GAHC010036182019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/142/2019

Union of India, Represented by
The General Manager
North East Frontier Railway
Guwahati, Maligaon

…**Appellant**

-VERSUS-

M/s Numaligarh Refinery Ltd.
Registered Office at 122 A, G.S Road
Christian Basti, Guwahati 781005
And marketing and BD office at NEDFI House
4th Floor, Dispur, Guwahati 781005

…**Respondent**

Advocates for the appellant : Mrs. Uma Chakraborty

Advocates for the respondent : Ms. M Sharma

With

MFA 82/2019

M/s Numaligarh Refinery Ltd.
Registered Office at 122 A, G.S Road
Christian Basti, Guwahati 781005
And marketing and BD office at NEDFI House
4th Floor, Dispur, Guwahati 781005.

-VERSUS-

Union of India, Represented by
The General Manager
North East Frontier Railway
Guwahati, Maligaon

Advocates for the appellant : Ms. M Sharma
Advocates for the respondent : Mrs. Uma Chakrabort

BEFORE
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 10.02.2026
Date of pronouncement of judgment : 24.03.2026
Whether the pronouncement is of the operative part of the judgment ? : No.
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mrs. Uma Chakraborty, learned Special Railway counsel assisted by Ms. M Chattarjee, appearing for the appellant (in MFA 142/2019) and Respondent (in MFA 82/2019), hereinafter 'Railways'. Also heard Ms. M Sharma, learned counsel for the appellant (in MFA 82/2019) and respondents (in MFA 142/2019), hereinafter 'NRL'.

2. These two appeals, MFA 142/2019 filed by the Union of India (Railways) against the M/s Numaligarh Refinery Ltd. (NRL) and MFA 82/2019 filed by M/s Numaligarh Refiner Ltd. (NRL) against the Union of India (Railways), under Section 23 of the Railway Claims Tribunal Act, 1987 arises from the Judgment & Order dated 30.11.2018, passed by the learned Railway Claims Tribunal in Claim Application. No. OA-III-32/2016and the common order dated 21.10.2016 passed in Misc. Appl. No. 17/2016.

3. The case of the claimant before the learned Tribunal may be summarized as follows:-

> The applicant NRL booked petroleum products namely MS, SKO, HSD, etc. for carriage from Numaligarh Refinery Siding (NMGS) to different destinations during the period April 2005 to July 2009 under 2532 numbers of Railway Receipts (details stated in the claim application) on payment of all Railway freight and Siding Charges as demanded at the time of booking of the consignments. According to the applicant, the collection of siding charges amounting to Rs.2,98,22,483/- by the booking railway is illegal. This mistake, the Railways admitted after about 8/9 years and dis-continued charging of so-called excess distance of 9 km vide their letter no.C/402/RD/276/Pt.(Loose) dated 11.11.2008 and letter no C/402/RD/276/Pt. dated 08.07.2009. The CGS/NMGS has also verified, certified and clarified vide certificate dated 01.01.2013 regarding

overcharging of freight on account of so-called Siding Charges. However, the Railway rejected the claim of the applicant on the ground that the notice served under Section 106 of the Railways Act, 1989 (Old Act - Section 78B) was time barred. In the instant case, the booked goods were loaded from NMGS (Numaligarh Refinery Siding), which is served by NMGY (Numaligarh) Railway Station. The booking railway collected Siding Charges as well as 09 km Through Distance Charges i.e., two charges for one and the same Railway service. This fact was pointed out in a joint meeting with high Railway officials of N. F. Railway on 10.02.2001. From 2001 onwards, it submitted several reminders and even made personal representation to Headquarters and Divisional Office of N. F. Railway and the last reminder submitted was on 17.07.2008. After lapse of about 8 years, the office of CCM (Rates), N. F. Railway issued a letter bearing no.C/402/RD/276/Pt.I(Loose) dated 11.11.2008 clarifying "..... As per this office Goods Circular no.92/2001 dated 23.11.2001 Para-2, when the placement of the rake is made by reversing the engine and pushing the rake into the siding, the system of charging on through distance basis will not be applicable. In such case, shunting charges should be levied as per trip time basis....". On the basis of N. F. Railway's letter dated 11.11.2008, it submitted their claims vide claim letters dated 01.12.2008, 23.12.2008 and 22.11.2008 claiming refund of total amount of Rs.5,04,22,520/-, which was overcharged on account of charging freight on higher distance i.e., 9 kms, Thereafter, the office of CCM (Rates), N. F. Railway again after a lapse of 10 months issued another letter bearing no.C/402/RD/276/Pt. dated 08.07.2009 clarifying that 'Railway will realize freight on through distance basis adding 09 kms, but siding charge will not be levied on the

basis of trip time. However, in sidings where train engine is used for shunting on customer's account, shunting charge should be calculated for the total time of availability of the train engine at the siding'.

The Railway's letter dated 08.07.2009 shows that Siding Charges are not applicable on the goods booked during the period April 2005 to July 2009. CGS/NMGS having certified vide certificate dated 07.01.2013 that Rs.2,98,22,483/- on account of Siding Charges is refundable. Based on this, the applicant accordingly amended their claim and requested the Railways to refund the same with interest @ 12% per annum. As regards notice, the applicant averred that the limitation period of claim notice under Section 106 of the Railways Act, 1989 (Old Section 78B) has to be counted and computed from the date of issue of N. F. Railway's above stated letters dated 11.11.2008 and 08.07.2009 and because of the fact that the matter regarding freight overcharges was already pointed out to the Railway in their joint meeting conducted on 10.02.2001 and also in view of Hon'ble Supreme Court's judgement dated 05.02.2004. The applicant is a consignor and paid all Railway freight at the time of booking and as such holds legal tile to claim refund of freight overcharges. It is a Government of India undertaking organization, trading in petrol and petroleum products and most of their trading and transportation requirement are very much dependent on the Indian Railways.

4. The Railways filed written statement resisting the claim of the applicant. In the written statement it averred that the Railway Claims Tribunal does not have the jurisdiction to entertain the claim in view of the specific bar laid down

under Section 43 of the Railways Act, 1989. While deciding the miscellaneous petition for condonation of delay, the only issue before the Hon'ble Court was 'Whether there was sufficient explanation of the delay?' It is settled provision of law that the assignment of a new number to the original application would come only after the delay is condoned and as such the issue relating to 'validity & sufficiency of notice under Section 106' would come only after the original application comes into existence. So the provision of Section 11 of the CPC i.e., 'Res judicata' has no application in the fact and circumstances of the case. The alleged notice under Section 106 are time barred and hence not a valid notice as per provisions of Law and Rules. Besides, the alleged notices were not specific in respect of RR no., originating and destination station and date of booking. As per Section 74 of the Railways Act, 1989, the right and liability over the consignment passes to the consignee or endorsee on delivery of Railway Receipts and it is neither the case of the applicant that the consignment is yet to be delivered nor the applicant is an unpaid vendor, and as such the applicant does not have the right to claim refund of alleged freight overcharge. The claim of the applicant that the CGS/NMGS had worked out the alleged overcharge to the tune of Rs.2,98,22,483/- vide certificate dated 01.01.2013 is not correct. The fact remains that the applicant, after receipt of the summons from the Hon'ble Court, had made an enquiry into the alleged certificate/statement and the competent authority had informed vide letter dated 03.10.2016 addressed to SCM/CT/HQ to the effect that no such record regarding statement showing the details of the freight refund for the period 2007/2008 and details of refund of freight made against erroneously charged rate on chargeable distance to various location ex. NMGS are found at present. Hence the respondent denied the authenticity/correctness of the alleged certificate/statement dated

01.01.2013 under the provisions laid down under Rule 15-B of the Railway Claims Tribunal (Procedure) Rules, 1989. In terms of Rates Goods Circular no.92/2001 dated 23.11.2001, freight charges on through distance basis i.e., 9 km were levied up to the buffer end/furthest point on all the consignment booked from Numaligarh Refinery Project Siding (P) BG to different destination and siding charges were also collected as per provisions laid down under Rule 2512 of the IRCM Volume II, which lays down that in addition to other charges, the siding charge can be collected by the railway and as such the freight charges collected were legal and valid. The contents of the letter dated 11.11.2008 is neither clarification nor any direction to discontinue to collect charge for a distance of 9 km, rather a direction to strictly follow the instruction as laid down under Rates Goods Circular no.92/2001 dated 23.11.2001 which the railway authority had been following and as such the said letter is not relevant for the just decision of the case. That the competent authority had superseded all the earlier instructions vide Rates circular no.14 of 2009, circulated vide Rates Circular Goods No.21 of 2009 dated 25.02.2009 and accordingly instructions were communicated vide railway's letter dated 08.07.2009. Moreover, this circular does not have the retrospective effect and as such the freight collected by railway was legal and correct. The CGS/NMGS has clarified the method of placement of BTPN Wagons at the siding vide his letter dated 21.10.2016, which is very much relevant for the just decision of the case. As per said statement, the power was detached at the entry point/gate of the siding and then the power was reversed and the entire wagons were pushed back to the Gantry. It is further averred that the applicant failed to serve the statutory notice under Section 106 of the Railways Act which are statutory provisions and the same shall prevail over any of the circular/s issued by the

competent authority. The Railway Board vide its clarificatory circular issued under Memo no.TC-IV/2007/RP/1 dated 22.02.2010 has clarified the issue regarding time barred claim to the effect that unless the statutory notice under Section 106 of the Railways Act is served in time, no claim for refund can be entertained on merit.

On the basis of the pleadings of the parties, the following issues were framed for determination:-

1. Whether this court has jurisdiction to decide the claim application?

2. Whether the valid notice issued by the claimant?

3. Relief and costs?

Neither party adduced any oral evidence, but submitted their respective documents. After perusal of the record and hearing arguments to both sides, the learned tribunal allowed the claim of the claimant by the impugned Judgment & Order dated 30.11.2018, and passed the following order:

"*I. Respondent is directed to re-verify all the Railway Receipts, which are mentioned in the claim application, the number of rakes, rate as well as the amount paid under the cash remittance details given. Subject to verification of these calculations, the respondent is directed to work out the Siding Charges paid by the applicant, and*

refund the same for the period of Railway Receipts specified in the claim application.

II. The respondent is directed to refund the Siding Charges paid by the applicant alongwith simple interest @ 6% (six percent) per annum from the date of condonation of delay in filing claim application i.e., 21.10.2016 till the date of judgement. Thereafter, after expiry of 90 days from the date of judgement, if the respondent fails to pay the amount to the applicant, interest @ 9% (nine percent) shall be paid till the date of payment. In addition to this, respondent is also directed to pay the proportionate application fee Rs.1,51,578/- (Rupees one lakh fifty one thousand five hundred seventy eight only) and Legal Practitioner's Fee of Rs.3,000/- (Rupees three thousand only). The Application Fee and Legal Practitioner Fee have been calculated on Rs. 2,98,22,483/-, which the applicant claims to have paid as Siding Charges to the respondent railway. If the respondent, after verification, finds that the amount paid by the applicant on Siding Charges is less than the claimed amount, the respondent can recalculate the Application Fee on the said amount and pay to the applicant.

III. With this observations and directions, this original application stands disposed of accordingly.

5. Prior to that, by an order dated 21.10.2016 passed in Misc. Appln. Nos. 9/2016, 10/2016, 11/2016, 12/2016, 13/2016, 14/2016 & 17/2016, the delay in

preferring the claim was condoned by the learned Claims Tribunal.

6. Being aggrieved, the Railways have preferred the instant appeal being MFA 142/2019, whereas respondent herein i.e. M/s Numaligarh Refinery Ltd. (NRL) has also preferred a cross appeal being MFA 82/2019 seeking enhancement of interest.

7. Let me first take up the challenge to the common order dated 21.10.2016 referred to hereinbefore, whereby the delay in preferring the claim application by M/s Numaligarh Refinery Ltd. was condoned. Although the said order was passed on 21.10.2016, no challenge to the same was made at that time. The Railway Claims Tribunals Act provides as follows:

> "*23. **Appeals**.-(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.*
>
> *(2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.*

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the order appealed against."

8. From the above, it is evident that the challenge to the aforesaid order dated 21.10.2016 is hopelessly barred by time, inasmuch as there is no explanation for not having preferred the appeal against the said order within the time frame stipulated by the statute and consequently, the said challenge stands repelled.

9. The Railways have submitted written arguments wherein, inter alia, it is stated that since the respondent/applicant failed to serve the statutory notice u/s 106(3) of the Railways Act, 1989, the claim of the respondent/applicant cannot be entertained. Further, the provisions laid down u/s 106(3) of the Railways Act, 1989 are a statutory provision and the same shall prevail over any of the circulars issued by the competent authority. Moreover, the Railway Board vide its above clarification issued under Memo No. TC-IV/2007/RP/1 dated 22.02.2010 had clarified the issue regarding time-barred claim to the effect that unless the statutory provision u/s 106(3) of the Railways Act, 1989 is served in time, no claim for refund can be entertained on merits.

10. As stated earlier, the learned RCT framed the following three issues:

"*1. Whether this court has jurisdiction to decide the claim*

application?

2 Whether the valid notice issued by the claimant?

3. Relief & Cost."

11. It is submitted that the learned RCT had taken the issue Nos. 1 & 2, together for discussion but on a plain reading of the discussion and decision of the learned RCT, it transpires that the learned RCT decided the issues in favour of the claimants without going through the statutory provisions of law and the rules, and by ignoring the various Railway Board's circulars.

12. It is further submitted that although Section 106(3) of the Railways Act provides for issuance of notice, the question of sufficient notice though framed as an issue was not at all discussed in the impugned judgment.

13. Section 106(3) of the Railways Act provides as follows:-

> "*(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefore has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later."*

14. It is submitted that the learned Claims Tribunal did not adequately discuss the point of the applicability of statutory notice under Section 106(3) of the

Railways Act, 1989 in the instant case.

15. Per contra, it is submitted on behalf of the M/s Numaligarh Refinery Ltd. that such excess payment of Siding Charges Rs. 2,98,22,483/- by the booking railway is an illegal collection which was admitted by the Appellant-Railways after a lapse of 8/9 years by issuing a Clarification letter dated 11.11.2008 regarding discrepancy upon the enquiry made by the Respondent-Applicant made during Trip Trial in the Record Notes conducted jointly by the Appellant-N.F. Railway and the Respondent Claimant NRL officials between 10.02.2001 – 11.02.2001 and therefore the limitation period of claim notice under Section 106 of the Railways Act, 1989 has to be counted from the date of issue first raised by the Respondent-NRL in the Record Notes during Trip trial dated 10.02.2001 or from the date of issue of the two clarification letters by the N.F. Railways being clarification letter dated 11.11.2008 and 08.07.2009 because of the fact that the matter regarding excess payment of freight or duplication of payment was already pointed out to the Appellant/Railway in their joint meeting conducted on 10.02.2001.

16. Further, the requirement of giving notice under section 106(3) Railways Act, 1989 within six months from the date of such payment or the date of

delivery of such goods at the destination station, whichever is later, is only in the cases of overcharge by the Railways but the present case is not a case of overcharge but is one of illegal realization of freight in view of the law laid down by the Hon'ble Supreme Court in the case of ***Union of India (UOI) & Others vs. West Coast Paper Mills Ltd. & Others,*** reported in ***AIR 2004 SC 3079*** and a similar observation was also made by the Hon'ble Supreme Court in the case of ***Hindustan Petroleum Corporation Limited vs. Union of India***, decided on 14.12.2017.

17. In *West Coast (supra),* it was held as follows:-

> "*19. The term overcharge is not defined in the Act. In its dictionary meaning* "overcharge" means "a charge of a sum more than as permitted by law" [see, The Law Lexicon, P. Ramanatha Aiyar, 1997 Edition, Page 1389]. The term came up for the consideration of the High Court of Gujarat in Shah Raichand Amulakh (D) by his heir v. Union of India and Ors.MANU/GJ/0109/1970:(1971)12GLR93. Chief Justice P.N. Bhagwati (as His Lordship then was) interpreted the term by holding that "Overcharge" is not a term of art. It is an ordinary word of the English language which according to its plain natural sense means any charge in excess of that prescribed or permitted by law. To be an overcharge, a sum of money must partake of the same character as the charge itself or must be of the

same genus or class as a charge; it cannot be any other kind of money such as money, recovered where nothing is due. Overcharge is simply a charge in excess of that which is due according to law."

18. The aforesaid was also followed in the case of Hindustan Petroleum Corporation Limited vs. Union of India (UOI), MANU/SC/1743/2017.

19. In ***Union of India vs. M/s Indian Oil Corporation Limited***, reported in ***2024 INSC 242***, it was held as follows:-

"*80. Section 106 of the Act, 1989, sub-section (3) specifically uses the words "paid' and "date of payment". This clearly fortifies the above observations, that for a sum to be an "overcharge" within the meaning of Section 106(3) of the Act, 1989, it must be an overcharge on the date when such sum was paid. If on the date when the payment was made, the sum in question was not an overcharge, it will not become an 'overcharge" due to intervention of subsequent events at-least in terms of Section 106 of the Act, 1989.*

87. For illustration, say, goods were booked and freight was charged at the rate of Rs. 100 per km, and accordingly freight was paid. Subsequently, 7-months later the Railways decides as a matter of policy to reduce it to Rs 50 per km with retrospective effect. Now though the reduction is taking place retrospectively, but intimated 7-

months after when the payment was made, and further even-though, this is an overcharge (because Rs. 50 has been paid in excess of what was payable), it would not mean that in order to seek refund of the excess sum, the notice ought to have been made within 6-months as per Section 106(3) of the Act, 1989, when the payment was made. Such a case, although of an overcharge, cannot be said to be one of"overcharge" within the meaning of Section 106(3) of the Act, 1989, thus no notice of claim would be required in such cases.

98. Thus, from the above discussion, it is abundantly clear that there exists a very fine & clear distinction between an overcharge and an illegal charge, and that Section 106 sub-section (3) of the Act, 1989 only applies when the claim is for a refund of an overcharge, ***for all other charges, be it illegal or not, the said provision will have no application whatsoever****." (emphasis mine)*

20. It had been submitted on behalf of the Railways that the alleged dispute is only in respect of collection of siding charges. As per provisions laid down under Rule 2512 of the IRCM Volume II, the Railway is authorised to collect siding charges in addition to other charges and hence, collection of "through distance" and "siding charges " both are valid and having the authority of law. In view of the above, the siding charge can be collected by the Railway under Rule 2517 of

the IRCM Volume II and as such, the freight charges collected by Railway Administration for dealing with the traffic at the sidings from the siding users, the Respondent/applicant, were legal and valid. However, by ignoring the said statutory provision, the Ld. RCT had erroneously came to a conclusion that the siding charges so collected by the Railway were illegal.

21. In the considered view of this Court, if the siding charges levied and collected by the Railways are contended to be legal as well as valid, there cannot be any question of "overcharge". In other words, "overcharge" would clearly mean a charge in excess of the prescribed rates. There having arisen no issue that what was charged by way of siding charges was in excess of the prescribed rates for siding charges, the said charge can never answer to the definition or description of "overcharge" and must, in view of the decision in ***M/s Indian Oil Corporation Limited (supra)*** be regarded **not** as "overcharges", be it illegal or not, and therefore, the provision of Section 106(3) of the Railways Act will evidently not be applicable.

22. As contended on behalf of the NRL, Railway had admitted the refundable amount whether it was the collection of freight money through distance basis by adding 09 Km i.e. Rs. 5,04,22,520/- or collection of Siding Charges Rs.

2,98,22,483/- through CGS/NMGS Certificates annexed with the Claim Application marked as AnnexureA8-20, A-21-65 and A-66-78 and CGS/NMGS Certificate dated 07.01.2013 marked as Annexure-A81.

23. The Railway first admitted the total refundable amount Rs. 5,04,22,520/- which was raised by the Respondent-NRL after the receipt of the railway clarification letter dated 11.11.2008 which was issued after the lapse of 08 years from the date of raising such duplicity of payment during Trip Trial conducted on 10.02.2001. Later the Railway had corrected their action by issuing another clarification letter dated 08.07.2009 wherein it is stated that the freight through Distance basis by adding 9 Km will be levied and Siding Charges will not be levied. Accordingly, the CGS/NMGS issued another certificate dated 07.01.2013 admitting the refundable amount of Rs.2,98,22,483/- which was also vetted by the CGS/NMGS Sri Pradip Kumar Singh duly attested by the Asstt. Commercial Manager, N.F. Railway, Tinsukia dated 02.05.2017.

24. Further, RTI letter dated 27.03.2017 issued by the CGS/NMGS Sri Pradip Kumar Singh had enclosed two Annexures and out of them,/ Annexure-2 also reaffirmed that the amount Rs. 2,98,22,483/- collected on account siding charges from booking station NMGS from April 2005 to July, 2009 which also

tallies with the Certificate issued by then CGS, NMGS, Sri. J.P. Sunuwal on 07.01.2013.

25. Therefore, the remittance details furnished by then CGS, NMGS, Sri. J.P. Sunuwal on 07.01.2013 and thereafter through CGS/NMGS Pradip Kumar Singh's reply through RTI letter dated 27.03.2017 enclosed therewith (Annexure-2) creates a strong presumption that the said certificate is an authentic document, as rightly contended by NRL. The Railways cannot disprove the authenticity of the aforesaid documents by merely stating that the same could not be found in the official records at present.

26. As per the written submissions of the appellant/Railways (para 11A**),** Rules 2512 & 2517 of the IRCM Vol. II are enabling provisions authorizing the Railways to levy siding charges. But in view of the express admission on the part of the appellant Railways as referred to above, it is clear that the Railways have chosen not to levy siding charges by resorting to the said enabling provision. That being the case, I find no force in the aforesaid submissions on behalf of the Railways.

27. It was also contended on behalf of the Railways in their written submissions that the competent authority of Railway had superseded all the earlier instructions that relates to collection of siding and other charges vide

rates Circular No. 14/2009 dated 06.02.2009 circulated vide Rates Circular No. 21/2009 dated 09.03.2009 and further communicated vide Railways' letter dated 08.07.2009. Hence, in such situation, the Railway authority ought to have complied with the said direction. However, by ignoring the said contentions, the learned RCT had erroneously come to a conclusion that the siding charges so collected by Railway was illegal.

28. There is no force in the aforesaid contention either since the letter of clarification dated 08.07.2009 regarding non-application of siding charges was issued subsequent to the circular dated 06.02.2009 & 09.03.2009, the question of the said circulars negating the aforesaid letters dated 08.07.2009 and certificate dated 07.01.2013 does not arise. In any case, the Railways cannot be permitted to abjure responsibility for the actions of its own authorized officials by resorting to such a stand.

29. As far as the appeal/cross-appeal filed before the RCT is concerned, the same relates to enhancement of the interest granted. The same issue arising out of a similar application by the cross appellant (NRL) was negated by the learned Tribunal which was carried in appeal being MFA 12/2009 which was dealt with by a Coordinate Bench of this Court in the following manner :

"22. Regarding interest, it appears that the original application filed by the appellant before the Tribunal was allowed and the respondent was directed to pay the claimed amount along with simple interest @6% per annum from the date of filing of the original application till the date of judgment. It was further ordered that if the respondent failed to make payment within 90 days of the judgment, the amount shall carry interest @9% per annum till realization.

23. Aggrieved, the cross appellant preferred a review petition before the Tribunal contending that interest should be awarded from the date of last payment of freight i.e., 28.03.2008 at the rate of 12% per annum by relying upon two judgment: (i) Judgment dated 18.09.1987 passed in F.A. No. 1/1987 (Union of India vs. Food Corporation of India); and (ii) Judgment dated 29.06.2012 passed in MFA No. 80/2002 (M/s Jaypee Rewa Cement vs. Union of India). The Tribunal, however, rejected the review petition holding that: (a) there was no provision in the Railway Act, 1989 or Railway Claims Tribunal Act, 1987 for payment of interest; (b) interest was awarded only in exercise of inherent powers under Order 44 of the RCT Rules; and (c) no error apparent on the face of record existed to justify a review under Section 152 CPC.

24. Learned counsel for the cross appellant has reiterated her earlier submissions before this Court, seeking enhancement of interest from 9% to 12% per annum, and also for grant of interest from the date of last payment of freight i.e., 28.03.2008.

25. Having considered the submissions and the materials on record, this Court finds no infirmity in the order dated 25.03.2019 passed in Review Application No. 51/2018, arising out of Original Application No. III-27/2016 in respect of the cross appellant. The judgments relied upon by the appellant arose out of different factual contexts and do not govern the present case. The Tribunal, in exercise of its discretion, has already granted interest in the absence of specific statutory provision, which cannot be said to be illegal or arbitrary. Further, once the Tribunal has consciously exercised its discretion while granting interest, the same cannot be re-agitated under the garb of review or in appeal unless perversity or patent illegality is shown.

26. In the present case, the Tribunal has rightly held that there was no error apparent on the face of record. The interest granted @6% per annum till judgment and thereafter @9% per annum on default of payment beyond 90 days cannot be said to be inadequate or contrary to law.

30. This Court is in complete agreement with the aforesaid finding of the learned Coordinate Bench.

31. Consequently, the cross appeal is devoid of merit and stands dismissed.

32. For the reasons stated above:

· MFA No. 142/2019 filed by the Union of India (Railways) is dismissed.

· MFA No. 82/2019 filed by M/S Numaligarh Refinery Ltd is also dismissed.

33. With the above observations, both appeals, MFA No. 142/2019 and MFA No. 82/2019, shall stand disposed of.

34. The parties shall bear their own costs.

JUDGE

Comparing Assistant

Kuntal Datta

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