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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-203639 DATE: April 22, 1982

MATTER OF: American Farm Lines, Inc.--Reconsideration

DIGEST:

Where request for reconsideration presents no evidence demonstrating an error in fact or law, our prior decision is affirmed.

American Farm Lines (AFL) requests reconsideration of our decision in American Farm Lines, B-203639, December 30, 1981. In that decision, we held that the released value rates contained in American Farm Lines' (AFL) Tender 345 were applicable to a shipment of a road grader and sustained GSA's audit action. We found that the carrier had not shown that a motorized road grader is a tractor under Tender 345, item 30(B)(1), because the record indicated that the road grader was not used for the transportation of passengers or property over the highway. Since the commodity shipped was not covered by item 30(B)(1) as alleged by AFL, it was covered under item 30(A), which applies to commodities not specifically covered under item 30(B) or 30(C). Furthermore, since item 30(A) of Tender 345 did not require a declaration of released value in specified form as a condition of applicability, the failure of the Government to declare a released value on the Government bill of lading for the road grader shipment did not bar application of the tender's released valuation rates to the shipment as would have been the case if the commodity was covered under item 30(B).

AFL stated in its initial submission to this Office that the commodity descriptions in item 30(B), which include the term "tractor," were adopted from Interstate Commerce Commission (ICC) Released Rates Order No. MC-369 of December 7, 1954, and argued that the term "tractor" should be broadly defined. While the commodity descriptions in that order are identical to the descriptions contained in item 30(B) of AFL's Tender 345, we found that the ICC narrowly defines the scope of the commodities contained therein.

We determined that that order, granted on the petition of the National Automobile Transporters Association to carriers--

> "* * * in the specialized service of transporting passenger automobiles, commercial trucks, commercial tractors and trailers, buses and related motor vehicles,"

was limited to over-the-highway vehicles used for transportation of passengers or property, such as automobiles, trucks, and ambulances. We cited ICC decision Arco Auto Carriers, Inc., Extension-Escanaba, Mich. (Arco) 86 MCC 555, 559 (1961), as support for our conclusion. We then stated that the tender when viewed in light of its source, the ICC order, contemplated a specific kind of tractor, a "truncated-appearing motor vehicle," consisting of a motor, cab, and wheels to which various types of trailers are attached for the movement of freight. The tractor itself is primarily a source of power to tow the freight trailers. We found that this type of tractor was consistent with the objective intent of Tender 345, item 30(B). We cited Jerry McCarthy Highland Chevrolet Co. v. Department of Revenue, 88 N.W.2d 383, 384 (Sup. Ct. Mich. 1958), as illustrative of the kind of tractor we viewed as covered by the tender item description.

AFL now contends that the rate order was construed too restrictively in our decision. It is the carrier's position that the order was granted to "all motor common carriers," not only to carriers of motor vehicles; that some motor carriers are authorized by their ICC operating authority to transport all types of tractors, including those not designed to be used in the transportation of persons or property on the highways, such as farm-type tractors; and that the ICC, in the order, was not intending to limit the scope of the term tractors to those designed for the limited purpose of transporting passengers as property, as our decision concluded.

AFL has misunderstood our basis for determining the scope of the commodity description in item 30(B) of Tender 345. Well-established principles of tariff construction controlled disposition of this case. See 56 Comp. Gen. 529 (1977). Whatever may have been the intentions when tariff items are framed, tariffs must be construed according to their language, and the framer's intentions are not controlling. See B-174445, April 25, 1972. In the interpretation of a tariff, its terms must be taken in the

sense in which they are generally used and accepted, and it must be construed in accordance with the meaning of the words used. See Penn Central Co. v. General Mills, Inc., 439 F.2d 1338, 1340 (8th Cir. 1971).

In our view, despite the broad operating authority of AFL and, for that matter, the current operating authority of carriers that adopted the commodity descriptions in the ICC's order, the most reasonable inference that could be drawn from adoption is that AFL intended to limit application of item 30(B) to commodities generally understood to be within the operating authority of that specialized class of carriers known as carriers of motor vehicles. While AFL contends that tractor under item 30(B) should be defined in its broadest sense, AFL also stated, in essence, that it drafted its tender descriptions under item 30(B) using the order as its source.

As GSA correctly pointed out in its report to this Office in regard to AFL's claim, the order when issued was limited in scope to vehicles designed for over-the-highway use. The descriptions in the ICC's order consisted of commodities transported by specialized carriers of vehicles. The classification of the carrier is one engaged in the transportation of automobiles, trucks, trailers, etc., either by the truck-away or drive-away methods. See Descriptions in Motor Carrier Certificates, 61 MCC 209 (1952); Classification of Motor Carriers of Property 2 MCC 703, 711 (1937). Further, the trucks, or, in this case, tractors, authorized for transportation by this specialized group of carriers are designed for over-the-highway transportation of personnel and property. See Arco Auto Carriers, Inc., Extension-Escanaba, Michigan, supra.

In this context, Arco was used to illustrate the ICC's approach to determining the scope of a description, that is, whether authority to transport "trucks" encompassed "truck cranes" and "truck crane excavators." The guidance and related interpretive analysis in the Arco opinion are objective legal standards for determining the purpose and reason for the commodity descriptions and their "intended meaning"; the grant of permission in Arco to publish released value commodity rates was not pertinent to the question presented here--whether or not the description, "tractor," in item 30(B)(1) included road graders.

In our decision, we concluded that "tractor," as shown in item 30(B)(1), was limited to a vehicle designed for transportation and that road grader as described in the

Federal stock number literature was designed for construction work and not covered under item 30(B)(1). AFL has not shown that our conclusion or our analysis was erroneous.

We find no merit in AFL's three arguments: (1) that we assigned excessive weight to the "preamble" or commodity description used by the ICC in Order No. MC-369; (2) that the order does not state that the commodities described therein were limited to over-the-highway vehicles; and (3) that the order was issued to all motor common carriers.

With respect to the first argument, AFL admitted that its tender was tied to the description in the order, and the facts confirm their mutual identity. These factors support our treatment of that description. As to the second argument, we point out that the ICC carefully confined application of the order to commodities authorized for transportation by automobile transporters, either on the date of issuance of the order or thereafter, and the Commission specifically ordered that the commodity description could not be broadened to embrace other articles. In relation to the third argument, we refer to the order itself, which expressly limited application to carriers authorized to transport the commodities listed in the descriptions contained therein. The crucial fact undermining all of AFL's arguments is the ICC's interpretation of that commodity description. In Arco, the Commission explained the necessity for confining the term, "truck," for example, as that term appears in the description adopted here by AFL, within a narrow scope. With reference to the terms "trucks" and "commercial automotive vehicles," the Commission stated:

> "A commodity description is intended to be adequate to delineate with some specificity the type of commodity for which authority is granted and it is to be construed according to its obvious intent. Thus, when generic or class terms are employed in such descriptions they are construed in such a manner as to encompass only those commodities which are truly within the genus or class."

In relation to the question whether a truck crane was included in the two descriptions, the ICC stated:

> "An extremely broad interpretation of the phrase would encompass these commodities, but such an interpretation would of necessity also include almost

> any self-propelled motor vehicle. Clearly such a strained interpretation would defeat the intent of and the purpose and reason for commodity descriptions and would lead to chaos. Rather than accept such an interpretation we are constrained to interpret the term in the light of its accepted and obviously intended meaning."

In the Arco decision, the ICC essentially held that the commodities listed in the description for transportation by carriers of motor vehicles (the commodity descriptions which were by admission adopted by AFL) contemplate a vehicle designed for the conveyance of persons or things. In our view, the ICC's position in Arco clearly determined the resolution of the question, whether a road grader was a tractor within the meaning of the ICC's description of commodities authorized for transportation by carriers of motor vehicles.

None of the ICC cases cited by AFL in its reconsideration request supports the carrier's contention that our decision contains an error in law. For example, E. B. Law & Son, Inc., Extension-El Paso, Tex., 94 MCC 532 (1964), does not hold that "tractors must be deemed to embrace all commodities within a designated class," as AFL concludes. It involved the question of the scope of the term "refined petroleum products" listed in the carriers' operating authority.

The ICC, to the best of our knowledge, has never determined whether, under the ICC 1954 order, a road grader is a tractor, a case which would directly bear on our decision. AFL essentially disagrees with our legal conclusion; however, disagreement alone is not sufficient to cause us to overturn our decision in this case.

Since this request for reconsideration presents no evidence demonstrating an error in fact or law in our decision, our prior decision is affirmed. American Van & Storage, Inc.--Reconsideration, B-192951, March 17, 1980.

for Milton J. Socolar
Comptroller General
of the United States