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DECISION



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

FILE: B-190700

DATE:

AUG 2 1978

MATTER OF: Trans Country Van Lines, Inc.

DIGEST:

1. Carrier rate tender covering electronic equipment applies on shipments of various types of electrical equipment which are not (1) personal effects or property, (2) incident to a base closing or (3) do not require the specialized handling usually employed in moving household goods.
2. Where offer in Tender 1-W is conditioned to apply "only in absence of an applicable Tender," existence of applicable individual tender 150 prevents acceptance of Tender 1-W.
3. "Electronic equipment" is a generic name which gives information as to nature or class of an article.
4. Commodity description in tender contains no language which would serve to limit the words "electronic equipment" to a narrower definition than its all inclusive meaning.
5. The words "electronics equipment" are unambiguous and must be accorded their ordinary meaning.

Trans Country Van Lines, Inc. (Trans Country), in a letter dated November 12, 1977, requests the Comptroller General of the United States to review the General Services Administration's (GSA) action in disallowing five of its claims for a total of \$5,259.70. See section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. 66(b) (Supp. V, 1975). GSA disallowed the claims on the basis of a settlement certificate or by a letter to Trans Country sustaining an original disallowance. Under regulations implementing section 201(3) of the Act, the disallowance of a claim constitutes a reviewable settlement action 4 C.F.R. 53.1(b)(2) and 53.2 (1977) 7; Trans Country's letter complies with the criteria for requests for review of that action. 4 C.F.R. 53.2 (1977).

GSA reports that the five shipments were transported by Trans Country for the account of the Government from and to various points in the United States. The Government bill of lading (GRL) number for each shipment and the commodity transported is as follows:

<u>GBL No.</u>	<u>Commodity</u>
F-6227671	Military Communication Outfit
F-7944043	Electrical equipment, Transmitting, Receiving, Data Gathering, Recording
D-4141444	Electrical Instruments, NOI
F-9662080	Radio Impulse Transmitting and Receiving Sets
F-6750407	Recorders or Players, Separate Or Combined, Tape Or Wire

Although on four of the five shipments Trans Country originally collected transportation charges derived from its Tender I.C.C. #150, sub #5 (Tender 150), Trans Country's claims for additional transportation charges are based on rates in Section IV of Government Rate Tender I.C.C. No. 1-W (Tender 1-W), issued by the Movers' & Warehousemen's Association of America, Inc., and in which Trans Country is a participating carrier. Tender 150 and Tender 1-W are reduced rate quotations naming continuing offers to transport property for the Government; they are made under Section 22 of the Interstate Commerce Act, 49 U.S.C. 22 (1970), and are applicable to motor carriers under Section 217(b) of that Act, 49 U.S.C. 317(b) (1970). Trans Country asserts that Tender 1-W applies to the five shipments.

GSA states that the disallowances on the first four shipments are based on its opinion that Tender 150 contains the charges applicable on those shipments and that the charges in Section VI of Tender 1-W apply to the fifth shipment, the one moving under GBL No. F-6750407.

Trans Country has the burden of proving that the charges in Tender 1-W apply to the five shipments. 41 C.F.R. 101-41.604 (1977); see 57 Comp. Gen. 155 (1977).

Item 10 of Tender 1-W reproduces the description of the term "Household Goods" adopted by the Interstate Commerce Commission in Ex Parte No. MC-19, Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, 473, 505 (1939), and reads in part:

"(a) Household Goods The term 'household goods' means (1) PERSONAL EFFECTS AND PROPERTY USED OR TO BE USED IN A DWELLING when a part of the equipment or supply of such dwelling;

(2) FURNITURE, FIXTURES, EQUIPMENT AND THE PROPERTY OF STORES, OFFICES, MUSEUMS, INSTITUTIONS, HOSPITALS, OR OTHER ESTABLISHMENTS, when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and

(3) ARTICLES, INCLUDING OBJECTS OF ART, DISPLAYS, AND EXHIBITS, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods.

(b) Interpretation of the definition in (a) of this rule. Subsection (1) shall not be construed to include property moving from a factory or store, except such property as the householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier, by the householder.

Subsection (2) shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as an incident to the removal of the establishment, or a portion thereof, from one location to another.

Subsection (3) shall not be construed to include any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods."

It seems obvious that the commodities shipped were not personal effects or property within the meaning of subsection 1 of the definition in Tender 1-W. Nor does the record indicate that the commodities shipped were incident to a base closing within the meaning of subsection 2 of that definition. And the commodities seem to be of the type that could have been picked up by any common carrier of general commodities and therefore not within the meaning of subsection 3. Thus, contrary to Trans Country's contention, the rates in Section IV of Tender 1-W are not applicable to any of the five shipments. Cf. B-181137, July 5, 1974.

While CSA applied charges from Section VI of Tender 1-W to the fifth shipment because Tender 150 does not apply to shipments to

Nevada, we note that the GBL is annotated "SHIPPER TO LOAD AND CONSIGNEE TO UNLOAD," which indicates that the use of special equipment and handling apparently was not necessary. Therefore, this shipment is not covered by the definition of household goods in Item 10 of Tender 1-W.

Page 1 of Tender 1-W contains this caveat: "This Tender will apply only in the absence of an applicable individual tender as filed by the carriers listed herein." Thus, the offer in Tender 1-W is conditioned to apply only if Tender 150 does not apply. See our decision of July 19, 1977, B-158097, to Trans Country; and B-156925, March 29, 1977. And as stated, GSA determined that the lowest charges available to the Government on the first four shipments were based on Tender 150.

Item 1 of Tender 150 states that it is applicable on:

"OFFICE FURNITURE, FILES, FIXTURES AND EQUIPMENT, LINK TRAINERS, FLIGHT SIMULATORS, RADAR SETS, ELECTRONIC EQUIPMENT, COMPUTERS, MISSILES, SPACECRAFT AND/OR PARTS THEREOF, AND/OR COMPONENTS, SCIENTIFIC INSTRUMENTS AND ARTICLES OF SECRET NATURE WHEN SO CLASSIFIED BY THE MILITARY AND SPECIFIED ON THE GOVERNMENT BILL OF LADING EXCEPT ARTICLES EQUIPMENT AND INSTRUMENTS WHICH REQUIRE THE USE OF TEMPERATURE AND/OR HUMIDITY CONTROLLED EQUIPMENT."

Trans Country contends that none of the five shipments can be classified as electronic equipment, and in support has furnished a copy of Movers' & Warehousemen's Association of America, Inc., Agent, Tariff No. 68. The tariff is not applicable here but apparently was furnished by Trans Country in support of its argument that the rates in Section IV of Tender 1-W apply to the five shipments. The tariff applies on household goods but includes among other commodities radio and television transmission, receiving and recording equipment, a commodity similar to those shipped here. However, Tariff No. 68 applies only on articles which because of their unusual nature or value require specialized handling and the equipment usually employed in moving household goods. And as previously stated, the record does not indicate that this is the case here.

Trans Country contends that the rates in Tender 150 do not apply on shipments of "tape recorders, radio transmitters and receiving sets, a metal type personnel shelter and electrical instruments" because as the author of the tender it never intended the rates in the tender to be applied on these types of shipments.

It states that the intentions of the framer of the tender must be given consideration in ascertaining the meaning of words used in Tender 150.

The construction of tariffs and rate tenders presents a question of law which is not different in character from that presented when the meaning of any other document provision is in dispute. W. P. Brown & Sons Lumber Co. v. Louisville & N. R.R., 299 U.S. 393, 397 (1937); Penn Central Co. v. General Mills, Inc., 439 F.2d 1336, 1340 (8th Cir. 1971). And it is well established that one party's unexpressed subjective intentions do not bind the other party. Hotchkiss v. National City Bank of New York, 200 F. 287, 293 (D.S.D. N.Y. 1911); United States Potash Co. v. McNutt, 70 F.2d 126, 129 (10th Cir. 1934) and that any ambiguity in a written document will be construed strictly against the drafter, Trans Country, in this case, and in favor of the party to whom the contract is directed, the shipper, in this case. See United States v. Great Northern Ry., 337 F.2d 243, 246 (8th Cir. 1964); C. S. H. Transportation Co. v. United States, 436 F.2d 480, 482 (Ct. Cl. 1971).

In our opinion "electronic equipment" is a generic name which gives information as to the nature or class of an article. Bailey Motor Co. v. Watson 122 F. Supp. 627, 628 (D.C. 1954); Olympic Motors v. McCroskey, 132 P.2d 355, 356 (Wash. 1942). Further, all of the commodities shipped except for the military communication outfit, which GSA confirms contained electronic equipment, were classified in the National Motor Freight Classification (NMFC) under the generic heading of "Electrical Equipment Group." See, for example, Item 60500, NMFC A-12, MF-ICC 14. There is apparently no generic heading for electronic equipment in the classification and any commodity listed under the Electrical Equipment Group would seem to apply.

The word "electronics" as it applies here is defined in The American College Dictionary 3rd (1970), as "the investigation and application of phenomena involving the movement of free electrons, as in radio, television, etc., * * *."

A basic principle of construction to aid in ascertaining the meaning of a contract or other written instrument is that the meaning of general words or terms will be restricted by more specific descriptions of the subject matter. See Restatement (Second) of Contracts 299 (e)(1973); L. Simpson, Contracts, 209 (2d ed. 1965). The Tender 150 commodity description, however,

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contains no language which would serve to limit the words "electronic equipment" to a narrower definition than its all inclusive meaning. B-186091, July 11, 1977. Thus, from the facts, the words "electronic equipment" are unambiguous and must be accorded their ordinary meaning. See Laclede Steel Company v. Louisville & Nashville R.R., 218 I.C.C. 378, 384 (1936).

We agree with GSA that the five shipments properly can be classified as "electronic equipment" as described in Tender 150. The GSA action in sustaining its settlement certificates disallowing Trans Country's claims on the first four shipments is correct and is sustained. We believe that GSA incorrectly applied the charges in Section VI of Tender 1-W to the fifth shipment of recorders or players destined to Nevada. In the absence of any applicable tariff or tender rate, it will be necessary for GSA to apply to the fifth shipment a quantum relief measured by the charges in Tender 150 or in Tender 1-W, whichever is lower. See B-181137, July 5, 1974.

GSA's action should be consistent with this decision.

Comptroller General
of the United States