

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.02.2017

PRONOUNCED ON: 24.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.375 of 2009

Zoro Garments Private Limited by its
Managing Director N.F.Mogrelia
Chennai-37

Plaintiff

Vs

1. Export Credit Guarantee Corporation of India Limited
Chennai Metro Branch, by its Branch Manager
Chennai-2

2. Chairman and Managing Director,
Export Credit Guarantee Corporation of India Limited
Chennai Metro Branch, by its Branch Manager
Chennai-2

Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC and Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : Mr.M.Selvaraju

For Defendants : Mr.PRS.Giridhar for
M/s.Giridhar and Sri Associates

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree,
against the Defendant:-

- (a) for declaration, declaring that the letter of rejection dated 31.3.2006 of 1st Defendant, rejecting the claim of the Plaintiff dated 1.12.2004 under the Policy No.SCR 0052459 and credit limit under Ref.No.ST/100363692/CHE/03, dated 21.2.2003 is null and void

(b) directing the Defendants to pay a sum of Rs.88,25,000/- (Rupees eight eight lakhs twenty five thousand only) with interest @ 18% p.a. on Rs.50,00,000/- as on 20.2.2009 and subsequent interest at the aforesaid rate till the date of actual payment as per claim dated 1.12.2004 under the Policy No.SCR 0052459 and credit limit under Ref.No.ST/100363692/CHE/03, dated 21.2.2003.

(c) directing the Defendants to pay a sum of Rs.6,75,000/- as damages to the Plaintiff?

(d) Directing the Defendants to pay the costs of the suit.

2. **Plaint:-** The Plaintiff is a Private Limited Company, incorporated under the Companies Act, 1956 and is engaged in the business of manufacture and export of garments to various countries. They are recognized Export House for over 30 years. The 1st Defendant is the Government of India Enterprise formed with the sole object of providing guarantee by way of insurances to the recognized registered Export Houses and the 2nd Defendant is the In-charge of day today activities of the 1st Defendant Company. It had been stated that the Plaintiff had insured their exports with the 1st Defendant. The details of the goods exported and the premium paid are given in the following table:-

Year (Accounting)	Premium (Rs.Ps.)
1995-1996	71598.40
1996-1997	158196.39
1997-1998	172046.65
1998-1999	163440.40
1999-2000	141720.16
2000-2001	109163.92
2001-2002	75804.73
2002-2003	311547.00
2003-2004	232868.00
Total	1436385.65

3. It had been further stated in the plaint that the Plaintiff had obtained a comprehensive risk shipment policy by Policy No.SCR 0052549 and this was renewed every year and for the year 2001 by the Defendants' letter No.POL/SCR/52549/01 dated 19.1.2001. One of the main objections was that the Plaintiff can claim a major portion of the loss under the policy if payment for anyone of the shipments gets locked, delayed or lost due to commercial and political reasons mentioned in the policy. The policy had been renewed till the year 2006. Whenever renewal is done, the Defendants intimate the exact premium payable for the credit limit sanctioned. No claim bonus is also given by the Defendants under the policy if claim is not preferred by the Plaintiff. This is to be adjusted in the subsequent policy. It is the contention of the Plaintiff that they had a credit of Rs.1,33,552.37/- as no claim bonus, but which the Defendants did not adjust during the subsequent renewals.

4. In 2002 one Phillip Surh, representing ILS Corporation, 221-58, 58th Avenue, 2, Second Floor, Bay Side, NY 11364, USA, had contacted the Plaintiff's Sales Manager S.N.Mogrelia and after ascertaining the credibility of the Plaintiff, placed purchase orders No.001 and 002 dated 6.9.2002 for 1200 dozen garments and No.003 dated 6.9.2002 for 600 dozen garments. The delivery dates were 15.11.2002, 25.2.2002 and 15.11.2002 respectively, which were later extended to 5.1.2003 by email dated 25.10.2002. The payment was 60 days D.A. It had been stated by the Plaintiff that the said Phillip Surh was in Chennai from 25.10.2002 till middle of December 2002 and had personally inspected and approved the garments on day today basis. He checked the quality of the fabrics. Production was commenced only after he was satisfied

with the quality and after being satisfied with the finished goods, the shipments were made. They were shipped under invoices Nos.z/exp/ILS/074, z/exp/ILS/075, z/exp/ILS/076 and z/exp/ILS/077, all dated 26.12.2002 and the relevant documents were sent to the said ILS Corporation through the Plaintiff's Banker, Bank of India, Chennai-1 on 60 days D.A. Basis. The State Bank of India had forwarded these documents to the Bankers of ILS Corporation, namely, JP.Morgan, Chase Bank, USA. The value of the said export were USDs 38160, 3816, 52200 and 10392.15, totalling USD 104568.15, equivalent to Rs.50,27,877/-.

5. It had been further stated that the Plaintiff had applied for a guarantee credit limit with the 1st Defendant for a minimum of Rs.50 lakhs for the export to ILS Corporation by their application dated 27.12.2002. The 1st Defendant had ensured with expert before sanctioning credit limit by reference No.ST/100363692/CHE/03 dated 21.2.2002 in Policy No.SCR 0070005147. The credit limit of Rs.50 lakhs and the policy were applicable for shipments made on or after 27.12.2002 and valid up to 26.6.2003. It had been stated that the Plaintiff wanted the no claim bonus to be adjusted and consequently, there was no increase in the premium payable. The goods were shipped on 1.1.2003 under the Bill of Lading No.CHN/FAL/NYK/2769, dated 30.12.2002 and No.CHN/FAL/NYK/2776, dated 31.12.2002. The goods arrived at New York in 30 days time. However, in view of the attack in the twin towers on 11.9.2002, the United States Department of Home and Security, by notification dated 7.2.2003, had announced that national alert level was raised from yellow to orange (high risk). Consequently, the goods were subjected to 100% x-ray

scanning and checking and the goods were released by the US Customs only in the middle of March 2003. The Plaintiff came to know that the foreign buyer took delivery of the goods from the container ship without accepting the documents from his Bank. The Plaintiff deputed their Sales Director S.N.Mogrelia to USA to solve the problem. It was found that the importer could not sell the goods since the season, namely Christmas and New Year had already expired before the customs authorities cleared the goods in March 2003. Consequently, the goods were rejected on quality grounds. By letter dated 19.5.2003, the Plaintiff had complained to the American Consulate General, Anna Salai, Chennai-6. Further letters were sent on 11.7.2003 and 2.8.2003. The Consulate General of USA by reply dated 18.8.2003 had stated that they could not proceed further and advised the Plaintiff to seek assistance from the Embassy of India, Washington D.C. Directly.

6. The Plaintiff wrote a letter, dated 26.8.2003 and by letter dated 1.10.2003, the Consulate General declined to proceed any further. The Plaintiff then sought the help of Creative Resolutions, a Debt Collection Agency, recommended by the Defendants to recover the money and paid USD 500 on 15.7.2003 towards retainer fee. The said Creative Resolutions had tried to solve the dispute amicably. However, the foreign buyer refused to pay the money. After that, the Plaintiff by letter dated 1.12.2004 lodged a claim with the 1st Defendant seeking payment of the total loss sustained by them, namely, Rs.63,85,147/-. The Defendants had asked for production of certain documents. Thereafter, a personal representation was made before the Committee of Executives at Mumbai on 15.9.2005 and 7.10.2005. This was

admitted by the 2nd Defendant by letter dated 11.11.2005. However, the 1st Defendant after receiving all the documents and representations from the Plaintiff, repudiated their claim by letter dated 31.3.2006 on the ground that the shipment to the extent of over 30% under the policy were not declared and premium was not remitted and the shipment under the claim had been declared with a delay of 2 months and premium paid after the credit period expired which was against clause 8(a) of the policy. The Plaintiff had claimed that the said grounds are untenable.

7. It had been stated that necessary policy covers the shipments made on or after 27.12.2002 and was valid up to 26.6.2003. It had been stated that the first ground taken by the Defendants was unlawful since the Plaintiff had taken the policy for a maximum liability of Rs.2 crores and further there was an excess premium under no claim bonus with the Defendants and even though that was asked to be adjusted, the Defendants did not adjust the same. With respect to the second ground, it had been stated that the Plaintiff had applied for a credit limit on 27.12.2002 itself and credit limit was also sanctioned on 27.12.2002. It had, therefore, been stated that both the grounds for rejection are arbitrary and have to be declared as null and void and the suit relief (a) is for the same. It had been further stated that the policy was submitted for renewal on 24.1.2003 and the renewal policy was handed over only on 16.3.2003 and 17.3.2003. The Plaintiff had paid the entire premium. Consequently, the claim of the Defendants that the Plaintiff did not pay the premium cannot be accepted. Moreover, the Defendants had a sum of Rs.1,33,552.37/- under the head 'no claim bonus' from 1997. The premium

payable was only Rs.28,131/-. Therefore, the Defendants had excess amount with them. This was confirmed by letter dated 17.2.2005. It had been stated that the Plaintiff had applied for time limit on 27.12.2002, which was sanctioned only on 16.3.2003, by which time, the agreed time of 60 days D.A had expired. The delay was due to the deficiency of the Defendants alone. It had been claimed that repudiation by the Defendants of the claim made by the Plaintiff is totally unjustified.

8. The policy taken by the Plaintiff was a comprehensive policy, which covers commercial and political risks. It had been claimed that the Plaintiff was put to a loss of Rs.50 lakhs and consequently, relief (b) in the plaint has been claimed for payment of the said sum with interest at 18% p.a. from 1.12.2004 and also subsequent interest after the filing of the suit. It had been further stated that the Plaintiff had made several attempts to get the claim amount. The rejection of the Defendants was without any valid reasons and this had affected the business of the Plaintiff. The Plaintiff had been running from pillar to post. It had been stated that the Plaintiff is also claiming damages to a sum of Rs.6,75,000/- under relief (c) in the plaint. Consequently, the suit had been filed as stated above for the reliefs mentioned above.

9. **Written Statement:-** In the written statement, it had been stated that there was no cause of action for the suit and that the suit was also barred by limitation as the claim was rejected on 27.7.2005. It had been stated that the 1st Defendant is a Government of India Enterprise to protect exporters from consequences of the non-payment risks both political and commercial. However, this is subjected to strict compliance of the terms and conditions of

the contract. The Plaintiff was a manufacturer and exporter of garments. They had a shipment comprehensive risk SCR policy issued by the Defendants. They were to declare all shipments every month on or before the 15th day of every succeeding calendar month. They were also under obligation to pay premium within the time period required. This is given in clauses 8 and 10 of the policy.

10. It had been further stated that the policy for the period 1.1.2001 to 31.12.2002 was renewed subsequently for the period 1.1.2003 to 31.12.2004. The proposal for renewal was received on 24.1.2003. Clarifications were required orally on 19.2.2003 and the premium was received on 17.3.2003 and the policy was renewed with retrospective effect from 1.1.2003 to 31.12.2004. Shipments were made on 30.12.2002 and 31.12.2002 and this was covered under the policy for the period 1.1.2001 to 31.12.2002. It had been stated that this shipment should have been declared on or before 15.1.2003. It had been stated that the declaration was received only on 17.3.2003 and after the outstanding due dates on 2.3.2003 and 3.3.2003. It had therefore been stated that the Plaintiff was not entitled to make any claim according to clause 19(a).

11. It had been further stated in the written statement that the Plaintiff had not declared the shipment within the time period and that the claim of the Plaintiff that no claim bonus should have been adjusted itself shows that the Plaintiff had admitted that they had not paid the premium. The fact that the Plaintiff was entitled to no claim bonus for Rs.1,33,552/- was admitted by the Defendants. It had been stated that it was the responsibility of the Plaintiff to

pay the premium. It had been stated that the claim had been rejected for non payment of premium and also for failure to declare the shipment. It had been stated that the Defendants were unaware of the shipments made by the Plaintiff. The Plaintiff had declared the shipments only on 17.3.2009. The Defendants put the Plaintiff to strict proof of the fact that the value of their export worked out to Rs.50,27,877/-. It had been further stated that the Plaintiff had applied for a credit limit of Rs.50 lakhs for export to be made to ISL Corporation, USA on 27.12.2002 and the Defendant approved the same on 19.2.2003 and communicated the same on 21.2.2003. It had been denied that the Plaintiff had requested for adjustment of no claim bonus and that the Plaintiff had paid the premium only on 17.3.2003. The averments made in the plaint were denied by the Defendants. The Defendants relied on clause 8(a) of the policy and stated that declaration of shipment had to be made whether the credit limit was approved or not. It had been stated that no claim bonus was given credit on 17.2.2005. The Defendants had claimed that the suit reliefs have to be negated and the suit is to be dismissed.

12. On the basis of the above pleadings, by order dated 14.10.2011, this court had framed the following issues:-

1. Whether the Defendants' repudiation of liability in respect of the suit consignments under Bill of Lading Nos.CHN/FAL/NYK/2769, dated 30.12.2002 and CHN/FAL/NYK/2776, dated 31.12.2002, on the ground of non payment of premium and belated declaration of consignment, can be sustained in law?
2. Whether the rejection of the claim on the basis of non payment of premium for the suit shipment can be justified when a sum of Rs.1,33,552/- was available with the 1st Defendant as no claim bonus and the same had been

requested to be adjusted towards premium?

3. Whether the Plaintiff committed breach of the policy condition regarding the monthly declaration of shipments and overdue payments as per clause 8 of the policy in so far as the declarations of the suit shipments were not made on or before 15th day of January 2003?
4. Whether the declaration made by the Plaintiff in respect of the suit shipments after the due date, namely, the 15th day of the succeeding month and that too after the default in payment on the part of the overseas purchaser had already taken place shall amount to proper compliance of the requirement of clause 8 of the policy regarding declaration of shipments for the purpose of coverage of insurance?
5. Whether the Plaintiff's claim is bona fide?
6. Whether the suit claim is barred by limitation?
7. Whether the Plaintiff is entitled to declaration that the letter of rejection of the 1st Defendant dated 31.3.2006 rejecting the claim of the Plaintiff dated 1.12.2006 is null and void?
8. Whether the Plaintiff is entitled to a decree for the recovery of a sum of Rs.88,25,000/- being the claim amount and interest on the claim amount from the date of claim up to the date of plaint?
9. Whether the claim of the Plaintiff against the Defendants for a sum of Rs.6,75,000/- as damages is sustainable?
10. To what other reliefs, the parties are entitled?.

13. **Trial:-** To substantiate the issues, the Plaintiff had examined one witness as PW.1 and marked Ex.P1 to P44. The Defendants had examined one witness as DW.1 and marked Ex.D1 to D7.

14. This court heard the learned counsel on either side.

15. **Issues (1) and (2):-** The Plaintiff is a Private Limited Company, incorporated under the Companies Act, 1956 and is engaged in the business of manufacture and export of garments to various countries. They are recognized

Export House for over 30 years. The 1st Defendant is the Government of India Enterprise formed with the sole object of providing guarantee by way of insurances to the recognized registered Export Houses within the country. The 2nd Defendant is the In-charge of day today activities of the 1st Defendant Company. It is the contention of the Plaintiff that they have been continuously exporting garments thereby earning foreign exchange and had also paid tax to the exchequer. For the purpose of such export, the Plaintiff had insured their exports with the 1st Defendant. The 1st Defendant also used to collect premium as fixed by them from time to time. This premium is based on the volume of export made by the prospective exporters. The premium paid is about 0.5% of the value of the goods exported. In the plaint, the Plaintiff had given the premium paid by them from the year 1995-96 to 2003-04 and said details are given as under:-

Year (Accounting)	Premium (Rs.Ps.)
1995-1996	71598.40
1996-1997	158196.39
1997-1998	172046.65
1998-1999	163440.40
1999-2000	141720.16
2000-2001	109163.92
2001-2002	75804.73
2002-2003	311547.00
2003-2004	232868.00
Total	1436385.65

16. A careful perusal of the said statistical data provided reveals that the amount of premium paid by the Plaintiff had substantially increased within the period of 8 years, for which, data has been provided. In fact, it has increased nearly three times. This fact is mentioned not only to show that the

Plaintiff has been in the business of export of garments, but also to show that it has also been beneficial to the 1st Defendant. They have collected premium year after year depending upon the export made by the Plaintiff. To the knowledge disclosed in evidence and also in pleadings, the Plaintiff had not made any claim previously to the one under issue in this court. It is an accepted fact between the parties that if for a particular year, a claim is not made, the Plaintiff would be entitled for no claim bonus. It is the case of the Plaintiff that such no claim bonus should be deducted from the premium calculated as payable by the 1st Defendant in the succeeding year. This is the purpose for extending a no claim bonus. It is the recognition that the Plaintiff has engaged the 1st Defendant even though they had not incurred any risk and the amount of premium paid by the Plaintiff to the 1st Defendant has been wholly utilised by the 1st Defendant towards its financial progress.

17. It is also an admitted fact between the parties that till the date in which the claim in this case has been made, the 1st Defendant had an accumulative amount of Rs.1,33,552/- as no claim bonus. This amount even before going into the evidence of the parties, has been retained by the 1st Defendant and as a matter of fact, though it is called as a no claim bonus, the benefit under it had not been passed on to the Plaintiff by the 1st Defendant. This, at the outset, leads the court to a presumption that if this situation has not arisen and if the Plaintiff continues to do business of export in future, the 1st Defendant at no point of time, in the future would have ever passed on this benefit to the Plaintiff. That is against the principle behind which a no claim bonus is offered by the 1st Defendant. Irrespective of the above, in so far as

the facts of this case are concerned, it is evident from the pleadings and from the documentary and oral evidence that the Plaintiff had to come across a gentlemen called Phillip Surh representing ILS Corporation at 221-58, 58th Avenue, 2, 2nd Floor, Bay Side, New York 11364, USA. The said Phillip Surh had contacted the Plaintiff's Sales Director S.N.Mogrelia and after ascertaining credibility of the Plaintiff, had placed orders by Purchase Order Nos.001 and 002 dated 6.9.2002 for 1200 dozen garments and No.003 dated 7.9.2002 for 600 dozen garments. The purchase orders had been marked as Ex.P2 to Ex.P4. A perusal of Ex.P2 reveals that it has been signed by both the said Phillip Surh as President of ILS Corporation and also by S.N.Mogrelia, as Director of the Plaintiff Company. The said Ex.P2 bearing Purchaser Order No.001 is dated 6.9.2002 and the delivery date via sea was 15th November 2002. The payment was 60 days DA with clear documents. The price was USD 3.18. The quantity was 500 dozens. The items were mens short sleeves, button down shirts in cotton and polyester fabric. The details were also given in the purchase order. Similarly, Ex.P3 is yet another purchaser order similarly worded and dated 6.9.2002 and in the same also, the terms of payment was 60 days DA with clear documents directly in the name of ILS CORP. The date of delivery was 25.12.2002. Ex.P4 is the third purchase order bearing No.003 dated 19.9.2002. Even in this, the payment terms were 60 days DA and delivery date was 15th November 2002.

18. Based on the purchase orders mentioned above, the Plaintiff had issued invoices in Ex.P6 to Ex.P9. All the invoices are dated 26.12.2002. Ex.P6 is for USD 38160. Ex.P7 is for USD 3816. Ex.P8 is for USD 52200 and

Ex.P9 is for USD 10392.15. A perusal of these documents shows that the exporter was the Plaintiff and the consignee was ILS CORP. in the addresses given above. The description of the goods were also given. The documents have been forwarded through the Bank of India, Chennai Mount Road Branch, Chennai -1. The amount in USD were also given and the description of the good was also given. In all the documents, the port of discharge was given as New York and the final destination as USA. These invoices were covered by the Bills of Lading, which were marked as Ex.P12 and Ex.P13. Ex.P12 shows the exporter as the Plaintiff and the consignee as ILC CORP and the forwarding agent as Sky Lift Cargo Private Limited. The name of the vessel has also been given. The gross weight of the garments exported and the measurements have also been given. The goods were exported through sea. Ex.P12 and Ex.P13 are dated 30.12.2002 and 31.12.2002.

19. Ex.P10 is the credit limit application of the Plaintiff dated 27.12.2002. In the said application, the name of the policy holder has been given as that of the Plaintiff and the policy number has also been given as SCR0052549. It had been stated that the policy was valid till 31.12.2002. It had been further stated that the declarations had been submitted up to November 2002. A specific reference has been made to the purchaser ILS Corporation with address at New York, USA. It had been further mentioned that the buyer's banker was JP.Morgan, Chase Bank, USA. Their fax and telephone numbers were also given. The description of the goods exported has also been mentioned as ready-made goods. It has also been stated that the contract was valued at Rs.70 lakhs and the terms of payment was 60 Days DA. Shipping

schedule was also given as December 2002 and January 2003. The anticipated business value was given as Rs.50 lakhs and the credit limit required was given as Rs.50 lakhs. It was also mentioned that ILS Corporation is a new buyer. Payment for Rs.500 had also been mentioned. This has been received as is seen from the seal and signature and the date from the documents by the Defendants on 27.12.2002. It is, thus, seen that the Plaintiff had applied for credit limit with the 1st Defendant prior to the date of Bills of Lading dated 30.12.2002 and 31.12.2002. They had informed the 1st Defendant about the intention to export goods in December 2002 and January 2003 and also that the value of the goods exported would be Rs.50 lakhs. It is in these conditions the goods had been exported to USA, but as transpired during the evidence, since there was higher element of risk at USA announced by USA Home and Security Department from yellow to orange (high risk), the goods of the Plaintiff were placed for being scanned and for being verified and checked by the customs authorities. In this connection, the Plaintiff took necessary steps through a collection agent called Creative Resolutions to get the matter sorted out. They had also paid a sum of USD 500 to the said Creative Resolutions under Ex.P14.

20. The Plaintiff had made several attempts through Embassy at Chennai and also at Embassy at USA for settling the issue with the Defendants and for recovery of the value of the goods exported. But that was of no avail. On 23.1.2003, the Plaintiff had made an application for renewal of the policy in Ex.P18. This was received by the 1st Defendant on the very same day on 23.1.2003. In the very same renewal form, the minimum deposit premium

payable for standard policy was given as Rs.10,000/- and the Plaintiff had also issued a cheque for Rs.10,000/- towards the minimum premium payable. They had also disclosed the shipments made during the period January 2002 to December 2002. The Plaintiff then had issued a letter dated 27.1.2003 in Ex.P19 to the 1st Defendant, wherein they had stated that they had submitted a credit limit application No.144 for the buyer ILS Corporation, New York for Rs.50 lakhs on 27.12.2002. It had been mentioned that they had received orders for a total sum of Rs.2,43,03,156/- and shipped the goods to the value of Rs.50,73,876/- and the balance goods will have to be shipped before 31.3.2003. They also enclosed copies of the invoices. Consequently, a request was made to approve the limit at an early date.

21. From the above facts, the following facts emerged:-

- i. The Plaintiff had an existing policy with the 1st Defendant. This policy was being renewed year after year. The Plaintiff had been paying the premium and had not made any claim against the 1st Defendant.
- ii. The Plaintiff was entitled for no claim bonus.
- iii. The 1st Defendant had not extended the benefit of no claim bonus, but had made book entries only with respect to the same and they retained the amount in their accounts.
- iv. The Plaintiff was placed with purchase orders by a new purchaser ILS Corporation, USA on 6.9.2002 and 19.9.2002. Invoices were also raised on 26.12.2002.
- v. The Plaintiff had made a credit limit application on the very next day on 27.12.2002, which was also received by the 1st Defendant.
- vi. The Bills of Lading dated 30.12.2002 and 31.12.2002 were also issued by the Plaintiff.
- vii. The goods were actually shipped, but payments did not

come for the goods owing to various reasons at USA.

22. It is thus seen that the Plaintiff had bona fide made an application for credit limit with respect to this specific contract entered into by them with ILS Corporation, USA. The onus was on the Defendants to actually give the details of premium payable in view of the said transaction. The payment was 60 days DA. If the goods had been shipped on 31.12.2002, the period of 60 days would end on 1.3.2003. Even prior to that, on 23.1.2003 by Ex.P18, the Plaintiff had applied for renewal of policy. On 27.1.2003, the Plaintiff had also written a letter to the Defendants that they should take into consideration the credit limit application No.144 for the said buyer ILS Corporation, New York. However, the credit limit sanction letter from the 1st Defendant was actually dated 21.2.2003. The 1st Defendant has not come forward with any explanation as to why they had actually sanctioned the credit limit after a period of nearly two months. In fact, the goods had been shipped on 30.12.2002 and 31.12.2002 and this was granted on 21.2.2003. It had been mentioned that this credit limit shall be applicable for the shipments made on or after 27.12.2002. The limit was provisional and was valid up to 26.6.2003. Thereafter, the Plaintiff had addressed a letter under Ex.P22 dated 5.3.2003 again reiterating that they had submitted an application for obtaining credit limit on 27.12.2002 and sought for the status of the said application.

23. Thereafter, it had been again pleaded by the Plaintiff that they had deputed their Sales Director S.N.Mogrelia to USA to solve the problem. Thereafter, by letter dated 19.5.2003, which was marked as Ex.P23, the Plaintiff addressed the American Consulate General at Chennai and stated that

Phillip Surh had visited the Plaintiff on 25.10.2002 to 5.12.2002 and had placed orders and the terms of payment were 60 days DA. It had been further stated that though documents were sent through JP.Morgan Chase Bank, the payments were not being made. Therefore, US Consulate was requested to enquire into the matter and give further guidance. Further letters in this connection were also written. Finally, the USA Consulate General, by reply dated 18.8.2003 marked as Ex.P17 had informed the Plaintiff that they were not able to proceed further in the case. The Plaintiff was advised to contact the Indian Embassy in USA. Even prior to this, the Plaintiff had by demand draft dated 15.7.2003 marked as Ex.P14 appointed Creative Resolutions as collection agent and requested them to help in this regard. A letter by the said Creative Resolutions dated 10.8.2003 in Ex.P15 was addressed to Phillip Surh of ILS Corporation. This was followed by an email dated 11.8.2003 which was marked as Ex.P16. The orange alert by the Government of USA dated 7.2.2003 was marked as Ex.P20. The Plaintiff had written yet another letter to the American Consulate General at Chennai in Ex.P24 dated 26.8.2003 and they received a letter marked as Ex.P25 dated 1.10.2003 once again reiterating that the Plaintiff should contact the Indian Embassy at USA. It is in the back ground of the above facts that the Plaintiff had sought the assistance from the 1st Defendant with respect to the policy under which they were covered. It must be remembered as stated above that they had given a credit limit application on 27.12.2002 in Ex.P10 itself and had followed it by letter dated 29.12.2002 in Ex.P11.

24. It is the contention of the Defendants that the Plaintiff did not

make the premium. In this connection, the policy terms will have to be examined. Ex.P1 is the policy in reference No.POL/SCR/52459/2001 dated 19.2.2001, by which the Plaintiff had opened a policy with the 1st Defendant. That policy was originally for the period 1.1.2001 to 31.12.2002. Admittedly, the same had been renewed year after year and it was also an admitted case that it was in force when the claim was made by the Plaintiff towards the suit relief.

The important terms and conditions are as follows:-

“3(i) Credit limits on buyers:- Wherever shipments are made on D/P, D/A or Open Delivery terms it is essential that you get a suitable credit limit approved by the Corporation on each of the buyers unless your requirements are met by Clause 21(b) of the policy. In the absence of such credit limits, the Corporation will not admit claim arising from any of the commercial risks despite you having paid premium for covering comprehensive risks on such shipments. Applications for credit limits are to be made on form no.144. A supply of the forms is sent herewith. If you want a credit limit to be increased, you have to use form no.144A which can be obtained from us as and when required.

4. Maximum Liability:- Taking into consideration the value of your anticipated shipment terms of payments etc. the Policy has been issued with a maximum liability of Rs.2,00,00,000.00 (rupees two crores only). The maximum liability will be the limit up to which the Corporation will entertain your claims, irrespective of the cause of loss, on shipments made during the policy-year. We consider that this limit will meet with your requirements. If, however, you wish to have the maximum liability limit increased at later date, we shall consider raising it if there are sufficient reasons for doing so.

Terms and Conditions:

1. Rate of Premium:- The insured shall pay premium at the rates set out in the Schedule II on the Gross Invoice Value (GIV) of all shipments made under Irrevocable Letter of Credit.”

The above indicates that the premium has to be fixed in accordance with the shipment by the 1st Defendant. With respect to the premium, further clauses

had been given. Clauses 9 and 10 are as follows:-

“9. Minimum Premium:- The amount of Minimum premium specified in Schedule-I hereto and which has been paid by the Insured before issue of this Policy shall be adjusted towards premium payable on the shipments declared to the Corporation and if the total amount of premium computed on the shipments declared to the Corporation during the policy period be less than the amount of Minimum premium paid by the Insured, then the amount of Minimum Premium shall be deemed to be the amount of premium due on the shipments declared by the Insured and no part of the said minimum premium shall be refundable or be carried forward.

10. Incidence of premium and payment of additional premium:- The insured shall be liable to pay premium, at the rates set out in Schedule-II hereto, or, as the case may be, at such other rates for the time being in force, on the gross invoice value of all shipments to which this Policy applies forthwith on the making of such shipments and shall pay to the Corporation additional premium, if any, that may become due and payable after adjustment of the minimum premium referred to hereinabove, while submitting the relevant declaration of shipments as per clause 8(a) of this Policy.”

In this connection, in so far as the minimum premium is concerned, the Plaintiff had actually paid the minimum premium of Rs.10,000/- by way of demand draft and this is evidenced by Ex.P18 dated 23.1.2003.

25. On 23.1.2003, the shipments were in transit. They had not reached the port of USA. The Plaintiff did not know that Phillip Surh would be taking delivery of the goods and would not make any payment. The Plaintiff was not aware that they would not receive the value for the goods. Even otherwise, they had made payment of minimum premium payable. This was the primary obligation of the Plaintiff and I hold that they had discharged the same by Ex.P18 dated 23.1.2003. As a matter of fact, Ex.P18 had been reiterated by the Plaintiff by Ex.P19 dated 27.1.2003. They had very

specifically stated about the shipment of goods to ILS Corporation, New York. By Ex.P21 dated 21.2.2003, the Defendant had renewed the premium. There is a gap of more than a month taken by the Defendant, for which no explanation has been given by the 1st Defendant either in the written statement or in the evidence as to why there was a delay on the part of the 1st Defendant. Ex.P21 is the credit limit sanction letter dated 21.2.2003. It is with this specific reference to the shipments made by the Plaintiff to ILS Corporation. The amount has been given as Rs.50 lakhs. The terms of policy has been given as 60 days D.A. The credit limit was made applicable for shipments made on or after 27.12.2002. On this date itself, when this letter was issued dated 21.2.2003, the 1st Defendant had committed themselves to indemnify the Plaintiff for any loss suffered for this particular shipment. It had also stated that the credit limit will be valid up to 26.6.2003. Consequently, I hold with respect to issues (1) and (2) that the Plaintiff had discharged their primary duty, namely,

- (i) They had a valid purchase order from ILS Corporation in Ex.P2 to Ex.P4. They had shipped the goods pursuant to the invoices Ex.P6 to Ex.P9. This was on 26.12.2002 and
- (ii) Immediately, on the very next day, the Plaintiff had made an application for credit limit on 27.12.2002 in Ex.P10. They had received the bills of lading dated 30.12.2002 and 31.12.2002 in Ex.P12 and Ex.P13. Thereafter, they again reiterated their obligation for renewal of policy on 21.3.2003 in Ex.P18 and by reminder in Ex.P19 dated 27.1.2003.

26. The credit limit was actually sanctioned only on 21.2.2003. The Plaintiffs cannot be found fault for that purpose. In their application for renewal, they had also paid the minimum premium of Rs.10,000/-. Apart from this, by

Ex.P29 dated 17.2.2005, the 1st Defendant had stated that they have reworked the amount of premium to be paid for the shipments effected between 1.1.1997 and 31.12.2004 and they had found out that an excess of Rs.1,33,552/- had been paid. They sought instructions with respect to the adjustment of the excess premium paid. They had also stated that no claim bonus due to the Plaintiff was Rs.1,22,371/-. Consequently, the excess amount of premium paid was Rs.11,181/-. It is therefore clear that the 1st Defendant had acted mala fide in holding on to the amounts of the Plaintiff paid as premium. In fact, the Plaintiff had paid excess premium continuously from 1997 onwards. The stand of the 1st Defendant that since the Plaintiff did not make the premium, they could not honour the commitment, is rejected by this court.

27. The 1st Defendant had excess amount with them and in all fairness, they should have adjusted the same. The attitude of the 1st Defendant receives condemnation since so long as claims were not made, they continued to collect excess premium. Once claim has been made for a genuine cause, which cause has not been disputed by the 1st Defendant, then they went back and stated that the Plaintiff had not paid the premium. But, as is evident from Ex.P29, from the year 1997 onwards, the Plaintiff had paid excess premium of Rs.1,33,552/-. Even other wise for the claim in question, the Plaintiff had made the minimum premium payable of Rs.10,000/-. Therefore, viewed from any angle, I hold that the 1st Defendant is liable to the Plaintiff for the claim amount and they cannot stand on the fact that the Plaintiff had not paid the premium and consequently, issues (1) and (2) are answered in favour of the Plaintiff and against the Defendants.

28. Issues (3) and (4):- These issues arise out of the contention of the Defendants that the Plaintiff did not declare the shipments within 15th of every succeeding month. The Defendants relied on clause 8 of Ex.P1, which reads as follows:-

“8. Declarations:-

(a) Declarations of Shipments:- On or before the 15th day of each calendar month, the Insured shall deliver to the Corporation a declaration, in the form prescribed by the Corporation of all shipments made by him during the previous month. If no shipment has been made during a month, a NIL declaration shall nevertheless be submitted.”

In this connection, a look at Ex.P10, which is the credit limit application of the Plaintiff dated 27.12.2002, shows that they have stated specifically regarding the export of goods to ILS Corporation. They had also given the names of the buyer's banker J.P.Morgan Chase Bank. They had also given a fact that this was within the policy period of 31.12.2002 and they have further stated that declarations had been submitted up to November 2002. Consequently, the Plaintiff had disclosed this shipment at the earliest point of time. The Defendants relied on their communications as an after thought. Letters which emanated from the Defendants were nearly two years later.

29. Ex.P35 dated 30.8.2005, was an invitation to the Plaintiff to make a presentation of the claim before the Committee of Executives on 15.9.2005. The Plaintiff had made a presentation of the claim and this was confirmed by the Defendants by letter dated 11.11.2005 in Ex.P37. However, the Defendants again had addressed a letter dated 31.3.2006 to the Plaintiff. The Defendants had relied on Ex.D1 dated 19.2.2001, which is the insurance

policy and Ex.D2 which is the bank statement of exports made by the Plaintiff and Ex.D3, which is the monthly shipment declaration of the Plaintiff from 15.2.2001.

30. According to the 1st Defendant, the Plaintiff had not declared this particular shipment in their declaration. I hold this is of no consequences since the Plaintiff had, on the very next day of the invoice on 27.12.2002, made the credit limit application to the Defendants dated 29.12.2002 in Ex.P11. It was further followed by an application for renewal of policy on 23.1.2003 and by yet another letter in Ex.P19 dated 27.1.2003, credit limit sanction also was granted and was informed by Ex.P22 dated 21.2.2003 by the 1st Defendant. It was only thereafter can the Plaintiff legitimately declare the shipment. The Plaintiff cannot be faulted for non declaration in accordance with the terms of the policy. The 1st Defendant cannot disclaim knowledge of the shipment they have been made aware.

31. It is the case of the 1st Defendant stating that the right hand does not know what the left hand does. This is unacceptable in commercial transactions. The Plaintiff is in the business of export and they earn foreign exchange for the country and it is the duty of the Defendants to come forward to assist the Plaintiff whenever they had to make a claim before the 1st Defendant. It is not the case of both the parties that for every shipment, the Plaintiff continuously made claims on one ground or the other. In fact, as noted earlier, there was huge amount of excess premium available with the 1st Defendants. There was also a huge amount of no claim bonus available with the Defendants. The Plaintiff had also not received the benefit of the no claim

bonus. They have never questioned the Defendants about that, but when they make a claim, the 1st Defendant in total contrary reversal of noble object with which they had been formed, namely to assist the exporters, had actually tried to desist export by refusing the claim. I hold that the 1st Defendant had been made aware of the shipment even as early as on 27.12.2002 in Ex.P10 and the claim of the 1st Defendant that the declaration was not made is purely technical and has no significance in a court of law. Consequently, issues (3) and (4) are answered in favour of the Plaintiff and against the Defendants.

32. Issues (5) and (6):- Naturally, from the discussions above, I hold that the claim of the Plaintiff is bona fide and that the 1st Defendant having not raised the issue of limitation and there being no legal ground to non suit the Plaintiff on this issue, the suit claim is also not barred by limitation. Accordingly, these issues are answered in favour of the Plaintiff.

33. Issue (7):- The Plaintiff had sought for declaration that the repudiation of the claim by the 1st Defendant by letter dated 31.3.2006 is null and void. Ex.P39, the 1st Defendant had addressed the Plaintiff and had written as follows:-

“This has reference to your letter dated 14.9.2005 on the above subject”:-

Upon scrutiny of your claim we observe that following:-

1. Shipments to the extent of over 30% under the policy were not declared to the Corporation and premium was not remitted.
2. The shipments under claim had been declared with a delay of 2 months and the premium was remitted after the credit period had expired and payments for those shipments had become overdue and remained unpaid by

the buyer. This is not in line with clause 8(a) of the policy.

In view of the above we are not in a position to consider your claim favourably.

On analysis of the evidence above, this court had found that both the grounds, namely shipment to the extent of over 30% under the policy were not declared and they had been declared with a delay of two months and premium was remitted after the credit period, have been negated by this court in the discussions above. Consequently, I hold that the Plaintiff is entitled for a declaration that the letter dated 31.3.2006 issued by the 1st Defendant is null and void and is not binding on the Plaintiff. Accordingly, issue (7) is answered in favour of the Plaintiff.

34. **Issue (9):-** This issue relates to the claim of the Plaintiff for a sum of Rs.6,75,000/- as damages. I am not inclined to consider the arguments put forward by the Plaintiff on this ground. It is a commercial transaction. The Plaintiff is an exporter. The Plaintiff is also a policy holder with the 1st Defendant. When a claim is made, the 1st Defendant has every right to examine the claim and to accept or to reject the same. In this case, they had thought it fit to reject the claim. This rejection has been negated by this court. However, that does not mean that the Plaintiff is automatically entitled for damages. Therefore, I hold that the Plaintiff is not entitled for any damages, much less, Rs.6,75,000/- as claimed by them.

35. **Issues (8) and (10):-** In view of the above discussions and reasons, the Plaintiff is entitled to recover a sum of Rs.88,25,000/- (Rupees eighty eight lakhs twenty five thousand only) and further interest at 6% p.a. on

Rs.50,00,000/- (Rupees fifty lakhs only) from the date of the plaint till the date of realisation. Since the 1st Defendant is an Government of India Enterprise and they have exercised their legitimate right in rejecting the claim of the Plaintiff, I hold that the Plaintiff is not entitled for any costs.

36. In the result, this civil suit is partly decreed for a sum of Rs.88,25,000/- (Rupees eighty eight lakhs twenty five thousand only) and further interest at 6% p.a. on Rs.50,00,000/- (Rupees fifty lakhs only) from the date of the plaint till the date of realisation. The Plaintiff is also entitled for declaration that the letter of rejection of the 1st Defendant dated 31.3.2006 is null and void. The Plaintiff is not entitled for any damages, much less the damages as claimed by them in this suit. No costs.

24.03.2017

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

C.V.KARTHIKEYAN, J.

Srcm

To:

1. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CS.No.375 of 2009

24.03.2017

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