

DECISION

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

FILE: B-203639

DATE: December 30, 1981

MATTER OF: American Farm Lines

DIGEST:

1. Carrier has not shown that motorized road grader is tractor as contemplated by Tender 345, item 30(B)(1), since record indicates road grader is not used for hauling and drawing over the highway for transportation of passengers or property.
2. Since the commodity shipped is not covered under item 30(B)(1) of Tender 345, it is covered by item 30(A), which applies to commodities not specifically covered under items 30(B) or 30(C).
3. Item 30(A) of Tender 345 does not require a declaration of released value in specified form as a condition of applicability; therefore, despite absence of declaration on Government bill of lading, the released valuation rates of the tender apply to the shipment. B-200939, May 29, 1981.

American Farm Lines (AFL) requests review of a settlement action taken by the General Services Administration (GSA) in connection with the transportation of a commodity that is described on Government bill of lading (GBL) M-3,233,518 as "GRADER ROAD MOTOR GRADERS" LS, NEW NMFC: 122420." (AFL originally billed and was paid \$5,627.50, apparently on the basis of released value rates in its Tender 345. AFL's supplemental bill for \$10,973.13, which GSA disallowed, is based on higher rates published in AFL's Tariff 1-E, MF-ICC 10.

We agree with GSA that the rates in Tender 345 are applicable and sustain GSA's audit action.

There is no disagreement by AFL with GSA's position that road graders, in fact, were shipped and that Tender

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345 offers rates on road graders) (among the commodities specified in the various commodity lists therein) where the GBL complies with the released value provisions of item 30. The question raised by GSA's audit action is whether the released value rates in the tender are applicable where, as here, there is no declaration of value on the GBL and resolution of that question depends on whether road graders are included among the commodities listed in item 30, section (B) as contended by AFL, or covered generally in section (A), as contended by GSA.)

In our decision in American Farm Lines, Inc., B-200939, May 29, 1981, we found that under item 30, applicability of the various rates and valuation charges in the tender depends upon the declared or agreed value of the commodity shipped. We noted that the item is subdivided into three sections--(A), (B), and (C)--according to commodities and the declared or agreed value, and that section (A) applies generally to commodities not listed in other sections. We held that on commodities listed in section (B), where the Government failed to annotate the GBL in the form specified to show released valuation, Tender 345 was not applicable, and AFL could properly bill at higher applicable rates; but, if the commodity was not specified in section (B) or (C) (although included in the commodity lists), the commodity was covered by section (A), which provides that Condition 5 of the GBL (41 C.F.R. § 101-41.302-3(e)) relieves the Government of the requirement of declaring the value on the GBL.

Item 30, section (B), in pertinent part, lists the following commodities:

"* * * passenger automobiles, ambulances, hearses, taxis, buses, bus chassis, freight automobiles, trucks, truck chassis, truck trailers, trailers, trucks and trailers combined, tractors, tractors and trailers combined; * * *."

AFL contends that the commodity shipped is included within the term "tractor." GSA disagrees and contends that since the article shipped is not covered under sections (B) and (C) of item 30, section (A) applies; therefore, Tender 345 rates are applicable.

AFL makes two arguments in support of its view. First, AFL asserts that the term "tractor" should be broadly defined and that the term is intended to cover

all types of "tractors." In this connection, AFL points out that the descriptions in item 30(B) were adopted from Interstate Commerce Commission Released Rates Order No. MC-369 of December 7, 1954. Second, AFL states that the article as described in item 122420 of the National Motor Freight Classification (NMFC) includes "tractor," and item 122420 was a part of the commodity description contained on the GBL.

We find, contrary to AFL's position, that the commodity descriptions in the ICC's Released Rates Order No. MC-369 do not include road graders, and AFL's reference to the classification description in item 122420 is not helpful because it refers to tractors and road graders in the disjunctive: "Tractors and Tractor Excavating, Grading or Loading Attachments combined * * * or Motor Graders."

Released Rates Order No. MC-369 was 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,"

It is clear, therefore, that the descriptions relate to over-the-highway vehicles used for transportation of passengers or property such as automobiles, trucks and ambulances. Cf. Arco Auto Carriers, Inc.; Extension-Escanaba, Mich., 86 MCC 555, 559 (1961). (In our view, the tender, when viewed in light of the ICC order, contemplates a specific kind of tractor.) The term tractor here is descriptive of 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 and goods. The tractor itself is primarily a source of power to haul the trailers. 60 C.J.S. Motor Vehicles § 7(2) (1969); Jerry McCarthy Highland Chevrolet Co. v. Department of Revenue, 88 N.W.2d 383, 384 (Sup. Ct. Mich. 1958). Therefore, the term tractor, in its broadest sense, is defined as an automotive vehicle used for drawing or hauling. 60 C.J.S. Motor Vehicles § 7(2) (1969); Golding-Keene Co. v. Fidelity-Phenix Fire Ins. Co., 69 A.2d 856; (Sup. Ct. N.H. 1949) Classification Ratings on Army Tractor Tanks, 85 ICC 383, 384 (1923).

The commodity at issue here is not a tractor under item 30(B). According to the descriptive data for the Federal stock number noted on the GBL, the article shipped is a motorized road grader manufactured as construction equipment. Neither the Federal stock number description, GBL, nor other shipping documents contained in the record describe the article shipped as a tractor.

The NMFC classification description does not show that motor graders fall within any broad definition of tractors. This description separates tractors from motor graders within the item and clearly suggests that although the commodities have the same rating where class rates are applicable, tractors and motor graders are clearly identified as two separate articles.

We conclude that section (A) of item 30 applies to this shipment because road graders are not among the commodities specified in section (B) and the released valuation rates in Tender 345 are applicable.

We sustain GSA's audit action.

Harry R. Van Cleave
For Comptroller General
of the United States