

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FMA 658 of 2023
with
CAN 5 of 2022
CAN 6 of 2024
CAN 7 of 2024**

**Union of India
Vs.
Electrosteel Castings Ltd. & Anr.**

Appearance:

For the Appellants : **Mr. Pramit Kumar Ray, Sr. Adv.
Mr. Navneet Misra, Adv.
Ms. Atmaja Bandyopadhyay, Adv.**

For the Respondent : **Mr. Samrat Sen, Sr. Adv.
Mr. Mainak Bose, Adv.
Mr. Rajesh Gupta, Adv.
Mr. Nikhil Jhunhunwala, Adv.
Mr. Sarthak Makkar, Adv.**

Judgment on : **27.02.2025**

HARISH TANDON, J.

The gamut of dispute involved in the instant appeal are basically founded upon the levy of the registration fees to the tune of Rs. 10 crores on the basis of a Freight Marketing Circular no. 12 of 2008 dated August 28,

2008 which was conspicuously withdrawn by a Freight Marketing Circular no. 24 of 2014 dated November 17, 2014 and the excess license fees charged by the appellant and sought to be adjusted from the future license fees. For the aforesaid charging of the registration fees and the licensing fees, the claim was made for refund of the same along with an interest as according to the writ petitioner/respondent the Railway has acted contrary to their own policies, circulars and the other communications made in this regard. The question, therefore, arises in this appeal is whether the levy and the payment of the registration fees to the tune of Rs. 10 crores and charging of an excess license fees are liable to be refunded to the writ petitioner or to be adjusted against the future license fees or the freight chargeable on the writ petitioner/respondent.

Before we proceed to decide the aforesaid disputes which, in fact, are agreed by the appearing Counsels to have involved in the instant case; the salient facts are succinctly narrated hereinafter. The writ petitioners/respondent are the manufacturer of an iron steel products which requires an iron ores from the different mines to be brought to the factory by iron rakes. There was a spurt of demand of iron ore as the China being the major importers for that the loading stations around the major mines situated in Orissa and Jharkhand did not have the requisite capacity to load the huge number of rakes. The Government of India formed the policy on Public Private Partnership (PPP) Model permitting the intending users of the Railway Rakes to construct the private siding either in their own land or the land owned by the Railways at their cost and expenses to develop the

infrastructure for mechanical loading of those products at their expenses. Such policy was framed by the Ministry of Railways for licensing the Railway land for commercial plots by virtue of a Master Circular dated February 10, 2005 providing that the rate of the license fee shall be 6 per cent of the land value in relation to the land used for a private siding and the value of the land shall be fixed on the basis of an adjacent areas as on January 1, 1985 which shall be increased by 7 per cent per year.

The writ petitioner/respondent, being in dire need of a huge numbers of Railway rakes, applied for construction of a private siding which was approved on February 6, 2006 by the Railways in principle. The said proposal was approved and received a railway transport clearance on June 23, 2006. Subsequently, the writ petitioner/respondent submitted the detailed project report for construction of a private siding which was approved in the month of October, 2007. After the commissioning of the project, the provisional bills towards land rent was raised by the appellant. The writ petitioner/respondent deposited the same on the basis of the said provisional bill under protest. Further demand was made for payment of a non-refundable registration fees of Rs. 10 crores for the said siding in terms of the Freight Marketing Circular no. 12 of 2008 which was also deposited under protest. Subsequently, the writ petitioner/respondent raised dispute with regard to the license fees calculated on the basis of a land value and also charging the non-refundable registration fees in terms of the said Freight Marketing Circular no. 12 of 2008 and claimed refund thereof.

However, correspondences were exchanged between the parties herein in relation to charging of the non-refundable registration fees as well as the license fees on the basis of the land value so determined by the Railway Authorities until the said Freight Market Circular no. 12 of 2008 was withdrawn by the Ministry of Railways on the basis of a Freight Market Circular no. 24 of 2014 dated 17.11.2014. After the withdrawal of the said Freight Marketing Circular no. 12 of 2008, a further bill was raised for land used for the said private siding for the year 2015-16 which was duly replied to by the Respondent raising an issue that after the withdrawal of the said Circular no. 12 of 2008, the excess payment made by the Respondent under protest be refunded. In response to the objection so raised, the Railway by letter dated September 23, 2018 acknowledged the payment of Rs. 10 crores as registration fees in terms of the said FM 12 of 2008 and also assessed the land licensing fees in terms thereof having paid but It would be deemed to have been paid in compliance of the said FM Circular no. 12 of 2008 thereby denying the claim of the writ petitioner/respondent on the aforesaid issues. The challenge is made to the said communication in the writ petition with further prayer for refund of the excess amount paid in respect of the license fees and the registration fees together with an interest thereupon.

The Railway appellant took a stand that by virtue of a policy having adopted for the development of the goods/sheds and siding by a private investment on the Railway premise, the writ petitioner/respondent was permitted to use the said Railway land under the PPP Model. By the Circular no. 12 of 2008, the Ministry of Railway imposed certain conditions including

the payment of the registration fees of Rs. 10 crores which had been accepted by the writ petitioner/respondent. Subsequently, the said FM Circular was withdrawn indicating the guidelines in relation thereto and, therefore, the policy decisions should not be lightly interfered under Article 226 of the Constitution of India. Subsequently, a conscious decision was taken that instead of refund of the excess amount in relation to the license fees and the registration fees, the same shall be adjusted by 10 per cent from the future bill and, therefore, the judgment of the Single Bench in directing the refund is contrary to such decision. The Single Bench after taking into account the circulars and the stands of the parties in relation thereto directed the appellant to refund the said registration fees to the tune of Rs. 10 crores and the excess land licensing fees within a specified period together with an interest at the rate of 6 per cent.

During the pendency of the instant appeal, several applications are filed by the respective parties seeking to rely upon certain documents which, according to them, shall throw a light on the core issue involved in the instant matter. We do not intend to go into the nitty-gritty of the aforesaid documents as we find from the supplementary minute of PHOD's level committee's meeting held on 18.02.2022 with regard to the review of the land rate and the land license fees, the Railway land was licensed to the writ petitioner/respondent. The appellant in the said meeting admitted that there was an excess payment in relation to a land license fees and also the charging of the registration fees in terms of the said withdrawn circular and decided to adjust the said amount from the future license fees for 5 years.

Admittedly, the agreement entered into between the parties provides for a payment of the land license fees in advance for one year with the buffer period of one year for payment which, according to the writ petitioner/respondent has to be strictly adhere to and the decision of the appellant in adjusting the same from the future license fees spanning over 5 years is in contravention therewith.

The facts adumbrated hereinabove leaves no ambiguity in our mind that the appellant has also agreed that there has been an excess payment on the aforesaid two counts but the dispute hinges upon whether the aforesaid excess payment is required to be refunded or to be adjusted from future bills.

The Counsel for the appellant vociferously submits that taking into account the spirit of the policy and the decision taken therefrom, the Single Bench ought not to have directed the refund of the excess amount but should have passed an order directing the adjustment from the future bill and placed reliance upon a judgment of the Apex Court in ***Maharashtra State Electricity Distribution Co. Ltd. Vs. JSW Steel Ltd. & Ors. reported in (2022) 2 SCC 742*** and ***Ajmer Vidyut Vitran Nigam Ltd. Vs. Hindustan Zinc Limited & Ors. reported in (2022) 6 SCC 282***. The Counsel for the appellant further submits that the moment a decision has been taken for adjustment of the aforesaid amount unless the same is found to be mala fide or unjustified, the Court should not pass an order for refund of the said amount.

On the other hand, the Counsel for the writ petitioner/respondent submits that once it is found that the excess payment has been made *de hors* the agreement as well as the circular issued by the Railways from time to time, there is no fetter on the part of the Court to direct the refund of the same with interest as the said amount was unreasonably withheld by the appellant. It is further submitted that there is no fetter on the part of the Writ Court to direct the refund of the said amount if the same has been withheld arbitrarily and placed reliance upon a judgment of the Apex Court in case of ***Surya Constructions vs. State of Uttar Pradesh & Ors. reported in (2019) 16 SCC 794.*** The Counsel for the writ petitioner/respondent audaciously submits that adjustment of an excess amount unilaterally is *per se* illegal as held by the Co-ordinate Bench of this Court in ***Kolkata Municipal Corporation and others. vs. Abas Nibas Pvt. Ltd. & Ors. reported in (2023) SCC Online Cal 3609.***

In reply to the aforesaid stand taken by the respondent, a preliminary objection is raised by the appellant that the agreement entered into between the parties contained an arbitration clause and, therefore, the Writ Court should not have entertained the writ petition. It is thus submitted that the Writ Court should have relegated the parties to the arbitration and, therefore, the impugned order is not sustainable.

Taking into account the submissions so advanced before us, the point has squeezed to whether the appellant was justified in adjusting the excess payment made in relation to a land license fee and the registration fees from the future bills. Admittedly there was no concept of payment of registration

fees prior to the FM Circular no. 12 of 2008 dated August 28, 2008. The said circular on its bare reading indicates that it will have its operation in respect of a new site. The word “new” is considered as the fresh and, therefore, has its applicability to a site given under the PPP Model on the date of its existence or thereafter. It does not include within itself, the site given prior to the said circular and having realised the same, the appellant have also accepted the aforesaid position. The said Circular dated 28th August, 2008 was subsequently withdrawn by another Circular dated 17th November, 2014 indicating that the site which was approved prior to the said Circular dated 28th August, 2008 the licensees are not required to deposit the registration fees with the rider that in the event it is so deposited, it would be refunded by way of a rebate of 10 per cent in freight for loading. In view of the said Circular dated 17th November, 2014, it is manifestly clear that the imposition of the payment towards the registration fees in respect of a siding approved/allotted prior to the Circular dated 28th August, 2008 was unjustified. It appears from the record that even after the withdrawal of the Circular dated 28th August, 2008, huge amount of freight charges for loading was paid by the writ petitioner/respondent without any adjustment. It does not appear that any attempt on the part of the appellant to comply the mandate given under the Circular dated 17th November, 2014 was ensured and the said amount towards the registration fees was neither adjusted nor refunded. There is an unqualified admission on the part of the appellant in relation to the wrongful charging of the registration fees from the writ petitioner/respondent and the conduct does not instil any attempt made by the Railway Authorities either to adjust or

refund the same. It is further apparent from the correspondences made by the appellant that the claim of refund was, in fact, declined which also indicate the conduct of the appellant in unreasonably withholding the amount towards the registration fees and, therefore, after a gap of a considerable period of time, it is unjustified that the said amount would not be refunded to the writ petitioner/respondent. The writ petitioner/respondent was deprived of the said amount and in a commercial parlance was precluded from utilising the same for business purpose.

The judgment of the Apex Court in ***Maharashtra State Electricity Distribution Co. Ltd. Vs. JSW Steel Ltd. & Ors. reported in (2022) 2 SCC 742***, cited by the appellant that the Apex Court has directed the adjustment of the said amount does not appear to have any manner of application in the instant case. In the said report, the Maharashtra State Electricity Distribution Co. Ltd. being the licensee approached the State Commission for MYT Approval for Financial Year 2014-15, provisional truing up of ARR for Financial year 2015-16 and multi-year tariff for 3rd control period of Financial Year 2016-17 to Financial Year 2019-20. The respondent therein resisted the claim and the Commission held that the additional surcharge leviable under Section 42(4) of the Electricity Act, 2003 is not applicable to captive users to the extent of their self-consumption from such plants. It was further held that additional surcharge shall be applicable to all consumers who avail open access to receive supply from sources other than the distribution licensee. The order of the said Commission was challenged before the Appellate Tribunal and was allowed with the

categorical finding that the group of captive consumers are not liable to pay additional surcharge to the distribution licensee. The question that fell for consideration was whether the captive consumers/ captive users are liable to pay the additional charges under Section 42(4) of the Electricity Act, 2003. The Apex Court after considering the definition of a consumer and the provisions contained in Section 42(4) of the Electricity Act, 2003 held that the captive consumer/captive users constitute a separate class other than the consumers defined under Section 2(15) of the Electricity Act and, therefore, shall not be subject to any additional surcharge levied under the said Act.

In the backdrop of the above, the Apex Court held that if the distribution licensee is directed to refund, it would cause a huge liability as they are providing electricity to all intending users and directed the adjustment from the future bills. The appellant does not stand on the same footing that of distribution licensee being the company who is in the helm of a business of distributing the electricity and, therefore, such decision does not appear to have any applicability of this case. Furthermore, we do not find that the discretion exercised by the Apex Court in granting the relief is equated with the law declared under Article 141 of the Constitution of India and, therefore, we do not find any assistance can be lend to the appellant.

Similarly, in case of ***Ajmer Vidyut Vitran Nigam Ltd. (supra)***, the Apex Court directed the adjustment taking into account the long business relation between the two companies although it was found that such payment was secured unreasonably and *de hors* the agreement.

The contention of the appellant that the writ Court should not interfere in relation to a dispute arising out of a contract does not appear to us an absolute proposition of law laid down in catena of judgments rendered by the Apex Court. The Apex Court in ***ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors.*** held that there is no absolute rule involving the adjudication of disputed question of facts to send the parties to Civil Court. It is further held that in an appropriate case involving the interpretation of a contract does not *ipso facto* render it a serious disputed question of fact so as to relegate the parties to the Civil Court in the following:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”

The Apex Court in ***ABL International Ltd. (supra)*** was also considering whether the writ Court can grant the monetary relief by way of a

refund of an amount which was unreasonably and unfairly received. Answering the aforesaid point the Apex Court held:

“25. The learned counsel for the respondent then contended that though the principal prayer in the writ petition is for quashing the letters of repudiation by the first respondent, in fact the writ petition is one for a “money claim” which cannot be granted in a writ petition under Article 226 of the Constitution of India. In our opinion, this argument of the learned counsel also cannot be accepted in its absolute terms. This Court in the case of U.P. Pollution Control Board v. Kanoria Industrial Ltd. While dealing with the question of refund of money in a writ petition after discussing the earlier case-law on this subject held: (SCC pp. 556-58, paras 12 & 16-17)

“12. In the para extracted above, in a similar situation as arising in the present cases relating to the very question of refund, while answering the said question affirmatively, this Court pointed out that the courts have made distinction between those cases where a claimant approached a High Court seeking relief of obtaining refund only and those where refund was sought as a consequential relief after striking down of the order of assessment etc. In these cases also the claims made for refund in the writ petitions were consequent upon declaration of law made by this Court. Hence, the High Court committed no error in entertaining the writ petitions.

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16. In support of the submission that a writ petition seeking mandamus for mere refund of money was not maintainable, the decision in *Suganmal v. State of M.P.* was cited. In AIR para 6 of the said judgment, it is stated that

‘we are of the opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as tax’.

17. Again in AIR para 9, the Court held:

‘we, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.’

This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax/cess is unconstitutional or without the authority of law. It is one thing to say that the High Court has no power under Article 226 of

the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, in the cases on hand where facts are not in dispute, collection of money as cess was itself without the authority of law; no case of undue enrichment was made out and the amount of cess was paid under protest; the writ petition were filed within a reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case.”

The law enunciated in *ABL International Ltd. (supra)* is further restated and reiterated in a subsequent judgment rendered by the Apex Court in *Surya Constructions vs. State of Uttar Pradesh & Ors., reported in (2019) 16 SCC 974* in the following:

“3. It is clear, therefore, from the aforesaid order dated 22-3-2014 that there is no dispute as to the amount that has to be paid to the appellant. Despite this, when the appellant knocked at the doors of the

High Court in a writ petition being Writ Civil No. 25216 of 2014, the impugned judgment dated 2-5-2014 dismissed the writ petition stating that disputed questions of fact arise and that the amount due arises out of a contract. We are afraid the High Court was wholly incorrect inasmuch as there was no disputed question of fact. On the contrary, the amount payable to the appellant is wholly undisputed. Equally, it is well settled that where the State behaves arbitrarily, even in the realm of contract, the High Court could interfere under Article 226 of the Constitution of India (ABL International Ltd. V. Export Credit Guarantee Corpn. of India Ltd.)”

Reverting to the point of charging excess land license fees, the minutes as relied upon by the appellant of the PHOD's level committee meeting dated 18.02.2022 is also corroborating the stand of the appellant that there was an excess payment by the writ petitioner/respondent and proceeded to adjust the same from the future license fees for 5 years in advance. The copy of the resolution of said meeting was communicated to the writ petitioner/respondent vide letter dated 21st February, 2022 acknowledging excess payment towards the land license fees to the tune of 9,94,77,331/-. It is a specific stand of the appellant that the said amount after adjustment shall be treated as a further payment for a period of 5 years reckoning from 1.4.2022 to 31.3.2027. We had an occasion to peruse the minutes as stated above and do not find any guidelines or the supporting documents in relation thereto. The contract entered into between the parties are exposit of the fact that the license fee for one year should be

paid in advance with the buffer period of one month and, therefore, the parties to the contract cannot resile therefrom. The contract is explicit and, therefore, the parties have to strictly adhere to the terms and conditions embodied therein and cannot unilaterally modified or changed the same. The decision in adjusting the said amount from a license fees to be paid for future period is contrary to the contract and, therefore, the stand of the appellant in this regard does not appear to hold water.

We, thus, do not find any incongruity, illegality and/or infirmity in the impugned order.

The appeal is thus dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)

Later:

After the delivery of the judgment in open Court, learned counsel for the appellant prays for stay of the operation of the instant judgment.

We do not find any ground warranting stay of operation of the instant judgment.

Hence, the prayer for stay of the judgment is refused.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)