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**(2018) 06 GAU CK 0042**  
**In the Gauhati High Court**  
**Case No : MFA 83 of 2011, MFA 3 of 2012**

Union Of India,

APPELLANT

Vs

M/S Shree Gopal Enterprise

RESPONDENT

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**Date of Decision :** 11-06-2018

**Acts Referred:**

Railways Act, 1989 — Section 106

**Citation :** (2018) 06 GAU CK 0042

**Hon'ble Judges :** SUMAN SHYAM, J

**Bench :** Single Bench

**Advocate :** A Chetry, M Sharma

**Final Decision :** Allowed

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## Judgement

1. Heard Ms. M. Sarma, learned counsel for the appellant in MFA No. 68/2009, MFA No. 67/2009 and MFA No. 69/2009. Also heard Mr. Bimal

Sarma, Mr. Brijesh Sarma, Mr. D.K. Dey as well as Ms. R. Barman, learned counsel appearing for the N.F. Railways as well as the appellants in

MFA No. 05/2010, MFA No. 06/2010, MFA No. 83/2011 and MFA No. 03/2012.

2. The sole issue that arises for decision of this court in this in this batch of appeals is as towwhether the consignors, who had booked the railway rakes

from the Ugar-Khurd Railway Station (UGR) to New Guwahati Railway Station (NGC), would be entitled to the benefit of â??Train Loadâ? rate of

tariff notwithstanding the fact that the UGR station had not been formally notified by the Railways as a train load handling station on the date on which

the consignments were booked. The learned Railway Claims Tribunal has passed conflicting judgment whereby, in some cases the prayer of the

consignor for refund of tariff by applying â??Train Loadâ? rate has been allowed whereas in the other cases, such claim had been rejected.

Accordingly, the aggrieved consignors have preferred MFA No. 68/2009, MFA No. 67/2009 and MFA No. 69/2009 whereas the Union of India as

approached this Court by filing MFA No. 05/2010, MFA No. 06/2010, MFA No. 83/2011 and MFA No. 03/2012 assailing the decision of the learned

Tribunal wherein direction for refund has been issued. Since all these appeals raises common question of law and facts, hence, I propose to dispose of

these appeals by this common judgment and order.

3. For better appreciation of the controversy involved in this batch of appeals, the facts givingrise to MFA No. 68/2009 are briefly stated herein

below:-

In this case the appellant/ applicant M/s Shree Gopal Enterprises had booked a consignment of sugar from Ugar-Khurd Station (UGR) under the

South Central Railways for the destination station New Guwahati (NGC) on 30th and 31st October, 2000 vide invoice No. 316 to 355 pertaining to

RR No. 258-230 to 258-269. The appellant had applied for 40 wagons with a request to charge the freight on "Train Load" basis. Although the 40

wagons, as requested by the appellant, were allotted to by the authorities, yet, the freight was charged on the basis of "Wagon Load" rate and the

charges were also paid by the appellant without raising any protest. After the rake had reached NGC from UGR and the consignment was delivered,

the appellant had served a notice dated 30-01-2001 under Section 106 of the Railways Act, 1989 claiming refund of the excess rate on the ground that

the railways having permitted the rake of 40 wagons, the same ought to have been treated as a "Train Load" traffic in which case much lower

tariff at the train load rate would have been applicable to the rake. The appellant had, therefore, made a claim for refund of the excess tariff and

accordingly the notice under Section 106 of the Act of 1989 was served. Since the said notice was not responded to by the railway authorities, the

appellant/ consignor had filed application No. 440/01 before the Railway Claims Tribunal, Guwahati Bench, which was dismissed by the judgment

and order dated 29-07-2009. Hence, this appeal.

4. Ms. Sarma, learned counsel for the appellant as forcefully argued that although the UGR station was not notified as a "Train Load" handling

station on the date on which the consignments were booked by her client, yet, the said station, for all practical purposes, was capable for handling

Train Load traffic and that is why 40 wagons were allotted to the appellant. According to the learned counsel for the appellant, although UGR

station was not a notified train load handling station at that point of time yet, the circular dated 11-09-1998 issued by the Chief Commercial Manager,

Railway permits relaxation of the conditions applicable to Train Load stations. Since her client had made a specific request for allocating 40

wagons and also to charge the tariff based on Train Load traffic, it was incumbent upon the authorities, submits Ms Sarma, to charge the

correct freight rate i.e. the train load rate, which has not been done in this case. Referring to the circular dated 14-10-1996, Ms. Sarma further submits

that the conditions for a station to be classified as a Train Load handling station has been clearly spelt out in the said circular and there is no

dispute about the fact that the station UGR did meet the requirement laid down by the said circular. That apart, submits Ms. Sarma, under the goods

and tariff No. 2 of the N.F. Railways, which came into force from 15-01-1994, the benefit of train load classification cannot be denied to a

consignment which otherwise fulfills all the conditions prescribed for classification as a train load station merely on the ground that the forwarding/

destination station has not been notified as open for handling Train Load traffic. Since NGC is a station which has been notified for Train Load traffic

and considering the fact that UGR station had the capacity to handle Train Load traffic, hence, the learned counsel submits that there was no

justification for denying the benefit of such lesser rate of freight to the appellant after having allocated a full railway rake consisting of 40 wagons.

5. Ms. Sarma has also placed heavy reliance on the decision of the Division Bench of the Railway Claims Tribunal, Guwahati Bench in OA No.

445/2001 whereby similar applications filed by similarly situated applicants involving the same station had been allowed by the Division Bench and

the Railways have also refunded the excess amount in compliance of such order of the tribunal.

6. The learned standing counsel appearing for the N.F. Railways, on the other hand, have argued that the UGR station was not notified as a station

capable of handling Train Load traffic on the date on which the consignment in question were booked. It was only on 01-09-2003, that the UGR

station was notified as a Train Load handling station and therefore, as per the standing railway circulars, the consignor cannot claim train load

tariff even if 40 wagons are allotted on the request of the consignor. Referring to the goods and tariff circular, Mr. B. Sarma, learned counsel for the

N.F. Railways submits that the said circular is applicable only in case of Indo-Bangla traffic and the N.F. Railways and since, UGR station comes

within the jurisdiction of South Central Railways, the said circular would not have any application in the facts of this case. It is also the categorical

stand of the respondents (Railways) that in this case although 40 wagons were allotted to the appellant, yet, since UGR did not have train load facility,

hence, the loading took place in two different shifts of 20 wagons each thereby, increasing the operational cost. It is on such count the Wagon Load

tariff was charged in this case. The learned standing counsel has further argued that all such stations which are capable of handling Train Load traffic,

had provisions of loading the entire 40 wagons at one go, as a result of which, it is permissible to charge a concessional rate, i.e. "Train Load"

rate.

7. I have considered the submission advanced by the learned counsel for the parties and have also meticulously gone through the materials available on

record. From a perusal of the circular dated 11-09-1998 issued by the Chief Commercial Manager, Railways, I find that one standard rake consists of

41 wagons but 38 wagons in the BCN/ BCNA type would constitute one full rake which would be eligible for Train Load rate. In the present case,

there is no dispute about the fact that as many as 40 BCN/ BCNA wagons were allotted to the appellant/ consignor. But from a perusal of the letter

dated 05-07-2001 issued by the Sr. Chief Commercial Inspector, it appears that the facility in the UGR station at that point of time was available only

for loading 20 wagons at a time and that is the reason why the UGR station was not declared as a train load handling station until 15-08-2003 on which

date UGR had acquired the train load handling capacity. From a careful analysis of the relevant circulars issued by the Railway Authorities, it is

evident that train load rate would be applicable only in case of those forwarding/ destination station which had the capacity of handling such load and is

accordingly declared so. In the present case, there is nothing on record to dislodge the claim of the railways that prior to 15-08-2003 UGR station did

not have the capacity of loading 40 wagons at a time, which was the condition precedent for notifying a station as "Train Load" handling station.

If that be so, the question of permitting 'Train Load' tariff in respect of the consignment booked from UGR station prior to 05-08-2003, in the opinion of this Court cannot arise in the eye of law. It may so happen that the appellant has availed 40 wagons but the permission to use 40 wagons was not accorded on the basis of 'Train Load' tariff nor could the authority have granted such tariff because the UGR station was not notified as such on the date on which the consignment was booked.

8. I find from the record that there was a clause in the form of Clause 4(ii) in the circular goods tariff No. 2, which reads as follows:

'(ii) The benefit of train load classification may not be denied to a consignment which otherwise fulfills all the conditions prescribed for application of train load, merely, because the forwarding/ destination station has not been notified as open for handling train load traffic.'

9. However, what must be noted herein is that the said tariff applies only in case of Indo-Bangla traffic and the N.F. Railways. There is no circular

available on record which extends the operation of the Goods tariff circular to all other stations all across the country including the South Central

Railways. Since there is already a circular issued by the competent authority laying down the criteria/ condition necessary for declaring a station as a

'Train Load' handling capacity station, until and unless such conditions are fulfilled and there is a notification issued by the competent authority

certifying that the station has in fact acquired the capacity for handling Train Load traffic, the said station cannot be treated as one.

10. For the reasons stated hereinabove, I am of the opinion that in the absence of a notification declaring that UGR station as a 'Train Load'

handling station on the date on which the consignment was booked, the consignor cannot claim the benefit of 'Train Load' tariff and instead

would be liable to pay the 'Wagon Load' tariff. The question raised in this batch of appeals stands answered accordingly.

11. In so far as the reference to the Division Bench Order of the Railway Claims Tribunal projecting a contrary view in the matter is concerned, the

learned counsel for the appellant could not invite the attention of this court to any legal provision which stipulates that the decision of the Division

Bench of the Railway Claims Tribunal would be binding upon the Single Bench. It rather appears that the claim petitions are taken up by the Benches

of the Claims Tribunal based on the pecuniary jurisdiction. If that be so, the Single Bench would be entitled to take an independent view in any matter

based on the material available before it. Since, the validity of the decision of the division bench is not the subject matter of these proceedings, this

court refrains from making any further comment on this issue.

12. In view of the opinion expressed by this court here-in-above, MFA No. 68/2009, MFA No.67/2009 and MFA No. 69/2009 stand dismissed.

Consequently, MFA No. 03/2012, MFA No. 05/2010, MFA No. 06/2010 and MFA No. 83/2011 preferred by the Union of India and another stand

allowed.

Â Â Â LCR be send back.

Â Â Â Parties to bear their own cost.