IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.(Comm.Div.)No.98 of 2021

M/s.Sri Arumuga Sugars Limited,
formerly known as "Sri Arumuga Sugars Pvt. Ltd.,
No.51, Appusamy Layout,
Redfields, Coimbatore – 641045
Rep. by its
Director Mr.V.Satish ...Plaintiff

Vs.

M/s.Integrated Service Point Pvt. Ltd.
No.32, VOC Colony,
Anna Nagar East, Chennai - 600102 ...Defendant

PRAYER: Plaint is filed under under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of the CPC and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No. 4 of 2016, praying to pass the judgment and decree:-

(1) Granting a mandatory injunction directing the Defendant to deliver to the plaintiff the duplicate Form 'H' issued by the Office of the Assistant Commissioner of Sales Tax, Chintadripet, Chennai – 600006 under the proceeding dated 18.02.2021. Or alternatively:

2) Direct the defendant to apply for and secure from the Assistant Commissioner fresh duplicate Form 'H' in lieu of the original Form 'H' bearing Nos.095852, 095853 and 095988 issued on 20.16.2012, 20.06.2012 and 20.06.2013 respectively, misplaced on 21.08.2019. Or alternatively;

3) Pass a money decree in favour of the Plaintiff and against the Defendant for a sum of Rs.3,70,70,137/- with further interest @ 24% per annum on the principal amount of Rs.3,19,08,782/- from date of plaint till the date of realization of the decreetal amount.

4) Pass and pronounce an order directing the Defendant to pay the Plaintiff for the costs of the suit proceedings;

5) For such further or other reliefs as may be just and necessary in the circumstances of the case and thus render justice.

For Plaintiff	:	M/s.R.Vidhya Shankar
For Defendant	:	M/s.Mani Sundar Gopal

JUDGMENT

The entire suit revolves around the issue as to who would bell the cat. The suit has been filed for the following reliefs:-

(1) Granting a mandatory injunction directing the Defendant to deliver to the plaintiff the duplicate Form 'H' issued by the Office of the Assistant Commissioner of Sales Tax, Chintadripet, Chennai – 600006 under the proceeding dated 18.02.2021. Or alternatively:-

2) Direct the defendant to apply for and secure from the Assistant Commissioner fresh duplicate Form 'H' in lieu of the original Form 'H' bearing Nos.095852, 095853 and 095988 issued on 20.16.2012, 20.06.2012 and 20.06.2013 respectively, misplaced on 21.08.2019. Or alternatively;

3) Pass a money decree in favour of the Plaintiff and against the Defendant for a sum of Rs.3,70,70,137/- with further interest @ 24% per annum on the principal amount of Rs.3,19,08,782/- from date of plaint till the date of realization of the decreetal amount.

4) Pass and pronounce an order directing the Defendant to pay the Plaintiff for the costs of the suit proceedings;

2. The admitted case of both the parties is that the defendant who had purchased sugar and molasses from the plaintiff for export had handed over two copies of 'Form H' to the plaintiff in the year 2012 which had been lost by the plaintiff. Thereafter, the plaintiff had immediately filed a complaint with the Madukkarai Police Station, on 26.08.2019 and had obtained a non traceable-certificate. He had then requested the defendant to apply and obtain duplicate 'Form H' certificates. The Duplicate 'Form H' Certificates applied for and obtained. It is here that the difference of opinion between the parties had occurred. It is the case of the plaintiff that these duplicate 'Form H' certificates were not handed over to them. Whereas, it is the case of the defendant that 'Form H' Certificates were handed over to the representative of the plaintiff who had accompanied the defendant's representative on 18.02.2021.

3. The plaintiff had sent a reminder dated 08.03.2021 calling upon the defendant to obtain the duplicate 'Form H' certificates. To this, there has been no response from the defendant which constrained the plaintiff to send a legal notice dated 18.03.2021. To this legal notice, a reply has been sent by the defendant on 26.03.2021, wherein they have stated that 'Form H' certificates were handed over to the plaintiff. Hence the suit for the reliefs set out above.

4. This Court by order dated 15.12.2022 was pleased to frame the following issues:-

1. Whether the three sets of "Form-H", bearing L1-295010 to L1-295012 were received by the representative of the plaintiff, Mr.V.Sathish and representative of the Defendant, K.Srikanth Apparao, on 18.02.2021 from the office of the Assistant Commissioner (ST)?

2. Whether the Defendant has proven that he has delivered the duplicate Form-H to the plaintiff?

3. Whether the Defendant is required to secure *another set of duplicate Form-H in lieu of the original Form 'H' bearing Nos.095852, 095853 and 095988 issued on 20.06.2012, 20.06.2012 and 20.06.2013 from the Assistant Commissioner of Sales Tax, Chintadripet?*

4. Whether duplicate and the original separated by a perforation from the counterfoil of the Form-H were collected by Mr.V.Sathish, Representative of the Plaintiff from Srikanth Apparao, Representative of the Defendant on 18.02.2021?

5. Whether the claim of the plaintiff in the letter dated 08.03.2021, that the defendant unilaterally collected the Form-H from the office of the Assistant Commissioner Sales Tax (ST) is true ?

6. Whether the claim of the plaintiff that the defendant refused to forward the Form-H, collected from the office of the Assistant Commissioner Sales Tax (ST) is true?

7. Whether the Defendant has anything to gain by not handling over the Form-H to the plaintiff after requesting the Sales Tax Department for issuance of fresh Form-H on the basis of the request made by the plaintiff?

8. Whether the plaintiff's claim that the defendant is refusing to handover the fresh Form-H-3 nos is for some ulterior motive namely to delay and evade of Revenue Recovery Proceeding vide Ref.No.14160/2021/D3 dated 07.09.2021?

9. Whether the plaintiff is entitled for seeking a *relief of Money Decree in its favour and against the defendant for a sum of Rs.3,70,70,137/-?*

10. Whether the plaintiff is entitled for any of the reliefs prayed for?

5. The parties have also gone to trial and on the side of the plaintiff 1 witness had been examined and Ex.P.1 to Ex.P.17 were marked. The defendant had examined 2 witnesses and Ex.D.1 to D.9 were marked.

6. However, a mere perusal of the dispute at hand clearly indicates that the same can be solved by applying for a duplicate 'Form H' certificate. After initial arguments have been addressed it is seen that the dispute between the parties is as to who would lodge the complaint for the loss of 'Form H' Certificates. The plaintiff is now willing to file the complaint and the defendant is agreeable that once they receive the non-traceable certificate, they are ready to make a fresh application for the second set of duplicate 'Form H' certificates. Since both parties have arrived at this consensus, the suit can be decreed directing the plaintiff to lodge a complaint with the jurisdictional police station informing them about the loss of the 'Form H' certificates and on their obtaining the non-traceable certificate, the same shall be handed over to the defendant who shall thereupon make necessary application and obtain 'Form H' Certificates. Therefore, the suit is decreed for the first relief with the above directions. Once the 1st relief is granted the other reliefs become redundant.

7. It is needless to state that on such application being made accompanied by the non-traceable certificate, the Department shall issue a duplicate set of the 'Form H' certificates. The suit is decreed accordingly. No costs.

08.09.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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APPENDIX

List of Witness Examined on the side of the Plaintiff:

1. P.W.1 - Mr.V.Satish

List of Exhibits marked on the side of the Plaintiff:-

S.No.	*Exhibits*	*Description of documents*
1.	P-1	Board resolution dated 13.10.2021.
2.	P-2	Printout of the certificate of Incorporation dated 19.06.2008.
3.	P-3	Printout of the certificate of name change of the plaintiff dated 24.06.2011.
4.	P-4	Photocopy of the letter dated 20.06.2012 of Form 'H' No.095852 under sale order dated 23.01.2012.
5.	P-5	Photocopy of the letter dated 20.06.2012 of Form 'H' No.095853 under sale order dated 02.03.2012.
6.	P-6	Photocopy of the letter dated 20.06.2013 of Form 'H' No.095988 under sale order dated 21.02.2013.
7.	P-7	Photocopy of the letter sent to the Inspector of Police, Madukkarai Police Station, Madukkarai by the plaintiff dated 26.08.2019.
8.	P-8	Photocopy of the CSR No.193/2019 dated 26.08.2019.
9.	P-9	Photocopy of the certificate issued by the Inspector of Police, Madukkarai Police Station, Madukkarai.
10.	P-10	Photocopy of the letter sent by the plaintiff to the defendant dated 22.02.2020.
11.	P-11	Photocopy of the letter from the Office of the Assistant Commissioner (ST) dated 18.02.2021.
12.	P-12	Photocopy of the letter sent by the plaintiff to the defendant dated 08.03.2021.
13.	P-13	Photocopy of the legal notice sent by the plaintiff counsel to the defendant dated 18.03.2021.

S.No.	Exhibits	Description of documents
14.	P-14	Photocopy of the reply to legal notice issued by the defendant to the plaintiff dated 26.03.2021.
15.	P-15	Photocopy of the rejoinder to reply issued by the plaintiff to the defendant dated 31.03.2021.
16.	P-16.	Photocopy of the reply to rejoinder issued by the defendant to the plaintiff dated 05.04.2021.
17.	P-17	Photocopy of the order passed by the District Collector, Coimbatore in revenue recovery proceedings dated 07.09.2021.

List of Witnesses Examined on the side of the Defendants:

1. **D.W.1 - Mr.K.Ramnath Apparao**
2. **D.W.2 - Mr.Srikanth Apparao**

List of Exhibits marked on the side of the Defendant:-

S.No.	Exhibits	Description of documents
1.	D-1	Printout of the certificate of Incorporation of the defendant dated 01.06.1999.
2.	D-2	Original letter sent by the plaintiff to the defendant dated 08.03.2021.
3.	D-3	Original legal notice sent by the plaintiff to the defendant dated 18.03.2021.
4	D-4	Office copy of the reply notice sent by the defendant to the plaintiff dated 26.03.2021.
5.	D-5	Original rejoinder notice sent by the plaintiff to the defendant dated 31.03.2021.
6.	D-6	Office copy of the reply to the rejoinder sent by the defendant to the plaintiff dated 05.04.2021.
7.	D-7	Printout of the GST registration certificate of the

S.No.	Exhibits	Description of documents
		defendant.
8	D-8	Original board resolution dated 10.12.2021.
9	D-9	Section 65B affidavit filed for Ex.D.1 and Ex.D.7.

P.T. ASHA, J,

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