

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 16TH DAY OF JANUARY 2018 / 26TH POUSHA, 1939

WP(C).No. 4264 of 2008

PETITIONER

K.S.E. LTD.,
SOLVENT ROAD, IRINJALAKUDA-680 121, REPRESENTED BY, ITS
COMPANY SECRETARY-CUM-FINANCE MANAGER,,
MR.R.SANKARANARAYANAN.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.ANIL D. NAIR
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI

RESPONDENTS:

1. SOUTHERN RAILWAYS,
REPRESENTED BY ITS GENERAL MANAGER,, HEADQUARTERS
OFFICE, CHENNAI-600 003.
2. CHIEF GOODS SUPERVISOR,
SOUTHERN RAILWAY, GOODS OFFICE, KOTTAYAM.
3. SENIOR DIVISIONAL COMMERCIAL MANAGER,
DIVISIONAL OFFICE, SOUTHERN RAILWAY,, COMMERCIAL BRANCH,
THIRUVANANTHAPURAM-14.

R1 TO R3 BY ADVS. SMT.A.RAJESWARI, SC, RAILWAYS
SRI.C.S.DIAS,SC, RAILWAYS
SRI.N.B.SUNIL NATH,SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sdr/-

APPENDIX

PETITIONERS EXHIBITS

EXT.P1 TRUE COPY OF TH INTERIM ORDER IN WPC NO. 33189/07 DATED 12.11.2007
EXT.P2 TRUE COPY OF THE RAILWAY RECEIPT DATED 19.08.2005
EXT.P3 TRUE COPY OF THE RAILWAY RECEIPT DATED 10.12.2005
EXT.P4 TRUE COPY OF THE RAILWAY RECEIPT DATED 6.2.2006
EXT.P5 TRUE COPY OF THE RAILWAY RECEIPT DATED 19.03.2006
EXT.P6 TRUE COPY OF THE COMMUNICATION DATED 23.08.2007 ISSUED
BY THE 2ND RESPONDENT
EXT.P7 TRUE COPY OF THE REPLY DATED 23.11.2007 ISSUED BY THE
PETITIONER TO THE 2ND RESPONDENT
EXT.P8 TRUE COPY OF THE COMMUNICATION DATED 8.1.2008 ISSUED BY THE
3RD RESPONDENT
EXT.P9 TRUE COPY OF THE REPLY DATED 14.1.2008 ISSUED BY THE
PETITIONER TO THE 3RD RESPONDENT
EXT.P10 TRUE COPY OF THE ORDER DATED 24.1.2008

RESPONDENTS EXHIBITS

EXT.R3-1 COPY OF THE RELEVANT PAGE OF THE CLASSIFICATION OF
COMMODITIES W.E.F 01-04-2005 ISSUED BY THE MINISTRY OF RAILWAYS
(RAILWAY BOARD)
EXT.R3 (2) COPY OF THE RELEVANT PAGES OF THE ADJUSTMENT IN FREIGHT
CHARGES W.E.F 01.04.2005 PASSED IN THE RAILWAY BUDGET
2005 -2006

/TRUE COPY/

PA TO JUDGE

sdr/-

A. MUHAMED MUSTAQUE, J.

W.P. (C) No.4264 of 2008

Dated this the 16th day of January, 2018

J U D G M E N T

The petitioner availed the service of Railway for transporting de-oiled rice bran from Coimbatore to Kottayam. The tariff applicable to such transport is based on the nature of the goods being transported. The Railway classified the trainload under 110 instead of 120. After delivery, the Railway found out a mistake in the classification and demanded the petitioner to pay differential rate. Challenging the demand, the petitioner approached this Court.

2. Learned counsel for the petitioner challenged the demand mainly relying upon Section 78 of the Railways Act which reads as follows:

“78. Power to measure, weigh etc.- Notwithstanding anything contained in the railway receipt, the railway administration may before the delivery of the consignment have the right to-

- a. re-measure, re-weigh or re-classify any consignment;
- b. re-calculate the freight and other charges; and
- c. correct any other error or collect any amount that may have been omitted to be charged.

3. On going through the above provision, it can be concluded that the above provision gives only an enabling power for the Railway to measure the consignment before the delivery being effected and to recalculate the tariff. The present demand essentially arises out of the mistake committed by the Railway while applying classification of the goods/commodity concerned.

4. The question is whether the Railway can demand such differential tariff after delivery. The Railway refers to Section 83 of the Railways Act. The said provision in fact only refers to exercise of right of lien over the goods. That is one mode of recovery. The question is whether the Railway is having any power after the consignment is delivered to raise such demand. The consignment essentially arises out of contract. If there is a mistake arises out of the contract, one party can demand from other party. In that sense, the demand can only be understood as a demand from one of the parties. However, the question looms large is in what manner it can be enforced. Since that is not an issue before this Court, treating it only as a demand from the Railway, this writ petition can be disposed of.

The petitioner is free to raise objections to the demand now made. If the petitioner wants to raise an objection, it shall be done within a period of one month from the date of receipt of a copy of this judgment. Thereafter, the Railway shall pass appropriate orders within a further period of one month. As already adverted above, the mode of recovery is not being the subject matter of writ petition, that issue is left open. In such circumstances, the question whether the Railway can demand differential tariff without resorting for adjudication is a matter to be considered when the recovery is resisted.

This writ petition is disposed of as above.

Sd/-

**A. MUHAMED MUSTAQUE
JUDGE**

smp