(2006) 12 MAD CK 0208

Madras High Court

Case No: O.S.A. No''s. 298 of 1994 and 376 of 2001 and C.M.P. No''s. 12864 and 12865 of 2005

The Cotton Textiles Export Promotion Council		APPELLANT
	Vs	
South Handys Agencies and The Union of India (UOI) South Handys Agencies, Sole Prop. G. Palanisamy Vs The Cotton Textiles Export Promotion Council and Others		RESPONDENT

Date of Decision: Dec. 16, 2006

Acts Referred:

- Imports and Exports (Control) Act, 1947 - Section 1, 7
- Limitation Act, 1963 - Article 55

Hon'ble Judges: S.J. Mukhopadhaya, J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: K.S. Natarajan, for Anand Das Gupta, in O.S.A. No. 298 of 1994 and M.S. Sundararajan, in O.S.A. No. 376 of 2001, for the Appellant; K.S. Natarajan, for Anand Das Gupta in O.S.A. No. 376 of 2001 and M.S. Sundararajan in O.S.A. No. 298 of 1994, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.

The first defendant in C.S. No. 393 of 1980 is the appellant in O.S.A. No. 298 of 1994 and the plaintiff in the said suit is the appellant in O.S.A. No. 376 of 2001. The parties will be hereinafter referred to in the same manner in which they have been described in the suit.

2. The plaintiff filed the suit for a decree to direct the defendants 1 to 4 to pay the cash assistance amounting to Rs. 92,578.35 and import licence of staple fibre for 20,240 kgs. for the quantity exported, namely 16,192 kgs. of staple fibre or any

other permissible goods equivalent to 20,240 kgs. of staple fibre, apart from directing the defendants 1 to 4 to pay the plaintiff a sum of Rs. 3 lakhs with interest @ 18% on the said sum from the date of plaint till the date of payment.

3. Brief facts which led to the filing of the suit can be stated as under:

The plaintiff was dealing in sale of textile goods and is a member of the first defendant-Cotton Textile Export Promotion Council. The plaintiff received a telegram Ex. P-1, dated 30.8.1972 from the first defendant, intimating the plaintiff about the visit of a delegation to Madras and also direct the plaintiff to keep its samples ready for inspection by a delegation from Bangladesh. According to the plaintiff, the first defendant was authorised by the fourth defendant to export all kinds of textiles to Bangladesh during the relevant period, namely in the year 1972, that a delegation came from Bangladesh to India towards the end of August 1972 for the purchase of textiles and under Ex. P-1, the first defendant directed the plaintiff to keep ready the samples of textile goods like sarees, lungies, etc., at Madras for inspection by the delegation. It is stated that as directed, the plaintiff displayed the staple fibre sarees and that rates were also quoted by it. Thereafter, according to the plaintiff, the first defendant under Exs. P-4 and P-4.A, dated 13.9.1972, assigned its contract with the Bangladesh party for the supply of power staple fibre sarees for quantity of 15,000 and 25,000 pieces for F.O.B. value of Rs. 3,70,713.40. The plaintiff stated that the first defendant specifically mentioned in Exs. P-4 and P-4.A as to the period within which the shipment be completed, bank guarantee be furnished by the plaintiff, the service charges payable at the rate of 2% of the C & F value to the first defendant and also the entitlements and the benefits such as cash assistance as well as other export function incentive and distance premium which the plaintiff would be entitled to pursuant to the said assignment. It is also stated that the price at which the plaintiff was to supply the goods was also settled at that time when the delegation inspected the sample products displayed by the plaintiff, pursuant to which the contract came to be entered into by the first defendant with the Bangladesh delegation, which was subsequently assigned to the plaintiff. The plaintiff is stated to have furnished the bank guarantee and also paid the service charges of 2% in a sum of Rs. 7,350/- to the first defendant. It is also not in dispute that the plaintiff duly carried out the export as per the assigned contract under Exs. P-4 and P-4.A. Subsequently, the plaintiff applied for the benefit of cash assistance as well as the other export entitlements with all relevant records and payment of necessary fees to the second and third defendants. The plaintiffs claim for export entitlements except the import of dyes and chemicals, came to be rejected by the third defendant, while the claim for cash assistance came to be rejected by the second defendant. The rejection of the plaintiffs claim by the third defendant was stated to have been made once on 17.2.1976 and the rejection of his second appeal was stated to have made on 19.7.1976 under Exs. P-34 and P-37 respectively. The plaintiff is stated to have preferred a review application on 2.9.1976, which remained pending with the third defendant. The plaintiffs claim for

cash assistance came to be rejected by the second defendant under Ex. P-40 dated 9.9.1977. It is in the above stated circumstances, the plaintiff filed the above suit with the prayers mentioned above.

4. The suit was resisted mainly by the first defendant by filing a written statement and additional written statement. The defendants 3 and 4 filed independent written statements, refuting the claim of the plaintiff. The second defendant neither filed any written statement nor made any contest to the suit claim. The other defendants 5 to 8 were only formal parties, who also did not resist the claim of the plaintiff.

5. On behalf of the first defendant, it was contended that there was no cause of action to the suit claim as against it, that the claim was barred by limitation, that no part of cause of action had arisen within the jurisdiction of this Court, that there was no privity of contract or any other legal relationship between the plaintiff and the first defendant, that the suit was misconceived and a frivolous one, and was also bad for misjoinder of parties. The first defendant however admitted the induction of the plaintiff as one of its members with effect from 24.8.1972 and that it ceased to be a member with effect from 1.4.1975. It is also stated that it entered into two contracts dated 9.9.1972 with the Trading Corporation of Bangladesh and assigned the same to the plaintiff by its assignment letters dated 13.9.1972, namely Exs. P-4 and P-4.A respectively. The first defendant however denied to have given any information to the plaintiff about the arrival of trade delegation from Bangaladesh or that it was asked to keep any samples ready at the time of their visit. It was also specifically denied to have assured any benefits out of the intended export to Bangaladesh, such as cash assistance, replenishment licence etc. The payment of service charges of Rs 7,350/- was also denied. According to the first defendant, none of the benefits were denied by it, that since the first defendant did not have authority to grant any cash assistance or other import benefits such as replenishment licence except the issuance of no objection certificate by it, that it would not claim any import replenishment licence against export of staple fibre sarees effected by the plaintiff and that there was no question of the first defendant liable to meet the claim of the plaintiff.

6. In the additional written statement, the first defendant claimed that it was a representative body of exporters of textiles from India, that at the instance of the Government of India, the first defendant negotiated with the trade delegation from Bangladesh, which visited India in 1972 and entered into various export contracts with it, that the grant of cash assistance was not the concern of the first defendant and that it was the function of the Government of India and that the Government of India decided that in respect of such exports to Bangladesh, no cash assistance would be payable, since the prices offered by Bangladesh were remunerative to the suppliers. It was also contended that the import benefits were available only to such exports which were made through the State Trading Corporation of India Limited or on its accounts, and that the cash assistance was also dependent upon the

compliance of a detailed procedure as laid down by Silk and Rayon Textiles Export Promotion Council and the entitlement of the plaintiff was dependent upon the compliance of various conditions prescribed under the procedure. It was therefore contended that since necessary no objection certificate was issued by the first defendant, no further obligation was cast upon the first defendant to deal with the claim of the plaintiff. It was therefore contended that the plaintiff was not entitled for any relief much less the relief as claimed in the suit.

7. The third and fourth defendants raised identical defence. According to the third and fourth defendants, since the plaintiff did not carry out its export through the State Trading Corporation, but through the first defendant, it was not entitled for the import benefits and that in any event, since the plaintiff was only a merchant exporter, such benefits cannot be extended to it. It was further stated that the defendants 3 and 4 were unnecessary parties to the suit.

8. On the above said pleadings, the parties went on for trial before the earned single Judge On the side of the plaintiff, its sole proprietor was examined as P.W. 1 and on the side of the defendants, one Thiru. N. Ravindranathan, Assistant Director of the first defendant was alone examined as D.W. 1. Exs. P-1 to P-67 were marked on the side of the plaintiff. Exs. D-1 to D-4 were marked on the side of the defendants.

9. On the above referred to pleadings, the learned single Judge framed the following seven issues and one additional issue for consideration:

1. Whether no part of the cause of action has arisen within the jurisdiction of this Court?

2. Whether the first defendant has committed breach of contract as contended by the plaintiff?

3. Whether defendants 3 and 4 are necessary parties to the suit?

4. Whether the suit is barred by limitation as contended by the first defendant?

5. Whether the plaintiff is entitled to export entitlements and cash assistance as contended by him?

6. Whether the plaintiff is entitled to the alternative relief against the first defendant?

7. To what relief, the parties are entitled?

Additional issue:

1. Whether the jurisdiction of the civil Court is barred u/s 7 of the Import and Export (Control) Act?

10. On issue No. 1, the learned single Judge held that the cause of action has arisen well within the jurisdiction of this Court-to entertain the suit. On issue No. 4, the

learned single Judge held that the suit was well within time and was not barred by Article 55 of the Limitation Act. On issue Nos. 2, 3 and 5, the learned single Judge held that the defendants 2 to 4 were not liable to issue any cash assistance and replenishment licence to the plaintiff and that the defendants 3 and 4 were unnecessary parties to the suit. As far as the first defendant was concerned, the learned single Judge took the view that the first defendant committed breach of contract as contended "by the plaintiff. Ultimately, while answering issue Nos. 3 and 5 against the plaintiff, on issue No. 2, the same was answered in its favour. On additional issue No. 1, the learned single Judge held that Section 7 of the Import and Export (Control) Act does not bar the jurisdiction of the Civil Court inasmuch as the suit was filed based on the agreement entered into between the first defendant and the plaintiff. On issue No. 6, the learned single Judge ultimately held that the plaintiff failed to prove the expected extent of profit and what was the actual loss sustained by it based on the false promise made by the first defendant. Since the cash assistance was not a grant, but only an assistance recoverable from the exporter, namely the first defendant, a sum of Rs. 92,578.35 which was 25% of the FOB value of the exported goods and if the said amount had been given to the plaintiff in the year 1973, the plaintiff would have earned atleast a sum of Rs. 63,000/- by way of interest @ 9% p.a. and on that basis, granted the same by way of compensation as claimed in paragraph 18(b) of the plaint as against a sum of Rs. 3 lakhs. The said relief was granted as against the first defendant alone. On issue No. 7, the learned single Judge held that the plaintiff would be entitled to the compensation of Rs. 63,000/- from the first defendant with proportionate costs and with subsequent interest @ 12% from the date of suit till the date of realisation. The other reliefs claimed in the suit were rejected. The suit as against the defendants 2 to 8 was dismissed. The first defendant was directed to pay the Court Fee for the amount decreed and the plaintiff in respect of the claims which were negatived.

11. Aggrieved by the above judgment and decree of the learned single Judge, insofar as it related to the first defendant, O.S.A. No. 298 of 1994 has been filed, while the plaintiff has preferred O.S.A. No. 376 of 2001 insofar as it related to the rejection of the other reliefs claimed by it.

12. Assailing the impugned judgment, Mr. Natarajan, learned Counsel appearing for the first defendant, after taking us through various documents, in particular, Exs. P-3, 3.A, 4 and 4.A, submitted at the outset that irrespective of the above documents, there was no agreement between the plaintiff and the first defendant to conclude that the first defendant was obliged to confer the benefit of cash assistance or other normal export benefits based on the export of staple fibre sarees to Bangladesh carried out by the plaintiff. According to the learned counsel, the assignment of the first defendants contract Exs. P-3 and 3-A to the plaintiff through Exs. P-4 and 4-A cannot be construed as binding contract between the parties to the extent of obligating the first defendant to pay cash assistance to the plaintiff and that when the learned single ''Judge, having recognised the said

position, was not justified in granting the relief of compensation to the extent of Rs. 63,000/- to the plaintiff. By specifically referring to the Clause in Exs. P-4 and 4-A, namely "You will be entitled to cash assistance at the rate of ____ % on the FOB value of the goods exported, besides normal export function incentive and distance premium, wherever applicable." Learned counsel contended that the said Clause in the assignment letters only discloses that by virtue of assignment of the contracts, the plaintiff would only be entitled to such of those benefits from the concerned authorities, if such benefits would be available as per whatever stipulations that were prevailing. The learned Counsel would therefore contend that if by virtue of application of the prescribed rules, regulations or conditions, the plaintiff was not entitled for such benefits, it will have to be construed that such benefits were not applicable to the case of the plaintiff and therefore, the first defendant cannot be in any way blamed for non-conferment of such benefits. The learned Counsel contended that insofar as the first defendant was concerned, it carried out its obligation by issuing ''no objection certificate'' as per Ex. P-8, making it clear that it would not claim import replenishment licence against exports and beyond that, the first defendant was not expected to issue any other document. In support of the above submissions, learned Counsel relied upon Exs. P-30, 34 and 37, the rejection letters issued by the third and fourth defendants insofar as it related to import replenishment licence and Exs. P-43 and 45 insofar as it related to cash assistance. As regards the question of limitation, the learned Counsel contended that pursuant to Exs. P-4 and 4-A, dated 13.9.1972, the goods were shipped in October 1972 and since the cause of action arose as early as in November 1972, the presentation of the plaint on 29.3.1978 was far beyond the period of three years'' limitation prescribed under Article 55 of the Limitation Act and therefore, the suit was liable to be rejected on the ground of limitation.

13. As against the above submissions, Mr. M.S. Sundararajan, learned Counsel appearing for the plaintiff contended that it was only at the instance of the first defendant under Exs. P-1 and 2, the plaintiff was dragged into the transaction of export to Bangladesh based on Exs. P-4 and 4-A assignment letters issued by the first defendant, that the first defendant having admitted the membership of the plaintiff with it, cannot now be heard to say that it was not in any way concerned with the suit transaction, that when the plaintiff specifically pleaded in paragraph 13 of the plaint about the obligation of the first defendant to have ensured the derival of various benefits as per its assignment letters which was not fully refuted by the first defendant in its written statement, the learned single Judge ought not to have rejected the claim of the plaintiff made in paragraph 18(a) of the plaint as well as the entire claim as made in paragraph 18(b) of the plaint. The learned Counsel placed heavy reliance upon Ex. P-40 dated 9.9.1977 and contended that when the first defendant was the authority prior to 1.1.1973 as regards the exports to Bangladesh and having specifically provided in the assignment letters, namely Exs. P-4 and 4-A, assuring the entitlement of the plaintiff for cash assistance and other export

benefits, cannot be allowed to resile from the said obligation, as held by the learned single Judge. The learned Counsel therefore contended that once breach of the said obligation having been found as a matter of fact by the learned single Judge, the learned single Judge ought to have granted the relief in its entirety. The learned Counsel also contended that non-grant of import licence by way of replenishment by the third and fourth defendants on the ground that the goods exported by the plaintiff did not meet with the classified items, was not justified, in the light of Ex. P-42 which was the certificate issued by the Textiles Committee under the Government of India, Ministry of Foreign Trade, confirming that the viscose staple fibre and spun rayon are one and the same, inasmuch as spun rayon is obtained as the viscose staple fibre is converted to yarn using cotton spinning machinery for its manufacture. The learned Counsel also contended that the rejection of import licence by the third and fourth respondents on the ground that the plaintiff is only a merchant exporter and not a manufacturer was also contrary to the Import Trade Control Policy prevailing between April 1972 and March 1973. The learned Counsel also pointed out that under Ex. P-66, Clause 14 of Section 1 - Part-B which is the Import Policy for registered exporters, specified that the applications for import licences under the Policy could be entertained from registered exporters including the merchant exporters, manufacturing exporters and export houses holding eligibility certificates, in the private and public sectors. The learned Counsel contended that the first defendant categorically agreed to secure the benefits to the plaintiff as an exporter and having lured the plaintiff to carry on the export at a price which was far below the prevailing market price of the goods exported, it was the duty of the first defendant to have ensured due compliance of such assured benefits under Exs. P-4 and 4-A through the defendants 3 to 5 and having failed to carry out its obligations, would entitle the plaintiff to seek for the said relief in the suit in its entirety.

14. As regards the question of limitation, the learned Counsel for the plaintiff contended that the third and fourth defendants having rejected the claim of import licence by the fourth defendant''s communication dated 19.7.1976, the filing of the suit within three years from the said date, namely on 29.3.1978 was well within time and therefore, the conclusion of the learned single Judge that the suit was not barred by limitation should not be interfered with.

15. Having heard the learned Counsel for the respective parties, and after having perused the pleadings of the parties and the respective stand of the plaintiff and the defendants, we frame the following issues for consideration in these appeals:

(i) Whether the suit was barred by limitation as contended by the defendants 1, 3 and 4?

(ii) Whether the first defendant has committed breach of contract and if so, what is the relief to be granted to the plaintiff?

(iii) Whether the alternative relief of compensation granted by the learned single Judge is sustainable? and

(iv) To what relief the parties are entitled to?

16. Issue No. 1 : Whether the suit was barred by limitation as contended by the defendants 1, 3 and 4?

The suit was filed by the plaintiff on 29.3.1978. Pursuant to the assignment order dated 13.9.1972 under Exs. P-4 and 4-A, the plaintiff carried out its export obligations by October 1972 as disclosed by the plaintiff in its communication dated 15.2.1975 and in Ex. P-7. It is not in dispute that the present transaction of the plaintiff is governed by Article 55 of the Limitation Act, which reads thus:

No. of the Article	Description of suit	Period of limitation	Time period b
Article 55	For compensation for the breach of any contract, express or implied not herein specifically provided for.	Three years	When t broken there a breache breach which t institu (where continu ceases

The period of limitation as provided under the said Article is three years from the date when the contract is broken or when the breach occurred or if the breach was continuing, the date when it ceased.

17. Under Exs. P-4 and 4.A, the first defendant has stipulated that the plaintiff would be entitled to cash assistance at the rate of ____ % of the FOB value of the goods exported, besides normal export function incentive and distance premium wherever applicable. It also stipulated that the plaintiff is liable to pay service charges calculated @ 2% of the C & F value to the first defendant. After completion of the shipment, the plaintiff admittedly paid the service charges under Ex. P-6 on 2.7.1973. Thereafter, on 25.11.1972 (Ex. P-51), the plaintiff applied to the second defendant for payment of cash assistance by submitting the required documents in the prescribed format. Similarly, by its communication dated 19.1.1973 (Ex. P-20) to the third defendant, the plaintiff applied for issuance of import licence by furnishing the required documents.

18. As far as the cash assistance was concerned, the second defendant by its communication dated 26.11.1973 (Ex. P-28), directed the plaintiff to obtain clearance certificate from the first defendant. The first defendant issued a certificate under Ex. P-8 dated 29.3.1975 confirming that the plaintiff effected export of staple fibre sarees to Bangladesh during the period October-December 1972 under Shipping Bill No. 922, dated 25.10.1972 and that they have no objection for the claim of import licence benefits from the authorities concerned, subject to fulfilment of such terms and conditions as are prescribed. The second defendant under Ex. P-27 dated 11.11.1976, reiterated that unless the plaintiff obtained a clearance certificate from the first defendant, it will not be able to consider the plaintiffs claim for cash assistance. However, the first defendant under Ex. P-12, dated 15.12.1976 addressed to the plaintiff, took a stand that it is not possible for it to give any more certificate other than the one already issued to the plaintiff and that it is for the plaintiff to work out its remedy in the manner known to it. Thereafter, the first defendant itself sent a communication dated 2.3.1977 (Ex. P-14) to the plaintiff forwarding a copy of the communication of the second defendant dated 20.1.1977 (Ex. P-14.A). Under Ex. P-14.A, the second defendant had stated about the entitlement of the plaintiff for 5% import licence for dyes and chemicals as well as REP licence/replenishment from the licensing authorities. Ex. P-14.A did not state anything about the entitlement of the cash assistance payable to the plaintiff. Thereafter, the second defendant issued Ex. P-40 dated 9.9.1977, wherein the second defendant for the first time, stated that the export made by the plaintiff had been effected through the first defendant, which was the authority nominated by the fourth defendant for export of all textiles to Bangladesh till the issue of public notice dated 1.1.1973 issued by the Ministry of Foreign Trade, in and by which the export to Bangladesh was also brought under the jurisdiction of the second defendant. The second defendant therefore made it clear in Ex. P-40 that since the first defendant was in-charge of such export made by the plaintiff, the question of considering the plaintiffs claim for cash assistance by it did not arise. It also made it clear that it was treating the matter as finally closed so far as the second defendant was concerned and any future correspondence should be carried out directly with the first defendant.

19. Similarly, after the plaintiff''s application under Ex. P-20 dated 19.1.1973 for issuance of the import licence, the plaintiff sent a subsequent reminder under Ex. P-21 dated 30.6.1973 to the third defendant. By letter dated 16.10.1973 under Ex. P-22, the third defendant informed the plaintiff that its request for release order cannot be accepted, since the export was not routed through the State Trading Corporation of India and that the import of viscose staple fibre would be allowed only against the export of spun rayon fibre and not for the goods exported, namely pure viscose stable fibre sarees. The plaintiff sent its reply dated 17.10.1973 under Ex. P-23 wherein the plaintiff enclosed a certificate issued by the Textiles Committee under the Government of India and functioning under the Ministry of Foreign Trade, dated 8.5.1975 (Ex. P-42), which stated that pure viscose staple fibre and spun rayon

are one and the same. The plaintiff also pointed out by enclosing copy of Ex. P-40 dated 9.9.1977 which is the communication of the second defendant stating that it was the first defendant who was the authority nominated by the fourth defendant for carrying out any export to Bangladesh. The plaintiff sent further reminder to the Ministry of Commerce under Ex. P-24 dated 5.12.1973. By Ex. P-25 dated 15.6.1974, the fourth defendant held that it was decided in its meeting that no cash assistance should be granted to exporters of staple lungies to Bangladesh, as those were competitive in Bangladesh Market without any cash assistance. It is relevant to state that what was exported by the plaintiff was not staple lungies, but viscose staple fibre sarees.

20. When the plaintiff made a subsequent approaches to the third and fourth defendants by its communications under Exs. P-26 and 29, the third defendant, under Ex. P-30 dated 1.5.1975, once again rejected the claim of the plaintiff for issuance of import licence, reiterating its stand as disclosed in Ex. P-22 dated 16.10.1973 and that the plaintiff can work out its remedy by way of an appeal as against the said order. The plaintiff preferred its first appeal under Ex. P-31 dated 12.6.1975. The said appeal was also rejected by the third defendant by its order dated 17.2.1976 under Ex. P-34, stating that it was not possible to accede to the claim of the plaintiff as according to the existing instructions, art silk viscose staple fibre cannot be allowed to merchant exporters and hence, release order cannot be issued. A further appeal to the Chief Controller of Imports and Exports, New Delhi in terms of Chapter-XII of the Import Trade Control Hand-Book of Rules and Procedure 1974-75, was also indicated in the said order. Accordingly, the plaintiff preferred its further appeal to the Chief Controller of Imports and Exports under Ex. P-35 dated 29.3.1976 in the required format. The said appeal was also rejected by the fourth respondent by its order dated 19.7.76 under Ex. P-37, stating that issuance of such import licence was not permissible to merchant exporters.

21. It is significant to note that the plaintiff was issued with an import licence for total FOB value of Rs. 3,67,369/- for the import of dyes and chemicals under Ex. P-19 dated 17.9.1973 by the very same third defendant. Nevertheless, for the reasons best known to them, the third and fourth defendants took a stand that the plaintiff was not entitled for import licence for the import of staple fibre. Aggrieved by the rejection of import licence, the plaintiff preferred a Writ Petition in W.P. No. 6784 of 1983, which came to be dismissed as withdrawn by a learned single Judge of this Court on the ground that the plaintiff has already preferred a suit on the Original Side of this Court, wherein the issues involved were common and also giving liberty to the plaintiff for addition of necessary parties to work out their remedies in the suit itself.

22. The stand of the defendants 3 and 4 in not granting import licence was on the ground that the plaintiff did not carry out the export through State Trading Corporation, that what was exported by it cannot be construed as spun rayon fibre

and that the plaintiff being a merchant exporter, was not entitled for the said benefit. In the first instance, the very same third and fourth defendants have issued Ex. P-19 dated 17.9.1973, which is the import licence for import of dyes and chemicals for the total FOB value of Rs. 17,450/-. It was not known how the import licence for viscose staple fibre was not permissible. Further, the other wing of the fourth defendant, namely Textiles Committee, having issued Ex. P-42 dated 8.5.1975, stating that pure viscose staple fibre and spun rayon are one and the same, the rejection of licence on the ground that what was exported by the plaintiff was pure viscose staple fibre sarees and not spun rayon fibre, was not an acceptable reasoning at all.

23. As far as the stand of the defendants 3 and 4 that the plaintiff did not carry out the export through State Trading Corporation, hereagain, when the plaintiff brought to the notice of the said defendants about Ex. P-40 dated 9.9.1977 issued by the second defendant, making it clear that it was the first defendant who was the authority nominated by the fourth defendant to carry out the export to Bangladesh prior to the issuance of the public notice dated 1.1.1973, in all fairness, the third and fourth defendants ought to have considered the said claim of the plaintiff with particular reference to the said public notice and the authority conferred on the first defendant before passing any order of rejection. Therefore, the said ground was not also an acceptable one for rejecting the issuance of licence to the plaintiff.

24. As far as the other ground of rejection, namely that the plaintiff was only a merchant exporter, Ex. P-66, namely the Import Trade Control Policy (For Registered Exporters) for the year April 1972-March 1973, contained a Clause in Part-B Section 1 of Import Policy for Registered Exporters, viz., Clause No. 14, making it clear that the applications for import licence under the said Policy would be entertained only from registered exporters including merchant exporters, manufacturer-exporters and Export Houses holding eligibility certificates, in the private and public sectors. When such being the policy of the fourth defendant, the failure to apply the said policy condition while rejecting the claim of the plaintiff, was thoroughly unjustified. When the claim of the plaintiff for cash assistance and REP licence came to be thus rejected on the said grounds, and when such rejection came to be informed to the plaintiff, only under Ex. P-37 and 40, dated 19.7.1976 and 9.9.1977 respectively, it will have to be held that the plaintiff could have worked out its remedy only subsequent to the passing of the above proceedings by the defendants 2 to 4. Even under Exs. P-4 and 4.A, though the first defendant made it clear that the plaintiff was entitled for the benefits of cash assistance and import licence wherever applicable, the concerned authorities for grant of such benefits were only the defendants 2 to 4. Therefore, the plaintiff could take recourse to legal measures for redressal of its grievances when it got finally crystallised after issuance of Exs. P-37 and 40, dated 19.7.1976 and 9.9.1977 respectively. Therefore, applying Article 55 of the Limitation Act, it will have to be held that limitation of three years prescribed therein can be said to have commenced only from those dates, namely 19.7.1976

and 9.9.1977 when the breach of terms of the agreement under Exs. P-4 and 4.A can be said to have finally occurred on those dates from when onwards the plaintiff can be said to have had no option except to approach the appropriate judicial forum for working out its remedies. If the period is calculated from those dates, the filing of the suit on 29.3.1978 was well within the time stipulated under Article 55 of the Limitation Act and therefore, the finding of the learned single Judge on the said issue in favour of the plaintiff, is well justified. We therefore hold on issue No. (i) that the suit was filed well within the time limit prescribed under the provisions of Article 55 of the Limitation Act and therefore answer the issue No. (i) in favour of the plaintiff.

25. Issue Nos. (ii) to (iv):

(ii) Whether the first defendant has committed breach of contract and if so, what is the relief to be granted to the plaintiff?

(iii) Whether the alternative relief of compensation granted by the learned sinale Judge is sustainable? and

(iv) To what relief the parties are entitled to?

As the issue Nos. (ii) to (iv) are inter-linked, the same are being dealt with in common. The prayer of the plaintiff in the suit is two-fold. The claim made in paragraph 18(a) of the plaint is for payment of cash assistance, amounting to Rs. 92,578.35 and import licence of staple fibre for 20,240 kgs., for the quantity exported, namely 16,192 kgs. of staple fibre or any other permissible goods equivalent to 20,240 kgs. of staple fibre. In paragraph 18(b) of the plaint, the plaintiff claimed a sum of Rs. 3 lakhs as against defendants 1 to 4 with interest @ 18% on Rs. 3 lakhs, from the date of plaint till the date of payment. In fact, a reading of paragraph 13 of the plaint discloses that the claim made in paragraph 18(b) is alternative to the claim made in paragraph 18(a). The statements found in paragraph 13 read as follows:

... The 1st defendant has committed breach of the terms of the contract of assignment. He is liable to obtain the necessary cash assistance and other export entitlements by approaching defendants 2 to 4 in the alternative they have to pay Rs. 3,00,000/-. The 1st defendant by their misrepresentation has made the plaintiff to suffer damages. The 1st defendant has not done any service as expected from them even though they have received the charges. The plaintiff estimates the charges at Rs. 3,00,000/- being the value of the cash assistance, import licence, replenishment and other export entitlements which the plaintiff could not get because of the default on the part of the 1st defendant....

Therefore, even though the claims as made in paragraph 18(a) and (b) of the plaint have been distinctively made, a reading of the plaint as a whole and in particular, to the above referred to statement contained in paragraph 13 of the plaint, makes it

clear that the claim made in paragraph 18(b) is alternative to the claim made in paragraph 18(a).

26. Keeping in mind the intent of the plaintiffs claim as disclosed in the plaint, the plaintiffs claim will have to be analysed. The basis of the plaintiffs claim is Exs. P-3, 3.A, 4 and 4.A. Exs. P-3 and 3.A are the contracts signed between the first defendant and the Trading Corporation of Bangladesh. The contract is meant for supply of 15,000 sarees of pure staple fibre at the rate of Rs. 9.25 FOB per piece for a total value of Rs. 1,38,750/- under Ex. P-3 and 25,000 pieces of pure staple fibre sarees at the rate of Rs. 9.45 C & F per piece for a total value of Rs. 2,36,250/- under Ex. P-3.A. Among other things, the said contract stipulates that the shipment of the goods be completed during September/October 1972, that if the seller or its nominees fail to stick to the shipment schedule, any loss or demurrage incurred by the buyer, namely Bangladesh party, would be on the seller''s account, that the payment to be made by way of letters of credit through buyer''s bank, that the payment would depend upon, among other things, the certificate of pre-shipment inspection regarding quality, quantity and weight by the Textile Committee and match with the supplier''s certificate guaranteeing the quality of goods as per Clause 2 of the contract. Under Exs. P-4 and 4.A, the above two contracts were assigned by the first defendant in favour of the plaintiff. The assignment in reality is the contract between the first defendant and the plaintiff for executing the contract under Exs. P-3 and 3.A as between the first defendant and the Trading Corporation of Bangladesh, mutatis-mutandis, and that the said terms contained in Exs. P-3 and 3.A to bind in all respects the plaintiff herein vis-a-vis the first defendant. Apart from application of the terms of Exs. P-3 and 3.A as between the first defendant and the plaintiff, Exs. P-4 and 4.A provided for further stipulations as between the parties, which inter-alia included the right of the first defendant to cancel part or whole of the quantity allotted to the plaintiff and ship or cause to ship any unshipped quantity at the cost of the plaintiff. It further stipulated that in case there was any claim from Trading Corporation of Bangladesh in respect of the goods exported by the plaintiff, the same would be settled by the first defendant and would be recovered from the plaintiff with any damage paid by the first defendant. That apart, the plaintiff was directed to execute a performance guarantee in the prescribed format for the value calculated @ 5% of the value of the business allotted, subject to a minimum of Rs. 10,000/-. The said guarantee was to be a standing guarantee to be valid for a period of one year from the date of allotment letters, so that it can be used against future business as well, if any to be allotted to the plaintiff. It specifically stated that the plaintiff should complete the shipment according to the schedule given in the contract, failing which the penalty @ 5% of the value of shortshipped/unshipped quantity, would become payable by the plaintiff. The first defendant also imposed service charge calculated @ 2% of the C & F value of the allotted business. In turn, the first defendant agreed to assign the letter of credit to the extent the business is placed with the plaintiff and also stated that the plaintiff

would be entitled to cash assistance @ ____ % on the FOB value of the goods exported, besides normal export function incentive and distance premium wherever applicable.

27. It is not in dispute that the plaintiff accepted the orders of assignment of its terms and conditions stipulated thereunder, which specifically endorsed mutatis-mutandis the contract terms as contained in Exs. P-3 and 3.A. It is also not in dispute that the plaintiff performed its part of the contract in exporting the agreed quantity of materials within the stipulated time limit of October 1972, as is confirmed by the first defendant itself in its certificate dated 29.3.1975 under Ex. P-8. The detailed reference to Exs. P-8, 9, 12, 13, 14, 14.A, 20, 22, 23, 25, 27, 28, 29, 30, 33, 34, 37, 40, 42, 46, 51, 66 and 67 discloses that after the completion of the contract terms insofar as the part to be complied with by the plaintiff was concerned, he duly approached the concerned authorities with necessary certificate issued by the first defendant itself claiming cash assistance as well as issuance of the import licence. While under Ex. P-19, the plaintiff was issued with the import licence for dyes and chemicals for the FOB value of exports in a sum of Rs. 3,67,369/- and the approximate value (c.i.f) at Rs. 17,450/-, the claim for necessary REP licence for the import of viscose staple fibre, was denied to the plaintiff. The denial of cash assistance by the second defendant was on the ground that the plaintiff did not carry out the export obligation through the State Trading Corporation. The denial of import licence for viscose staple fibre was on the ground that it was only a merchant exporter, that pure staple fibre sarees cannot be equated with spun rayon fibre, for which alone such import licence was permissible and that the export was not carried out through the State Trading Corporation. The first defendant would contend that the clause contained in Exs. P-4 and 4.A to the effect that the plaintiff would be entitled to cash assistance and import licence wherever applicable, should be construed to mean that it is for the plaintiff to work out and avail the benefits on its own efforts and that too, if the benefits were applicable to such exports under the relevant rules and regulations. In fact, by issuing Ex. P-8 certificate, under the caption "To whomsoever it may concern" and stating that the first defendant would undertake not to claim import replenishment licence against exports of staple fibre sarees effected by the plaintiff to Bangladesh during October-December 1972, subject to fulfilling all such terms and conditions as are prescribed from time to time under the Import Policy, the first defendant bluntly refused to extend any other help to the plaintiff after availing the above said benefits from the concerned authorities.

28. While the defendants 3 and 4 came forward to issue import licence for dyes and chemicals for the very same items of exports carried out by the plaintiff, rejected the claim for import licence for the import of viscose staple fibre on certain grounds, which conflicted with the stand of the second defendant as well as the terms contained in the Import Policy as exhibited in Exs. P-14 and 66. In fact, even according to the defendants 3 and 4, the replenishment licence was granted in respect of exports carried out through State Trading Corporation. Ex. P-45 contains

the salient features of export assistance scheme for various items of exports. The said document has been issued by parent body of the second defendant, namely Silk and Rayon Textiles Export Promotion Council. The opening paragraph of the said document would state that the intending exporters are required to get themselves enrolled as members of the said Council as well as the second defendant herein and that the second defendant is the business associate of the State Trading Corporation of India. It also stated that the export assistance such as replenishment, import entitlements, drawback of duty and cash assistance, were being granted to the registered exporters only if they effect their exports on account of the State Trading Corporation. Therefore, when the second defendant acted as business associate of the State Trading Corporation, its statements as made in Ex. P-14.A in categorically stating that the plaintiff was entitled for the replenishment of the staple fibre @ Rs. 1.25 for each kg. content of staple fibre in the exported fabrics as well as 5% import licence for dyes and chemicals if the goods transported were dyed or printed, cannot be ignored.

29. As regards the denial of the replenishment licence alone to the plaintiff by the defendants 3 and 4, it will have to be stated that by virtue of the terms contained in Exs. P-4 and 4.A, the first defendant was mandatorily obligated to the plaintiff to have secured that licence to the plaintiff. On the other hand, it is shocking to note that when the plaintiff approached for issuance of proper no objection certificate, the first defendant took a recalcitrant attitude and virtually made the plaintiff run from pillar to post for working out its lawful entitlements. At one stage, the first defendant went to the extent of stating in Ex. P-12 dated 15.12.1976 to the effect that it is not possible for them to give any more certificate other than the one already issued in its favour and that it is for the plaintiff to work out its entitlements by complying with the rules laid down by the concerned authorities. Virtually, the first defendant having made the plaintiff to fulfil its part of the contract, as contained in Exs. P-3, 3.A, 4 and 4.A, washed off its hands when it came to the question of the benefits which are to be derived by the plaintiff under the very same contract. In fact, it was because of the indifferent and uncooperative attitude adopted by the first defendant, the plaintiff was deprived of the lawful benefits to which it was entitled to on fulfilment of the terms contained in Exs. P-3, 3.A, 4 and 4.A.

30. While the failure for getting necessary import replenishment licence was due to the above indifferent attitude of the first defendant, even as regards the cash assistance, it was no different. A reading of Ex. P-40 dated 9.9.1977 issued by the second defendant makes it clear that prior to the issuance of public notice dated 1.1.1973, the first defendant was the authority nominated by the fourth defendant for carrying out the exports to Bangladesh. The said position is also reinforced by the stand of the first defendant itself as stated in its written statement, wherein the first defendant has taken the firm stand that in pursuance of the trade agreement between Government of India and Bangladesh, it was decided by the Government

of India to allow the exports from India to Bangladesh, that the first defendant being the representative body of Indian Textile Exporters, negotiated with the trade delegation from Bangladesh which visited India in 1972, that on behalf of the diverse exporters including the plaintiff, it entered into several contracts with the Trading Corporation of Bangladesh and thereupon assigned such contracts in favour of the concerned exporters. Though the first defendant would state that it did not give any information to the plaintiff about the trade delegation from Bangladesh for the purpose of keeping the samples ready at the time of inspection, Ex. P-1 would belie the said statement. Ex. P-1 is the telegram issued by the first defendant itself specifically directing the plaintiff to be available at the time when the delegation from Bangladesh would visit Madras and also keeping the samples ready for inspection.

31. Even though the above referred to statement as well as documents, namely Ex. P-1 and Ex. P-40 were on record, the first defendant had not placed any material before the Court to show that it had no authentication nor authority to act on behalf of the Government of India while negotiating and finalising the contract with the State Trading Corporation, Bangladesh. On the other hand, a reading of the deposition of P.W. 1 gives a picturesque description as to the manner in which the officials of the first defendant assured the plaintiffs representative at the time when Exs. P-3 and 3.A were signed for finalising the rate at which the sarees are to be supplied, and also about the consequential entitlements to which the plaintiff would be entitled to in the event of the fulfilment of the export obligation under Exs. P-3 and 3.A read along with Exs. P-4 and 4.A. The version of P.W. 1 in chief-examination has neither been contradicted nor dislodged either in the course of the cross-examination of P.W. 1, nor in the evidence of D.W. 1 who was the successor-in-office of the person who represented on behalf of the first defendant at the time when Exs. P-3, 3.A, 4 and 4.A came into being. The statement of D.W. 1 that the first defendant did not give any assurance except mere assistance for export benefits, is of no avail, inasmuch as the specific terms contained in Exs. P-4 and 4.A make it abundantly clear that in the event of the fulfilment of the contractual terms by export of the materials as agreed under Exs. P-3, 3.A, 4 and 4.A, the plaintiff would be entitled for cash assistance and other normal benefits available by virtue of such exports to a foreign country. Though the first defendant itself was not competent for paying cash assistance or issuance of the relevant import licence, being an authority nominated by the fourth defendant to monitor the exports to Bangladesh prior to the issuance of public notice dated 1.1.1973 as stated in Ex. P-4, it cannot lie the mouth of the first defendant that it was not obliged to carry out its obligation in securing such benefits to the plaintiff. In other words, from the conduct of the first defendant in not having ensured due derival of such benefits, namely cash assistance and normal import licence, it can be stated that the first defendant committed breach of the said terms contained in the contract, which should enure to the benefit of the plaintiff to derive whatever legal remedies

available to it for non-performance of such terms contained in a valid contract entered into between the plaintiff and the first defendant.

32. As rightly held by the learned single Judge, though the second defendant was the competent authority for getting cash assistance and defendants 3 and 4 for issuance of replenishment licence, the first defendant, in its capacity as a representative of the fourth defendant, having persuaded the plaintiff to agree to such terms as contained in Exs. P-4 and P-4.A, it was bound to compensate whatever loss sustained by the plaintiff on that score. The learned single Judge having reached such a conclusion and stated that it was the duty of the first defendant to pursue the matter with the Government and the State Trading Corporation for extending the benefits to the exporters who effected export through the first defendant also and secure those benefits to the plaintiff, by answering the issue No. 2 in the suit in favour of the plaintiff, should have granted the relief as claimed by the plaintiff in paragraph 18(a) of the plaint in full. Under Ex. P-46, for spun rayon fabrics, the plaintiff is entitled for 25% by way of cash assistance. The entitlement of cash assistance for the goods exported by the plaintiff under the said head, cannot be disputed by virtue of Ex. P-14.A, which has been issued by the second defendant itself who is the associate of State Trading Corporation to certify such entitlement. In fact, the plaintiff has paid whatever charges payable as provided under Ex. P-45 for the purpose of claiming cash assistance to the second defendant which is proved by Ex. P-51, wherein the receipt for payment has been enclosed as S. No. 9. Therefore, when the cash assistance was thus due and payable to the plaintiff as per the rules and regulations, which was not paid by the second defendant on the sole ground that prior to the issuance of public notice dated 1.1.1973, such entitlement was to be secured through the first defendant and the first defendant having failed in its duty in securing the said benefit to the plaintiff, it will have to be held that to the extent of such value of cash benefit, the first defendant should be directed to make payment.

33. However, as far as non-issuance of the import licence was concerned, we are unable to issue any positive direction to the first defendant for more than one reason. In the first instance, issuance of such licence statutory vested with the third and fourth defendants. Though the first defendant failed to assist in any manner the plaintiff for securing the said benefits, it will have to be held that, that by itself alone cannot be a ground for granting any relief by giving any positive directions, inasmuch as the specific orders passed by the third and fourth defendants under Exs. P-22, 25, 30, 34 and 37 remained unchallenged till this date. In fact, though the plaintiff appeared to have made a challenge by filing a writ petition in W.P. No. 6784 of 1983, it was permitted by a learned single Judge to withdraw the said writ petition by order dated 3.10.1991 to enable the plaintiff to work out its remedies in the present suit itself by impleading the defendants 3 and 4. Though the plaintiff got the defendants 3 and 4 impleaded in the suit, unfortunately, it did not seek for any consequential amendment praying for appropriate relief to declare the above

referred to orders of the defendants 3 and 4 as null and void and for necessary relief for issuance of such licence. Therefore, in the absence of any such relief having been specifically made by the plaintiff, and there being no specific pleading to measure the said relief monetarily, there is no scope for issuing any direction to the first defendant for the grant of such reliefs.

34. Having regard to our above said conclusions, we answer the issue Nos. (ii), (iii) and (iv) in these appeals in favour of the plaintiff and hold that the plaintiff is entitled for the relief as claimed in paragraph 18(a) of the plaint. Having regard to our said conclusions, we also hold that the plaintiff is not entitled for the alternative relief as claimed in paragraph 18(b) of the plaint. Since the plaintiff has challenged that part of the finding of the learned single Judge in not granting the relief as claimed in paragraph 18(a) of the plaint in O.S.A. No. 376 of 2001, we hold that the learned single Judge was not justified in denying the relief of payment of Rs. 92,578.35 towards the value of 25% of cash assistance on the total value of the exported goods as payable by the first defendant along with the relief of Rs. 63,000/- as granted by the learned single Judge being the interest @ 9% per annum from the year 1973 for a period of seven years.

35. We confirm the judgment of the learned single Judge that the defendants 5 to 8 were the formal parties of the plaintiff and they have no right at present to the plaintiff and therefore, they were unnecessary parties and the suit against the defendants 5 to 8 was rightly dismissed.

36. In view of our above said conclusions, the plaintiff will be entitled to the compensation of Rs. 92,578.35 along with a sum of Rs. 63,000/- being the interest for a period of seven years from the first defendant with proportionate costs and subsequent interest @ 12% from the date of suit till the date of realisation. The other reliefs claimed by the plaintiff are rejected. The suit as against the other defendants 5 to 8 is dismissed. The judgment and decree of the learned single Judge in all other respects stands confirmed.

37. O.S.A. No. 376 of 2001 filed by the plaintiff stands partly allowed with proportionate costs and O.S.A. No. 298 of 1994 filed by the first defendant stands dismissed with costs. C.M.Ps. are closed.