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

FILE: B-219924 **DATE:** March 24, 1986

MATTER OF: C. I. Whitten Transfer Company

DIGEST:

1. A carrier's tariff, offering released value rates to the public generally, contained a provision increasing line-haul charges by 25 percent where a shipper failed to annotate the Bill of Lading in specified form declaring the value of the property. Condition 5, now published at 41 C.F.R. § 101-4.302-3(e), among the provisions governing Government Bill of Lading shipments, substantially complies with the tariff's formal annotation requirement. Therefore, the General Services Administration's disallowance of the carrier's claim for an additional 25 percent of original charges is sustained.

2. Government foreign military sales shipments, for which the Government is to be reimbursed, were shipped on Government Bills of Lading. Neither Baggett Transportation Company, Inc., 670 F.2d 1011 (Ct. Cl. 1982), which held that section 22 rates are not applicable to foreign military sales shipments, nor any other authority prohibits the use of Government Bills of Lading and the application of their provisions for such shipments.

C. I. Whitten Transfer Company, a motor carrier, asks for review of action taken by the General Services Administration (GSA) disallowing the carrier's claim for additional transportation charges.[1/] We sustain the action.

[1/] Whitten's claim for an additional allowance of $1,000.53 was disallowed by Settlement Certificate dated August 9, 1985.

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Background

In 1983 Government Bills of Lading (GBL)[2] were issued to Whitten for the transportation of three so-called foreign military sales shipments.[3] The carrier was paid on the basis of rates which apply when the value of the shipment is agreed to be not in excess of $2.50 per pound, published in the applicable tariff, Whitten's rate tariff, ICC WITT 300. The carrier presented supplemental bills to GSA which reflected a 25 percent increase of the original charges on the theory that the Government had not executed a written declaration of the property's value on the GBL's, as required by the tariff. The GSA, however, relied on a blanket declaration of limited valuation contained in 41 C.F.R. § 101-41.302-3(e), which is among the terms and conditions incorporated by reference in the GBL.[4]

Whitten presents two issues in contesting the validity of GSA's disallowance of its claim: (1) whether the GBL condition concerning limited valuation satisfies the tariff requirement for a written declaration on the GBL, and (2) whether the terms and conditions of the GBL are applicable to foreign military sales shipments.

Limited Valuation

There is no dispute that the tariff provides for an increase of 25 percent of the basic freight charges if the

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[2] Government Bills of Lading M-5147230, S-5779126, and S-5833790 were involved.

[3] These consist of materials sold to foreign countries under the Arms Export Control Act, 22 U.S.C. § 2751 et seq. See Baggett Transportation Company v. United States, 670 F.2d 1011 (Ct. Cl. 1982); see also Procurements Involving Foreign Military Sales, 58 Comp. Gen. 81 (1978).

[4] The terms of this provision were previously printed on the reverse of the Government Bill of Lading under "terms and conditions" as condition number 5.

shipper fails to provide a written declaration of value. The issue is whether the GBL condition satisfies that general requirement.

Item 848 of Whitten's tariff, ICC WITT 300, provides:

> "When any item is made subject to this Item, line haul rates and charges provided in that Item apply only when the shipper certifies in writing on the shipping order and bill of lading the following:
>
> > 'The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding 250 cents per pound for each distribution package.'
>
> "If the shipper fails or declines to execute the above statement, line haul rates and charges published in an Item made subject to this Item, will be increased by 25% to determine appropriate charges."

The GSA contends that the declaration incorporated in the GBL concerning limited valuation complies in substance with the requirement of item 848. The declaration, as published in revised form in 41 C.F.R. § 101-4.302-3(e), reads as follows:

> "(e) The shipment is made at the restricted or limited valuation specified in the tariff or classification or established under section 10721 of the Revised Interstate Commerce Act (49 U.S.C. 10721), formerly section 22 of the Interstate Commerce Act, or to another equivalent contract, arrangement, or exemption from regulation at or under which the lowest rate is available, unless otherwise indicated on the face of the GBL."

Whitten disputes that this declaration complies with the tariff requirement.

In Strickland Transportation Company, Inc. v. United States, 334 F.2d 172 (5th Cir. 1964), a tariff requiring a similar notation as a condition for application of released

value rates was involved. The court held that the declaration in condition 5 of the GBL demonstrated the Government's intention to ship at the lowest possible rate. Thus, where there is a requirement in a tariff for a declaration of limited value, the Government has satisfied this requirement in the terms of the Government Bill of Lading even though there is no specific declaration of limited value. This reflects the Government's policy as a self-insurer. See also Georgia Highway Express, Inc., 48 Comp. Gen. 335 (1968).

Strickland Transportation Company, Inc., addressed condition 5, which at that time was among the terms and conditions printed on the reverse of the GBL. Currently, 41 C.F.R. § 101-4.302-3(e) contains the revised version of condition 5. We have held that the change of language from condition 5 to the regulation, which formally extended its application to tenders, simply acknowledges previous holdings of this Office. In American Farm Lines, B-200939, May 28, 1981, we stated that the regulation, as former condition 5, relieves the Government of a requirement to declare value as a condition to application of the lowest available rates when the requirement in the tariff or tender is in general rather than specific form. See also 38 Comp. Gen. 768 (1959). Therefore, where a tariff provides released value rates for the public generally if a declaration of value is on the Bill of Lading or other shipping document, the declaration in the regulation as incorporated in the GBL substantially complies with the requirement. Accordingly, we find that the requirements of item 848 of the tariff were satisfied in the present case.

Foreign Military Sales Shipments

Whitten argues that even if the declaration incorporated in the GBL formally satisfies the tariff requirement for a written certification of value not exceeding $2.50 per pound, the provision may not be applied to foreign military sales shipments because they are not "Government shipments." To support its position Whitten cites Baggett Transportation Company v. United States, 670 F.2d 1011 (Ct. Cl. 1982).

We agree with the agency's contention that the Baggett decision is inapposite. The court there considered the different question of whether reduced rates offered only to the United States by a carrier pursuant to Section 22 of the Interstate Commerce Act, 49 U.S.C. § 10721 (1982), were

applicable to foreign military sales shipments. Since the Arms Export Control Act, 22 U.S.C. § 2792(b), required reimbursement of transportation costs to the United States, the court held that the reduced rates were not applicable because the United States did not receive the benefit of the reduced rates. Although the shipments were tendered on Government Bills of Lading, the issue of whether provisions of the Government Bill of Lading were applicable, was not raised. Here, the applicability of Section 22 rates is not in issue because generally applicable tariff rates, not Section 22 tender rates, were applicable.

The shipment of foreign military sales commodities by the Department of Defense is authorized under the Arms Export Control Act, 22 U.S.C. § 2751 et seq., and thus the use of Government Bills of Lading for such shipments appears proper. Since the shipments moved on Government Bills of Lading, the provisions of such bills apply to these foreign military sales shipments. Therefore, we conclude that the terms and conditions published in 41 C.F.R. § 101-4.302-3, governing acceptance and use of Government Bills of Lading, were applicable to these shipments.

Accordingly, the General Services Administration's action, disallowing Whitten's claim for additional transportation charges, is sustained.

for Milton J. Socolar
Comptroller General
of the United States