IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: March 31st, 2016

FAO Nos.707, 6294, 6300, 6343 to 6398, 6400 to 6402, 6404 to 6419, 6421 to 6453, 6459 to 6490, 6493 to 6496, 6498 to 6504, 6506 to 6520, 6522 to 6537, 6539 to 6554, 6556 to 6575, 6577 to 6592, 6636 to 6779, 6781 to 6783, 6785, 6787, 6790 to 6792, 6795 to 6799, 6801 to 6808, 6813 to 6962, 6978 to 7026, 7032 to 7165, 7174 to 7404, 7556 and 7797 to 7878 of 2014 (O&M)

M/s Hindustan Petroleum Corporation Limited, Delhi

...Appellant

Versus

The Union of India through General Manger, Northern Railway, Baroda House, New Delhi

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sumit Mahajan, Senior Advocate with Mr. Atul Nehra and Mr. Hitesh Ghai, Advocates for the appellant (in FAO No.707 of 2014).

Mr. Atul Nehra, Advocate for the appellant (in all other connected cases).

Mr. Sandeep Vermani, Advocate, for the respondent (in all cases).

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide FAO Nos.707, 6294, 6300, 6343 to 6398, 6400 to 6402, 6404 to 6419, 6421 to 6453, 6459 to 6490, 6493 to 6496, 6498 to 6504, 6506 to 6520, 6522 to 6537, 6539 to 6554, 6556 to 6575, 6577 to 6592, 6636 to 6779, 6781 to 6783, 6785, 6787, 6790 to 6792, 6795 to 6799, 6801 to 6808, 6813 to 6962, 6978 to 7026, 7032 to 7165, 7174 to 7404, 7556 and 7797 to 7878 of 2014 all titled as *M/s Hindustan Petroleum Corporation Limited, Delhi Versus The Union of India through General Manger, Northern Railway, Baroda House, New Delhi* preferred against a common order dated 27.11.2013 passed by the

Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the 'Claims Tribunal') whereby the claim of amount paid in excess by the appellant to the respondent-railways between the period 01.04.2008 to 30.09.2010 along with application for condonation of delay under Section 17(1) and (2) of The Railway Claims Tribunal Act, 1987 (hereinafter referred to as 'The Tribunal Act, 1987'), stand dismissed on the grounds of being not maintainable as the statutory notice as required under Section 106(3) of The Railways Act, 1989, has not been served within the period of six months as prescribed and further that the explanation given for the delay in preferring the claim application does not merit acceptance.

2. Briefly the facts are that the appellant had been using the services of the respondent-railways for ferrying its various petroleum products from Asaudah Railway Station, District Rohtak to various destinations. Undisputedly, the competent authority to notify the distance between the different Railway Stations is the Chief Goods Supervisor and the freight charges were levied according to the notified distance between the destinations. With the installation of computerised railway freight charges system called Terminal Mechanism System (TMS) at Asaudah Railway Station, Computerised Railway Receipts (CRR) were started to be issued with effect from 27.02.2011. It then came to light that the respondent had been making illegal recovery of freight charges for the petroleum products which were being despatched by the appellant through Railway Tank Wagons from Asaudah to sixteen different destinations by wrongly projecting the distance in excess than the actual distance. For example, the distance between Asaudah Railway Station, District Rohtak (Haryana) and

Partapur, District Meerut (Uttar Pradesh) as notified by the Chief Goods Supervisor, was 125 kilometres, whereas under the TMS, the distance came out to 100 kilometres i.e. freight for 25 kilometres in excess was being charged by the respondent-railways from the appellant. The claims for refund of this excessively charged freight have been made in these appeals for the period 01.04.2008 to 30.03.2011 for these sixteen destinations.

3. As all these claims are based upon similar set of facts and pleadings between the same parties as also the dispute involved is the same, except for the destination stations and accordingly the excess distance for which freight has been charged, the date of issuance of the railway receipts, the amount claimed and the number of days for which the condonation of delay is being sought. The counsel for the parties stated that FAO No.707 of 2014 be taken as the lead case. They have put forth their respective arguments and submissions with reference to the pleadings therein and, therefore, the basic facts have been taken therefrom.

4. In the said appeal, the consignment was booked on 08.05.2008, vide Railway Receipt No.C914343 from Asaudah (Haryana) to Partapur Railway Station (Uttar Pradesh). For bringing the application for the claim of compensation within the ambit of sub-section (1) of Section 106 of The Railways Act, 1989 which mandates service of notice within a period of six months from the date of entrustment of the goods and for claim of refund of an overcharge within six months from the date of payment or the date of delivery of goods at the destination station whichever is later under sub-section (3) of Section 106 of The Railways Act, 1989, an application for condonation of delay of 1772 days was filed under Section 17(1) and (2)

of The Tribunal Act, 1987. The reason for the delay as stated is that the applicant-appellant came to know about the illegal charging of the freight when the revised TMS was introduced at Asaudah Railway Station with effect from 27.02.2011. The discrepancy in excess charging of freight came to light when a consignment was booked of the petroleum products from Asaudah to Partapur for which TMS receipt was issued on 27.02.2011, where the distance between the two stations was mentioned as 100 kilometres and the charges were accordingly levied, whereas earlier the distance notified was 125 kilometres and freight charges were also levied for the said distance which was in excess of actual distance. Claim for refund was applied for which has been repudiated by the respondent on 19.03.2012, declining the claim on the ground that it was not made within six months as permissible under the statute. It was stated that the delay was neither intentional nor deliberate and being a *bona fide* one, required sympathetic consideration for being condoned. It is asserted that the Chief Goods Supervisor has notified the distance between Asaudah and Partapur as 125 kilometres for which the railway receipts generated manually were being issued during 01.04.2008 to 27.02.2011 illegally recovering the freight for extra distance of 25 kilometres. It was also pleaded therein that the amount was paid by mistake and, therefore, the same was liable to be refunded.

5. These claim applications along with application for condonation of delay were sought to be contested on the plea that the same were not maintainable as the statutory notice required under Section 106(3) of The Railways Act, 1989 was never served within the statutory period of six

months and the delay was unexplained and in any case, could not be condoned as the claim application itself was not maintainable.

6. On considering the submissions made by the counsel for the parties and the pleadings, the Claims Tribunal proceeded to dismiss the claim applications on the ground that the main application for claim as preferred was itself not maintainable as the statutory period within which the refund could have been claimed being six months had expired as no notice has been served upon the respondent-railways as required under Section 106(3) of The Railways Act, 1989, and consequently the application for condonation of delay has also been dismissed on the ground of main application for claim being not maintainable and no just and reasonable explanation has been given for the delay in approaching the Claims Tribunal.

7. Counsel for the appellant submits that the Claims Tribunal has erred in coming to a conclusion that the claim as made would be a refund of overcharge, in fact, it is a refund of an illegal charge. He contends that overcharge would be something which is excess of that which is due according to law, whereas a charge which is not permissible in law, would be an illegal charge i.e. it cannot be such money which is recovered where nothing was due. In the present case, the only recoverable charge was for 100 kilometres, whereas the respondent-railways have been charging for a distance of 125 kilometres prior to the introduction of the TMS. In support of this contention, he relies upon the judgment of the Supreme Court in *Union of India and Ors. Versus West Coast Paper Mills Ltd. And Anr., AIR 2004 SC 3079* and reliance has also been placed upon the judgment of the

Orissa High Court in *Union of India and others Versus Steel Authority of India Limited, AIR 1997 (Orissa) 77.* On the basis of these judgments, he asserts that the illegally charged freight was liable to be refunded under Section 72 of the Indian Contract Act, 1872, according to which a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. He contends that in case of an illegal charge, there is no limitation prescribed and, therefore, the application for condonation of delay, should have been allowed and Section 106(3) of The Railways Act, 1989, would not be applicable. In support of this contention, he relies upon the judgment of Andhra Pradesh High Court in *Union of India Versus Rashtriya Ispat Nigam Ltd. (Steel Plant), AIR 2005 (A.P.) 184.*

8. On the other hand, counsel for the respondent has placed reliance upon the judgment of the Supreme Court in *Shri Ramji Enterprises Rep. by Managing Partner Versus Union of India (UOI) and Ors.,* 2014 (2) RCR (Civil) 901 (S.C.) to contend that the delay in giving notice is fatal for the claim under Section 106 of The Railways Act, 1989, as the mandate of sub-section 3 of Section 17 of The Tribunal Act, 1987, has not been complied with.

9. I have considered the submissions made by learned counsel for the parties and with their able assistance, have gone through the impugned order passed by the Claims Tribunal but do not find any ground to interfere with the same.

10. The facts in this case are not in dispute. Prior to the introduction of Terminal Mechanism System (TMS), Manual Railway Receipts (MRR) were issued. The freight to be charged was to be as per the

distance notified by the competent authority i.e. the Chief Goods Supervisor. Admittedly, the competent authority issued a notification according to which the distance between the destinations Asaudah (Haryana) and Partapur (Uttar Pradesh) was 125 kilometres and the freight was being charged in accordance thereof for the said distance. The appellant had accepted the said distance and proceeded to deposit the determined freight without any protest or objection. After the introduction of the TMS at the Asaudah Railway Station, the distance was notified which came out to be 100 kilometres as per the Computerised Railway Receipts (CRR). The freight thereafter was being charged treating the distance to be 100 kilometres. Even the refunds as claimed during the period 01.10.2010 to 27.02.2011 have been accepted which were within the period of six months as per Section 106(3). The claim which has been made now in these appeals is for the period 01.04.2008 to 30.09.2010 which claims have been rejected by the respondent stating that the same have been received beyond the period of six months prescribed under Section 106(3) of The Railways Act, 1989.

11. The basic question which begs a decision in the present case is whether the freight as charged by the respondent is 'overcharge' or 'illegal charge'?

12. The difference between overcharge and illegal charge is very thin and the Hon'ble Supreme Court in *Union of India and Ors. Versus West Coast Paper Mills Ltd. (supra)* has explained the same. Overcharge has been stated to be any charge in excess of that prescribed or permitted by law. To be an overcharge, a sum of money must partake of the same

character as the charge itself or must be of the same genus or class as a charge; it cannot be any other charge of money such as money recovered where nothing is due. Overcharge is simply a charge in excess of that which is due according to law. Illegal charge is thus, one which would not fall in the above category. In the opinion of this Court, an illegal charge would be one that is prohibited in or forbidden by law and in other words a charge in violation of express provisions of law.

13. Testing the issue involved in the present case in the light of the above principles distinguishing overcharge and illegal charge i.e. charge of freight for 25 kilometres in excess of the actual distance by the Railways, it would turn out to be an overcharge as the sum of money is of the same character as the charge itself for the simple reason that the respondent undisputedly, can charge for the distance for which they carry the goods. The respondent was entitled to charge the freight. The excess charge, thus, recovered has the same class and genus as the charge itself. It is a different aspect that the charged freight is in excess because of the difference in the distance prior to and after the introduction of TMS. The freight charged is not in violation of any express provision of the statute nor is it prohibited in or forbidden by law which would bring it within the fold of an illegal charge. Thus, the excess freight charged by the respondent is held to be an overcharge and not an illegal charge.

14. It is undisputed that prior to introduction of the TMS on 27.02.2011 at Asaudah Railway Station, the competent authority i.e. Chief Goods Supervisor had notified the distance between different Railway Stations and the freight was being charged as per the notification

which was admitted and accepted by the appellant without any challenge or protest. The competence, jurisdiction and authority of the Chief Goods Supervisor has never been challenged nor is under challenge here. Similar is the position qua the notifications issued by the said authority giving the distance, thus, the freight so charged during that period in any case cannot be termed as illegal.

15. In the present case, the freight rates as notified by the competent authority in exercise of its statutory power to do so has not been challenged nor have the notifications or the freight rates declared illegal or unreasonable by any competent Tribunal or Court and, therefore, were legal and anyone sending the goods by rail was liable to pay the freight charges in accordance with the distance notified. It would at best be a charge in excess of that permitted by law. The plea of the appellant that by accepting the claims of refund for the period 01.10.2010 to 27.02.2011, the respondent had admitted its illegal act of charging in excess the freight, would not help as these claims for refund made by the appellant fell within the permissible period of six months under Section 106(3) of the The Railways Act, 1989.

16. Principle of acquiescence would fully be applicable to the facts and circumstances of the present case. It is the undisputed case of the parties that no objection has ever been raised by the appellant regarding overcharging of freight by the respondent. The appellant, in simple words, can be said to have accepted the charges demanded by the respondent-railways, as it did not raise even a little finger at any point of time regarding overcharging of freight. The appellant cannot claim advantage of its long slumber and cannot be granted the claim at this

belated stage after unexplained and inordinate delay that they came to know subsequently about the mistake on the part of the Railways.

17. Thus, the common law doctrine of estoppel by acquiescence is strictly applied in this case and the appellant can be said to have acquiesced to the claim and is now estopped from challenging the claim or making a counter-claim.

18. Reliance by the counsel for the appellant on the judgment of the Supreme Court in *West Coast Paper Mills Ltd.'s case (supra)* is misplaced as in the said case, a complaint was earlier filed against the railway, complaining illegality on account of contravention of the provisions of Section 28 of the Indian Railways Act, 1890, which claim was accepted by the Tribunal and the Tribunal held the freight rates applied by the Railway Administration to be illegal and unreasonable. The appeal preferred by the Union of India was dismissed and the decision of the Tribunal affirmed by the Supreme Court in *Union of India Versus West Coast Paper Mills Limited, 1970(3) SCC 606*. The issue had attained finality and was no more *res integra*. It is in the subsequent ligation for refund of these very freight charges that the Hon'ble Supreme Court held the charged freight to have been illegally recovered being it to be in violation of Section 28 of the Indian Railways Act, 1890 as per the earlier upheld findings of the Tribunal. Present is not such a case as there is no such declaration or finding by any competent Tribunal or Court, thus, no benefit can be derived by the appellant from this judgment.

19. The claim as put forth by the appellant, in the light of the above, would fall under Section 106 of The Railways Act, 1989, sub-section

3 of which mandates notice within six months from the date of such payment or the date of delivery of such goods at the destination station whichever is later. Admittedly in all these cases, the claims are beyond six months and thus, *prima facie* would not be maintainable. But an application for condonation of delay has been preferred under Section 17(1) and (2) of The Tribunal Act, 1987, which gives rise to another question with regard to the jurisdiction of the Claims Tribunal to entertain such an application for condonation of delay and the maintainability of the claim application itself under Section 106 of The Railways Act, 1989.

20. Before embarking upon this aspect, reference at this stage be made to the judgment of the Hon'ble Supreme Court in *Birla Cement Works Versus G.M. Western Railways and another 1995(2) Supreme Court Cases 493* where while dealing with a case of similar nature and on almost similar facts, where the claimant discovered the mistake where the railway authorities confirmed their mistake in charging excess freight on wrong calculation of distance and benefit of Section 17 of the Limitation Act, 1963, was being sought to be taken to bring it within the statutory period prescribed for making a claim, it has been held as follows:-

> *"2. The principal contention raised by the petitioner is that it had discovered the mistake when the railway authorities have confirmed by their letter dated 12-10-1990 that they had committed a mistake in charging excess freight on wrong calculation of distance. The limitation starts running from the date of discovery of mistake and, therefore, stands excluded, by operation of Section 17(1)(c) of the Limitation Act, 1963 (Act 21 of 1963) and that Section 78-B has no application to the facts in this case. In consequence, the High Court and the Tribunal have committed error of law in rejecting the claim for refund. We find no force in the*

> *contention.*
>
> *3. Section 17(1)(c) of the Limitation Act, 1963, would apply only to a suit instituted or an application made in that behalf in the civil suit. The Tribunal is the creature of the statute. Therefore, it is not a civil court nor the Limitation Act has application, even though it may be held that the petitioner discovered the mistake committed in paying 'overcharges' and the limitation is not saved by operation of Section 17(1)(c) of the Limitation Act.*
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> *4. Section 78-B of the Act provides that a person shall not be entitled to refund of overcharge or excess payment in respect of animals or goods carried by Railway unless his claim to the refund has been preferred in writing by him or on his behalf to the Railway Administration to which the animals or goods were delivered to be carried by Railway etc. within six months from the date of the delivery of the animals or goods for carriage by Railway. The proviso has no application to the facts of this case. An overcharge is also a charge which would fall within the meaning of Section 78-B of the Act. Since the claims were admittedly made under Section 78-B itself but beyond six months, by operation of that provision in the section itself, the claim becomes barred by limitation. Therefore, the Tribunal and the High Court have rightly concluded that the petitioner is not entitled to the refund of the amount claimed".*

From the above, it is apparent that the Limitation Act, 1963, will not apply and an overcharge would fall within the meaning of Section 106 of The Railways Act, 1989 (the counsel for the parties agree that Section 106 of The Railways Act, 1989, is corresponding to Section 78-B of the Indian Railways Act, 1890) and, therefore, the limitation prescribed therein shall be applicable for such claims. Therefore, it can safely be concluded that the appellant shall not be entitled for refund of the overcharge, as this claim was hopelessly barred by period prescribed as limitation for bringing such claims under The Railways Act, 1989. The claims were admittedly made under Section 106 of The Railways Act, 1989 and strictly applying the operation of that provision, the claims become barred by limitation. Therefore, the Claims Tribunal has rightly concluded that the appellant is not entitled to the refund of the amount claimed.

21. The judgment of the Andhra Pradesh High Court in *Rashtriya Ispat Nigam Ltd. (Steel Plant) (supra)* relied upon by the counsel for the appellant would not support the appellant's case in the light of the above authoritative judgment of the Supreme Court in *Birla Cement Works' case (supra)*. Further, it is distinguishable on facts as in that case there was a printing mistake in IRCA Goods Tarrif Part-I, Vol-II which was corrected and a modified Tariff Order issued by the Railway Board which lead to excessive freight charge. The position is not the same here as this is a case of overcharge, if any, and not illegal charge as held by this Court above.

22. In the light of the above observations of the Hon'ble Supreme Court, the plea of the appellant for condonation of delay under Section 17 (1) and (2) of The Tribunal Act, 1987, needs evaluation including its maintainability before the Claims Tribunal as also the Tribunal's jurisdiction, power and authority qua the claim for refund made under Section 106 of The Railways Act, 1989. For understanding the same, reference to Section 13 which deals with the jurisdiction, power and authority of Claims Tribunal and Section 17 which prescribes limitation period for an application within which any claim application shall be admitted by the Tribunal needs to be made. Section 13 of The Railway

Claims Tribunal Act, 1987, reads as follows:-

> ***13. Jurisdiction, powers and authority of Claims Tribunal.-****(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any Civil Court or a Claims Commissioner appointed under the provisions of Railway Act,-*
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> *(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for-*
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> *(i) compensation for loss, destruction, damages, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;*
>
> *(ii) compensation payable under Section 82 A of the Railways Act or the rules made thereunder; and*
>
> *(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.*
>
> *[(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124 A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any Civil Court in respect of claims for compensation now payable by the Railway Administration under section 124 A of the said Act or the Rules made thereunder.]*
>
> *(2) The provisions of the [Railways Act, 1989 (24 of 1989)] and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."*

For the purpose of the present case, Sections 13(1)(a) and (b) and (2) would be relevant. A perusal of these provisions would show that the Tribunal would be entitled to entertain an application for claim as made by the appellant under Section 13(1)(a)(i) and (b). As per sub-section 2 of Section 13, the provisions of The Railways Act, 1989 and the rules made thereunder will be applicable for inquiring into or determining any claims by the Claims Tribunal under this Act. Meaning thereby that The Railways Act, 1989 and the rules made thereunder cannot be ignored by the Claims Tribunal while inquiring into or determining any claim made before it.

23. As the present claim, which has been made by the appellant before the Tribunal, is under Section 106 of The Railways Act, 1989, the provisions thereunder will have to be looked into as the same would be applicable as also Section 107 as per Section 13 (2) of The Tribunal Act, 1987, and will have to be applied by the Tribunal for determining the same. Reference to these two Sections, thus, would also be essential at this stage. The same read as follows:-

> ***106. Notice of claim for compensation and refund of overcharge.-(****l) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf,-*
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> *(a) to the railway administration to which the goods are entrusted for carriage; or*
>
> *(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods.*
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> *(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for*

compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

107. Applications for compensation for loss, etc., of goods.- *An application for compensation for loss, destruction, damage, deterioration or non-delivery of goods shall be filed against the railway administration on whom a notice under section 106 has been served.*

24. A perusal of the above would show that as per sub-section (1) of Section 106, a person to be entitled to claim compensation for the loss, destruction etc. of goods carried by Railway shall have to give a notice within a period of six months from the date of entrustment of goods. As per sub-section (2), any information demanded or enquiry made in writing from or on behalf of the complainant, by or on behalf of the person within a period of six months subject to qualifications given therein will be deemed to be notice of claim for compensation. As per sub-section (3), for a person to be entitled to refund of overcharge in respect of goods carried by the Railway, notice shall have to be served by him or on his behalf within six months from the date of such payment or the date of delivery of such goods at the destination station whichever is later. Without such a notice, the claim would not be maintainable.

25. Thus, it is clear that for claiming compensation as well as for refund of overcharge, notice within six months is mandatory, otherwise the

claimant shall not be entitled to compensation or refund of overcharge, as the case may be. Meaning thereby that the Tribunal cannot entertain claim made under Section 106 of The Railways Act, 1989, if the said claim is not preceded with a notice to the concerned Railway Administration within a period of six months from the date of entrustment of goods or the date of payment of overcharge or the date of delivery of goods at the destination station, as the case may be.

26. A perusal of Section 107 would show that an application for compensation would only be filed against the Railway Administration on whom a notice under Section 106 within the time fixed, has been served and against no other. This depicts the intention of legislature that prior serving of notice is mandatory and essential for preferring an application for claim. In case notice is not so given within the time fixed/stipulated, no application for claim would be maintainable.

27. The jurisdiction, power and authority of the Tribunal is circumvented and controlled by the provisions of The Railways Act, 1989 and the rules made thereunder as is clear from sub-section (2) of Section 13 of The Tribunal Act, 1987, as these have been made applicable to enquire into or determine any claims by the Tribunal.

28. Counsel for the appellant emphasised upon the powers of the Tribunal to admit an application as has been provided in Section 13 even beyond the period of three years in the light of Section 17 of The Tribunal Act, 1987. This Section 17 reads as follows:-

> ***17. Limitation.***
>
> *(1) the Claims Tribunal shall not admit an application for any claim-*

(a) under sub-clause (i) of clause (a) of sub-section (1) of section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway;

(b) under sub-clause (ii) of clause (a) of sub-section (1) [or, as the case may be, sub-section (1A)] of section 13 unless the application is made within one year of occurrence of the accident;

(c) under clause (b) of sub-section (1) of section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under section 78B (Sic. 106) of the Railways Act.

(2) Notwithstanding anything contained in sub-section (1) an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.

A perusal of Section 17 which deals with the limitation would show that the Claims Tribunal can admit an application for any claim within three years of the contingency provided therein, if the application is made under Section 13(1)(a)(i) and 13(1)(e) of The Tribunal Act, 1987, as has been specified thereunder. Proviso thereto further qualifies that a claim under Section 13(1)(a)(i) cannot be preferred until the expiration of three months after the date intimation of the claim has been preferred under Section 106 of the The Railways Act, 1989. It is, thus, apparent that this limitation of three years which has been provided, is with regard to period within which the Claims Tribunal can admit an application for any claim.

Sub-section (2) of Section 17 carves an exception to sub-section (1), where an application for claim may be entertained after the period specified in sub-section (1) if the claimant is able to satisfy the Claims Tribunal that he had sufficient cause for not making the application within the time prescribed under sub-section (1) of Section 13.

29. Reading of the Section 17 of The Tribunal Act, 1987, as a whole leaves no manner of doubt that the limitation as prescribed for approaching the Claims Tribunal can be enlarged by it to admit an application for any claim as specified under Section 13 of The Tribunal Act, 1987 but it does not have the power to enlarge the time or condone the delay qua the time which has been prescribed under the provisions of The Railways Act, 1989 and the rules made thereunder in the light of Section 13(2) of The Tribunal Act, 1987. Section 13(2) not only makes applicable the provisions of The Railways Act, 1989 and the Rules made thereunder but also mandates the following of the procedure and period fixed for doing a particular act in a particular manner, where it is so provided, for inquiring into or determining any claims made to the Claims Tribunal. The powers to inquire into and to determine a claim is thus governed by Section 13(2) of The Tribunal Act, 1987. In case the mandated requirements as provided under The Railways Act, 1989 and the Rules made thereunder have been complied with, then and only then, the Claims Tribunal can admit an application for any claim. The powers of the Claims Tribunal to condone the delay as provided under Section 17(2) are thus limited to claims which qualify to be admitted by the Claims Tribunal under Section 13 as a whole i.e. under sub-section (1) read with sub-section (2)

thereof. Meaning thereby that the claim, even if falls under sub-section (1), would not be admitted for consideration unless the mandate and requirements of sub-section (2) of Section 13 are fulfilled.

30. In case the argument of the counsel for the appellant that the Claims Tribunal has unfettered powers to condone the delay except as qualified under Section 17(2) of The Tribunal Act, 1987 is accepted, the same would render Section 13(2) of this Act redundant which would be against the mandate of the statute and would lead to abrogating a statutory provision which is not permissible as each word as legislated in a statute has to be given effect to as none is superfluous or surplus.

31. Hon'ble Supreme Court by a nine Judge Bench in *Mafatlal Industries Ltd. Versus Union of India, (1997) 5 SCC 536*, where the question was concerning refund of Excise and Customs Duty collected contrary to law which was described as cases of illegal levy where there was mis-construction, wrong interpretation of the provisions of the Act, Rules and Notifications or by an erroneous calculation of refund i.e. an error on facts (as in this case erroneous distance), should claims of refund be presented and determined only under and in accordance with the provisions of the Act and the Rules, held that such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein.

32. Further, the Hon'ble Supreme Court in *Birla Cement Works' case (supra)* (referred to in para 16 above and relevant paras reproduced therein) has held that an overcharge is also a charge which would fall within

the meaning of Section 78-B of the old Act (now Section 106). The claim becomes barred by limitation by operation of that provision in the Section itself as no notice was given within six months, thus, disentitling the claimant to refund of the amount claimed. Similar are the facts, circumstances and claims in the present case and the ratio of this judgment covers the case of the appellant against it.

33. In the present case, admittedly no notice of claim has been served upon the respondent-railway administration within the prescribed period of six months as mandated under Section 106 read with Section 107 of The Railways Act, 1989, therefore, no application for compensation would be admissible against the railway administration under Section 13 of The Tribunal Act, 1987. Since the application for claim cannot be admitted by the Claims Tribunal, Section 17(2) of The Tribunal Act, 1987, would not be applicable and thus, the application for condonation of delay is not maintainable.

34. In view of the above discussion, in none of the eventualities, the appellant is entitled to any relief under the statutory provisions of The Railways Act, 1989.

35. The impugned orders dated 27.11.2013 challenged in these appeals as passed by the Claims Tribunal are hereby upheld and all the appeals dismissed being devoid of merit.

March 31st, 2016 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**