

GAHC010287882018



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

Case No. : WP(C)/85/2019

M/S MAHASHAKTI CEMENTS
A PARTNERSHIP FIRM REPRESENTED BY ITS PARTNER SMT. RAMITA
JHUNJHUNWALA HAVING ITS OFFICE AT H.M. TOWER, 1ST FLOOR, S.C.
GOSWAMI ROAD, GUWAHATI, ASSAM, PIN- 781001.

VERSUS

UNION OF INDIA AND ANR.
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI, ASSAM- 781011.

2:THE ASSISTANT REGISTRAR
RAILWAY CLAIMS TRIBUNAL
GUWAHATI BENCH
STATION ROAD
GUWAHATI
ASSAM- 781011

For the Petitioner(s)	: Ms. M. Sharma, Advocate
	: Ms. M. Kalita, Advocate
For the Respondent(s)	: Mr. B. Sarma, SC, Railway Department

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 20.09.2023

1. The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondent Authorities for keeping the matters related to the issue of levy of Terminal Charges pending till the final decision of the Supreme Court in

Special Leave to Appeal (C) No.29210-29212/2018.

2. The learned counsel appearing on behalf of the Petitioner submits that the issue as to whether the Railway Authorities could impose the Terminal Charge is pending adjudication before the Supreme Court in the above mentioned Special Leave to Appeal case and as such the Railway Tribunal at Guwahati be directed not to decide any of the matters wherein the issue of Terminal Charge arises pending disposal of the Special Leave to Appeal before the Supreme Court. It is relevant to note that the said SLP arises out of the common judgment and order dated 23.02.2018 passed in MFA No.67/2014, MFA No.72/2014 and MFA No.68/2014.

3. From a perusal of the said judgment passed by this Hon'ble Court, it transpires that in MFA No.67/2014, the claim petition filed before the Railway Tribunal related to:

- (a) Claim on account of freight incentive was Rs.74,58,636/-.
- (b) Freight over charges on charging of excessive distance was Rs.11,88,377/-.
- (c) Claim on account of originating terminal charges was Rs.8,88,150/- and
- (d) Destination terminal charges was Rs.24,920/- totaling to Rs.93,12,581/-

4. In MFA No.68/2014, the claim related to :-

- (a) Claim on account of freight incentive of Rs.41,72,119/-.
- (b) Freight over charges on charging excessive distance was Rs.2,42,613/-.

- (c) Claim on account of originating terminal charges was Rs.7,51,410/-.

5. In MFA No.72/2014, the claim related to:-

- (a) Claim on account of freight incentive was Rs.45,12,305/-.
- (b) Freight over charges on charging excessive distance was Rs.2,66,076/-.
- (c) Claim on account of originating terminal charges was Rs.50,480/-.

6. It is seen that the MFA No.67/2014 and MFA No.68/2014 were filed by the Railway Authorities whereas MFA No.72/2014 was filed by the Claimant. In the original claim proceedings in relation to MFA No.67/2014 and MFA No.68/2014, the Railway Tribunal did not grant the claim on account of Terminal Charges. This was not put to challenge by the claimants therein.

7. The Appeal proceeding i.e. MFA No.72/2014 was filed by the Claimant as the claim proceedings was rejected in toto. This Court vide the judgment and order dated 23.02.2018 found that the order of rejecting the claim of the Appellant in MFA No.72/2014 was not sustainable and as such allowed the Appeal and remanded the matter back to the Railway Tribunal for fresh adjudication.

8. From a perusal of the entire judgment and order dated 23.02.2018, there is nothing which would show that this Court had adjudicated the authority of the Railway Authorities to impose terminal charges. Mr. B. Sarma, the learned counsel appearing on behalf of the Railways submits on instructions that in the Special Leave to Appeal (C) No.29210-29212/2018, the issue of imposition of Terminal Charge is not in issue.

9. In view of the above, taking into account the common judgment and order dated 23.02.2018 passed in MFA No.67/2014, MFA No.68/2014 and MFA No.72/2014, the fact that the issue of Terminal Charge being not a subject matter of consideration in the Special Leave to Appeal (C) No.29210-29212/2018, the question of issuance of a writ upon the learned Railway Claims Tribunal not to adjudicate any claims wherein issues arise pertaining to Terminal Charges on account of the pendency of Special Leave to Appeal (C) No.2920210-29212/2018 does not arise.

10. This Court having not found any merit in the writ petition, accordingly dismisses the writ petition.

JUDGE

Comparing Assistant