Supreme Court of India
Birla Cement Works vs G.M., Western Railways & Anr on 2 January, 1995
Equivalent citations: 1995 AIR 1111, 1995 SCC (2) 493
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
BIRLA CEMENT WORKS

Vs.

RESPONDENT:
G.M., WESTERN RAILWAYS & ANR.

DATE OF JUDGMENT02/01/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 AIR 1111 1995 SCC (2) 493
JT 1995 (2) 59 1995 SCALE (1)386

ACT:

HEADNOTE:

JUDGMENT:

1. The petitioner is a manufacturer of cement at Chittorgarh in Rajasthan. It had transported cement to various destinations through railway carriages. Prior to 3.5.1989, 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. In consequence 34 kilometers' distance was added to levy freight charges. Thereafter, between May-June, 1989 and March, 1990 the petitioner had, various consignments, booked and transported the cement to diverse destinations and paid the freight charges. Later, on January 21, 1991, the petitioner has sent a notice to the Western Railway under Section 78-B of the Indian Railway Act, 1890, (for short, 'the Act'), claiming refund of different amounts. Since it was rejected, on 23.12.1991 the petitioner laid the claim under s. 16 of the Act before the Railway Claims Tribunal at Jaipur, which by its Order dated 25.11.1992, dismissed the petition holding as being barred under s.78B of the Act. When it was challenged in Civil Appeal No.84/93 and batch the Single Judge of the High Court by his order dated 25.1.1994 dismissed the same. On further appeal No.76/94, the Division Bench by order dated

3.10.94 confirmed the same. Thus, these Special Leave Petitions.

2. The principal contention raised by the petitioner is that it had discovered the mistake when the railway authorities have confirmed by their letter dated 12.10.1990 that they have committed 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 s.17(1)(c) of the Limitation Act, 1963 Act 21 of 1963 and that s.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.

3. Section 17(1)(c) of the Limitation Act, 1963, would apply only to a suit instituted or an application made in that behalf in the civil suit. The Tribunal is the creature of the 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 'over charges' and the limitation is not saved by operation of s. 17(1)(c) of the Limitation Act.

4. Section 78-B of the Act provides that a person shall not be entitled to refund of over-charge 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 over charge is also a charge which would fall within the meaning of s.78-B of the Act. Since the claims were admittedly made under s.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.

5. We do not find any ground for our interference with the orders challenged in S.L.Ps. The Special Leave Petitions are accordingly dismissed.