2025 INSC 805

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7376-7379 OF 2025
(Arising out of SLP(C) Nos.11566-11569/2022)

UNION OF INDIA … APPELLANT(S)

Versus

M/S KAMAKHYA TRANSPORT PVT. LTD. ETC.ETC. … RESPONDENT(S)

J U D G M E N T

SANJAY KAROL J.

Leave granted.

2. The present appeals arise from the final judgment and order dated 20th December 2021 passed by the Gauhati High Court in MFA Nos.80 of 2016, 57 of 2016, 29 of 2017 and 28 of

2017 respectively, whereby the order dated 19th January 2016 of the Railway Claims Tribunal, Guwahati Bench in OA Nos.229/12, 184/12, 228/12 and 185/2012 respectively came to be affirmed.

Brief facts

3. The brief facts giving rise to this appeal are that the Appellant raised demand notices of varied amounts dated 13th October 2011, 7th April 2012, 29th October 2011, as also 7th April 2012 respectively against the respondents, alleging mis-declaration of goods; for consignments sent through the Indian Railways. The respondents paid the demands raised and thereafter, preferred separate claim petitions under Section 16 of the Railway Claims Tribunal Act, 1987, before the Railway Claims Tribunal[1], Guwahati Bench, seeking a refund of the amount paid. It was stated therein that the demand notices being issued after the delivery of the goods were illegal in view of Sections 73 and 74 of the Railways Act, 1989[2].

4. The Tribunal, allowed the claim petitions *vide* a common order dated 19th January 2016, and directed for refund of the amount paid in the following manner, along with interest @ 6% per annum :

1 Hereafter “the Tribunal”
2 Hereafter “the Act”

Claimant (Respondent herein)	O.A. number	Amount refunded
C.M. Traders	184/12	Rs. 4,47,965/-
Vinayak Logistics	185/12	Rs. 4,97,342/-
Kamakhya Transport Pvt. Ltd.	228/12	Rs. 3,07,902/-
	229/12	Rs. 15,12,959/-

5. The Tribunal placed reliance on the judgment of the Gauhati High Court in ***Union of India v. Megha Technical & Engineers Pvt. Limited***[3], whereby the Court had held that a demand under Section 83 of the Act has to be raised before delivery of the goods, to conclude that the Appellant could not have imposed punitive charges, after delivery of goods to the consigner and if such action was required, then the principles of natural justice have to be followed.

6. Aggrieved thereof, the appellant, preferred an appeal before the High Court of Gauhati, stating therein that the Tribunal failed to consider that the consignments were booked by declaring the items to be one category, however, the loaded items were found to be different from the category declared.

7. The High Court, *vide* its impugned judgment and order, dismissed the appeals of the appellant. The Court made the following observations :

3 W.A. Nos. 71 – 74 of 2013, Gauhati High Court.

(a) Both Section 74 of the Act and Rule 1820 of the Railway Commercial Manual II, 1991, permit recovery of dues before the delivery of goods.

(b) The scope of Section 83 of the Act has been dealt by this Court in ***Jagjit Cotton Textile Mills v. Chief Commercial Superintendent N.R. and Ors.***[4], wherein it was held that punitive charges are required to be raised by the Railway authorities before delivery is caused.

(c) From a perusal of Sections 73 and 78 of the Act, it is revealed that penal charges can be claimed prior to the delivery of goods, but not thereafter.

8. Dissatisfied, the appellant-Railway authorities are now before us. We have heard the learned Additional Solicitor General for the appellant and the learned counsel for the respondents.

Case of the Appellant - Railway Authorities

9. The significant point raised by the appellant is that the Courts below have erroneously treated the dispute at hand, as one dealing with overloading of the wagon which is governed by Section 73 of the Act. Meanwhile, the case of the appellant is that the consignments were found to be different, from what

4 (1998) 5 SCC 126.

had been declared, and, consequently, the appellant imposed a penalty under Section 66 of the Act.

10. Furthermore, the High Court's reliance on ***Jagjit Cotton Textile*** (supra), is erroneous, since the factual matrix of that case pertained to overloading of the wagon and right to lien. Moreover, the High Court has failed to take into consideration, the plain language of Section 83, which permits detainment of goods after delivery.

Case of the Respondents

11. We have perused the written submissions filed by the respondents. The significant point raised by the respondents is that since the demand notices were raised after the delivery of goods, Section 66 of the Act would not be applicable, and the Courts below have rightly held in favor of the Respondents.

Issue for consideration

12. In the attending facts and circumstances, the question which arises for consideration before this Court is whether the Courts below have rightly held that the Railway authorities could not have raised the demand notice after the delivery of goods.

Our view

13. As per the appellant - the Railway authorities, Section 66 is applicable which is found in Chapter IX of the Act, which seeks to regulate the carriage of goods. Section 66 reads as follows:

> **"66. Power to require statement relating to the description of goods.—**
>
> (1) The owner or a person having charge of any goods which are brought upon a railway for the purposes of carriage by railway, and the consignee or the endorsee of any consignment shall, on the request of any railway servant authorised in this behalf, deliver to such railway servant a statement in writing signed by such owner or person or by such consignee or endorsee, as the case may be, containing such description of the goods as would enable the railway servant to determine the rate for such carriage.
>
> (2) If such owner or person refuses or neglects to give the statement as required under sub-section (1) and refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to refuse to accept such goods for carriage unless such owner or person pays for such carriage the highest rate for any class of goods.
>
> (3) If the consignee or endorsee refuses or neglects to give the statement as required under sub-section (1) and refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to charge in respect of the carriage of the goods the highest rate for any class of goods.

> (4) If the statement delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, the railway administration may charge in respect of the carriage of such goods such rate, not exceeding double the highest rate for any class of goods as may be specified by the Central Government.
>
> (5) If any difference arises between a railway servant and such owner or person, the consignee or the endorsee, as the case may be, in respect of the description of the goods for which a statement has been delivered under sub-section (1), the railway servant may detain and examine the goods.
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> (6) Where any goods have been detained under sub-section (5) for examination and upon such examination it is found that the description of the goods is different from that given in the statement delivered under sub-section (1), the cost of such detention and examination shall be borne by such owner or person, the consignee or the endorsee, as the case may be, and the railway administration shall not be liable for any loss, damage or deterioration which may be caused by such detention or examination."
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> (Emphasis supplied)

14. It is borne from the above that a consignee/owner of goods/person having charge of goods who has brought goods for the purpose of carriage has to give the Railway authorities a written statement regarding the description of the goods, to enable them to charge the appropriate rate of carriage. Under sub-section (4), if the statement is found to be materially false, the Railway authority is empowered to charge the goods at the

required rate. No reference is made to the stage at which such a charge can be made, i.e., either before or after delivery. Consequently, it can be seen that the legislative intent had to be, to permit levy of charge under this Section, at either stage and not at a specific one.

15. Meanwhile, the High Court has considered Sections 73 and 78 of the Act, relating to the overloading of the wagon. They read as follows :

> "**73**. Punitive charge for overloading a wagon.—Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4), of section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:
>
> Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account.
>
> .....
>
> **78**. Power to measure, weigh, etc.—Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to— (i) re-measure, re-weigh or re-classify any consignment; (ii) re-calculate the freight and other charges; and (iii) correct any other error or collect any amount that may have been omitted to be charged."

(Emphasis supplied)

16. We have perused the demand notices annexed as Annexure P-1 dated 13th October, 2011, Annexure P-2 dated 29th October, 2011, Annexure P-3 dated 7th April, 2012 and Annexure P-4 dated 7th April, 2012. It is evident from the contents thereof that the demand was raised for misdeclaration by the respondents. No reference has been made to the overloading of wagon, to which Section 73 applies. More so, even the claim petitions do not propose that the demand notices have been for the overloading of wagon. T herefore, in our view, Section 66 applies to the present *lis*.

17. Furthermore, we are not inclined to accept the submission of the respondents that the demand notices annexed to the petition are not genuine in nature. No evidence has been led to that effect and, more over, the claim petitions are silent on such averments. Therefore, in the absence of evidence to the contrary, we are inclined to find the demand notices to be genuine.

18. Before parting with the appeals at hand, we notice that the High Court has held that penal charges can only be applied prior to the delivery of goods on the basis of the exposition in ***Jagjit Cotton Textile*** (supra). The respondents have also placed reliance on the same judgment to submit that penal charges can

be imposed only prior to the delivery of goods. We find such an approach to be erroneous and not in furtherance of the exposition in ***Jagjit Cotton Textile*** (supra). The relevant paragraph, as relied upon by the respondents, is as follows :

> "**22**. Again Section 54(1) states that the Railway Administration may impose conditions not inconsistent with the Act or with any general rules made thereunder, "with respect to the receiving, forwarding or delivery of any animal or goods". In our view one such "condition" could be by directing that penal charges could be collected before delivering the goods."

19. From a perusal of the above, it is clear that when this Court observed "*one such 'condition' could be by directing that penal charges could be collected before delivering the goods*", it was a suggestion, to explain the conditions that could be imposed by the Railway Administration under Section 54(1). Moreover, the above exposition in ***Jagjit Cotton Textile*** (supra), was made in the context of Section 54 only, while the facts of this case pertain to Section 66 of the Act.

20. In view of the above, the impugned order dated 20th December, 2021 passed by the Gauhati High Court in MFA Nos.80 of 2016, 57 of 2016, 29 of 2017 and 28 of 2017, is hereby set aside. In the attending facts and circumstances of this case, the civil appeals are allowed.

Pending applications, if any, shall stand disposed of.

……J.
(SANJAY KAROL)

……..……..J.
(PRASHANT KUMAR MISHRA)

New Delhi;
5th June, 2025