In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

<u>F.M.A.T. No. 237 of 2017</u>

Indian Oil Corporation
Vs.
Union of India

For the appellant	:	Mr. Kanish Kejriwal, Mr. Amit Meharia, Ms. Paramita Banerjee, Ms. Subika Paul, Mr. Rohan Raj
For Union of India	:	Mr. Amal Kumar Datta, Mr. Rajdeep Pramanik
For the South Eastern Railway	:	Mr. Ajay Kumar (in person)
Hearing concluded on	:	24.12.2024
Judgment on	:	14.01.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out a judgment dated June 21, 2016 passed by the Railway Claims Tribunal, Kolkata Bench, Kolkata, whereby the appellant's claim for refund of 20% surcharge was refused.

2. The admitted facts of the case are that the appellant booked consignments of Naptha (SRN) on twelve (12) different dates with the South Eastern Railway. 20% surcharge was levied on the said consignments. Challenging the same, a claim was filed before the Tribunal by the appellant claiming refund of the 20% surcharge.

3. Learned counsel for the appellant argues that *vide* Circular No.TCR/1078/2007/2 dated October 16, 2007 issued by the Railway Board, Ministry of Railways, thelevy of additional 20% surcharge was relaxed. By the said Circular, the expression “OR” in Column 6 of the IRCA Goods Tariff was replaced with “RR”. Since the consignments were booked in the year 2011, the said relaxation was applicable and, as such, the surcharge was levied unlawfully and ought to be refunded.

4. The Railways argued before the Tribunal that the consignment was booked under GT No.46, Part-I (Vol.-II), in which the commodity (Naptha) was included under the main head. As such, Goods Tariff (GT) No.45, Part-I (Vol.-II) and the Railway Circular dated October 16, 2007 are not applicable since the consignor/appellant opted for booking the consignments at RR rate.

5. During arguments before us, the authorised employee of the Railways contends that even if the 2007 Circular is applicable, the charges would be levied as per Base Class 210 instead of 200, as appearing in Column No.8 of the General Classification of Goods.

6. In order to decide the short issue involved, as to the legality of the levy of 20% surcharge, the relevant Circulars as well as GT Nos.45 and 46 of the IRCA are required to be examined.

7. Circular No.TCR/1078/2007/2 dated October 16, 2007 replaced “OR” with “RR” in Column No.6.

8. To appreciate such change, GT No.45, Part-I (Vol.-II), which was given effect from April 1, 2007, is to be looked into. As per Clause 12.0 thereof, the abbreviation "OR" in Column No.6 (captioned as "Risk Rate") was defined as "Owner's Risk". As opposed to the same, the expression "RR" was defined as "Railway Risk". The concept was that if the consignment was booked with the endorsement "OR" in the Risk Rate Column (Column No.6), the risk for the same would be covered by the owner,whereas if the booking was with the endorsement "RR" under Column No.6, the risk would be of the Railways, for which payment of 20% surcharge was levied by the Railways.

9. During subsistence of GT No.45, Part-I (Vol.-II), the Railway Board issued Circular No.TCR/1078/2007/2 dated October 16, 2007, universally replacing the endorsement "OR" with "RR". As such, from the said date, there would be no option for the consignor to book a consignment by depicting"OR" under the Risk Rate Column but the consignor would compulsorily have to book the goods as "RR".

10. Simultaneously, the Circular dated October 16, 2007 also remitted the additional 20% surcharge in case of "RR" consignments.

11. In the self-same Circular, the product "Petroleum Products and Gases", under which the commodity-in-question (Naptha) falls, was shown under the head "General Tariff Lines".

12. Thus, on and from October 16, 2007, the consignments had to be booked mandatorily with the endorsement "RR" in Column No.6 and would be free from levy of additional 20% surcharge.

13. Since the consignments of the appellant were booked between October 7, 2011 and October 29, 2011, GT No.45, and not GT No.46 (which came into force later), would be applicable. The General Classification of Goods under GT No.45, Part-I (Vol.-II), as corrected on May 31, 2011, that is, prior to the booking of the appellant's consignments, indicated the Base Class under Column No.8 for Petroleum Products and Gases to be 200. Even going by GT No.46, Part-I (Vol.-II) which came into force from March 6, 2012, subsequent to the appellant's consignments, and which the Railways claim to be the governing GT, the Base Class under Column No.8 for Petroleum Products and Gases remained 200 and not 210.

14. The argument of the Railways that Base Class 210 would be applicable emanates from the illustration given in the Railway Board Circular dated October 16, 2007 mentioning that for Acids and Alcohols, which come under the same category as Petroleum Products and Gases (that is, "General Tariff Lines"), the consignments would be booked at "RR" and charged at Class 210 without levy of additional 20% surcharge. Even if, for arguments' sake, we proceed on the basis that at that juncture, Base Class 210 was the governing class under Column No.8 in respect of Petroleum Products and Gases, at the juncture when the consignments of the appellant were booked, that is, in the month of October, 2011, the General Classification of Goods under GT No.45 stood corrected as on May 31, 2011, designating 200 as the Base Class for Petroleum Products and Gases. The same position was retained in the subsequent GT No.46, Part-I (Vol.-II), which came into force from

March 6, 2012. Thus, whereas the Base Class for Petroleum Products and Gases was altered to 200 by the time the appellant's consignments were booked, even if the same was 210 previously, the relaxation regarding additional 20% surcharge incorporated by the Railway Board Circular dated October 16, 2007 remained.

15. Hence, as on the date of booking of the consignments of the appellant, the prevalent Base Class under Column No.8 of the General Classification of Goods applicable to the appellant's consignment was 200 whereas, pursuant to the Circular dated October 16, 2007, the only category which could be mentioned under "Risk Rates" in Column No.6 was "RR", associated with which was the relaxation of the additional 20% surcharge by virtue of the October 16, 2007 Circular.

16. As such, on the relevant date, the Base Class for Petroleum Products and Gases, under which the appellant's consignments of Naptha fell, was 200, with remission of the 20% surcharge.

17. The respondent's argument that the appellant deliberately opted for "RR" under the Risk Charges in Column No.6 instead of "OR" and hence should be subjected to the 20% surcharge is fallacious, since by dint of the Circular dated October 16, 2007, there was no option for the consignors to indicate "OR" under Column No.6. The only available option was "RR".

18. Hence, on a comprehensive appreciation of the prevalent Circulars and the Goods Tariffs as well as the General Classification of Goods thereunder prevalent at the relevant point of time it is clearly seen that the consignments of the appellant fell under Base Class 200 under

Column No.8 of such General Classification and had to be shown under the Risk Rate in Column No.6 as "RR". On the relevant dates in October, 2011, no additional surcharge of 20% was payable for "RR" goods by virtue of Circular No.TCR/1078/2007/2 dated October 16, 2007.

19. Accordingly, the Tribunal patently erred in law in refusing the claim of refund of such 20% surcharge made by the appellant.

20. One other aspect of the matter cannot be lost sight of. The Tribunal proceeded on the premise that the burden of proof and onus lay on the appellant to prove its case and it had failed to discharge such burden by adducing convincing evidence. However, the facts of the case are admitted. It is an admitted position that the consignments were booked between October 7 and October 29, 2011. Thus, no further evidence was required to be led on facts by the appellant.

21. The adjudication hinged only on the Railway Circular dated October 16, 2007 on the one hand and GT No.45 and GT No.46 at best on the other, all of which were before the Tribunal. In any event, the said documents being public records and authored by the respondent-Railways, there was no liability on the part of the appellant to produce or prove the same. It was for the Railways to produce the said Circulars, if so required by the Tribunal.

22. In any event, all the relevant GTs and the Circular dated October 16, 2007 were considered by the Tribunal and addressed in the arguments by both parties. Thus, nothing more remained to be produced before the Tribunal for coming to the only possible conclusion that no additional surcharge of 20% was leviable on the consignments of the appellant.

23. Hence, the impugned judgment is not only erroneous in law but perverse, since it overlooked the obvious legal effect of the Circulars and Goods Tariff documents before it, which were the only documents which would have any bearing on the adjudication.

24. Accordingly, the appeal succeeds. Interim orders, if any, stand vacated.

25. F.M.A.T. No.237 of 2017 is allowed on contest without any order as to costs, thereby setting aside the impugned judgment and order dated June 21, 2016 passed by the Railway Claims Tribunal, Kolkata Bench, Kolkata in Claim Application No.OA(III)/KOL/2013/0035. The respondent/South Eastern Railway is directed to refund the additional 20% surcharge on freight to the appellant to the tune of Rs.1,14,05,071/-, along with interest at the rate of 6% per annum from March, 2013, till the date of payment, within February 15, 2025.

26. In default of payment within the said date, additional interest at the rate of 6% per annum, payable on and from February 16, 2025 calculated on the total sum, including the principal plus interest till February 15, 2025, till the date of payment shall be paid by the respondent to the appellant.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)