2024 INSC 243

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1891-1966 OF 2024

UNION OF INDIA **...APPELLANT(S)**

VERSUS

M/S INDIAN OIL CORPORATION LTD. **...RESPONDENT(S)**

J U D G E M E N T

J.B. PARDIWALA, J.:

For the convenience of the exposition, this judgement is divided in the following parts: -

INDEX

1. This batch of 76 appeals is at the instance of the Union of India being the unsuccessful respondent before the High Court and is directed against the common set of judgements and orders dated 23.02.2018 passed by the High Court of Allahabad in FAO Nos. 726, 730-739, 765, 772-793, 798-814, 825-826, 829-830, 833-842, 844-848, and 850-855 respectively of 2014, by which the High Court allowed all the abovementioned appeals filed by the respondent herein (original appellant) and directed the railway administration to refund the difference of approx.. 110 km that was illegally levied towards the freight charges.

A. FACTUAL MATRIX

2. The respondent company herein had booked various consignments of furnace oil between the years 2002 & 2005 via railway from Baad to Hisar route.

Indisputably the freight for the same was calculated by the appellant on the basis of a total chargeable distance of 444 km. as per the then prevailing distance table plying for the said route.

3. On 07.04.2004, the Ministry of Railways vide its Letter No. TCR/2043/2002/2, decided to rationalize the method of calculating the 'chargeable distance' between the pairs of station routes by way of rounding off the aggregate of the 'actual engineering distance' to the next higher kilometre only once at the end. The said letter is reproduced below: -

"Rates Circular No. 14 of 2004

GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
RAILWAY BOARD

No. TCR/2043/2000/2

New Delhi, Dt. 07.04.2004

To,
The General Managers (Comml.).
All Indian Railways, NCR

SUB: Rounding off of Chargeable Distance: Rationalization of fares and freight.
REF: Board's letter no. TCR/2043/2002/4 dated 05.02.2003

Reference is invited to Board's above cited letter wherein Zonal Railways were asked to print their new Local Distance Tables (LD1) and Junction Distance Tables (JDT) effective from April 1, 2003, indicating the actual engineering distances of the various sections upto two decimal places. Board desire confirmation in this regard and that these books have been printed and circulated to other railways also.

It was also indicated in the letter under reference that the method of "rounding off" to be adopted for arriving at the 'chargeable distance' shall be communicated in due course. The Ministry of Railways have now

decided in rationalize the method for arriving at the 'chargeable distance' between a specific pair of originating and destination points. The actual engineering distances upto two decimal places of the various sections from originating station to destination station will be added up and the distance so aggregated would be finally rounded off to the next higher kilometre for deriving the chargeable distance. It may be ensured that for deriving the "chargeable distance", the summation of individual sectional distances be "rounded off" ***only once at the end****. This rationalization is aimed at ensuring uniformity in the method of deriving the distance of charging fares and freight for all customers across the Indian Railways.*

In order to have a uniform date of implementation, all railways shall change over to the rationalized procedure with effect from 01.06.2004. As these instructions have prospective effect and may result in variation in fares and freights when compared with the existing fares and freight, neither would any undercharges be raised by the railways nor would the railways refund charges collected in past cases. Rail users may be intimated of the proposed changes well in advance and staff may also be made well conversant with the changes contemplated.

This issues in consultation with C&IS Directorate and with the concurrence of Finance Directorate in the Ministry of Railways.

Sd/-
(L. Venkataraman)
Director, Traffic Comml. (Rates)
Railway Board"

4. This new methodology was being adopted in order to ensure uniformity in deriving the chargeable distance for fares and freight across the Indian Railways, and pursuant to it, the various zonal railways were required to revise their respective distance tables accordingly.

5. The letter as referred to above specifically stipulated that, the change over to the new 'rationalized procedure' shall take place w.e.f. 01.06.2004 and further that as the aforementioned change might result in variation in the fares and

freights in comparison to the then existing charges / rates, the said change would not entitle either the Railways or the end-users to recover or seek any under-charge or excess charge that was already paid prior to the implementation of the said policy.

6. However, since many zonal railways were yet to print and make available their revised local distance tables and junction tables at their respective stations by the scheduled date of implementation, the Ministry of Railways vide its letter dated 24.09.2004 changed and moved the date of implementation of the aforesaid new methodology to 01.01.2005. It was further clarified that till the revised guidelines were implemented, the chargeable distance would continue to be calculated as per the earlier prevailing methodology and procedure as applicable. The said letter reads as under: -

"Rates Circular No. 14 of 2004

GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
RAILWAY BOARD

No. TCR/2043/2000/2

New Delhi, Dt. 24.09.2004

To,
The General Managers (Comml.)
Al Indian Railways, NCR

Managing Director,
Konkan Railway Corporation,
Belapur Bhavan, Sector-11, CBD Belapur,
New Mumbai – 400614

The Chief Administrative Officer/ FOIS
Camp: CRIS, Chanakyapuri,

New Delhi – 21

SUB: Rounding off of Chargeable Distance: Rationalization of fares and freight.

Please refer to Board's message dated 25.06.2006 wherein it was communicated that the revised procedure of charging fares and freight by rounding off the actual engineering distance only once at the end shall come into force from 01.10.2004. As all the Zonal Railways have not printed their local distance tables and junction distance tables by the target time, it has been decided that the revised procedure of charging fares and freight by rounding off the actual engineering distance only once at the end shall come into force from 01.01.2005 i.e., First January two thousand five.

It has also been decided that till the implementation of revised guidelines, the earlier procedure for calculating the chargeable distance on the basis of old distance tables should be followed by Zonal Railways. Moreover, the receipt of LDTs/JDTs prepared on the basis of Board's guidelines by concerned Railways should be intimated to this office.

Sd/-
(PURAN CHAND)
Deputy Director, Traffic Comml. (R)
Railway Board"

7. On 05.07.2005, the Chief Commercial Manager of the North Central Railway Zone addressed a letter bearing No. DRM/CLAOG/RAD/Distance Table/2004/20 to the Chief Goods Supervisor (CGS), Baad *inter-alia* stating that the earlier chargeable distance of 444 km from the Refinery Baad to Hisar as per the old distance table should be changed to 334 km as per the new junction table, and that the "*correct distance should be charged*". The said letter reads as under:

"NORTH CENTRAL RAILWAY

Dated: 05.07.2005

No. DRM/CLAOG RAD/Distance Table/2004/20

Chief Commercial Manager (M&R)

North Central Rail
Allahabad

SUB: Charging of FO HPS Book from IOC BAAD to Hissar (HSR):

As per old distance table prior to formation of Zone and Division, the distance, Refinery to HSR via TKD was being charged as under: -

1.	*Refinery BAAD to BAAD station*	*04 Km*
2.	*BAAD to TKD*	*145 Km*
3.	*TKD to HSR*	*295 Km*
Total		***444 Km***

As revised distance table of NCR, NR were not received, hence the charging was as per the earlier practice of 444 Km. These all the distance tables were critically reviewed from revised distance tables of NCR and the distance from IOC BAAD to HSR should be as under: -

(A) The distance from IOC BAAD to HSR via PWL is as under:		
1.	*Refinery BAAD to BAAD station*	*04 Km*
2.	*BAAD to TKD*	*93.62 Km*
3.	*TKD to HSR*	*235.56 Km*
Total		***333.18 Km***

(B) The distance from HSR via AWR is as under:		
1.	*Refinery BAAD to BAAD station*	*04 Km*
2.	*BAAD to MTJ*	*10.22 Km*
3.	*AWR to RE*	*74.21 Km*
4.	*RE to HSR*	*142.56 Km*
Total		***354.17 Km***

As the traffic of FO and HPS is moving via PWL, hence the chargeable distance should be 334 Km.

CGS has been instructed to change the distance of HSR according to the new junction distance table i.e., 334 Km.

CGS BAAD has been instructed that the other disputed distance should also be corrected as per the new junction distance table and the correct distance should be charged.

Sd/-
(P.K. PANDEY)
Sr. Divl. Comml. Manager
Agra"

8. The respondent upon learning about the aforesaid letter dated 05.07.2005 changing the chargeable distance from 444 km to 334 km for the route from Refinery Baad to Hisar, made further inquiries with the concerned Railway office & came to learn that, although there had been no change in the physical track length for the said route and that the actual distance from Baad to Hissar via Palwal was in fact 333.18 km, yet the appellant was charging freight at a wrong chargeable distance of 444 km for the same route.

9. In view of the aforesaid, the respondent company sent a notice of claim dated 07.11.2005 under Section 78B of the erstwhile Railways Act, 1890 (for short, the "**Act, 1890**") to the appellant demanding refund of the difference of 110 km in the freight charges that had been erroneously charged on the basis of the wrong chargeable distance which was subsequently changed.

10. The respondent vide the aforesaid notice of claim had demanded refund for a total of 122 consignments for which freight had been levied on the basis of a chargeable distance of '444 km'. However, the appellant herein rejected all of the claims and declined to refund the 110 km difference in freight charges.

B. PROCEEDINGS BEFORE THE RAILWAY CLAIMS TRIBUNAL

11. Aggrieved by the same, the respondent in all filed 122 claim applications under Section(s) 13(1)(b) r.w. 16(1) of the Railway Claims Tribunal Act, 1987

(for short, the "**RCT Act**") for refund towards the difference of 110 km in freight charges, with the lead application being the OA/(III)/229/20006/Mathura before the Railway Claims Tribunal, Ghaziabad ("**RCT**").

12. During the pendency of the aforesaid claim applications, the respondent company held meetings with the appellant more particularly the General Manager, North Central Railway, Allahabad, who upon scrutinizing the matter allowed refund for inasmuch as 45 (sic) claims (approx..), which had been made within the statutory time period of 6-months under Section 78B of the Act, 1890 – now Section 106 of the Railways Act, 1989 (for short, the "**Act, 1989**").

13. The Railway Claims Tribunal, Ghaziabad vide its common final judgement and order dated 26.12.2013, dismissed the remaining 77 claim applications of the respondent as being time-barred. The said decision of the RCT is in two parts: -

(i) *First,* the RCT observed that though the chargeable distance was only 334 km still the freight charges had been levied for a distance of 444 km. This according to the Tribunal was a case of excess payment of freight, and thus the refund that was sought was for an 'overcharge'. The relevant observations read as under: -

> *"18. [...] In this case, the goods were booked from 'A' to 'B', showing the chargeable distance as 444 Kms. and payment was given by the applicant company for the same distance, but later on, Railways reworked the chargeable distance as only 333.18 Kms. The consignment in question was carried through the same*

route. So, it is clear that the payment was to be made for 333.18 Kms., whereas it was made for 444 Kms. In this way, the applicant company had to pay for 444 Kms, instead of 333.18 Kms. Hence, the present case is for the refund of this excess payment of freight, which can only be termed as refund of overcharge and nothing else and so, the notice under Section 106(3) of the Railways Act, 1989 is necessary."

(Emphasis supplied)

(ii) *Secondly,* since the case at hand was one for refund of an overcharge and the notice of claim had not been sent within the prescribed time-period of 6-months as required under Section 106(3) of the Act, 1989, the claim application was time-barred. The relevant observations read as under: -

"24. [...] Furthermore, perusal of the record shows that the applicant company had served a notice on 07.11.2005 upon the Respondent Railway, but the date of booking of the consignment in question was 25.08.2002. Hence, it has been revealed that the said notice was time barred as per the provisions of the aforesaid Section 106(3) of the Railways Act, 1989, which had been well within the knowledge of the applicant company also as per the aforesaid letter dated 28.01.2009. In this context, Ld. Counsel for the Respondent has placed reliance on the case law, titled as Birla Cement Works v. G.M., Western Railways & Anr., 1995 SCC (2) 493. We have carefully perused the said case law and it supports the contention of the Respondent Railway.

xxx xxx xxx

26. In view of the above, it has been held the applicant company has not served a valid and legal notice on the Respondent Railway within the statutory period under the provisions of Section 106(3) of the Railways Act, 1989. As such, the applicant company is not entitled for any compensation. [...]"

(Emphasis supplied)

14. Thus, the RCT, whilst dismissing the respondent's claim applications held that, the respondent's claim was for a refund of an overcharge and since the notice of claim was not served in terms of Section 106(3) of the Act, 1989, the claim was time-barred.

C. IMPUGNED ORDER

15. Aggrieved with the aforesaid, the respondent went in appeal under Section 23 of the RCT Act before the High Court of judicature at Allahabad. In all 76 First Appeals from Order were filed, with the lead appeal being the FAO No. 843 of 2014 wherein the High Court vide its judgement & order dated 23.02.2018 allowed the aforesaid appeal, by placing reliance on the decision of this Court in ***Hindustan Petroleum Corp. Ltd. v. Union of India*** reported in ***(2018) 17 SCC 729.*** The High Court took the view that since in the case at hand the freight had been paid as per the notified chargeable distance which was later found to be incorrect, it was a case of "illegal charge" and not that of "overcharge". The relevant observations read as under: -

> *"[...] In this case, the freight was paid by the appellant as per the notified distance and freight charges were paid accordingly. However, later on it was revealed that the distance was less and that is how the appellants had claimed the amount. This was one of the facts on which the Apex Court held in favour of the appellant (Hindustan Petroleum) and this was a question of illegal realisation of freight and not of over charging as submitted by the counsel for the respondent. [...]*
>
> *The finding of fact by the Tribunal dismissing the claim of the claimant is bad in the eye of law as held by the Apex Court in* ***Hindustan***

***Petroleum (Supra)**, there was no need for issuance of notice. I am fortified in my view by both the decisions of the Apex Court in **Hindustan Petroleum (Supra)** and **West Coast Paper Mills (Supra)**. Hence, this is not a case of over charge at all as the freight was paid as per the rates notified for certain distance. No other view can be taken in this matter.*

*The judgment in **Hindustan Petroleum (Supra)** will enure for the benefit of the appellant in this case also.*

In view of the above, the appeal is allowed. The respondents to calculate the difference within 12 weeks from today and pay the appellant."

(Emphasis supplied)

16. Accordingly, the High Court vide the aforesaid judgement & order dated 23.02.2018 disposed of the lead appeal of FAO No. 843 of 2014, and thereafter by a batch of common orders disposed of the other 75 appeals in terms of its findings recorded in the final judgement and order passed in the lead appeal.

17. The aforesaid order dated 23.02.2018 as passed in FAO No. 843 of 2014 i.e., the lead appeal was challenged and carried upto this Court by way of the special leave petition being SLP (C) No. 3987 of 2021. This Court vide its order dated 04.03.2021 refused to interfere with the order dated 23.02.2018 passed in FAO No. 843 of 2014 as the claim amount was very low. Thus, the said Special Leave Petition came to be dismissed by this Court, however the question of law was kept open. The relevant portion reads as under: -

"O R D E R

We decline to interfere in this Special Leave Petition, as we find that the claimed amount is very low. The Special Leave Petition is dismissed accordingly, leaving the question of law open."

18. In view of the aforesaid, the appellant herein being aggrieved, has challenged the final orders passed by the High Court in the other 75 appeals involving a total sum of Rs. 1,55,03,652/- (approx.).

D. SUBMISSIONS ON BEHALF OF THE APPELLANT

19. Mrs. Rukhmini Bobde, the learned counsel appearing for the appellant in her written submissions has stated thus: -

> *"**WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT***
>
> *1. The present Appeal has been filed against the final judgement of the Hon'ble High Court of Allahabad a batch of First Appeals, whereby the Hon'ble High Court has allowed all the abovementioned appeals filed by the Respondent-IOCL while relying upon the judgment dated 23.02.2018 passed in First Appeal from Order No. 843 of 2014 (@pg. 79 of the present Appeal) which is illegal and perverse as the Hon'ble High Court has ignored to answer the questions of law. It is submitted that the order dated 23.02.2018 in First Appeal from Order No. 843 of 2014 was challenged by the Appellant-Union before this Hon'ble Court and the said petition bearing SLP(C) No. 3987 of 2021 was dismissed by this Hon'ble Court on 04.03.2021 on the ground that claim amount was very low. It is however submitted that the claim amount of all the batch matters herein comes to approximately Rs. 1,55,03,652/-.*
>
> *2. The facts of the lead case herein are that the Respondent-IOCL had sent a legal notice dated 07.11.2005 under Section 106 of the Railway Act, 1989 to the Appellant-Union for refund of excess freight charges with respect to a consignment dated 25.08.2022, due to change in methodology, having been applied prospectively from 01.01.2005 which resulted in variation in fares and freights when compared with the then existing fares and freight. It is submitted that the present Appeal is not a case of error in the existing notified freight change.*
>
> *3. The case of the Appellant-Union is that Section 106 of the Railway Act, 1989 does not apply to the present case at all since as per the circulars dated 07.04.2004 and 24.09.2004 (@page 141 and 144 of the Appeal respectively) issued by the Appellant-Union, the change in*

distance happened due to rationalization of the distances, aimed at ensuring uniformity in the method of deriving the distance of charging fates and freight for all customers across Indian Railways. The rationalization was also directed to be applied prospectively (from 01.01.2005 onwards) and the date of transport of consignment was on 25.08.2002 i.e. more than 2 years before application of the circular. It is further submitted that the Appellant-Union in its circular dated 07.04.2004 had specifically stated that the Appellant-Union would not be raising any issue of undercharges due to the variation nor was the Petitioner going to refund the charges collected in past cases, thus ensuring balance of convenience. Therefore, the question of overcharging does not arise at all as the Respondent-IOCL has been charged the freight charges as per the then prevailing existing fares and freights of the time and consequently, the Respondent-IOCL cannot raise any claim for compensation under Section 106 of the Railway Act, 1989.

4. Even assuming and without admitting to the case of the Respondent-IOCL, if the Respondent-IOCL is able to present a case for being overcharged and thus Section 106 of the Railways Act, 1989 to be applicable, the case of the Respondent-IOCL is barred from raising any claim as per the provisions of Section 106 of the Railways Act, 1989 on the ground of delay.

5. It is also pertinent to take a close look at the facts of the following case laws:

> ***a. In Birla Cement Works v. G.M., Western Railways and Another'**, the Petitioner earlier used to transport through metre-gauge from the railway siding at Chanderia. However, after conversion into broad-gauge the railway siding was at Difthkola Chittor Broad-Gauge Rail Link, which lead to an increase of 34 km, which was added to the freight charges. The Petitioner had belatedly raised its claim under Section 78-B of the Railway Act, 1890 (pari materia to Section 106 of the Railways Act, 1989) and were thus barred by limitation.*
>
> *The principal contention raised by the Petitioner was that it had discovered the mistake when the railway authorities confirmed by their letter that they had committed a mistake in charging excess freight on wrong calculation of distance. The limitation started running from the date of discovery and therefore stands excluded and that Section 78-B of the*

Railway Act, 1890 had no application to the facts. However, this Hon'ble Court held that since admittedly the claims of the Petitioner were made under Section 78-B of the Railway Act, 1890 beyond a period of six months, the claim had become barred by limitation.

It should be mentioned that the facts of ***Birla Cement*** *would have only been applicable in the present Petition if there was a case of overcharging. However, as the Respondent had booked according to the prevailing freight charges at that time, the facts of* ***Birla Cement*** *does not arise at all.*

b. *In* ***Union of India and Others v. West Coast Paper Mills Ltd and Another (III),*** *the Respondents were being charged a flat rate irrespective of the commodity carried and were not given the benefit of telescopic system of rates which was allowed by the Railways to others. This led to a scenario wherein the Respondents had to pay freight on certain goods at three times compared to what would have been payable in case the benefit of telescopic system of rates was allowed to them. This was construed to be an illegal and unreasonable charge. Reference is made to paragraph 20 of the Judgement:*

> *"20. In the case at hand, the freight rates notified by the Railway Administration in exercise of its statutory power to do so, so long as they were not declared illegal and unreasonable by the Tribunal under Section 41 of the Act, were legal and anyone carrying the goods by rail was liable to pay the freight in accordance with those rates. The freight paid by the respondents was as per the rates notified. Thus the present one is not a case of overcharge at all. It is a case of illegal recovery of freight on account of being unreasonable and in violation of Section 28 of the Act, consequent upon such determination by the Tribunal and the decision of the Tribunal having been upheld by this Court. A case of "illegal charge" is distinguishable from the case of "overcharge" and does not attract the applicability of Section 78-B of the Railways Act."*

The facts are different from the present case as the Respondent-IOCL in the present case was only being charged the notified rates as per the prevailing rules at the time of booking. The Respondent-IOCL was aware of the freight charges at the time of booking.

c. *In* ***Hindustan Petroleum Corporation Limited v. Union of India'****, the facts were different from the present case as the Railways had migrated to a computerized railway freight charges system from a manual system, which lead to decrease in the distance notified between Asaudah Railway Station, District Rohtak, Haryana and Partapur, District Meerut, Uttar Pradesh.*

It is submitted that this Hon'ble Court had correctly held that there was no overcharge and therefore Section 106 of the Railways Act, 1989 is not applicable. However, it is most humbly and respectfully submitted that as on merits there is no discussion in law as to whether any refund is payable dehors Section 106 of the Railways Act, 1989.

In the present case, the Appellant-Union had stated as per the circulars dated 07.04.2004 and 24.09.2004 that it would not be raising any issue of undercharging nor would be providing any refund and that the charges are prospective.

6. Therefore, it is requested to allow the present Appeal and reverse the judgement of the Hon'ble High Court."

E. SUBMISSIONS ON BEHALF OF THE RESPONDENT

20. Mr. Shashwat Goel, the learned counsel appearing for the respondent in his written submissions has stated thus: -

*"**WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT - M/S INDIAN OIL CORPORATION LTD***

A. RESPONDENT'S CASE/ ARGUMENTS IN BRIEF

1. It is respectfully submitted that the present matter pertains to 'illegal charge' / 'illegal realization' of the freight amount by the Petitioner (i.e.

the Railways) from the Respondent oil company. Admittedly, the Petitioner herein has charged the freight amount from the Respondent for a distance of 444 km, instead of 333.18 km between 'Baad' (BAD) station to 'Hissar' (HSR) station. This is nothing but 'illegal realization' of freight from the Respondent and it cannot be termed as 'overcharge'. It is submitted that there is a difference between 'illegal realization'/ 'illegal charge' and 'overcharge' of freight amount. An 'overcharge' is something which is in excess of that what is due according to law and is paid by a party on account of mistake of fact. Whereas, 'illegal realization' / 'illegal charge' is excess realization of charges due to change in 'notified' distance or rates.

2. It is submitted that the Petitioner has been calculating the freight amount for a distance of 444 km as it was 'notified' in the old distance table. Therefore, this cannot be termed as overcharge. Admittedly, upon realizing that the said distance was wrongly calculated, the appropriate authority of the Petitioner 'critically reviewed' the old distance tables and thereafter notified the corrected distance/ rate between BAD to HSR as 333.18 km on 05.07.2005 (i.e. Annexure P-3 @ Pg. 146 of SLP). This notification of corrected distance made the earlier realization of freight for 444 km under the erstwhile notified rates, illegal. Further, the cause of action for recovery of such illegal realization' of freight arose on 05.07.2005, when the corrected distance was notified by the Petitioner. Immediately, the Respondent filed its claim petitions on 07.11.2005 for recovery of excess amount for the extra distance which was illegally realized by the Petitioner.

3. The present case is squarely covered by a judgment of this Hon'ble Court passed in the matter of Hindustan Petroleum Corporation Limited v. Union of India, (2018) 17 SCC 729 (attached herewith). In the said case, the Petitioner therein (i.e. Hindustan Petroleum Corpn.) paid freight to the Railways (i.e. Petitioner herein) for the notified distance of 125 km, between the period 01.04.2008 to 30.09.2010. Subsequently, the said distance of 125 km was corrected by the Railway to 100 km on 27.02.2011. Immediately, HPCL filed its claim petitions on 30.03.2011, which were rejected as being time barred U/s 106(3) of the Railways Act, 1989 by the Railways; Railways Tribunal & the High Court. When the said matter reached this Hon'ble Court, the Railways (i.e. the Petitioner herein) placed reliance on the judgment of this Hon'ble Court in Birla Cement Works, (1995) 2 SCC 493 to buttress its argument that the claims filed by HPCL were barred U/s 106(3) of the Railways Act. It is submitted that the said judgment of Birla Cement Works was

distinguished by this Hon'ble Court and it was held that excess realization of freight by the Railways from HPCL was 'illegal' and therefore HPCL's claims were allowed. It was further held that there was no requirement of giving any notice under Section 106 of the Railways Act as there was no overcharge by the Railways. The findings of this Hon'ble Court in HPCL's case are as follows:

> *"8. Birla Cement Works [Birla Cement Works v. Western Railways, (1995) 2 SCC 493] was a case where the petitioner therein (i.e. Birla Cement Works) came to know of the alleged excess amount of freight on wrong calculation of distance through a letter dated 12-10-1990 issued by the Railway authorities. This primary fact is conspicuously absent in the present case. In the present case what was paid was as per the fixed rate on the basis of notified distance which subsequently was corrected by another Notification upon introduction of the Terminal Mechanism System (TMS) at Asaudah Railway Station, District Rohtak, Haryana.*

9. On the other hand, in West Coast Paper Mills Ltd. [Union of India v. West Coast Paper Mills Ltd., (2004) 3 SCC 458] this Court in para 20 of the said Report took the view that as the freight paid was as per the rates notified the case would not be one of overcharge at all. If that is the view taken by this Court on an interpretation of the pari materia provision in the erstwhile Act i.e. the Railway Act, 1890 (i.e. Section 78-B) we do not see why, in the facts of the present case which are largely identical, we should be taking any other view in the matter.

10. Consequently and in the light of the above, we allow the present appeals, set aside the order of the High Court as well as that of the Railway Claims Tribunal, Chandigarh and allow the claims of the appellant which will be paid forthwith on due and proper calculation."

B. <u>SUBMISSIONS ON THE ISSUES FRAMED BY THIS HON'BLE COURT</u>

<u>Issue No.1 - What is the scope of Section 106 of the Railway Act, 1989, and if the said provision is applicable to the present case at hand?</u>

(i) It is submitted that Section 106 of the Railways Act, 1989 stipulates that a 'Notice has to be sent to the Railways within six months for : (a) 'claim for compensation' (under sub-section (1) & (2)); & (b) for 'refund

of overcharge' (under sub-section (3)). It is clear from a bare reading of this section that a notice cannot be sent to the Railways for any other purpose/ for raising a claim under any other head which is not mentioned in the said section. The term(s) 'illegal charge' / 'illegal realization of freight' is not mentioned in S.106. Therefore, there is no legal requirement of sending a notice under S.106 for raising a claim on account of 'illegal charge' / 'illegal realization' of freight. It is pertinent to mention here that a claim of illegal charge' will not fall under the category of overcharge as undisputedly, there is a difference between the terms - 'overcharge' and 'illegal charge'.

(ii) In this regard, reliance is placed upon a judgment of this Hon'ble Court passed in the matter of Union of India & Ors. v. West Coast Paper Mills Ltd. & Anr. (IlI), (2004) 3 SCC 458 (attached herewith). In the said case, an interpretation of the pari materia provision (like S.106) in the erstwhile Act i.e. the Railway Act, 1890 (i.e. Section 78-B) was done by this Hon'ble Court. While considering the distinction between an 'overcharge' and 'illegal charge' for the purposes of Section 78-B of the Railways Act, 1890 (i.e. same as Section 106 of the Railways Act, 1989), it was held by this Hon'ble Court that :

"20. ..... A case of "illegal charge" is distinguishable from the case of "overcharge" and does not attract the applicability of Section 78-B of the Railways Act."

It is pertinent to mention here that this Hon'ble Court has also analysed in detail the meaning of the term 'overcharge' in Para 19 of the above-mentioned judgment.

(iii) It is reiterated that the present matter pertains to 'illegal charge' / 'illegal realization' and not of overcharge' of the freight amount. Therefore, in view of the aforesaid submissions, it is submitted that the provision of Section 106 of the Railways Act, 1989 is not applicable upon the present case. In this regard, reliance is also placed upon paras 8-10 of the judgment of this Hon'ble Court passed in Hindustan Petroleum Corporation Limited's case (supra).

<u>Issue No.2 - Whether the decision of this Court in Birla Cement Works vs. G.M. Western Railways (1995) is applicable to the case at hand?</u>

(i) It is respectfully submitted that the decision of this Hon'ble Court in Birla Cement Works is not applicable upon the present case. Pertinently, the said decision has already been distinguished by this Hon'ble Court

in the subsequent case of Hindustan Petroleum Corporation Limited (supra), which is identical to the present case.

(ii) The case of Birla Cement Works pertains to refund of 'overcharge' which was made by the Railways. Whereas, the present case is that of recovery of 'illegally realized' freight from the Railways.

(iii) In the case of Birla Cement Works, the Railways had charged excess freight from the Petitioner therein (i.e. Birla Cement), than what was stipulated in distance table (i.e. overcharge). Whereas, in the present case, the Railways (i.e. the Petitioner) had realized the freight amount from the Respondent on the basis of the distance, i.e. 444 km, that was notified in the erstwhile distance table which subsequently got corrected & was notified by the Railways as 333.18 km (i.e. illegal realization of freight).

(iv) In the case of Birla Cement Works, the Petitioner therein (i.e. Birla Cement) came to know of the alleged excess amount of freight on account of wrong calculation of distance through the letter issued by the Railways. It was not the case where the distance was corrected and re-notified by the Railway authorities. In Birla Cement Works, there was a mistake by the Railways in calculating the freight amount by wrongly taking into account the distance that was stipulated in the distance table in that case. It is submitted that the said mistake/ error was of such a nature that even the Petitioner therein (i.e. Birla Cement) could have also found, had it been diligent. Instead, it kept paying the freight charges to the Railways and filed its claim only when the Railways informed it that the same was wrongly calculated. Whereas, in the present case, the Respondent has paid the freight charges as per the distance of 444km notified in the erstwhile distance table, which later on stood corrected; notifying the distance as 333.18 km. In the present case, Respondent was not sleeping over its rights. The Respondent filed its claims soon after the corrected distance was notified by the Petitioner herein and the Respondent came to know about the illegal charge. There is no sort of lack of vigilance or bona fides of the Respondent in the present case.

Issue No.3 - What was the reason for revising the freight charges? In other words, whether the revision of freight charges was done pursuant to a new methodology being adopted or due to an error in the existing notified freight charges?

(i) It is submitted that the freight charges/ the distance between BAD station to HSR station was revised / corrected by the Petitioner vide its notification dt.05.07.2005 (Annexure P-3 @Pg.146 of the SLP). The said revision/ correction was carried out after 'critically reviewing' the old distance tables with the revised distance tables of the North Central Railways (NCR). It is clearly stated in the said notification that the earlier notified distance of 444 km was used for calculating the freight as the revised distance table of NCR, despite being available, was not received earlier. This clearly shows lapses on part of the Petitioner. Despite being aware that the revised distance tables had come for the NCR, the same were not considered and the Petitioner continued calculating the freight as per the old distance, which is illegal.

(ii) It is further submitted that there is no change in the tracks or route from BAD to HSR. It appears that the wrong distance was notified in the old table, that is why there was a need to critically review the same before notifying the corrected distance.

4. It is pertinent to mention here that the Petitioner has made a subtle attempt to mislead this Hon'ble Court by introducing circulars dt.07.04.2004 & 24.09.2004 in its SLP. The Petitioner has used the said circulars to erroneously allege that the change of distance was to be applied prospectively from date mentioned in the said circulars. In this regard it is submitted that the said circulars do not pertain to change of distance. The said circulars stipulate the guidelines for rounding off the chargeable distance upto two decimal places. Even the file no. of the said circulars is completely different from the notification issued on 05.07.2005, whereby the corrected rates were notified between BAD & HSR. The file no. of the circulars dt. 07.04.2004 & 24.09.2004 is TCR/2043/2000/2, whereas, for the notification dt.05.07.2005, it is DRM/CLAOG RAD/ Distance Table/2004/20. It is submitted that this fact in itself makes it clear that the subject matter of the circulars dt. 07.04.2004 & 24.09.2004 and notification dt.05.07.2005 are totally distinct and separate and the said circulars have no bearing upon the present case.

5. It is also pertinent to mention here that there is an unexplained delay of 661 days in filing the SLP by the Petitioner.

In the light of the aforementioned submissions, it is humbly prayed that the present SLP filed by the Petitioner be dismissed."

F. ANALYSIS

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following pivotal questions fall for our consideration: -

I. What is the scope of Section 106 sub-section (3) of the Railways Act, 1989? In other words, what constitutes an "overcharge" within the meaning of Section 106 sub-section (3) of the Railways Act, 1989? What is the difference between an "Overcharge" and an "Illegal Charge"?

II. Whether, the claim towards the refund of difference of 110 km in freight charges is covered by Section 106 sub-section (3) of the Railways Act, 1989? In other words, Whether the claim is for a refund of an 'overcharge'?

III. Whether, the difference of 110 km in freight is liable to be refunded? In other words, whether the notified chargeable distance of '444 km' was an Illegal Charge or not?

i. Relevant Statutory Scheme and Provisions

22. Earlier, in India the law pertaining to the railways was scattered into several enactments and executive orders, each regulating different aspects of the railways throughout the country. The reason behind the multiple different legislations on

the railways was the number of changes that were rapidly taking place due to the expansion and establishment of various railway corridors across the country.

23. The Indian Railways Act, 1890 was the first prominent legislation to be passed to consolidate the law and embody all important provisions relating to the railways. The Act, 1890 since its enactment remained the sole substantive legislation for regulating railways in India for nearly half a century.

24. Despite being amended several times, the Act, 1890 was not able to keep pace with the changes that were rapidly taking place in the Indian railway infrastructure and network. Over the course of time, several committees were constituted with a view to streamline the functioning of Indian Railways and meet the challenges of changing times. Various recommendations were made to the Government by these committees, with the most significant one being the complete reorganization of the railway into several operational zones.

25. Due to large and sweeping nature of the changes recommended, the Act, 1890 required an extensive revision, something which could not be done by amendment, and thus, a new exhaustive Act was required for the consolidation and nationalization of the Indian Railways.

26. Accordingly, the Railways Act 1989 came to be enacted with a view to amend and consolidate the legislation relating to the Railways and to replace the

erstwhile Indian Railways Act, 1890. The statement of objects and reasons of the Act, 1989 reads as under: -

"STATEMENT OF OBJECTS AND REASONS

The Indian Railways, Act, 1890 was enacted at a time when the railways in India were mostly managed by private companies. The Government of India primarily played the role of a coordinating and regulating authority in various matters, such as inter-railway movement of traffic, fixation of rates, sharing of revenue, earnings of through traffic, apportionment of claims liability amongst the railways, providing reasonable facilities to passenger and goods traffic, etc. This role was accordingly reflected in the Act. But now, except for a very small portion of the railways, the entire railway system has become part of the Government of India. To give effect to the changes in the railway system from time to time, the Act had also undergone changes number of times since its enactment in 1890. In addition, as some of the original provisions enacted in 1890 had continued without any change, a need for their replacement by new provisions more responsive to the needs of the present day was felt and some other provisions have become redundant. There has also been a demand, both within and outside Parliament, for the re-enactment of the Act so as to reflect the large number of changes that have occurred in the railways. It has, therefore, become necessary to consolidate and amend the law relating to railways by a new act.

2. The Bill, while giving effect to the changes that are necessary due to the change of circumstances, provides, among other things, for the following matters, namely: -

(i) The railways are being administered by zonal railways. This position had not been given effect to in the Act. The Bill provides for the constitution of railway zones, abolition of existing zones and appointment of General Managers as heads of these railways administrations.

(ii) Power has been given to the Central Government to fix the rates for the carriage of passengers and goods over the railways instead of the existing provisions to fix only the maximum and minimum rates for such carriage and leaving the fixation of specific rates to the railway administrations. In addition, the railway administrations are also being authorised to specify lump sum rates for the carriage of goods.

(iii) In accordance with certain judicial pronouncements, the Bill provides for statutory recognition of the railway receipt as a negotiable instrument.

(iv) The Bill specifically provides for limiting the monetary liability of railway administrations in respect of payment of compensation of loss, damage, etc. of goods. Provision has, however been made for full liability subject to the condition that the consignor while entrusting the goods to a railway administration for carriage, should declare the value of the goods and pay a percentage charge on such value.

(v) The offences included in the Act have been rationalised and a few new offences have also been included in the Bill. Punishment for some of the offences had not been changed since the enactment of the Act. Penalties provided for the offences under the Act have been made more stringent which would include, among other things, a minimum punishment for many of the offences.

3. The Bill seeks to achieve the aforesaid objects."

(Emphasis supplied)

27. The Act, 1989 is a consolidating and amending legislation relating to the Railways which received assent and came into force on 03.06.1989 replacing the erstwhile Act, 1890 by virtue of the repealing provision contained in Section 200 of the Act, 1989. The Act, 1989 is divided into 16 Chapters and 200 Sections. Chapter XI of the Act, 1989 sets out the provisions (Section(s) 93 to 112) relating to the Responsibilities of Railway Administration as Carriers, and it deals with claims for refund and compensation in respect of the goods carried by railway.

28. In addition to the aforesaid statute, the Railway Claims Tribunal Act, 1987 was also enacted for the establishment of the Railway Claims Tribunal with a view to provide the procedural framework and forum for inquiry, determination

and adjudication of claims against the railway administration. The statement of objects and reasons of the RCT Act reads as under: -

"STATEMENT OF OBJECTS AND REASONS

An Act to provide for the establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents] and for matters connected therewith or incidental thereto."

29. Section 13 of the RCT Act provides that the Railway Claims Tribunal shall *inter-alia* exercise powers and jurisdiction under Chapter VII of the erstwhile Act, 1890 (now Chapter XI of the Act, 1989) pertaining to inquiry and determination of claims for compensation for loss, destruction, damage etc. and claims for refund of freight etc. in respect of goods carried by railway. The said provision reads as under: -

*"**13. Jurisdiction, powers and authority of Claims Tribunal. –***
(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act, —

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for —

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under section 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

(1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder.

(1B) The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act,1989 (24 of 1989).

(2) The provisions of the Railways Act, 1989 (24 of 1989) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."

(Emphasis supplied)

30. Section 15 of the RCT Act bars the jurisdiction of courts and other authorities from entertaining or exercising any power in respect of matters referred to in Section 13 of the RCT Act. The said provision reads as under: -

*"**15. Bar of jurisdiction. —***
On and from the appointed day, no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-sections (1), (1A) and (1B) of section 13."

31. Section 16 of the RCT Act provides that an application may be made to the Railway Claims Tribunal for any claim of compensation or refund from the railway administration as provided under Section 13 of the said Act. The said provision reads as under: -

*"**16. Application to Claims Tribunal. —***
(1) A person seeking any relief in respect of the matters referred to in sub-section (1) or sub-section (1A) of section 13 may make an application to the Claims Tribunal.

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee in respect of the filing of such application and by such other fees for the service or execution of processes as may be prescribed:

Provided that no such fee shall be payable in respect of an application under sub-clause (ii) of clause (a) of sub-section (1) or, as the case may be, sub-section (1A)] of section 13."

32. Section 23 of the RCT provides for a statutory appeal on both a question of fact and law, to the High Court against any order passed by the Railway Claims Tribunal. The said provision reads as under: -

*"**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."

33. Section 17 sub-section (2) of the RCT Act *inter-alia* provides that no application for claim of compensation or refund from the railway administration shall be entertained by the tribunal, until the expiry of three-months from the date on which the notice of claim was made in accordance with Section 78B of the

erstwhile Act, 1890 (now Section 106 of the Act, 1989). The said provision reads as under: -

> *"**17. Limitation. —***
> *(1) The Claims Tribunal shall not admit an application for any claim—*
>
> *(a) under sub-clause (i) of clause (a) of sub-section (1) of section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway;*
>
> *(b) under sub-clause (ii) of clause (a) of sub-section (1) 3[or, as the case may be, sub-section (1A)] of section 13 unless the application is made within one year of occurrence of the accident;*
>
> *(c) under clause (b) of sub-section (1) of section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:*
>
> *Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under section 78B of the Railways Act.*
>
> *(2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period."*

ii. <u>Scope of Section 106 of the Railways Act, 1989</u>

34. In the present *lis,* we are concerned with Section 106 of the Act, 1989, which is *pari-materia* to Section 78B of the erstwhile Act, 1890. Section 106 deals with notice for claim of compensation and refund of overcharge. The said provision reads as under: -

*"**106. Notice of claim for compensation and refund of overcharge. –***
(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf,—

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs.

within a period of six-months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor 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."

35. A close reading of the aforesaid provision would indicate that Section 106 of the Act, 1989 is in two-parts and deals with and encompasses two distinct types of claims that may be made or sought against the railway administration by way of a notice: -

(i) *First*¸ the claims towards the 'compensation' from the railway administration which has been provided under Section 106 sub-section (1).

The compensation may be sought in respect of any loss or damage or destruction caused to the goods which were being carried by the railway.

(ii) *Secondly,* the claims towards the refund of any 'overcharge' that has been levied in respect of any goods which were being carried by the railways, and this has been provided under Section 106 sub-section (3).

36. Thus, Section 106 of Act, 1989 contains the statutory provisions that enables any person to make a claim from the railway administration, either for **(i)** compensation **OR** for **(ii)** refund of overcharge, in respect of any goods which were being carried by the railway by sending a notice of claim.

37. Apart from containing the enabling provision for making a claim, Section 106 further provides when such a claim may be made. Section 106 sub-section (1) provides that a claim for compensation may be made where there has been a loss or damage or destruction or deterioration or non-delivery of the goods that were being carried by the railway. Whereas, Section 106 sub-section (2) provides that a claim for refund may be made where there has been an overcharge in respect of the goods carried and the said overcharge was paid to the railway administration.

38. Lastly, Section 106 also provides how a claim may be made and the mode & manner in which the notice must be made by stipulating a pre-condition in the form of a prescribed time-limit for making any claim thereunder: -

(i) Section 106 sub-section (1) prescribes twin-conditions for a Notice of Claim for Compensation and provides that such notice must be made within a period of 6-months from the date of entrustment of goods **AND** the notice must be served to the Railway Administration to whom the goods were entrusted.

(ii) Similarly, Section 106 sub-section (3) also stipulates twin-conditions for making a Notice of Claim for Refund of Overcharge and provides that such notice must be made within a period of 6-months from either the date of payment of such overcharge or the date of delivery of the goods in respect of which the overcharge was paid **AND** that the notice must be served to the railway administration to whom the overcharge was paid.

39. Thus, a statutory time-period of 6-months has been provided for making a notice of claim under Section 106 of the Act, 1989, and if the notice of claim is not made within the stipulated period, then the claim becomes time-barred.

40. The High Court of Gujarat in its decision in ***Shah Raichand Amulakh v. Union of India & Ors.*** reported in (1971) 12 GLR 93 had observed that the object behind the time-limit prescribed under Section 78B of the 1890 Act (now Section 106 of the Act, 1989) is to prevent stale or dishonest claims from being made, which if otherwise allowed would make it difficult to enquire into their merits due to lapse of time. The relevant observations read as under: -

"3. [...] the object of service of notice under this provision clearly is to enable the railway administration to make an inquiry and investigation as to whether the loss, destruction or deterioration was due to the consignor's laches or to the wilful neglect of the railway administration and its servants and further to prevent stale and possibly dishonest claims being made when, owing to delay, it may be practically impossible to trace the transaction or check the allegations made by the consignor or the consignee. It is, therefore, apparent that the provision requiring that notice of claim must be given within six months even where the claim is for refund of an overcharge in respect of animals or goods carried by railway is intended to prevent stale and perhaps dishonest claims being made when, by reason of lapse of time, it may not be possible to inquire and find out whether the claim made is well-founded or not. [...]"

(Emphasis supplied)

41. ***Shah Raichand Amulakh*** (supra), further held that the term "*overcharge in respect of carriage of goods*" used in Section 78B of the 1890 Act (now Section 106 of the Act, 1989) means and includes all such charges that are related to the railway's carrier business and those which are incidental to the carriage of the goods by railway irrespective of whether they are incurred prior to or subsequent to the railway transit, and thus would include loading and unloading of goods. The relevant observations read as under: -

"3. [...] To bring the claim for refund within the mischief of the section, the overcharge must be in respect of goods carried by railway. The words "carried by railway" qualify goods and if any overcharge is recovered in respect of goods which satisfy this description, it would be "overcharge" by the railway administration in respect of demurrage and wharfage charges, it is according to the plain and natural meaning of the words, an overcharge in respect of goods which are carried by railway. 1 do not think it is possible to limit the ambit and coverage of the section by reading the words "overcharge in respect of goods carried by railway" as indicating that the overcharge must be in respect of carriage of the goods. To read these words in such a manner would be

to refuse to give effect to their plain natural meaning and to rewrite the section by substituting some such words as "overcharge in respect of carriage of goods." That would be clearly impermissible under any cannon of construction.

4. [...] Demurrage and wharfage charges are thus clearly terminal charges and though it is true that they are charges in respect of the period subsequent to the completion of the transit, all the same, they are incidental to the business of the railway administration as a carrier. These charges are, therefore, not unrelated to the business of a carrier carried on by the railway administration. The railway administration makes these charges because there is delay in unloading the wagon or removing the goods from the platform. These are clearly charges in respect of the goods carried by railway as much as freight and other charges. If, therefore, there is any overcharge made by the railway administration in respect of demurrage and wharfage charges, a claim for its refund would clearly come within the scope and ambit of Section 77. It would be a claim for refund of an overcharge in respect of goods carried by railway within the meaning of that section."

(Emphasis supplied)

42. The Orissa High Court in ***Union of India & Ors. v. Steel Authority of India Ltd.*** reported in (1996) SCC OnLine Ori 60, while examining Section 78B of the Act, 1890, made the following pertinent observations which are reproduced as under: -

"12. [...] What this section provides for is, apart from claim for compensation for the loss, a claim for refund of overcharge to a person in respect of animals or goods carried by the Railways. The condition precedent for making such a refund is that the person should have preferred a claim in writing for such overcharge or compensation within six months of the date of delivery of the animals or goods for being carried by the Railway."

(Emphasis supplied)

43. Thus, it can be seen from above that when it comes to a Notice for Claim for Refund of Overcharge under Section 106(3) of the Act, 1989 the following conditions must be fulfilled: -

a. Claim must be for refund of an 'Overcharge',
b. Overcharge must have been paid to the Railway Administration in respect of the goods carried by the railway
c. Notice must be issued within 6-months from the date of payment or delivery of goods for which overcharge was paid, and
d. Notice must be served to the concerned railway administration to whom the overcharge was paid.

44. Thus, the rigours of Section 106 sub-section (3) i.e., the 6-month time-period for making a notice of claim, is only attracted, when the refund is for an overcharge. Whenever, an application is made under Section 16 of the RCT Act for refund, what needs to be seen is whether the same is for a refund of an overcharge or not? If the claim is for an overcharge, Section 106 sub-section (3) would be applicable.

a. What is meant by an "Overcharge"?

45. At this stage, it would be apposite to understand what is meant by the term "overcharge" used in Section 106 of the Act, 1989. The term "overcharge" has neither been defined in the Act, 1989 nor the erstwhile Act, 1890. The term

"overcharge" is derived from the word 'charge' prefixed by the word 'over' and means "something more than the correct amount or more than a certain limit". The Black's Law Dictionary has defined "overcharge" as follows [See: Henry Campbell Black on '*Black's Law Dictionary*', 4th Edn., 1968 at Pg. 1610]: -

> "*an exaction, impost, or incumbrance beyond what is just and right or beyond one's authority or power.*"

46. The Law Lexicon has defined the term "overcharge" as "*a charge of a sum, more than is permitted by law*". [See, P. Ramanatha Aiyar on '*The Law Lexicon'*, 2nd Edn., 1997 at Pg. 1389].

47. The term "overcharge" as used in Section 78B of the Act, 1890 (now Section 106 of the Act, 1989) was first interpreted by the Gujarat High Court in ***Shah Raichand Amulakh*** (supra) to mean any charge in excess of what is prescribed or permitted or due by law. It was further held, that for a sum to be an overcharge, it must be of the same character as the charge itself or of the same genus of charge. Accordingly, the High Court held that the demurrage and wharfage charges that had been levied on a consignment in excess of what was permissible under the law was an overcharge under Section 78B. The relevant observations read as under: -

> *"2. [...] "Overcharge" is not a term of Article It is an ordinary word of the English language which according to its plain natural sense means <u>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 of or class as a charge; it</u>*

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."

(Emphasis supplied)

48. In yet another decision of the Gujarat High Court in ***Union of India v. Mansukhlal Jethalal*** reported in (1974) SCC OnLine Guj 12 the scope of Section 78B of the Act, 1890 (now Section 106 of the Act, 1989) came to be examined. In the said case, the Railway besides the freight was levying new charge in the form of shunting charges etc. It was contended that since, the freight encompassed the terminal charges for shunting, the additional charges being levied was arbitrary and illegal. The High Court held that since the additional charges were not being levied in excess of the prescribed charges, but were an altogether a different charge, the same could not be termed as an overcharge and thus, Section 78B of the Act, 1890 was not attracted and no notice of claim was required. The relevant observations read as under: -

"2. The trial Court has held that it has got jurisdiction to entertain this suit. It is also held that no claim notice as contemplated under Section 78-B of the Indian Railways Act, 1890 (which will be hereinafter referred to as "the Act"), was necessary as it was not a case of recovery of over charges. Non-giving of such a notice, therefore, was not fatal to the suit. The material averments made in the plaint are, that the plaintiff booked salt from Kuda Salt Siding Station, on the line of Western Railway Administration, owned and represented by the Union of India (original defendant), to salt merchants at Dhrangadhra and at various other stations. That the said salt consignments are booked in wagon loads from Kuda Salt Siding Station. In para 12 it is averred that since 1-6-1961 the Western Railway Administration, in addition to charging usual freight on goods, traffic from and to Kuda Salt Siding Station, wrongly, illegally, arbitrarily and unreasonably levied an additional new charge by- way of siding charges or shunting charges or placement of wagon charges or

removal of wagon charges. In paras 13 to 18, reference is made regarding the increases made, in those charges from time to time and such collections made. In para 26, it is averred that the, defendant Western Railway Administration charged freight on the wagon load salt consignment of the plaintiff from Kuda Salt Siding Station to destination and the said freight includes terminal charges for shunting, placement and removal of wagons at the place where, the salt, to be loaded, is stacked and hence the defendant-Western Railway Administration, in addition to freight, is not entitled to levy new charge with effect from 1-6-61 either as siding charges or as shunting charges or as placement charges or as removal charges or under the pretext of any other charge and the levy of the said new charge from the plaintiff with effect from 1-6-61 is wrong all the arbitrary, unauthorised and unreasonable and excessive and the plaintiff is entitled to the refund of this new charge paid by him to the defendant-Western Railway Administration. This also amounts to double taxation. In para 28 of the plaint, plaintiff actually refers to the total amount recovered in that manner. In the relief clause 33 prayer made is to recover the suit amount which includes the amount it paid by way of new charges as said earlier, and the notice charges, and it is in terms stated that it is a claim for refund of new charger by way of siding charges, shunting charges, placement charges received by the defendant Western Railway Administration from the plaintiff.

xxx xxx xxx

27. In the instant case, it is not the opponent's case that charges in excess of the prescribed charges were recovered from him and he wants refund of such charges. What he claims is that the railway administration had collected such charges illegally, arbitrarily and unreasonably. These charges referred to as 'new charges' were levied by the railway administration from time to time and such collections made in the past are challenged on the aforesaid grounds. In my opinion, they cannot be termed 'overcharges', so as to attract the provisions of Section 78-B [...]"

(Emphasis supplied)

49. In ***Birla Cement Works v. G.M. Westerm Railways & Anr.*** reported in (1995) 2 SCC 493, this Court held that the excess freight charged by mistake due to a wrong calculation of distance was an overcharge and thus, was covered by

Section 78B of the 1890 Act (now Section 106 of the Act, 1989). The relevant observations read as under: -

> *"2. The principal contention raised by the petitioner is that it had discovered the mistake when the railway authorities confirmed by their letter dated 12-10-1990 that they had committed a mistake in charging excess freight on wrong calculation of distance. The limitation starts running from the date of discovery of mistake and, therefore, stands excluded, by operation of Section 17(1)(c) of the Limitation Act, 1963 (Act 21 of 1963) and that Section 78-B has no application to the facts in this case. In consequence, the High Court and the Tribunal have committed error of law in rejecting the claim for refund. We find no force in the contention.*
>
> *xxx xxx xxx*
>
> *4. [...] Section 78-B of the Act provides that a person shall not be entitled to refund of overcharge or excess payment in respect of animals or goods carried by Railway unless his claim to the refund has been preferred in writing by him or on his behalf to the Railway Administration to which the animals or goods were delivered to be carried by Railway etc. within six months from the date of the delivery of the animals or goods for carriage by Railway. The proviso has no application to the facts of this case. An overcharge is also a charge which would fall within the meaning of Section 78-B of the Act. Since the claims were admittedly made under Section 78-B itself but beyond six months, by operation of that provision in the section itself, the claim becomes barred by limitation. Therefore, the Tribunal and the High Court have rightly concluded that the petitioner is not entitled to the refund of the amount claimed."*
>
> (Emphasis supplied)

50. In ***Steel Authority of India Ltd.*** (supra), the goods were booked to be carried through a longer-route and the freight was accordingly charged for the long route. However, the goods instead were dispatched through the shorter route. The Orissa High Court held that overcharge is anything charged in excess of what is actually to be charged for a particular thing. The High Court observed

that as the goods had been booked for the longer route, the freight was also payable for the longer route. Since, no freight in excess of what was payable was realized, the High Court held that the claim for refund of the difference in freight charges was not one of overcharge. The relevant observations read as under: -

> *"4. [...] the coal imported at Visakhapatnam Port for carriage to Rourkela Steel Plant was required to be booked and carried by the longer route covering 1082 kilometres instead of by the shorter route of 667 kilometres. According to the plaintiff, in view of the rationalisation scheme and the general order, it had no choice but to pay freight for the longer route, as booking could not be for carriage over the shorter route.*
>
> *5. It is the further case of the plaintiff that in or about April, 1987, an officer came to know that some of the rakes booked were despatched to Rourkela by the shorter route (covering a distance of 667 kilometres) though weight charges were recovered for carriage by the longer rationalised route (covering a distance of 1082 kilometres). On further enquiry made at different junctions, it was gathered that during the period 15-4-1986 to 28-11-1986 and 5-1-1987 to 28-2-1987, a large quantity of imported coal booked from Visakhapatnam to Bondamunda had in fact been carried, not by the rationalised route but by the shorter route. On coming to know about the aforesaid fact, alleges the plaintiff, it lodged a demand for refund of the differential amount of Rs. 1,32,87,749/-, but the same was turned down. [...]*
>
> *xxx xxx xxx*
>
> *13-A. The word "overcharge" has not been defined in the Act. Therefore, the common parlance meaning has to be taken to explain its meaning. In common parlance, the simple meaning of "overcharge" is anything charged in excess of what is actually to be charged for a particular thing. Taking this to be the meaning of "overcharge", it has to be seen as to whether the claim of the respondent is or is not for refund of overcharge. Admittedly, the goods were booked for being carried over the rationalised route which covers a distance of 1082 kilometres. It is neither the respondent's case nor the appellants' case that what was charged towards freight was in excess of what was payable for the distance of 1082 kilometres. In other words, the respondent was not "overcharged" because no freight in excess of what was payable for 1082 kilometres was realised.*

14. To appreciate the meaning of "overcharge", as illustration from the facts of the present case would, I feel, be appropriate. Say for example, 'A' had booked the coal for being carried by the shorter route covering a distance of 667 kilometres but freight was charged from him for the longer route covering a distance of 1082 kilometres. Here, since the coal was booked to be carried by the shorter route, freight ought to have been determined accordingly. So, any amount recovered from 'A' towards freight in excess of what was legally payable for the distance of 667 kilometres would be an 'overcharge' because what was recovered from him was over and above what was actually payable for the distance of 667 kilometres over which goods were booked. Alternatively, if 'A' had booked the goods over the longer route covering a distance of 1082 kilometres and freight was charged for such distance but carriage was over the shorter route covering distance of 667 kilometres, in such a situation, if 'A', on coming to know that though he had booked the goods to be carried over the longer route and had paid the freight accordingly yet as the goods were carried over the shorter route, claims for a refund, this claim would not be one for "overcharge" for the simple reason that he had booked the goods by a particular route and paid the freight that was payable for that distance. The claim of the respondent in the present case is of a like nature. Thus, under no stretch of imagination can it be said that its claim is for refund of over-charge. The contention of the learned counsel for the appellants that the claim made by the respondent for refund of overcharge, therefore, must fail."

(Emphasis supplied)

51. In ***Rajasthan State Electricity Board v. Union of India*** reported in AIR 2001 Bom 310, the freight was initially being charged on an inflated distance rate as fixed by the Central Government. Later the freight was fixed to be charged on the actual distance, however, the railway continued charging freight as per the old inflated distance under a mistaken belief that the same was still applicable. The High Court *prima-facie* was of the view that the refund of the difference in freight was an overcharge and thus barred by Section 106(3) of the Act, 1989.

However, the High Court relegated the petitioners therein to avail the statutory remedy and dismissed the writ petition leaving all issues open for determination by the Railway Claims Tribunal. The relevant observations read as under: -

> *"2. The facts of the case, which are not in dispute, are:— Petitioners, Rajasthan State Electricity Board, are an autonomous public body, wholly owned and controlled by the State Government of Rajasthan. For the generation of electricity at their Thermal Power Station at Kota (Rajasthan), coal is transported from collieries situate in areas covered by the Eastern and South Eastern Railways to a station called Gurla, situate in Kota Division of the Western Railway. Between the 4th March, 1992 and 31st December, 1992, the Petitioners booked 248 rakes for carrying coal to Gurla. The routes on which these wagons were transported include a section of Central Railway, viz., Katni-Singrauli. In exercise of powers under section 71 of the Railways Act, 1989, the Central Government had imposed, for movement of coal wagons over this section "inflated distance rate" of freight. Consequently, for the coal wagons moved by the petitioners, the freight included the inflated distance rate for this particular section of Katni-Singrauli. For the wagons booked by the petitioners, freight was paid at Gurla Station of Kota Division of the Western Railway. The Railway Authorities charged the petitioners freight on the basis of inflated distance rate over Katni-Singrauli section upto 31st December, 1992, but from the 1st January, 1993, the Railways started charging freight on the basis of actual distance for Katni-Singrauli section, instead of inflated distance rate, and the petitioners paid the charges on that basis.*
>
> *xxx xxx xxx*
>
> *9. It was submitted on behalf of the Petitioners that sub-section (3) of section 106 of the Railways Act, 1989 is not attracted in the facts of this case-inasmuch as there was no dispute regarding the over-charge. The instant case was a case of collection of inflated distance charge without authority of law. It was submitted that there is a distinction between over-charge and a wrong charge. It was, therefore, submitted that the Petitioners were not required to give notice as contemplated by sub-section (3) of section 106 of the Railways Act, 1989, since the claim was not a claim for refund of an overcharge in respect of goods carried by railway. On the other hand, the respondents contend that this clearly a case where the Petitioners claim refund of an over-charge in respect of goods carried by railway, and, therefore, admittedly, the Petitioners*

claim that they have been charged more than what they should have been charged because the circular under which inflated distance charge was levied had been withdrawn, and was not operative during the period in question. Despite this, the Petitioners were compelled to pay the inflated distance charge.

10. In our view, the submission urged on behalf of the respondents must prevail, and the same is clearly supported by the principles laid down by the Apex Court in Birla Cement Works v. G.M., Western Railways, (1995) 2 SCC 493 : AIR 1995 SC 1111. The petitioner therein manufacturer of Cement at Chittorgarh in Rajasthan, had transported cement to various destinations through railway carriages. Prior to 3rd May, 1989, the Petitioner got the cement transported through meter gauge from the railway siding at Chanderia. After conversion into broad gauge the railway siding was at Difthkola Chittor Broad Gauge Rail Link. Consequently, 34 kilometres' distance was added to levy freight charges. Thereafter, between May-June, 1989 and March, 1990 the Petitioner had booked various consignments of cement and transported them to diverse destinations and paid the freight charges. Later, on January 21, 1991, the Petitioner had sent a notice to the Western Railway under section 78-B of the Indian Railway Act, 1890, claiming refund of different amounts. Since it was rejected, the Petitioner laid a claim under section 16 of the Act before the Railway Claims Tribunal, which dismissed the petition holding the same to be barred under section 78-B of the Indian Railway Act, 1890.

xxx xxx xxx

16. [...] Having regard to the scheme of the Act, we are satisfied that it provides a complete mechanism for correcting any error, whether of fact or law, and that not only a remedy is provided by way of claim before a Tribunal, but also a further appeal to this Court, which is a Civil Court. It would, therefore, not be appropriate for this Court, in exercise of its writ jurisdiction, to give relief, which authority, in law, has been vested in the Claims Tribunal under section 13 of the Railway Claims Tribunal Act, 1987.

xxx xxx xxx

18. We, therefore, find no merit in this Writ Petition, and the same is accordingly dismissed, and Rule discharged, but without prejudice to the right of the petitioners to seek remedy before the appropriate forum, if so advised."

(Emphasis supplied)

52. The aforesaid decision of the Bombay High Court came to be challenged before this Court. A 2-Judge Bench of this Court in ***Rajasthan State Electricity Board v. Union of India*** reported in (2008) 5 SCC 632, set-aside the High Court's order and held the appellant therein to be entitled to refund of the freight charges. The relevant observations read as under: -

> *"4. In the present case between 4-3-1992 and 31-12-1992 the appellant had booked rakes for carrying coal to Gurla. A sum of Rs. 3,56,69,671 which had been collected from the appellant over a period of time by mistake. That the mistake has been committed is admitted by the respondent herein and it is has duly been noted by the High Court. However, the High Court, in our view, erroneously rejected the claim on the ground of availability of alternative remedy. On the aforesaid premises the High Court dismissed the wirt petition with the direction to the appellant to approach the Railway Claims Tribunal for alternative remedy provided under Section 13 of the Railway Claims Tribunal Act, 1987 (hereinafter "the Act").*
>
> *5. We are clearly of the view that as the respondent Union of India has clearly admitted the liability, the High Court ought not to have relegated the appellant to its alternative remedy and should not have dismissed the writ petition on that count. There is no disputed question of fact in this case. As already noted, in the present case the respondent had admitted its liability and, therefore, the question raised before the High Court being an admitted fact the High Court ought not to have directed the appellant to resort to its alternative remedy under the Act.*
>
> *6. In the aforesaid premises, we set aside the impugned order of the High Court. This appeal is allowed. No costs. The respondents are directed to pay the admitted liability along with interest at the rate of 6% p.a. with effect from 6-1-1993 till payment is made within three months from today."*
>
> (Emphasis supplied)

53. In ***Union of India & Ors. v. West Coast Paper Mills Ltd. & Anr.*** reported in (2004) 3 SCC 458, the prescribed rate that was being charged as per law by

the railways had been declared to be illegal. This Court held that any claim of refund of such charge which is illegal cannot be said to be an overcharge and thus does not attract Section 78B of the Act, 1890. This Court explained that an overcharge is something in excess of what is due according to law, an overcharge must be of the same genus or class as a charge, and it does not include a sum that was collected but was not due. The relevant observations read as under: -

> *"19. The term overcharge is not defined in the Act. In its dictionary meaning "overcharge" means "a charge of a sum, more than is permitted by law" (see: Aiyar, P. Ramanatha: The Law Lexicon, 1997 Edn., p. 1389). The term came up for the consideration of the High Court of Gujarat in Shah Raichand Amulakh v. Union of India. 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.*
>
> *20. In the case at hand, the freight rates notified by the Railway Administration in exercise of its statutory power to do so, so long as they were not declared illegal and unreasonable by the Tribunal under Section 41 of the Act, were legal and anyone carrying the goods by rail was liable to pay the freight in accordance with those rates. The freight paid by the respondents was as per the rates notified. Thus the present one is not a case of overcharge at all. It is a case of illegal recovery of freight on account of being unreasonable and in violation of Section 28 of the Act, consequent upon such determination by the Tribunal and the decision of the Tribunal having been upheld by this Court. A case of "illegal charge" is distinguishable from the case of "overcharge" and does not attract the applicability of Section 78-B of the Railways Act."*
>
> (Emphasis supplied)

54. In ***J.K. Lakshmi Cement Ltd. v. General Manager & Anr.*** reported in (2014) SCC OnLine Raj 2340, the Rajasthan High Court held that the freight charged mistakenly on a wrong calculation of distance between the two stations was an overcharge and not an illegal charge. The High Court observed that an overcharge is an excess sum having the same character as the basic charge which otherwise is payable, and thus, any other kind of levy unrelated to the basic charge would not be an overcharge. Since the excess freight that was charged due to mistake on part of the railway booking staff related to 'freight charges' which otherwise was payable, the same was held to be an overcharge. The relevant observations read as under: -

> *"[...] The facts of the case are that the appellant-Company dispatched 5 racks of 4100 M.T. levy cement from its Banas siding to be carried and delivered at Thiyat Hamira Railway Station. The distance between two stations is stated to be only 511 Kms, and the Railways alleged to had charged freight for distance of 946 Kms. Calculating the distance via Rewari. It was stated that because of this mistake in the calculation of the distance from the appellant-Company's Banas siding to Thiyat Hamira Railway Station, railway freight was charged in excess @ Rs. 21.44 per qtl. Instead of the applicable rate of Rs. 13.11 per qtl. and paid under mistake. Consequently Rs. 3,69,775/- was overpaid. This excess realisation was according to the appellant-Company on the face of it arbitrary, unauthorized and illegal and thus refundable by the Railways with interest.*
>
> *xxx xxx xxx*
>
> *[...] Further, a bare look at the judgement of the Hon'ble Gujarat High Court in Mansukhlal Jethalal (Supra) as also the judgement of the Hon'ble Supreme Court in West Coast Paper Mills Ltd. (Supra) makes it clear that an overcharge of freight would mean "a charge of sum more than permitted in law". Overcharge of a sum of money for a purpose partakes the same character as the underlying charge and belongs to the same genus or class the basic charge. Any other kind of levy of money*

unrelated to the basic charge would, as held by the Gujarat High Court and the Hon'ble Supreme Court, indeed would not take the character of an overcharge. In the Gujarat High Court case the overcharge related to a charge relating to the use of sidings of the Railways and it did not entail an excess charge on the freight as in the instant case. So to in the case before the Hon'ble Supreme Court. In my considered opinion, from the very enunciation of law by the Hon'ble Gujarat High Court in Mansukhlal Jethalal (Supra) and the Hon'ble Supreme Court in West Coast Paper Mills Ltd. (Supra) it is evident that the charge levied over the appellant-Company was qua the freight and movement of goods and nothing more excessive though it is alleged to be. It did not have a character different from the basic change. In fact the appellant-Company itself averred of realisation of an excess freight and specifically in para 6 of the plaint had itself averred that due to mistake in calculating of distance excess freight was realised at the rate of Rs.21.44 per qtl. instead of Rs.13.11 per qtl.. Further in the notice under Section 78B of the Act of 1890 R/w Section 80 CPC issued by the appellant-Company prior to the filing of the suit for recovery of money before the District Judge, Sirohi, it was submitted that due to mistake on the part of the booking staff of the Railways incorrect distance was computed from Banas siding to Thiyat Hamira railway station against the correct chargeable distance of 511 KMs and the distance was worked out to 946 KMs. which was the chargeable via Rewari. In para 4 of the suit it was stated that on the part of the Railway enhanced rate (emphasis mine) @ Rs.21.44 per qtl. was charged. In my considered opinion as also held by the learned Tribunal, the case set up by the appellant-Company makes it evidently clear that the refund was sought of the excess freight realized allegedly illegally and unauthorizedly. The excess freight without doubt related to freight otherwise payable for the movement / transportation of goods by the Railways and therefore was obviously an overcharge. Consequently, Section 78B of the Act of 1890 attracted to the claim petition filed. Admittedly notice with regard to the freight paid between 07.12.1985 and 11.02.1986 was issued on 17.02.1988 quite clearly beyond the period of six months as statutorily mandated. The Tribunal was right in so holding."

(Emphasis supplied)

55. Furthermore, the contention that retainment of excess freight by the railway due to the claim applications being time-barred would amount to unjust

enrichment of the Railway came to be negatived by the Rajasthan High Court in ***J.K. Lakshmi Cement*** (supra). The High Court observed that equity cannot defeat the statutory provision and thus, if any excess freight realized by the railway is held to be an unjust enrichment it would result in the statutory time-period under Section 78B of the Act, 1989 being rendered otiose and redundant. The relevant observations read as under: -

> *"Mr. S.R. Joshi has finally submitted that in the event this Court were to uphold the impugned order dated 15.05.1990, passed by the Tribunal, it would entail unjust enrichment of the Railway as admittedly the distance over which its goods were transported was 511 KMs and not 946 KMs (between Banas siding and Thiyat Hamira railway station) and further that rate charged was Rs.21.44 per qtl. instead of Rs.13.11 per qtl. Limitation under Section 78B of the Act of 1989 has been statutorily provided for. A misplaced argument of unjust enrichment cannot be misapplied, removed from the context it has been developed by courts of equity and turned on its head and be agitated to circumvent the provisions of statutory limitation and for the matter, the Limitation Act. Were it to be so, the provisions of the law limitation under the Act of 1963 or otherwise would be rendered otiose and redundant. Equity to defeat pubic policy encapsulated in the statutes of limitation cannot be visualised."*
>
> (Emphasis supplied)

56. In another decision of this Court in ***Hindustan Petroleum Corporation Ltd. v. Union of India***, reported in (2018) 17 SCC 729, the freight had been paid as per the notified chargeable distance. Subsequently when a computerized system for generating railway receipts was introduced, the chargeable distance was reduced and re-notified. This Court relying upon ***West Coast Paper Mills*** (supra) held that since the freight had been paid as per the notified rate which

was later found to be incorrect, the case would be of an illegal charge and not an overcharge. The relevant observations reads as under: -

> *"2. The core facts that will be required to be noticed are as follows: the appellant, a public sector organisation, had dispatched various petroleum products through Railway Tank Wagons of the respondent from Asaudah Railway Station, District Rohtak, Haryana to Partapur, District Meerut, Uttar Pradesh and to some other destinations located in different parts of the country. The freight was paid by the appellant as per the notified distance i.e., 125 Km, so notified by the Chief Goods Supervisor, the competent authority at the relevant point of time. The dispatch of the petroleum products continued for a long period between the year 2008 and 2011 and the freight charges were paid according to the distance between the destinations as notified by the competent authority of the respondent. When the manual system of generating railway receipts was discontinued and the respondent had installed computerised railway freight charges system called Terminal mechanism System (TMS) at Asaudha Railway Station, the distance between Asaudah Railway Station, District Rohtak, Haryana and Partapur District Meerut (Uttar Pradesh was notified as 100 km instead of 125 km. This was on 27-2-2011.*
>
> *xxx xxx xxx*
>
> *8. Birla Cement Works was a case where the petitioner therein (i.e., Birla Cement Works) came to know of the alleged excess amount of freight on wrong calculation of distance through a letter dated 12-10-1990 issued by the Railway Authorities. This primary fact is conspicuously absent in the present case. In the present case what was paid was as per the fixed rate on the basis of notified distance which subsequently was corrected by another Notification upon introduction of the Terminal Mechanism System (TMS) at Asaudah Railway Station, District Rohtak, Haryana.*
>
> *9. On the other hand, in West Coast Paper Mills Ltd., this Court in para 20 of the said Report took the view as the freight paid was as per the rates notified the case would not be one of overcharge at all/ If that is the view taken by this Court on an interpretation of the pari materia provision in erstwhile Act i.e., the Railway Act, 1890 (i.e., Section 78-B) we do not see why, in the facts of the present case which are largely identical, we should be taking any other view in the matter."*
>
> (Emphasis supplied)

57. In ***Union of India v. Mineral Enterprises*** reported in (2019) SCC OnLine Kar 1971, the Karnataka High Court was dealing with a matter where the actual distance between the two stations was less than what was charged by the railways. The Karnataka High Court in the said case held that the excess freight collected by the railways on a chargeable distance more than the prescribed distance was an overcharge within the meaning of Section 106 of the Act, 1989. The relevant observations read as under: -

> *"3. [...] The facts briefly stated are that the respondent M/s Mineral Enterprises Pvt. Ltd., was transporting the minerals through the appellant railways from Ammasandra to Panamburu as per the rates fixed for transportation of the consignment. The distance from Ammasandra Railway Station to Panamburu was calculated as 365 Kms. and freight was charged as per the rate fixed by the railways. The freight charges were dependent on the distance between the place of loading and unloading of consignment. Later, on enquiry it was learnt that the actual distance between Ammasandra Railway Station to Panamburu post is only 359 Kms. and not 365 Kms. as charged by the appellant railways. Therefore, the respondent Company made correspondence with the railways through letters dated 3.10.2006, 5.5.2007 and 20.07.2007 requesting to take corrective action. [...]*
>
> *xxx xxx xxx*
>
> *14. It is and admitted fact that the respondent Company had transported the irone ore fines / minerals through the railways for the period from 25.05.2006 to 04.01.2007 at the rates fixed by the railway. The main controversy was in respect of refund of excess freight charges said to have been collected by the railways than the prescribed rates fixed on the basis of distance. In that connection the respondent Company had sought for clarification about the actual distance for which the appellant railways gave the reply. As could be seen from the records the actual distance between Ammasandra to Panamburu is 358 kms., whereas the railways had calculated the distance as 365 kms., but they have collected the rates applicable for the distance above 360 Kms. It is an admitted fact that after clarification regarding actual distance, the railways had settled some of the claims of the respondent Company regarding excess*

charges which were within the limitation period. Some of the claims to an extent of Rs.8,85,000/- were rejected on the reason that they were barred by limitation. Under these circumstances, it is necessary to ascertain whether the repudiation of claims regarding Rs.8,85,000/- was justified.

xxx xxx xxx

23. The learned counsel for the appellant railways has relied on a decision in the case of Birla Cement Works vs. G M, Western Railways and another reported in (1995) 2 SCC 493, wherein the Hon'ble Supreme Court has held under:

> *"Railways - Railways Act, 1890 - S.78.B - Railway Claims Tribunal Act, 1987 - S 16 - Limitation - Computation of - Claim to refund of excess freight notified under S.78- B beyond the statutory time-limit on discovering the mistake from railway authorities' letter - Rightly held by the Tribunal and the High Court to be time- barred - Further held, provision in.*
>
> *XXX*
>
> *4. Section 78-B of the Act provides that a person shall not be entitled to refund of overcharge or excess payment in respect of animal or goods carried by Railway unless his claim to the refund has been preferred in writing by him or on his behalf to the Railway Administration to which the animals or goods were delivered to be carried by Railway etc. within six months from the date of the delivery of the animals or goods for carriage by railway the proviso has no application to the fact of this case. An overcharge is also a charge which would fall within the meaning of Section 78-B of the Act. Since the claims were admittedly made under Section 78-B itself but beyond six months, by operation of that provision in the section itself, the claim becomes barred by limitation. Therefore, the Tribunal and the High Court have rightly concluded that the petitioner is not entitled to the refund of the amount claimed. "*

24. In the aforesaid case the principal contention raised by the petitioner was that the claimant had discovered the mistake when the railway authorities confirmed by their letter that they had committed a mistake in charging excess freight on wrong calculation of distance. As such, the limitation starts running from the date of discovery of mistake and therefore stands excluded by the operation of Section 17(i)(c) of Limitation Act and that Section 78(B) has no application to the facts in this case. But it was held that Section 17(i)(c) of Limitation Act, 1963, would apply only to a suit instituted or an application made in that behalf in the civil suit but whereas the Tribunal is the creature of statute,

therefore it is not a civil court nor the limitation act has application, even though it may be held that the petitioner discovered the mistake committed in paying the over charges, the limitation is not saved by operation of Section 17(i) (c) of the Limitation Act.

25. The facts of the case on hand are exactly similar to that of the facts involved in the aforesaid decision. The Hon'ble Supreme Court in the said situation has held that the claims made under Section 78(B) are barred by limitation. As such, they cannot be entertained. The aforesaid decision was not at all referred or considered in the decisions relied on by the counsel for the claimant - respondent. The doctrine of binding precedent is of utmost importance in the administration of judicial system. It brings certainty and consistency in judicial decisions. The judicial consistency promotes confidence in the system. The ratio laid down in the aforesaid decision ((1995) 2 SCC 493) is aptly applicable to the facts of this case. As such, the claims which are barred by limitation in view of Section 106 of the Railways Act (78(B) of the Old Act) cannot be entertained."

(Emphasis supplied)

58. In yet another decision of the Orissa High Court in ***M/s National Aluminium Co. Ltd. v. Union of India*** FAO No. 306 of 2022, the goods were booked to be carried by a longer-route and freight was accordingly charged for the long route. However, the goods instead were dispatched by the shorter route. The High Court placing reliance on ***Steel Authority of India Ltd.*** (supra) which involved similar facts, held that since what was charged was prescribed by law, the refund was not for an overcharge, and Section 106(3) of the Act, 1989 would not be attracted. The relevant observations read as under: -

"8. Mrs. Rath contends that the Tribunal has misconceived the claim for refund of additional freight charges received by the railways with the term 'overcharges' and in this regard she relies on a decision of this Court reported in AIR 1997 Orissa 77 (Union of India and others vrs. Steel Authority of India Limited).

9. The above referred case is involving similar issues where SAIL filed a suit before the Sub-Judge, Rourkela praying for refund of excessive charges received by the railways under the rationalization scheme relating to the old Act, i.e. Indian Railways Act, 1890. Section 78-B of the old Act is same to the present Section 106 in the Railways Act, 1989. This Court while deciding with the issue that, whether the claim for refund of overcharge is maintainable for want of notice under Section 78-B, have held that the claim is not one for 'overcharge' for the simple reason that the goods were booked by a particular route and paid the freight that was payable for that distance. [...]

10. In view of the above, no second opinion can be there to treat the claim of refund of additional freight charges beyond 'overcharges' and no prior notice under Section 106 of the Railways Act is required to be sent. Undisputedly, no such notice has been sent by NALCO as per the submissions made by Mrs. Rath in course of hearing and the admitted fact remains that several intimations seeking refund of such amount from the railways have been sent by NALCO in those letters annexed to the claim application, as seen from the copy of the claim application produced in course of hearing. So, no further discussions on the facts of the present case is needed here on the requirement of notice under Section 106."

(Emphasis supplied)

59. What can be discerned from the above is that this Court as-well as various High Courts have consistently held that the rigours of Section 106(3) of the Act, 1989 will only be applicable where the claim is for a refund of an 'overcharge'. Where the claim for refund is for anything but an 'overcharge', Section 106(3) of the Act, 1989 will not apply, and no notice of claim is required.

b. Concept of an 'Overcharge' and an 'Illegal Charge'

60. As to what would be an 'overcharge', this Court and the various High Courts have consistently held that an 'overcharge' is any sum charged in excess

or more than what was payable as per law. Whereas an illegal charge is any sum which is impermissible in law.

61. Since the underlying difference in the dictionary meaning of both the expressions; "overcharge" and "illegal charge" is that of the prefix "over" and "illegal", used in conjunction with the word "charge", it would be apposite to first understand the meaning of the term "charge".

(i) "**CHARGE**"

P Ramanatha Aiyar's '*The Law Lexicon*' (Vol I, 6th Edn., 2019 at pg. 886) defines "Charge" as: -

> *"it is the price* ***required or demanded*** *for services rendered."*
>
> (Emphasis supplied)

L.P. Singh and P.K. Majumdar's '*Judicial Dictionary*' (2nd Edn., 2005 at pg. 460) defines "charge" as under: -

> "***any sum fixed by law*** *for services of public officers or for use of a privilege under control of government*"
>
> (Emphasis supplied)

Henry Campbell Black in '*Black's Law Dictionary*' (4th Edn., 1968 at pg. 295) defines "Chargeable" as: -

> "*something* ***capable*** *or liable to be charged*".
>
> (Emphasis supplied)

(ii) "**OVER**"

The term "over" as a prefix has been defined by L.P. Singh and P.K. Majumdar's '*Judicial Dictionary*' (2nd Edn., 2005 at pg. 996) as under: -

> "*excessive or beyond a* ***an agreed or desirable limit***".
>
> (Emphasis supplied)

P Ramanatha Aiyar's '*The Law Lexicon*' (Vol III, 6th Edn., 2019 at pg. 3990) states that "Over" as a prefix denotes something: -

> "s*omething excessive or excessively"*
>
> (Emphasis supplied)

Henry Campbell Black on '*Black's Law Dictionary*' (4th Edn., 1968 at pg. 1256) defines it as something: -

> *"more than or in excess of"*
>
> (Emphasis supplied)

(iii) "**ILLEGAL**"

Whereas the term "illegal" is defined by Henry Campbell Black in '*Black's Law Dictionary*' (4th Edn., 1968 at pg. 882) as something: -

> "***not authorized by law or contrary to law or unlawful***" or
> "*something which* ***lacks authority of or support from law***"
>
> (Emphasis supplied)

P Ramanatha Aiyar's '*The Law Lexicon*' (Vol II, 6th Edn., 2019 at pg. 2605) defines it as: -

> "s*omething that is* ***against the law***" or "*something which is* ***contrary to or forbidden by law***"
>
> (Emphasis supplied)

L.P. Singh and P.K. Majumdar's '*Judicial Dictionary*' (2nd Edn., 2005 at pg. 749) defines it as: -

> "*something which is* ***prohibited by law***"
>
> (Emphasis supplied)

62. Thus, in its plain meaning, the use of words "*capable*" and "i*mposed by law*" shows that the term "charge" means something which in the eyes of law is permissible and payable, and therefore the term "overcharge" which is a conjunction of "over" and "charge" would mean something more than or beyond what is payable in the eyes of law. Same way, an "illegal charge" would mean a charge which is contrary to the law or lacks the authority of law or *simplicter* is unlawful.

63. L.P. Singh and P.K. Majumdar's '*Judicial Dictionary*' (2nd Edn., 2005 at pg. 888) defines 'over-charge' in the context of Section 106 of the Act, 1989 as follows: –

> "*The expressions "charge" and "over charge" are properly employed only with reference to* ***actual quantum of liability****, and they cannot be applied to relate to rates of charges. There will be an over charge if Railway applies* ***higher rate than appropriate*** *and there can also be an*

*over charge where even at a rate **which itself is not open to objection**, there is yet an excessive liability foisted by the railway. It is not possible to restrict the expression over charge only to former kind of cases where the railway **applies a higher rate** than that **which the law allows**.*"

(Emphasis supplied)

64. Thus, in the context of Section 106 sub-section (3) of the Act, 1989, an "overcharge" would be any sum which has been paid in excess or over and above or more than what was payable by law / required by law. It pertains to only the actual quantum of liability. Furthermore, merely, because an incorrect or rather higher slab-rate has been applied, will not make it an illegal charge, as long as the charge was not itself open to objection i.e., not incorrect.

65. It is pertinent to note, that the term "payable by law" should not be conflated with the term "permissible by law", this is because although something maybe paid in excess than what was required by law, yet the same would by no means automatically become an "overcharge". This is further fortified from the fact that, "charge" as above-stated is defined to mean something which is either required **OR** demanded to be paid.

66. For illustration; say 'A' booked certain goods to be carried by railway, and the railway charged 'A' loading charges for the goods, even-though, there was no loading of goods involved. Here, although the law allows railway to levy loading charges i.e., the loading charges are permissible by law, and even-though the sum paid by 'A' towards loading charges can be said to be in excess of what was

required (i.e., in excess of Nil loading charges as no loading was involved), this would not be an "overcharge" but would be an "illegal charge".

67. We say so because, the very basic charge or in other words the genus or basis of the charge i.e., the loading charge in itself was not required to be paid. Thus, when the very basis or genus of the charge was not payable as per law then any sum which is collected in respect of the same will not be an overcharge but would be an illegal charge. Since the very class of the charge was not required to be payable by law.

68. Conversely, say for example, 'A' again booked certain goods to be carried by railway, and the railway charged 'A' loading charges for the goods, and this time loading of goods was involved in the consignment, but the railway mistakenly charged 'A' Rs. 100/- more towards the loading charges than what was required by the rate applicable. Here the basis or genus of this excess charge of Rs. 100/- i.e., the loading charges itself was payable by law. Any sum charged in excess of the loading charges as required by law would be an 'overcharge'.

69. For another illustration, say 'A' booked the carriage of iron ore by the railway, however, instead of being charged for the rate applicable for iron, the railway by mistake charged 'A' for steel. Now the rate which is applicable for steel is permissible by law, but here since iron was being carried, the rate applicable for steel though permissible by law is not payable by law, as the

consignment was not for steel. Thus, any sum paid although is in excess of what was required, and the charge towards which it was paid was also permissible by law, the sum cannot be said to have been paid in excess of what was payable by law.

70. Thus, for an excess sum to be an "overcharge" the sum paid must partake the same character as the basic charge, or must belong to the same genus of charge which was payable or required to be paid by law. Whereas, for an illegal charge, the sum must not have been payable by law.

71. Another very fine but pertinent distinction between an 'overcharge' and an 'illegal charge' is that, an 'overcharge' is generally *inter-se* the specific parties involved and in its peculiar facts. Whereas an 'illegal charge' is illegal for everyone irrespective of the parties or facts.

72. For illustration, say 'A' booked 10 boxes to be carried by railway, however, he was erroneously charged for 12 boxes. Here the excess amount that has been charged for 12 boxes instead of 10 is an overcharge qua these specific facts for 'A' alone. If 'B' books 12 boxes to be carried by railway, the said charge which was an overcharge qua 'A' will not be an overcharge qua 'B'. For that matter even if 'A' in a different consignment books 12 boxes and is charged for 12 boxes, it will not constitute an overcharge. This will not be an illegal charge because, it is not illegal for Railway to levy charge for 12 boxes *ipso-facto* (whenever a

consignment is booked for 12 boxes, the Railway can levy that charge), but rather it is erroneous to levy charge for 12 boxes when in fact only 10 boxes were carried. Here whether the sum charged is an overcharge or not is largely dependent upon the peculiar facts, more particularly the number of boxes being booked for carriage. Thus, it can be safely said, that in case of an overcharge, the issue lies in the "charging" whereas in case of an illegal charge, the issue lies in the "charge" itself.

73. Conversely for example, say for a particular route, the chargeable distance as per the law was 100 km, but the railways incorrectly showed the chargeable distance as 120 km in its local rate list. Now 'A' books a consignment of iron ore and 'B' books a consignment of steel, over the same 120 km distance. Irrespective of the type of goods or the quantity of goods being carried or by whom the consignment has been booked, any amount charged in respect of this incorrect chargeable distance of 120 km is an illegal charge. Here the sum charged as an illegal charge is not dependent upon either the peculiar facts or the parties thereof, the charge is illegal solely because the very charge itself i.e., the chargeable distance of 120 km was in contravention of the law.

74. An Overcharge is effectively concerned with the error in the quantum of what was or should be payable, whereas an illegal charge is solely concerned with

whether a particular thing was payable by the law / in conformity with the law or not.

75. Another aspect that distinguishes the two is that, an 'overcharge' often stems due to a clerical mistake or mis-interpretation or misapplication of law in a particular case, whereas an 'illegal charge' stems from a patent error or inherent error in the charge i.e., in contravention of the law and principles of fair play. In other words, in overcharge, the mistake is in the levying of the charge, whereas in illegal charge the error lies in the very substance of the charge itself which is in contravention of the law, even though the charge per-se is permissible by law.

76. In ***West Coast Paper Mills*** (supra), the concerned railway zone therein was charging freight at a flat rate without giving any telescopic benefits to the consignees, which the other railway zones were providing. This denial of telescopic benefit was found to be unreasonable, arbitrary and against fair-play. Thus, the same was held to be illegal by this Court even-though the said charge was payable as per the notified rate.

77. To illustrate, say the chargeable distance as measured by the concerned Zonal Railway Authority for a particular route is 100 km. However, the Station Master whilst making the local distance table records the said distance as 110 km due to a clerical mistake. Thus, because of an error in indicating the actual

chargeable distance in the table, the freight for the said route becomes chargeable for 110 km. Although the mistake here is a clerical one, yet because of such mistake, an inherent error has crept into the local distance table. Thus, the notified rate would be an illegal charge and not an overcharge. This is because the error here lies in the very substance or genesis of the charge that was notified i.e., the charge which is sanctioned and permitted to be levied by the law, but in contravention of the law i.e., in contravention of the Zonal Authority's calculation.

78. We are conscious of the fact that this Court in ***Rajasthan State Electricity Board*** (supra) had directed the refund of excess freight charged by misapplication of the law despite the claim being time-barred under Section 106(3), however, a closer reading would reveal that the refund had been directed in view of the peculiar facts and circumstances of the case. Even otherwise, the court in the said decision whilst directing the refund completely missed to advert to either the bar under Section 106(3) or whether the excess freight would be an 'overcharge'. Nevertheless, the distinction between an 'overcharge' and an 'illegal charge' has been acknowledged by this Court in its subsequent decisions in ***West Coast Paper Mills*** (supra) and ***Hindustan Petroleum Corporation*** (supra), thus, we need not dwell any further on the decision of ***Rajasthan State Electricity Board*** (supra).

79. Further, a sum paid in excess of what was required to be payable as per law, must assume the character of an 'overcharge' on the date when the payment was made or when the charge was levied. To explain this in detail we may refer to the decision of the Calcutta High Court in ***Suresh Kumar v. Board of Trustees for the Port of Calcutta*** reported in (1988) SCC OnLine Cal 420.

79.1 In the said decision, the issue pertained to the provision of Section 55 of the Major Port Trusts Act, 1963 (for short, the "**Ports Act**"), which is analogous to Section 106(3) of the Act, 1989, inasmuch as both the provisions provide that for a claim of refund of an 'overcharge' a notice of claim must be made within 6-months from the date of payment.

79.2 The facts of ***Suresh Kumar*** (supra) were as follows: there was a delay in custom clearance, because of which the goods had to be warehoused at the port. Due to this, the goods incurred heavy demurrage charges. The petitioner therein requested the custom authorities that since the delay was to no fault of its own, he may be issued an exemption certificate for the said demurrages. During this period, since the goods continued incurring demurrage charges, the petitioner therein paid the same under protest. Subsequent to the payment of the said charges, he was issued exemption certificates, whereby a portion of the demurrage charges stood abated. Accordingly, a claim for refund was made, however the same *inter-alia* came to be rejected in view of being time-barred as per Section 55 of the Ports Act.

79.3 The Calcutta High Court observed that, although this was in essence a refund for an overcharge, as by virtue of the exemption certificates, a sum excess than what was required by law had been paid, yet, it would not be hit by Section 55 of the Ports Act, as the excess sum only assumed a character of an overcharge, subsequent to the date of payment, when the exemption certificates were issued. The High Court held that the time-period under Section 55 of the Ports Act would only apply to a case where payment and overcharging would synchronize i.e., on the facts and circumstances as prevailing on the date of payment, the sum should be an overcharge. The relevant observations read as under: -

> *"5. Because of the inordinate delay [in] the release of the said goods after completing all Customs formalities, the said goods suffered heavy demurrage charges. Accordingly the petitioner represented before the Customs authorities for allowing warehousing of the said goods, pending completion of the Customs formalities [...]*
>
> *7. Due to the aforesaid delay in allowing clearance of the said goods by the Customs authorities, the said goods incurred heavy demurrage due to no fault of the petitioner. In the circumstances, the petitioner prayed before the Customs authorities for issuance of necessary wharf rent exemption certificate in order to enable the petitioner to clear the consignment without payment of demurrages from the Port authorities. After several reminders on or about March 25, 1985 the Customs authorities handed over a wharf rent exemption certificate dated March 23, 1985 to the petitioner covering part of the period of detention, that is from November 28, 1984 to March 1, 1985 in respect of consignment arrived per Vessel "Batara Dua" and from January 22, 1985 to March 1, 1985 in respect of the consignments arrived per vessel "Vishwa Yash".*
>
> *8. Thereupon the petitioner again requested the Customs authorities for issuance of wharf rent exemption certificate for the entire period of detention, that is, upto March 25, 1985. Meanwhile, however, as the goods were continuing to incur demurrage, the petitioner had no other*

alternative but to make payment of the demurrage charges to the Port authorities under protest and take clearance of the said goods. In respect of the said consignments, the petitioner paid a total sum of Rs. 8,43,995 as purported demurrage charges for the period November 28, 1984 to March 25, 1985 in respect of vessel "Batara Dua" and for the period January 15, 1985 to March 25, 1985 in respect of vessel "Vishwa Yash".

9. Thereafter, on or about February 3, 1986 the Customs authorities issued another wharf rent exemption certificate for the uncovered period from March 2, 1985 to March 25, 1985 in respect of the said goods.

10. In the premises, by a letter dated 15th February, 1986, the petitioner filed an application before the Financial Adviser and Chief Accounts Officer, Post and Railway Audit Section, Calcutta Port Trust enclosing therewith the bills issued by the Port Trust authorities levying and realising demurrage charges as also the said wharf rent exemption certificates. By the said application the petitioner claimed refund for the sum of Rs. 8,43,995 paid by him under protest as aforesaid as purported demurrage/wharf rent charges. The petitioner drew the attention of the said Financial Adviser and Chief Accounts Officer to the fact that in view of the said Wharf Rent Exemption Certificate the petitioner was not/could not be made, liable for payment of the said demurrage/wharf rent charges.

11. In or about March 1986 the petitioner's representative received a purported communication dated 22nd February, 1986 issued by the Financial Adviser and Chief Accounts Officer whereby the petitioner was informed that "no refund was due" to the petitioner as all claims were "time-barred as per Section 55 of the Major Port Trusts Act, 1963".

14. It is also contended that the petitioner could have and should have submitted the refund claim within the time limit prescribed under Section 55 of the Major Port Trust Act, 1963 but the claim for refund was submitted by the petitioner on 26th March, 1985 and 27th March, 1985. The claim for refund of the petitioner is statutorily time-barred.

15. The contention is that while taking delivery of the said consignments the petitioner paid the port charges, that is to say, wharf rent and demurrage and did not produce any certificate from the Customs authority covering the period between the 2nd March, 1985 and 25th March, 1985 to the concerned shed of the Calcutta Port in order to

enable himself to obtain the concession on any rent charges in accordance with the scale of rates. The port rent and demurrage were paid in full and the wharfage exemption certificate was produced subsequently for refund. The payment made to the Port Trust while taking delivery of the cargo from its custody was an overcharge for which a claim should have been preferred within the time prescribed in Section 55 of the said Act.

16. The first question which calls for determination is whether Section 55 of the Major Port Trusts Act, 1963 has any application on the facts and in the circumstances of this case. Section 55 provides as follows:

> *"No person shall be entitled to a refund of an overcharge made by a Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all relevant documents. Provided that a Board may of its own motion remit overcharges made in its bills at any time."*

17. It is contended by the learned counsel for the petitioner that in the instant case there is or can be no "overcharges" being made by the Port Trust Authorities. In the absence of Wharf Rent Exemption Certificate, the Port Trust Authorities had sought to realise Wharf Rent payable in respect of the subject goods. In view of the said Wharf Rent Exemption Certificate no wharf rent is payable by the petitioner and/or realisable by Port Trust Authorities from the petitioner. Thus the entire realisation of wharf rent in respect of the said goods is without authority of law as the said amount is not payable by the petitioner at all. Seeking of refund of such money cannot come within the purview of Section 55 of the said Act.

18. This contention has substance. Section 55 will only apply to a case where payment and overcharging would synchronise : In other words, on the facts and in the cirumstances prevailing at the date of payment, Board should have overcharged the rent. In this case, on the date payment was made by the petitioner, the payment did not and could not assume the character of overcharging. It only assumed such character when the second set of exemption certificates had been issued on 3rd February, 1986."

(Emphasis supplied)

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.

81. Otherwise, the same would lead to a very chilling effect, whereby a particular sum which at the time of payment was not an overcharge but due to subsequent events (not attributable to any mistake or lack of diligence) happens to become an overcharge after the lapse of the statutory time-period under Section 106(3) of the Act, 1989 i.e., 6-months after the date of payment, even then the said sum would not be refundable because no notice was made within 6-months. Thus, the claim for refund of an "overcharge" in such case would become time-barred owing to an impossibility i.e., making the notice within the time-period which could not have been made, as at the relevant point of time it was not an overcharge.

82. It is a settled law that in interpreting a statute or a rule, the court must bear in mind that the legislature does not intend what is unreasonable or impossible. If a rule leads to an absurdity or manifest injustice from any adherence to it, the

court can step in. A statute or a rule ordinarily should be most agreeable to convenience, reason and as far as possible to do justice to all. A law/rule should be beneficial in the sense that it should suppress the mischief and advance the remedy. In interpreting a rule, it is legitimate to take into consideration the reasonableness or unreasonableness of any provision. Gross absurdity must always be avoided in a statute/rule. The expression reasonable means rational, according to the dictate of reason and not excessive or immoderate.

83. Thus, keeping in mind the aforesaid view, and the specific language used in Section 106(3) of the Act, 1989 particularly the words "*paid*" and "*date of payment*", the aspects of "payment" and "overcharging" must synchronize in order to fall within the rigours of Section 106(3) of the Act, 1989.

84. This aforesaid aspect may be looked at from one another angle, by making use of the Hohfeld's analysis of jural relations. As per Hohfeld's scheme of jural relations conferring of a right on one entity must entail vesting of a corresponding duty in another. Under Section 106(3) of the Act, 1989, the right of consignee to seek a refund of an overcharge arises only when there is a corresponding duty on the railway administration to grant such refund i.e., when the notice of claim is made to it within the statutory period. To seek a refund, certain condition precedents need to be satisfied by the consignee before the right can be said to accrue, namely: -

a) An overcharge has been paid by the consignor to the Railway administration
b) A notice has been served by the consignor to the Railway administration to which overcharge has been paid
c) The consignor has served the said notice within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

84.1 Thus, once the aforesaid conditions are satisfied, the consignee's "right to get a refund" can be said to have as its jural correlative the "duty to grant refund" of the Railway administration.

85. Now the consignee's duty to make the notice of claim for refund will only arise if the sum was an overcharge within the statutory time-period, if it is not, then it could not be said that there was any duty to make the notice of claim. Similarly, if the right of consignee to claim a refund for an overcharge, accrues when the sum was an overcharge on the date of payment, the corresponding duty of consignor to refund it will also arise when the sum was an overcharge.

86. Thus, if on the date of payment, the sum was not an overcharge, neither is the right to claim refund emanating in terms of Section 106(3) nor is the corresponding duty i.e., neither the right nor the duty could be said to have arisen on the date of payment. Both the right to claim refund and the corresponding duty to refund must arise in synergy in terms of Section 106(3) of the Act, 1989

(emphasis). It would be too much to say that, although no overcharge was made in terms of Section 106(3), yet when the sum actually became an overcharge, the duty to seek refund will only be in terms of Section 106(3) 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.

88. Another peculiar aspect which must be borne in mind, is that the subsequent event which makes a particular charge an overcharge, must take place subsequent to the date of payment. For illustration, say freight on goods carried was charged by mistake at Rs. 100 instead of Rs. 50. Now this aspect comes to the knowledge of the parties 6-months after the date of payment. This would not mean that at the time when freight was being paid it was not an overcharge, as

the excess sum was realized due to a mistake committed on the date of payment irrespective of subsequent knowledge. It cannot be said that due to a *bona-fide* mistake neither party was under the impression that this is an overcharge. This is reinforced from the decision of this Court in ***Birla Cement Works*** (supra). Thus, whilst deciding the applicability of Section 106(3) of the Act, 1989 what has to be seen is whether the very sum that was levied was an overcharge or not on the date of payment. Mere lack of knowledge will not postpone the accrual of cause of action to apply under Section 106(3) of the Act, 1989.

89. This distinction drawn between a claim for refund of an 'overcharge' and an 'illegal charge' is not imaginary or superfluous, but is well-founded from the landmark decision of a 9-Judge Bench of this Court in ***Mafatlal Industries Ltd. & Ors. v. Union of India*** reported in (1997) 5 SCC 536, wherein this Court observed that a claim of refund for any excise or custom duty levied will broadly fall into three categories, and the relevant observations read as under: -

> *"290. Broadly, the basis for the various refund claims can be classified into 3 groups or categories: -*
>
> *(I) The levy is unconstitutional — outside the provisions of the Act or not contemplated by the Act.*
>
> *(II) The levy is based on misconstruction or wrong or erroneous interpretation of the relevant provisions of the Act, Rules or Notifications; or by failure to follow the vital or fundamental provisions of the Act or by acting in violation of the fundamental principles of judicial procedure.*

(III) Mistake of law — the levy or imposition was unconstitutional or illegal or not exigible in law (without jurisdiction) and, so found in a proceeding initiated not by the particular assessee, but in a proceeding initiated by some other assessee either by the High Court or the Supreme Court, and as soon as the assessee came to know of the judgment (within the period of limitation), he initiated action for refund of the tax paid by him, due to mistake of law."

(Emphasis supplied)

90. We see no reason as to why the above-mentioned distinction and categories should only be restricted to claims for refund pertaining to excise and custom levied and not extend to refund of charges levied by the Railway as-well. Thus, applying the aforesaid dictum, the three-categories can broadly be stated to be as follows: -

(i) **Category 1 – "Illegal Charge"** that is a levy which is outside or beyond the law. It is a charge which though may be notified in law as a lawful charge but at its core is *stricto-sensu* in contravention of the law, as explained by us in the preceding paragraphs of this judgement.

(ii) **Category 2 – "Overcharge"** that is a levy based on misconstruction or misinterpretation or failure to follow the fundamental provisions / principle. It is a charge that is in excess of beyond what was required by the law i.e., by the notified or applicable charge, as illustrated in the preceding paragraphs of our discussion.

(iii) **Category 3 – "Nullified Charge"** a levy which has been declared or struck-down as unconstitutional or illegal by a court on principles of

arbitrariness, unreasonableness or fair-play. This too would be in the nature of an "Illegal Charge" enunciated in Category 1 with the only difference being that, the courts found the law to be untenable in the eyes of law even though it may not be in contravention of the statutory provisions. Such as the charge levied by the arbitrary denial of telescopic benefits which was held to be illegal in ***West Coast Paper Mills*** (supra).

91. Another reason, as to why this distinction assumes importance is in view of the intention behind the rigours of Section 106(3) of the Act, 1989. The purpose behind incorporating the stricter and shorter time-period envisaged under Section 106(3) of the Act, 1989 for refund of an overcharge is in view of its nature.

92. An 'overcharge' as discussed by us above emanates due to a clerical or arithmetical mistake or misapplication of the law or charge prescribed or notified by the law, qua the peculiar facts of an individual case. Such mistakes are easily discoverable by exercising due-diligence; thus, a 6-month time period is stipulated to ensure that claimants are vigilant and prompt in bringing such errors to the notice of the railway. Due to the fact specific nature of such claims by way of errors at the very grass-root level, timely enquiries by railway to ascertain the mistake becomes a necessity. Thus, the intention of Section 106(3) of the Act, 1989 is to ensure that when the claim is made, a timely enquiry into such factual errors is possible **AND** to bring *quietus* to stale and false claims of refunds made belatedly due to the laches & lack of vigilance on part of the claimant.

93. The true purport of Section 106(3) of the Act, 1989 is by no stretch to render even those claims of refunds as time-barred which despite the best of efforts and diligence could not have been discovered by the claimants on their own accord. 'Illegal Charges' are by their nature prescribed, sanctioned and notified by law as a lawful levy even-though they may be inherently wrong or in contravention of the law. Thus, despite the exercise of a reasonable degree of diligence, there could be no real reason to doubt their legality. A consignee cannot be reasonably expected to be capable of discovering such patent or perverse error in the very genesis of the charge. It is something which only the authority that calculates, determines and notifies the levy of the charge could be said to know or at the very least ought to have known. Thus, Section 106(3) of the Act, 1989 cannot be said to encompass even "Illegal Charges" which are beyond the intention and object of the said provision, and the applicability of the prescribed time-limit must be confined only to claims for an 'overcharge'.

94. Therefore, a distinction has been envisaged between an 'overcharge' and an 'illegal charge', where the former relates to any excess sum paid due to a mistake which was capable of being discovered by exercise of proper vigilance and thus, ought to have been claimed within a period of 6-months.

95. Lastly, we must also caution the courts and the railway claims tribunal of one another aspect, which is that where the court or tribunal whilst examining a

claim for refund finds that a particular charge for which refund is sought is not an overcharge, they must not jump to the conclusion that the said charge then is an illegal charge. The purpose of the above discussion was only to bring clarity over what would be an 'overcharge' for the purposes of Section 106 sub-section (3) of the Act, 1989.

96. There may be situations, where a charge for which refund is sought may no be an overcharge or even an illegal charge and rather would be a lawful charge perfectly valid in the eyes of law, or a charge though valid but in the extant of equity may be refundable, the same has to be determined upon appraisal of the entire facts of the case. The courts and tribunal must be mindful of the fact that, the question as to what is the nature of a particular charge, be it overcharge or illegal charge or valid charge etc. is for ultimately determining whether it is liable for refund or not, without jumping to any conclusion.

97. This is evinced from the decisions of ***Steel Authority of India Ltd.*** (supra) and ***National Aluminium Co. Ltd.*** (supra), where as per the mandate of the Central Government's policy, the goods in question were required to be carried only over the longer route. Accordingly, the goods were booked and freight was also realized for the longer route, but the railways dispatched the goods by the shorter-route due to logistical issues. Even though the High Court found nothing wrong with either the policy or the freight charge realized, and held both to be

lawful, yet it directed refund in view of principles of equity by taking recourse to Section 72 of the Indian Contract Act, 1872.

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.

iii. Whether the present case is one of 'Overcharge' or 'Illegal Charge'?

a. Applicability of Section 106(3) of the Railways Act, 1989.

99. Now coming to the facts of the present case at hand, it is the case of the respondent company herein that at the time of booking the consignments, from Baad to Hisar via Palwal, the notified chargeable distance for calculating freight as per the Local Distance Table was 444 km, and accordingly the respondent company paid the same from time to time.

100. However, subsequently, the appellant railways vide its letter dated 05.07.2005 changed the chargeable distance to 334 km in the revised Local Distance Table and the said revised table was to apply prospectively. It is undisputed that, at the time when the respondent company had booked its consignment, the notified chargeable distance was 444 km for Baad to Hisar, and any consignment booked for the said route was to be charged as per the said rate.

101. The respondent company has contended that a change in the notified chargeable distance due to a change in policy was held to be illegal by this Court in ***Hindustan Petroleum Corp Ltd.*** (supra). The High Court too whilst passing the impugned order has placed reliance on the said decision and held that the present case is squarely covered by the ratio of ***Hindustan Petroleum Corp Ltd.*** (supra).

102. However, we are not in agreement with the same. In ***Hindustan Petroleum Corp Ltd.*** (supra), the notified chargeable distance was 125 km, subsequently by the introduction of the Terminal Mechanism System (TMS) which was a computerized railway receipt system, the notified chargeable distance was reduced to 100 km. A close reading of the said decision would reveal that the change in the notified distance was attributable to a computerized receipt system, which had no bearing on the actual calculation of distance, in other words a receipt system had nothing to do with determining a chargeable distance. Thus, when the chargeable distance subsequent to the introduction of the said receipt system got altered and came out to be 100 km, this Court had no hesitation to hold that the initial notified distance of 125 km was illegal, and only upon the introduction of the TMS system, the said glaring patent error came into light.

103. However, in the instant case, the change in the policy is in respect to the change in the methodology for calculation of chargeable distance, which has a direct bearing on the chargeable distance payable as per law. Thus, a mere change

in policy which results in the change of a charge payable as per law, will not render the original charge illegal, regard must be had to the nature of the policy and its effect. Thus, on this score, the High Court committed an error.

104. The respondent company has also undisputedly paid the freight charges as per the notified chargeable distance, and nothing more has been charged than what was at the time of booking of the consignment required to be charged as per the law prevailing i.e., as per the old local distance table.

105. The case of the respondent company is not that it has paid anything in excess of what was at the time of booking of the consignment required by law, rather, the respondent's case is that the charge which was required to be paid by the law as prevailing at the time of booking of the consignment was wrong. In other words, the respondent's case is that the very chargeable distance of 444 km as per the old local distance table was wrong, and not that the distance for which the respondent has been charged is incorrect in terms of the chargeable distance that was notified at that time.

106. We are *seisin* of the fact that in ***J.K. Lakshmi*** (supra) and ***Mineral Enterprises*** (supra) the freight charged due to an incorrect chargeable distance was held to be an overcharge.

106.1 However, a close reading of ***J.K. Lakshmi*** (supra) would reveal, that it was not a case where the notified chargeable distance was incorrect, but rather was a mistake of miscalculation on the part of the booking staff i.e., it was a clerical mistake and not a mistake attributable to a charge permitted and notified under the law. It does not appear that the said case was dealing with a situation where the notified or prescribed rate / chargeable distance was wrong, in fact the distance averred to be wrong is not a chargeable distance that has been notified in any manner. The relevant observations read as under: -

> *"[...] The distance between two stations is stated to be only 511 KMs and the Railways alleged to had charged freight for distance of 946 KMs calculating the distance via Rewari. It was stated that because of this mistake in the calculation of the distance from the appellant-Company's Banas siding to Thiyat Hamira Railway Station, railway freight was charged in excess @ Rs.21.44 per qtl. instead of the applicable rate of Rs.13.11 per qtl. and paid under mistake. Consequently Rs.3,69,775/- was overpaid. This excess realisation was according to the appellant-Company on the face of it arbitrary, unauthorized and illegal and thus refundable by the Railways with interest.*
>
> *xxx xxx xxx*
>
> *He submitted that the factum of the realisation of excess charge in an arbitrary and unauthorized manner by the Railway came to the notice of the appellant-Company only on or about 30.12.1987 when in the course of Government of India audit of the accounts of the appellant-Company with regard to supply of rakes of levy cement from its factory, it transpired that the excess freight had been unauthorizedly realized by the Railway in miscalculating the distance between Banas siding of the appellant-Company and place of delivery at Thiyat Hamira Railway station by wrongly measuring the distance as 946 KMs as against the actual distance of 511 KMs between the two stations. Counsel submitted that no sooner the letter dated 30.12.1987 was received by the appellant-Company requisite notice were issued to the respondent-Railway on 17.02.1988.[...]*
>
> *xxx xxx xxx*

[...] In fact the appellant-company itself averred of realisation of an excess freight and specifically in para 6 of the plaint had itself averred that due to "mistake" in calculating of distance, excess freight was realised at the rate of Rs.21.44 per qtl. instead of Rs.13.11 per qtl.. Further in the notice under Section 78B of the Act of 1890 R/w Section 80 CPC issued by the appellant-Company prior to the filing of the suit for recovery of money before the District Judge, Sirohi, it was submitted that due to mistake on the part of the booking staff of the Railways incorrect distance was computed from Banas siding to Thiyat Hamira railway station against the correct chargeable distance of 511 KMs and the distance was worked out to 946 KMs. which was the chargeable via Rewari. In para 4 of the suit it was stated that on the part of the Railway enhanced rate (emphasis mine) @ Rs.21.44 per qtl. was charged. In my considered opinion as also held by the learned Tribunal, the case set up by the appellant-Company makes it evidently clear that the refund was sought of the excess freight realizedallegedly illegally and unauthorizedly. The excess freight without doubt related to freight otherwise payable for the movement / transportation of goods by the Railways and therefore was obviously an overcharge. Consequently, Section 78B of the Act of 1890 attracted to the claim petition filed. Admittedly notice with regard to the freight paid between 07.12.1985 and 11.02.1986 was issued on 17.02.1988 quite clearly beyond the period of six months as statutorily mandated. The Tribunal was right in so holding."

(Emphasis supplied)

106.2 Similarly in ***Mineral Enterprises*** (supra), the wrong chargeable distance was in respect to the railway receipts which were issued that showed 365 km instead of 359 km. It was not a case of the notified rates being wrong i.e., the charge that has been made payable under law. This is further evinced by the fact that the High Court itself observed that the excess freight was charged than the "prescribed distance". Thus, it appears that the mistake related to one in the "calculation of the distance" at the time of booking and doesn't appear to be a

mistake in the "prescribed distance". Similarly, even in the said decision, it is nowhere mentioned that, 365 km was a "notified chargeable distance", thus, even this decision does not come in aid of the appellants herein.

> *"14. It is an admitted fact that the respondent Company had transported the iron ore fines/minerals through the railways for the period from 25.05.2006 to 04.01.2007 at the rates fixed by the railways. The main controversy was in respect of refund of excess freight charges said to have been collected by the railways than the prescribed rates fixed on the basis of distance. In that connection the respondent Company had sought for clarification about the actual distance for which the appellant railways gave the reply. As could be seen from the records the actual distance between Ammasandra to Panamburu is 358 kms., whereas the railways had calculated the distance as 365 kms., but they have collected the rates applicable for the distance above 360 Kms. It is an admitted fact that after clarification regarding actual distance, the railways had settled some of the claims of the respondent Company regarding excess charges which were within the limitation period. Some of the claims to an extent of Rs.8,85,000/- were rejected on the reason that they were barred by limitation. Under these circumstances, it is necessary to ascertain whether the repudiation of claims regarding Rs.8,85,000/- was justified.*
>
> *xxx xxx xxx*
>
> *24. In the aforesaid case the principal contention raised by the petitioner was that the claimant had discovered the mistake when the railway authorities confirmed by their letter that they had committed a mistake in charging excess freight on wrong calculation of distance. [...]"*
>
> (Emphasis supplied)

106.3 We do not propose to dwell any further on the decisions of ***J.K. Lakshmi*** (supra) and ***Mineral Enterprises*** (supra), and leave it at rest with just one observation that, as long as there is no error or patent illegality in the very genesis or core of a charge that has been notified i.e., the charge that has been made permissible or applicable by sanction of a law, it will not be an illegal charge.

107. In view of the above, since admittedly, what was charged from the respondent was as per the chargeable distance notified and required to be payable by law at that time with nothing in excess, and since the respondent has challenged the very basis or genus of the charge i.e., primary challenge is to the chargeable distance of 444 km in itself and not the incidental quantum of freight levied on the distance of 444 km, and because the same was admittedly charged as per the prevailing law and not due to any misapplication or mistake i.e., as per the old local distance table, this clearly is not a case of overcharge and would not fall within the four corners of Section 106(3) of the Act, 1989.

b. Whether the chargeable distance of 444 km was correct or not?

108. The respondent company herein has challenged the very validity or correctness of the notified chargeable distance of 444 km which was payable as per the old local distance table. At this stage, it would be apposite to understand on what basis, the respondent company has challenged the said chargeable distance of 444 km.

109. The respondent company has contended that, initially the chargeable distance for the route from Refinery Baad to Hisar was 444 km as provided in the old local distance table. Subsequently, the appellant vide its letter dated 05.07.2005 changed and reduced the chargeable distance to 334 km. The

respondent enquired and found out that, there was neither any change in the actual route nor any change in the physical track length between the Refinery Baad and Hisar stations.

110. On such basis, the validity of the old chargeable distance of 444 km has come under cloud, and the respondent company has questioned how the chargeable distance came to be reduced by a difference of 110 km without there being any change in the actual distance in the route from Refinery Baad to Hisar.

111. The appellant railways, submitted that pursuant to the Ministry of Railway's letter dated 07.04.2004, a new methodology of 'Rationalization and Rounding-off' was adopted by the railways for calculating the chargeable distance between any two pair of stations. As per the new methodology, the chargeable distance was now to be calculated on the basis of the actual engineering distance of the various stations reckoned upto two decimal points. For determining the chargeable distance, the actual entering distance (upto two decimal) of each station in the route is first added up, and then the aggregate is rounded-off to the next kilometre only once at the end.

112. Furthermore, the new methodology had been adopted in order to bring uniformity in the procedure for determining chargeable distance throughout the railway, and the policy itself contemplated that the change in methodology would

likely result in variation from the existing freights and fares being levied under the old methodology.

113. The appellants have contended that owing to this change in policy and methodology, the earlier chargeable distance of 444 km came to be reduced to 334 km. The appellants have further submitted that the aforesaid letter dated 07.04.2004, specifically stipulates that the said change would only apply prospectively and that any variation from the old fares and freights will not be entitled to any refund.

114. We have gone through the aforesaid letter. Since the question before this Court pertains to the validity or correctness of the old chargeable distance of 444 km as per the old methodology and not one of refund of past freight charges solely on basis of a subsequent change in methodology. Thus, the prospective application of the change in methodology as per the letter dated 07.04.2004 has no bearing whatsoever, with the question that is before this Court.

115. The appellant railways has contended that the old chargeable distance of 444 km was valid and correct as per the old methodology and distance table that was prevailing at that time, and thus, the respondent company is not entitled to a refund.

116. Before, we proceed to determine the validity of the old chargeable distance of 444 km, we must try to understand the stance of the appellant railway in the present litigation, as discernible from their pleadings, which has left us quite perplexed. The argument of the appellant railways is twofold: -

(i) *First*, that the respondent company is not entitled to any refund whatsoever, since the change in chargeable distance was due to a change in the methodology, and that the old chargeable distance was correct as per the old methodology and distance table.

(ii) *Alternatively*, it has been contended that, in the event this Court finds that the respondent is entitled to refund of the difference in chargeable distance, the same would at best be a case of 'overcharge' and the claim could be said to be time-barred in terms of Section 106(3) of the Act, 1989.

117. Thus, the primary thrust of the appellant's contention is that this is neither a case of overcharge nor an illegal charge, as the old chargeable distance was valid as per the old methodology and distance table, thus, the respondent company is not entitled to any refund whatsoever.

118. However, interestingly, despite maintaining the aforesaid stance that no case is made out for a refund, the appellant railway itself during the pendency of the matter before the Railway Claims Tribunal, Ghaziabad granted refund to the respondent company in approx. 45 claims that were made within the 6-month statutory time period.

119. *Prima-facie* since the refund was not made by any adjudicatory authority it would have no bearing in the case of the appellant before this Court, however we should be mindful, that the appellant remarkably in its entire pleadings has nowhere explained why the refund was granted in the first place or even remotely indicated that the same had been granted due to a mistake.

120. The appellant despite contending that the old chargeable distance of 444 km was correct and valid as per the old methodology and the old distance table, the appellant has neither provided the complete old distance table nor explained what was the old methodology being used that resulted in a 110 km difference in the chargeable distance.

121. As discussed by us above in this judgement, when a charge is alleged to be illegal, it would be too much to expect a consignee such as the respondent herein to prove that a particular charge is illegal or not. It is only the authority who formulated and prescribed a particular charge that may be capable of establishing that a particular charge is valid or not. The threshold of the 'burden of proof' if we may use that term that is required to be discharged, when challenging a particular charge as an "illegal charge", is only on the preponderance of probabilities, upon which the onus will shift on the authorities to establish how the particular charge is valid.

122. In the instant case, the respondent whilst challenging the validity of the chargeable distance of 444 km has submitted as follows: -

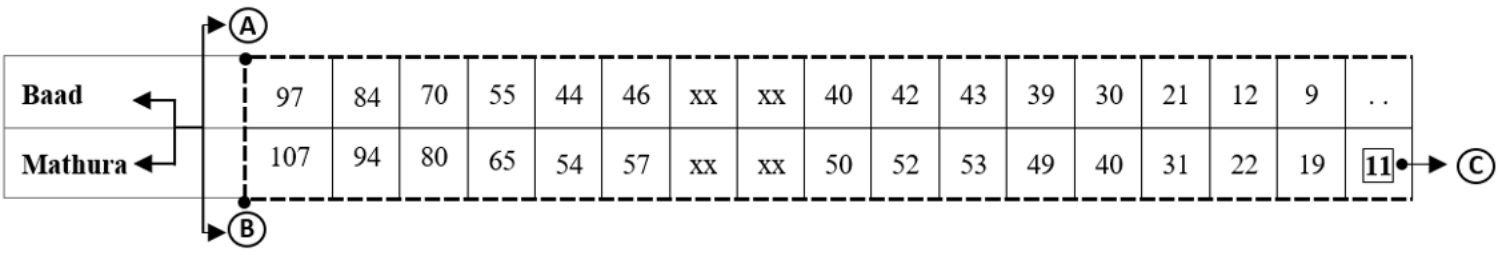
a. That, the notification / communication whereby the chargeable distance was reduced from 444 km to 334 km had no bearing with the change in policy in the methodology for calculating the chargeable distance as alleged by the appellants herein.
b. Further, the said communication shows that the chargeable distance was a matter of "correction" made after "critically reviewing" the old distance tables, and thus, indicating that the chargeable distance of 444 km was illegal.
c. The respondent, upon enquiry from the concerned railway office came to learn, that there been no change in either the physical tracks or the route to warrant a change in the chargeable distance from 444 km to 334 km.

123. The respondents have more than sufficiently showcased, how and why the chargeable distance of 444 km appears to be illegal. However, in response to the same the appellants herein have stated that, the chargeable distance of 444 km was correct as per the old distance table and the old methodology as prevailing, but have not been in a position to explain nor provide any documents to substantiate how the same was correct. Thus, except for a bald assertion, no other foundation has been laid for offering such a claim.

124. Despite the aforesaid, we ourselves have undertaken the pains of examining the validity of the chargeable distance of 444 km. A close reading of the Ministry of Railway's letter dated 07.04.2004 regarding the new rationalization methodology and a careful analysis of a small portion of the old distance table that was prevailing vis-à-vis the current distance table would give some insight and clarity over the old methodology that was being used to calculate the chargeable distance. For the purposes of explanation, the said distance tables are reproduced below: -

Figure 1: Distance Table as per the Old Methodology

STATIONS	Dhaulpur	Mania	Jaju	Bhandai	Agra Cantt	Raja ki Mandi	Bilochpur	Runkunta	Kitham	Farah	Bad	Mathura
Dhaulpur	. .											
Mania	13	. .										
Jaju	27	15	. .									
Bhandai	43	30	16	. .								
Agra Cantt	53	41	26	11	. .							
Raja-Ki-Mandi	57	44	30	15	4	. .						
Bilochpura	58	46	31	16	6	3	. .					
Runkunta	67	55	41	25	15	11	9	. .				
Kitham	76	64	49	34	24	20	19	11	. .			
Farah	88	75	61	46	35	31	30	21	12	. .		

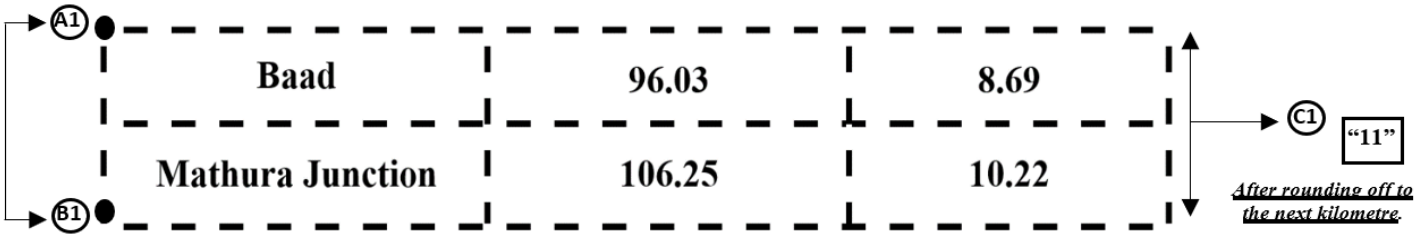


In the above distance table: -

- "**. .**" indicates the Originating Point, i.e., the station of origin from which the goods are booked / loaded for carriage.
- Chargeable Distance from one station to another is calculated by the aggregate of the distance of all stations between the Originating Station and the Destination Station.
- For example, the chargeable distance from Baad to Mathura is calculated by the actual engineering distance between the two pair of stations.
- "**(A)**" to "**(B)**" indicates the actual engineering distance between Baad and Mathura.
- "**(C)**" indicates the chargeable distance which is calculated by adding the distance between **(A)** & **(B)** and thereafter rounding off the aggregate to the next kilometre.

Figure 2: Distance Table as per the New Methodology

STATIONS	CUMULATIVE DISTANCE	INTER DISTANCE
Dhaulpur	0.0	0
Mania	12.45	12.45
Jajau	26.84	14.39
Bhandai	42.18	15.34
Agra Cantt	52.46	10.28
Raja ki Mandi	56.34	3.88
Bilochpura	57.79	1.45
Runkunta	66.86	9.07
Kitham	75.84	8.98
Farah	87.34	11.50
Baad	96.03	8.69
Mathura	106.25	10.22



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125. The striking difference between the Old Distance Table in Figure 1 and the New Distance Table in Figure 2 is that under the old methodology the distance between each station is being rounded-off, whereas in the new methodology the distance between each station is not rounded-off, and rather is indicated up-to two decimal points. Thus, in the Old Distance Table the chargeable distance between **(A)** Baad and **(B)** Mathura comes out to be **(C)** 11 km whereas under the New Distance Table distance between **(A1)** Baad and **(B1)** Mathura distance is indicated as 10.22 and upon rounding it off, the chargeable distance would come out to **(C1)** 11Km.

126. Thus, *prima-facie* it appears that under both; the Old Distance Table and the New Distance Table, the actual engineering difference was being taken into consideration, and the only difference between the two methodologies lies in the rounding-off. Under the old methodology, the actual engineering distance for every station was being rounded-off to the next kilometre, whereas under the new methodology this was done away, and only the cumulative distance is being rounded-off only once at the very end to the next kilometre.

127. Thus, when calculating the chargeable distance for a specific route under the old methodology, each station that exists in-between the route would at best add 1 km each. Thus, the extent to which the cumulative chargeable distance for a route would get inflated will roughly correspond to the number of stations it has

in its route, with each intervening station increasing the chargeable distance by a maximum of 1 km.

128. This is further evinced from the fact that, the Ministry of Railway's letter dated 07.04.2004 by which the new methodology was introduced, itself in the subject uses the words "*Rounding off of Chargeable Distance: Rationalization of fares and freight*". This indicates that both methodologies utilized actual engineering distance with the only underlying difference between both of the them being in respect of rounding-off and nothing more.

129. Furthermore, in the letter dated 05.07.2005 issued by the Chief Goods Supervisor (CGS), Northern Railway, whereby the chargeable distance from Refinery Baad to Hisar was reduced from 444 km to 334 km, it is nowhere mentioned that the same was done pursuant to the new methodology of "Rationalization of Rounding Off" or by virtue of the Ministry of Railway's letter dated 07.04.2004 whereby the new methodology was introduced for the first time.

130. The aforesaid letter dated 05.07.2005 of the CGS only goes so far as to say that the old distance tables were "critically reviewed" and that now the chargeable distance should be 334 km. In fact, the aforesaid letter further instructs CGS Baad that "*the other disputed distance should also be corrected as per the new junction table and the correct distance should be charged*". The use of the words "*disputed*" and *"corrected"* used in the said letter clearly indicates that the

distance of 444 km was incorrect in itself, and that the change in the chargeable distance had nothing to do with the new methodology of 'Rounding Off'.

131. We are conscious of the fact that in the aforesaid letter dated 05.07.2005, it was indicated that the chargeable distance of 444 km was being levied as per the old distance table, and that the same was corrected as per the revised distance table. However, it must be borne in mind, that merely because the chargeable distance of 444 km was correct as per the old distance table will not *ipso-facto* make the chargeable distance of 444 km correct.

132. The correctness of a chargeable distance is dependent upon the correct application of the methodology prescribed by law and correct calculation of the same pursuant to the methodology. A distance table, is a public document, which is available and displayed at each station, whenever a consignment is to be booked, the chargeable distance is calculated as per that distance table, had the distance table been incorrect, the respondent company would have disputed the same the very first moment when the consignment was probably being booked.

133. We have no reason to doubt that the chargeable distance as calculated by the old distance table would have come out to 444 km, had it not, it would have been pointed out by the respondent company then and there. But merely because the calculation of the chargeable distance as per the old distance table is correct would not make the distance table correct as-well.

134. The case of the respondent is that the calculation and application of the old methodology used for the formation of the distance table was incorrect, due to which inherent error has crept into the said distance table, thus it is the distance table which is incorrect and by its extension the chargeable distance of 444 km which is required to be payable by the law i.e., the notified distance table.

135. Remarkably, even the Railway Claims Tribunal in its order had observed that the "**actual distance**" (emphasis) from Baad to Hissar was 334 km (sic 333.18 km), and the sole reason why the RCT rejected the claims of the appellant was on the ground of being time-barred by Section 106(3) of the Act, 1989, which we have already stated, is not applicable in the instant case. The relevant observations read as under: -

> *"18. [...] In this case, the goods were booked from 'A' to 'B', showing the chargeable distance as 444 Kms. and payment was given by the applicant company for the same distance, but later on, Railways reworked the chargeable distance as only 333.18 Kms. The consignment in question was carried through the same route. So, it is clear that the payment was to be made for 333.18 Kms, whereas it was made for 444 Kms. So, it is clear that the payment was to be made for 333.18 Kms., whereas it was made for 444 Kms.*
>
> *xxx xxx xxx*
>
> *22. [...] from the facts of the present case in hand, as in the present case, the applicant company was well within the knowledge of the* ***actual distance from Baad to Hisar was 333.16 Kms****, instead of 444 Kms."*
>
> (Emphasis supplied)

136. As afore-stated, since the only tangible difference between the old methodology and the new methodology is of rounding-off, the effect of change

in methodology upon the chargeable distance would have at best been limited or confined to a difference of 1 km for each corresponding intervening station. The route from Refinery Baad to Hisar has about 48 stations (approx..). It is not the case of the Appellant that there was any change in either the route by way of addition of new station or any change in the physical track length of the said route. Thus, a mere change in methodology would not have resulted in a difference of 110 km in the chargeable distance.

G. CONCLUSION

137. Thus, we are of the considered opinion, that the chargeable distance of 444 km was illegal, for the following reasons: -

(i) That, the effect of the change in methodology on the chargeable distance would not have resulted in a huge difference of 110 km,

(ii) That, there had been neither any change in the route by way of addition of new station nor change in the physical track length of the said route,

(iii) The letter dated 05.07.2005 itself indicates that the change in the chargeable distance of 444 km was due to an error, and has no bearing with the Ministry of Railway's letter dated 07.04.2004 introducing the new methodology.

(iv) The factum of the appellants themselves granting refund without explaining the reason for the same, despite their stance that the respondent is not entitled to any refund.

(v) The failure of the appellant in establishing that the chargeable distance of 444 km was the correct chargeable distance as per the law.

(vi) Concurrent findings of both, the Railway Claims Tribunal and the High Court on the limited aspect of the actual distance being 333.18 km.

138. Thus, for all the foregoing reasons, we have reached to the conclusion that the said chargeable distance of 444 km was illegal. We find no infirmity with the impugned judgement and order passed by the High Court.

139. In the result, the appeals filed by the appellant railway fails, and are hereby dismissed.

140. The parties shall bear their own costs.

141. Pending application(s), if any, also stand disposed of.

..... J.
(J.B. Pardiwala)

..... J.
(Sandeep Mehta)

New Delhi
21st March, 2024