IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.715 of 2014

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M/s Shree Salasar Trading Company, Proprietor Arun Kumar Kalothia, having its business sub centre in the house of Sri Sushil Kumar, Jamhaur, PO & PS: Jamhaur, Dist:- Aurangabad (Bihar).

... ... Appellant/s

Versus

The Union of India, Through The General Manager, East Central Railway, Hajipur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 714 of 2014

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Sultania and Sons, Proprietor Rajesh Sultania, having its business centre at Ritako Palace, Chadda Market, Naya Bazar, Delhi, PO: Naya Bazar, P.S: Lahori, Distt: Delhi.

... ... Appellant/s

Versus

The Union of India, Through The General Manager, East Central Railway, Hajipur.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 716 of 2014

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M/s Shree Salasar Trading Company, Proprietor Arun Kumar Kalothia, having its business sub centre at in front of Satsang bhawan, Teghra, PO & PS: Teghra, Distt: Begusarai (Bihar).

... ... Appellant/s

Versus

The Union of India, Through The General Manager, East Central Railway, Hajipur.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 717 of 2014

==

M/s Shree Salasar Trading Company, proprietor Arun Kumar Kalothia, having its business sub centre in the house of Sri Sushil Kumar, Jamhaur, PO & PS: Jamhaur, Dist:- Aurangabad (Bihar).

... ... Appellant/s

Versus

The Union of India Through The General Manager, East Central Railway, Hajipur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 718 of 2014

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M/s Shree Salasar Trading Company, Proprietor Arun Kumar Kalothia, having its business sub centre at in front of Satsang bhawan, Teghra, PO & PS: Teghra, Distt: Begusarai (Bihar).

... ... Appellant/s

Versus

The Union of India Through The General Manager, East Central Railway, Hajipur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 721 of 2014

G.S. Enterprises, Proprietor Arvind Kumar, having its business centre at Shokhara, PO & PS: Barauni, Distt: Begusarai (Bihar).

... ... Appellant/s

Versus

The Union of India Through The General Manager, East Central Railway, Hajipur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 727 of 2014

M/s G.S. Enterprises, proprietor Arvind Kumar, Resident of village - Shok hara, P.S.- Barauni, Distt.- Begusarai Bihar.

... ... Appellant/s

Versus

The Union of India Through The General Manager, East Central Railway, Hajipur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 78 of 2015

M/s G.S. Enterprises, proprietor Arvind Kumar, Resident of village - Shok hara, P.S.- Barauni, Distt.- Begusarai Bihar.

... ... Appellant/s

Versus

The Union of India, through the General Manager, East Central Railway, Hajipur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 504 of 2015

M/s Sultania and Sons, Proprietor Rajesh Sultania, resident of Barauni, PO and PS- Barauni, District- Begusarai Bihar.

... ... Appellant/s

Versus

The Union of India Through The General Manager, East Central Railway Hazipur.

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 715 of 2014)
For the Appellant/s : Mr.Krishna Mohan Murari, Adv.
For the Respondent/s : Mr. Ramadhar Shekhar, Adv.
(In Miscellaneous Appeal No. 714 of 2014)
For the Appellant/s : Mr.Krishna Mohan Murari
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 716 of 2014)
For the Appellant/s : Mr.Krishna Mohan Murari
For the Respondent/s : Mr.Rajnandan Kumar, Adv.
(In Miscellaneous Appeal No. 717 of 2014)
For the Appellant/s : Mr.Krishna Mohan Murari, Adv.
For the Respondent/s : Mr.Satyendra Kumar Jha, Adv.
(In Miscellaneous Appeal No. 718 of 2014)
For the Appellant/s : Mr.Krishna Mohan Murari
For the Respondent/s : Mr.Satyendra Kumar Jha
(In Miscellaneous Appeal No. 721 of 2014)
For the Appellant/s : Mr.Krishna Mohan Murari, Adv.
For the Respondent/s : Ms. Kalpana, Adv.
(In Miscellaneous Appeal No. 727 of 2014)
For the Appellant/s : Mr.Krishna Mohan Murari
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 78 of 2015)
For the Appellant/s : Mr.Krishna Mohan Murari
For the Respondent/s : Mr. Umesh Tiwari, Adv.
(In Miscellaneous Appeal No. 504 of 2015)
For the Appellant/s : Mr.Krishna Mohan Murari
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
Date : 19.02.2020

Heard the parties.

2. These appeals under Section 23 of Railway Claims Tribunal Act, 1987 have been filed for setting aside the order dated 26.08.2014 passed in Claim Application No. OA(III)7/2014 by Member (Technical) of Railway Claims Tribunal, Patna Bench, Patna, order dated 27.08.2014 passed in Claim application No. OA(III)10/2014 passed by learned Member (Technical) of the Railway Claims Tribunal, Patna, order dated 26.08.2014 passed in Claim application No.

OA(III)8/2014 passed by the learned Member (Technical) of the Railway Claim Tribunal, Patna, order dated 26.08.2014 passed in Claim application No. OA(III)6/2014 passed by learned Member (Technical) of the Railway Claims Tribunal, Patna, order dated 27.08.2014 passed in Claim application No. OA(III)9/2014 passed by learned Member (Technical) of the Railway Claims Tribunal, Patna, order dated 27.08.2014 passed in Claim application No. OA(III)11/2014 passed by learned Member (Technical) of the Railway Claims Tribunal, Patna, order dated 05.09.2014 passed in Claim application No. OA(III)17/2013 passed by learned Member (Technical) of the Railway Claims Tribunal, Patna, order dated 11.02.2015 passed in case No. OA(III)00016/2013 passed by learned Member (Technical) of the Railway Claims Tribunal, Patna and order dated 01.10.2015 passed in Case No. OA(III)19/2013 passed by learned Member (Judicial) of the Railway Claims Tribunal, Patna Bench, Patna.

3. The claimants have filed claim application before the railways claims tribunals claiming refund of terminal charges levied by the railways. Claimants are consignor as well as consignee and had booked maize consignment on different dates. According to claimants in terms of railways Board's

Circular No. 58/2007 dated 29.05.2007 and its clarification by circular No. 74/2007 dated 17/19.07.2007 the terminal charges should not be levied on commodity which are packed in bags, tin, cartoon, bale or crate. The present commodity was packed in gunny bags, as such, imposition of terminal charges were unjustified and they have claimed refund of terminal charges deposited by them.

4. Railways in their written statements have stated that terminal charges has been levied in accordance with circular No. 92/2007 dated 18.09.2007 which superseded the circular No. 58/2007 dated 29.05.2007 and its clarification by circular No. 74/2007 dated 17/19.07.20007. According to Railways on the date of booking of consignment circular No. 92/2007 dated 18.09.2007 was in force, as such, on the consignment booked by the claimants in gunny bag terminal charges have rightly been imposed.

5. The relevant part of circular No. 58 of 2007 dated 29.05.2007 and its clarification vide circular No. 74/2007 dated 17/19.07.2007 is reproduced hereinafter:-

> Sanction of the Central Government is also accorded to the levy of Terminal Charge of Rs. 10(Rupees ten) per tone per terminal.

These Terminal Charges will be levied for Bulk and Loose traffic on Railway-owned terminals and sidings and not on terminals owned by customers. The same will be collected at the time of issue of RR itself. These charges will be leviable on loading and unloading terminals independently and separately on the basis of chargeable weight at the time of issue of RR. Figures of any subsequent weightment shall not be reckoned for levy of terminal charge.

The terminal charges will be levied on all bulk and loose commodities. Whenever the commodity is packed in bag, tin, drum, bale or crate, such commodity should not be treated as bulk and loose commodity. All other commodities may be treated as bulk and loose commodities. However, terminal charges will be levied on any consignment requiring crane handling. In addition, all liquid consignments moving loose in wagons will also be levied terminal charges. Moreover, if a wagon is loaded with both type of commodities, the wagon should be treated as having loaded with bulk and loose commodities.

6. These two circulars were superseded by a fresh circular No. 92 of 2007 dated 18.09.2007 which was applicable on the date of booking of consignment of claimants and relevant part of which reads as follows:-

Sub:- Levy of Terminal Charge on Goods traffic.

Ref:- Board's letters of even number dated 29.05.2007 (RC No. 58 of 2007) and dated 17/19.07.2007 (RC No. 74 of 2007).

In supersession of rules regarding levy of terminal charges notified vide Board's letters of even number dated 29.05.2007 (RC No. 58 of 2007) and dated 17/19.07.2007 (RC No. 74 of 2007) sanction of the Central Government is accorded to the levy of Terminal Charge at the rates mentioned in the table below:-

S. No.	Commodities	Rate Per Tonne. Per Terminal.
(i)	Iron Ore traffic	Rs. 40
(ii)	All other traffic	Rs. 10

(iii)	Container traffic	NIL

7. The subsequent circular No. 92 of 2007 dated 18.09.2007 clearly states that the present circular is being issued in supersession of rules regarding levy of terminal charges as notified by circular No. 58/2007 dated 29.05.2007 and subsequent clarification vide circular No. 74/2007 dated 17/19.07.2007 as such under the circular which was applicable on the date of booking of consignment claimants were obliged to pay the terminal charges and only container traffic has been exempted from payment of terminal charges as notified in said circular and all consignment books other than the container traffic are liable to pay the terminal charges in terms of present circular and as such, the submission of the counsel for the appellant that the previous circular No. 58 of 2007 dated 29.05.2007 and its clarification circular No. 74/2007 dated 17/19.07.2007 were still in force and they are entitled for the benefit of clarification dated 17/19.07.2007 in which packed items in bag, tin, cartoon, bale and crate are not liable for terminal charges cannot be accepted.

8. From conjoint reading of all three circulars it is apparent that earlier terminal charges were levied on all bulk and loose commodity except commodities which were packed in

bag, tin, cartoon, drum , bale and crate. However, in subsequent circular terminal charges were to levied on all other traffic except container traffic which makes it clear that the commodity which was booked by the claimants will come within the item No. (2) all other traffic and were liable for imposition of terminal charges.

9. After hearing the parties and perusing the order passed by the Railways claims Tribunal, this Court does not find any error or infirmity in the order passed by the Railways Claims Tribunal. Accordingly these appeals are dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	19.08.2019
Uploading Date	22.02.2020
Transmission Date	22.02.2020