IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2019

PRONOUNCED ON : 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.1015 of 2008

M/s.Virgo Polymers (India) Ltd.,
Having its registered office at
New No.10, Old No.34,
Arunachalam Road,
Saligramam, Chennai - 600 093.
and factory at:
A-1-A, MMDA Industrial Complex,
Maraimalai Nagar - 603 209,
Kancheepuram District, Tamil Nadu.
Rep.by its Manager - Finance & Accounts
Mr.K.Neelakantan. ... Appellant/Plaintiff

Vs.

M/s.Ambadi Enterprises Ltd.,
rep.by its Chairman, Mr.A.Vellayan,
Having its office at:
Tiam House, No.72 (Old No.28)
Rajaji Salai, Chennai - 600 001.
... Respondent/Defendants

Prayer :-
First Appeal has been filed under Section 96 of CPC against the Judgement and Decree dated 17.12.2007 passed in O.S.No.7209 of 2005 on the file of the VII Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.V.Bhiman
For M/s.Sampthkumar Associates

For Respondent : Mr.S.Thanka Sivan



JUDGMENT

The plaintiff in O.S.No.7209 of 2005 on the file of the VII Additional Judge, City Civil Court, Chennai, who has lost the suit laid by it against the defendant for recovery of money, has come forward with the first appeal, impugning the judgment and decree of the Court below dated 17.12.2007.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiff's case is that it is a Limited Liability Company incorporated under the Companies Act, 1956 and is a manufacturer of PP Bags for various uses and the defendant placed an order with the plaintiff vide purchase order dated 14.03.2003 for the supply of 1,50,000/- quantity of the new PP Bags and the plaintiff supplied the same to the defendant on various dates as detailed in the plaint for a total amount of Rs.19,96,766/- and towards the abvoesaid price, the defendant paid some amounts and some amounts were paid by Mr.G.Jayasimhan, Proprietor M/s.Universal Products and Allieds on behalf of the defendant, in all aggregating to Rs.14,96,766/- as detailed in the plaint and as on date, the defendant owes the plaintiff a sum of Rs.5,00,000/- towards principal and Rs.2,20,850/- towards interest at the rate of 18% per annum from the respective dates of supply till the date of the plaint and thus, the defendant owes the plaintiff a sum of Rs.7,20,850/- and the statement of account with regard to the same is filed and the defendant has failed and neglected to pay the said sum in spite of demands and the defendant had also assured the plaintiff to provide the Form-H certificate for Sales Tax Exemption but till date, it has not done so. The Sales Tax dues comes to Rs.79,871/- with surcharge of Rs.3,994/- totalling to Rs.83,865/- for the suit transaction and the Commercial Tax Officer, Porur, had issued the demand notice to the plaintiff to pay the abovesaid amount and also imposed 15% penalty i.e. Rs.1,25,798/- thereon and the plaintiff is liable to pay Rs.2,09,663/- to the Commercial Tax Department, Porur and the same has to be paid by the defendant with 18% interest to the plaintiff and hence, the suit.

4.The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and denied that it had placed an order with the plaintiff vide purchase order dated 14.03.2003 for the supply of 1,50,000/- quantity of PP Bags and that the plaintiff supplied the same on various dates as set out in the plaint to the defendant and also denied the case that the defendant and one Mr.G.Jayasimhan, Proprietor, M/s.Universal Products and Allieds paid a sum of Rs.14,96,766/- in aggregate with reference to the supply of the PP Bags as detailed in the plaint and also denied that the defendant owes a sum of Rs.7,20,850/- inclusive of interest as claimed in the plaint and also disputed the case of the plaintiff that the defendant had failed to pay the sum in spite of demands and also disputed the case of the plaintiff that the defendant had assured to provide Form-H certificate for

Sales Tax Exemption and that the defendant is liable to pay Rs.2,09,663/- with interest with reference to the Sales Tax dues claimed from the plaintiff by the Commercial Tax Department and according to the defendant, there is no cause of action for the plaintiff to institute the suit against it. It is put forth by the defendant that there is no privity of contract between the plaintiff and the defendant with reference to the supply of PP Bags and contended that the plaintiff's own document will falsify the same and stated that in the letter dated 15.10.2003 addressed by the plaintiff to the defendant, it has been averred that the plaintiff has received a sum of Rs.1,50,000/- on 04.09.2003 without referring to the mode of payment and party by whom payments were received and as per the statement of account filed by the plaintiff, when the plaintiff has received on various dates from the Bank account viz., LVB-Cathedral Bank OCC 129 and falsely alleged that the abovesaid payment and other payments were made by the defendant from the vary same account and no polythene bags or any other commodity was supplied to the defendant at any point by the plaintiff and the suit has to fail for the reason of non-jointer of necessary parties and the plaintiff has not chosen to sue G.Jayasimhan, from whom, the payments were alleged to have been received by the plaintiff for the alleged supply of polythene bags to the defendant and the plaintiff has also not sued the person to whom the PP Bags were actually supplied as claimed and therefore, prayed for the dismissal of the plaintiff's suit.

5.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

> “(i).Whether the plaintiff is entitled to claim the amount as put forth in the plaint?
>
> (ii).Whether the plaintiff has cause of action to institute the suit?
>
> (iii).To what relief the plaintiff is entitled to?”



6.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A19 were marked. On the side of the defendant, DW1 was examined and Exs.B1 & B2 were marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present first appeal has been laid.

8.The following points arise for consideration in the first appeal:

(i).Whether there is any privity of contract between the plaintiff and the defendant qua the supply of PP Bags as put forth by the plaintiff in the plaint?

(ii).Whether the plaintiff is entitled to recover the suit amount from the defendant as claimed in the plaint?

(iii).To what relief the plaintiff/appellant is entitled to?

(iv).To what relief the defendant is entitled to?”

9.Point Nos.1 & 2

The suit has come to be laid by the plaintiff for the recovery of money on the footing that it had supplied PP Bags to the defendant as per the purchase order dated 14.03.2003 placed by the defendant for a sum of Rs.19,96,766/- and according to the plaintiff, towards the abovesaid price, the defendant has paid some amounts and some amounts were paid by G.Jayasimhan, Proprietor, M/s.Universal Products and Allieds on behalf of the defendant aggregating to Rs.14,96,766/- as detailed in the plaint on various dates and deducting the same, according to the defendant, as on the date of the plaint, the defendant owes a sum of Rs.5,00,000/- with interest at 18% per annum amounting to Rs.2,20,850/- and thus, according to the plaintiff, in all, the defendant owes the plaintiff a sum of Rs.7,20,850/- and further, according to the plaintiff, the defendant is also liable to pay the amount paid by the plaintiff to the Commercial Tax Department by way of the Sales Tax dues amounting to Rs.2,09,663/- in connection with the suit transaction and hence, the suit.

10.The defendant, in toto, disputed that it had placed the purchase order with the plaintiff for the supply of PP Bags as alleged in the plaint and also disputed the payment of the sum with reference to the same by it and through the Proprietor, M/s.Universal Products and Allieds and according to the defendant, there is no privity of contract between the plaintiff and the defendant qua the supply of the PP Bags as put forth in the plaint by the plaintiff and further, according to the defendant, it is not liable to pay any amount to the plaintiff towards the payment of Sales Tax dues in connection with the supply of the alleged PP Bags and in toto, according to the defendant, the plaintiff has no cause of action to lay the suit against it and therefore, the suit is liable to be dismissed.

11.In the light of the abovesaid defence set out by the defendant, at the foremost, the plaintiff has to establish that the defendant had indeed placed purchase order with it for the supply of 1,50,000/- PP Bags on 14.03.2003. To sustain the abovesaid case, it is found that the plaintiff has marked the photostat copy of the abovesaid purchase order marked as Ex.A1. It is found that Ex.A1 has come to be marked through PW1 examined on behalf of the plaintiff and at the time of marking Ex.A1, the defendant is found to have not put forth any objection to the admissibility of the same and therefore, the photostat copy of the purchase order has come to be marked as Ex.A1 on the side of the plaintiff, without any resistance on the part of the defendant. No doubt, the plaintiff has to explain and prove the circumstances entitling it to adduce secondary evidence with reference to Ex.A1 purchase order (photo copy) and as to why it was unable to place the original purchase order for one reason or the other and the need for filing the photostat copy. Further, when the party, who is tendering such secondary evidence without proving the circumstances entitling him to put forth the same, the opposite party must raise the objection with reference to the same at the time of admission and in case, the objection is not raised at that point of time, the opposite party viz., the defendant, as in this case, would be precluded from raising the same at belated stage. However, in any event, the mere production of a document in evidence would not amount to its proof i.e. contents thereof and the plaintiff would not be exempted from dispensing with its proof which is otherwise required to be done. The above position of law could be gathered from the decision relied upon by the defendant's counsel reported in (2013) 10 Supreme Court Cases 758 ( Kaliya Vs. State of Madhya Pradesh).

12.As could be seen from the evidence of PW1, it is not the case of the plaintiff that the original purchase order is not available or lost. On the other hand, PW1 would assert that the original purchase order is available with them but it is found that only the photostat copy of the purchase order has come to be marked as Ex.A1 on the side of the plaintiff. No doubt, the defendant has suggested to PW1 that Ex.A1 the photostat copy of the purchase order, has been fabricated for the purpose of the case and the said suggestion has been denied by PW1 examined on behalf of the plaintiff.

13.As determined by the apex Court in the abovesaid decision, as far as the admissibility of Ex.A1, the defendant having not put forth any objection to the marking of the same, when PW1 was examined, it is found that the defendant would not be entitled to question its admissibility at a belated stage but in any event, when the defendant is challenging the genuineness of the same, it is for the plaintiff to establish that Ex.A1 is the purchase order placed with it by the defendant for the supply of the PP Bags in question. In this connection, the plaintiff would rely upon the evidence of PW1 and DW1 as well as the other materials placed on record. DW1 in his evidence during the course of cross examination has admitted that their company emblem is found in Ex.A1. Now, according to the defendant, they had not placed any purchase order with the plaintiff for the supply of PP Bags on 14.03.2003 as put forth by the plaintiff. DW1 examined on behalf of the defendant has admitted that he had joined the defendant company only during August 2003. Therefore, it is found that he may not be directly acquainted with the transaction involved in the matter. However, DW1 has admitted that their company is maintaining records/letters with reference to the purchase order placed by them and also admitted that the plaintiff's advocate has submitted a petition for the production of the abovesaid records/letter and DW1 has admitted that the purchase register maintained by them has not been filed in the Court and also would claim that their company is not maintaining the purchase register. However, the abovesaid version of DW1 is found to be unacceptable. When the company used to place orders with others for the purchase of their needs, definitely, as contended by the plaintiff's counsel, necessary records evidencing the same would be maintained with the defendant's company. In such view of the matter, to say that the defendant company is not at all maintaining any purchase register or other records pointing to the same cannot be believed and accepted in any manner. Therefore, when it is found that despite the petition given by the plaintiff's counsel calling upon the defendant to produce the relevant records as regards the purchase orders placed by the defendant during the relevant period, the defendant has not come forward with any records pointing to the same one way or the other and on the other hand, put forth a case as if they are not at all maintaining the purchase register / records. Furthermore, when DW1 has admitted that they are maintaining records as per the provisions of the Company Act, his evidence that the defendant is not maintaining any purchase register/records cannot be believed and accepted. When furthermore, DW1 has admitted that there are separate officers pertaining to the purchase wing of the defendant Company and he is not in any manner associated with the purchase of the defendant company, in such view of the matter, it is seen that DW1 would not be personally aware of the activities of the purchase wing of the defendant company and accordingly, he has come forward with the case as if no purchase order at all or other records are being maintained by the defendant qua the purchase placed by them. Therefore, the argument put forth by the plaintiff's counsel that DW1 has not come forward with the truth as regards the above aspects of the matter deserves acceptance and in my considered opinion, on the failure of the defendant to place the purchase order maintained by them for the relevant period, necessarily adverse inference has to be drawn against the defendant qua the same.

14.The suit has come to be laid against the defendant. The defendant has been described as M/s.Ambadi Enterprises Ltd., represented by its Chairman Mr.A.Vellayan and the address of the defendant company is also shown as Tiam House, 72, (old 28), Rajaji Salai, Chennai - 1. DW1 examined on behalf of the defendant has admitted that Murugappa is one of the group of companies of the defendant company and Vellayan is the vice president of Murugappa Group of companies. In this matter, claiming the amount to be given qua the supply of PP Bags, it is found that the plaintiff has sent a letter dated 15.09.2003 (Ex.A8) to Mr.Vellayan, Chairman, M/s.Murugappa Group of Companies, Tiam House, VI Floor, Rajaji Salai, Chennai - 1 complaining about the non-receipt of payment for the supplies made to M/s.Ambadi Enterprises Ltd., i.e. the defendant company, wherein, the plaintiff has clearly averred about the purchase order placed by the defendant company M/s.Ambadi Enterprises Ltd., on 14.03.2003 with reference to the supply of the 50 kgs of PP Bags for packing sugar for a sum of Rs.19,96,766/- and also detailed about the payments received with reference to the same by way of the various cheques, in all, amounting to Rs.14,96,766/- and reminded that though the goods had been delivered about 6 months back and even after repeated follow-up with the accounts department, they were unable to realise the payment due to them and accordingly, directed them to take efforts to ensure the payment of the balance sum. The receipt of Ex.A8 has not been controverted by DW1. As abovenoted, in Ex.A8, the plaintiff has clearly averred about the purchase order placed by the defendant company on 14.03.2003 the photo copy of which has been marked as Ex.A1. Inasmuch as no proper response had been received from the defendant company or from M/s.Murugappa Group of companies in which the defendant company is admittedly associated with, the plaintiff has been constrained to issue another letter to Mr.Vellayan, Chairman, M/s.Murugappa Group of Companies on 15.10.2003 (Ex.A9) with reference to the non-receipt of payment for the supplies made to the defendant company M/s.Ambadi Enterprises. In that letter (Ex.A9), the earlier letter dated 15.09.2003 has been referred to and also the details of supplies were pointed out and in particular reminded that there is still outstanding of Rs.5,00,000/- for the last 7 months and also they are repeatedly contacting Mr.Subramaniam and as he was elusive and also informing that they were unable to contact Mr.Jayasimman of Universal Enterprises for the balance payment and accordingly, reminded them that despite the supply of the goods, the company has not been making further payment and by way of the abovesaid letter marked as Ex.A9 the plaintiff's company requested to intervene in the matter and settle the issue as early as possible. The receipt of Ex.A9 has not been controverted by DW1. When it is found that the plaintiff had been insisting the payment due to it qua the supply of PP Bags to the defendant company by way of Exs.A8 & A9 and the receipt of Exs.A8 & A9 had not been challenged by the defendant in the written statement and all the more, the receipt of which has been admitted by DW1, if according to the defendant, as put forth in the written statement, they had not placed any orders qua the said PP Bags with the plaintiff, then, in the normal course of events, the defendant company would have controverted the claim of the plaintiff made by way of Exs.A8 & A9. On the other hand, it is seen that through A.Vellayan, Chairman of Ambadi Enterprises Limited i.e. the defendant company had responded to Ex.A9 letter by a letter dated 30.10.2003, which document has come to be marked as Ex.A10 and DW1 Elangovan having admitted that Ex.A10 letter had been sent by their chairman to the plaintiff and on a perusal of Ex.A10 letter, it is found that nowhere, in the same, the defendant company or its chairman had refuted the purchase order placed with the plaintiff for the supply of PP Bags vide., the purchase order dated 14.03.2003 and on the other hand, by way of the said letter informed the plaintiff that they had understood that the plaintiff had collected the cheques for the entire dues from M/s.Jayasimhan of Universal Products and Ambadi Enterprises Limited through Subramani and that the defendant company viz., Ambadi Enterprises Limited had reimbursed Universal Products on that basis and accordingly, informed the plaintiff to contact Mr.Jayasimhan and also assured that Mr.Subramani would help the plaintiff to sort out the matter and accordingly, directed the plaintiff to contact Mr.Subramani. Therefore, as rightly contended by the plaintiff's counsel, if the defendant company had not placed any order with the plaintiff qua the supply of PP Bags, the defendant, while responding to Ex.A9 by way of Ex.A10, would have put forth the case that there has been no privity of contract with the plaintiff qua the supply of PP Bags viz., the purchase order dated 14.03.2003 and on the other hand, when it is found that the defendant has not controverted the purchase order placed with the plaintiff qua the supply of PP Bags by way of Ex.A10 and on the other hand, only stated that they had understood the plaintiff had received the amounts pertaining to the same from Jayasimman of Universal products and furthermore, also informed the plaintiff that if there is still any issue to be sorted out with reference to the payment, requested the plaintiff to contact Jayasimhan further and also assured the plaintiff that Mr.Subramaniam and their company would help the plaintiff to sort out the matter and in the said letter, the defendant company had also informed that they had reimbursed Universal Products qua the payment of the amount to the plaintiff with reference to the supply of PP Bags, in such view of the matter, when by way of Ex.A10 as put forth by the plaintiff's counsel, the defendant, without any ambiguity, has clearly admitted its liability to pay the amount due to the plaintiff and when it is not the case of the defendant that there is any other pending agreement with the plaintiff company other than the present issue i.e. the supply of PP Bags vide purchase order dated 14.03.2003, the case now projected by the defendant that it had not at all placed any order with the plaintiff for the supply of PP Bags for the sum as averred in the plaint and as reflected in Ex.A1 pay order cannot at all be countenanced and it is seen that the abovesaid aspect of the matter had been failed to be considered by the trial Court despite the same glaring against the face of the defendant's version.

15.Not only that, prior to the institution of the suit, the plaintiff has issued the pre-suit notice to the defendant company claiming the amount due to it with reference to the supply of PP Bags, vide purchase order dated 14.03.2003 and the pre-suit legal notice issued by the plaintiff to the defendant company dated 18.03.2004 has been marked as Ex.A12, wherein also, the plaintiff has clearly averred about the purchase order dated 14.03.2003 placed by the defendant with the plaintiff for the supply of 1,50,000/- quantity of new PP Bags amounting to Rs.19,96,766 and the further sum is still outstanding at Rs.5,00,000/- and interest thereon, in all , amounting to Rs.5,97,002/-. In the said legal notice, the plaintiff has also averred that the defendant company has paid the amounts and the amounts were also paid through Universal Products and Ambadi Enterprises Ltd., as detailed therein. The receipt of Ex.A12 legal notice has not been denied by the defendant. Even DW1 examined on behalf of the defendant has admitted that they had not sent any reply to Ex.A12 legal notice and also admitted that Ex.A12 reflects about the business dealings between the defendant company and the Universal Products and furthermore also admitted that while placing the purchase order, Form - H would be supplied. In such view of the matter, when the plaintiff is found to have made the claim of the amount due to it even prior to the institution of the suit by way of Ex.A12 notice and despite the receipt of the same, the defendant having not refuted the claim of the plaintiff in any manner, in such view of the matter, as contended by the plaintiff's counsel, when Ex.A12 legal notice as well as Exs.A8 & A9 letters sent by the plaintiff had clearly furnished the transactions which the plaintiff and the defendant had entered into qua the supply of PP Bags, the defendants having not controverted any of the said letters and on the other hand, admittedly, its liability as abovestated by way of the letter marked as Ex.A10 and assured the plaintiff that it would endeavour in all manner to sort out the issue between the parties, in such view of the matter, the present case projected by the defendant that it had not placed any purchase order with the plaintiff for the supply of PP Bags and that it had not made any payment with reference to the same and that it is not connected whatsoever with alleged payment made with reference to the same by Mr.Jayasimhan of M/s. Universal Products and Allieds, it is found that the abovesaid defence has been projected falsely only with a view to avoid the liability of making the payment to the plaintiff qua the supply of PP Bags as put forth by the plaintiff. As rightly put forth by the plaintiff's counsel, considering the non-repudiation of the defendant to the abovesaid letters and the legal notice sent by the plaintiff marked as Exs.A8, A9 and A12 and its liability to pay the amount by way of Ex.A12, in such view of the matter, necessary adverse inference has to be drawn against the defendant and the defendant cannot be allowed to avoid the liability and the only inference that could be drawn is that the defendant has indeed placed the purchase order for the supply of PP Bags vide Ex.A1 and taking advantage of the situation that the plaintiff company had not marked the original purchase order Ex.A1, the defendant cannot be allowed to extricate from the liability one way or the other. From the documents projected by the plaintiff in the matter and as above discussed, the defendant has admitted its liability towards the payment made to the plaintiff qua the supply of PP Bags vide purchase order dated 14.03.2003.

16.The plaintiff, on the basis of the purchase order, has raised the invoices with reference to the supply of PP Bags marked as Exs.A2 to A7 and it is found that as directed by the defendant company, had supplied the Bags to the Sugar Mills as reflected in the invoices as abovenoted. The plaintiff has, by way of Exs.A8 and A9 as well as in the legal notice Ex.A12, clearly averred that the supply has been effected and part payment had been made by the defendant with reference to the same and only further sum requires to be paid by the defendant company as abovenoted. Further, the defendant has not refuted Ex.A8 and not replied to Ex.A12. Further by way of Ex.A10, the defendant has only admitted the case of the plaintiff and assured the plaintiff that the matter would be sort out through Mr.Subramaniam as well as Jayasimhan as abovenoted. The defendant has not sent any reply to the legal notice. In such view of the matter, the contention put forth by the defendant that the delivery has not been effected to the defendant on the basis of the invoices projected in the matter cannot at all be countenanced. When it is found that the defendant company is having transactions with the various Sugar Mills reflected in the invoices marked in the matter, when the same could be gathered from Exs.A16 to 19 and furthermore, when DW1 examined on behalf of the defendant has admitted that they would pay the amount as regards the purchase made by Universal Products and Allieds and the said sum would be adjusted by Universal Products and Allieds, qua the amount handed by them to the defendant company, in addition to that, when it has been admitted by DW1 that the defendant has paid Rs.5,00,000/- to the plaintiff and the said amount had been paid as requested by Universal Products and when there is no material to hold that the amount of Rs.5,00,000/- paid by the defendant is only with reference to the purchase acquired by Universal Products and the defendant having also not placed any agreement with reference to the same, in such view of the matter, it is found that the defendant itself has admitted its liability to pay the amount to the plaintiff and accordingly, also made part payment to the plaintiff and the defendant cannot contend that the said payment made by the defendant to the plaintiff got adjusted qua the purchase said to have been made by the Universal Products but when with reference to the same, there is no material forthcoming on the part of the defendant, the abovesaid contention raised by the defendant cannot be countenanced. No doubt, the cheque issued by Universal Products having been dishonoured, the plaintiff has levied the criminal prosecution against the Universal Products as well as the defendant and the materials placed on record go to show that the proceedings had been stayed by this Court and that alone would not in any manner entitle the defendant to claim that it is not liable to pay to the plaintiff qua the purchase of PP Bags pursuant to the purchase order dated 14.03.2003.

17.The trial Court seems to have been carried away by the failure of the plaintiff to place the original purchase order. No doubt, the plaintiff should have produced the original purchase order than the photostat copy of the same marked as Ex.A1. As above discussed, the plaintiff is able to substantiate its case that the defendant has indeed placed the purchase order in question and the same has not been refuted by the defendant in any manner as above pointed out and impliedly having admitted the same in Ex.A10 and would only endeavour to sort out the issues pending between the parties one way or the other, in such view of the matter, and furthermore, when the defendant has also not refuted the delivery of the PP Bags by the plaintiff as put forth in the plaint and reflected in the invoices and the defendant having acknowledged the liability by making part payment as above pointed out and also made certain payments through Universal Products and Allieds, in such view of the matter, in all, it is found that there is privity of contract between the plaintiff and the defendant with reference to the supply of PP Bags as projected by the plaintiff and accordingly, the defendant having made only part payment with reference to the supply effected by the plaintiff and failed to make the payment in full, in such view of the matter, it is seen that the plaintiff has been necessitated to levy the suit against the defendant for appropriate reliefs.

18.In the light of the abovesaid discussions, when it is seen that the plaintiff is entitled to recover the suit amount representing the amount to be paid by the defendant qua the supply of PP Bags as above pointed out with interest as claimed by the plaintiff and the defendant having placed the purchase order also liable to pay the Commercial Tax Dues with reference to the same as put forth in the plaint, in all, it is found that there is privity of contract between the plaintiff and defendant qua the supply of PP Bags and the plaintiff has cause of action to levy the suit against the defendant and accordingly, the plaintiff is entitled to recover the suit amount from the defendant and resultantly, I hold that the plaintiff is entitled to recover the suit amount as prayed for from the defendant with interest at the rate of 6% per annum from the date of the plaint till the date of realisation with costs and accordingly, the point Nos.1 & 2 are answered against the defendant and in favour of the plaintiff.

19.Point Nos.3 & 4

For the reasons aforestated, the Judgement and Decree dated 17.12.2007 passed in O.S.No.7209 of 2005 on the file of the VII Additional Judge, City Civil Court, Chennai, are set aside and resultantly, the suit is decreed in favour of the plaintiff and the defendant is liable to pay Rs.7,20,850/- to the plaintiff with interest at 6% per annum on Rs.5,00,000/- from the date of the plaint till the date of realisation and the defendant is also liable to pay a sum of Rs.2,09,633/- towards the Commercial Tax dues with interest at 6% per annum from the date of the plaint till the date of realisation with costs and accordingly, the first appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To

The VII Additional Judge,
City Civil Court, Chennai.

+1cc to M/s.S.Thankasivan, Advocate sr.79523
+2cc to M/s.Sampthkumar & Associates, Advocate sr.79516

A.S.No.1015 of 2008

VD(CO)
CS/21/01/2020