.4.6 requires a rail around the entire periphery of the pallet, consisting of a lip, and means for attaching tiedown rings. Paragraph 3.4.6.1 states that the lip shall be capable of mating with aircraft rail systems. Tiedown rings are provided around the periphery to secure nets (para. 3.4.7), and the pallet is to be capable of being hoisted by means of four cables attached to four tiedown rings (para. 3.5.3.1). Paragraph 3.5.4.1 requires a capability of traversing roller conveyors. Although each type would be capable of withstanding lifting by forklift (para. 3.5.3.2), only Type III has openings to receive forklift tines. The manufacturer's sales literature, citing military specifications MIL-P-27443E (USAI), contains substantially the same information on the three types of cargo pallets. See also Military Handbook 300B relative to FSN 1670-820-4896.

It is clear that the Type I pallet was transported on the GELs in issue. It is also clear that, in view of Rule 265 (the Rule incorporated by item 150370), the classification description in item 150370 (pallets, for lift trucks) does not cover the HCU 6/E (Type I) cargo pallet. Moreover there appears to be no reasonable basis for concluding that item 150370 covers Type II or Type III. Rule (Item) 265 states:

"Pallets, platforms, racks or skids, elevating or lift truck, are platforms or areas, either round, hexagonal, octagonal, rectangular or square in actual dimensions, of solid, slatted, intersticed, ribbed or open framework construction providing flat load-bearing surfaces, supported by legs or runners, with or without bodies, enclosures, standards or stacking posts, without wheels or casters. Double-faced pallets are those without legs or runners other than those used to separate the two faces or surfaces." (Underlining supplied)

The bonded sandwich construction of the Type I pallet, and legs or runners, as included in Rule 265, are incongruous.

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The evidence shows that the two faces or surfaces on the articles shipped are not separated by legs or runners, thus the plain terms of item 150370 precludes its application to the shipments involved. The determination of applicable classification ratings is one of tariff interpretation. Tariffs are interpreted by their plain terms, but if doubt exists, it is resolved in favor of the shipper. Classification, Rating of De-Icer-Seaboard A.L.R., 326 I.C.C. 389, 395, 396 (1966).

Although the Type I cargo pallet is capable of being lifted by forklift, it is primarily designed to be moved by hand between specially modified aircraft and specially constructed ground vehicles equipped with surface conveyor caster/roller systems. On page 2 of its statement before the National Classification Board, Subject 15, Docket 721, January 13, 1972, which persuaded the Board to publish the new class 40 truckload rating in item 157520, the Military Traffic Management and Terminal Service (MTMTS) stated:

"These aircraft cargo pallets [HCU-6/E and HCU-12/E] are used in conjunction with specially modified aircraft, such as the C-130, C-5 and C-141 which have a surface conveyor caster/roller system attached to the floor which mates with the lip of the pallet and enables the palletized cargo to be pushed by hand within the aircraft. The palletized cargo is off-loaded from the aircraft by moving it onto specially constructed vehicles which are also equipped with surface conveyor caster/roller system. The pallets remain either on the trailers or on the aircraft and seldom, if ever, are placed on the ground."

We agree with the conclusion made by MTMTS on page 2 that the structure of the HCU-6/E (and HCU-12/E) does not conform to the definition of pallets as set forth in item (Rule) 265 of the classification; therefore, we are of the opinion that there was no specific or general classification

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description applicable on the dates these five shipments moved nor did the classification provide ratings for the pallet embraced in an NOI item. This fact is a prerequisite to applicability of the Rule of Analogy (Rule 421). Henry Modell & Co., Inc. v. Pennsylvania R. Co., 278 I.C.C. 630, 633 (1950); Clark-Cutler-McDonnott Co. v. New York, N.H. & P.R. Co., 276 I.C.C. 450, 452 (1949). The rule also requires that the article to be classified must be similar to the classification article. Myers Tire Supply Co. v. Akron, C. & Y. R. Co., 274, I.C.C. 107, 110 (1949).

As stated previously, the HCU-6/E cargo pallet is of bonded sandwich construction, containing two skins of aluminum and a balsa wood core. This also fits the structural description of the air drop modular platform, Type II, manufactured by Brooks & Parkins. See also paragraph 2-3 of Technical Manual 10-500/TO 13C7-1-7, January 1972, for a similar description of air drop platforms.

We conclude, as did our Transportation and Claims Division, that the commodity actually shipped was most closely analogous to the description, "platforms, aerial delivery, with equipment of harness or lashings, loops or in packages," appearing in item 146510 of the classification. If the item which you contend is applicable, we would question the reasonableness of a class 125 truckload rating on a commodity having transportation characteristics as identified to the Type I cargo pallet. The MTMS statement indicates that over 38,000 pounds of the Type I pallet can be loaded on a 40-foot trailer. See General Increases - Eastern Central Territory, 316 I.C.C. 467, 483 (1962). Therefore, we conclude that the class 45 truckload rating provided in item 146510 was properly applicable to the five shipments in question. For these reasons, the disallowance of your claims is sustained.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States