

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 1477 of 1996 (O&M)
Date of Decision: 10.01.2017

Punjab Small Industries and Export Corporation Chandigarh

... Appellant

Vs.

Union of India and Another

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sanjeev Sharma, Advocate,
for the appellant.

Mr. Rohit Suri, Advocate,
for respondent No. 1.

KULDIP SINGH, J. (Oral)

The appeal is directed against the judgement dated 25.09.1995 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred as “the Tribunal”) vide which the claim application of the present appellant was dismissed.

Brief facts of the case are that the appellant purchased 617 MTs of Pig Iron through Rashtriya Ispat Nigam Ltd.- Respondent No. 2. The same was booked in 11 wagons vide railway receipt No. 999160 dated 16.06.1991 ex. Vishakhapatnam to Dhandari Kalan. As per the invoice, the weight of the consignment was 55.800 MTs. against the wagon No. SE 66756. The said wagon was apparently detached and reached separately after a gap of one month from Vishakhapatnam. As the appellants suspected heavy shortage in the same, the appellant made a request for re-weighment to Sr. DCS, Ferozpur which was declined. Thereafter, the appellants got re-weighment from the independent surveyor M/s Kulwant Singh Jolly. The report of the surveyor

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indicated a shortage of 4.060 MTs. The cost of which comes to Rs. 25,835.50 comprising cost + 4% CST, interest @18% per annum on the value of the material delivered short for the period from 11.06.1991 to 16.04.1992, ₹1,317.50 as application fee + ₹75/- as process fee.

On the other hand Railways took the stand that the railway staff had not checked and verified the wagons at the forwarding station. The consignment wagons had reached the destination with all doors properly closed and in intact position. The Railways also disputed the process of re-weighment done through the independent surveyor. The Tribunal after examining the matter, held that when the shortage is suspected and the re-weighment is not permitted by the railways, the consignee is entitled to re-weighment by the independent surveyor. It was also noticed that in such re-weighment, it is essential that the Railways should be asked to participate through a specific communication. It was further held that the independent surveyor, who was asked to carry out re-weighment should be involved with the whole process from removal of goods from railways to the stage of re-weighment. The Tribunal held that in this case affidavit of the independent surveyor has not been filed and the goods were removed from truck from the railway premises to the godown of the consignee and then in trucks from the godown for re-weighment. Therefore, as the affidavit of the surveyor was not placed on the file, therefore, the re-weighment done by the independent surveyor is not to be believed.

I have heard learned counsel for both the parties.

After going through the file, I am of the view that there is no infirmity and illegality in the findings recorded by the Tribunal. In this case

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admittedly, the re-weighment was refused by the railways. The wagons had reached after the delay of one month after being detached from the other wagons. The appellants suspected the shortage. In these circumstances, the railways should have agreed for re-weighment in the presence of its officials. However, the railways did not agree for the re-weighment as according to the railways, doors of the wagons were properly closed. The appellant has sent a registered notice for re-weighment on 16.07.1991. It was received on 17.07.1991. The re-weighment was done on 17.07.1991 by M/s Kulwant Singh Joly, the independent surveyor. However, the affidavit of the independent surveyor is not placed on the file nor he was examined which deprives the right of the Railways to cross examine him to find out whether the surveyor has supervised the process of carrying the goods from the Railways to the godown of the appellants and then from the godown of the appellant for re-weighment and whether the re-weighment was properly done or not?

It being so, it was rightly held that the appellant failed to prove the shortage.

In view of the above, no ground is made out to interfere in the impugned judgement dated 25.09.1995 passed by the Railways Claims Tribunal, Chandigarh Bench, Chandigarh, hence, the present appeal stands dismissed.

January 10, 2017

Suresh Kumar

**[KULDIP SINGH]
JUDGE**

<i>Whether speaking / reasoned</i>	:	✓ Yes / No
<i>Whether Reportable</i>	:	✓ Yes / No