IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:30.9.2019

1. **FAO No.1208 of 1996(O&M)**

Indian Potash Ltd. and another …..Appellants

VERSUS

Union of India and another .....Respondents

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2. **FAO No.1209 of 1996(O&M)**

Indian Potash Ltd. and another …..Appellants

VERSUS

Union of India and another .....Respondents

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3. **FAO No.1210 of 1996(O&M)**

Indian Potash Ltd. and another …..Appellants

VERSUS

Union of India and another .....Respondents

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4. **FAO No.1211 of 1996(O&M)**

Indian Potash Ltd. and another …..Appellants

VERSUS

Union of India and another .....Respondents

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5. **FAO No.1212 of 1996(O&M)**

Indian Potash Ltd. and another …..Appellants

VERSUS

Union of India and another .....Respondents

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6. **FAO No.1213 of 1996(O&M)**

Indian Potash Ltd. and another …..Appellants

VERSUS

Union of India and another .....Respondents

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7. **FAO No.1214 of 1996(O&M)**

Indian Potash Ltd. and another …..Appellants

VERSUS

Union of India and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Ekta Thakur, Advocate for the appellants.

Mr. Jagdish Marwaha, Advocate for the respondents in FAO Nos.1208, 1209, 1211 to 1214 of 1996.

Mr. R.S. Mamli, Advocate for the respondents in FAO No.1210 of 1996

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REKHA MITTAL, J.

This order will dispose of FAO Nos.1208 to 1214 of 1996 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.1209 of 1996.

A brief backdrop of the case is that Indian Potash Ltd. and Maya Farm Inputs (P) Ltd. (appellants herein) filed claim application for recovery of Rs.20630.14 as compensation for short delivery of 188 bags (9.4 Mts) of MOP fertilizer, freight charges and interest.

The allegations are that appellant No.1 Indian Potash Ltd., Madras booked 43840 bags of 50 KGs each of MOP fertilizer (2192 Mts) through their forwarding agent ex.Bhavnagar to Patiala vide railway receipt Nos.B-606135 to B-606140 dated 05/06.11.1987. The delivery of consignments at Patiala was taken by the clearing and forwarding agent of appellant No.1 only of 43652 bags (2182.60 MTS) thereby resulting in shortage of 188 bags. The shortage was duly recorded in the delivery book maintained by Patiala Railway Station. The value of short delivered goods is Rs.12,220/-, freight charges Rs.31,77.20p and interest at the rate of 18% from 12.12.1987 to 31.10.1989 Rs.5232.94p.

The respondent contested the claim inter alia contending that there was no shortage of goods and no remarks regarding shortage were made in the delivery book. However, transshipment of goods, due to change of gauge, at Sabarmati Railway Station has been admitted.

The Railways Claims Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal') framed issues noticed at internal page 2 of the award. Having heard counsel for the parties in the light of materials on record, the claim was rejected, on the basis of findings recorded on issue No.2. A relevant extract from the award reads as follows:-

> "Availability of shortage certificate is a key element in deciding the extent of shortage as it creates a settled evidence at the time of delivery. There is no record to show that the shortage certificate was even asked for. The applicant has taken protection on the basis of remarks (at present available) in the Delivery Book regarding short delivery of the consignment. This remark is neither dated nor signed by

anybody. This plea can only generate as per the Evidence Act, 'may presume' situation which has been rebutted by the respondents by producing an affidavit from the then Senior Goods Clerk who handled the consignment at the destination station. The statement under oath by Shri Vijay Kumar Singla does not explain as to why the remarks claimed to have been given in the delivery book were not signed and dated by him.

Even the undated Chief Goods Supervisor's certificate submitted by the applicant regarding the remarks, is not a true copy of the remarks but incorporates additional details which are not available in the remarks column and is also undated. It is also not possible to decipher the name of the Chief Goods Supervisor. The respondents have challenged the authenticity of this certificate."

Counsel for the appellants has mainly relied upon the document purported to be issued by Chief Goods Supervisor, Northern Railway Patiala with the title 'delivery book remarks' wherein it has been mentioned with regard to receipt of 43652 bags MOP ex-Bhavnagar to Patiala booked under invoice No.12 to 17, R.R. No.B606135 - B606140 of dated 05/06.11.1987, U/L and delivered on 14.11.1987 and 12.12.1987, as per RR 43840 bags. It is argued that the Tribunal has committed a serious error by discarding the document with observations that the same does not bear signatures of a representative of the Railways. It is further argued that the document is signed by Chief Goods Supervisor, though no date has been mentioned thereon. It is argued with vehemence that it was for the respondents to prove that the said document has not been signed by the then Chief Goods Supervisor, Northern Railways Patiala but it is not so. The last submission made by counsel is that on the basis of aforesaid document, it is amply established on record that as against consignment of 43840 bags of fertilizer, the Railways delivered only 43652 bags, proving the short delivery to the extent of 188 bags.

Counsel representing the respondents, on the contrary, has supported the award with the submissions that the respondents proved document i.e. copy of delivery book in respect of delivery of 43652 bags on 14.11.1987 and document Ex.R/C with regard to delivery of 370 bags on 12.12.1987 and entry in this regard is duly signed by the consignee. It is argued that the appellants did not challenge the correctness of document Ex.R/C prepared by the officials of the Railways in discharge of their official functions, therefore, the appellants cannot be heard to say that in view of delivery of consignment received on 14.11.1987 and 12.12.1987, there was still short delivery in respect of consignment booked ex-Bhavnagar to Patiala vide the aforesaid Railway Receipts. Another submission made by counsel is that appellants failed to produce any documentary evidence even with regard to value of materials stated to be delivered short.

Counsel for the appellants, in reply, would argue that as appellant No.1 booked 43840 bags vide RR No.606135 to 606140, there was no question of the Railways allowing excess delivery of more than 188 bags and this fact alone is sufficient to prove that entry made in document Ex.R/C cannot be connected with the Railway Receipts in question. She would further argue that as appellant No.1 had been sending various consignments of fertilizer from time to time, possibility cannot be ruled out that entry in document Ex.R/C pertains to some other consignment and sought to be appropriated towards the consignment in question.

Counsel for the respondents has refuted the aforesaid contention of the appellants by referring to the testimony of Sh. G.B. Christian, Senior Goods Clerk, Sabarmati wherein he has deposed in para 5 of his affidavit that two CL Wagons (MG) were received at Sabarmati on 09.11.1987 and transshipped in his presence into 1 BCX BG Wagon. It is further argued that when testimony of G.B. Christian and document Ex.R/C are read together, there is no escape from conclusion that there was no short delivery pertaining to the aforesaid Railway Receipts.

I have heard counsel for the parties, perused the paper-book and copies of documents made available by counsel for the parties at earlier occasions.

There is no denial that 43652 bags were delivered at Patiala on 14.11.1987. Counsel for the appellants is not in a position to advance any meaningful arguments that when testimony of Sh. G.B. Christian and document Ex.R/C are read in conjunction, there remains any scope to argue that either the delivery made on 12.12.1987 pertains to some other consignment or there was short delivery, in view of delivery of consignment made on 14.11.1987 and 12.12.1987. Counsel for the appellants has failed to point out any facts elicited in cross examination of Sh. G.B. Christian on the basis whereof his testimony can be discarded or entertained with doubt. Though it appears strange that Railways delivered 370 bags more in addition to delivery made on 14.11.1987 but in absence of appellants proving their case with regard to short delivery, they cannot to press their claim for price of alleged shortage with freight charges etc. This apart, counsel for the appellants has fairly conceded that no documentary evidence was produced with regard to value of total consignment or that of 188 bags stated to be delivered in short. Analyzed from any angle, I do not find an error much less illegality in the impugned award, warranting intervention.

In view of what has been discussed hereinbefore, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

SEPTEMBER 30, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no