



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-259756

Date: August 18, 1995

DIGEST

1. A carrier claiming additional charges for transporting a guided missile with a warhead rather than Class A Explosives, NOIBN, has the burden of proving the identity of the article shipped 3 years earlier, where the government bill of lading (GBL) described the article as "ROCKET AMMUNITION WITH EXPLOSIVE PROJECTILE, CLASS A EXPLOSIVE." A carrier meets this burden when: (1) it provides a copy of a Department of Defense (DOD) Single Line Item Release/Receipt, DD Form 1348-1, which refers to the GBL number and the date of shipment involved and which describes each item shipped item as a "GUIDED MISSILE SURFACE ATTACK, BGM-71E;" and (2) the Military Traffic Management Command confirms that DOD shipped guided missiles.
2. For purposes of transportation charges, a guided missile with a warhead should be classified under Department of Defense Unique Code 064300 Sub 04 (missiles or rockets guided with warheads), and not as 064300 Sub 01 (ammunition, explosives, fireworks, or chemical munitions, NOIBN, Class A) when DOD ships the entire guided missile system even though a part of it is a warhead containing Class A explosive in the warhead.

DECISION

Tri-State Motor Transit Company, requests that we review the General Services Administration's (GSA) denial of its claim for additional charges of \$417.40 for services it performed for the Department of Defense under government bill of lading (GBL) D-1,250,369. The parties ask us to determine whether the items shipped were guided missiles, and if they were, whether transportation charges for a shipment of guided missiles belonging to the Department of Defense (DOD) should be based on a rate that applied to Class A ammunition or explosives, not otherwise indexed by name (NOIBN), or to one that applied to guided missiles or rockets with warheads. We reverse GSA's settlement.

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Tri-State provided dromedary service to move this material in June 1990. The GBL was prepared by the shipper, and the shipper described the contents of the shipment on the GBL as "ROCKET AMMUNITION WITH EXPLOSIVE PROJECTILE, CLASS A EXPLOSIVE." The GBL also indicated that Tri-State's Tender 200 applied to the shipment and that the Classification Item Number in block 18 was NMFC 64300-1. This number relates to the Department of Defense Unique (Commodity) Code (DODUC) 064300 Sub 01; i.e., commodities properly classified as "Ammunition, explosives, fireworks or chemical munitions, NOIBN, Class A . . ." See page 10 of the Revised Instructions for Use of DOD MT Form 364-R, Standard Tender of Freight Services, effective June 1, 1989.

The carrier based its original charges on its Tender No. 200, which included rates for DODUC 064300 Sub 01. However, in this claim, Tri-State argues that its Tender No. 200 did not apply on the shipment because the shipment actually consisted of items that were properly classified as DODUC 064300 Sub 04; that is, "Missiles or Rockets, guided with warheads . . ." Id. Tri-State argues (without dispute by the government) that at the time of this shipment the rates in Tender No. 200 did not apply to Sub 04 material, and that the higher rates in its Tariff 4000B did apply. In support of its position, in this case, Tri-State provided a copy of a DOD Single Line Item Release/Receipt, DD Form 1348-1, which refers to this GBL transaction and which describes each item shipped as "GUIDED MISSILE SURFACE ATTACK, BGM-71E." (Our research indicates that a BGM-71E is the TOW 2A heavy anti-tank wire command link guided missile with a warhead.¹)

At our request, MTMC reexamined this matter and found the contents of the shipment to be "Taurus" guided missiles. GSA believes that our decisions Tri-State Motor Transit Company, B-256085, Aug. 5, 1994, and Tri-State Motor Transit Company, B-258343; B-258458, Feb. 14, 1995, are dispositive. GSA also argues that even if this shipment contained guided missiles, each item was a Class A explosive if the attached warhead was such an explosive. It appears that GSA would classify an item as Sub 04 only if the warhead was inert or contained some other substance.

As the decisions cited by GSA indicate, Tri-State, as the claimant, must furnish evidence to clearly and satisfactorily establish its claim, and establish the clear legal liability of the United States and its right to receive payment. See J & V Audit Co., B-211465, Nov. 18, 1983. Also, the bill of lading is presumed to correctly describe the article tendered for transportation, but this presumption is not conclusive - the important fact is what moved, not what was billed. See Yellow Freight System, Inc., 57 Comp. Gen. 155, 156 (1977). In contrast to the situation in these prior Tri-State decisions, here Tri-State has offered clear evidence that the contents were guided missiles, and MTMC now confirms that DOD shipped guided missiles.

¹See Jane's Infantry Weapons, 20th Ed. 1994-1995, pp. 348-350.

We disagree with GSA concerning the classification of these items for purposes of rates and charges. The contents of the warheads may require the shipper to adhere to the requirements for Class A explosives under the Department of Transportation's Hazardous Materials Regulation, 49 C.F.R. Parts 171-177, but DOD provided for a specific scheme for purposes of charges. In deciding between DODUC 064300 Sub 01 and DODUC 064300 Sub 04, we have recognized that the nature and character of each shipment at the time the shipper tenders it to the carrier determines its status for rate purposes. Significant facts which weigh heavily in making this determination are the producer's description of the article for sales purposes, the manner in which it was billed, its use and value, and how it is regarded in the trade. See Navajo Freight Lines, Inc., 57 Comp. Gen. 649, 651 (1978). In devising a classification scheme under the Revised Instructions for Use of DOD MT Form 364-R, Standard Tender of Freight Services, MTMC clearly distinguished between Class A ammunition and explosives, not otherwise indexed by name, and a guided missile with a warhead (even though the warhead may contain a Class A explosive). If MTMC had not distinguished guided missiles with warheads (including those which contain Class A explosives) from other Class A explosives, we could agree with GSA, but under the circumstances, we cannot think of a clearer example of a commodity falling under DODUC 064300 Sub 04.

We reverse GSA's settlement, and return this matter to GSA for re-audit. GSA should apply the lowest charges that were available on the date of shipment for material classified as DODUC 064300 Sub 04.

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General Counsel**