IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 7796 of 2012 (Y)

PETITIONER:

ULTRA TECH CEMENT LIMITED ,
REGISTERED OFFICE, B WING, AHURA CENTRE
SECOND FLOOR, MAHAKALI CAVES ROAD, ANDHERI (EAST),
MUMBAI, 400093
REPRESENTED BY ITS DULY AUTHORIZED POWER-OF-ATTORNEY HOLDER
SRI. RAMESH MALOO, SON OF SRI. NAND KISHOR MALOO
DEPUTY MANGER, (FINANCE & COMMERCIAL)
ULTRA TECH CEMENT LIMITED, ERNAKULAM, KERALA,682016.

BY ADVS.SRI.GEORGE JACOB (JOSE)
SRI.DILEEP P.PILLAI

RESPONDENT:

1. **THE UNION OF INDIA**
   REPRESENTED BY THE SECRETARY, MINISTRY OF RAILWAYS
   CENTRAL SECRETARIAT, NEW DELHI-110001.

2. **THE DIVISIONAL RAILWAY MANAGER**
   SOUTHERN RAILWAY, PALAKKAD-678001.

3. **THE SENIOR DIVISIONAL COMMERCIAL MANAGER**
   SOUTHERN RAILWAY, PALAKKAD, PIN-678001.

4. **THE CHIEF GOODS SUPERVISOR**
   RAILWAY GOODS SHED, NILESWAR, KASARGODE
   PIN-671121.

5. **THE CHIEF GOODS SUPERVISOR**
   RAILWAY GOODS SHED, VALAPATTANAM, KANNUR
   PIN-670001.

6. **THE STATION SUPERINTENDENT**
   VALAPATTANAM RAILWAY STATION, VALAPATTANAM, KANNUR
   PIN-670001.

7. **THE CHIEF GOODS SUPERVISOR**
   RAILWAY GOODS SHED, VADAKARA, KANNUR
   PIN-670001.

8. **THE CHIEF GOODS SUPERVISOR**
   RAILWAY GOODS SHED, EDAKKOT, KANNUR-670366.

9. **THE JOINT DIRECTOR**
   TRAFFIC, COMMERCIAL (RATES), RAILWAY BOARD
   NEW DELHI-110001.

10. **THE CHIEF COMMERCIAL MANAGER**
    SOUTHERN RAILWAY, CHENNAI-600001.

BY ADV.SRI.JAMES KURIAN, SC FOR RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PTO

APPENDIX

WP(C).No. 7796 of 2012 (Y)

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE POWER OF ATTORNEY DEED DATED 26/12/2012 OF THE PETITIONER COMPANY AUTHORIZING SRI.RAMESH MALOO, DEPUTY MANGER(FINANCIAL & COMMERCIAL) ULTRA TECH CEMENT LIMITED,ERNAKULAM,KERALA, TO PREFER THE WRIT PETITION.

EXHIBIT P2: TRUE COPY OF THE INTERIM ORDER DATED 10/2/2012 OF THIS HON'BLE COURT IN WP(C) NO.3450/2012.

EXHIBIT P3: TRUE COPY OF THE COMMUNICATION DATED 20/3/2012 OF THE FOURTH RESPONDENT INTIMATING OF THE IMPOSITION OF ENHANCED PENAL DEMURRAGE.

EXHIBIT P4: TRUE COPY OF THE COMMUNICATION DATED 20/3/2012 OF THE SIXTH RESPONDENT ENHANCING PENAL DEMURRAGE CHARGES.

EXHIBIT P5: TRUE COPY OF THE COMMUNICATION DATED 20/3/2012 OF THE SEVENTH RESPONDENT ENHANCING PENAL DEMURRAGE CHARGES.

EXHIBIT P6: TRUE COPY OF THE COMMUNICATION DATED 20/3/2012 OF THE EIGHTH RESPONDENT ENHANCING PENAL DEMURRAGE CHARGES.

EXHIBIT P7: TRUE COPY OF THE NOTIFICATION DATED 19/12/2015 ISSUED BY THE 9TH RESPONDENT.

EXHIBIT P8: TRUE COPY OF THE NOTIFICATION DATED 29/12/2005 ISSUED BY THE 10TH RESPONDENT.

RESPONDENT'S EXHIBITS:

EXHIBIT R3(1) COPY OF THE CIRCULAR NO. TC-1/2005/201/2 DATED 19/12/2005

EXHIBIT R3(2) COPY OF THE ADVANCE RATE NOTIFICATION NO.12/2005 (GOODS NO.129) DATED 29/12/2005.

// True Copy //

P.A. to Judge

sas

K. VINOD CHANDRAN, J.

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W.P.(C) No.7796 of 2012 - Y

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Dated this the 16th day of July, 2015

J U D G M E N T

The petitioner in the above writ petition is concerned with the enhanced penal demurrage charges demanded from them by the respondent Railways, for the delay in clearing the consignments by the petitioners and releasing the wagons. The similar issues as raised in the writ petitions were considered by this Court in W.A No. 917 of 2014 and connected cases, wherein, the operative portion is as below:

> "(1) The writ petitioners are permitted to make an application for waiver before the Station Manager/Goods Supervisor within 30 (thirty) days from today giving all details along with reasons and relevant records as necessary.
>
> (2) Station Master/Goods Supervisor shall forward the application for waiver of demurrage charges to the Divisional Officer with his remark within 15 (fifteen) days of receipt of the application.
>
> (3) The Divisional officer shall take a decision on the waiver application considering the reasons and circumstances given by the writ petitioners in the waiver application. Consequential orders be issued thereafter.

> In case the writ petitioners are aggrieved by the said decision, they can prefer appeal to the higher authority."

In such circumstance, the above writ petition is also disposed of in a similar manner reserving the right of the petitioners to move as per the aforesaid directions.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to judge