CASE NO.:
Appeal (civil) 2259 of 1999

PETITIONER:
Food Corporation of India

RESPONDENT:
Assam State Cooperative Marketing & Consumer Federation Limited & Ors.

DATE OF JUDGMENT: 01//4\001@\006

BENCH:
October 26, 2004.

JUDGMENT:
J U D G M E N T

R.C. LAHOTI, CJI

The Food Corporation of India, the appellant herein filed a suit for recovery of Rs. 79,82,105.44p. against four defendants (in fact two sets of defendants) namely (i) the Assam Cooperative Marketing and Consumer Federation Limited through its Managing Director; (ii) the General Manager of the Federation (comprising the first set); (iii) the State of Assam through its Chief Secretary; and (iv) the Secretary to the Government of Assam in the Supply Department (comprising the second set) respectively impleaded as defendant Nos. 1, 2, 3 and 4. Hereinafter, defendant Nos. 1 and 2 shall be referred to as the 'Federation' and defendant Nos. 3 and 4 shall be referred to as the 'State' for convenience sake.

According to the plaintiff, the State through its procuring agent, the Federation, requested the plaintiff through the Government of India to take over 20,000 metric ton of procured paddy of kharif season 1975-76 as per specification and price to be fixed by the Government of India. The request was acceded to by the plaintiff. It was also agreed that the plaintiff shall pay 90 per cent of the amount as advance in nine instalments on the condition that the balance 10 per cent will be paid after fixation of price by the Government of India. An amount of Rs. 1.8 crores was to be paid by way of advance. However, by mistake the plaintiff paid a sum of Rs. 2 crores as advance to the Federation during the period 16/2/76 to 27/2/76. In a meeting which took place on 20/9/1976, wherein the representatives of the parties and the Government of India were present, the price of paddy was fixed and it was resolved that the value of the paddy supplied by the Federation to the plaintiff was Rs. 1,60,63,190 as against an advance of Rs. 2 crores by the plaintiff to the Federation and thus there was an amount of Rs. 39,36,810/- paid by the plaintiff to the Federation in excess.

Here itself, it may be mentioned that the plaintiff also claimed an amount of Rs. 7,03,541/- from the Federation on account of quality cut. However, we do not propose to deal with that claim inasmuch as it has been negatived by the trial court itself and we do not find any reason to take a different view.

Correspondence ensued between the parties regarding the plaintiff's claim against the Federation. Several letters were exchanged. At the end, the plaintiff served a legal notice and filed the suit for recovery on 13/05/1980.

The defendants contested the suit. The principal defence raised in the written statement was that the suit was barred by time inasmuch as the cause of action, if any, had arisen to the plaintiff on 20/09/1976 and the suit was filed beyond three years from that date and as such was beyond the period of limitation. The defendants also expressed in the written statement a desire of pleading set-off and also of raising a counter claim but that was not done. After trying all the issues, the trial court held that

the plaintiff was entitled to recovery of Rs. 39,36,810/- only from the Federation, but even that claim could not be decreed as the suit was filed beyond the prescribed period of limitation. Consequently, the suit was directed to be dismissed.

The plaintiff preferred an appeal in the High Court. The only issue agitated in the High Court was the one of limitation. The High Court found no reason to take a view different from the one taken by the trial court and accordingly, directed the appeal to be dismissed. This is an appeal by special leave preferred by the plaintiff.

The issue as to limitation centers around two letters respectively dated 29/03/1977 and 30/07/1977 marked as Exhibits 8 and 9(Annexures P4 and P5). According to the plaintiff these two letters written by the Federation amount to acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963 and have the effect of extending the period of limitation. The trial court has found the letters not proved and also not amounting to such acknowledgement of liability as may attract the applicability of Section 18 of the Limitation Act.

The first question which arises for consideration is whether the two letters have been proved. Madan Pathak-P.W.1 was Assistant Manager in Food Corporation of India at the relevant time. He deposed to all the relevant facts in issue and substantiated all the material plaint averments. During the course of his deposition, he stated \026 "Exhibit 7 is the letter given by defendant No. 1 itself. In that letter defendant No. 1 admitted to have received Rs. 2 crores. Exhibits 8 and 9 are the letters given by defendant No. 1. We have filed this suit for non payment of money by defendant No. 1." There is no cross-examination directed on this part of the statement made by plaintiff. There is no suggestion given that such letters were not sent by or on behalf of the Federation to the plaintiff.

Both the letters Exhibits 8 and 9 are written on the letter pad of the Federation. Both bear despatch numbers. The letter dated 29th March, 1977 has been written in response to plaintiff's D.O. No. E-1(7)/75-76/Proc./292 dated 14/03/1977. The letter dated 30th July, 1977 (Exhibit-9) has been written in response to Plaintiff's D.O. No. ECM/FCI/P/76 dated 16/07/1977. In both the letters, the Federation has disputed its liability to pay the amount in view of certain disputes relating to settlement of accounts. The fact remains that both the letters acknowledge an amount of Rs. 2 crores having been received by the Federation from the plaintiff. The letter dated 29/03/1977, marked as Exhibit-8, states inter alia \026 "We have already covered a sum of Rs. 1,77,64,923.89 leaving a balance of only Rs. 22,35,075.11." In latter part of the same letter the Federation has staked a claim of Rs.48,73,984.74p. against the plaintiff, as against the plaintiff's claim for the balance of Rs. 22,35,076.11p. and then states \026 "loss balance amount against deposit of Rs. 2.00 crores".

In the letter dated 30/07/1977 against the same statement has been reiterated. The letter states at two places \026 "we have already covered a sum of Rs.1,77,64,923.89 leaving a balance of only Rs. 22,35,076.11" and "loss balance amount (Rs.22,35,076.11) against deposit of Rs. 2 crores". It is true that the letters Exhibits 8 and 9 were not written in the presence of P.W.1. He has also not deposed to any such facts as would amount to proof of execution of document. The fact remains that both these letters formed part of the official record of the plaintiff and are placed as pieces or links found in the chain of long correspondence entered into between the parties. According to Section 35 of the Evidence Act - an entry in any public or other official record stating a fact in issue or relevant fact and made by public servant in the discharge of his official duty is itself a relevant fact. Section 39 of the Evidence Act makes a reference to any statement of which evidence is given forming part of a connected series of letters or papers. In P.C. Purushothama Reddiar Vs. S. Perumal, [1972] 1 SCC 9, the question arose as to the admissibility and relevance of certain correspondence included in the official records. The Court observed \026 " The learned Advocate General did not support the

exclusion of the last three on the ground that the copies of correspondence kept in the Collector's and taluk offices were not signed but contended that they were not admissible under Section 35 of the Indian Evidence Act. We think however that copies of actual letters made in registers of official correspondence kept for reference and record are admissible under Section 35 as reports and records of acts done by public officers in the course of their official duty and of statements made to them and that in the words of their Lordships in Rajah Muttu Ramalinga Setupati Vs. Periyanayagum Pillai (1874) 1 Ind. App. 209 at p. 238, they are entitled to great consideration in so far as they supply information of material facts and also in so far as they are relevant to the conduct and acts of the parties in relation to the proceedings of Government founded upon them.
We are in agreement with the view taken by the Madras High Court in that case."

The Court further held that once the document has been marked as exhibit without any objection from a party then such party cannot object to the admissibility of document and once a document is properly admitted the contents of that document are also admitted in evidence though those contents may not be conclusive evidence.

The documents having been tendered in evidence without any demur by the defendants, the same coming from proper custody and forming part of official record of the appellant-Corporation and being part of the chain of correspondence can be said to have been proved by P.W.1 more so when his deposition to the effect that the two letters were received from the Federation was not disputed by the defendant-Federation either by directing any cross-examination on that part of the statement or by making any suggestion to the contrary indicating the defendant's case as regards the said two letters. In our opinion, the documents were proved and their contents can be read in evidence. Needless to say, there is no rebuttal of the letters on the part of the defendants by way of evidence adduced in the case.

Once it is held that the two letters are proved then the next question which arises is as to their effect on limitation.

According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. It is well-settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication.

The statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability, though the exact nature or the specific character of the said liability may not be indicated in words. The words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be inferred by implication from the nature of the admission and need not be expressed in words. A clear statement containing acknowledgement of liability can imply the intention to admit jural relationship of debtor and creditor. Though oral evidence in lieu of or making a departure from the statement sought to be relied on as acknowledgement is excluded but surrounding circumstances can always be considered. Courts generally lean in favour of a liberal construction of such statements though an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or far-fetched process of reasoning. (See : Shapoor Freedom

Mazda Vs. Durga Prosad Chamaria & Ors. AIR 1961 SC 1236 and "M/s Lakshmiratan Cotton Mills Co. Ltd. Etc. Vs. The Aluminium Corporation of India Ltd. 1969 (1) SCR 951). So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made.

The two letters dated 29/03/1977 and 30/07/1977(Exhibits 8 and 9) clearly acknowledge the amount of Rs. 2 crores having been received by the Federation from the Food corporation of India whether by way of advance or by way of deposit. The letters also indicate that the amount of two crores was by way of advance or deposit against paddy procurement. This is admission of jural relationship of buyer and seller which stood converted into relationship of creditor and debtor on the failure of the principal transaction. However, the acknowledged liability is sought to be disowned by submitting that on an account being taken nothing would be found due and payable by the plaintiff to the Federation. Disputing the liability to repay the amount acknowledged to have been received does not dilute the fact of acknowledgement in so far as Section 18 of the Limitation Act is concerned. The two letters have the effect of extending the period of limitation prescribed for filing the suit and calculated from the date of the latter of the two letters i.e. 30/07/1977, the suit filed on 30/05/1980 was well within the period of limitation.

For the foregoing reasons, we cannot countenance the view taken by the trial court and the High Court that the suit filed by the appellant was barred by limitation.

The trial court, as already indicated, has found the plaintiff not entitled to any claim other than the recovery of Rs. 39,36,810/-. The claim for interest was also found not liable to be sustained. We are not inclined to take a view different from the one taken by the trial court more so, when we find that no plea other than that of limitation was pursued and pressed in the High Court.

The appeal is allowed. The judgments and decrees of the trial court and the High Court are set aside. Instead the suit filed by the plaintiff is directed to be decreed against the defendant respondent Nos. 1 and 2 for recovery of Rs. 39,36,810/- with costs proportionate to that amount throughout. The plaintiff shall also be entitled to interest calculated at the rate of 6 percent per annum from the date of the suit till realization.