

GAHC010038042022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./44/2022

M/S INDIAN OIL CORPORATION LTD.
ASSAM OIL DIVISION, DIGBOI 786171, ASSAM

VERSUS

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, NF RAILWAY, MALIGAON,
GUWAHATI ASSAM 781011

Advocate for the Petitioner : MR. K P MAHESWARI

Advocate for the Respondent : SC, RAILWAY

Linked Case : Review.Pet./50/2022

M/S INDIAN OIL CORPORATION LTD.
ASSAM OIL DIVISION
DIGBOI 786171
ASSAM

VERSUS

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER
NF RAILWAY

MALIGAON
GUWAHATI ASSAM 781011

Advocate for : MR. K P MAHESWARI
Advocate for : SC
NF RLY appearing for UNION OF INDIA

Linked Case : Review.Pet./48/2022

M/S INDIAN OIL CORPORATION LTD.
ASSAM OIL DIVISION
DIGBOI
ASSAM
786171

VERSUS

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER
NF RAILWAY
MALIGAON
GUWAHATI
ASSAM 781011

Advocate for : MR. K P MAHESWARI
Advocate for : SC
NF RLY appearing for UNION OF INDIA

Linked Case : Review.Pet./43/2022

M/S INDIAN OIL CORPORATION LTD.
ASSAM OIL DIVISION
DIGBOI
ASSAM
786171

VERSUS

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER
NF RAILWAY
MALIGAON
GUWAHATI ASSAM
781011

Advocate for : MR. K P MAHESWARI
Advocate for : SC
RAILWAY appearing for UNION OF INDIA

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

03.01.2023

Heard Ms. M. Sarma, learned counsel appearing for the petitioners. Also heard Mr. B. Chakraborty, the learned CGC appearing for respondents.

2. This is a common order for these four items.
3. MFA 85/2016, MFA 82/2016, MFA 83/2016 and MFA 94/2016 were disposed of on the basis of the view taken in MFA 92/2016. The relevant paragraph in those judgments reads as under:

“In the instant set of appeals, the view taken by this Court in MFA 92 of 2016 is also applicable. Because, the railway receipts did not have any report pertaining to the quantity or volume of goods loaded in the train. Therefore, it is the duty of the respondent to prove the actual weight or volume of the goods it loaded in the train. There is no evidence in these appeals as to the quantity or volume of goods actually loaded by the respondent.”

4. Ms.Sarma has pointed out that in MFA 92 of 2016, a direction was passed remanding the matter to the Tribunal for fresh disposal by giving liberty to M/S. Indian Oil Corporation to bring on record any evidence that they may desire to bring so as to substantiate as to what was the weight or volume of the petroleum product loaded by them in the place of origin.

5. I have considered the submissions made by the learned counsel of both sides.

6. Now, the question arises whether the powers of review provided by Order 47 Rule 1 of the CPC can be applied in the present case. Order 47, rule 1 reads as under –

“1. Application for review of judgment - (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which

he applies for there view.

[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

7. The impugned judgments were passed on the basis of the ratio laid down by this Court in MFA 92 of 2016. If MFA 92 of 2016 was remanded, the instant MFAs should also have been remanded to the Tribunal for fresh disposal in terms of the observations made in MFA 92 of 2016. That was not done. It is an error apparent on the face of the record. Therefore, the review petitions are allowed.

8. The impugned judgments passed in MFA 85/2016, MFA 82/2016, MFA 83/2016 and MFA 94/2016 are modified to the extent that they are remanded to the Tribunal for fresh disposal of the original applications in the light of the observations made in MFA 92 of 2016.

All the review petitions are disposed of accordingly.

JUDGE

Comparing Assistant