

DECISION

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

PL-2
KRITZER
119997

FILE: B-203432.2

DATE: November 29, 1982

MATTER OF: American Farm Lines

DIGEST:

Prior decision, that item 30(B) of Carrier's Tender 345 does not include armored personnel carriers because they were not designed for over-the-highway use, is affirmed where the carrier has not presented evidence that demonstrates an error in fact or law.

American Farm Lines (AFL) requests that we reconsider our decision in American Farm Lines, B-203639, December 30, 1981. In that decision, we held that the released value rates contained in AFL Tender 345 were applicable to a shipment of armored personnel carriers (Army tractor tanks). We found that the AFL had not shown that the personnel carriers were passenger automobiles under Tender 345, item 30(B)(1), because the record indicated that the carriers were not designed 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 personnel carrier shipment did not bar application of the tender's released valuation rates to the shipment as would have been the case if the commodity had been covered under item 30(B).

We affirm our previous decision.

AFL contests our conclusion that personnel carriers are not designed to convey passengers and property over the highway. AFL contends that Diamond T Motor Car Company v. Hawkeye Motor Express, Inc., 48 M.C.C. 213 (1948), in which the Interstate Commerce Commission (ICC) found that half-track vehicle parts should be classified as automobile parts rather than as machine parts, supports its position that the personnel carriers are automobiles. AFL points out that with the use of special tractor tread shoes the carriers can traverse highways without causing damage. AFL also cites numerous private publications which indicate that the carriers in fact may be used over highways.

We do not believe that Diamond T Motor Car Company is dispositive of the issue of whether armored personnel carriers are passenger automobiles. In that decision, the ICC stated that:

"Half-tracks are ordnance vehicles designed to travel both on and off the highways, carrying troops or personnel and having seating arrangements for 10 or more persons. They have 2 rubber-tired wheels in the front and 2 endless-track units in the rear, one on each side. Each vehicle has a specially designed commercial-type truck chassis with an armored hull, powered by a conventional 6-cylinder gasoline engine. The front of each vehicle, like other passenger cars, is equipped with a hood, fenders, headlights, wheels, and tires. The chassis has a conventional-type frame with a front-and-rear drive, including a clutch, transmission, drive shafts, and differentials. The vehicles are designed to operate freely at about 50 miles an hour, and at a maximum speed of approximately 70 miles an hour."
48 M.C.C. 213, 214.

Pointing out that an automobile is defined as a vehicle designed for road travel, the commission concluded that half-track parts should be classified as automobile parts:

"The vehicle, it is true, had rear driving units which afforded an unusual amount of traction and made the vehicle

particularly effective in operations off improved highways, but the record is clear that it was equally effective on the highways. Its ability to attain speeds of 50 and even 70 miles an hour, its conventional wheels in front, and its many other features similar to or identical with ordinary automobiles and trucks, is convincing that a half-track in reality is an automobile or truck with a special type of rear-driving unit, the nature of which did not change the essential character of the vehicle." 48 M.C.C. 213, 215.

Unlike the half-track, the personnel carrier does not appear to have been designed for road travel. In contrast to the half-track, the personnel carrier is fully tracked with no conventional wheels. It bears little physical resemblance to ordinary automobiles or trucks. We believe that the fully tracked drive mechanism indicates that the personnel carrier, although indeed capable of traversing highways, was primarily intended for cross-country terrain use. The Department of the Army Technical Manual strongly supports this conclusion, stating that the personnel carrier is "intended primarily for operation over cross-country terrain." Department of the Army Technical Manual 9-2300-257-20 (February 1969). It is also significant that the personnel carrier may be used on a highway, without inflicting damage to the highway, only if special tread shoes are attached to its standard tread. Thus, over-the-highway transportation is merely a secondary use of the carrier; the carrier was primarily designed and is chiefly used for transportation over cross-country terrain. Since it is the primary, not the secondary, function that is relevant and material to the classification of commodities for ratemaking purposes, we conclude that the carriers cannot be classified as passenger or freight automobiles. See Atchison, Topeka & Santa Fe Railway Company v. United States of America, 310 I.C.C. 663, 668 (1960).

AFL points out that the commodity descriptions in item 30(B) were adopted from ICC Released Rates Order No. MC 369, December 7, 1954. The order was granted on the petition of the then National Automobile Transporters Association. One member of the Association (Arco Auto Carriers, Inc.), AFL claims, indicates in a

tariff filed with the ICC that it has the authority to transport "crawler type tractors." AFL contends that if an Association member has authority to transport crawler tractors, it necessarily has authority to transport the armored personnel carriers. If Association members have authority to transport fully tracked personnel carriers, it follows, AFL believes, that personnel carriers are within item 30(B).

We reject this reasoning. The fact that one carrier has included crawler type tractors in a tariff on file with ICC does not establish that fully tracked commodities are generally within the scope of item 30(B). As we have pointed out, item 30(B) must be construed based on the generally used and accepted meaning of the commodities listed. See American Farm Lines--Reconsideration, B-203639, April 22, 1982. At most, this evidence establishes that one carrier subjectively interprets the order as authorizing the carrying of personnel carriers. As discussed above, we find that the generally used and accepted meaning of the descriptions in item 30(B) does not encompass armored personnel carriers.

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 
Comptroller General
of the United States

END