

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 910 of 2023

With

CAN 1 of 2023

Orient Exports Pvt. Ltd.

-Vs-

Union of India

For the Appellants : Mr. Aritra Basu
: Mr. Shoham Sanyal
: Mr. Abhijit Sarkar

For the Respondents/
Insurance Company : Mr. Sukumar Bhattacharyya
: Mr. Manabendranath Bandyopadhyay

Heard on : 16.10.2023, 19.06.2024, 16.07.2024
26.09.2024

Judgment on : 08.05.2025

Ananya Bandyopadhyay, J.:-

1. The appellant, Orient Exports Private Limited has filed the instant application seeking stay of the order dated June 20, 2023 passed by Member (Judicial) and Vice Chairman, Railway Claims Tribunal in MA/KOL/2023/04.
2. The petitioner dealt in the business of collecting fly ash from Santaldih Thermal Power Station (hereinafter referred to as the "Thermal Power Station") and exporting the same to various customers at Bangladesh and

other neighbouring countries. The aforesaid power station exclusively facilitate people to purchase fly ash from West Bengal Power Development Corporation Limited by entitling them to load rakes for the purpose of exporting fly ash respectively.

3. To accomplish such export through transportation the petitioner placed indents at the aforesaid power station for allotment of railway rakes to transport fly ash. Accordingly, the Chief Goods Supervisor of Santaldih Thermal Power Station was allotted 33 railway rakes between November, 2018 and July 2019 to transport fly ash of a particular aggregation to Benapole, Darshana and Rohanpur.
4. The petitioner was liable to pay for various charges in terms of the circular issued by the respondent at the time of loading fly ash in the railway rakes. On and from September 26, 2018 the aforesaid thermal power station was electrified by A.C. traction which enabled normal electric traffic at the fly ash siding which did not demand the petitioner to pay any siding charges to the respondent-Thermal Power Station.
5. However, being directed by the respondent – Thermal Power Station, petitioner paid a sum of Rs. 33,87,561/- against excess railway freight towards railway siding charges at the time of the loading of the consignments under protest issuing communication vide letter dated March 7, 2019 and December 14, 2022.
6. The petitioner contended the respondent despite receipt of the aforesaid letters failed to refund the excess charges collected from the petitioner at the time of loading of consignments.

7. The respondent on June 25, 2019 issued a letter, inter alia, indicating that the petitioner was liable to pay for siding charges and the claim of the petitioner, inter alia, for refund of the siding charges was not maintainable in view of the Special Rate Circular No. RG46/2202/19 issued by the respondent on July 10, 2018. The letter dated June 25, 2019 was followed by a further letter issued by the respondent on July 8, 2019. The letter dated July 8, 2019 was issued inadvertently as delineated in the letter dated June 25, 2019. In the letter dated July 8, 2019 the respondent indicated that a circular dated July 10, 2018 bearing No. RG47/2202/19 existed.
8. The petitioner in order to demand refund of the siding charges, on the basis of circular dated July 10, 2018, even issued letter between March 7, 2019 and December 14, 2022.
9. In reply to the aforesaid communications vide letter dated November 17, 2022, the respondent indicated that the Circular RG47/2202/19 dated July 10, 2018 was modified with retrospective effect by a Circular No. RG46/4112 dated February 11, 2020 and thereafter, with the advent of Covid Pandemic considerable period of time was consumed by the appellant to deliberate and contemplate on the future action for recovery of the aforesaid sum of Rs. 33,87,561/-. Consequently, an application was filed before the Railway Claims Tribunal on January 10, 2022, inter alia, seeking refund of Rs. 33,84,561/-.
10. The application filed by the petitioner, inter alia, for refund of a sum of Rs. 33,87,561/-, was heard by the Learned Railway Claims Tribunal on May 30, 2023. On the said date the Learned Advocate representing the petitioner prayed for leave to file an affidavit, inter alia, praying condonation of delay in

filing the application for refund of the said sum of Rs. 33,87,561/-. Pursuant to the leave granted by the Learned Railway Claims Tribunal on May 20, 2023, an affidavit was filed by the petitioner on June 14, 2023. On June 20, 2023 disregarding the affidavit filed by the petitioner, inter alia, for condonation of delay in filing the application for refund of the said sum of Rs. 33,87,561/-, the application filed by the petitioner was dismissed, by the order dated June 20, 2023. The order dated June 20, 2023 had been impugned in the present appeal.

11. Considered the rival submissions of Learned Lawyers representing both the parties.
12. The Learned Railway Claims Tribunal by Order No. 05 dated 20.6.2023 passed the following orders:

“Record is put up for order on the delay condonation petition filed by the applicant. Perused the petition as well as written objection filed by the respondent.

The claim application is for refund of siding charge which is a part of freight in respect of booking of 33 consignments, first booking is of 02.11.2018 and the last booking is of 08.07.2019. As per sub-section (c) of Section 17 of the RCT Act, 1987, the claim application for refund of freight is to be made within three years from the date on which the fare or freight is made to the railway administration. In the case in hand, the siding charges were paid on the date of booking on different dates for 33 consignments the first one is of 02.11.18 and the last one is of 08.7.2019. The period of limitation for the 1st consignment expired on 02.11.2022 and that for the last booked consignment expired on 08.07.2022. Hon'ble Supreme Court in MA case No.665/2021 has held that the period between 15.03.2020 to 28.02.2022 should not be reckoned as the delay in filing cases due to Covid 19. The petitioner

has stated that due to outbreak of Covid-19 the dealing person could not look after the claim matters. Further the applicant company was under impression that as per verbal assurance of the railway officials, the matter would be settled at the claim stage. The claim application was actually filed on 25.01.2023. The applicant could not explain the delay in filing the case on 25.01.2023 after the expiry of Covid-19 period on 28.02.2022. The Court is not satisfied with the explanation that due to verbal assurance of the respondent official, the case could not be filed within the stipulated period. On 30.05.2023 the Ld. Counsel for the applicant prayed for time for filing proper Affidavit on behalf of the applicant in support of condonation of delay. On 14.06.23 Ld. Counsel for the applicant filed another affidavit and it is noticed that the affidavit has not been verified by the deponent of the applicant company. As such, the affidavit being a defective one cannot be given cognizance to.

In the light of the above discussion, the delay in filing the claim application is not condoned and as such, the delay condonation petition is rejected without costs. Consequently, the claim application is dismissed.

The case file be consigned in the record room.”

13. The transaction of loading fly ash from the thermal power station to respective destination were for following time period:

- a. 02.11.2018 to 05.03.2019
- b. 06.03.2019 to 26.04.2019
- c. 27.04.2019 to 08.07.2019

14. The appellant-company had time and again communicated to the respondent-Thermal Power Station to refund the excess claimed to have been paid and two communications to that are replicated as follows:-

“Date: 14.12.22

To

CCM/FM

South Eastern Railway 11 Garden Reach Road,

Kolkata-700043

Sub : (a) Regarding refund of Rs.33,87,561/- for the period from 26.09.18 till 08.07.19 by wrongfully levying siding charges although such siding charges is not applicable, siding being declared fit for electric traffic effective from 26.09.2018.

(b) Matter is pending with your office since March 2019 unresolved.

Ref: Our Previous letters dated 07.03.19, 13.05.2019, 21.05.2019, 25.06.2019, 02.07.2019, 31.07.2019, 08.08.2019, 21.11.19, 05.12.2019, 22.01.20, 16.09.20, 08.01.21 and 01.02.21.

Respected Sir,

1. This has reference to our previous letters, referred herein above regarding refund of siding charges amounting to Rs.33,87,561/- for the period from 26.09.18 till 08.07.19, siding being declared fit for electric traffic effective from 26.09.2018. A copy of our earlier letter dated 01.02.2021 is enclosed herewith for your kind perusal.

2. We have not received any communication from your office since then and we are suffering since our legitimate claim is being withheld which we are entitled to receive as per the Railway rules and prevailing Railway Circulars.

3. In context we state that after the Fly Ash Siding of STPS has been electrified by AC traction and has been declared fit for normal electric traffic on 26.09.18 and accordingly siding charges are not applicable from the said date.

4. Moreover, as per the special Rate Circular No. RG47/2202/19 dated 10.07.18 it is mentioned that the siding charges are leviable only for

"piecemeal wagon loads traffic only" which is not applicable/leviable for train load consignment.

5. We have loaded 33 number of fly ash rakes on rake load basis during the period between 02.11.2018 to 08.07.2019 from STPS siding under Adra COMME division wherein siding charges have been wrongfully collected from us. Although siding charges are not applicable at STPS and more so even if 122 applicable, it is only for loading on piecemeal wagon basis as per Special Rates Circular No. RG46/1391/2 dated 10.07.2018.

6. In support of loading of fly ash rakes on rake load basis and not on piecemeal basis from STPS, we have already submitted all the Railway Receipts to your office, a specimen of RR which is enclosed herewith for your kind perusal.

7. We further state that based on our several representations since March 2019, the circular RG.46/1391/2 dated 22.07.19 was issued by your office wherein it is mentioned that "the system of charging siding charge will be discontinued as freight will be charged on through distance" without giving any retrospective effect from 26.09.2018.

8. Subsequently in Circular No.46/4112 dated 11.02.20 at point No. (e) it was mentioned that "siding charge notified for the private siding of STPS is applicable for loading of Fly Ash" without giving any retrospective effect and without affecting any change about applicability of siding charges for piecemeal wagon loads traffic only and thereby siding charge is not applicable in rake load consignment.

9. Considering the above, we request you to kindly arrange refund of the siding charges amounting Rs.33,87,561/- wrongfully collected from us by STPS railway authorities once siding being declared fit for electric traffic with effect from 26.09.2018 and more so since we have loaded all train load wagon traffic instead of piecemeal wagon load traffic.

With Regards,

For Orient Exports (Private) Limited

S.K. SAHA

Director

Encl: As stated above”

SOUTH EASTERN RAILWAY

Dated: 25.06.2019

*Office of the
Principal Chief Commercial Manager 14,
Strand Road, 8th floor,
Kolkata-1*

No C/RFG/A1/OSKB/607182201557-1560/ADRA/Ashes/3/18-19

To

M/S ORIENT EXPORTS (PRIVATE) LTD.,

7. Camac Street,

AZIMGUNJ HOUSE, 4th floor,

Kolkata-700017

Dear Sir(s),

Sub: Refunds of Rs. 18,92,700/- collected by CGS, STPS siding, as siding charges, which is not applicable, as siding declared fit for electric traffic effective from 26.09.2018, whereas such charges has been collected for loading of our Fly Ash since 02.11.2018 till now - We are entitled to get refund of such charges so collected by the Railways and request to issue necessary instruction not to levy such siding charges with immediate effect for further loading.

Ref: Your letter No. Nil dated 07.03.2019.

In connection with the subject mentioned under reference above, this is to inform you that the matter was referred to Dy.CCM(FS)/ South Eastern Railway, 14, Strand Road, 8th floor, Kolkata-700001 who, has informed that special Rates Circular No.RG46/2202/19 dated 10.07.2018 is in existence and therefore no refund is admissible..

Thanking you,

Yours faithfully,

(Saibal Kr. Bose)

*Dy. Chief Commercial Manager (Claims & Refunds)
for Principal Chief Commercial Manager*

Copy to: Secy. to GM for kind information of GM.”

15. Section 16 and 17 of the Railways Claims Tribunal Act, 1987 are stated in seriatim as follows:

“Section 16. Application to Claims Tribunal. – (1) *A person seeking any relief in respect of the matters referred to in sub-section (1) [or sub-section (1A)] of section 13 may make an application to the Claims Tribunal.*

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee in respect of the filing of such application and by such other fees for the service or execution of processes as may be prescribed:

Provided that no such fee shall be payable in respect of an application under sub-clause (ii) of clause (a) of sub-section (1) [or, as the case may be, sub-section (1A)] of section 13.”

“Section 17. Limitation. – (1) *The Claims Tribunal shall not admit an application for any claim –*

(a) under sub-clause (i) of clause (a) of sub-section (1) of section 13 unless the application is made within three years from the date on

which the goods in question were entrusted to the railway administration for carriage by railway;

(b) under sub-clause (ii) of clause (a) of sub-section (1) 1 [or, as the case may be, sub-section (1A)] of section 13 unless the application is made within one year of occurrence of the accident;

(c) under clause (b) of sub-section (1) of section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under section 78B of the Railways Act.

(2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.”

16. It appeared in view of the Section 17 stated above the statute provided discretion to the Railway Claims Tribunal to consider or to condone delay in filing an application provided sufficient cause for delay had been explained.

17. The Hon’ble Supreme Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020 with Miscellaneous Application No.29 of 2022, inter alia, stated in Paragraph – 5 as follows:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I. *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
- IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*

18. If at all the last transaction between the parties was effective on 08.07.2019, the period from 15.03.2020 till 28.02.2020 should have been excluded for the purpose of limitation, thereby, the extension would automatically had been granted in favour of the appellant by dint of order of the Hon'ble Supreme Court for nearly 02 years. After Covid 19 became ineffective the

time period for filing the application under Section 17 of the Railway Claims Act, the benefit rendered by the order of the Hon'ble Supreme Court would persist into credit. The transactions ranging from the year 2018 would have been barred by limitation after the year 2021, but still persisted owing to the gap of years granted as leverage due to Covid. The appellant should get the benefit to file the application under Section 17 of the Railway Claims Tribunal seeking the relief to its credit based on the precarious and unprecedented Covid Pandemic. Any calculation of delay exceeding the period of limitation should have been beneficially dealt with exercising discretionary power of the Railway Claims Tribunal which otherwise had not been excessive or unexpressed.

19. Under such circumstances, the order dated 20.06.2023 passed by the Railway Claims Tribunal be set aside.
20. The Learned Railway Claims Tribunal is to deal with the claim application filed before it in its proper perspective and expeditiously dispose of the same.
21. The instant appeal is disposed of accordingly.
22. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
23. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)