**BY E-MAIL / COURIER**

**File No.228/2023-Opinion**

16.02.2024

Bank of India,

Chennai Main Branch,

Star House, First Floor,

No.17, Errabalu Chetty Street,

Chennai – 600 001.

Attn.: Ms. Sheerin Sithara, Senior Manager <chennai.chennai@bankofindia.co.in>

**Mobile: 044-6677 7549** / **90254 76041**

**Sub.: Delay in payment of dues for Red Chillies supplied to Sri Lanka.**

Dear Madam,

1. In continuation of the opinion of even number dated 08.12.2023 in respect of the above subject, please find attached our further clarifications on the basis of additional inputs provided by you/your customer.

2. This is to be read as part of our earlier opinion and taken as our final clarifications the issue.

Regards,

**S. Murugappan**

Attached: as above.

sm/ss

**OPINION (FURTHER CLARIFICATIONS)**

**1. QUERIST:**

Bank of India,

Chennai Main Branch,

Star House, First Floor,

No.17, Errabalu Chetty Street,

Chennai – 600 001.

**2. FACTS & QUERY:**

These have been enumerated in detail in the opinion given on 08.12.2023. In our opinion given earlier, we have observed that SBI, Colombo is not at fault and it that it will be difficult to hold them as responsible for non-remittance of the funds to the Indian exporter and that appropriate relief is to be claimed by the Indian exporter only from the Sri Lankan Government authorities for the detailed reasons recorded in that opinion.

**3. OPINION:**

3.1 Based on further inputs provided, it appears that some more clarifications are needed and, in that context, we consider that the following issues need determination.

A. Because the supply by the Indian exporter is governed by an LC opened on behalf of the Sri Lankan importer are the payments to be made to the Indian supplier purely as per UCP 600 guidelines without any reference to and reliance upon the procedure in accordance with the operating guidelines issued by the Sri Lankan government under the Indian Credit Facility?

B. Whether the Indian exporter can take a stand that he is not bound by any of the procedures and conditions imposed under the Indian Credit Facility scheme in respect of the goods supplied by him and for receiving payment as per the procedure envisaged under the scheme?

C. If the answers to the above are in the negative, from whom relief can be taken by the Indian exporter as the goods have been destroyed at the behest of the Sri Lankan importer with the approval of Sri Lankan Customs?

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3.2 A perusal of the LC opened in the present case clearly shows that it is not purely governed by UCP 600 regulations for release of payment upon evidence of shipment. As permitted under UCP 600, there are appropriate additional conditions imposed in the LC, including the condition that the payment for the supply will be in Sri Lankan rupees by the importer to the local bank and in Indian rupees to the Indian exporter and further that the supply is under the Indian Credit Facility. The operating guidelines issued by the Sri Lankan government clearly stipulate that the Sri Lankan importer has to go through a registration process and the prospective supplier from India has to get his order included under the Indian Credit Facility scheme. Unlike any other LC payments, in the present case, importer’s bank is required to transfer Sri Lankan rupees equivalent to the invoice value only to **Account No.7041549 of Director General, Department of Development Finance, Indian Credit Line Facility (Collection Account) opened at the Taprobane Branch of Bank of Ceylon (BOC)** and inform the ICFCU accordingly.

3.3 Thus, the initial payment itself is not to the negotiating bank in Sri Lanka, based on any LC condition for transfer of the amount upon evidence of shipment or release of documents to the Sri Lankan importer. The guidelines issued by the Sri Lankan government is applicable for payments through LC as well as other modes of payment and any payment in terms of LC is not excluded from the provisions of the guidelines stipulated under the Indian Credit Facility scheme.

3.4 A perusal of the guidelines issued clearly indicate that after taking possession of the documents from the bank, the importer needs to submit the documents to Sri Lankan Customs and Sri Lankan Customs will release the imported goods and after clearance process is over the Sri Lankan Customs will send a set of clearance documents with recommendation to ICFCU and then ICFCU through the Department of External Resources will issue the disbursement advice to the High Commissioner of India and thereafter the High Commissioner of India will send payment order to SBI to release funds to the exporter bank. This process is applicable for both LC as well as other modes of payment.

3.5 In view of the above, the answer to the first point will be that the exporter cannot insist that payment as per the LC terms ought to have been released to him upon shipment or retirement of documents by the Sri Lankan Importer by ignoring the procedure set out in the Indian Credit Facility scheme implemented by the Sri Lankan government and as per the conditions incorporated in the LC.

3.6 One of the documents to be provided by the exporter’s bank is a declaration in **Form D** which reads as follows:

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“I do hereby agree to receive the payment for the aforementioned consignment of goods supplied to ………………………………………… (importers name and address), in Indian Rupee terms (INR) under the Credit Facility extended by the State Bank of India to the Government of Sri Lanka vide the Agreement dated 17th March 2022, subject to the order being approved for export under the said facility.”

 Apart from that, **Form D1** is required to be provided by the Indian exporter as mentioned below.

“I do hereby agree to receive the payment for the aforementioned consignment of goods supplied to ………………………………………… (importers name and address), in Indian Rupee terms (INR) under the Credit Facility extended by the State Bank of India to the Government of Sri Lanka vide the Agreement dated 17th March 2022, **subject to the order being approved for export under the said facility.”**

3.7 In the light of the above, it cannot be argued that the Indian exporter is not bound by the operating procedure of the Indian Credit Line Facility and that the only condition he will accept is that payment can be made in Indian Rupees. There is no partial acceptance of any of the procedure stipulated under the scheme. Once the exporter agrees to include the supply under the Indian Credit Facility scheme operated by the Sri Lankan government, he is bound to agree to all the terms of the scheme and there is no pick and choose in that regard. Further, it is assumed that he is aware of the various operating conditions and stipulations and at a later stage a stand cannot be taken that he is not bound by the scheme. The LC condition stipulates that the goods are imported under the Indian Credit Facility and the unique reference number. It is not that this applies to the importer only. The reference here is to the invoice to be raised by the supplier and the supplier is required to mention in the invoice that the goods are imported under Indian Credit Facility. Once the exporter has consented for his order to be governed by the Indian Credit Facility scheme, the provisions contained in the scheme will apply in total and therefore, the answer to the second point will be that the Indian exporter is bound by the conditions of the scheme.

3.8 Having determined the above, it is unfortunate that without making payment for the goods supplied and after withdrawing the payment so made with the help of ICFCU, the Sri Lankan importer has given his consent to the Sri Lankan customs for destruction of the cargo. Partly, the Indian exporter is responsible for this situation as a stand was taken by him that the ownership is transferred to the Sri Lankan importer and therefore, no further discussions can take place in that context including options for bringing back the goods to India, which the Sri Lankan customs as well as the Sri Lankan importer have suggested.

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3.9 When the Sri Lankan customs wanted a confirmation for destruction of the cargo, the Sri Lankan importer has given his consent knowing fully well that he has not fully acquired the ownership for the goods since payment has not been made to the supplier of the goods and that the sale is not complete and that part of sales transaction is pending.

3.10 The role of ICFCU also does not inspire any confidence in respect of the process adopted by them for return of the funds. After getting the funds transferred to the Sri Lankan Treasury bank and after documents were released to the importer for taking clearance from Sri Lankan Customs, ICFCU has unilaterally returned the funds to the Sri Lankan importer upon his submission of confirmation from Sri Lankan customs to the effect that the goods have been destroyed. Under what provisions of the operating guidelines for the Indian Credit Facility, ICFCU has transferred back this amount directly to the Sri Lankan importer is not known. Prior to the return of the funds directly to the Sri Lankan importer, ICFCU also has not put on notice the SBI or the Indian exporter for their response.

3.11 As per the operating guidelines only when the Sri Lankan customs gives clearance to ICFCU, disbursement to the Indian supplier will take place. When it sought approval from the Sri Lankan importer for destruction of the goods, the customs authorities in Sri Lanka were well aware that they have not yet given the clearance and that the Indian supplier has not received his payment for the goods supplied and therefore, they also ought to have put on notice the Indian exporter with regard to the options to be exercised for taking the goods out of the country or destruction of the same. Without taking this step, it appears that the Sri Lankan customs have acted based on the confirmation received from the Sri Lankan importer which is not proper.

3.12 These are the issues which need to be decided in Sri Lanka and therefore, the appropriate relief to the Indian exporter will be to take up these with the Sri Lankan Government and if needed before the Courts in Sri Lanka for claiming compensation in the light of the roles played by ICFCU, Sri Lankan Customs and the Sri Lankan Importer.

**S. MURUGAPPAN**

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**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.