(2018) 03 GAU CK 0100

In the Gauhati High Court

Case No : MFA 7 of 2005

NOOLKANTH SALT SUPPLY CO — APPELLANT

Vs

UNION OF INDIA AND ORS — RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:
Railways Act, 1989 — Section 73, 74, 75, 106

Citation : (2018) 03 GAU CK 0100

Hon'ble Judges : SUMAN SHYAM

Bench : Single Bench

Final Decision : Allowed

Judgement

1.Heard Mr. H.P. Barman, learned counsel for the appellant. I have also heard Mr. B. Sarma, learned counsel appearing for the N.F. Railways. The

judgement and order dated 31/08/2004 passed by the Railway Claims Tribunal, Guwahati in Application No. 361/99 filed by the appellant, rejecting the

claim for refund of Freight allegedly over-charge by the Railways by holding that the application was not maintainable, is under challenge in the

present appeal.

2) It appears from the record that the appellant as the consignee had booked 5 wagons of iodised salt against Railway Receipt (RR) No. 792831,

792832 and 792833 on 25/11/1997 in favour of Mukhyada Associates i.e. the consignee, from Station GIMB to New Guwahati (NGC). After delivery

of the consignment, the appellant consignee had lodged a claim before the Railways demanding refund of an amount of Rs. 28,242/- on the ground that

the consignment having travelled through a dearer route, the freight charged by the Railways was in excess of the applicable amount. By referring to the provisions of Section 74 of the Act of 1989, the learned tribunal had dismissed the claim of the appellant by holding that it was only the Railways

which can claim freight over the consignor and not vice-versa as the consignor does not hold title of the consignment so as to claim refund of

difference of freight, if any.

3) Assailing the decision of the learned Railway Claims Tribunal, Mr. Barman, submits that section 74 of the Act of 1989 would not have any

application in the matter of claim for refund of freight and therefore, the learned Tribunal was not correct in rejecting the application without entering

into the merit of the claim.

4) Opposing the arguments of the appellantâ??s counsel, Mr. B. Sarma, learned Standing Counsel, N. F. Railway has placed reliance on a decision

of the Honâ??ble Supreme Court rendered in the case of Jagjit Cotton Textile Mills etc. Vs. Chief Commercial Superintendent, Northern Railway

and others reported in AIR 1998 SC 1959 to contend that interpreting section 74 of the Act of 1989, the Supreme Court has held that the rights and

liabilities on the goods would pass over to the consignee after the articles are booked on the basis of an RR and therefore, the appellant would not

have any right to claim refund of the excess freight, if any. It is also the contention of Mr. Sarma that it would be the consignee in this case who

would alone be entitled to make a claim for refund, if at all, but not the appellant. Mr. Sarma has also relied upon another unreported decision of this

Court rendered in the case of Union of India Vs. Sri Gopal Enterprise [judgement dated 17/08/2017 passed in MFA 224/2010] to argue that in the

aforesaid decision also it has been held that section 74 of the Act of 1989 will come into play in the matter of rights and liabilities over the property

which is attached to the consignment in question and the same will shift in favour of the consignee. Mr. Sarma has also relied upon Section 75 of the

Act of 1989 to contend that the said provision further makes it clear that the right of stoppage of goods in transit and also to claim freight from the

consignor would lie exclusively with the Railways whereas the liability of the consignee or the endorsee would be governed by Section 74 of the Act

of 1989. Mr. Sarma, submits that freight would be included in the price of the commodity and, therefore, would be a matter that would be exclusively

control by Section 74 of the Act of 1989.

5) I have considered the submissions made by the learned counsel for the parties and have also gone through the materials on record. Since the entire

controversy in this case revolves around interpretation of section 74 of the Railways Act, 1989, the said provision is quoted herein below :-

â??74. Passing of property in the goods covered by railway receipt â?" The property in the consignment covered by a railway receipt shall pass to the

consignee or the endorsee, as the case may be, on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the

consignor.â??

6) A bare reading of the aforesaid provision makes it clear that section 74 deals with passing of property in the goods covered by the Railway

Receipts but the same has nothing to do with refund of freight over charged by the Railways. Section 106 of the Act of 1989 deals with compensation

and refund of freight over charged which inter-alia lays down that a person shall not be entitled to refund of a freight charged in respect of goods

carried by Railway unless a notice thereof has been served by him or on his behalf to the Railway Administration to which the over-charge has been

paid, within six months from the date of such payment or the date of delivery of goods at the destination station, whichever is later. There is nothing in

section 106 which prohibits the consignor from claiming refund of excess freight by complying with the process indicated in the said provision.

7) In the present case, as noted above, the claim of the appellant is confined to refund of freight charged by the Railway, which according to the

appellant, is in excess of the applicable amount. In Jagjit Cotton Textile Mills (Supra), the Supreme Court was confronted with an issue wherein the

validity of the decision of the Railways to impose penal charges on freight under Section 73 of the Act of 1989 upon the consignee was put under

challenge. By interpreting the provision of Section 73 and 74 of the Act of 1989, the Honâ??ble Supreme Court had held that the endorsee will be

liable to pay theÂ penal charges if the delivery is applied for at the destination by the endorsee and the consignee will be liable if the delivery is

applied for at the destination by the consignee. But in the present case, we are not concerned with imposition of penal charges.

8) In the case of Shree Gopal Enterprise (Supra), the consignee had booked a train load of sugar at Daurala with destination at Guwahati to itself and

after the delivery of the consignment, made a claim for refund of an amount of Rs. 60,915/-. The Railways had accepted the claim for refund but took

a stand that there was a previous outstanding due of Rs. 45,738/- payable by M/s. Daurala Sugar Works to the Northern Railway since 1991 and,

therefore, the Refund can be effected after adjusting the said outstanding amount. Aggrieved by the aforesaid decision, the affected party had

approached the Railway Claim Tribunal at Guwahati by filing claim application which was allowed by the learned Tribunal. It was in such context that

the learned Single Judge had observed that the respondent in the appeal would have all the rights and liabilities of M/s. Daurala Sugar Works which

was both the consignor and the consignee.

9) The question of payment of freight charges arises at the stage of initial booking of the consignment by the Railway Wagons and therefore, it is a

threshold transaction. At that stage the property does not pass on to the consignee or the endorsee under Section 74 of the Act. It is only when the

goods are booked and Railway Receipt is delivered to the consignee or the endorsee that section 74 of the Act of 1989 will come into play. At the

stage of booking the consignment, the title to the property remains with the consignor and the Railway authorities are obliged to realize the correct

freight charge from the consignor. Therefore, if there is an error in realization of the freight, it would be open for the consignor to claim refund of the

excess amount since it is the consignor who had paid the excess amount. There is nothing in the Railways Act, 1989 which prohibits the person who

has paid the excess freight to claim refund of the same by following the due process of law.

10) For the reasons stated hereinabove, I am of the view that Section 74 or 75 of the Act of 1989 would have no application while deciding the claim

for refund of the excess freight charged by the Railways. The decisions relied upon by the learned Standing Counsel for the respondents are

distinguishable on facts and would be of no assistance to him in the facts and circumstances of the present case. As such, the impugned order dated

31/08/2004 passed by the Railway Claims Tribunal, Guwahati in Application No. 361/99, is held to be unsustainable in law and is accordingly set aside.

11) The appeal stands allowed.

12) The matter is now remanded to the learned Tribunal for a decision on merit

on the claim of the appellant. Send back the LCR. No order as to costs.

