

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO Nos. 2/2017 & 3/2017**

% **18th May, 2017**

+ **FAO No. 2/2017**

M/S GLOBAL CARRYING INDIA Appellant

Through: Mr. Sunil Dalal, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rajeshwar Singh, Advocate.

+ **FAO No. 3/2017**

M/S PRIME LOGISTICS Appellant

Through: Mr. Sunil Dalal, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rajeshwar Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. These appeals under Section 23 of the Railway Claims Tribunal Act, 1987 raise a singular issue as to whether a claim petition filed under Section 13 before the Railway Claims Tribunal if filed with delay can or cannot be condoned in a case where the original claim filed before the Railway Claims Tribunal itself did not come into

existence because of non-compliance of giving the requisite notice within six months of overcharging as required by Section 106(3) of the Railways Act, 1989. Putting it in other words if for arising of a valid claim in law against the Railways, and which is subsequently filed before the Railway Claims Tribunal, there is a pre-condition of issuing of a notice for claim of refund of overcharge under Section 106(3) of the Railways Act within six months of the overcharge, then once such notice is not given, then in such a case since cause of action for the claim itself does not arise, therefore, the issue of condonation of delay in filing of the claim petition becomes immaterial inasmuch as the claim petition itself could not be filed because the cause of action never accrued on account of non-service of notice within six months as required under Section 106(3) of the Railways Act.

2. Section 106(3) of the Railways Act reads as under:-

“106. Notice of claim for compensation and refund of overcharge-

XXXXX

(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.”

3. A reading of sub-section 3 of Section 106 of the Railways Act makes it clear that where a person files a claim petition for refund of overcharge in respect of goods carried by the Railways, then, unless

a notice with respect to the claim has been served by him or on his behalf to the railway administration within a period of six months of overcharge or of the six months of date of delivery of goods, no claim shall lie against the Railways.

4. The Supreme Court in the judgment in the case of *Birla Cement Works vs. G.M., Western Railways, and Another (1995) 2 SCC 493* has held that there cannot be condonation of delay of six months as provided under Section 106(3) of the Railways Act. Section 106(3) of the Railways Act is the same as Section 78-B of the Indian Railways Act, 1890, and which latter provision was the subject matter of decision in *Birla Cement Works's* case (*supra*). Since the judgment in the case of *Birla Cement Works (supra)* is a short judgment of five paras, the same is reproduced as under:-

“1. The petitioner is a manufacturer of cement at Chittorgarh in Rajasthan. It had transported cement to various destinations through railway carriages. Prior to 3.5.1989, the petitioner got the cement transported through meter gauge from the railway siding at Chanderia. After conversion into broad gauge the railway siding was at Difthkola Chittor Broad Gauge Rail Link. In consequence 34 kilometers' distance was added to levy freight charges. Thereafter, between May-June, 1989 and March, 1990 the petitioner had, various consignments, booked and transported the cement to diverse destinations and paid the freight charges. Later, on 21.1.1991, the petitioner has sent a notice to the Western Railway under Section 78- B of the Indian Railways Act, 1890, (for short, 'the Act'), claiming refund of different amounts. Since it was rejected, on 23.12.1991 the petitioner laid the claim under Section 16 of the Act before the Railway Claims Tribunal at Jaipur, which by its Order dated 25.11.1992, dismissed the petition holding as being barred under Section 78-B the Act. When it was challenged in Civil Appeal No. 84 of 1993 and batch the Single Judge of the High Court by his order dated 25.1.1994 dismissed the same. On further appeal No. 76 of 1994, the Division Bench by order dated 3.10.1994 confirmed the same. Thus, these Special Leave Petitions.

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 have committed 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 'over charges' and the limitation is not saved by operation of Section 17(1)(c) of the Limitation Act.

4. Section 78-B of the Act provides that a person shall not be entitled to refund of over-charge 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 over charge 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 to the amount claimed.

5. We do not find any ground for our interference with the orders challenged in SLPs. The Special Leave Petitions are accordingly dismissed.”

5. It is therefore clear in view of the ratio of the judgment of the Supreme Court in the case of *Birla Cement Works (supra)* that there cannot be an extension of the period of six months given under Section 106(3) of the Railways Act. As already stated above Section 106(3) of the present Railways Act, 1989 is a reproduction of Section 78-B of the Indian Railways Act, 1890. In the present case, the argument of the appellant with respect to entitlement of condonation of

delay because of such entitlement existing under Section 13 of the Railway Claims Tribunal Act is an irrelevant argument because admittedly there was no notice given within six months of the date of the alleged overcharge by the Railways or within six months of the delivery of the goods transported by the Railways for the appellant. The issue of condonation of delay in filing a claim petition under Section 13 of the Railway Claims Tribunal Act can only arise if first of all a valid claim petition can be filed. A valid claim petition cannot be filed if notice is not given within six months as provided under Section 106(3) of the Railways Act. Accordingly, the contention urged on behalf of the appellant of entitlement of condonation of delay of the claim petition of the appellant is irrelevant in the facts of the present case.

6. For the purpose of completion of narration since facts of both the parties are identical, I am stating the facts of FAO No. 2/2017, and which are that the appellant claimed that it had transported various parcels/goods using the services of the Railways from New Delhi to Guwahati and that the Railways had overcharged the appellant as the distance between Delhi Kishan Ganj to Guwahati was not 2100 kilometers as was claimed by the Railways but was only 1855 kilometers. According to the appellant/claimant therefore it was

entitled to refund charges which were overcharged by the Railways by taking the distance longer than the distance which actually was between Delhi Kishan Ganj to Guwahati. The period of transportation in question was 22.12.2008 till 27.09.2013, and therefore, qua each transportation there was an overcharge between 22.12.2008 till 27.09.2013, and with respect to each of such overcharged transportation a notice under Section 106(3) of the Railways Act had to be given, but admittedly no notice within six months was given by the appellant with respect to such overcharged transportation. Once therefore there is no requisite notice under Section 106(3) of the Railways Act the valid claim itself did not arise on behalf of the appellant for being filed before the Railway Claims Tribunal, therefore, there does not arise the subsequent issue of condonation of delay in filing of the claim petition before the Railway Claims Tribunal because of Section 13 of the Railway Claims Tribunal Act.

7. Though not relevant I would also like to observe that *prima facie* the case of the appellant itself was misconceived because the rates are statutory notified rates. Once the rates are statutory notified rates, the same could only be challenged before the Railway Rates Tribunal in terms of the provisions of Chapters VI and VII of the Railways Act containing Sections 30 to 48 and once there is no

challenge to the statutory notified rates there does not arise an issue of overcharging the appellant as claimed by the appellant in view of the ratios of the judgments of the Supreme Court in the cases of *Union of India and Others Vs. West Coast Paper Mills Ltd. and Another (III)* (2004)3SCC 458 and *Upper Doab Sugar Mills Ltd., Shamli (U.P.) Vs. Shahdara (Delhi) Saharanpur Light Railway Company Ltd., Calcutta AIR 1963 SC 217*. In any case I do not have to take any final view on this aspect one way or the other with regard to the merits of the claim of the appellant inasmuch as the claim of the appellant itself did not arise for want of statutory notice within six months as required under Section 106(3) of the Railways Act.

8. I would also like to note that a provision similar to Section 106(3) of the Railways Act is found in Section 10 of the Carriers Act, 1865 and which specifies that a case for a claim under the Carriers Act can only be filed if a notice is given to the carrier within six months of the loss etc. Once there is no notice given within six months as required by Section 10 of the Carriers Act then no valid claim can be filed under the Carriers Act on account of want of requisite notice under Section 10 of the Carriers Act. Same is the position as per Section 106(3) of the Railways Act.

9. In view of the above discussion, there is no merit in these appeals, and the same are therefore dismissed.

MAY 18, 2017/ib

VALMIKI J. MEHTA, J

