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**DECISION**



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

FILE: B-198433

DATE: July 28, 1980

MATTER OF: American Farm Lines, Inc.

DLG00205

**DIGEST:**

1. In determining whether 30 caliber rifles are "guns," thus exempt from applicability of rates in carrier's Freight, all kinds, tender, proper classification of article under individual descriptive items in National Motor Freight Classification, for class rating purposes, not controlling.
2. Where commodities, generally, in tender are described in technical language identifiable to individual classification items, but one commodity, "guns," is not, draftsman intended "guns" to be interpreted in non-technical sense, as ordinarily used and understood; as ordinarily used and understood, 30 caliber rifles, are "guns," therefore exempt from Freight, all kinds tender.
3. Where there is reasonable and permissible construction of term, "guns," in carrier's tender, rule of strict construction against carrier cannot be applied.
4. Where article is exempt from applicability of lower Freight, all kinds tender, question of whether tender is governed by Classification is irrelevant.

American Farm Lines (AFL) requests [review of settlement action taken by the General Services Administration (GSA) in relation to 11 shipments of rifles which were transported from Tooele Army Depot, Tooele, Utah, to Rock Island Arsenal, Rock Island, Illinois, in January and February 1978. GSA reports that it caused to be deducted from monies otherwise due AFL, the sum of \$1,529, as a result of an audit determination that the carrier had collected overcharges of

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\$139 for services performed on Government bill of lading (GBL) M-3232166 and on each of ten other GBLs (M-3232096, M-3232164, M-3232098, M-3232162, M-3232161, M-3232097, M-3231575, M-3232094, M-3232095, and M-3232165).

The issue is whether the commodity shipped on the 11 GBLs is excluded by item 140 from application of the rates published in AFL's Tender ICC 266 (Tender 266)-- the basis used by GSA in its audit action. In the resolution of this issue the facts relating to GBL M-3232166 are considered representative of all the shipments.

The record shows that the shipment moving under GBL M-3232166 was described as "FSN:1005 00674 1425 NOUN: RIFLE FIREARMS NOI IN BOXES 'NMFC:069300.'" The charges of \$2,212 billed by the carrier were derived from AFL's Commodity Tariff 200, MF-ICC 9 (Tariff 200). Tariff 200 contains distance commodity rates for the transportation of weapons, ammunition, explosives and drugs. A rate of \$6.45 per 100 pounds was applied to a minimum weight of 30,000 pounds for a distance of 1,300 miles, resulting in charges of \$1,935; the additional charges of \$277 (\$1,935 + \$277 = \$2,212) relating to accessorial services, are not in dispute.

The lower rate of \$4.49 per 100 pounds (minimum weight 30,000 pounds) applied by GSA was derived from item 1170 of Tender 266. This rate is a general commodity rate applicable to Freight, all kinds, except articles described in item 140. It is AFL's position that the commodity shipped is described in item 140, as being included within the description, "Guns or gun mounts, or components thereof."

The parties apparently agree that Federal Stock Number 1005-00674-1425 (shown in the GBL description) identifies 30 caliber rifles, and neither party disagrees with the premise that Tender 266 is governed by the National Motor Freight Classification (Classification); however, GSA contends that in view of the individual explicit descriptions of pertinent articles in the classification, "rifles" are not "guns." GSA stresses the distinction between item 69300 and item 146250 in the Classification, contending that these rifles are covered by item 69300, which covers "Firearms or Parts, NOI,"

and that item 146250, which covers "Guns, NOI" would not include rifles because the item includes Cannon, Howitzers, or Mortars--weapons which, according to GSA, are larger than rifles, and are not "portable."

We note that if we had here the question of classification, 30 caliber rifles would not be embraced by item 146250 because the item applies to weapons that have a minimum bore of 3/4 inch, a point acknowledged by AFL. The definition of caliber in Army Regulation 310-25 indicates that a 30 caliber rifle would have a bore diameter of only 30/100 of an inch; therefore, the rifles' bore diameter is too small to come within the description, "Guns, NOI," in item 146250. But this fact and the assumption that 30 caliber rifles would be classified properly as Firearms, NOI, rather than Guns, NOI, alone do not justify the conclusion that rifles cannot be exempted from the tender as guns to determine the applicability of the tender.

AFL contends that the term, "guns" as used in item 140 of Tender 266 to identify exempted articles, is a general term which is broad enough to cover any weapon that propels a projectile through a barrel, including B-B guns, machine guns, carbines, rifles, howitzers, cannon and pistols; therefore, the bore of a weapon or its portability are irrelevant considerations. AFL finds support for its position in Webster's Third New International Dictionary (1971), which, in part, defines a gun to include portable firearms, viz., rifles, shotguns, carbines and pistols. We note, however, that there is some support for GSA's position in the Dictionary of Weapons and Military Terms, Quick, McGraw-Hill, New York, 1973, where at page 206 "gun" is defined in one sense, specifically, as having a relatively long barrel and usually over 30 caliber in bore.

The narrow issue raised by the opposing contentions is whether the term, "guns," as used in item 140, exempting articles from applicability of the lower Tender 266 rates was intended to be limited to the description, "Guns, NOI," as used in item 146250 of the Classification. If so, GSA would be correct because of the smaller bore diameter of 30 caliber rifles.

The interpretation of quotations of freight rates, such as Tender 266, is governed by traditional rules of contract law, and ambiguities are construed against the carrier, the party preparing the document. B-194951, November 23, 1979; 56 Comp. Gen. 529, 531 (1977); 39 Comp. Gen. 352, 355 (1959). However, a strict construction against a carrier is not justified where such a construction ignores a permissible and reasonable construction. Penn Central Co. v. General Mills, Inc., 439 F.2d 1338, 1341 (8th Cir. 1971); 56 Comp. Gen. 529 (1977). Further, interpretation must be made in the sense in which the terms are generally used and understood. Penn Central Co. v. General Mills, Inc., supra.

By reference to the exempted articles with which the exemption for guns is associated in item 140 it may, at first, appear that the term "guns" was intended to be tied to an individual description in the classification. This association can be seen by reference to item 140 as it appears on 5th revised page No. 9:

"EXEMPTED COMMODITIES

Rates named in items making reference to this item will not apply on the following articles.

Ammunition, Explosive or Fireworks, Classes 'A' or 'B' as defined in Department of Transportation and Regulations Governing Transportation of Hazardous Materials, ICC ATA 111-B, Supplements thereto or successive issues thereof.

Ammunition and Explosives, viz:

- Caps, blasting or electric blasting
- Cartridge cases (cartridge shells),  
cannon, empty, primed
- Fireworks, NOI
- Fuze, safety or detonating cord
- Fuzes, percussion, tracer, time or  
detonating, separate or combined
- Grenades, hand or rifle
- Guns or gun mounts, or components  
thereof
- Percussion caps
- Primers, cannon or small arms
- Safety squibs

(For applicable rates, see American Farm Lines Tender I.C.C. 309, supplements thereto or successive issues thereof.)

Articles contaminating or injurious to other lading.

Articles requiring protection from heat or cold, unless moving under provisions of Item 300.

Articles which because of their weight or overdimension permits or require trailers with a deck height of less than 58" measured from ground to deck surface of trailer.  
(For applicable rates, see American Farm Lines Tender I.C.C. 345, supplements thereto or successive issues thereof.)

Coins and currency

Fresh fruits and vegetables

Livestock and/or live wild animals"

The other exempted articles associated with the exemption on guns under the heading "Ammunition and Explosives, viz:" are identifiable to individual descriptions in cancelled Classification NMFC A-13, MF-ICC 15 (although similar identification cannot be made by reference to current Classification ICC NMFC 100-D). The identification is made through use of identical language and by references in Section 2 of the Tender to specific Classification item numbers. Moreover, it should be noted that there is no item in the Classification which covers the description--"Guns or gun mounts, or components thereof."

The term, "guns," in item 140 and the term "Guns, NOI" in item 146250 of the Classification are literally and technically distinguishable. The abbreviation "NOI" is a technical transportation term which is defined in the Classification as "not more specifically described herein." See B-155349, December 11, 1969. Use of the word "gun" without "NOI" in item 140 is a strong indication of the draftsman's intention that the exemption

was not to be restricted to large guns having a minimum bore diameter of 3/4 inch, as in item 146250, because framing of the associated exempted articles in language identifiable to specific Classification descriptions is indicative of the draftsman's awareness of the utility of specificity; however, instead of using the explicit, restrictive language of individual Classification items to describe the exemption on guns, a non-technical term was deliberately chosen. Therefore, the exemption ought to be interpreted to cover all types of articles coming within the description and not be limited to any specific item which is merely illustrative of a general commodity class. See B-137180, June 27, 1962; see also B-158024, April 7, 1966. Because of this, we believe that "guns" should be viewed as that term is defined in its general sense, which is also shown in Quick's Dictionary.

The general definition of gun on page 206 of Quick's Dictionary reads as follows:

"In general, a piece of ordnance consisting essentially of a tube or barrel and used for throwing projectiles by force usually the force of an explosive, but sometimes that of a compressed gas, a spring, etc. The general term embraces such weapons as are sometimes specifically designated as guns - howitzers, mortars, cannon, firearms, rifles, shotguns, carbines, pistols, and revolvers. \* \* \*"

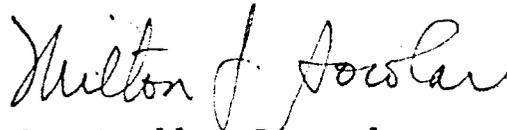
This definition makes consideration of portability and bore diameter irrelevant, and comes close to the broad view advocated by AFL; i.e., that it includes almost any weapon that propels a projectile through a barrel. We believe that under the circumstances this is a reasonable and permissible construction of the term "guns" as it is ordinarily used and understood; therefore, a strict construction against the carrier, as advocated by GSA, would not be permissible. See Penn Central Co. v. United States, supra.

The unpersuasiveness of GSA's position stems from the excessive leap in reasoning from the premise that Tender 266 is governed by the Classification, to the unstated but implied conclusion that articles exempted from the tender must be defined by the individual descriptions in the Classification. But the fact that a

tender is governed by the Classification is irrelevant where the tender, by its terms, is inapplicable to the articles shipped. Further, GSA's view overlooks the fact that Section 22 quotations are voluntary. Rocky Mountain Carriers-Agreement, 314 ICC 279 (1961). As a result, carriers may deprive the Government of lower rates on articles of its choice.

Based on the above, we believe the rifles shipped on the 11 GBLs are exempt articles under item 140 and the general commodity rate in item 1170, applicable to Freight, all kinds, is not applicable because the articles shipped were encompassed under the term "guns" in item 140.

Accordingly, GSA's settlement action was incorrect and refund of \$1,529 should be made to American Farm Lines, Inc.



For the Comptroller General  
of the United States