**OPINION**

**1. QUERIST:**

Bank of India,

Chennai Main Branch,

Star House, First Floor,

No.17, Errabalu Chetty Street,

Chennai – 600 001.

**2. FACTS:**

2.1 The querist are the bankers for M/s.Omvishkar Exports, an exporter. In respect of five shipments of Red Chillies exported by the above exporter, the querist has acted as the beneficiary’s bank / exporter’s bank.

2.2 The buyer for these Red Chillies consignments is one M/s. Convenience Foods Lanka PLC, who is an importer in Sri Lanka. Letters of credit were opened by the above importer as “drawee” through State Bank of India, Colombo in favour of the Indian Exporter M/s.Omvishkar Exports as beneficiary with the querist as the negotiating bank. Following are the five LCs along with the bill value, amount received and pending amounts.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sl.  No. | LC No. | Bill Value USD | Received Amount | Pending Amount |
| 1. | 25122LU00021 Dated 27.06.2022 | 296223.75 | 150322.5 | 145901.25 |
| 2. | 25122LU00020 Dated 27.06.2022 | 154620.00 | 92182.5 | 62437.50 |
| 3. | 25122LU00020 Dated 27.06.2022 | 59062.50 | 29970 | 29092.50 |
| 4. | 25122LU00020 Dated 27.06.2022 | 207405.00 | 177705 | 29700.00 |
| 5. | 25122LU00020 Dated 27.06.2022 | 61267.50 | 31646.25 | 29621.25 |

2.3 It is to be noted that these exports have taken place under the Indian Credit Line facility extended by the Government of India to Government of Sri Lanka. The exporter and the Sri Lankan importer have mutually agreed to complete these transactions and import of the goods into Sri Lanka through this credit facility.

2.4 The Indian Credit Line facility is a scheme where Govt. of India has agreed to provide one billion US $ credit to the Government of Sri Lanka and based on a credit facility agreement signed in this regard between the two countries, the one billion US$ credit could be used for importing essential items into Sri Lanka from India.

2.5 In this connection, the Indian Credit Facility Coordinating Unit (ICFCU) Ministry of Finance, Sri Lanka has issued operating guidelines titled “Importation of Essential Items under Indian Credit Facility”. In the introduction to these guidelines the following is stated:

*“This facility will enable registered importers to import essential food items, essential pharmaceuticals and raw materials for local industries from India. The Ministry of Finance together with the Ministry of Trade will take necessary steps to implement this facility.*

*Once the importers are selected by the Ministry of Trade to import assigned quantities of selected items, they can place orders with the identified Indian suppliers. The importers are required to secure their order by placing a deposit at the General Treasury through their respective banks and* ***once the imports are arrived and cleared by the customs, the Indian suppliers shall be paid with equal Indian Rupees through the SBI.”***

2.6 For smooth functioning of this facility, Indian Credit Facility coordinating unit has been formed under the Ministry of Finance and it was required to oversee and coordinate all activities related to the loan facility. It is also stated that the decisions of ICFCU shall be considered as final. The guidelines issued as above indicate in detail the procedure to be adopted for importing the essential items. Briefly the process involved is as follows:

1. Importers who are willing to import essential items from India will be selected through paper advertisements and each importer will be registered and allocated quota for specific items.
2. The registered importers are required to submit proforma invoices with relevant documents to the Ministry of Trade and a recommendation letter is to be issued to be respective importers with a copy to ICFCU providing details of the items and the quantity to be imported from India.
3. Thereafter the importer is required to submit the proforma invoice and other relevant documents to ICFCU and the information provided to ICFCU will be shared with the Indian High Commission, importer’s bank and Sri Lankan Customs.
4. ICFCU will send supplier’s information to the Indian High Commission for their approval and the approved documents will be forwarded to the importer’s bank with appropriate intimation to the importer.
5. Thereafter the importer’s bank will facilitate the importer to open Letters of Credit. The LC documents, thereafter will be forwarded to the exporter’s bank in India and exporter’ bank in India will send the order confirmation to the supplier. After receiving the order confirmation, the Indian exporter is required to export the goods and forward the export documents to the importer’s bank through their bank (exporter’s bank).
6. After receiving the import clearance documents, the importer’s bank is to transfer the funds to the Bank of Ceylon under the account reference “Director General, Department of Development & Finance, Indian Credit Line Facility (Collection Account)”. Thereafter the importer’s bank will hand over the import clearance documents to the importer which are to be submitted to the Sri Lankan Customs by the importer. Sri Lankan Customs will release the goods after completion of the clearance process and also will send a set of clearance documents with their recommendation to ICFCU.
7. Thereafter, ICFCU through Department of External Resources will issue the disbursement advise to the High Commission of India and **High Commission of India will send payment order to State Bank of India to release funds to the exporter’s bank.** Finally, after disbursement, State Bank of India will Top-up the loan account of the Government of Sri Lanka and will update the relevant loan transaction.
8. Once disbursement is done, the exporter’s bank is to make payment to the supplier.

The guidelines also contain the following paragraph at 3.3

***“3.3 Special Investigation Unit (SIU) at Sri Lanka Customs***

*This unit will investigate goods imported under this facility and issue clearance. This unit will also provide recommendations to the ICFCU with regard to Customs clearance to facilitate the payments.”*

2.7 In the present case, it appears that for five shipments covering 26 containers, payments were received by the exporter in respect of 16 containers. For the balance 10 containers payments are pending. It is stated that though clearance was given by Customs and amounts were transferred by the importer’s bank to the Bank of Ceylon, based on testing of the goods, subsequent to the release by Customs for determination of aflatoxin levels containers were detained subsequently. As the two test results carried out in Sri Lanka did not meet the requirement of the stipulations provided by the Food Administrative Control Unit, Ministry of Health, Government of Sri Lanka the goods were ordered to be re-exported / destroyed. It is also reported that after much correspondence and delay the detained goods were destroyed. It is also reported by the querist that ICFCU has refunded the amount received from the Sri Lankan importer back to their account and informed SBI, Sri Lanka suitably.

2.8 In this process, the pending payments were not released to the exporter and various representations have been made by the exporter to the banks concerned, to Sri Lankan Customs, to the Indian High Commission and also representations were given to the officials in the Indian Government. It also appears that the querist has written to the State Bank of India holding that they are liable to follow up with Bank of Ceylon and ensure that the payment already made by the Sri Lankan importer is retrieved and paid to the Indian exporter.

**3. QUERY:**

In the above factual matrix, the querist would like to know the options available for the Indian exporter to realize the pending payments. To enable giving of the opinion the following correspondence have been made available.

a) Group D Mail Correspondence between Bank of India and SBI, Colombo.

b) Group C Mail Correspondence between Omvishkar and Bank of India.

c) Group E Mail Correspondence between Omvishkar and ICFCU, Colombo.

d) Group A ICL Guidelines, SBI - IC Agreement, FAQ.

e) Group B Shipping documents.

f) Group H Letter sent to Indian Ministries.

g) Group F Mail Omvishkar to SBI LK to Omvishkar.

h) Group I Correspondence between OMV and Colombo Customs.

i) Group G OMV Mail, WhatsApp to Mr.Vivek Sharma.

j) Group J Mail Correspondence between Omvishkar and the Srilankan Importer.

**4. OPINION:**

4.1 It is noticed that the transactions under reference are governed by Letters of Credit opened by the importer’s bank. It is true that once transactions are in terms of letters of credit, the provisions contained in UCPDC 600 will be applicable for resolving any issues / disputes.

4.2 At the same time, it is to be understood and appreciated that such LC payments are subject to the guidelines stipulated under the Indian Credit Facility to the Government of Sri Lanka when supplies are made under this scheme. The guidelines issued under this credit facility stipulate a very clear process and procedure to be adopted right from registration of contracts till the disbursement of the amount to the exporter under LC terms as well as other payment modes such as DP.

4.3 After the goods are imported the Sri Lankan Customs are required to release the imported goods upon completion of clearance process in accordance with the Sri Lankan Customs Law. It is also required to send a set of clearance documents with their recommendation to ICFCU for disbursement of the amounts to the exporter.

4.4 From the correspondence made available by the querist, it appears that the Sri Lankan Customs allowed clearance of the consignments imported and also sent clearance documents to ICFCU. But it appears that clearance of the goods by Sri Lankan Customs is conditional and subject to testing for aflatoxin levels prior to the final consumption by the Sri Lankan consumers. This is a procedure normally adopted by any customs authority including Indian Customs where the goods are released, subject to test results. The communications exchanged between the Indian exporter and the Sri Lankan importer contained in Group-J mail clearly reveal that though the goods were released initially, containers were detained when the first test results failed. It is also noticed that subsequently, in the government laboratory, another test was done and when that also failed, it appears that the Sri Lankan Customs told the Sri Lankan importer that the goods under reference are not according to the stipulations as laid down by the Food Administrative Control Unit, Ministry of Health, Sri Lanka and therefore, they are to be re-exported. It is also noticed that the Indian exporter and the Sri Lankan importer jointly made efforts for further drawal of samples and fresh testing and it appears that such a request has been turned down by the Ministry of Health, Govt. of Sri Lanka. Another interesting point noticed is that while the Sri Lankan importer has repeatedly requested for re-exporting the goods as the Customs authorities have refused permission for clearance and use of the goods in Sri Lanka, the Indian exporter was disputing the procedure adopted for testing, the basis for withholding of the payment etc. and refused to accept the suggestion of getting back the goods.

4.5 It appears that the Indian exporter has taken a stand that the Sri Lankan importer has become the owner of the goods and therefore, they (exporter) have nothing to do with the re-export request. It appears that finally, the Sri Lankan Customs have through the forwarder has asked for consent for destruction of the goods and the goods came to be destroyed.

4.6 In this whole process, there had been considerable delay that occurred at different points with different agencies.

4.7 It is to be noted that the fact of delay alone will not make a person liable for payment of the dues, especially, the role of SBI, Colombo. The guidelines clearly stipulate that once the Sri Lankan Customs authorities give clearance and intimate ICFCU, ICFCU ought to have proceeded with the disbursement of the dues to the Indian exporter. From the information provided it is not clear as to what exactly happened between the point of the initial customs clearance intimated to ICFCU and the subsequent confirmation with regard to non-clearance of the goods. It is not known whether the clearance of the goods by Sri Lankan Customs was conditional and is subject to test results of samples drawn earlier. But it looks that the Sri Lankan Customs authorities had the power to detain the containers and also order re-export, if the importer wanted to exercise that option, and ultimately, they had the authority to destroy the goods.

4.8 Whether clearance was given by Sri Lankan Customs at the initial stage or not becomes irrelevant as the Sri Lankan Customs, a part of Sri Lankan government, had ordered destruction of the goods and thus, effectively, the goods have not reached the buyer.

4.9 In the whole process, the role played by the ICFCU is not clear and whether the actions taken by them were in accordance with the Sri Lankan Law and the guidelines given in the Indian Credit Facility Scheme need to be thoroughly examined. Once SBI, Colombo has transferred the funds to the Bank of Ceylon, it is also not clear how subsequently ICFCU refunded the payment directly to the Sri Lankan importer and only simply intimated SBI, Colombo. In the normal circumstances, it ought to have returned the funds to SBI, Colombo.

4.10 In these set of transaction the Indian exporter has taken a stand that the Sri Lankan importer has become the owner. It is doubtful whether such a stand can be maintained. The fact remains that the Indian exporter has not received payment of the goods supplied by him and till payment is disbursed on the basis of an order issued by the Indian High Commission to SBI, Colombo it cannot be said that the title to the goods have been transferred to the Sri Lankan importer. In the normal LC procedure, when money is paid and documents are retired, that is the end of the transaction. But under the Credit Facility Scheme it is not so. It is true that the Sri Lankan importer has made available the funds and retired the documents. But, the transaction in this case is subject to the guidelines provided in the Indian Credit Facility Scheme and therefore, it is difficult to accept the stand that even before the High Commission of India sends the payment order to SBI to release funds to the exporter’s bank, the exporter has lost title to the goods and that the Sri Lankan importer has become the owner of the goods (notwithstanding the fact that even if the bills are discounted).

4.11 If this legal position is accepted, then the Indian importer may have some way out to claim compensation. From the information provided and the documents made available, the role of SBI, Colombo as importer’s bank cannot be questioned. It will be very difficult to hold them as responsible for non-remittance of the funds ultimately to the Indian exporter. SBI Colombo could not have not anything against Srilankan Customs or ICFCU and their actions expect applying pressure to act fast.

4.12 On the other hand, the customs authorities have apparently destroyed the goods without the approval of the proper owner of the goods i.e., the Indian exporter. It appears that ICFCU has unilaterally refunded the funds to the Sri Lankan importer under doubtful circumstances without any prior intimation or approval with the other agencies involved. It is possible that there may be correspondence in this regard but the information made available to me do not reveal that such a course was adopted by ICFCU.

4.13 When the supplier’s goods are subjected to such actions in another country, where the import has taken place, it should be possible to get suitable relief by way of international law or within the judicial system of the importing country.

4.14 If the actions on the part of Sri Lankan Customs and ICFCU are not in accordance with law and prescribed procedures, then, the Indian exporter may have a case to claim compensation in Sri Lankan Courts by instituting and initiating appropriate suits.

4.15 But the difficulty in this case will be, all along the Indian exporter has taken the stand that the Sri Lankan importer has become the owner of the goods. Secondly, if ultimately it is to be held that the consignments of red chillies which were ordered to be destroyed by the Sri Lankan Customs are not in accordance with the regulations of Sri Lankan Government administered through Food Administrative Control Unit, Ministry of Health, then also there will not be any relief to the Indian exporter as the charge of supplying substandard goods that are not in accordance with the regulations of the importing country will be sustained.

**S. MURUGAPPAN**

sm/ss

**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.