

GAHC010194102011



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

Case No. : MFA/82/2011

THE UNION OF INDIA,
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON ,
GUWAHATI-11, ASSAM.

VERSUS

M/S THE ASSOCIATED CEMENT COMPANIES LTD.,
9, BARBOURNE ROAD, KOLKATA

Advocate for the Petitioner : MR. B SARMA

Advocate for the Respondent : MR.K P MAHESWARI

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. B. Sarma
Advocate.

For the Respondents : None appeared.

Date of Hearing : 22.05.2024.

Date of Judgment : 16.07.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. B. Sarma, learned counsel representing the appellant. None appears for the respondent.

2. This is an application under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and order dated 24.01.2011 passed by the Railway Claims Tribunal, Guwahati Bench in Original Application No.224/2003.

3. A train load consignment of cement was booked from JCWS to TZTB vide Invoice No.6 to 10, RR No.085593 to 085597 dated 21.08.2001. The freight charge was taken on wagon load basis, not on train load basis. Therefore, the respondent demanded refund of ₹49,163/- .

4. The Tribunal had referred to a Railway Board Circular dated 17.08.1998, wherein it was mentioned that in order to avail the benefit of train load rate of charge, 38 wagons are to be booked. In this case, the respondent booked only 20 wagons. The Tribunal held that up to TZTB, the entire train was full of the load of goods and therefore, the respondent is entitled to the train load charge rather than wagon load charge. The Tribunal directed the appellant to refund ₹49,163/- to the respondent.

5. Mr. B. Sarma has referred to the Notification dated 17.08.1998 and submitted that in order to avail the benefit of train load class rate, 38 wagons are to be booked. Mr. Sarma further pointed out that the Tribunal itself had admitted that the RR showed that 20 wagons were booked by the respondent. According to Mr. Sarma, the said train consisted of only 20 wagons and that does not mean that the respondent would get the benefit of train load class charge.

6. I have considered the submissions of Mr. Sarma and also gone through the Notification dated 17.08.1998.

7. I find that since the entire train consisted of only 20 wagons, the opinion of the Tribunal that the respondent would get the benefit of train load class of charge, is erroneous in view of the Notification dated 17.08.1998.

8. The appeal is allowed.

9. The judgment and order dated 24.01.2011 passed by the Railway Claims Tribunal, Guwahati Bench in Original Application No.224/2003, is set aside.

The appeal is disposed of accordingly.

JUDGE

Comparing Assistant