IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2023

PRONOUNCED ON: 22.12.2023

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3252 of 2017

M/s. My Home Industries Pvt. Ltd.,
9th Floor, Block - III,
My Home Hub, Madhapur,
Hyderabad, Telangana - 500 081
Rep. by its Company Secretary
and Sr. General Manager
(Legal) Mr. B. Muralidhara Rao ... Appellant / Complainant

Vs.

1. Government of India,
Ministry of Railways,
Railway Board,
Rep. by its Secretary,
Rail Bhavan,
New Delhi - 110 001.

2. Union of India,
Owning South-Central Railway
Rep. by its General Manager,
Rail Nilayam,
Secunderabad - 500 071.

3. Chief Commercial Manager,
South-Central Railways,
Rail Nilayam,
Secunderabad - 500 071. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the Order dated 17.07.2017 passed by the Railway Claims Tribunal, Chennai Bench, in Complaint No.5 / 2014 (transferred from the file of Railway Rates Tribunal of India Chennai by virtue of Gazette Notification No.1501 dated 26.05.2017 amending the Railway Claims Tribunal Act).

For Appellant	:	Mr. V. Raghavachari (for Mr. T. Raja Mohan)
For Respondents	:	Mr. P. T. Ramkumar, (Standing Counsel)

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the appellant herein against the Order dated 17.07.2017 passed by the Railway Claims Tribunal, Chennai Bench, in Complaint No.5 / 2014 (transferred from the file of Railway Rates Tribunal of India Chennai by virtue of Gazette Notification No.1501 dated 26.05.2017 amending the Railway Claims Tribunal Act).

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal.

3. Facts leading to filing of this appeal in brief as follows:

4. The appellant is a manufacturer of cement, clinkers and utilise the services of the Railways to transport bulk cement/ clinkers. On 10.11.2009, the Ministry of Railways issued a policy guidelines for the Freight Incentives Scheme and Transport Products in Rate Circular No.62 of 2009 with main objective to generate additional transport volumes and additional revenues. To achieve the object, various types of concessions were given under the scheme.

5. Subsequently in the year 2012, the Railways have issued a Freight Marketing Policy Circular No.1/2012 on "Siding matters" **"Liberalization of Siding Rules",** whereby the Railways have encouraged setting up of new 'Siding' for the benefit of customers as well as the Railways for providing better traffic facilities. By utilizing the Liberalization of Siding Rules, the appellant herein has set up a new B.G. Private siding at

Mellacheruvu, in Secundrabad Division of South-Central Railway with effect from 23.03.2012. As per the Commercial Circular Letter No. 51/2012, a new private siding of the appellant herein became operational for outward traffic for cement and clinker and inward traffic for coal, gypsum, clinker, laterite, fly ash and iron ore. On 25.05.2012, the appellant has submitted an application for incentive scheme under incremental traffic made by them from new siding based on the outward traffic made from Jagayanpet Town and Bonakal Railway goods sheds for the period from April 2010 to March 2012, based on Paragraph 10 of Freight Marketing Circular No.1/2012. It was pending consideration of the Railway Board.

6. In the mean time, the Freight Marketing Circular No.4/2013, dated 20.03.2013 was issued by the Railway Board, wherein it is clarified that the traffic offered by new sidings may be treated as existing traffic instead of new traffic with certain conditions. In Paragraph 4 of the Freight Marketing Circular No.4/2013, it prescribed that the instructions in the amendment will come into force with immediate effect from the date of issuance of Freight Marketing Circular No.4/2013. By relying on this circular, the appellant once again made representation to the South Central

Railway that the Freight Marketing Circular No. 4/2013 is an clarification of Freight Marketing Circular No.1/2012, dated 30.01.2012 and accordingly, the applicability of this amendment should be made from the date of original circular and requested approval of incremental traffic incentives scheme for the period April 2012 to March 2013 based on the average Net Tonnage Kilometer (NTKM), based on the Freight traffic made by them in the previous two years i.e., April 2010 to March 2011 and April 2011 to March 2012. The Competent Authority/ Sr. Divisional Commercial Manager issued a Draft Notification no. 01/2013, dated 15.05.2013 sanctioning/ grant of incentive of incremental traffic, on the basis of compliance of benchmark and refund amount was also ordered. However on 18.07.2023, the Chief Commercial Manager, sought clarification from Railway Board, in view of the amendment of Freight Marketing Circular no. 4/2013. Subsequently, the Railway Board has rejected the appellant's request on the ground that the amendment issued under Freight Marketing Circular No.4/2013, which came into effect on 23.03.2013 onwards, and the traffic made from new siding shall be treated as new traffic, hence the incentives claimed by the appellant is untenable.

7. Aggrieved over the rejection of claim of incentives, the appellant

filed a complaint before the Rates Claim Tribunal and subsequently, it was transferred to the Railways Claims Tribunal, Chennai. After considering the materials placed on record, the Claims Tribunal has held that the Freight Marketing Circular no.4/2013 is applicable only from 31st March 2013, which permits the Railways to treat the traffic offered from the new sidings as existing traffic instead of new traffic and rejected the complaint of the appellant herein stating that, traffic made by him from 20.03.2013 to 31.03.2013 alone is eligible for incentive under the Freight Marketing Circular, dated 30.01.2012.

8. Aggrieved over the dismissal of the complaint, the appellant filed this appeal to set aside the Order dated 17.07.2017 of the Railways Claims Tribunal.

9. The learned Senior counsel Mr. V. Raghavachari appearing on behalf of the Mr.T.Raja Mohan has submitted that the incentives schemes were introduced in the year 2009 as per the Rate Circular No.62/2009 and the appellant was continuously availed the benefits of the incentives schemes. Subsequently, they have been offered to set up a separate private

sidings and accordingly, private sidings was commissioned by the appellant on 23.03.2012 and they have also continued the traffic from the new sidings instead of using the nearby Railways goods shed. However, the Railways have refused to consider the traffic offered from the new sidings as an existing traffic of the nearby railway goods shed and treated the traffic offered from the new siding as a new traffic, which is against the incentives scheme for incremental traffic. To buttress his argument, he draw the attention of this Court on the Paragraph 4 of the Rate Circular no.12/2009 and the provisions in Freight Marketing Circular Nos.1/2012, dated 30.01.2012 and 4/2013, dated 20/03.2013.

10. According to him, bare perusal of the Paragraphs of the Rate Circular No.62/2009 and Liberalization of Siding Rules Circular No.1/2012, it could be seen that the incentives scheme is applicable for new siding commissioned on or after 01.04.2005. The amendment was issued to the circular no.1/2012, is clarification in nature, hence the amendment has not altered any of the rights and liabilities of the parties which was in existence earlier, more particularly, the eligibility of the appellant, claiming incentives for the incremental traffic for the traffic made from new siding at

Mellacheruvu. The Divisional Office of the Railways have also prepared a Draft notification 1/2013, dated 15.05.2013, accepting eligibility of the complainant for refund, which was issued based on the traffic loaded from Bonakalu, Jaggayyapeta and Mellacheruvu for the previous two years, hence the rejection of the claim of the appellant is against the spirit of the incentive schemes of the Railways and prays to allow the appeal and modify the Order passed by the Railways Claims Tribunal.

11. The appellant has relied on the judgments of the Hon'ble Apex Court in ***Pawan Alloys & Casting Pvt. Ltd. Vs. U.P. State Electricity Board*** **[(1997) 7 SCC 251]** and ***State Bank of India Vs. V. Ramakrishnan and Another [(2018) 17 SCC 394],*** to support their contention that, on the basis of the Principles of Promissory Estoppel, the respondent herein is not entitled to deny grant of incremental incentive to the appellant herein.

12. Countering the argument of the appellant, the learned Standing Counsel for the Railways Mr. T. Ramkumar submits that Paragraph no.4.4 of the Rate Circular 62/2009 envisages that no freight concession will be admissible in case of new traffic. The new traffic has also been defined in the

circular itself. As per the scheme, the traffic offered from each terminal shall be considered separately and independently for customers operating from multiple terminals. The appellant herein has offered traffic from the new sidings, which shall only be treated as a new traffic and it could not be treated as existing traffic. For providing better benefit to the customers, who have established sidings, the Railways have come with an amendment by way of Freight Marketing Circular No.4/2013, thereby agreed to treat the traffic made from the new sidings as an existing traffic, if the conditions prescribed therein are satisfied by the customers. In this case, the appellant herein has started a new siding and offered traffic between April 2012 to March 2013 and thereafter, he made a claim as per the incentives scheme for incremental traffic for the traffic offered by him for the two years from the nearby Railways goods shed. The amendment is not applicable retrospectively to the case of the appellant herein, hence the Tribunal has rightly dismissed the claim of the appellant herein for the traffic made prior to 20.03.2013, prays to confirm the Order of the Tribunal.

13. I have considered the submissions made on both sides and

perused the materials placed on record:

14. Major contention raised by the appellant is that the Railways have assured for awarding incentives, for incremental traffic and same could not be taken back, and they are estopped by doing so as per the principle of "Promissory Estoppal". The Railway Claims Tribunal after considering the submission on both sides, has relied on the Paragraph 18 of the judgment of the Hon'ble Apex Court in ***Delhi Cloth & General Mills Ltd., Vs. Union of India [(1988) 1 SCC 86]***, which reads as follows:

> *"18. Here the Railways Rates Tribunal apparently, appears to have gone off the track. The doctrine of promissory estoppel has not been correctly understood by the Tribunal. It is true, that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he has suffered 'detriment' or 'prejudice'. It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment. But this has now been explained in so many decisions all over. All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the promise that it is reliance based and nothing more."*

15. Based on the above observations of Apex Court, the Tribunal

has held that there is no case for the complainant that, he set up a private siding on any promise on extending the concession and setting up of siding is not the only purpose of availing concession. It is not the appellant's case that, Goods shed at Bonakalu was closed, thereby, they have constrained to use private siding and he lost the opportunity to avail traffic incentive. It further held that, the amendment did not say that it was clarificatory in nature to the earlier notification for liberalized siding schemes and consequently complaint is not maintainable. However, ordered incentive for the traffic made after 20.03.2013 i.e., from the date of amendment i.e., Freight Marketing circular no.4/ 2013.

16. The judgment of the Apex Court in ***Pawan Alloys & Casting Pvt. Ltd. Vs. U.P. State Electricity Board*** cited supra has considered the powers of Electricity Board to withdraw the concession or rebate, and application and scope of the Principle of Promissory Estoppel and observed in Paragraph nos. 9 and 10 as follows:

> *"9. It is now well settled by a series of decisions of this Court that the State authorities as well as its limbs like the Board covered by the sweep of Article 12 of the Constitution of India being treated as 'State' within the meaning of the said Article, can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel*

does not fly in the face of any statutory prohibition, absence of power and authority of the promisor, is otherwise not opposed to public interest, and also when equity in favour of the promise does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.

10. In this connection we may usefully refer to a decision of this Court rendered in the case of State of H.P. v. Ganesh Wood Products. B.P. Jeevan Reddy, J. speaking for a Bench of two learned Judges of this Court made the following pertinent observations in this connection in paragraphs 54 and 55 of the Report:

> *The doctrine of promissory estoppel is by now well recognised in this country. Even so it should be noticed that it is an evolving doctrine, the contours of which are not yet fully and finally demarcated. It would be instructive to bear in mind what Viscount Hailsham said in Woodhouse Ltd. v. Nigerian Produce Ltd.*
>
> *I desire to add that the time may soon come when the whole sequence of cases based upon promissory estoppel since the war, beginning with Central London Property Trust Ltd. v. High Trees House Ltd. (1947) I KB 130 : 62 TLR 557 : 1947 L JR 77 may need to be reviewed and reduced to a coherent body of doctrine by the courts. I do not mean to say that they are to be regarded with suspicion. But as is common with an expanding doctrine, they do raise problems of coherent exposition which have never been systematically explored.*

Though the above view was expressed as far back as 1972, it is no less valid today. The dissonance in the views expressed by this Court in some of its decisions on the subject emphasises such a need. The views expounded in Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. MANU/SC/0336/1978 : [1979]118ITR326(SC) was departed from in certain respects in Jit Ram Shiv Kumar v. State of Haryana MANU/SC/0335/1980 : [1980]3SCR689 which was in turn criticised in Union of India v. Godfrey Philips India Ltd. MANU/SC/0036/1986 : [1986]158ITR574(SC) . The divergence in approach adopted in Shri Bakul Oil Industries v. State of Gujarat MANU/SC/0426/1986 : [1987]165ITR6(SC) and Pournami Oil Mills v. State of Kerala MANU/SC/0424/1986 : [1987]165ITR57(SC) is another instance. The fact that the recent decision in Kasinka Trading v. Union of India MANU/SC/0170/1995 : 1994ECR637(SC) is being reconsidered by larger Bench is yet another affirmation of the need stressed by Lord Hailsham *for enunciating 'a coherent body of doctrine by the courts'. An aspect needing a clear exposition - and which is of immediate relevance herein - is what is the precise meaning of the words 'the promise ... alters his position', in the statement of the doctrine. The doctrine has been formulated in the following words in Motilal Padampat Sugar Mills Co. Ltd.. at p. 643):*

> *The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promise, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promise, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.*

We may say at this stage that at the time the aforesaid decision was rendered, judgment of this Court in the case of Kasinka Trading v. Union of India MANU/SC/0170/1995 : 1994ECR637(SC) was pending scrutiny before a larger Bench. Subsequently the said decision came to be confirmed by the decision of a Bench of three learned Judges of this Court speaking through A. M. Ahmadi, C.J. in the case of Shrijee Sales Corporation v. Union of India MANU/SC/1099/1997 : 1997(89)ELT452(SC). We will refer to these decisions in the latter part of this judgment. Suffice it to say at this stage that if a statutory authority or an executive authority of the State functioning on behalf of the State in exercise of its legally permissible powers, has held out any promise to a party who relying on the same has changed its position not necessarily to its detriment and if this promise does not offend any provision of law or does not fetter any legislative or quasi-legislative power inhering in the promisor then on the principle of promissory estoppel the promisor can be pinned down to the promise offered by it by way of representation containing such promise for the benefit of the promise.”

17. Recently, the Hon'ble Apex Court judgment in ***Sree Sankaracharya University of Sanskrit & Ors. Vs. Dr. Manu & Anr. [(2023) LiveLaw SCC 394],*** while interpreting the Government Order of

the Higher Education Department, as to whether it is applicable retrospectively or not, and held in Paragraph nos.9.1 and 9.2 as follows:

> *"9.1. An explanation/clarification may not expand or alter the scope of the original provision, vide Bihta Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar, MANU/SC/0260/1966 : A.I.R. 1967 SC 389. Merely describing a provision as an "Explanation" or a "clarification" is not decisive of its true meaning and import. On this aspect, this Court in Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi,Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement in the statute itself, but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods.*
>
> *This position of the law has also been subscribed to in Union of India v. Martin Lottery Agencies Ltd., MANU/SC/0739/2009 : (2009) 12 SCC 209 wherein it was stated that when a new concept of tax is introduced so as to widen the net, the same cannot be said to be only clarificatory or declaratory and therefore be made applicable retrospectively, even though such a tax was introduced by way of an explanation to an existing provision. It was further held that even though an explanation begins with the expression "for removal of doubts," so long as there was no vagueness or ambiguity in the law prior to introduction of the explanation, the explanation could not be applied retrospectively by stating that it was only clarificatory.*
>
> *9.2. From the aforesaid authorities, the following principles could be culled out:*
>
> *i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.*
>
> *ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the*

amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii) An explanation/clarification may not expand or alter the scope of the original provision.

iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

18. In this case, the appellant claim that, they were assured of awarding of Incentives for incremental traffic made by them based on their traffic volume carried in previous two years. They have also reached the benchmark for the period from April 2010 to march 2011 and April 2011 to March 2012. They have relied on the Rate Circular No. 62/2009, Freight Marketing Policy circular No.1/2012 and Freight Marketing circular no.4/2013.

19. The Railway Board has issued a policy guidelines for Freight Incentives schemes and Transportation products namely, Rate Circular no.62/2009, dated 10.11.2009. Paragraph 1.5 and 1.6 deals with the objective of the scheme, which reads as follows:

"1.5. Main objective of the Freight Incentive Scheme is to generate additional traffic volumes and additional revenues. Grant of freight concessions should, therefore, serve this very objective. A close watch needs to be kept to ensure that this objective is being served.

1.6. Concessions will normally be given as a discount at the time of issue of RRs unless otherwise specifically stated in a particular scheme. However, if on request of the customer or for any other reason discount could not be given at the stage of issue of RRs, then the concession should be given subsequently as a refund."

20. The circular further prescribed a benchmark to avail the concession. In Paragraph No.2.11, it listed out the schemes included in this Freight Incentives Schemes as follows:

"(i) Incentive Scheme for Loading Bagged Consignments in BOXN.
(ii) Incentive Scheme for Traditional Empty Flow Direction.
(iii) Incentive Scheme for Freight Forwarders.
(iv) <u>Incentive Scheme for Incremental Traffic.</u>"

21. In Paragraph No.2.20, a new traffic has been defined, which reads as follows:

"New Traffic: It refers to the traffic loaded by a customer in the current year from a terminal provided that this customer had not loaded same commodity from the same terminal in each of the 2 previous years."

22. In Paragraph No.4.4 deals about the Incentives Scheme for Incremental Traffic which is applicable to the case of appellant and it reads as follows:

"Objective:

This scheme aims to generate additional business volumes.

Incentives:

Discounts in the freight rate (NTR) will be granted for the Incremental NTKMs at the time of issue of Railway receipt itself. The percentage discount in freight rate would be as indicated in each slab of incremental NTKMs in the following table.

Slabs of freight concessions are as under:

	Slabs of Incremental NTKMs	*Percentage Discounts on Applicable Freight Charges*
(a)	*10%>= Inc. NTKMs*	*Nil*
(b)	*20%>=Inc. NTKMs >10%*	*10% on the increment beyond 10%*
(c)	*30%>=Inc. NTKMs >20%*	*(b) + 20% on the increment beyond 20%*
(d)	*Inc. > 30%*	*(b) + (c) + 30% on the increment beyond 30%*

Conditions:

1. *No freight concessions will be admissible in case of New Traffic.*
2. *This Scheme will be applied to each terminal separately and independently for customers operating from multiple terminals.*
3. *If a customer is dealing with more than one commodity at a single terminal (for example cement & clinker), then combined NTKMs from different commodities should be taken into consideration for deciding the eligibility under this Scheme.*
4. *NTKMs from a terminal to any number of destinations will be eligible under the Scheme.*

5. *Concessions will be given at the stage of issue of RR itself on incremental NTKMs over the annual benchmark. However, if incremental NTKMs have been loaded before issue of notification (in terms of para 8), then freight rebate will be granted.*
6. *For the year 2010, application for availing this discount must be submitted by customers latest by 31st January 2010. Divisions/ Zones will not have any discretion for entertaining any application after that date.*
7. *For the year 2010, customers must submit data for the period from 1st January 2008 to 31st December 2008, and from 1st January 2009 to 31st December 2009.*
8. *Applications received from customers must be finalized within 45 days at the Divisional level, latest by 15th March 2010. Notification indicating the benchmarks must be issued by 15th March 2010.*
9. *Concessions granted under this Scheme will always be for the entire year with effect from 1st January 2010 to 31st December 2010.*
10. *For subsequent years the same time schedule should be followed."*

23. In the year 2012, the Railway Board issued a "Freight Marketing Policy Circular No.1/2012 on Siding Matter", which paved the way for setting up of private sidings and for the purpose of increasing the traffic volumes. By using this policy, the appellant herein has established his own private siding at Mellacheruvu and it was alloted an alphabet code of MMHM. After setting private siding, the appellant herein has started inward and outward traffic from 28.07.2012. The Draft Notification no.1/2013 was

also issued by the Competent Authority to disburse the incentives amounts as claimed by the appellant for the traffic made from Mellacheruvu from 28.07.2012, however, it was not awarded by the Railway Board.

24. The Paragraph nos. 9 and10 of the Freight Marketing circular No.1/2012 for Siding matters, deals with the concessions to be given separately to the private siding, the relevant portions reads as follows:

9. ***Detailed Instructions for Sidings:***

(i) to (vi) ......

(vii). Based on the projected outward traffic volumes, OD flows and commodity-wise freight charges per rake, Division shall work out the approximate duration for which a freight discount of 10% is required to be given.

(viii). The freight discount shall remain fixed at 10%.

(ix). The duration for which this discount is to be given shall depend on the time period of repayment of the expenditure incurred by the siding owner on behalf of Railways. However, such discount shall be admissible for a maximum period of 10 years only, irrespective of whether the investment made on behalf of Railways are recovered or not. The duration of freight discount shall be for less than 10 years in case the expenditure incurred is recovered in less time period.

(x), (xi) ......

(xii). All outward traffic loaded from the siding shall be the 'paid' traffic.

(xiii). For outward traffic originating from new sidings, this discount shall be given up front in freight charges at the time of booking.

The Goods Clerk shall maintain a separate register containing details of all outward traffic moved along with discount given and the balance amount of repayment due to the siding owner. TIA and sectional CMI shall conduct post checks regarding this account-keeping on a quarterly basis.

*10. **Applicability Of Liberalized Siding Policy:***

i. New siding of a new plant being set up.

ii. New siding of an existing plant that was earlier getting its inward & outward traffic dealt with at a nearby Railway Goods Shed.

(a). However, since the traffic being offered is not altogether new, the discount shall be given only for incremental outward traffic that is handled at the new siding over and above what was earlier being dealt with at Railway's Goods Shed during the previous year.

(b) The incremental traffic mentioned above shall be calculated in terms of money value of freight paid (during the previous year after indexing for increase in freight charges), if any.

(c) The discount shall be given up front in freight charges at the time of booking. The goods clerk shall maintain details of all such outward traffic along with discount given in a separate register, as mentioned in Para 9 (xiii) above.

iii. It shall be applicable to all the sidings which are commissioned after 01.04.2005. This shall apply to both categories falling under Para 10. (i) & (ii) above.

25. On 20.03.2013, the Freight Marketing Circular No. 04/2013

was issued by the Railway Board, which is titled as "Amendment to Freight Marketing Circular No. 1/2012" on Siding matters in Paragraph 2, which read as follows:

> *"2. Para 10 appearing at page 9 of aforesaid circular, may be read as under:*
>
> *For getting benefit under Freight Incentive Scheme for incremental traffic, as stipulated in Rates Circular No.62 of 2009, amended from time to time, following conditions are required to be fulfilled:*
>
> *I. The Traffic offered from the new sidings may be treated as existing traffic instead of new traffic, if it is established by the concerned zonal railways that:*
>
> *(i). New siding of existing plant that was earlier getting its inward and outward traffic dealt with at nearby Railway Goods Shed(s), has been commissioned under Liberalized Siding Rules.*
>
> *(ii). Rail customer of the new siding is the same customer of an existing plant that was earlier getting its inward and outward traffic dealt with at nearby Railway Goods Shed(s).*
>
> *(iii). The traffic at this new siding is the same traffic which was earlier dealt with at nearby Railway goods shed(s).*
>
> *(iv). All the traffic of the customer of such new sidings, which was earlier being handled at railway-owned goods shed(s)/ public siding(s) should stand transferred to the new private siding or, in other words, the traffic of the said customer at railway-owned goods shed(s)/ public siding(s) should have got reduced to 'NIL'. Also if in case outward traffic is offered by such siding/ plant owners at nearby goods shed(s)/ public siding(s) at a date subsequent to the commissioning of the siding under the relevant Liberalized Siding Rules, the said traffic would not be eligible for concessions under any of the freight incentive schemes prevalent at that time.*

II. Average annual NTKMs during 2(two) previous years of new siding of an existing plant that was being handled at nearby Railway Goods Shed(s) will be calculated and benchmark for becoming eligible for discount will be 10% more than the average.
.....

III. The customer will get the benefit under Freight Incentive Scheme after fulfilling all other terms and conditions. There will not be any change in the extant provisions of the scheme for all the customers apart for the customer of new sidings commissioned under Liberalized Siding Rules."
.....

4. These instructions will come into force with immediate effect."

26. The Paragraph 10 of the Freight Marketing Circular No.1/2012 has been relied on by the appellant for seeking incentives for their traffic made by them from the new sidings. This has been disputed by the Railways and according to them, by way of amendment, this benefit is extended to the new sidings and this amendment is made applicable prospectively and the Tribunal has accepted the same and rejected the claim made by the claimants for the traffic prior to 20.03.2013.

27. In the complaint filed before Tribunal, the appellant specifically pleaded about the application of Paragraph 10 to them, but this has not been disputed by filing separate counter or reply by the Railways. The appellant has also adduced oral evidence by relying on this Paragraph 10 but this was

not adverted or denied by cross examining the witnesses of appellant. The Railways have relied on the amendment i.e., Freight Marketing Circular No.4/2013, to reject the claim of the appellant on the ground that only by way of amendment the Railways have declared that the new traffic made from the new sidings shall be treated as existing traffic, earlier, the outward and inward traffic was offered from nearby goods shed. This amendment shall come into effect only from 20.03.2013.

On close scrutiny of Paragraph 10 (i) and (ii) of the Freight Marketing Circular No.1/2012 on Siding Matters prior to amendment, it indicates that the traffic made from the new siding of a new plant being set up, and new siding of an existing plant, that was earlier getting its inward and outward traffic dealt with at a nearby Goods shed, is not a new traffic altogether, the discount shall be given for the incremental outward traffic handled from the new siding over and above what was earlier being dealt with at Railways Goods shed during the previous year. Paragraph 10 (iii) further reads that, this shall apply to all the sidings, which are commissioned after 01.04.2005 and also fall under both categories of Paragraph 10 (i) and (ii) above.

28. Before the Tribunal, by way of evidence, this Paragraph 10 of Freight Marketing Circular No. 1/ 2012 has been relied on and the Tribunal

has not considered this Paragraph. This Paragraph shows that there was an existing concession or incentives in favour of the appellant/ claimant and there was an assurance by way of policy, to offer incentive for incremental traffic to the persons establishing new sidings.

29. The Railways in the amendment states that the traffic made from the new siding shall be treated as an existing traffic, however it put cap on the application of the amendment by prescribing the date of its application i.e., from the date of issuance of amendment. In this case, by way of issuance of Rate Circular No.62/2009, the railways have promised to offer incentive for the incremental traffic, in Paragraph no.4.4 under the head "Incentive scheme for Incremental Traffic". Subsequently, by Freight Marketing Circular No.1/2012 on Siding matters by Paragraph 10, the Railways declared that traffic offered from new siding of new plant or new siding from the existing plant shall be treated as an existing traffic. It means that even the traffic made from the new siding shall not be treated as a new traffic, since, the traffic offered is not altogether new, and it was earlier being dealt with at Railway Goods shed. In this case, the appellant prior to establishment of new siding that have offered traffic from nearby Goods

shed Bonakalu. Already the appellant reached the benchmark for claiming the increment for incentive traffic. The issue of Draft Notification confirms that the appellant has reached the benchmark.

30. As observed by the Tribunal, it is true that the nearby Goods shed of Banakallu has not been closed or the appellant has been asked to continue the traffic only from the new siding. However, the Freight Marketing Circular No.1/2012 of Siding Matters declares that the customers operating new sidings are eligible for getting incentive for incremental traffic. Naturally the appellant must have been induced to go for private siding for getting more incentive for the traffic made by them. In ***Sree Sankaracharya University of Sanskrit & Ors. Vs. Dr. Manu & Anr,*** cited supra it is held that the Court is not bound by the statement made in the statue and it shall proceed to analyze the nature of the amendment and then to conclude whether it is a clarificatory in nature or declarative provision, or it is the amendment, that is intended to change the previous position of law and whether it apply to future period.

31. In this case, Paragraph 10 contains the provision for treating the traffic made from the new siding as an existing traffic, which has been once

again reiterated in the amendment. If there was no provision as stated in Paragraph 10, then this Court would have accepted the contention of the railways that the subsequent Freight Marketing Circular No.4/2013 issued is an amendment to the Siding matters for extending the incremental traffic concessions to the persons establishing new siding. It is not new concession offered by Railways to the customers of new sidings Whereas, already Paragraph 10 makes it clear, the traffic made from the new sidings shall be considered as a new traffic. That being so, the Freight Marketing Circular No.4/2013 is only a explanatory of the Paragraph 10 of the Freight Marketing Policy Circular No.1/2012.

32. Further, the appellant has also pleaded that they have come forward to establish new private siding at Melachevaru (MMHM) by incurring Rs.156 crores and based on the promise that they would get better incentive for incremental traffic. After promising that the traffic made by them as an existing traffic, which would in turn makes them eligible to get incentives, the Railways are not entitled to withdraw the same based on the Doctrine of Promissory Estoppal. This amendment is not introducing any new benefit, which is not in existence in the siding matters, similarly, it is

not withdrawing any benefit, which is made available in the previous siding matters. The Railways have made promise knowing or intending that their policy on the siding matters would induce its customers to establish new siding and after establishment, refusing to grant the existing benefits by fixing the cut of date i.e., by way of bringing amendment to avoid benefits, is not permissible and the Railways estopped from changing the date of application of extending concession. Admittedly, the appellant herein invested a huge sum for setting up of new siding and they have also reached the benchmark, hence they are eligible to get the incentive for their incremental traffic as claimed by him. The Tribunal without adverting to the above aspects has held that there was no promise made to the appellant to establish the private siding, and this Court is of the view that the above finding is liable to be set aside.

33. In view of the discussions made above, this Court is of the view that the appellant is entitled to get incentive charges under Incremental Traffic Scheme as per the Draft Notification no.1/2013 issued by the Competent Authority.

34. After hearing the arguments, this Court has expressed its opinion in the open Court, that the case of the appellant is not having any merits. Subsequently, on a further closer and meticulous scrutiny of the various circulars adverted to supra, this Court is of the considered view that the case of the appellant merits consideration in the teeth of the discussion above made. This final decision has been taken prior to signing of the judgment which is permissible as per the ratio laid down by the Apex Court in ***Kushalbhai Ratanbhai Rohit and Others vs. State of Gujarat,*** reported in ***AIR 2014 SC 2291.***

35. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

22.12.2023

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Railway Claims Tribunal,
Chennai Bench.

2. Government of India,
Ministry of Railways,
Railway Board,
Rep. by its Secretary,
Rail Bhavan,
New Delhi - 110 001.

3. Union of India,
Owning South-Central Railway
Rep. by its General Manager,
Rail Nilayam,
Secunderabad - 500 071.

4. Chief Commercial Manager,
South-Central Railways,
Rail Nilayam,
Secunderabad - 500 071.

5. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

stn

C.M.A. No. 3252 of 2017

22.12.2023