

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1077 of 1999

**Ms. Faisalabad Oil Refinery Pvt. Ltd-----Plaintiff**

**Versus**

**State Bank of Pakistan & another-----Defendants**

**Dates of hearing:** 27.09.2016 & 06.10.2016 & 8.12.2016

**Date of Judgment:** 24.02.2017

**Plaintiff:** Through Mr. Mazhar Imtiaz Lari, Advocate.

**Defendant No.1:** Through Mr. Ain-ud-din Khan, Advocate.

**Defendant No.2:** Through Mr. Ghulam Murtaza, Advocate.

## J U D G M E N T

Muhammad Junaid Ghaffar J.- This is a Suit for declaration, permanent injunction and recovery of Rs.4,54,49,750/-.

2. Briefly, the facts as stated are that pursuant to permission to the private Sector for import of wheat, the plaintiff entered into a Contract dated 23.04.1999 with M/s. Cargill International S.A, Geneva, Switzerland, for purchase of 50,000 Tons of Australian Premium Wheat for a total C & F value of Rs. US \$ 68,50,000/- and requested defendant No.2 to establish a Letter of Credit (L.C) and also approached defendant No.1 through defendant No.2 for approval of said L.C. in terms of Foreign Exchange Circular No.77 dated 15.09.1992. It is further stated that at the same time, the plaintiff also requested defendant No.2 to book a forward exchange for US \$ 68,50,000/- against the said L.C from defendant No.1 for a period of 3 months from the date of establishment of L.C. Thereafter defendant No.2 upon permission by defendant No.1 opened a Letter of Credit bearing No. MPD/LC/99/11676 dated 07.05.1999 having last date of shipment as 10.07.1999. It is further stated that the shipment for some reasons could not be affected within the validity period of L.C and the supplier requested for extension up to 31.07.1999, which request was immediately forwarded to defendant No.2. However, the plaintiff was informed that no amendment could be made without

approval of defendant No.1, and thereafter plaintiff approached defendant No.1 for grant of such approval, but, vide Letter dated 21.07.1999, the defendant No.1 informed the plaintiff that their request for amendment in the L.C has been declined in terms of Foreign Exchange Circular No.14 dated 15.06.1999. Once again the plaintiff approached both the defendants and made efforts to get necessary approval, however, the efforts were of no avail. It is further stated that thereafter defendant No.1 issued Foreign Exchange Circular No.10 dated 26.05.1999, whereby, the authorized dealers including defendant No.2 were informed that in order to prevent speculation by the importers in case of closing out of forward sale contracts for the reason that either L.C has been cancelled or had expired un-utilized, the importer will be liable to pay the difference between the spot rate and the forward booked rate. It is the case of the plaintiff that the defendants on the basis of this Circular were threatening to debit the amount of plaintiff for an amount of Rs.10,206,500/- being difference between the spot rate prevailing on 07.05.1999 and the booked forward exchange rate, whereas, according to the plaintiff in terms of paragraph-9 of Chapter No. IV of Foreign Exchange Manual, the plaintiff was entitled for the difference between booked forward rate and T.T Clean spot rates, hence instant Suit with the following prayers:-

- a) A declaration that the foreign exchange Circular No. 10 dated 26.5.1999 and Circular No. 14 dated 15.6.1999 are illegal and void and not applicable to the case of the plaintiff.
- b) A permanent injunction to the defendants No. 1 & 2 restraining them from debiting the plaintiff s account to the tune of Rs. 102,06,500.00 or any other amount whatsoever being the difference between the spot rate at the time of opening of the Letter of Credit and the forward booking rate.
- c) A decree against the defendant No. 1 for a sum of Rs. 4,54,49,750.00
- d) Cost of the suit and interest pendent-ilite and future @ 15% per annum.
- e) Such other reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case."

3. Pursuant to issuance of summons and notices, defendants No.1 & 2 had filed their written statements, wherein, the contention of the plaintiff was denied; whereafter, vide Order dated 07.08.2000, following Issues were settled as Court Issues:-

- i. Whether the Government of Pakistan was a necessary party and whether the Suit is bad for its non-joinder?

- ii. Whether the defendant No. 1 rightly declined to revalidate the Letter of Credit under Ministry of Commerce SRO No. (91) 98 dated 15.6.1999?
- iii) Whether the Letter of Credit opened by the plaintiff on 7.5.1999 comes within the scope of and covered by F.E. Circular No. 14 dated 15.6.1999?
- iv) Whether F.E. Circular No. 10 dated 26.5.1999 was applicable to the plaintiff's case and if so with what effect?
- v) Whether the plaintiff is entitled to recover from the defendant No. 1 the loss of profit and the difference between the booked price and the price prevailing on 7.5.1999, and if so in what sum?
- vi) What should the decree be?"

4. The plaintiff led its evidence through its General Manager Akhtar Hanif S/o Umer Hanif Khan, who filed affidavit in evidence on 10.10.2007 Exhibit P-1/1, Authority Letter dated 28.3.2007 as Exhibit P-1/2, Proforma dated 23.4.1999 as Exhibit P-1/3 consisting of four leaves, Letter dated 7.5.1999 as Exhibit P-1/4, another Letter dated 7.5.1999 addressed to defendant No. 1 as Exhibit P-1/5, another Letter of the same date as Exhibit P-1/6, Letter of Credit dated 7.5.1999 bearing stamp of defendant No. 2 dated 12.5.1999 as Exhibit P-1/7 consists of four leaves, Fax Transmission dated 16<sup>th</sup> July 1999 as Exhibit P-1/8, Letter dated 16<sup>th</sup> July, 1999 as Exhibit P-1/9, Letter dated 16.7.1999 addressed to the Director of defendant No.1 as Exhibit P-1/10, Fax Transmission dated 19<sup>th</sup> July 1999 as Exhibit P-1/11, Letter dated 20<sup>th</sup> July 1999 addressed to the Manager of defendant No. 2 as Exhibit P-1/12, Letter dated 21<sup>st</sup> July 1999 addressed to Faisalabad Oil Refinery as Exhibit P-1/13, Letter dated 21<sup>st</sup> July 1999 as Exhibit P-1/14, Letter dated 15<sup>th</sup> June 1999 as Exhibit P-1/15 which is Foreign Exchange Circular No. 14, Letter dated 1<sup>st</sup> July 1999 addressed to the Manager of defendant No. 2 as Exhibit P-1/16, Letter dated 23<sup>rd</sup> July 1999 as Exhibit P-1/17 in two leaves, F.E. Circular No. 10 dated 26<sup>th</sup> May 1999 as Exhibit P-1/18 in two leaves, Chapter 4 of Foreign Exchange Manual in seven leaves as Exhibit P-1/19, Extract of the Minutes of the Meeting of the Board of Director held on 31.7.1999 signed by Company Secretary as Exhibit P-1/20/ Whereas, defendant No.1 led its evidence through Muhammad Ismail a Foreign Exchange Officer of State Bank of Pakistan. On the other hand, defendant No.2 did not led any evidence.

5. Learned Counsel for the plaintiff has referred to the documents exhibited in the evidence and has contended that insofar as establishing of L.C for import of 50,000/- Tons of wheat from Australia is concerned the same is not in dispute, whereas, due to bad weather conditions at the port of shipment, the seller had

requested for an extension in the date of shipment for which the plaintiff approached the defendants, through various letters, however, such request was not accepted and plaintiff suffered losses on two accounts. First, the plaintiff is entitled for difference in the rate of exchange as the plaintiff at the time of establishing the L.C had arranged and booked Forward Exchange Cover so as to secure its losses, if any, which may have occurred at the time of making payment to the Bank due to difference in the rate, and secondly, for losses on the ground that if the extension in the L.C would have been permitted, the plaintiff would have imported wheat and generated profits for which the plaintiff has claimed estimated loss @ 5% on the total value of the consignment. Per learned Counsel the restriction placed by the Federal Government and circulated through Foreign Exchange Circular No.14 dated 15.6.1999, does not apply to the case of the plaintiff as such restriction was only in respect of fresh L.C's, whereas, the plaintiff's L.C. was already established much prior to the said Circular. Learned Counsel submits that the plaintiff had a vested right and such Circular could not be made applicable retrospectively on a Letter of Credit already established by the plaintiff. Learned Counsel has relied upon the cases reported as **1986 SCMR 1917** (*Al-Samrez Enterprise vs. The Federation of Pakistan*) and **PTCL 1994 CL 222** (*Molasses Trading & Export (Pvt.) Limited versus Federation of Pakistan and others*).

6. On the other hand, learned Counsel for defendant No.1 has contended that defendant No.1 had never granted any permission to establish a Letter of Credit, whereas, defendant No.2 had acted in violation by establishing the L.C. He has further contended that the contract between the buyer and seller is an independent contract and is not binding upon defendant No.1. Per Learned Counsel, the plaintiff's Suit is also not maintainable for the reasons that the Government of Pakistan has not been arrayed as a defendant, whereas, the Notification, whereby, a ban was imposed on the import of wheat by the private sector was issued by the Government. Learned Counsel has referred to the documents and Foreign Exchange i.e. Circulars No.10 & 14 and has contended that the defendant No.1 acted strictly in accordance with law with no malafides. He has further contended that no losses occurred to the plaintiff as the shipment was required to be affected within the validity period of the L.C and once a restriction was placed, the extension in the L.C also amounts to establishing a fresh L.C. Per Learned Counsel the plaintiff has failed to lead any evidence to claim the alleged losses suffered by it including losses due to difference in the rate of exchange, if any. The Counsel for defendant No.2 has contended that since nothing was claimed against defendant No.2, therefore, no evidence was led, whereas, the entire prayer

clause is against defendant No.1, hence they would abide by the orders of this Court.

7. I have heard all the learned Counsel and perused the record including the Evidence File and my findings Issue-wise are as follows.

**ISSUE No.1:** Whether the Government of Pakistan was a necessary party and whether the Suit is bad for its non-joinder?

8. The precise objection raised on behalf of defendant No.1 in respect of the aforesaid issue is on the ground that since a ban/restriction was imposed by the Government of Pakistan through its Notification dated 15.06.1999 and therefore, the Government ought to have been impleaded as a defendant and such non-joinder is fatal to the case of the plaintiff. However, such objection has not been pressed upon seriously on behalf of defendant No.1. Nonetheless, it is pertinent to observe that insofar as the plaintiff's case is concerned, neither they have challenged the vires of the amendment made in the Import Policy, nor they have sought any relief in that regard. Their case is only premised against defendant No.1 for their inaction and refusal for extension in the date of shipment, as according to them the amendment did not apply to their L.C. which was already established much prior to the amending Notification. In the circumstances, I am of the view that since no relief has been sought against the Government and the plaintiff is rather aggrieved by the Foreign Exchange Circular issued by defendant No.1 for implementation of restrictions imposed by the Federal Government, whereas, the defendant No.1 is an Autonomous Body functioning under the State Bank of Pakistan Act 1956 and therefore, can be independently sued. In view of hereinabove, the issue is answered in negative.

**ISSUE No.2:** Whether the defendant No. 1 rightly declined to revalidate the Letter of Credit under Ministry of Commerce SRO No. (91) 98 dated 15.6.1999?

**ISSUE No.3:** Whether the Letter of Credit opened by the plaintiff on 7.5.1999 comes within the scope of and covered by F.E. Circular No. 14 dated 15.6.1999?

9. Since both these Issues are interlinked and would cover the entire gist of the case, therefore, they are being dealt with accordingly. Perusal of the record reflects that insofar as establishment of L.C and booking of Forward Exchange is concerned, the same does not appear to be in dispute, though the learned Counsel for defendant No.1 has contended that the L.C was not established with the prior

permission of defendant No.1. However, perusal of cross-examination of defendant No.1's witness, reflects that such contention is not correct as the witness has stated that "*It is correct that plaintiff opened Letter of Credit with the approval of State Bank of Pakistan*". The only question and the point of dispute between the plaintiff and defendant No1 appears to be that whether Foreign Exchange Circular No.14 dated 15.6.1999 issued by the State Bank of Pakistan was applicable on the L.C already established by the plaintiff. The plaintiff's case is that it was merely an extension in the date of shipment with no changes or amendments in the L.C, and therefore, the restriction placed through said Circular was not applicable to such amendment in the date of shipment and as it only applied to establishment of opening of fresh L.C. It would be advantageous to refer to the relevant Circulars and the amendments in the Import Policy to have a better understanding of the controversy in hand, which reads as follows:-

F.E. Circular No. 14  
All Authorised Dealers  
in Foreign Exchange,

June 15, 1999

Dear Sirs,

BAN ON IMPORT OF WHEAT BY PRIVATE SECTOR

Attention of Authorised Dealers is invited to F.E.Circular No. 77 dated the 15th September, 1992 in terms of which prior permission of State Bank is required for opening of Letter of Credit for import of sugar and Food grains (cereals) on C&F (Free out) basis.

It has been decided by the Government to impose ban on import of wheat by Private Sectors. Authorised Dealers are, therefore, advised not to establish Letter of Credit for import of wheat henceforth whether on C&F or C&F (Free out) basis.

Particulars of Letters of Credit opened by Authorised Dealers on or after 8th June, 1999 may be furnished to the Additional Director, Foreign Exchange Department, State Bank of Pakistan, Karachi immediately but not later than 19-06-1999.

Yours faithfully

(MUHAMMAD MAHMOOD AHMED)  
Additional Director

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THE GAZETTE OF PAKISTAN  
EXTRAORDINARY  
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, JUNE 16, 1999

PART II  
Statutory Notifications (S. R. O.)

Government of Pakistan  
Ministry of Commerce  
ORDER  
Islamabad, the 15<sup>th</sup> June, 1999

S.R.O. 750(I)/99.---In exercise of the powers conferred by sub-section (I) of section 3 of the Imports and Exports (Control) Act, 1950 (XXXIX of 1950), the Federal Government is pleased to direct that the following further amendment shall be made in the Import Policy Order 1998, namely:-

2. In the aforesaid Order, in Chapter 3, in section II after Sr. No. 18, the following new serial number and the entries relating thereto shall be inserted, namely:-

“19 1001.9010 Wheat\*\* Importable by public  
Sector only”.

[File No. 10(2)/99-Imp. II. ] JAVED UL HASSAN QURESHI,  
Deputy Secretary.

[574 (99)/Ex. Gaz. ]

**Circular No. 10  
1999**

**May 26,**

All Authorised Dealers  
in Foreign Exchange,

Dear Sirs,

**CONVERTIBLE RUPEE ACCOUNTS AND FORWARD SALE/PURCHASE**

In order to prevent speculative deals by non-residents, paragraph 8 of Chapter VII of the Manual is deleted. With the deletion of the said para, sale of foreign currencies to non-resident bank branches and correspondents against credit balance(s) available in their non-resident rupee account would require prior approval of the State Bank. Non-resident bank branches and correspondents may, therefore, be advised to fund their non-resident rupee accounts only to the extent required for effecting authorized payment to beneficiaries in Pakistan.

2. Authorized Dealers are also advised to ensure that "Special Convertible Rupee Accounts" of non-residents, opened in terms of instructions contained in paragraph 8, Chapter XX of the Manual are not used for speculation in respect of exchange rate of the rupee and that only such credits and debits are allowed which relate to permitted trading in shares and securities and receipt of dividends/profits and repatriation of disinvestment proceeds and dividends/profits.

3. Attention of the Authorized Dealers is invited to paragraph 7(I) of FE Circular No. 8 dated the 18<sup>th</sup> May, 1999 regarding forward cover contracts by the Authorized Dealers with the State Bank prior to 19<sup>th</sup> May, 1999. Their attention is also invited to paragraph 9 Chapter IV of the Foreign Exchange Manual and Sub-Section(2) of the Section 4 of the Foreign Exchange Regulation Act, 1947 in terms of which the State Bank is vested with the powers to direct to close out forward contract at the rate ruling on the date on which they were booked. In cases where importers have established L/Cs for import of wheat against contracts on C&F Free Out basis without the prior approval of the State Bank, such contracts shall be required to be closed out at the rate ruling on the date on which they were booked. The Authorized

Dealers will close out their relevant contracts with the State Bank on the same basis.

4. In order to prevent speculation by importers and exporters, banks are instructed that in case of closing out of forward sale contract with customers where underlying LC has been cancelled or has expired un-utilized, the spot rate for counter transaction would be lower of those prevailing on the date of booking of the contract and the date of close out. **Similarly in case of closing out of forward purchase contract with the customers where underlying LC/export contract has been cancelled or has expired un-utilized, the spot rate for counter transaction would be higher of those prevailing on the date of booking of the contract and the date of close out.**

10. It is not in dispute that in terms of the Import Policy Order, wheat has always been permitted to be imported by State Enterprises and it is only from time to time, that such permission is also given to the private sector through State Bank of Pakistan. In the instant matter when subject L.C was established by the plaintiff, the private sector was permitted to import wheat and the plaintiff opened the L.C with permission of State Bank of Pakistan. However, due to the reason stated hereinabove, the shipment could not be made within the validity period, and therefore, the plaintiff requested an extension in the date of shipment, which was denied. The defendant No.1 pursuant to issuance of SRO 750(I)/1999 dated 15.6.1999, by the Government, issued Foreign Exchange Circular dated 15.06.1999 to all the authorized dealers advising them not to establish a Letter of Credit for import of wheat, henceforth, whether on C&F or C&F (free out) basis. It was further directed that particulars of L.C's opened by Authorized Dealers on or after 08.06.1999 may be furnished to the Additional Director, Foreign Exchange Department, State Bank of Pakistan, Karachi immediately but not later than 19.06.1999. Perusal of this Circular very clear reflects that it only directs the Authorized Dealers not to establish L.C for import of wheat any further. Insofar as the plaintiff's case is concerned the amendment was only in respect of extension of date of shipment, whereas, neither the quantity, nor the value of L.C was being sought to be amended. If that had been a case, then perhaps the contention of defendant No.1 for refusing such amendment could have been justified, however, a mere extension in the date of shipment does not *ipso facto* means that a fresh L.C is being established, rather it was a minor amendment for extension in the date of shipment, whereas, the rest of the formalities already stood completed including booking of the Foreign Exchange Forward Cover. Para 9 of Chapter XIII of the Foreign Exchange Manual caters to all such amendments and provides guidelines to the Authorised Dealers (Banks) for such amendments. It further appears that the plaintiff had requested for an extension in the date of shipment in



the L.C within the validity period of such L.C, and such position appears to be admitted on the basis of record placed before this Court. It would not be out of place to mention that insofar as amendments in the L.C are concerned, they are made as a matter of routine by the Authorized Dealers not only in respect of date of shipment, but even in the quantity and value of the goods, and even the name of the beneficiary as and when requested by an Importer. Since in this matter, the permission to import wheat was subject to monitoring and supervision of defendant No.1, therefore, as an abundant precaution, the defendant No.2 in the instant matter instead of granting such extension on its own, referred the matter to defendant No.1, who refused to grant such extension on the basis of Notification dated 15.06.1999 issued by the Government and subsequent Foreign Exchange Circular dated 15.6.1999 issued by it treating such extension of date of L.C as fresh L.C which does not appear to be a correct and justified act on the part of defendant No.1. The plaintiff after establishing of its L.C had entered into a binding contract and was entitled to import the goods in question on the basis of such L.C. The ban which was placed by the Government was in fact through an amendment in Chapter-3, Section II of the Import Policy Order 1998, whereby, a new clause was inserted which only permits import of wheat through a procedural requirement by public sector only, and such insertion was always prospective and not retrospective. It is a settled proposition of law that a Notification which impairs a vested right or is prejudicial to the interest of a party will always be prospective in nature until and unless it has been given a retrospective effect in clear and specific terms, whereas, a Notification or Order which is beneficial in nature can be applied retrospectively. Moreover, in cases of imports, wherein, letters of credits are duly established or imports have been affected by issuance of Bills of Lading or Airway Bill, they are always protected from any subsequent change or restriction in the Import and or Export of any commodity, as the case may be. Though in the Import Policy under discussion there was no such provision, but currently the same is provided in terms of Para 4 of the Import Policy Order 2013 that *the amendments brought in this Order from time to time shall not be applicable to such imports where Bill of Lading or Letters of Credit (L/C) were issued or established prior to the issuance of amending Order*. In this matter it does not appear to be the case of defendant No.1 that Notification dated 15.6.1999 or for that matter their Circular No.14 dated 15.6.1999 had been given any categorical retrospective effect on all consignment for which L.C's had already been established. The Lahore High Court in the case of *Kaghan Impex v. Central Board of Revenue & Others (PLD 1982 Lahore 608)* had the occasion to examine an amendment made in the Import Policy Order, whereby in terms of SRO dated 13.10.1980 an amendment was made in Para 8(4) of the Import Policy

Order, 1980, which resultantly read as “*Import of goods from India (including goods of Indian Origin from any country) will be allowed to public sector agencies*”....., whereas, previously the words read as “*Import of goods from India (including goods of Indian origin) will be allowed to public sector agencies*”... The petitioner imported its consignment from Singapore prior to the amending SRO dated 13.10.1980, however, when it arrived in Pakistan, the same was confiscated on the basis of the amending Notification that goods from India and of Indian Origin from any country are no more importable by the private sector. The learned Lahore High Court was pleased to hold as under:

The change in the import Policy Order, 1980, through the amending provisions cannot affect past and closed transactions and the petitioners have a vested right to demand that their case be decided according to the law as it existed when the action was begun, unless the amendment shows a clear ; intention to the contrary. I am, however, of the considered view that the amendment does not operate retrospectively. Reference may also be made to *B. G. N. Bhandari v. Rehabilitation Authority, Lahore (2)* and *Ahmad Ali Khan v. Muhammad Raza Khan and others (3)*, wherein it was held that a subsequent change in the law cannot affect past and closed transactions.

In appeal the matter went before the Hon’ble Supreme Court and the case is reported as *Central Board of Revenue v. Messrs Kaghan Impex and another (PLD 1989 SC 463)*, wherein the Court observed as under;

There is force in these submissions. As already stated the ban contained in the Import Policy Order, 1979, was directed only to goods of Israel, South Africa, Taiwan a province of the People’s Republic of China, Rhodesia or goods originating from any of these countries. It was only later on i.e. on 13-10-80 that a similar ban was imposed for the first time in relation to goods originating from India. The Government apparently was becoming wiser by lapse of time and by stages, but the amendment made on 13-10-1980 could not, as rightly pointed out by the High Court, apply to the goods E which were imported much earlier.

In the result when the disputed goods were imported by the respondents and arrived in Pakistan notwithstanding the fact that they were goods of Indian origin having been imported not from India but from another country (Dubai) they were not liable to confiscation in terms of Import Policy Order, 1979, then in force.

In the circumstances Issues No.2 & 3 are answered in negative.

**ISSUE No.4:** Whether F.E. Circular No. 10 dated 26.5.1999 was applicable to the plaintiff’s case and if so with what effect?

**ISSUE No.5:** Whether the plaintiff is entitled to recover from the defendant No. 1 the loss of profit and the difference between the booked price and the price prevailing on 7.5.1999, and if so in what sum?

11. Again both these Issues are interlinked and are therefore being dealt with accordingly. Insofar as Foreign Exchange Circular 10 of 1999 dated 26.05.1999 is concerned, it is only the last Para, which is relevant for the present controversy. The plaintiff's case is that on 07.05.1999 when the L.C was established, the plaintiff in order to safeguard its interests had booked the Foreign Exchange Cover for a period of three months, whereas, through defendant No.1's witness it has come on record that on the day of booking of foreign exchange, the rate of 1 US\$ was equal to Rs.47.44 and on the day of cancellation of L.C it was Rs.51.50. The witness while answering such question has stated that "*It is correct that on the day of booking of Foreign Exchange rate, 1 US\$ was equal to the rate of Rs.47.44 and on the day of cancellation it was at the rate of Rs.51.50.*" In fact the plaintiff is claiming this difference as at the time of booking, the Foreign Exchange Cover, the plaintiff was saddled with certain liabilities by the L.C opening Bank which in fact is a usual practice in this business. This calculation of difference and settlement of export and unutilized L.C has been dealt with in Circular No.10 *ibid.* In the last Para, which provides that in order to prevent speculation by importers and exporters, banks are instructed that in case of closing out of forward sale contract with customers where underlying LC has been cancelled or has expired un-utilized, the spot rate for counter transaction would be lower of those prevailing on the date of booking of the contract and the date of close out. It further provides that similarly in case of closing out of forward purchase contract with the customers where underlying LC/export contract has been cancelled or has expired un-utilized, the spot rate for counter transaction would be higher of those prevailing on the date of booking of the contract and the date of close out. Insofar as, the plaintiff's case is concerned, it has been vehemently argued that they did not enter into any speculative event as after establishing of L.C, they were trying or persuade the defendants to extend the date of shipment so that goods can be physically imported by them. Such contention appears to be justified as the plaintiff has shown enough material and has led positive evidence to this effect that their transaction was never speculative in nature. They have been trying to persuade the defendants for extension in the date of shipment, whereas, defendants have not led any such evidence to substantiate that opening of L.C. and entering into a contract with the Foreign Supplier was a speculative attempt by the plaintiff. The witness of defendant No.1 has further stated in his cross-

examination that *“It is correct that importer booked foreign exchange on the date of opening of L.C and if the contract is cancelled or revoked then he is entitled to claim difference on the rate of foreign exchange prevailing on the day of booking and on the day of cancellation”* and thereafter, he voluntarily says that this principle does not apply in the case of the plaintiff as such he is not entitled to claim amount as mentioned in the plaint. However, mere assertion of the defendants’ witness that the plaintiff is not entitled does not suffice. The plaintiff has led its evidence and has established that a Letter of Credit was duly established with Forward Booking of Foreign Exchange with the permission and approval of defendant No.1, and the request for extension was denied by relying on an amendment which only applied on establishing a fresh L.C and not on the L.C’s already established, as discussed while answering Issues No.2 & 3. In the circumstances, the plaintiff’s case does not fall within any speculation and the plaintiff appears to be entitled for the difference in the rate of exchange as prevailing on the date of establishing the L.C i.e. 07.05.1999 and on the day of its cancellation. Such difference has already been stated by the defendants’ witness i.e. on the date of opening of L.C, it was **Rs.47.44** and on the date of cancellation it was **Rs.51.50**, which comes to **Rs.4.06** and on the total value of L.C i.e. **US\$ 68,50,000/-** it comes a total of **Rs. 27,811,000/-**. Insofar as loss of profit being claimed at the rate of 5% on the total value of the goods is concerned, the plaintiff has failed to lead any evidence so as to suggest that any losses had actually occurred. It was incumbent upon the plaintiff to come with positive and confidence inspiring evidence that at the relevant period, the parties, who had imported wheat and sold in the country, were making profits and not losses. Nothing has been adduced on behalf of the plaintiff in this regard; therefore, the claim of loss or profit at the rate of 5% is not substantiated. Accordingly, both the aforesaid Issues are answered by holding that Foreign Exchange Circular No.10 dated 26.05.1999 was only applicable to the plaintiff’s case for its entitlement in respect of difference in the rate of exchange prevailing on the date of contract vis-à-vis the rate prevailing on the date of its cancellation, whereas, the plaintiff is entitled to recover such difference. However, the claim for loss of profit is not proved and is accordingly dismissed.

**ISSUE No.6: What should the decree be?”**

12. In view of hereinabove facts and circumstances of the case, the plaintiff is entitled for recovery and accordingly Suit is decreed for an amount of Rs.27,811,000/-, with mark-up / and or cost of funds, as per prescribed rate(s) of State Bank of Pakistan during such period from the date of filing of this Suit till its realization.

13 Suit stands decreed in the above terms. Office to prepare decree accordingly.

Dated: 24.02.2017

J U D G E