IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	**21.12.2024**
Pronounced On	**02.01.2025**

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. No.935 of 2008

S.V.Sugar Mills Ltd.,
Palayasevaram
631 606, Kancheepuram Taluk & District
Rep. by its Company secretary ... Plaintiff

Vs.

M/s.Transworld Logistics Pvt. Ltd.,
Transworld House, No.2, IX Lane,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4 ... Defendant

Prayer: Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of CPC., praying to pass judgment and decree against the defendant for a sum of Rs.1,33,08,161/- together with further interest at 24% per annum on the sum of Rs.1,05,64,330/- from the date of plaint till payment in full and for the costs of the suit.

For Plaintiff : Mr.S.Sathiyanarayanan

For Defendant : Mr.S.Raghunathan

JUDGMENT

This suit has been filed by the plaintiff for recovery of money a sum of Rs.1,33,08,161/- together with further interest at 24% per annum on the sum of Rs.1,05,64,330/- from the date of plaint till payment in full and for the costs of the suit.

2. The averments made in the plaint are as follows;

2.1. The plaintiff is a leading sugar manufacturer in South India having its factory at Palayaseva, Kanchipuram District. The plaintiff entered into an agreement with the defendant on 09.09.2006 for the purpose of engaging the services of the defendant in respect of shipment of second hand machineries from United States of America and Ireland. The consignments were agreed to be delivered at Chennai Port, by the defendant.

2.2. The main clauses of the agreement dated 09.09.2006 between the plaintiff and defendant are as follows:-

I. The freight rates agreed between SVSL (Plaintiff) and TLPL (Defendant) etc., are as follows:-

(1) 20' dv general purpose - US $ 2900/20' dv (within gauge, legal weight 18.2 mt).
(2) 20' open tops - US $ 5500/20' open top (within gauge, legal weight 18.2 mt).
(3) 20' flat racks - US $ 7137/20' flat rack (within gauge, legal weight 18.2 mt).

and further agreed

1) Transportation of empty containers to place of loading
2) Transportation of loaded containers to nearest US Port
3) Ocean freight charges from US Port to Chennai Port
4) AES charges
5) The above rate is basis live load with two hours free time and any extra time required/requested by SVSL will be charged EXTRA at US$ 100 per hour.
6) The above rate is for in-gauge cargo and within the legal weight limit indicated above.
7) Rates are subject to change with fuel and other charges.

B/L charges are excluded in the price shown above and SVSL requests TLPL to limit the bill of lading to two or three as per shipping plan and the charges as confirmed by TLPL shall be US $ 25 per B/L all other cost will be as per actual.

II. Payment terms:

Basis the current estimation that the shipment will require about 27x20' GP, 17x20' FR and 6x20' OT, total value of the contract is US $232,629/-. In case of any change in the inventory, the contract will get increased/decreased accordingly and shall be paid by SVSL to TLPL. The terms of payment is agreed as under;

1) 25% of the total value shall be paid as advance by SVSL to TLPL at the time of signing the contract where after TLPL will commence the work.

2) 25% after containers have been loaded and shipped from the USA.

3) 50% on arrival of cargo in Chennai Port but prior to issue of delivery order.

4) Payment will be made locally in Chennai in Indian Rupees and the exchange rate for this purpose will be

the Standard Chartered Bank TT selling rate prevailing on the date of payment.

III. Item Head: Place

(a) Sl.No.2 Inview of increase in the number of special equipments where the quantity is almost double than projected earlier it is agreed that SVSL will pay to TLPL an additional sum of US $ 15,000/- to take care of the revised lashing requirements.

(b) Sl.No.5: As SVSL's shipper has requested for drop and pick-up service, there will be an additional charge of US $ 1000 per container which will be payable by SVSL to TLPL. In line with the contract, TLPL has provided this advance information to SVSL vide E-mail dated 16th September 2006 and the same is payable with the second installment of 25% which is due to TLPL once the container lots leave USA Port.

IV. ITEM HEAD: FREIGHT TERMS

On going through the packing list and in line with discussion with the shipper, it has been observed that certain cargos are over height and over width. In line with the contract, for such containers/equipments there will be over dimensional charges will be extra at actuals at the time of shipment. SVSL to settle this amount with the second instalment of 25% which is due to TLPL once the container lots leave USA Port.

V. ITEM HEAD: PAYMENT TERMS:

Based on the revised estimation that the shipment will require approx. 45 Nos. special equipments (20' Open Tops & Flat Racks) and 5 Nos.20' GP containers, the total value of the contract is revised to US $ 298.832.50 which has been arrived at as under:

45 Nos. 20' FR/OT @ US$ 6318.5/Unit* = US$ 284.332.50

5 Nos. 20' GP @ US $ 2900/Unit = US$ 14,500.00

* Average of the freight rate for FR/OT

Again if the actual inventory used is increased/decreased or in case of any change in the type of containers used, the contract value will increase or decrease accordingly.

2.3. It is clarified that the second instalment of 25% becomes due after containers have been loaded/shipped from USA, namely if the containers are shipped in two lots, second instalment of 25% for the first lot becomes due immediately after the first lot is shipped and shall include all charges viz., ODC charges and drop/pickup charges for this lot. Similarly, the balance 50% for this lot becomes due once the containers arrive at Chennai Port, but prior to the issue of delivery order. Subsequently the defendant sent an addendum to the original agreement which the plaintiff did not agree.

2.4. In respect of the services rendered by the defendant, the plaintiff has been making periodical payments to the defendants towards the carriage of machinery from US Ports and delivery to the plaintiff at Chennai Port. The plaintiff had paid a sum of Rs.3,11,41,875/-, as per the following details:

Ocean FRT	Rs.1,78,75,464.00
Bill of Lading Fee	Rs. 45,772.00
Drop/Pick up	Rs.28,02,990.00
Reworking/Relashing	Rs. 36,54,016.00
ODC charges	Rs. 41,07,325.00
Detention Charges	Rs. 14,39,040.00
Freight Tax	Rs. 9,24,380.00
Total	Rs.3,08,48,987.00

2.5. Subsequent to the payment made by the plaintiff, it worked out the details of services rendered by the defendant and found that a sum of Rs.1,05,64,330/- has been paid in excess for which the defendant has illegally appropriated the same under different heads without proper accounting and without furnishing any details or proof from the carrier to whom the cargo was entrusted for shipment to Chennai. The details of the excess charges collected are in respect of the following;

a. Drop/pick up charges	Rs.28,02,990.00
b.Reworking and re-lashing charges	Rs.36,54,016.00
c.ODC charges (over dimensional charges)	Rs.41,07,325.00
Total	Rs.1,05,64,331.00
Rounded of to Rs.1,05,64,330/-.	

2.6. Therefore, by a letter dated 25.05.2007, the plaintiff informed the defendant about the manner of working of the excess charges debited by the defendant. The defendant sent a reply to the plaintiff on 31.05.2007, by which the defendant had sought to make several claims in respect of drop and pickup charges, re-lashing and re-working and ODC charges and claimed that the same were calculated only in consonance with the terms of the contract and re-imbursement had been sought on the basis of actuals. By a rejoinder dated 20.06.2007, the plaintiff had pointed out that the details contained in the letter dated 31.05.2007 of the defendant, was contrary to the terms of the agreement and plaintiff further clarified that there is specific term contained in the contract that the charges would be as per actuals and that the re-imbursement would be done only on a case to case basis that too with the prior approval. The defendant by its letter dated 03.07.2007, had enclosed the invoices relating to various shipments but, all such invoices had emanated from M/s. All Cargo Movers who are none else than the Associate of the defendant as both of them operate from the same office and share the telephone and fax numbers in the United States of America.

2.7. After several requests were made by the plaintiff, the defendants produced invoices relating to the transactions between the plaintiff and the defendant but they were not the one actually issued/raised by the carriers of the cargo. This goes to prove that the defendant had not paid nor incurred anything in excess with a view to deliver the cargo to the plaintiff at Chennai Port. Unilaterally the defendant using its nexus with the original carrier, had withheld the information relating to the actual payment. It is against the terms of the contract in receiving payment without rendering additional service. That too without obtaining prior approval. It has to be done on a case-to-case basis.

2.8. Therefore, it necessitated the plaintiff to issue a lawyer's notice dated 27.07.2007, requiring the defendant to refund the excess payment of Rs.1,05,64,330/- paid by the plaintiff to the defendant. By a reply dated 31.08.2007, sent by the counsel for the defendant, the defendant has reiterated its earlier stand without making any effort to refund the amount which it had received from the plaintiff. Under those circumstances , it has become necessary for the plaintiff to file the present suit for recovery of money.

2.9. Being a commercial transaction, the plaintiff is entitled to charge interest at 24% per annum on the amount due and payable by the defendants. Thus in aggregate the defendants are liable to pay a sum of Rs.1,33,08,161/- towards principal and interest as per the following details:

a) principal	: Rs.	1,05,64,330/-
b) interest at 24% from 25.05.2007 till date	: Rs.	27,43,831/-
c) Total	**: Rs.**	**1,33,08,161/-**

3. The defendant has filed written statement denying the allegations made in the plaint stating that the suit is not maintainable in as much as the plaintiff had paid the amounts due to the plaintiff under the Agreement dated 09.09.2006 read with an addendum thereto dated 18.09.2006. All the payments were made by the plaintiff without any demur or protest and as per the contract and as admitted by the plaintiff, the payments were made at different stages viz. 25% at the time of signing the contract, 25% upon the cargo being shipped at the Port of loading and the balance 50% upon the arrival of the cargo at the port of discharge viz., Chennai. Further, as contemplated under the contract, the shipments were made in different lots, between 20.10.2006 and 11.11.2006 and March/April, 2007 and debit notes were raised by the defendants on different dates, between October

2006 and April, 2007. The debit notes/invoices were also raised in accordance with the Agreement dated 09.09.2006 read with the addendum dated 18.09.2006. Further, the plaintiff as well as the shippers of the cargo were a party to the shipment. At the time of delivery at the Port of discharge, there was regular correspondence between the defendant and the plaintiff during the course of various shipments and whenever the debit notes were raised by the defendant for the services rendered, the plaintiff had been making payments along with covering letters. The invoices raised by the defendant were verified by the plaintiff and its Senior Executives and it was only upon being satisfied that the debit notes/invoices were in accordance with the terms agreed upon, the plaintiff had made payments periodically. It was only after the expiry of several weeks from the completion of the entire shipment that the plaintiff had by a letter dated 25.05.2007 claimed that a sum of Rs.1,05,64,330/- was paid in excess towards pick up/drop charges, reworking and relashing and towards over dimensional charges. Immediately upon receipt of the said letter, the defendant has replied on 31.05.2007, addressed to Senior Manager of the plaintiff wherein they had explained in detail as to how the amounts claimed towards drop and pick up charges, relashing and reworking charges and over dimensional charges were payable on the basis of the agreement read with the addendum dated 18.09.2006.

3.1. While raising various debit notes, the defendant had given details of the amounts claimed including the quantum thereof which was on the basis of the contract and the addendum. For instance, in respect of a 20' Flat rack container, a sum of US $ 5500 was charged under the Debit Note dated 22.11.2006 bearing TLPL/CHE/006/OE 002393 for container No.TOLU 474-157 and it was made clear from the said debit note that it was excluding the over dimensional charges and relashing/ reworking charges which would be invoiced separately. Similarly under a debit note dated 20.12.2006 bearing No.TLPL/CHE/006/OE 002427, the container drop/pick up charges were levied at US $ 1000/-, apart from the freight charges for the two containers at US $ 5000/- per container. These charges were set out in the Agreement dated 09.09.2006 and the addendum dated 18.09.2006. While sending a reply dated 20.06.2007, the plaintiff, even though acknowledged the receipt of the addendum dated 18.09.2006, claimed that there was no record of acceptance of the terms of addendum, but, the fact remains that the addendum to the original Agreement sent by the defendant was admittedly received and payments were also made without any protest as and when the debit notes were raised. Further, by the said letter dated 20.06.2007, the plaintiff wanted the defendant to substantiate the over dimensional charges, re-lashing/re-working charges, which are taken place at the port of shipment, with supporting documents. In response thereto, the defendant had submitted note cover of their letter dated 03.07.2007 and the invoices raised by All Cargo Movers, INC, New Jersy, USA. The fact that in certain cases, the cargo had to be reworked or relashed pursuant to the directions issued by the Statutory Authorities, National Cargo Bureau in USA which were also known to the Shippers. Therefore, it is only an after thought that the plaintiff, in May, 2007, had claimed that the amounts are paid in excess and that the plaintiff had not accepted terms of the addendum. All along, when charges had been claimed by the defendant on the basis of the original agreement dated 09.09.2006 read with the addendum dated 18.09.2006, payments had also been made by the Plaintiff without any dispute or demur. In such circumstances, it is submitted that the plaintiff, after several weeks of the completion of the shipment and upon the payments being made, alleged as if, the defendant had claimed and received a sum of Rs.1,05,64,330/- in excess of what was payable and claimed refund of the said amount together with interest at 24% p.a. Thus, it is submitted that the suit has been filed in gross abuse of process of law.

3.2. The plaintiff has received the addendum sent by the defendant by an email dated 18.09.2006 and had not disputed the terms contained therein. In fact after the addendum was sent on 18.09.2006, the defendant had addressed a further letter of 19.09.2006 wherein a debit note dated 19.09.2006 bearing No.TLPL/CHE/004 for a sum of Rs.8,80,465.65/- was submitted and had been settled by the plaintiff. Similarly, several debit notes have been raised on the basis of the agreement and the addendum which had also been honoured by the plaintiff. Having thus acted on the basis of the agreement as well as the addendum, the plaintiff is estopped from claiming that the terms of the addendum were not agreed upon by them. The parties are bound by the terms and conditions contained in the original agreement dated 09.09.2006 as well as the addendum dated 18.09.2006 and the plaintiff rightly paid the amounts due on the basis of the said documents for the services rendered.

3.3. In so far as the allegations with regard to collection of excess charges of Rs.1,05,64,331/- comprising of Rs.28,02,990/- towards drop/pack up charges, Rs.36,54,016/- towards reworking and relashing charges and Rs.41,07,325/- towards over dimensional charges, is concerned, the Shipper/Consignor at the Port of loading wanted the defendant to arrange for the pick up/drop of the cargo as well as the shipper requesting for special equipments on account of a change in the inventory requirements which insisted the drawing up of an addendum. Accordingly, an addendum was drawn involving payment of additional sums towards lashing requirements, towards drop and pack up charges as well as payment of over dimensional charges on account of the measurements of the cargo being excess gain both in terms of height and weight than what was originally contemplated. It also involved payment of additional freight on account of special equipments namely open tops and flat racks and GP containers. At every stage, the plaintiff was informed that even the contract value indicated in the addendum was approximate and the final figure would be arrived at based on the actual number of flat racks, open tops and GPs used for the shipment. The Shippers and the plaintiffs were not only aware of payment of additional sums towards drop/pick up charges, over dimensional cargo and lashing charges, but also became aware of the fact that the cargo had to be reworked and relashed pursuant to an inspection/survey conducted at the port of shipment with recommendations being made by the Surveyors as to the manner in which the cargo had to be reworked and relashed. The defendant had sought assistance of All Cargo Movers Inc and the invoices raised by the said Company were also forwarded to the plaintiff when asked for. All such payments were on actual. Having settled all the invoices when raised, without any demur, it is not open to the plaintiff to claim as though the defendant had collected amounts in excess of what was in fact due.

3.4. Further, the contract involves shipment of second hand machinery and such shipments had to be made in several lots and in containers of different measurements. Upon each individual shipments being made, invoices/debit notes were being raised and submitted to the plaintiff, which was spread over several months. Several of the containers was done in the presence of the Shippers and/or their representatives who are well aware of the nature and the details of the machinery, which was being shipped in several lots. The plaintiff upon being satisfied that the amounts were charged by the defendant in accordance with the contract, had made payments spread over several months, without any protest. It was for the first time while addressing the letter dated 25.05.2007 the plaintiff had alleged that the amounts were paid in excess and that they had not accepted the terms contained in addendum dated 18.09.2006, while in fact the plaintiff and their Shipper were fully aware of the shipments made and the nature of work and services which are rendered by the defendants and/or their Associates. If the Plaintiff, at any point of time, had any reservations about the amounts claimed by the defendant or the nature of services rendered, they could have disputed the same. Having paid the amounts, it is not open to the plaintiff to initiate such a claim, after several weeks/months of having been advantaged by the said services as though the amounts have been paid in excess.

3.5. As regards engaging the services of an Associate Company of the defendant namely All Cargo Movers Inc., USA, there was nothing in the contract which prevented the defendant from engaging the services of any party including its Associate Company abroad and when called upon the defendant had also submitted the invoices raised by the said Associate Company in USA to the defendant. Further, the defendant had also submitted the reports of the Surveyor making certain recommendations regarding the manner in which the over dimensional cargo was to be relashed and reworked to ensure smooth garage of the cargo during the transit. A very detailed explanation was given by the defendant by its letters dated 31.05.2007 and 03.07.2007 as well as the reply notice dated 31.08.2007 sent by the counsel for the defendant.

3.6. It is too late in the hour for the plaintiff to claim as though they are not bound by the terms and conditions contained in the addendum or that the defendant is not entitled to claim Rs.28,02,990/- towards drop/ pack up charges, Rs.36,54,016/- towards reworking and relashing charges and Rs.41,07,325/- towards over dimensional charges in all amounting to Rs.1,05,64,331/-.

3.7. The plaintiff made an effort to negotiate for a discount on the basis that it would engage services of the defendant for certain other shipments. But the defendant had only collected amounts which are due as per the contract as they were unable to offer any discount except to the extent of Rs.3.00 lakhs and not being satisfied with the same, the plaintiff has come forward with the suit without any basis. There are no merits in the suit and the suit is liable to be dismissed. The plaintiff is not entitled to claim any interest much less a sum of Rs.27,43,831/- at 24% p.a., and/or any other amounts, especially considering the fact that a contract of such nature would not warrant any payment of interest. Hence, prayed for dismissal of the present suit.

4. Upon considering the pleadings and documents, the following issues have been framed by this Court on 21.02.2020.

1. Whether the plaintiff has paid Rs.1,05,64,330/- in excess to the defendant and show whether the plaintiff is entitled to refund the said amount?

2. Whether the defendant is entitled for drop and pickup charges and detention charges to an extent of Rs.28,02,990/-

3. Whether the defendant is entitled to claim Rs.36,54,016/- towards reworking and re-lashing charges?

4. Whether the defendant is entitled for Rs.41,07,322/- towards over dimensional charges?

5. Whether the plaintiff is entitled for the suit claim?

6. Whether the terms found in the addendum dated 18.09.2006 bind the plaintiff?

7. What other relief the parties are entitled to?

5. After framing of issues, during trial, on the side of the plaintiff, one Mr.C.Ramasubramaniam was examined as P.W.1 and 55 documents were marked on the side of the plaintiff as Exs.P1 to P55.

6. It is seen from the records that despite the plaintiff's witness was examined on 30.11.2021 itself, no steps were taken by the defendant to produce witness on their side and the case has been adjourned regularly at the request of the learned counsel for the defendant for producing witness and to mark documents on the side of the defendant. Therefore, on 03.03.2023, last opportunity has been given to the defendant to produce witness before the learned Master between 27.03.2023 to 31.03.2023 failing which, directed to list the matter before this Court for filing written arguments, after closing the evidence of the defendant. But, the adjudication order of the learned Master dated 05.04.2023 shows that the learned counsel for the defendant has reported before the learned Master that the witness is the Director of the company. The Director has been changed and new Director has to attend and thereby, requested the learned Master to post this matter before this Court. Thereafter, when the matter came up before this Court on 13.07.2023, the learned counsel for the defendant has reported that the defendant has no evidence to let in and therefore, the matter was posted for filing written arguments.

7. Though both the learned counsel have filed their respective written arguments, when the matter was taken up for hearing arguments on 24.06.2024, the learned counsel for the defendant was not ready to argue the matter. Despite giving sufficient opportunity, the defendant did not produce any witness or mark any documents to defend their case. Since, the case is of the year 2008, this Court heard the learned counsel for the plaintiff and perused the written arguments of the defendant.

8. The learned counsel for the plaintiff submitted that the plaintiff entered into a contract with the defendant dated 09.09.2006 for the purpose of engaging the services of the defendant in respect of shipment of second hand machineries from United States of America and Ireland and as per the agreement, the defendant agreed to deliver the consignments at the Chennai Port. The terms and conditions of the shipment service availed by the plaintiff is governed by the contract dated 09.09.2006 and that is the only contract entered into between the plaintiff and the defendant with respect to the said service and the same is legally binding on the parties. As per the terms of the contract**,** the plaintiff made payment for a sum of Rs.3,11,41,875/- as stated above. Subsequent to making the above payment, the plaintiff on reconciliation found that without intimating the plaintiff and in contravention to the terms of the contract, the defendant had illegally appropriated a sum of Rs.1,05,64,330/- under different heads viz.,drop/pick up charges, Reworking/re-lashing charges and ODC Charges, without properly accounting for the same. In contravention to the terms of the contract, the defendant has failed to furnish any details of the carrier or proof from the carrier to whom the cargo was entrusted for shipment to Chennai.

8.1. The plaintiff represented by its Company Liquidator (appointed by the NCLT, Chennai vide order 20.04.2021) had deposed as P.W.1 and marked Exs.P.1 to P.54. Further, P.W.1 was cross examined by the learned counsel for the defendant. Though the defendant had taken the stand that the extra charges are contemplated in the addendum dated 18.09.2006 and the plaintiff made all the payments without any demur or protest and that the payments have been made based on contractual obligations, the defendant neither produced any witness nor marked any documents to support his contention.

8.2. The learned counsel for the plaintiff submitted that based on the pleadings, this Court has framed 7 issues for consideration in which, the following two issues (issue Nos.1 and 6) are critical and the other issues are incidental/ancillary thereto;

1. Whether the plaintiff has paid Rs.1,05,64,330/- in excess to the defendant and show whether the plaintiff is entitled to refund the said amount?

2. Whether the terms found in the addendum bind the plaintiff?

8.3. It is pertinent to state that even the said addendum dated 18.09.2006, relied on by the defendant, was not marked as a document in this suit. The entire agreement for transportation of the cargo from USA to Chennai Port is contained in the Agreement dated 09.09.2006 signed by both the plaintiff and the defendant and the same is marked as Ex.P.55 which specifically states that the entire Agreement is including the consideration and the payment thereof. Though Clause 5 of the Agreement/Ex.P.55 specifies that any extra changes would be intimated to the plaintiff separately, but no such intimation was received from the defendant and that the defendant failed to provide evidence that such intimation was ever made.

8.4. The learned counsel for the plaintiff submitted that the purported addendum being a 2 page document was never executed by either of the parties and that the same cannot be construed as a binding contract by any stretch of imagination. The addendum (not marked as an exhibit) relied on by the defendant is neither executed by the plaintiff nor the plaintiff consented for the terms of the alleged addendum. Hence, the same is not legally binding on the parties as alleged by the defendant. As as per the terms of the Contract (Ex. P55), the defendant is bound to intimate the plaintiff if any EXTRA charges were to be incurred. Further, as per the terms agreed between the parties, the charges should be as per actuals and reimbursement should be done only on a case-to-case basis that too with the prior approval of the plaintiff, whereas, the defendant did not intimate about the alleged extra charges incurred by them and further failed to produce any evidentiary document before this Court to substantiate that the alleged extra charges were incurred and paid by the defendant. The learned counsel submitted that until the Auditors questioned during the audit, the plaintiff did not realise that they have paid excess amount, as they blindly believed the defendant and paid the defendant based on their invoices / debit notes raised on various dates. At this point of time, the plaintiff sent out a Letter dated 25.05.2007 (Ex.P46) to the defendant requesting them to refund the excess amount of Rs.1,05,64,330/-. To this, the defendant gave an elusive reply vide letter dated 31.05.2007 (Ex.P47) and stated that all debit notes raised are on the basis of contract signed and that the plaintiff was appraised of the same from time to time by e-mails. The said e-mails appears to be ghost and has till date not seen the light of the day. The defendant failed to produce the same before this Court or mark them as an exhibit. Further, to the above letters and in response to the letter of the defendant vide Ex.P47, the plaintiff sent a letter dated 20.06.2007 (Ex.P48). The defendant to tide over the wave, chose to get invoices from its Group Company/sister concern in USA and forwarded the same to the plaintiff vide letter dated 03.07.2007 (Ex.P49). After clear understanding that the US company invoices are a collusive act and self-serving document, the plaintiff demanded the defendant to provide to them the bills raised by the liners (shipping lines) and handed over to the defendant. As the defendant knew that they are caught bare handed, thereafter, they did not respond. Due to the illegal appropriation and adjustment of extra charges under different heads, the plaintiff was deceived to pay above and beyond the agreed amount towards the pickup and drop charges and detention charges and the plaintiff had also paid 15% ocean freight.

8.5. The learned counsel submitted that the defendant has not denied the receipt of the above amount from the plaintiff in its Written statement. Further, the details of all the payments made to the defendant by the plaintiff is set out in the Statement of Accounts (Ex.P54), which is not disputed by the defendant. Therefore, the plaintiff has paid an amount totalling to Rs.3,11,41,874/- and thereby has paid an amount of Rs.1,05,64,330/- in excess to the defendant. As it is clear from the Exhibits- Ex.P55, P.46, P.47, P.48, P.49 and P.50, the plaintiff has paid an amount in excess of the contractual dues and that the defendant is unable to explain with proper third party proof of having incurred such amount, the plaintiff is entitled to refund of the excess amount of Rs.1,05,64,330/-. The Defendant failed to produce any evidence or mark the addendum relied on by it. Therefore, the terms found in the addendum will not bind the plaintiff. Hence, he prayed this Court to pass a judgement and decree against the defendant as prayed for in the plaint.

9. In the written arguments of the defendant, it is stated that the defendant is not disputing that the plaintiff had paid a sum of Rs.1,05,64,330/- towards drop/pick up, reworking and re-lashing and also for ODC charges (over dimensional charges) however, the first contention of the defendant is that, it was only paid in terms of the agreement dated 09.09.2006 read with an addendum thereto dated 18.06.2006 and individual invoices were raised by the defendant clearly stating the nature of the services rendered and the quantum of the payment due under each service. Secondly, all such payments were made by the plaintiff without any demur or protest and as per the said agreement at different stages-namely, 25% at the time of signing the said agreement, 25% upon the cargo being shipped at the port of loading and the remaining 50% upon the arrival of the cargo at the port of discharge viz., Chennai. Thirdly, neither the plaintiff has disputed the fact of such payments having been made nor of the quality of the services that had been rendered by the defendant.

Lastly and more importantly, the invoices raised by the defendant were verified by the plaintiff and its Senior Executives, who had only upon being satisfied with the veracity of the debit notes/invoices and the fact that the same being in tandem with the terms agreed upon, had made payments periodically. While so, it is wrongful on the part of the plaintiff to now allege that it had paid amounts in excess of the services rendered by the defendant. The plaintiff as well as the shippers of the cargo were parties to the shipment and were well aware of the delivery at the port of discharge. The shipments in question were made in varies lots between 20.10.2006 and 11.11.2006 and March/April, 2007. Accordingly, debit notes were raised by the defendants between October, 2006 and April, 2007 (Ex.P.3 to P46). As and when the said debit notes had been raised by the defendant for the services rendered, the plaintiff had made payments in respect of the same along with covering letters. The defendant had also submitted the report of the Surveyor making certain recommendations regarding the manner in which the over dimensional cargo was to be relashed and reworked to ensure smooth carriage of the cargo during transit. However, to the utter dismay of the defendant and after an elapse of a considerable period of time, from the date of completion of the entire shipment, the plaintiff by its letter dated 25.05.2007 (Ex.P.47) claimed that a sum of Rs.1,05,64,330/- was paid in excess. Upon receipt of the same, the defendant addressed a detailed reply on 31.05.2007 (Ex.P.48) to the Senior Manager of the plaintiff setting out the details of the drop and pick up charges, relashing and reworking charges and over dimensional charges while emphasizing that the same were due and payable on the basis of the Agreement read with the addendum dated 18.09.2006. For example, in respect of a 20' Flat rack container, a sum of US $ 5500 was charged under the debit note dated 22.11.2006 bearing TLPL/CHE/006/OE 002393 for container No.TOLU474-157 and it was made clear in the said debit notes that it was excluding the over dimensional charges and relashing/reworking charges which would be invoiced separately. Similarly under a debit note dated 20.12.2006 bearing No.TLPL/CHE/006/OE 002427, the container dropped/pick up charges was levied at US $ 1000 apart from the freight charges for the two containers at US $ 5000 per container. At the risk of repetition, it is submitted that the levy of these charges was clearly set out in the agreement dated 09.02.2006 and the addendum dated 18.09.2006.

9.1. In response to the defendant's reply, the plaintiff sent a rejoinder dated 20.06.2007 (Ex.P.49) acknowledging receipt of the addendum dated 18.09.2006 and setting out that it had not accepted the terms of the addendum, which is untrue since the addendum to the original agreement sent by the defendant was admittedly received by the plaintiff and the payments were also made in relation thereto. After the defendant had clarified that such amounts were claimed as per the addendum, the plaintiff, upon scrutiny of the invoices and the debit notes, made payments without any protest. The plaintiff was, therefore, estopped from claiming otherwise, with a malafide intention to evade payments that are due and liable to be paid to the defendant. The defendant vide its letter dated 03.07.2007 (Ex.P.50) had submitted the invoices raised by All Cargo Movers, INC, New Jersy, USA which would be evident and support the defendant's claim for such charges. It is not in dispute that, in certain cases, the cargo had to be reworked or relashed pursuant to the directions issued by the Statutory Authorities National Cargo Bureau in USA, and the same was known to the Shippers. As the defendant having clearly brought out the fact that such amounts were charged only to the services rendered by it, the suit filed by the plaintiff is without any cause and liable to be dismissed *in limine.*

9.2. Insofar as the issue regarding entitlement of suit claim is concerned, the plaintiff having accepted the terms of the original agreement dated 09.09.2006 read with the addendum dated 18.09.2006 and having made payments in relation thereof to the defendant without any demur or protest, upon duly perusing the invoices as well as the debit notes raised, cannot allege that the defendant received a sum of Rs.1,05,64,330/- in excess of what was payable and claim refund of the said amount together with interest at 24% per annum, as they are only afterthought and wholly misplaced. In the light of the above, it is clear that the suit is only an afterthought and has been filed in gross abuse of process of law and therefore, liable to be rejected *in limine.*

9.3. Insofar as the issue as to whether the terms found in the addendum dated 18.02.2006 would bind the plaintiff is concerned, the transportation warranted incurring of charges in the nature of drop/pick up charges, reworking and relashing charges, over dimensional charges towards pick up/drop of the cargo and use of special equipments on account of a change in the inventory requirements. This had, in addition to the original agreement, warranted the drawing up of an addendum. The addendum was drawn owing to the requirement of payment of additional sums towards the said charges as, admittedly, the cargo was in excess both in terms of height and weight than what was originally contemplated. It also involved payment of additional freight on account of special equipments namely open tops and flat racks and GP containers. The plaintiff cannot dispute the same as it had been duly informed that even the contract value indicated in the addendum was approximate and the final figure would be arrived at based on the actual numbers of flat racks, open tops and GPs used for the shipment. The defendant had sought the assistance from the Associate Companies of theirs by name All Cargo Movers Inc and the invoices raised by the said company were also forwarded to the plaintiff which fact is also not disputed. In fact, pursuant to the addendum forwarded on 18.09.2006, the defendant had addressed a further letter dated 19.09.2006 wherein a debit note dated 19.09.2006 bearing No.TLPL/CHE/004 for a sum of Rs.8,80,465.65 had been raised and the same was also settled by the plaintiff. Hence, the plaintiff has to be estopped from challenging the terms of the addendum and its applicability or binding nature. Further, several debit notes have been raised on the basis of the agreement and the addendum which had also been honoured by the plaintiff. Therefore, the plaintiff is estopped from claiming that the terms of the addendum were not agreed upon by them, which is nothing but a mere afterthought. The plaintiff, after availing the services of the defendant, it cannot challenge the same as the services were not rendered gratuitously. The parties are bound by the terms and conditions contained in the original agreement as well as the addendum and hence, challenge to the same is unjust. As such, the defendant is entitled to all of the amounts it had raised in the invoices/debit notes as against the plaintiff for the services rendered by it and the defendant is not liable to refund the amounts paid by the plaintiff. The plaintiff is neither entitled to the suit claim nor entitled to any interest much less a sum of Rs.27,43,831/- at 24%

p.a. and /or any other amounts, which would go beyond the terms of the said contract. In the light of the above, the plaintiff is neither entitled to the relief as claimed for in the suit nor any other consequential reliefs.

10. Heard and perused the materials available on record.

11. The case of the plaintiff is that the plaintiff entered into a contract with the defendant dated 09.09.2006 for the purpose of engaging the services of the defendant in respect of shipment of second hand machineries from United States of America and Ireland. As per the contract, the defendant agreed to deliver the consignment at Chennai Port and it is the only contract between the plaintiff and the defendant to the said service and the same is bind on the parties. As per the terms of the contract, the plaintiff made a sum of Rs.3,11,41,875/- and subsequently found that the plaintiff has paid a sum of Rs.1,05,64,330/- excess. The defendant collected a sum of Rs.1,05,64,330/- excess under different heads namely a. Drop/pick up charges, b.Reworking and re-lashing charges

c.ODC charges (over dimensional charges) without proper accounting for the same. When the plaintiff sent a letter under Ex.46 to the defendant for refund of the said excess payment, the defendant sent a false reply under Ex.P47. Again the plaintiff sent a letter seeking certain particulars under Ex.P.48 for which, the defendant sent letter enclosing the photocopy of the invoices under Ex.P.49. Again the plaintiff sent a letter to the defendant under Ex.P.50 requesting certain details. However, since they did not get proper reply from the defendant, the plaintiff sent a pre-suit legal notice dated 27.07.2007 to the defendant under Ex.P.51 for which, the defendant sent reply through e-mail under Ex.P.52 and thereafter, the defendant sent a reply notice under Ex.P.53 dated 31.08.2007. Since the act of the defendant is against the terms and conditions of the actual contract under Ex.P.55 and since the defendant had not repaid the amount paid in excess or not given any proper reply even after receipt of legal notice and the request made by the plaintiff, the plaintiff was constrained to file this suit for recovery of Rs.1,33,08,161/- together with further interest at 24% per annum on the sum of Rs.1,05,64,330/- which is according to the plaintiff is excess payment and beyond the terms and conditions mentioned in Ex.P.55.

12. The specific case of the defendant is that admitted the plaintiff paid a sum of Rs.1,05,64,330/- towards a. Drop/pick up charges, b.Reworking and re-lashing charges c.ODC charges (over dimensional charges) which was only paid in terms of the agreement dated 09.09.2006 under Ex.P.55 read with an addendum dated 18.09.2006 and the individual invoices raised by the defendant would clearly show the nature of services rendered and the quantum of due under each services and all payments were made by the plaintiff without any demur or protest and also as per the contract Ex.P.55 and as admitted by the plaintiff, the payments were made at different stages viz. 25% at the time of signing the contract, 25% upon the cargo being shipped at the Port of loading and the balance 50% upon

the arrival of the cargo at the port of discharge viz., Chennai. The plaintiff neither disputed such payment having made nor of the quality of the service that rendered by the defendant. The invoices raised by the defendant were verified by the plaintiff and its Senior Executives and it was only upon being satisfied that the debit notes/invoices were in accordance with the terms agreed upon, the plaintiff had made payments periodically. Further, the shipments in question were made in various lots between 20.10.2006 and 11.11.2006 and March/April, 2007. Accordingly, debit notes were raised by the defendants between October, 2006 and April, 2007 and Ex.P.3 to P45 are evident to the same. As and when the said debit notes had been raised by the defendant for the services rendered, the plaintiff had made payments in respect of the same along with covering letters. The defendant had also submitted the report of the Surveyor making certain recommendations regarding the manner in which the over dimensional cargo was to be relashed and reworked to ensure smooth carriage of the cargo during transit. Though the defendant sent reply to Ex.P.47 (legal notice sent by the plaintiff), under Ex.P.48, the plaintiff sent a rejoinder dated 20.06.2007 (Ex.P.49) acknowledging the receipt of the addendum dated 18.09.2006 and setting out that it had not accepted the terms of the addendum whereas the plaintiff upon scrutinizing the invoices and debit notice made payments without any protest. Therefore, the plaintiff was estopped from claiming otherwise. Therefore, the claim made by the plaintiff is not maintainable. As per the invoices, he paid totally a sum of Rs.1,05,64,330/- which all in terms and conditions of Ex.P.55 and addendum dated 18.09.2006. Though the plaintiff claims an amount of Rs.1,05,64,330/- is paid excess, it was not paid excess and it was paid only for the services rendered by the defendant. Therefore, to claim as sought for in the plaint, the plaintiff is not entitled.

13. On a perusal of the pleadings, oral and documentary evidence the issues are answered as follows;

14. Since the **issue Nos.1 to 4 and 6** are similar and related, they are being dealt together as follows;

1. Whether the plaintiff has paid Rs.1,05,64,330/- in excess to the defendant and show whether the plaintiff is entitled to refund the said amount?

2. Whether the defendant is entitled for drop and pickup charges and detention charges to an extent of Rs.28,02,990/-.

3. Whether the defendant is entitled to claim Rs.36,54,016/- towards reworking and re-lashing charges?

4. Whether the defendant is entitled for Rs.41,07,322/- towards over dimensional charges? **and**

6. Whether the terms found in the addendum dated 18.09.2006 bind the plaintiff?

15. Admittedly, the plaintiff entered into an agreement dated 09.09.2006 with the defendant for the purpose of shipment of second hand machineries from United States of America and Ireland to Chennai. The said agreement is not disputed by both the plaintiff and the defendant and the said agreement is marked as Ex.P.55 which specifically states that the entire agreement including the consideration and the payment thereof.

16. According to the plaintiff, though Clause 5 of the agreement/Ex.P55 specifies that any extra charges, would be intimated to the plaintiff separately, no such intimation was received from the defendant. Admittedly the defendant also failed to provide evidence that such an intimation was made by them. Further, according to the plaintiff the purported ad-dendum was never executed by either of the parties and the same cannot be construed as a binding contract by any stretch of imagination and the plaintiff never consented for the terms of the alleged addendum. Hence, the same is not legally binding on the parties as alleged

by the defendant. As per the terms of agreement (Ex.P.55), the defendant is bound to intimate the plaintiff any extra charges were to be incurred. Further, as per the terms agreed between the parties, the charges should be as per actuals and reimbursement should be done only on a case-to-case basis that too with the prior approval of the plaintiff. Whereas, the defendant did not intimate about the alleged extra charges incurred by them and further failed to produce any evidentiary document before this Court to substantiate that the alleged extra charges were incurred and paid by the defendant. Until auditing, the plaintiff did not realise that they have paid excess amount, as they blindly believed and paid the defendant based on their invoices/debit notes raised on various dates. At this point of time, the plaintiff sent out a letter dated 25.05.2007 (Ex.P46) to the defendant requesting them to refund the excess amount of Rs.1,05,64,330/- for which, the defendant gave reply vide letter dated 31.05.2007 (Ex.P47) stating that all debit notes raised are on the basis of contract signed and that the plaintiff was appraised of the same from time to time by e-mails whereas, the plaintiff never received such an email and the defendant also failed to produce the said e-mails before this Court or mark them as an exhibit. Further, in response to the letter of the defendant vide Ex.P47, the plaintiff sent a letter dated 20.06.2007 (Ex.P48). The defendant chose to get invoices from its Group Company/sister concern in USA and forwarded the same to the plaintiff vide letter dated 03.07.2007 (Ex.P49). After clear understanding that the US company invoices are a collusive act and self-serving document, the plaintiff demanded the defendant to provide to them the bills raised by the liners (shipping lines) and handed over to the defendant. But they did not respond. Hence, the plaintiff filed the suit.

17. According to the defendant, the defendant agrees to the agreement (Ex.P.55) dated 09.09.2006 entered into between the S.V.Sugar Mills Limited (SVL) and M/s.Transworld Logistics Pvt. Ltd. (TLPL) however, in the agreement it is clearly stated that TLPL representatives in

US have visited the plant and met General Manager SVSL and discussed the Logistics Planning. As per the discussion, the freight terms in item No.(5) of the Freight terms agreed between the SVSL and TLPL and it is clearly stated as follows:

Freight terms

> *5) The above rate is basis live load with two hours free time and any extra time required/requested by SVSL will be charged EXTRA at US$ 100 per hour.*

18. Further, in Ex.P.47 which is the reply given by the defendant to Mr.N.Govindarajan, the then Senior Manager of plaintiff company, for the letter sent by the plaintiff dated 25.05.2007 regarding refund of excess amount of Rs.1,05,64,330/-, the defendant has also referred Sl.No.5 of the addendum dated 18.09.2006 as follows which was also communicated to the then Managing Director.

> *" As SVSL's shipper has requested for Drop*

and Pick-p service there will be an additional charge of US$ 1000 per container which will be payable by SVSL to TLPL. In line with the contract, TLPL has provided this advance information to SVSL vide email dated 16th September 2006 and the sme is payable with the Second Instalment of 25% which is due to TLPL once the container lots lave the ISA Port".

19. While giving reply to the legal notice, the defendant has clearly stated the reasons for the above said charges of Rs.1,05,64,330/-. Since the plaintiff did not agree with the same, they once again sent a letter dated 20.06.2007/ P.48 calling upon the defendant to furnish with the necessary invoices in respect of each of the charges and it was also stated that "in respect of the changes being carried out pursuant to an addendum, please note that though terms in respect thereof were sent by you, our office does not have any record of acceptance of the same", for which, the defendant sent the details and invoices vide Ex.P.49.

20. The defendant also stated that even though the plaintiff

acknowledged the receipt of the addendum dated 18.09.2006, the plaintiff denied that they did not accept the terms of addendum, however, the plaintiff did not specifically deny the receipt of addendum. The plaintiff paid the amount as per the invoices without any protest and therefore, they are not entitled to claim and therefore, they are estopped from such a claim.

21. Now the dispute is whether the said addendum was communicated to the plaintiff and the plaintiff accepted the terms of the same and whether, the Sl.No.5 of the addendum entitles the defendant for extra charges. Though the defendant stated that there is an addendum dated 18.09.2006, but the defendant has not produced any oral and documentary evidence to substantiate the same and that the said addendum was also not produced before this Court. Though the defendant has not produced the said addendum, a reading of Ex.47, the reply letter given by the defendant to then Senior Manager of the plaintiff, to the letter sent by the

plaintiff/Ex.P.46, shows that the defendant has clearly referred Item No.5 of the Freight terms of the agreement/Ex.P.55 which is admitted by both the parties and the defendant has also referred about Sl.No.5 of the addendum dated 18.09.2006 and has stated that the said addendum was communicated to the Managing Director and the Senior Manager Mr. Govindarajan during their meeting and the same was also accepted by them at that time. Though the plaintiff sent rejoinder dated 20.06.2007/Ex.P.48 for the reply letter given by the defendant/Ex.P47, the plaintiff did not specifically deny the receipt of addendum but has stated that the terms in respect of the addendum were not accepted by them.

22. Though the defendant had not produced any oral or documentary evidence, the plaintiff examined the liquidator of the plaintiff company who was appointed by the NCLT by order dated 20.04.2021 and he accepted that he filed Proof affidavit only based on records which he has perused and he has no personal knowledge about the transaction between the plaintiff company and the defendant. He has also stated during cross examination that he knows the Officers/employees who dealt with the transaction, i.e. Mr.Shanmugam and Mr.Govindarajan. However, he has stated that he has not met Govindarajan who was the Senior Manager of the erstwhile plaintiff-Company. He has only stated that he is answering the questions put by the defendant's counsel. The cross examination is only based on the document and he has not identified the whereabouts of the employees and gather information with regard to the transaction. He has also not stated anything in the proof affidavit filed by him for chief examination and that he is trying to access the books of accounts of the erstwhile plaintiff-company for the year 2006-2007 pertaining to the payments made to the defendant. He has also accepted that he is not personally aware of the excess payment of Rs.1,05,64,330/- made by the plaintiff to the defendant and he has stated that he speaks on the basis of the records and he has also accepted during cross-examination that the excess payments were made towards drop/pick up, re-working and re-lashing and also for ODC charges (over dimensional charges) for the period October 2006 to April 2007 and he also accepted that on the basis of the documents filed, the defendant was raising invoices periodically and every time a shipment was made and it was also accepted that various invoices also set out the charges claimed and further, he accepted the charges covered by the various charges including drop/pick up, re-working and re-lashing and also for ODC charges. He has also accepted that until Ex.P.46 was issued by the plaintiff to the defendant on 25.05.2007, the plaintiff had not disputed the charges claimed under Exs.P.1 to P.45 and also accepted that the defendant sent detailed reply Ex.P.47 to the legal notice sent by the plaintiff under Ex.P.46 and also accepted that there was a reference in Ex.P.47 about the addendum dated 18.09.2006.

23. Further, P.W.1 has also accepted that he sent re-joinder Ex.P.48 dated 20.06.2007 for Ex.P.47 reply notice sent by the defendant wherein he

has accepted about the reference of addendum and he has accepted that he has not denied in his re-joinder Ex.P48 about the acceptance of the addendum dated 18.09.2006. He has stated that the plaintiff has not denied the existence or receipt of the addendum dated 09.09.2006 in Ex.P.48, rejoinder of the plaint. He has accepted that the plaintiff had disputed the invoice for charges towards re-lashing and re-working and drop and pick up charges. Though the witness has stated that there are other reasons that the amount claimed was not on actual basis, but he has accepted that in Ex.P.48, the condition contained in addendum dated 18.09.2006 was not agreed because it was not signed by him. He had also accepted that the invoice of sub-contractor M/s.All Cargo Movers shows various charges including ODC charges, re-lashing working charges. Further during cross examination, P.W.1 stated that the plaintiff has not filed any document to establish that M/s.All Cargo Movers is the group company of the defendant as alleged by them. He has deposed that there was no restrictions under Ex.P.55 agreement against engaging sub-contract even with regard to associate contractor of the defendant. He has stated that the plaintiff has accepted the rate mentioned in Ex.P.55 and only denied the existence of said addendum. However, he has accepted even in the paragraphs 5 and 6 of the plaint that the plaintiff has not acknowledged the defendant for sending the addendum to the plaintiff. Though the plaintiff and defendant accepted Ex.P.55 agreement dated 09.09.2006 however, according to the plaintiff and defendant, extra charges were made under the above said 3 heads based on the addendum. Though the plaintiff denied the addendum however, P.W.1 accepted that they have not specifically denied in Ex.P.48 re-joinder about the addendum referred to in Ex.P.47 reply notice of the defendant. Further, in Ex.P.47 reply itself it is clearly stated that the reply was addressed to N.Govndaraj, Senior Manager of erstwhile defendant-Company, in which there is clear reference about the addendum and that was communicated to the Managing Director of the plaintiff-

Company and also Mr.N.Govindarajan. Senior Manager and during meeting, it was accepted.

24. Further, when question no.5 was put to P.W.1, did he meet the said Govindarajan, Senior Manager who participated in the meeting and also erstwhile Managing Director of the plaintiff-company and his answer is No and he is aware of the facts based on the documents. When in Ex.P.47 there is a clear averment that the addendum was communicated to the Managing Director and also to the Senior Manager, P.W.1 accepted that he has not taken steps to find out them and also get instructions about the averments made in Ex.P-47 reply of the defendant. The plaintiff has not stated that Ex.P.47 was not received by them. On a reading of the plaint, the proof affidavit of P.W.1 and also the cross examination, it clearly reveal that even though P.W.1 has not specifically denied that they have not received or acknowledged Ex.P47 and it was only stated they did not agree. Therefore, the non- filing of the addendum by the defendant will not

be fatal to the case of the defendant.

25. It is settled proposition of law that admitted facts need not be proved. The plaintiff specifically denied about the receipt of addendum, whereas the defendant specifically stated that in the presence of whom the addendum was issued and communicated. But, admittedly, the plaintiff has not examined any of the erstwhile officers viz. Senior Manager and Managing Director and employees who had participated in the day-to-day affairs of the plaintiff-Company.

26. It is to be noted that P.W.1 has come into the picture only after passing of orders by the NCLT and further, he has admitted that he is giving deposition only based on records and that he has no personal knowledge about the transactions.

27. Even though the receipt of the addendum was not specifically denied by the plaintiff, the officers who participated in the meeting have not specifically denied about the addendum at the relevant point of time.

P.W.1 admitted that they did not try to access the other documents in the company, which shows whatever referred to him in the plaint, and P.W.1 has gone through the same and only based on the plaint documents, he has given deposition. Further, PW1 has also stated that he has not taken any effort to meet the erstwhile officers who participated in the transaction with the defendant at the relevant point of time, even after receipt of Ex.P.47. He has also stated that he has no personal knowledge and he is giving evidence only on the basis of records.

28. Therefore, non examination of the erstwhile Managing Director, the Senior Manager and the concerned employees who are personally aware of the transactions between the plaintiff and the defendant and who were participating in the day-to-day affairs of the plaintiff-Company at the relevant point of time, is fatal to the case of plaintiff.

29. Since the plaintiff has not specifically denied in their re-joinder Ex.P.48 about the receipt of addendum dated 18.09.2006, the non-

production of the said addendum by the defendant before this Court is not fatal to the case of the defendant, since one of the terms of the addendum dated 18.09.2006 i.e. Sl.No.5 of the addendum, had been extracted in Ex.P.47/reply letter sent by the defendant.

30. The plaintiff admitted that they have made payments to invoices under Exs.P..2 to P.45 without any protest. However, since the plaintiff did not examine any of the erstwhile officers to disprove the claim of the defendant, the terms found in the addendum dated 18.06.2006 would bind the plaintiff.

31. Under these circumstances, this Court finds that the plaintiff-Company has not established their claim that the said sum of Rs.1,05,64,330/-, was paid in excess and the defendant illegally collected the same from the plaintiff and therefore, the defendant is liable to refund the same.

32. Accordingly, the issue Nos.1 to 4 and 6 are answered against the

plaintiff.

33. Issue No.5 : Whether the plaintiff is entitled for the suit claim?

Since issue Nos.1 to 4 and 6 have been answered against the plaintiff, the plaintiff is not entitled to the suit claim. Accordingly, issue No.5 is answered against the plaintiff.

34. Issue No.7: What other relief the parties are entitled to?

As stated above, when the agreement Ex.P.55 is admitted and when the payments made by the plaintiff are not excess, the parties are bound by the terms and conditions made in the original agreement dated 09.09.2006 and also to the addendum dated 18.09.2006. Therefore, as discussed above, the plaintiff is not entitled to any other relief. A**ccordingly, issue Nos.7 is answered against the plaintiff.**

35. Result:

As stated above, all the issues are answered against the plaintiff. Therefore, this suit is **dismissed.** The parties are directed to bear their own costs.

02.01.2025
(1/2)

Index : Yes / No
Speaking Order : Yes / No
Neutral Case Citation : Yes/No
Ksa-2

List of Witness Examined on the side of the Plaintiff:

P.W.1 - Mr.C.Ramasubramaniam

List of Exhibits marked on the side of the plaintiff:

S.No.	Exhibits	Description of Documents
1	P.1	The certified true copy of Liquidation Order against the plaintiff company passed by the NCLT, Chennai dated 20.04.2021.
2	P.2	The Original Letter dated 16.10.2006 with Debit Note dated 12.10.2006
3	P.3	The original Debit note dated 28.10.2006 and photocopy of Bill of lading

S.No.	Exhibits	Description of Documents
4	P.4	The original Debit note dated 28.10.2006 and photocopy of Bill of lading.
5	P.5	The original Debit note dated 28.10.2006 and photocopy of Bill of lading.
6	P.6	The original Debit note dated 30.10.2006 and photocopy of Bill of lading.
7	P.7	The original Debit note dated 30.10.2006 and photocopy of Bill of lading.
8	P.8	The original Debit note dated 30.10.2006 and photocopy of Bill of lading.
9	P.9	The original Debit note dated 30.10.2006.
10	P.10	The original Debit note dated 09.11.2006 and photocopy of Bill of lading.
11	P.11	The original Debit note dated 09.11.2006 and photocopy Bill of lading.
12	P.12	The original Debit note dated 13.11.2006.
13	P.13	The original Debit note dated 14.11.2006.
14	P.14	The original Debit note dated 21.11.2006 and photocopy of Bill of lading.
15	P.15	The original Debit note dated 21.11.2006 and photocopy Bill of lading.
16	P.16	The original Debit note dated 21.11.2006 and photocopy of Bill of lading.
17	P.17	The original Debit note dated 21.11.2006 and photocopy of Bill of lading.
18	P.18	The original Debit note dated 21.11.2006 and photocopy

S.No.	Exhibits	Description of Documents
		of Bill of lading.
19	P.19	The original Debit note dated 21.11.2006 and photocopy of Bill of lading.
20	P.20	The original Debit note dated 22.11.2006 and photocopy of Bill of lading.
21	P.21	The original Debit note dated 22.11.2006 and photocopy of Bill of lading.
22	P.22	The original Debit note dated 22.11.2006 and photocopy of Bill of lading.
23	P.23	The original Debit note dated 22.11.2006 and photocopy of Bill of lading.
24	P.24	The original Debit note dated 22.11.2006 and photocopy of Bill of lading.
25	P.25	The original Debit note dated 22.11.2006.
26	P.26	The original Debit note dated 22.11.2006.
27	P.27	The original Debit note dated 30.11.2006 and photocopy of Bill of lading.
28	P.28	The original Debit note dated 04.12.2006 and photocopy of Bill of lading.
29	P.29	The original Debit note dated 04.12.2006 and photocopy of Bill of lading.
30	P.30	The original Debit note dated 04.12.2006 and photocopy of Bill of lading.
31	P.31	The original Debit note dated 04.12.2006.
32	P.32	The original Debit note dated 14.12.2006, photocopy of Bill of lading and photocopy of the E-mail (marked

S.No.	Exhibits	Description of Documents
		subject to objection).
33	P.33	The original Debit note dated 20.12.2006 and photocopy of Bill of lading.
34	P.34	The original Debit note dated 20.12.2006 and photocopy of Bill of lading.
35	P.35	The original Debit note dated 20.12.2006 and photocopy of Bill of lading.
36	P.36	The original Debit note dated 20.12.2006 and photocopy of Bill of lading.
37	P.37	The original Debit note dated 09.01.2007 and photocopy of Bill of lading.
38	P.38	The original Debit note dated 10.01.2007 and photocopy of Bill of lading.
39	P.39	The original Debit note dated 24.02.2007 and photocopy of Bill of lading.
40	P.40	The original Debit note dated 27.02.2007 and photocopy of Bill of lading.
41	P.41	The original Debit note dated 27.02.2007 and photocopy of Bill of lading.
42	P.42	The original Debit note dated 27.02.2007 and photocopy of Bill of lading.
43	P.43	The original Debit note dated 27.02.2007 and photocopy of Bill of lading.
44	P.44	The original Debit note dated 22.03.2007.
45	P.45	The original Debit note dated 02.04.2007 and photocopy

S.No.	Exhibits	Description of Documents
		of Bill of lading.
46	P.46	The original Letter sent by the plaintiff to the defendant dated 25.05.2007.
47	P.47	The office copy of Reply sent by the defendant to the plaintiff dated 31.05.2007.
48	P.48	The original Letter sent by the plaintiff to the defendant dated 20.06.2007.
49	P.49	The original Letter along with photocopy of Invoices sent by the defendant to the plaintiff dated 03.07.2007.
50	P.50	The original letter sent by the plaintiff to the defendant dated 03.07.2007.
51	P.51	The office copy of Legal notice issued by the plaintiff to the defendant dated 27.07.2007.
52	P.52	The photocopy of E-mail sent by the defendant to the plaintiff dated 18.08.2007.
53	P.53	The office copy of Reply notice issued by the counsel for defendant to the plaintiff's counsel dated 31.08.2007.
54	P.54	The original Statement of Account.
55	P.55	The printout of Agreement dated 09.09.2006 (subject to objection admissibility and relevancy) along with 65B Certificate.

List of Witness Examined on the side of the Defendant: **Nil**

List of Exhibits marked on the side of the defendant: **Nil**

02.01.2025

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P.VELMURUGAN. J.

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02.01.2025