

\$~R-209

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: October 17, 2016

+ **FAO 200/2010 & C.M.13646/2016**

S.S.A INTERNATIONAL LTD Appellant
Through: Mr. N.M. Popli, Mr. Anuj Saxena
and Mr. Yogesh Bhardwaj,
Advocates

Versus

UNION OF INDIA & ANR Respondents
Through: Mr.A.S. Dateer, Advocate

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

JUDGMENT
(ORAL)

%

Appellant's claim petition seeking refund of ₹78,05,260/- with interest stands dismissed by Railway Claim Tribunal vide impugned order of 2nd June, 2009 by holding that the under charges were correctly imposed upon appellant. The factual matrix of this case is already noted in the impugned order and needs no reproduction. It is the case of appellant that consignment of Paddy Husk (hereinafter referred to as *Bhoosa*) was sent from Bihar to Panipat on 24th February, 2007 whereas it is the case of respondents that during the course of preventive check conducted by the Vigilance Department of respondents at Panipat on 27th February, 2007 the contents of the consignment in question was found to

be rice bran and not *Bhoosa* and accordingly, under charges were levied upon appellant which were duly paid by him. In the claim petition, the stand of appellant was that the under charges were levied without giving any opportunity of hearing to appellant, which is against the principles of natural justice. Learned Tribunal on the pleadings of the parties had framed issues and the evidence was led by the parties and thereafter, vide impugned order appellant's claim petition has been dismissed.

The challenge to impugned order by learned counsel for appellant is on the ground that principal issue No.3 has been decided by trial court without dealing with the plea of appellant regarding imposition of penalty without following the principles of natural justice. To submit so, attention of this Court is drawn to appellant's communication of 2nd March, 2007 (Annexure P-8) to show that the penalty amount was deposited under protest and the said document is on trial court record as Ex. C-9 and this document has not been considered by learned Tribunal and so, the impugned order deserves to be set aside. Reliance is placed upon Supreme Court's decision in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Others*, (2005) 7 SCC 764 and *Ashok Kumar Sonkar v. Union of India and Others*, (2007) 4 SCC 54 to assert that no one can be condemned unheard and an opportunity of hearing ought to be provided unless it is found to be a futile exercise or if no prejudice is caused.

On the other hand, learned counsel for respondents supports impugned order and submits that there is no infirmity in the order

impugned in this appeal and that appellant has relied upon documents at Annexure P-11 to P-14, which show that the goods in question were rice brain and so, under charges have been rightly levied. An application has been filed by respondents' counsel under Section 340 of Cr.P.C. for launching criminal proceedings against the Directors of appellant-company for filing a false claim before trial court and for filing photocopy of documents at Annexures P-11 to P-14 with affidavit. In rebuttal, learned counsel for appellant submits that the documents at Annexures P-11 to P-14 do not pertain to the consignment in question and were inadvertently filed and no case for invoking provisions of Section 340 of Cr.P.C. against appellant is made out.

Respondent in its evidence has got examined a formal witness, who has tendered a vigilance report of 25th April, 2007 and in the cross-examination, he has pleaded ignorance about the vigilance report while claiming to be a formal witness, who has just tendered the vigilance report.

Upon hearing and on perusal of impugned order, evidence on record and the decisions cited, I find that the principal plea of appellant of violation of principles of natural justice, though raised, has not been dealt with by learned Tribunal in the impugned order. It was incumbent upon learned Tribunal to do so with reference to applicable rules and regulations. The principal issue of justification to impose under charges has been decided by learned Tribunal with no reference to the evidence on record. Learned Tribunal has erroneously relied upon one

circumstance of appellant paying the under charges for getting the goods released. Learned Tribunal has proceeded on the surmise of appellant getting release of the consignment of ₹58 lacs odd by paying a penalty of ₹78 lacs odd and has concluded that no prudent person would do so.

During the course of hearing, it was pointed out by learned counsel for appellant that if the consignment whether it be *Bhoosa* or anything else is not got released, then heavy demurrage charges are imposed and to avoid the demurrage charges, consignment was got released and that too under protest and this basic plea has not been dealt with in the impugned order.

A bare perusal of impugned order shows that appellant's plea of getting the consignment released on payment of penalty charges under protest has not been dealt with by learned Tribunal in the impugned order. This by itself renders the impugned order unsustainable and makes out a case for remand and decision afresh on the basis of evidence already led.

So far as the application under Section 340 of Cr.P.C. filed by respondent is concerned, I find that the documents at Annexures P-11 to P-14 are of a period post the consignment and are thus of no relevance. It is quite possible that due to inadvertence these documents have been filed by appellant. However, there is no justification to entertain respondent's application under Section 340 of Cr.P.C. and hence, the application under Section 340 of Cr.P.C. is dismissed.

In the light of the aforesaid, impugned order is set aside and the matter is remanded back to the trial court for decision afresh in light of evidence already on record.

Since it is an old matter, therefore, learned Tribunal shall make all endeavours to decide it afresh within a period of four months from 2nd November, 2016, the date when the parties through their counsel shall appear before the learned Tribunal for hearing.

Trial court record be remitted back forthwith.

With aforesaid directions, this appeal and the application are disposed of.

OCTOBER 17, 2016

s

**(SUNIL GAUR)
JUDGE**

