

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO No.3398 of 2017 along with
other connected cases
Decided on : 08.10.2021**

Indian Oil Corporation Ltd.

... Appellant

Versus

Union of India

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Ashish Kapoor, Advocate, for the appellant.

Mr.Karminder Singh, Advocate

Mr.Sanyam Malhotra, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of 48 appeals bearing FAO Nos. FAO-3398-2017, FAO-3405-2017, FAO-4248-2017 to FAO-4250-2017, FAO-4216-2017, FAO-4217-2017, FAO-4232-2017, FAO-4558-2017 to FAO-4560-2017, FAO-4499-2017 to FAO-4501-2017, FAO-4504-2017, FAO-4505-2017, FAO-1693-2018 to FAO-1699-2018, FAO-1833-2018, FAO-4836-2018, FAO-4882-2018, FAO-3477-2018, FAO-4926-2018, FAO-4949-2018, FAO-4902-2018, FAO-4829-2018, FAO-7357-2018, FAO-7401-2018, FAO-7402-2018, FAO-8575-2017, FAO-8577-2017 to FAO-8579-2017, FAO-8670-2017, FAO-8673-2017 to FAO-8676-2017, FAO-6673-2018 to FAO-6677-2018 involving common questions of law and facts. However, to dictate orders, facts have been taken from FAO-3398-2017 titled *Indian Oil Corporation Ltd. Vs. Union of India*.

Challenge in the present set of appeals is to the order dated 29.08.2016, passed by the Railway Claims Tribunal, Chandigarh whereby the claims filed under Section 16 of the Railway Claims Tribunal Act, 1987 seeking refund of excess freight charges, had been rejected under the

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preliminary issue No.1, on the ground that the same were barred by limitation. Vide the impugned order, the Tribunal came to the finding that the since no notice of the claim has been served within the period of 6 months, under Section 106 read with Section 107 of the Railways Act, 1989 (for short, the 'Act'), the proceedings were barred, as such. Reliance was placed upon the judgment of the Apex Court in **Arun Kumar Aggarwal Vs. Nagarika Exports (P) Ltd. & another 2002 (10) SCC 101** that the preliminary issue should be decided first.

Counsel for the appellant has placed reliance upon the judgment of the Apex Court in CA-21862-2017 titled *M/s Hindustan Petroleum Corporation Ltd. Vs. Union of India*, decided on 14.12.2017, wherein the order passed by the Co-ordinate Bench on 31.03.2016 was set aside. Resultantly, it was held that keeping in view the earlier judgment in **Union of India & others Vs. West Coast Paper Mills Ltd. & another 2004 AIR (SC) 3079**, an illegal charge was distinguishable from the case of over-charge and would not attract Section 78-B of the Indian Railways Act, 1890 which is para-materia to Section 106 of the Act, now relied upon by the Tribunal. Resultantly, the claims of the Corporation were allowed, since the matter had been decided on merits therein. Relevant portion reads as under:

“10. On the other hand, in West Coast Paper Mills Ltd. (supra) this Court in paragraph 20 of the said report took the view that as the freight paid was as per the rates notified the case would not be one of overcharge at all. If that is the view taken by this Court on an interpretation of the pari materia provision in the erstwhile Act i.e. the [Railway Act](#), 1890 (i.e. [Section 78-B](#)) we do not see why, in the facts of the present case which are largely identical, we should be taking any other view in the matter.

11. Consequently and in the light of the above we allow the present appeals; set aside the order of the High Court as well as that of the Railway Claims Tribunal, Chandigarh and allow the claims of the appellant which will be paid forthwith on due and proper calculation.”

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A perusal of the paperbook would also go on to show that the claim of the Corporation is that as per the Railway receipts, the distance from Baholi (Panipat) to Kandla is 1130 kms whereas the distance were taken of 1270 kms by the Railways and on account of the said fact, the claims have been alleged though the same had been made after the period of 6 months. In West Coast Paper Mills Ltd. (supra), the Apex Court was dealing with the issue of benefit of telescopic system of rates which had been denied to the respondents. The stand of the Railways was that suits were barred by limitation and could not be entertained unless proceeded by the notification of the claims under Section 78B of the Indian Railways Act, 1890. Resultantly, while discussing the issue of over-charge and case of illegal charge, the following position was laid down:

“18. The term overcharge is not defined in the Act. In its dictionary meaning "overcharge" means "a charge of a sum more than as permitted by law" [see. The Law Lexicon, P. Ramanatha Aiyar, 1997 Edition. Page 1389]. The term came up for the consideration of the High Court of Gujarat in M/s Shah Raichand Amulakh (D) by his heir v. Union of India and Ors., (1971) 12 GLR 93. Chief Justice P.N. Bhagwati (as His Lordship then was) interpreted the term by holding that "Overcharge" is not a term of art. It is an ordinary word of the English language which according to its plain natural sense means 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 kind 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.

19. In the case at hand. the freight rates notified by the Railway Administration in exercise of its statutory power to do so, so long as they were not declared illegal and unreasonable by the Tribunal under [Section 41](#) of the Act, were legal and any one carrying the goods by rail was liable to pay the freight in accordance with those rates. The freight paid by the respondents was as per the rates notified. Thus the present one is not a case of overcharge at all. It is a case of illegal recovery of freight

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on account of being unreasonable and in violation of [Section 28](#) of the Act, consequent upon such determination by the Tribunal and the decision of the Tribunal having been upheld by this Court. A case of 'illegal charge' is distinguishable from the case of 'overcharge' and does not attract the applicability of [Section 78B](#) of the Railways Act.

For the foregoing reasons, we find the appeals devoid of any merit and liable to be dismissed. The appeals are dismissed accordingly and the decree of the Trial Court as upheld by the High Court is affirmed.

Appeals dismissed.”

The said view, as noticed, has now been followed in *M/s Hindustan Petroleum Corporation Ltd.* (supra). A Co-ordinate Bench of this Court has also allowed CR-6286-2014 titled *M/s Hindustan Petroleum Corporation Ltd. Vs. Union of India*, decided on 20.02.2018 (Annexure A-4) wherein the Tribunal had framed the preliminary issue as to whether legal and valid notice under Section 106(3) of the Railways Act was served upon the respondent Railways within stipulated period by the applicant company. While noticing that the matter was covered by *M/s Hindustan Petroleum Corporation Ltd.* (supra), it was held that once it was a case of illegal charge, the order was set aside and the Tribunal was asked to proceed in the case.

Keeping in view the above, this Court is of the opinion that the impugned order dated 29.08.2016 cannot sustain in view of the law laid down by the Apex Court. Accordingly, the same is set aside and the matter is remitted to the Tribunal, to decide the issue on merits. Parties to appear before the Tribunal on 02.11.2021 at 10.00 a.m.

October 8, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No