
(2007) 01 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.A. No. 836 of 1996

Indian Potash Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Railways Act, 1989 — Section 106, 106(3)

Citation : (2007) 2 MPLJ 209

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Virendra Prasad Verma, for the Appellant; Narinderpal Singh Ruprah, for the Respondent

Judgement

Arun Mishra, J.

This appeal has been preferred by Indian Potash Limited

The Appellant; M/s Indian Potash Limited filed a claim application claiming that the Respondent had recovered excess freight and was liable to refund the amount. The Appellant had booked one rake of DAP Fertilizer from Bhavnagar to Indore on 20-6-1991. When the said consignment reached at indore, then the Station Superintendent demanded over charges a sum of Rs. 2,24,459/- + Rs. 1,57,821/-. It was also demanded on the previous rake were was booked on 7/8-6-1989 from Bhavnagar to Indore on the ground that it was meter-gauge route. As such it was found that there was deficit payment of Rs. 1,57,821/- with respect to R Rs No. 315982, 315983, 315984 and 315985 dated 7/8-6-1989.

The Railway Claims Tribunal has directed the Respondent to pay Rs. 2,24,459/- with respect to consignment booked on 20-6-1991. However, the Claim of the Appellant with respect to four R Rs rakes booked on 7/8-6-1989 has been rejected on the ground that the Tribunal has no jurisdiction as the consignment was supplied in the year 1989. Mandatory notice u/s 78B of the Indian Railways Act, 1890 was not given.

Shri Yirendra Prasad Verma. learned Counsel appearing on behalf of the Appellant has submitted that the notice u/s 106 of the Indian Railways Act, 1989 was given. Provision of Section 78B was not applicable at the time when demand was raised for the first time on 25-6-1991. Though the consignment was delivered, but over charge was levied by the Railways, provision of Section 106 of Railway Act. 1989 came into force from 1-7-1990. notice dt. 30-8-1991 was served within six months, as such the Tribunal had the jurisdiction to entertain the claim made of levying the over charge and to adjudicate upon it. A notice u/s 106(3) was given.

Shri Narinderpal Singh Ruprah learned Standing Counsel appearing on behalf of the Respondent has submitted that no case for interference is made out as the consignment for supply was handed over in the month of June, 1989. Thus, notice ought to have been served within six months from the date of handing over the consignment, no such notice u/s 78B of Railways Act, 1890 was served, as such the remedy of the Appellant lies before the Civil Court. No case for interference in this appeal is made out.

The uncontroverted facts indicate that the consignment of four R Rs relating to the claim of Rs. 1,57,821/- was handed over to Railways in the month of June, 1989. The goods were booked from Bhavnagar to Indore. Whatever freight was demanded was paid by the Appellant at the relevant time in the year 1989, however, it appears that in 1991 when another consignment of four other R Rs was booked on 28-6-1991, it was found that even under the consignment of 1989 under charges were levied to the extent of Rs. 1,57,821/-. Railway Accounts Officer. Aimer has ordered deposit of amount as per letter dt. 3-6-1991. Consequently a demand notice was issued to the Appellant on 25-6-1991 (Annexure-6AVA) to deposit the amount of Rs. 1,57,821/- towards under charge of the consignment booked in June, 1989 and Rs. 2,24,459/- of under charge levied with respect to consignment booked on 20-6-1991. Thereafter a notice (Annexure-X) was served by the Appellant on 30-8-1991 to Respondent to refund the amount of Rs. 1,57,821/- and Rs. 2,24,459/-. It was stated that under protest the amount was deposited. It was submitted that the under charge raised was not proper as rakes were dispatched under the concurrent Western Railways.

Thus, it is clear that with respect to R Rs dt. 7/8-6-1989 for the first time the under charges were ordered to be paid on 25-6-1991. amount was deposited under protest in the month of June, 1991, demand for refund was made by Appellant on 30-8-1991 u/s 106 of the Railways Act, 1989 as the Act of 1989 came into force w.e.f. 1-7-1990. the claim raised would be governed by Sub-section (3) of Section 106. Section 106(3) is: quoted below:

106. Notice to claim for compensation and refund of over charge. - (3) a person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefore has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months

from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

It is clear from a bare reading of provision of Sub-section (3) of Section 106 that from the date of payment of overcharge notice has to be served within six months from the date of such payment or the date of delivery of such goods whichever is later. In the instant case the date of payment is later, date of delivery is earlier. Thus, the notice was served within six months from the date of payment in the month of June, 1991. a notice was served in the month of August, 1991. it was within limitation. Thus, the Railway Claims Tribunal has erred in applying the provision of Section 78B of the Act of 1890 as the demand was not made at the time when Section 78B of Act of 1890 was in force. Section 78B of Act of 1890 was not applicable as no demand was raised at the time when aforesaid Act was in force. It was not a case of compensation against Railway for loss due to non-delivery of goods, in that case, provision of Section 78B would have applied, but, in the instant case, it was claimed that under charge was not leviable and in fact over charge was realized from the Appellant, in June, 1991 when the demand was raised. Act of 1989 was in force. Section 106(3) governs the case of the Appellant. Thus, the Tribunal has the jurisdiction to entertain the petition and to deal with it as notice u/s 106 was also given within six months from the date of payment.

Consequently, the part of the order passed by the Railway Claims Tribunal rejecting the claim of Rs. 1,57,821/- with respect to R Rs dt. 7/8-6-1989 is hereby set aside. The Railway Claims Tribunal shall consider the claim of refund on merits and take a decision in accordance with law after hearing parties and recording such evidence as may be adduced.

Appeal is partly allowed. No order as to costs.