

BIRLA CEMENT WORKS  
v.  
G.M. WESTERN RAILWAY AND ANR.

JANUARY 2, 1995

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Limitation Act, 1963—S. 17(1)(c)—Indian Railways Act, 1890—S.78-B: Limitation for claiming refund of over charges or excess payment—Claim for refund of over charge or excess payment under section 78-B of Indian Railways Act beyond six months would fall within the meaning of Section 78-B of the Act and claim barred by operation of the Proviso of Section 78-B. 17(1)(c) of Limitation Act—No application.*

**The petitioner is a manufacturer of cement in Rajasthan. Petitioner got the cement transported through meter gauge from the railway siding at Chandina prior to 3.9.1989. After conversion of meter gauge into broad gauge additional 34 kilometers distance was added to levy freight charges. Thereafter various consignments booked by the appellant and transported the cement to diverse destination and paid the freight charges between May-June 1989 and March 1990.**

**A notice was sent to the Western Railway by the appellant under section 78-B of the Indian Railways Act, 1890 claiming refund of different accounts. On its rejection a claim under section 16 of the Act made before the Railway Claims Tribunal. The principal contention raised by the petitioner was that it had discovered the mistake when the railway authorities have confirmed by their letter dt. 12.10.1990 informing that they have committed mistake in charging excess freight charges on wrong calculation of distance. It was therefore claimed that the limitation starts running from the date of discovery of mistake and therefore stood excluded by operation of Section 17(1)(c) of the Limitation Act, 1963 in this case.**

**The Railway Tribunal dismissed the petition holding as being barred under section 78-B of the Indian Railways Act, 1890. Appeal to Single Judge of the High Court was dismissed. On further appeal, the Division Bench confirmed the same. Hence this Appeal.**

**Dismissing the appeal, this Court**

**A** HELD : 1. 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 Section 17(1)(c) of the Limitation Act. [7-D]

**B** 2. An over charge is also charge which would fall within the meaning of Section 78-B of the Indian Railways Act 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. [7-F]

**C**

CIVIL APPELLATE JURISDICTION : Special Leave Petitions (C)  
Nos. 21448 of 1994 etc. etc.

**D** From the Judgment and Order dated 3.10.94 of the Rajasthan High Court in C. Spl. A No. 76 of 1994.

A.K. Chitale, Praveen Kumar and Virendra Kaushal for the Petitioner.

**E** The following Order of the Court was delivered :

**F** 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. 78-B the Act. When it was challenged in Civil

**G**

**H** 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.

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.

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.

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 to the amount claimed.

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