रेल दावा अधिकरण
गुवाहाटी न्यायपीठ

RAILWAY CLAIMS TRIBUNAL

GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Mrs. Leena Sarma, Member (Technical)

Mr. Mahtab Ahmad, Member (Judicial)

Claim Application No.OAIII-04/2022
OAIII/GHY/2022/0004 (ONLINE)
Date of filing of claim application: 03.02.2022
Date of Judgment: 23.11.2023

In the matter of,

M/s Nav Manas Food Products,

Cole Road,

P.O- Dibrugarh- 786001(Assam) …. Applicant

- Versus -

The Union of India,

Represented by its, General Manager,

Western Railway, Church Gate,

Mumbai-400020 …..Respondent

Present:

Mr. K. P. Maheswari, Learned Counsel for the Applicant.

Mr. A.K Sarma, Ld. Counsel for the Respondent.

Mrs. Leena Sarma, Member (Technical)

JUDGEMENT

1) A consignment of 18125 packet of salt was booked in train load condition on 02.12.2020 under Invoice No. 01/212005742 from Halvad To Dibrugarh. Railway collection of Originating Terminal Charges on account of booking station Halvad (Goods) and Destination Terminal Charges on account of Dibrugarh (Goods) are not notified as Freight Terminal Stations. The applicant as endorsed Consignee had paid all the money and railway freight money through consignor at booking point as per demand of the booking goods clerk /Halvad. Railways at booking point collected terminal charges and made serious calculation mistakes for which the applicant prays for refund.

2) The issues are:

a) Refund on account of Terminal Charges/Calculation Mistake.

b) Refund on account of wrong calculation of NTR.

On the basis of pleadings, the following issues were framed:

1. Whether statutory legal notice under Section 106 of the Railways Act, 1989 has been served?
2. Whether the claim application is properly verified, signed and filed?
3. Whether the applicant holds legal title?
4. Whether the applicant is entitled for compensation as claimed in the claim application and to what extent?
5. Relief and costs?

3) We perused the record thoroughly and heard argument of respective counsels. The issue-wise findings are as follows:-

ISSUE NOS.1, 2 & 3:

(These two issues are taken up together for discussion and decision for the sake of convenience)

4) Perusal of the case records shows that the applicant herein is the endorsee. It is seen that in this case, the notice under Section 106 has been signed by the authorized representative of the consignee or his legal representative; and that the notices have been served to the respondents within time. Perusal of the case records also shows that this claim application has been duly verified, signed and filed by the authorized representative of the consignee/endorsee, endorsee.

5) This Original Application is filed by the endorsee and if this OA is decreed in favour of the endorsee, the benefit of the order will go not to the individuals who have verified the application, but only to the endorsee so named. Further, the amount awarded shall be credited only to the endorsee's bank account through electronic transfer through RTGS or NEFT and to that extent, no one individual can siphon the amount.

6) Considering all the facts stated above, it is held that statutory legal notice under Section 106 of the Railways Act, 1989 was served within time to the respondents; and that the applicant holds legal title. Accordingly Issue nos.1 and 2 are decided in favour of the applicant.

7) ISSUE NO.3:

The applicant has claimed for refund of overcharges on account of the following:-

(i) Terminal Charges; (ii) Calculation Mistake; (iii) Refund on account of NTR in Graded concession and NE Region rebate issue.

8)

i) Terminal Charge issue and calculation mistake has not been pressed in any of these cases by the applicant and therefore, does not merit any discussion. However, the court does not agree with the contention that the terminal charge and calculation mistake issues have been pending in the Hon'ble Supreme Court.

ii) This issue has been discussed elaborately in many cases where orders have been passed by this Tribunal. OAIII-7/2010(Old)/OA no.III/GHY/2010/0007(New) was decided by a Division Bench consisting of Hon'ble Chairman and Member (Technical), Railway Claims Tribunal, in which levy of Terminal Charges in accordance with Rates Circular no.58 of 2007 dated 29.05.2007 and Rates Circular no.92 dated 18.09.2007, was held to be correct.

We may further take orders passed on 27.01.2021 in OAIII-58/2013 Meghalaya Cement vs. Union of India as a reference where the issue has been covered adequately by this bench.

It does not require further deliberations here. The issue is disposed off accordingly as per decision rendered in the above mentioned orders passed in OAIII-7/2010(Old)/OA no.III/GHY/2010/0007(New) & in OAIII-58/2013.

iii) Learned Counsel for the Applicant requested to give liberty to approach this Tribunal again in respect of Terminal Charge as per decision of Hon'ble Supreme Court in Petition(S) For Special Leave to Appeal (C) 29210-29212/2018 Union of India Vs M/s Mahesh Enterprises Pvt Limited and others which is pending before the Hon'ble Supreme Court and the stay order is in the operation. We find that this special appeal is filed by the railway before the Hon'ble Apex Court against the Judgement and Order passed by the Hon'ble Gauhati High Court in MFA No-72 of 2014 including 2 other MFA. This MFA was filed by the petitioner customer of the railway against the denial of incentive under a special scheme as well as Terminal Charge by the Tribunal. Hon'ble Gauhati High Court has decided this MFA with two connected MFA No.67 of 2014 and 98 of 2014 by Judgement dated 20.02.2018 in which the Hon'ble High Court was pleased to hear, consider and decided on in the question of incentives to the customer under a special incentive scheme. Perusal of the Judgement shows that the Hon'ble Gauhati High Court neither considered nor decided the claim of the Terminal Charge of the Petition . That Order of the Hon'ble Gauhati High Court has also been stayed by the Hon'ble Apex Court in the above SLP. It is true that in the Memo of the SLP the Railway has also the question of terminal charge but in our view only by raising discussion in the SLP by railway does not mean that issue of terminal charges is under stay. Therefore, we are not inclined to give liberty to the applicant again to raise the issue of terminal charge in view of the pendency of the above SLP as prayed for by the applicant. Hence, the applicant prayer is rejected.

9) The second most relevant issue here is wrong calculation of NTR for concurrent graded concession for salt traffic and 6% NE Region rebate.

i) Respondent Railway has produced Railway Board's letter No TCR/1078/2022/Salt/3396153 Dated 25.01.2023 issued to CCM/FM, Western Railway in connection with their reference made to the Board supposedly on the issue of 'Methodology for granting various concessions for non-refined salt' as is evident from the aforesaid letter of the Railway Board.

ii) Railway Board's clarification on this issue has been based on the RC 25 of 2007. The letter has stated very clearly that '*With regard to admissibility of concurrent concession, the same is given as per RC 25 of 2007 which states that in case two or more concessions are permissible, subsequent concessions will be given on reduced rates derived after giving concession.'*

iii) Circular RC 25 of 2007 has been examined. It is found that the Para 2.0 (26) of the circular RC 25 of 2007 has stated that '*freight concession(discount/rebate) will also be levied on NTR.'*

iv) Para 6.0 (d) of the same circular explained that '*In case of two or more concessions are permissible, subsequent concessions will be given on reduced rates derived after giving concession.'*

v) The circular RC 25 of 2007 was for 'Freight Incentive Schemes and Transportation Products'.

vi) RC 25 of 2007 had been superseded by RC 25 of 2008. Here also the subject matter is 'Freight Incentive Schemes and Transportation Products'. Here, the procedure for granting concurrent concession is not mentioned.

vii) The RC 25 of 2008 was superseded by RC 62 of 2009. The current circular valid for the case or cases under consideration in this Tribunal is the Rates Master Circular/FIS/2014/0 Dated 13/06/2014 based on RC 62 of 2009. Here, as per Para 2.0, Sub Para 3(iii), Concurrent Concession will be given one after the other on the reduced NTR.

viii) However, all these aforesaid circulars are meant for specific freight incentive schemes where the eligibility of the customers to avail the scheme has been defined and procedures spelt out.

ix) It is very clearly specified that 6% concession to NE region will be given on NTR and then the rest of the concessions covered under the schemes as mentioned in this circular will be given on reduced NTR one after another if concessions are to given concurrently.

x) In terms of RC 7 of 2008, 6% NE region rebate has to be given on NTR.

xi) The issue here should have been the concessions given independently outside the purview of the Freight Incentive Schemes as covered by the Rates Master Circular Dated 13.06.2014.

xii) In this Tribunal, the issue that has come up is how to calculate simultaneous concessions given to traffic booked to NE Region and graded concession given for ordinary non-refined salt meant for human consumptions. These two issues are dealt independently by two independent circulars: one by RC 7 of 2008 and the other by Rates Instruction No 16 of 2003. The terminology used is slightly different, in RC 7 of 2008, it is mentioned that 6% NE Region concession will be on Normal Tariff Rate and in Rates Instruction 13 of 2003, it is mentioned that graded concession on non-refined salt for human consumption will be given on Normal freight Rate. The term Freight is used in the Railways Act, 1989 whereas the term Tariff is not used anywhere in the said Act. However, it is understood that tariff as used in the Rates circulars is meant to denote freight.

xiii) The decision of this court on the issue is that Freight and Tariff can be used interchangeably in the context of the Rates circulars issued by the Railways for transportation of goods. Further, NE Region concession and Graded Concession on salt traffic would be calculated separately and independently on NTR, since these two issues are dealt by two independent circulars and not covered by the Freight Incentive Circulars of RC 25 of 2007, RC 25 of 2008 & RC 62 of 2009.

xiv) The views as elucidated in the Railway Board's letter No TCR/1078/2022/Salt/3396153 Dated 25/01/2023 is not acceptable to this court in view of the fact that this is not a circular and has no statutory value and moreover, it has relied on a circular (RC 25 of 2007) which has long been superseded by subsequent circulars. The relied upon document has dealt with a completely different issue of Freight Incentive Scheme and therefore, any subsequent circulars on the same issue of freight incentive scheme will also not be applicable on the issue under consideration in this court. Had any decision been arrived at or any interpretation been made based on Dynamic Pricing Circulars, this court would have been inclined to accept that opinion or interpretation.

10) Now, we are going to examine this case individually:

i) The Claim pertains to a salt rake booked from Halvad to Dibrugarh on 02.12.2020.

ii) The two issues are Refund for Terminal charges/Calculation mistake and refund on account of graded concession with NE Region Concession.

iii) Terminal Charge/Calculation mistake issue has already been decided and dismissed vide Para 8 above.

iv) Refund request on account of graded concession and NE Region concession is Rs. 30991/-. The applicant is entitled to this refund, however with a modification, as the calculated amount did not take into account the Digha Bridge surcharge of Rs. 26680/-. If this amount is deducted Rs. 4311/- will be the refundable amount and it conforms to the deliberations in our discussion at Para 10 above.

v) Rs. 4311/- is allowed with 6% rate of interest from the date of filing of the claim to the date of order. This has to be paid within 90 days of the receipt of the order by the respondent failing which 9% rate of interest has to be paid from the 91st day of the receipt to the date of actual payment.

ORDER

1. An amount of Rs. 4,311/- **(**Rupees Four Thousand and Three Hundred and Eleven Only) is allowed to the applicant for the graded concession and North East Region. Hence, partially allowed.

2. Respondent is directed to pay within 90 days of the receipt of the order by the respondent failing which 9% rate of interest has to be paid from the 91st day of the receipt to the date of actual payment.

3. With these observations and directions, the above case is hereby stand disposed of accordingly.

4. Let the case file be consigned to the record room after due compliance.

(Mahtab Ahmad)
Member (Judicial)

(Leena Sarma)
Member (Technical)

ED

<u>ORDER SHEET</u>

Original Application No: – OAIII-04/2022

Dated: 23.11.2023

Claim application is partially allowed. Judgment pronounced today vide separate detailed order.

(Mahtab Ahmad)
Member (Judicial)

(Leena Sarma)
Member (Technical)