

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-7241 of 2018

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioner : M/s. Shahzad Trade Links
through Yousuf Moulvi,
Advocate.

Respondent No.1 : State Bank of Pakistan through
Manzoorul Haq, Law Officer
and Rizwan Ahmed, Joint
Director.

Respondents No.2 : Soneri Bank Limited through
Mujahid Bhatti, Advocate.

Date of hearing : 02.11.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner has impugned a Letter dated 06.09.2018 bearing Ref. No.IPU/019617/2(47)-2018 (the “**Impugned Letter**”) issued by Respondent No.1 to the Respondent No.2, being the State Bank of Pakistan (the “**SBP**”) and Soneri Bank Limited respectively, whereby the former was advised by the latter to proceed in the case of the Petitioner as per the instructions contained in Para 30 of Chapter 13 of the Foreign Exchange Manual (the “**FE Manual**”), so as to apply a penalty on account of delayed shipments.

2. The aforementioned provision of the FE Manual pertains to the subject of Advance Remittances, and *inter alia* stipulated at the relevant time that:

“(i) Authorized Dealers may allow advance payments against imports only against irrevocable letters of credit upto 100% of the FOB or CFR value of the goods subject to the following terms and conditions:

- a) The bank will take all possible measures to verify the bonafides and genuineness of the transaction while processing advance payment request and may get the credit worthiness report of the foreign supplier before allowing advance payment. In order to secure advance payment, the bank may also ask the importer to obtain performance guarantee from the supplier’s bank.
- b) The bank will obtain an undertaking from the importer on the prescribed form (Appendix V- 31) that in case goods are not received for any reason within the period of four months, the bank as well as the customer will ensure repatriation of the advance payment back.
- c) In case the importer is unable to import goods against advance payment within four months or the underlying contract is cancelled, the bank will recover a penalty @1% per month or part thereof on the amount of advance payment from the date of remittance till date of submission of shipping documents or repatriation of advance payment.
⁸The bank will deposit the penalty amount in favor of State Bank of Pakistan through RTGS Clearing Account No.427518. In this respect, a consolidated statement regarding all such cases will be submitted by Head/Principal Offices of the Authorized Dealers to the Director, Foreign Exchange Operations Department, SBP-Banking Services Corporation on monthly basis as per prescribed format (Appendix V-27A).
- d) If a consistent behavior as mentioned at (c) above is observed where actual imports do not take place against advance payments, Authorized Dealer may debar the concerned importer from making any future advance payments under intimation to Exchange Policy Department, State Bank of Pakistan, Karachi.”

3. The basic facts underpinning the matter in that backdrop are that the Petitioner had opened two Letters of Credit, being LC NO.40020030004935 amounting to EUR 3708180.08 and LC NO.40050030000013 amounting to EUR 12,600, through the Respondent No.2, subject to the regulations of the SBP, as per which advance payments were made to the supplier on the condition of shipment to be ensured within a specified timeframe, but with the same having then ensued with some delay.

4. Learned counsel for the Petitioner submitted that the proprietor of the Petitioner had been arrested on 15.01.2018 and remained in prison till 22.05.2018, hence could not monitor the shipments from the supplier in whose favour the aforementioned LCs had been established. It was submitted that the supplier had stopped shipments on account of apprehensions arising out of the arrest of the Petitioner, and shipments under 22 Bills of Lading thus came to be delayed beyond the statutory period for reasons beyond the control of Petitioner, as such the shipping documents could not be filed within 120 days of advance payment.

5. He submitted that on 16.07.2018 the Petitioner had addressed a letter to the Respondent No.2, seeking waiver of the penalty of advance payment against LC No.40020030004935, which had been forwarded to the Respondent No.1, but the same was declined by said Respondent vide the Impugned Letter, which was then forwarded to the Petitioner by the Respondent No.2 under cover of a letter dated 11.09.2018. He contended that the Respondent No.1 had declined the waiver without properly examining the facts and circumstances underpinning the request and was bent on imposing a heavy penalty on the Petitioner based on a wrong interpretation of the FE Manual, which was not attracted under the given circumstances. Inviting attention to the prayers advanced, he sought that the instruction contained in Para 30 Chapter 13 of the FE Manual be declared to be inapplicable to the case of the Petitioner and the Impugned Letter be declared to be illegal and unlawful and of no legal effect, with the Respondents being restrained from imposing the envisaged penalty.

6. Conversely, learned counsel for the Respondent No.1 argued that the contentions of the Petitioner were fallacious and the Petition was misconceived as the representation made through the letter dated 16.07.2018 and further correspondence addressed by the Petitioner in the matter to the Respondent No.2 on 05.10.2018 turned on the assertion that the shipments were delayed due to the arrest of the Petitioner, which is said to have taken place on 15.01.2018, whereas the shipments were to have been made by 25.12.2017 as per the LCs.

7. Having heard the arguments advanced and examined the material placed on record, it merits consideration that the underlying representation made by the Petitioner through the letter dated 16.07.2018 proceeds as follows:

“The Manager,
Soneri Bank Ltd
Jodia Bazar Branch,
Karachi.

Subject: Waiver of Penalty of Import Advance Payment
against Letter of Credit #40020030004935.

Dear Sir

Please refer to above cited subject, we established Letter of Credit No. 40020030004935 dated: 05.10.2017 against 100% advance payment for purchase of Agricultural Tractors, Tyres with Tubes from Belshina Joint Stock Company, Belarus as per Contract/Agreement No.8056-61-16/8055-61-16 dated 5.10.2016 and subsequently shipments were made by beneficiary within time.

The shipments were effected however delivery postponed by the beneficiary due to unfavorable circumstances occurred & FIR lodged against me for corruption charges. Upon being released by Court, I have informed the beneficiary to re-effect the balance shipments which have been delayed since long.

In light of above unavoidable circumstance, we are therefore request to kindly accord approval from SBP for waiver of penalty against said advance payment.

Thanks & Regards

For Shahzad Traders

Proprietor
(Shahzad Riaz)

8. Thereafter, following the Impugned Letter, the relevant excerpt from a further letter dated 05.10.2018 addressed by the Petitioner in the matter to the Respondent No.2 reads thus:

“1. That we established Letter of Credit No. 40020030004935 dated 05.10.2017 against 100% advance payment for purchase of Agriculture Tractor, Tyres with tubes from Belshina joint Stock Company, Belarus as per contract / Agreement No.8056-61-16/8055-61-16 dated 05.10.2016 and subsequently shipment were made by the beneficiary within time.

2. That due to the unfavorable circumstances occurred 1 was arrested in a false case on January 15, 2018 and remained in prison up till 22 May 2018. That after the arrest on 15.01.2018 from active business, I being in prison could not monitor arranging containers for the shipments from the supplier against above mentioned LC as such 21 BLs (shipments) were delayed beyond the statutory period as such I could not file the shipping documents within 120 days of advance payment.

3. That during this period the shipment were effected, the supplier stopped the shipment under the above referred LC and after my release i.e. on 25.09.2018, the supplier renewed the shipment. That the first shipment after my release was made on 25.05.2018 and the goods arrived in Karachi on 26.06.2018.

4. That in response to my letter dated 16.07.2018 regarding waiver of penalty of advance payment against above referred LC sent to you, SBP vide their Letter Ref. No.IPU/019617/2(47)-2018 dated 6th September, 2018 without discussing the facts and circumstances of our request and without assigning any reason rejected my request and advise you to proceed as per the instruction contained in Para 30 Chamber 13 of Foreign Exchange Manual (F.E. Manual)-2018.”

9. When the terms of the LCs are examined, it is apparent that the shipments envisaged thereunder were indeed to have been made by 25.12.2017. As such, the rationale presented by the Petitioner while seeking waiver of the penalty recoverable under the FE Manual, being predicated on his arrest subsequent to that date, is palpably misconceived.

10. As held by the Honourable Supreme Court in the case reported as Commissioner of Income Tax Karachi vs. Messrs. Hassan Associates (PVT.) LTD and another 2017 SCMR 1652, the FE Manual contains the basic regulations issued by the Government of Pakistan and SBP under the provisions of the Foreign Exchange Regulations Act, 1947, therefore, it has the force of law and a violation thereof constitutes an infraction of the law, rendering the concerned party liable to penal consequences, as provided therein.

11. As such, we see no illegality or perversity marking the marking the matter so as to warrant correction in exercise of the extraordinary Constitutional jurisdiction of this Court. The Petition thus stands dismissed

JUDGE

CHIEF JUSTICE