

(2025) 11 OHC CK 1878

In the Orissa High Court

Case No : First Appeal Order No. 371, 372 Of 2019

M/S. KIOCL Ltd., Bangalore And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 07-11-2025

Acts Referred:

Railways Act, 1989 — Section 78, 83

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2025) 11 OHC CK 1878

Hon'ble Judges : Dr Sanjeeb K Panigrahi, J

Bench : Single Bench

Advocate : Bhabani Shankar Rayaguru, Satya Smruti Mohanty

Final Decision : Disposed Of

Judgement

Dr. Sanjeeb K Panigrahi, J

A. Since common question of facts and laws are involved in both the above mentioned FAOs, the same are heard together and are disposed of by this common judgment. However, this Court feels it apposite to deal with the FAO No.371 of 2019 as the leading case for proper and effective adjudication of both the cases.

B. In filing this FAO, the Appellant being represented through its General Manager, East Coast Railway, Chandrasekharapur has challenged the impugned judgment dated 04.02.2019 passed by the learned Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar in Case No.OA III/9/2015.

C. These appeals assail the judgment dated 04.02.2019 passed by the Railway Claims Tribunal, Bhubaneswar Bench ("RCT") in OA III/9/2015, whereby the RCT directed refund to Rs.58,01,110.80 (Distance Based Charges, "DBC") with simple interest @ 6% per annum from 02.12.2015 till payment, holding that DBC was impermissibly levied on a rake of iron-ore fines booked under RR No. 261002668 dated 15.12.2012 when the resultant pellets were not exported but sold

domestically.

D. The controversy turns on a narrow compass, as to whether on the facts and the governing tariff circular—Railway Board Rates Circular No. 36 of 2009 dated 01.06.2009 (“RC-36/2009”)—the subject consignment attracted export tariff (Class-180 + DBC) or domestic tariff (Class-140 without DBC). The answer rests on (a) the legally relevant “end-use” at the time of carriage; (b) compliance with documentary conditions in RC-36/2009 to qualify for the domestic rate; and (c) the effect, if any, of Sections 78 and 83 of the Railways Act, 1989 (“the Act”) on the levy in question.

I. FACTUAL MATRIX OF THE CASE:

1. The brief facts of the case are as follows:

i) The Respondent–Company, a Government of India enterprise engaged in the metallurgical sector, is primarily devoted to the production and commercial dissemination of iron oxide pellets, and operates a fully integrated industrial establishment encompassing both upstream and downstream facilities. The said establishment comprises, inter alia, a pelletization plant endowed with an installed production capacity of 3.5 million tonnes per annum, together with a blast furnace unit designed to yield approximately 2.16 lakh tonnes per annum of foundry- grade pig iron. In order to secure a continuous and assured supply of its principal raw material, namely iron ore fines, the Respondent entered into a long-term contractual covenant with M/s. National Mineral Development Corporation Limited (NMDC), under which the requisite quantities of iron ore were to be loaded at NMDC’s Kirandul and Bacheli loading stations in the Bailadila sector and transported through railway rakes placed and operated by the East Coast Railway, Bhubaneswar. Pursuant to the said arrangement, the Respondent regularly procured substantial consignments of iron ore fines from NMDC’s Bailadila mines located at Kirandul/Bacheli. The said iron ore fines, though forming part of the Respondent’s broader stream of industrial procurement, were, during the relevant period, not earmarked for export, but were rather consumed captively within the Respondent’s domestic manufacturing operations for conversion into iron oxide pellets. The resultant pellets were predominantly channelled into the domestic market for industrial utilisation, and only such incidental or residual quantities, as may have remained unabsorbed in domestic demand, were thereafter diverted for export on a need-based and on ancillary basis.

ii) The Respondent–Company is entirely dependent upon the services of the Indian Railways for the conveyance of its raw material, namely iron ore fines, from the Kirandul and Bacheli loading stations to the Visakhapatnam Port (VSKP), such transportation being effected through a dedicated private railway siding integrated into its logistical chain. Upon arrival at Visakhapatnam, the said iron ore fines are trans-shipped and thereafter conveyed via maritime route to the Respondent’s Pelletization Plant at Mangalore, where they constitute the

indispensable feedstock for the continuous operation and sustenance of its iron oxide pellet production process. The Respondent's dependence on the railway network is thus absolute and structural, the entire supply chain being intrinsically interlinked with the efficiency and regulatory framework of the East Coast Railway, without which the Respondent's industrial production cycle would inevitably be rendered inoperative.

iii) The payment of freight charges in respect of the railway rakes loaded for the Respondent-Company, M/s. KIOCL Limited, at the NMDC, Kirandul Loading Station, was effected through an Online e-Freight Payment System, a digital mechanism instituted for seamless remittance of freight dues to the Railway Administration. In order to operationalize this arrangement, a tripartite agreement was executed on 29th February, 2012 among the parties like the State Bank of India, Panambur Branch, Mangalore, the Respondent-Company, and the East Coast Railway, Bhubaneswar, stipulating the modalities for payment of freight and rake charges through the e-payment mode. Under the terms of the said covenant, the Respondent was obligated to ensure the availability of requisite funds on a daily basis, which were to be transferred from its designated account maintained with SBI, Mangalore Branch, to a dedicated account of the East Coast Railway. The said account, maintained at the State Bank of India, Main Branch, Bhubaneswar, was to serve as the authorized repository for receipt of such e-payments, thereby facilitating a continuous and automated settlement of freight liabilities arising out of the Respondent's consignment movements.

iv) In the ordinary course of its operations, the Respondent- Company booked a railway rake vide Railway Receipt (RR) No. 261002668 dated 15th December, 2012, which was loaded on 14th December, 2012 at the NMDC's NMVK Siding for carriage to its destination at VPTG, covering a distance of approximately 562 kilometres. The Appellant-Railway Administration, while assessing the freight payable on the said consignment, not only levied the regular freight charges but also imposed an additional Distance Based Charge (DBC) component thereon. Consequently, the total freight realised from the Respondent aggregated to ₹ 1,14,46,604/-, which sum comprised, inter alia, a DBC component of ₹ 58,01,110.80/-, notwithstanding the fact that there was no default or misfeasance attributable to the Respondent, nor was the consignment intended for export. It is of some considerable significance that the Respondent had, contemporaneously, furnished an affidavit of declaration affirming that the iron ore fines in question were intended exclusively for domestic industrial consumption and not for exportation. Notwithstanding such declaration, the Appellant proceeded to levy the DBC, which under the governing Rate Circular No. 36 of 2009 is impermissible in cases where the consignment is meant for domestic use and not for export- oriented processing. Upon being apprised of the said levy, the Respondent promptly lodged a formal claim for refund of the excess freight amounting to ₹ 58,01,110.80/-, vide its representation dated 6th February, 2013, asserting that the charge had been illegally and unjustifiably imposed.

v. The full particulars of payment of freight are furnished hereunder:-

Sl. No

Date of Booking

RR

Station

Freight paid in Rs.

Amount of refund of claim in Rs.

1

15/12/12

261002668

261002668

NMVK

VPTG

1,14,46,604/-

58,01,110.80

Total

58,01,110.80

The Appellant–Railway Administration was, therefore, under a legal and equitable obligation to refund the sum of ₹ 58,01,110.80/- (Rupees Fifty-Eight Lakhs One Thousand One Hundred Ten and Eighty Paise only), representing the excess freight erroneously recovered by way of Distance Based Charges (DBC), notwithstanding that the consignment in question was not destined for export. The Respondent had, in its claim, further sought interest at the rate of 18.25% per annum, computed from the date of lodging of the claim until the date of actual realisation, on the principle that the Railway Administration had unjustly enriched itself by retaining amount collected in contravention of the governing tariff instrument, namely Railway Board's Rate Circular No. 36 of 2009, which explicitly prohibits the levy of DBC in cases involving domestic consumption of iron ore fines. The impugned collection, thus, stood squarely opposed to the statutory framework and administrative instructions regulating freight computation, warranting restitution of the amount together with appropriate interest to neutralise the pecuniary prejudice occasioned to the Respondent.

v) Challenging the said action of the Appellant, the Respondent herein (who was the applicant in the learned Court below) preferred an application vide Case No.OAIII/9/2015 before the learned Railway Claims Tribunal, Bhubaneswar

Bench, Bhubaneswar. While hearing the said application, the learned Tribunal had framed the following issues for determination:-

- i. Is the O.A. maintainable?
 - ii. Whether the use of iron ore fines, or the end use of the iron oxide pellets, determines the freight rate, i.e. domestic consumption rate of export rate?
 - iii. Whether the respondents entitled to levy Distance Based Charges for manufacture of pellets by the applicant?
 - iv. Whether the applicant is entitled for refund of Rs.58,01,110/- collected by the respondent?
 - v. To what reliefs the applicant is entitled?
- vi) Accordingly, on hearing both the sides, the learned Tribunal decided the above noted issues in favour of the Respondent herein vide judgment dated 04.02.2019. The direction portion of the said judgment dated 04.02.2019 is reflected hereunder:-

O R D E R

"The OA is allowed on contest. The Respondent is directed to pay a sum of Rs.58,01,110/- (Rupees Fifty Eight Lakhs One Thousand and One Hundred Ten) only along with simple interest @ 6 per cent per annum from the date of application i.e. 02/12/2015 till the date of the payment to the applicant.

In the peculiar circumstance of the case there shall be no order as to costs."

Being aggrieved by the said judgment dated 04.02.2019 passed in the above noted Case bearing No.OAIII/9/2015 the Appellant-East Coast Railway, Bhubaneswar has preferred this present appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

2. Learned counsel for the Appellant earnestly made the following submissions in support of his contentions:

- i) It is the contention of the Appellant-Railway Administration that, in terms of the enabling provisions enshrined under Sections 78 and 83 of the Railways Act, 1989, the Railway Administration is vested with the statutory prerogative to re-measure, re-calculate, or re-assess the freight charges and, if necessary, to raise a consequential demand at a subsequent stage upon discovery of any error or omission in the initial computation. It is urged that the learned Railway Claims Tribunal, while adjudicating the dispute, failed to take cognizance of or give due interpretative weight to these provisions, which according to the Appellant, confer upon the Railway Administration an unfettered statutory authority to review and rectify freight assessments retrospectively whenever found inconsistent with the prescribed tariff or circular. The grave omission to consider the statutory latitude embodied in Sections 78 and 83, has vitiated the impugned

decision by rendering it juridically incomplete and procedurally infirm.

ii) The Appellant–Railway Administration further contends that the Respondent–Company, M/s. KIOCL Limited, is an admittedly 100% Export-Oriented Unit (EOU), a material aspect which the learned Railway Claims Tribunal failed to properly appreciate while adjudicating the issue concerning the levy of Distance Based Charges (DBC). It is further submitted that the Tribunal, while rendering its judgment, deviated from the significant interpretative framework delineated under Paragraph 3(B)(III) of the Railway Board’s Rate Circular No. 36 of 2009, dated 1st June, 2009, which governs the conditions and# parameters for classification of freight at domestic or export tariff rates. By departing from the binding administrative guidelines and by placing disproportionate reliance upon the deposition of A.W.-1 representing M/s. KIOCL Limited, the Tribunal has arrived at a conclusion bereft of empirical foundation and unsupported by the statutory scheme, thereby vitiating the adjudicatory process with manifest error in appreciation of evidence and misapplication of governing circular instructions.

iii) It is further submitted on behalf of the Appellant–Railway that the determinative criteria expressly enunciated in Rate Circular No. 36 of 2009 have been completely disregarded by the learned Railway Claims Tribunal in the course of adjudication. The said circular, which constitutes the operative framework governing the levy or exemption of Distance Based Charges (DBC), mandates that the eligibility for concessional or domestic tariff is conditioned upon the establishment of actual end-use of the iron ore consignment in the manufacture of consumable goods within a pre-declared domestic manufacturing unit. Unless such end- use is affirmatively demonstrated through cogent documentary evidence, the consignment, by necessary implication, continues to attract the export tariff classification, inclusive of DBC. However, the learned Tribunal, while rendering the impugned decision, appears to have proceeded on a presumptive premise that the iron ore fines transported were utilised by the Respondent–KIOCL Limited for domestic industrial consumption, without undertaking the requisite factual and evidentiary verification mandated under the said circular. The impugned finding is therefore legally unsustainable, being contrary to the express stipulations of the governing tariff regime and unsupported by the evidentiary record.

iv) The learned Tribunal has not considered the issue that the Respondent-KIOCL Ltd. had not submitted the requisite documents i.e. Affidavit by consignee before taking delivery and indemnity note by consignee as specified vide Para 3(B)(III) and Para 3(B)(V) respectively of the Rates Circular 36 of 2009, to avail domestic rate and passed the impugned judgment against the Appellant which is per se not maintainable.

v) Learned counsel for the Appellant has raised the following issues for determination by this Court:-

a) Whether the finding of the learned Railway Claims Tribunal, Bhubaneswar with

regard to applicability of domestic tariff rate or export tariff rate to the Applicant/ Respondent is just and proper?

b) Whether the finding of the learned Railway Claims Tribunal, Bhubaneswar with regard to entitlement of the Appellant/ Respondent-Railways to levy Distance Based Charges for manufacture of pellets by the applicant/ Company is sustainable in the eye of law?

c) Whether the finding of the learned Railway Claims Tribunal, Bhubaneswar with regard to entitlement of Rs.58,01,110/- collected by the Appellant-Railways is justified?

d) What relief the applicant/ Company is entitled to?

vi) The present Respondent has suppressed the end use and it is a 100% export oriented company which exports iron oxide pellets which can be clarified / verified from the Excise Return of the applicant / respondent for the month of October, 2012. The Respondent had availed "domestic freight rate" for the period from 22.05.2008 to 31.03.2012 based on its false declaration on forwarding notes and on detection of such false declaration by the Central Audit. Further, upon a query made by the Appellant in the matter, the Respondent submitted its reply on 26.01.2013 thereby admitting the export of 4,76,298 tons of iron oxide pellets during the period from June, 2009 to September, 2011.

vii) It was further pleaded by the Appellant before the learned RCT that the applicant/ the Respondent herein had availed "domestic tariff rate" instead of "export tariff rate" by giving false declaration in the forwarding notes during the period from 22.05.2008 to 31.03.2012 and as such, the Appellant/Respondent had raised demand to a tune of Rs.414.45 crores against the applicant/ Respondent herein. Thereafter, the applicant/Respondent herein had challenged the said penalty before this Court through Writ Petition vide W.P.(C) No.22943 of 2013 and this Court vide order dated 13.12.2013 granted interim order of stay in respect of 50% of the demand subject to payment of the balance 50% wherein this 50% was the freight charges only, excluding the penalty and pursuant to such order passed by this Court, the Applicant has paid a sum of Rs.51.80 crores only to the Appellant.

viii) For similar miss-declaration made by the applicant/ Respondent this Appellant had raised demand of Rs.182,09,16,780/- on 13.10.2014 in respect of 2,82,848 tons of iron ore for the period from 11.07.2008 to 05.06.2009 and on the same day i.e. on 13.10.2014 demand of Rs.6,27,77,95,421/- was raised in respect of 8,71,015.32 tons of iron ore for the period from 06.06.2009 to 23.08.2011 for miss-declaration furnished by the applicant/ Respondent vide letter dated 13.10.2014 and all these documents clearly shows that the iron oxide pellets were exported by the applicant/ Respondent for which the applicant was liable to pay export tariff rate.

ix) When iron ore is moved for pelletization (for export), such carriage of iron ore

will be charged at Class 180 along with levy of Distance Based Charges which ultimately means that it will attract export tariff rate and paragraph no.5 of the Rate Circular No.36 of 2009 dated 01.06.2009 under Annexure-R/7 of the Written Statement filed by the Appellant clarifies such position. Moreover, for violation of the provisions stipulated under paragraph 3(B)(III) and paragraph 3(B)(V) of the Rate Circular No.36 of 2009 dated 01.06.2009, the applicant is also liable to pay freight charge at Class 180 and distance based charge under paragraph 4(c) thereof. It is pertinent to mention here that the end use of the goods transported determines as to whether domestic consumption rate or export rate would apply and this is the essence of the Rate Circular No.36 of 2009. The said circular prescribes the submission of specific documents by the applicant in order to avail the domestic consumption rate. Further, the applicant/ Respondent is registered as a Company to carry out the works of filtration of iron ore concentrate and its export and production of iron ore pellets and its export.

x) Further, the applicant/ Respondent-Company at the time of booking of iron ore from KRDL and BCHL, had submitted the monthly excise returns as applicable to 100% export oriented unit and no document in support of domestic manufacture of pig iron was submitted to the Appellant and only on forwarding note the applicant had declared the consignment was meant for domestic consumption and by virtue of such declaration, the Company availed the domestic tariff rate, though such declaration was false. The applicant/Respondent manufactures and exports pellets. The production record of the Company during the period from 22.05.2008 to 31.03.2012 shows that 6423 MT pellets generally meant for export, was produced and as against only 180 MT pig iron and by mis-declaration, the company unduly availed domestic tariff rate.

xi) Further, the date of booking of consignment in respect of the instant case is 15.12.2012 and as such, the Rate Circular No.30 of 2008 has no application, but the Rate Circular No.36 of 2009 will be applicable, as it supersedes the former circular. But, in this case, while adjudicating the matter the learned Railway Claims Tribunal failed to consider the above aspects in its proper perspective, so also did not considered the provisions stipulated under the Rate Circular No.36 of 2009. The Ld. Tribunal settled the issues in favour of the applicant in a mechanical and routine manner which is not only erroneous, but also unsustainable in the eye of law and as such, the impugned judgment dated 04.02.2019 requires to be set aside.

xii) The actual end-use was export of pellets which is the key factor as per the applicable Rate Circular No.36 of 2009. When iron ore is moved for pelletization for export, the applicable rate is Class- 180 + DBC=Export Tariff, whereas in case of Domestic Rate, Class-140 without DBC is only allowed, if conditions in paragraph No.3 of the Rate Circular No.36 of 2009 are fulfilled, including affidavits and proof of use in domestic production like pig iron. Here in this case, the conduct of the applicant- Company shows export use, as the applicant produced 6423 MT of pellets (exportable), but out of which only 180 MT of pig

iron was for domestic use. Further, the applicant admitted the export of 4,76,298 MT iron ore and despite this, the applicant's claim for domestic tariff rate is quite inconsistent and amounts to misdeclaration.

xiii) Further, it is trite that in case of statutory circulars or rate circulars, the binding effect on the parties and authorities is emphasized, unless contrary to law. Hence, the rate Circular No.36/2009 is binding unless it is set aside and as such, it must be complied with. Misdeclaration or false representation disentitles a person from availing concessional tariff which is squarely applicable to the case of the applicant/Respondent.

Learned counsel for the Appellant, accordingly, prays for allowing the prayer made in both the FAOs.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

3. The Learned Counsel for the Respondents earnestly made the following submissions in support of his contentions:

i) The Respondent-KIOCL Limited, a Government of India enterprise under the aegis of the Ministry of Steel, instituted O.A. No. III/9/2015 before the Railway Claims Tribunal, Bhubaneswar, impugning the levy of Distance Based Charges (DBC) amounting to ₹ 58,01,110.80, in respect of R.R. No. 261002668 dated 15.12.2012. The Respondent contended that the consignment of iron ore fines was exclusively utilised for domestic industrial production of iron oxide pellets, and not for export-oriented processing, thereby rendering the DBC levy contrary to the statutory tariff prescription embodied in Rate Circular No. 36 of 2009.

ii) Upon a scrupulous evaluation of the evidentiary record, including the excise returns for the quarter October–December 2012, the learned Railway Claims Tribunal (RCT) arrived at a clear and empirically substantiated finding that no iron oxide pellets were exported outside India during the relevant period and that the entire production was sold within the domestic market. This finding, resting on primary contemporaneous documents, was untainted by conjecture or extraneous inference. The Tribunal also noted that the collection of DBC was not disputed, being reflected in the Railway Receipt entries (Sl. Nos. 33–34) and duly remitted through the e-payment mechanism prevailing at that time.

iii) Proceeding on these foundational premises, the learned Tribunal held that the levy of DBC was inherently unsustainable in law, being in direct contravention of Rate Circular No. 36 of 2009, which—having the force of subordinate legislation—explicitly excludes the imposition of DBC on domestic consumption consignments. The Tribunal, applying the equitable doctrine of restitutio in integrum, directed the Appellant–Railways to refund the said amount of ₹ 58,01,110.80 together with simple interest at 6% per annum, reckoned from 02.12.2015 until payment, thereby effectuating the principle of restitutionary justice that seeks to restore the aggrieved party to its rightful financial position had the illegal exaction not occurred.

iv) Responding to the Appellant's reliance on Sections 78 and 83 of the Railways Act, 1989, it is contended that these provisions are purely procedural and enabling in nature, authorising recalculation of freight or recovery of undercharges, but they do not create a substantive head of charge. The present dispute, which turns on the validity of a tariff classification and the illegality of the DBC levy, therefore falls outside the ambit of these provisions.

v) On the argument that KIOCL, being a 100% Export-Oriented Unit (EOU), could not claim the domestic rate, the Respondent submits that an EOU is statutorily entitled to engage in domestic tariff area transactions to the extent permitted under the Foreign Trade Policy. This is corroborated by the excise returns for October–December 2012, where Column 4A (Domestic Tariff Area sales) records the transactions in question, while Column 4B (exports) remains blank—decisively establishing that the pellets were sold domestically and not exported.

vi) The Appellant's plea of non-submission of the requisite affidavit and indemnity note is untenable. The Appellant's own written statement (para 10) before the Tribunal categorically acknowledges that the Respondent had duly submitted these documents. Even assuming arguendo a procedural lapse, the doctrine of substantial compliance would operate to prevent a purely technical omission from defeating a substantive entitlement, particularly where no prejudice has been demonstrated.

vii) The reliance placed on the pendency of S.L.P. (C) No. 15869 of 2015 and Transfer Petitions (C) Nos. 832–854 of 2015 before the Hon'ble Supreme Court is, it is urged, misconceived both in law and in fact. The order of the Supreme Court dated 14.12.2015 merely stayed proceedings in certain identified writ petitions, which were specifically enumerated in the order. The present appeal is not among them, nor has any specific stay been issued restraining its adjudication. The said order, being context-specific, cannot be expanded into a blanket interdiction covering all matters involving the issue of DBC.

viii) The Respondent further clarifies that the proceedings pending before the Supreme Court concern the constitutional validity of the Rate Circular and the Distance Based Charge regime in general. In contrast, the instant case raises a question of application, not of vires. The Respondent has not challenged the competence of the circular but has merely asserted that its operative terms are inapplicable to the present factual matrix. The issue, therefore, lies within the interpretative rather than constitutional domain

ix) Lastly, it is emphasised that although O.A. No. III/9/2015 was filed in 2015 and decided on 04.02.2019, the Appellant never disclosed the alleged pendency of proceedings before the Supreme Court during the Tribunal's adjudication. The belated invocation of this plea at the appellate stage betrays an absence of bona fides, constituting an afterthought calculated to delay restitution of the amount unlawfully retained. Such conduct, it is urged, offends the duty of candour and procedural fairness incumbent upon public authorities.

For all these reasons, the Respondent prays that the appeal be dismissed, and the well-reasoned judgment of the Railway Claims Tribunal be affirmed in toto.

IV. FINDINGS OF THE TRIBUNAL:

4. The Railway Claims Tribunal, Bhubaneswar Bench heard the parties, perused the documents on record, and upon the basis of the pleadings framed five issues for consideration.

5. On the issue of maintainability, the Tribunal observed that on perusal of the agreement placed before the Bench on the date of arbitration, the tripartite agreement among Chief Commercial Manager, East Coast Railway, KIOCL Ltd and State Bank of India dated 29/02/2012 is an agreement which governs the methodology of transfer of fund electronically relating to payment/ realisation of freight and any dispute thereof from KIOCL Ltd. by State Bank of India on advice from Railways/ and is not related to charge of freight based on classification of goods as well as type of materials to transport as in this claim case and is not applicable to the subject issue concerned in this particular claim. There is no record available in the WS and during the proceeding of the case wherein the respondent neither mentioned the presence of the agreement nor did they make any application for referring the case to arbitration. The pleading of the respondent thus fails to satisfy the observations of the Apex Court mentioned under serial No.i) to (iv) at page 13 of that judgement.

6. In view of above, the Bench is convinced and decide this issue against the respondent. This is also in the conformity of the judgment of Allahabad High Court in the case of Bal Kishan Bansal Vs Pramit Bansal and another 2006 (4) AWC 3509 in Civil Revision No.369 of 2004 dated May 2006 and the judgment of the Supreme Court of India in the Civil Appeal No.5156 of 2003 (Arising out of SLP (C) No.21154/ 2002) and the judgment in the case of Hindustan Petroleum Corporation Ltd Vs. Pinkcity Midway Petroleum decided by the Supreme Court of India in the Civil Appeal No.5156 of 2003 (Arising out of SLP (C) No.21154/2002) .

7. So far as the issue with regard to use of iron ore fines, or the end use of the iron oxide pellets, determines the freight rate i.e. domestic consumption rate or export rate is concerned, the Tribunal observed that the applicant as well as the respondent relied upon the Rate Circular No.36 of 2009 dated 01/06/2009 (Exhibit R/7) extended thereafter time to time in support of their respective case. Paragraph 5 of the Rates Circular mandates that carriage of pallets of export as well as carriage of iron ore moved for such pelletization for export will be charged at class 180 plus DBC (Distance Based Charges) and the applicant is required to prove that iron ore transported and pallets produced are used domestically and not exported.

8. While discussing the issue No.3, the Tribunal observed that on scrutiny of the records and exhibits filed by both parties, the Bench observes that the concerned RR was raised on 15th December 2012. The examination of Exhibit R/3, Exhibit

A/9 & Exhibit A/10 i.e. Excise Returns of KIOCL for the month of October 2012, November and December 2012 show that no pellets KIOCL outside India and all the pellets sold domestically. There was no other evidence available in the case file to and were exported by were sold accept the pleading of the respondent that the iron ore fines / pellets were exported.

9. Concerning to the RR, the Bench is, therefore, convinced that the respondent plea is not supported by any cogent evidence and thereby fails to prove the plea.

10. So far the issue nos.4 and 5 are concerned, it is observed that the applicant filed documents and stated that the freight charges along with Distance leased Charges (DBC) collected by the respondent vide RR i.e. Annexure-3 is not controverted by the respondent. The document is in respect to the collection of the amount by the respondent. There is no denial with respect to the collection of the amount by the respondent with an entry as DPOU on the RR. On scrutiny, the Tribunal is convinced that the said ER was a paid RR and the Distance Based Charges (DBC) under the entry as DPOU on RR amounting to R5.58,01,110/- has been collected through e-payment system by the respondent.

11. Accordingly, the O.A. was allowed by the Tribunal directing the appellant/ Union of India to pay a sum of Rs.58,01,110/- only along with simple interest @ 6 per cent per annum from the date of application till the date of payment to the respondent.

V. COURT'S REASONING AND ANALYSIS:

12. Upon hearing learned counsel for the respective parties and upon an anxious consideration of the pleadings, documents, and materials placed on record, this Court deems it appropriate to structure its analysis in a systematic and comprehensive manner, so as to ensure clarity of reasoning and logical coherence in adjudication. Accordingly, the analytical framework of this judgment is delineated under the following heads:

A. Statutory and Tariff Framework:

i) The controversy arising in the present appeal is situated within the delicate interstices of statutory authority and administrative discretion that define the freight regulation regime under the Railways Act, 1989. The Act, being a comprehensive legislative framework, delineates the contours of the Railway Administration's power to levy, assess, and recover freight, while simultaneously circumscribing that authority through procedural safeguards and tariff rationalization mechanisms.

ii) The issue assumes further complexity in light of the binding tariff circulars issued by the Railway Board in exercise of its delegated legislative competence under the Act. These circulars constitute subordinate legislation, having the force of law, and are intended to secure uniformity, transparency, and fiscal discipline in freight computation. The interplay between the statutory provisions—particularly Sections 78 and 83 of the Act, which confer limited powers of

recalculation and recovery—and the administrative tariff prescriptions such as Rate Circular No. 36 of 2009, forms the crux of the present adjudication.

iii) The analytical fulcrum of the present adjudication pivots upon a twofold inquiry. Firstly, it necessitates an examination into the nature, scope, and limits of the authority conferred upon the Railway Administration under Sections 78 and 83 of the Railways Act, 1989—provisions which, though procedural in formulation, often assume interpretive significance in the assessment and re-determination of freight liability. The inquiry must, therefore, address whether these sections merely empower the Railway Administration to rectify computational or clerical discrepancies, or whether they extend to authorise a substantive reclassification of tariff heads once the transaction has been consummated.

iv) Secondly, the analysis must engage with the interpretive reach and normative import of the Railway Board's Rate Circular No. 36 of 2009, which governed the field during the relevant period of booking. This circular, issued in the exercise of delegated legislative competence, constitutes not merely an administrative guideline but a binding fiscal instrument, defining the operative tariff structure applicable to the carriage of iron ore for both domestic consumption and export.

v) The interpretive exercise thus requires reconciling the statutory empowerment under Sections 78 and 83 with the regulatory prescriptions of the circular, so as to ascertain whether the impugned levy of Distance Based Charges (DBC) conforms to the tariff logic and legislative intent underlying the framework of railway freight governance.

B. Sections 78 and 83 of the Railways Act, 1989

i) Section 78 of the Act empowers the Railway Administration to undertake re-measurement, re-weighment, or re-calculation of freight, thereby enabling correction of computational or clerical errors. However, Section 83 authorises the Administration to recover under-charges arising from such re-assessment. These provisions, by their very structure and context, are procedural and ancillary, designed to secure the fidelity of freight computation to the governing tariff. They do not, in jurisprudential contemplation, create a substantive head of charge, nor do they vest any discretion to alter the character of the levy or reclassify traffic contrary to the tariff instrument that was legally applicable at the time of booking.

ii) The principle underlying these provisions is one of administrative correction, not of substantive reassessment. The power to recalculate does not carry within its fold, the power to reimagine the transaction. Any interpretation to the contrary would subvert the fundamental rule that the delegated administrative authority must operate within the four corners of the enabling statutory and tariff framework, and cannot, under colour of recalculation, import a new incidence of charge alien to the governing schedule.

Rate Circular No. 36 of 2009 — the Normative Matrix

i) The Railway Board's Rate Circular No. 36 of 2009, which superseded Circular No. 30 of 2008, codifies a dual tariff structure premised upon the end-use of iron ore consignments, distinguishing between traffic for export-oriented processing and those intended for domestic consumption. Being a form of subordinate legislation of fiscal character, the circular possesses binding normative force upon both the Railway Administration and the consignor, subject only to judicial review on grounds of illegality, irrationality, or procedural impropriety.

ii) The Rate Circular No. 36 of 2009, which constituted the operative tariff framework during the relevant period, delineates a dual-stream classification predicated upon the intended end-use of the consignment and the corresponding fiscal consequence. Under the Export Stream, where iron ore is transported for pelletisation or beneficiation with the ultimate object of export, the freight is chargeable at Class-180 together with the levy of Distance Based Charges (DBC), cumulatively forming the export tariff—a structure designed to align higher freight incidence with the commercial orientation and profit-yielding character of export transactions. In contrast, under the Domestic Stream, where the movement of iron ore is demonstrably for domestic end-use within a pre-declared manufacturing unit, the applicable freight rate stands reduced to Class-140, exempt from DBC, subject to compliance with specific procedural and evidentiary safeguards such as the filing of an affidavit by the consignee prior to delivery, an indemnity note, and a verified end-use declaration. These safeguards serve a regulatory purpose, ensuring transparency, accountability, and prevention of fiscal evasion. The dual classification thus embodies a teleological balance between industrial facilitation and revenue protection, linking tariff incidence to the consignment's economic destination and thereby integrating the principles of functional differentiation and proportionality into the railway freight regime.

iii) In fact, two doctrinal consequences emanate from the above scheme namely, first, the end-use of the consignment is not a mere ancillary fact but a constitutive element of tariff classification. The freight liability crystallises ex ante, by reference to the intended and declared use of the consignment, as corroborated by contemporaneous records such as excise returns, manufacturing declarations, and affidavits. In other words, purpose conditions classification. This jurisprudential position aligns with the broader administrative law principle that tax or tariff incidence must attach to objective and ascertainable factual predicates existing at the time of levy, not to speculative or retrospective assessments of conduct. Second, Documentary Compliance as Condition Precedent. The filing of the requisite documents under Paragraphs 3(B)(III) and 3(B)(V) of the Circular is not a matter of procedural triviality but a substantive evidentiary safeguard designed to ensure transparency in tariff application. Yet, once the foundational fact of domestic end-use stands established through primary and contemporaneous evidence, such as excise returns evidencing

domestic sales and absence of export, a purely technical deficiency in paperwork cannot serve as a juridical basis for transmuting a domestic consignment into an export on

iv) In the realm of administrative law, the doctrine of substantial compliance occupies a position of settled authority. It postulates that procedural imperfections or technical omissions cannot be permitted to defeat a substantive entitlement, particularly where the statutory purpose has been fulfilled in essence and the public authority has suffered no demonstrable prejudice. The doctrine thus preserves the equilibrium between administrative discipline and substantive justice, recognising that procedural form is a means to an end, not an end in itself. Viewed through such lens, Rate Circular No. 36 of 2009 epitomizes a teleological synthesis— it insists upon procedural fidelity to ensure transparency and regulatory uniformity, yet it accords primacy to substantive truth over formal compliance. Where the end-use of the consignment, being the decisive normative criterion, stands established beyond cavil through contemporaneous and credible evidence, form must yield to substance, and procedure must bend to purpose. Such a construction alone harmonises the spirit of the circular with the broader principles of administrative fairness and equitable enforcement.

v) The Railway Claims Tribunal (RCT), upon an assiduous and methodical appraisal of the evidentiary corpus—including, *inter alia*, the excise returns for the quarter October to December 2012—arrived at an unequivocal finding that no iron oxide evidence, unsullied by conjecture, speculation, or extraneous inference, and therefore commands a high degree of evidentiary sanctity.

vi) In the absence of any demonstrated perversity, patent illegality, or misappreciation of evidence, such a finding warrants judicial deference under the well-settled doctrine governing appellate circumspection. This Court, exercising limited appellate jurisdiction under Section 23 of the Railway Claims Tribunal Act, 1987, is not tasked with re-evaluating factual determinations duly rendered upon an adequate evidentiary foundation. The principle of concurrent factual finality, deeply embedded in appellate jurisprudence, obliges this Court to respect the factual conclusions of the Tribunal, particularly when they emanate from contemporaneous industrial and fiscal records, and exhibit both coherence and evidentiary integrity.

vii) The Railways' endeavour to impugn the Tribunal's factual finding by adverting to instances of export activity during previous accounting periods (2008–2011) betrays a fundamental misapprehension of the normative structure of the prevailing tariff regime. Under the framework of Rate Circular No. 36 of 2009, tariff classification is conceived as transaction-specific rather than reputation-based, attaching legal consequence to the particular consignment and its contemporaneous end-use, not to the general business profile or historical conduct of the consignor. The mere fact that a consignor has, in previous years, engaged in export operations cannot, in the absence of cogent nexus or

contemporaneous linkage, retroactively transmute the juridical character of a distinct and subsequent consignment. If this Court holds otherwise, it would offend the principle of temporal specificity in tariff incidence, a cardinal tenet of fiscal jurisprudence which mandates that liability crystallises with reference to the factual matrix existing at the time of the transaction, and not by retrospective attribution of character from unrelated periods. Consequently, in the absence of any evidentiary continuum connecting Railway Receipt No. 261002668 with an export transaction, the attempt of the Appellant–Railways to predicate its claim on the Respondent’s prior export history is legally misconceived and untenable.

viii) The plea advanced by the Appellant–Railway Administration, alleging non-submission of the requisite affidavit and indemnity note by the Respondent–Company, stands squarely refuted by the Appellant’s own pleadings before the learned Tribunal, wherein the filing of such documents was expressly acknowledged. The argument, therefore, collapses under the weight of the Appellant’s own admissions. Even assuming *arguendo* that certain procedural formalities may not have been adhered to in a manner of absolute precision, such deviation, being *de minimis* and merely technical, cannot vitiate a transaction otherwise grounded in substantive compliance with the governing Rate Circular.

ix) Upon analysing from the administrative law standpoint, the doctrine of substantial compliance operates to distinguish between form and substance, recognising that procedural prescriptions are designed to advance, not obstruct, the attainment of statutory objectives. In the absence of demonstrable prejudice, fiscal detriment, or impairment of regulatory purpose, the invocation of minor procedural lapses cannot serve as a legitimate ground for withholding a benefit that is otherwise legally due. The Appellant’s failure to establish any causal nexus between the alleged omission and material prejudice renders this contention juridically untenable and doctrinally unsound.

x) The freight was duly paid through the e-payment system, delivery was effected without objection, and the contemporaneous excise documentation corroborates domestic utilisation. In such circumstances, the doctrine of substantial compliance, long entrenched in Indian administrative jurisprudence as echoed in *State of Haryana v. Raghubir Dayal* AIR 1995 SC 2130 must be invoked to immunise bona fide industrial transactions from technical nullification.

xi) The Scope and limitation of Sections 78 and 83 demonstrates that the statutory power to re-measure or re-calculate freight under Sections 78 and 83 operates within, not beyond, the four corners of the governing tariff. These provisions presuppose the existence of a legally correct tariff classification, and their purpose is to rectify quantitative miscalculations, not to effect qualitative reclassification. In order to employ them as instruments of substantive reassessment would be to invert their legislative intent and to allow administrative overreach under the guise of procedural rectitude. Thus, when RC–

36/2009 does not authorise the levy of DBC for domestically consumed consignments, Sections 78 and 83 cannot be deployed as vehicles for its imposition.

xii) The Pendency of case before the Supreme Court vide SLP (C) No. 15869 of 2015 and connected Transfer Petitions (Civil) Nos. 832–854 of 2015 is equally misplaced. The order of the Hon'ble Supreme Court, dated 14th December 2015, confers a limited stay upon specific writ petitions enumerated therein; it does not extend to this appeal, nor was any such order ever produced before the Tribunal during the pendency of the proceedings. In the absence of a specific stay, the adjudicatory process must proceed unhindered —mere pendency of SLP does not ipso facto translate into prohibition.

xiii) The doctrine of appellate restraint has long attained the status of a juridical axiom. An appellate court does not sit as a court of second evaluation on matters of fact or appreciation of evidence; interference is justified only where the order under challenge suffers from manifest perversity, patent illegality, or jurisdictional infirmity. The impugned judgment of the Ld. Railway Claims Tribunal discloses none of these vices. On the contrary, the Tribunal has correctly identified the determinative legal test—that of end-use as the decisive criterion—and has duly applied the governing tariff instrument, namely Rate Circular No. 36 of 2009, to the established facts. The findings recorded are empirically grounded, documentarily substantiated, and logically coherent, reflecting a reasoned adjudicatory process. In the absence of any perversity or material misdirection, this Court finds no warrant or justification for appellate interference, the judgment being juridically sound and evidentially unassailable.

13. CONCLUSION:

14. In view of the foregoing discussions, the RCT directed refund of the DBC component amounting to ₹ 58,01,110.80, with simple interest at 6% per annum from 2nd December 2015 (date of filing of the claim application). Although the Respondent had claimed interest at 18.25% per annum, the Tribunal's grant represents a judicious equilibrium between restitutionary fairness and fiscal restraint. The principle of restitution in integrum obliges the public authority to restore the aggrieved party to the financial position it would have occupied had the unlawful exaction not occurred. Interest, in this context, is not a windfall but a juridical recognition of the time-value of money wrongfully detained. Nevertheless, as the Respondent has not appealed for enhancement and the Appellant contests even the existing award, this Court, exercising appellate prudence, affirms the rate so determined, while clarifying that interest shall continue to accrue until the actual date of refund, if not already effected.

15. Regarding costs, the Tribunal's decision to make no order as to costs was predicated upon the "peculiar facts and circumstances" of the case. In view of the foregoing analysis, the appeals are devoid of merit and are accordingly dismissed. It is hereby ordered as follows:

- a. The judgment dated 04.02.2019 rendered by the Railway Claims Tribunal, Bhubaneswar Bench in O.A. No. III/9/2015 is affirmed in toto.
- b. The Appellant–Railway Administration shall refund the sum of ₹ 58,01,110.80 (Rupees Fifty-Eight Lakhs One Thousand One Hundred Ten and Eighty Paise only), representing the Distance Based Charges (DBC) component, to the Respondent–KIOCL Limited, together with simple interest at 6% per annum from 02.12.2015 until the date of actual payment (or until the date of refund, if already effected). The refund shall be effected not later than Two Months from today.
16. Accordingly, both the FAOs are disposed of.
17. Interim order, if any, passed earlier in any of the afore-mentioned FAOs stands vacated.