
(2011) 03 NCDRC CK 0019

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Swadeshi Polytex Ltd.

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision: March 24, 2011

Citation: 2011 0 NCDRC 200 : 2011 2 CPJ 188 : 2011 2 CPR 249

Hon'ble Judges: R.C.Jain , S.K.Naik J.

Advocate: Dinesh Dwivedi , Jayashree Shukla , Mayank Grover , A.Das Gupta , Prateek Dwivedi , Abhishek K.Singh , Dinesh Mathur , Nishant Menon , Priyanka Bhorrh

Judgement

1. THIS complaint was answered by this Commission earlier vide order dated 17.2.2004. The complaint was partly allowed with the direction to the Opposite Party No. 2- Central Bank of India, Madurai branch, to pay a sum of Rs. 65,20,250/- alongwith interest @ 12% p.a. from 29.06.1995 till realization. Aggrieved by the said order, Central Bank of India filed Civil Appeal No. 5044 of 2004. The said appeal was decided by the Supreme Court vide order dated 28.7.2009. Supreme Court allowed the said appeal, set aside the order of this Commission dated 17.2.2004 and remanded back the matter to this Commission for fresh disposal of the complaint in accordance with Law after taking into consideration the judgment in the case of United Commercial Bank Vs. Bank of India & Ors. 1981 (2) SCC, 766 observing as under:-

We have carefully perused the judgment of the National Commission and have given our consideration to the contentions raised by learned counsel for the parties. In our view, the National Commission has not considered the various points raised by the appellant herein about not strict observance of the terms and conditions of the letter of credit. It has been held by this Court in the case of United Commercial Bank Vs. Bank of India & Ors. 1981 (2) SCC, 766 (paragraphs 28 to 32) that the terms of a letter of credit have to be strictly complied with. Hence, we set aside the impugned judgment of the National Commission and remand the matter to the national Commission for fresh disposal of the complaint in accordance with law and after taking into consideration the judgment of this Court in the case of United Commercial Bank (supra) and after taking into consideration the terms and

conditions of the letter of credit. Since the Original Petition pertains to the year 1996, we request the national Commission to dispose off the same expeditiously. It is in the above circumstances that the complaint is again before us for re-consideration and decision.

2. IN nutshell, the case of the complainant is that it deals in the business of manufacturing and marketing of Polyester Staple Fibre (PSF) being sold under the trade mark Jailene. On 30.12.1994, the complainant received an order from Opposite Party No. 4- Sree Meenakshi Mills Ltd. for supply of Jailene Polyester Staple Fibre. IN order to ensure the payment for the material to be supplied, the Opposite Party No. 4 had established an irrevocable Letter of Credit (LC) dated 19.4.1995 bearing No. 95-7 INLC 001 at Opposite Party No. 2 i.e. Central Bank of INdia, Madurai Branch. The said LC was amended on 7.6.1995. The LC so established guaranteed payment of the material supplied by the complainant to Opposite Party No. 4 on fulfillment of certain conditions fully recorded in the LC. Case of the Complainant is that during the period 13.6.1995 to 29.6.1995, it had forwarded 9 consignments of Polyester Staple Fibre to Opposite Party No. 4 through a certain road carrier and requisite documents viz signed copies of the invoices alongwith lorry receipts and other requisite documents were submitted to Opposite Party No. 2 through State Bank of INdia, Ghaziabad- the banker of the complainant for negotiating the said documents against the aforesaid LC and obtaining payment of the invoices. Opposite party No. 2 did not honor the said invoices which they were duty bound to do once all the conditions were complied with. It rather declined to make the payment of the invoices on certain wholly extraneous grounds that the documents submitted by the complainant through its banker did not conform to the terms and conditions of the LC. Some correspondence was exchanged between the complainant and the opposite parties in that behalf. Despite Opposite Party No. 4 having waived the alleged discrepancies in the documents furnished by the complainant, the payment was not released. The Opposite Party No. 3 did not the return unpaid documents to the complainant. Opposite Party No. 3, however, offered to settle the invoices and to remit the amount in case the Opposite Party No. 4 could settle by making payment to Opposite Party No. 2. Ultimately the documents were returned to the complainant unpaid through SBI, Ghaziabad. According to the complainant, the act of Opposite Party No. 3 in not honoring the documents submitted by the complainant was for wholly unjustified and untenable reasons in as much as there were no material discrepancy (s) in the said documents submitted by it and therefore the action of the Opposite party No. 3 would amount to negligence on their part tentamounting to deficiency in service for which they are liable to compensate the complainant. Complainant claimed a sum of Rs. 65,25,280/- as the sale price of the goods as per the 9 invoices alongwith interest @ 20.25% from 29.6.1995 till the date of realization besides a sum of Rs. 40.00 lakhs as damages for the financial loss

of reputation suffered by the complainant due to the alleged gross deficiency in service on the part of the Opposite Party Nos. 2 & 3.

Complaint was resisted by the Opposite Party Nos. 1 & 2 by filing written version thereby raising certain preliminary objections about the maintainability of the complaint. On merits, any deficiency in service on the part of Opposite Party Nos. 1 & 2 has been categorically denied. It is, however, not disputed that Opposite Party No. 4 had opened the LC which contained the stipulation that the payment would be made on presentation of the requisite documents and compliance of the terms & conditions of the LC. It is also not disputed that the Opposite Party No. 2 received the documents from the complainant through its banker which were not immediately honored because there existed certain discrepancies in the invoices and lorry receipts submitted by the complainant and the complainant had not furnished the insurance policy or the certificate of insurance as was required. It is clarified that while doing so, the Opposite Party-Bank has followed the UCP 500 subject to which the LC was issued.

Opposite party No. 3 filed written version simply stating that they merely acted as a negotiating bank and, therefore, not liable for any alleged deficiency in service or otherwise. Opposite Party No. 3- SBI and Opposite Party No. 4- Sree Meenakshi Mills Ltd. remained unrepresented on record.

3. IN order to substantiate their respective pleas, the complainant and Opposite Party Nos. 1 & 2 have largely relied upon the documents filed on record. Besides that they have filed the supportive affidavits in support of their respective pleas. After the remand of the matter by the Supreme Court, an additional affidavit of B.Mehrotra has also been filed from the side of the complainant. We have carefully perused the entire evidence and material on record and have heard Shri Dwivedi for the Complainant and Shri Mathur for the Opposite Party and have given our thought to the consideration of their respective submissions.

The fate of this complaint hinges on the answer to the question as to whether the action of Opposite Party Nos. 1 & 2 in not honoring the commitment under the LC and not releasing the payment of the said invoices raised by the complainant due to the alleged discrepancies etc. constitute deficiency in service on their part? Learned Counsel for the complainant or for that reason Opposite Party Nos. 1 & 2 have taken us through the relevant documents in order to get support to their respective pleas. As the controversy raised in the present complaint depends upon the correct interpretation of the terms and conditions of the LC, it will be useful to extract the LC dated 19.4.1995 and amended LC dated 7.6.1995. L.C. dated 19.4.1995 Cable Address CENTRAL BANK OF INDIA

CUSTOMERS COPY (illegible) MADURAI BRANCH NOT NEGOTIABLE 15, Meenakshi Koil Street Date 19.4.95 MADURAI- 625 001, INDIA L/C No. MADURA 95 07 INLC 001 (Beneficiary) Our Principal(s) M/S. SWADESHI POLYTEX LTD. THE SREE MEENAKSHI MILLS LTD. F-60, MALHOTRA BUILDING THIRUPPARANKUNDRA ROAD 2ND FLOOR, CONNAUGHT PLACE MADURAI 625 003 NEW DELHI-110001. TAMIL. NADU.

Dear Sirs, We have opened our IRREVOCABLE LETTER OF CREDIT in favour of your goodselves for account of our Principals named above for any sums not exceeding in all Rs. 66,00,000/- (Rupees Sixty Six Lacs only) available by your drafts drawn on our Principals at sight without recourse to you and accompanied by the following documents:

1. Your signed invoices in ____* addressed to drawees certifying merchandise to be of INDIA origin, and quoting Import Licence No. ____**. Invoice issued for amounts in excess of credit amount are not acceptable. 2. xxxxxxxxxxxxxxxxxxxxxxxxxx 3. xxxxxxxxxxxxxxxxxxxxxxxxxx 4. Insurance Policy or Certificate in duplicate for not less than 10% over the invoice value including (All risks) with extended cover irrespective of percentage. Theft, Pilferage and Non-delivery clause; Institute Strike Clauses with extended cover. Insurance claims payable in India. If goods are subject to transshipment, risk of transshipment must be covered under the Policy Covering shipment of : ABOUT 116.9 TONNS JAILENE POLYSTER STABLE FIBRE AT 56.50 PER KG. AS PER ORDER NO. 4157 DT. 31.12.1994. 5. PACKING LIST IN DUPLICATE. 6. ORIGINAL CONSIGNEE COPY OF LORRY RECEIPT APPROVED BY IBA EVIDENCING DESPATCH OF THE MERCHANDISE DULY SIGNED AND MARKED FREIGHT PREPAID AND MADE OUT TO CENTRAL BANK OF INDIA, AND NOTIFY BOTH CREDIT OPERNERS AND OURSELVES. PLEASE REFER TO ATTACHED ANNEXURE FOR OTHER TERMS AND CONDITIONS. * QUADRUPLICATE **No. PL 2303217/25.11.94 PL 2303238/12.12.94 INSTRUCTIONS/CONDITIONS 1. Shipment from : GHAZIABAD Shipment to: PARAVAI UNIT MADURAI 2. Part Shipment: Permitted 3. Transshipment: Permitted 4. Presentation of documents for negotiation must be made within 7 days from shipment date. 5. Documents must be presented for negotiation not later than 23.05.1995 to our correspondents named below who must send direct us original documents by airmail and duplicates by next Air Mail and claim reimbursement as marked X. X TO THE DEBIT OF OUR ACCOUNT WITH CENTRAL OFFICE BY IBCA MADURAI 6. All charges outside are for account of credit opener. 7. Drafts must be marked Drawn under CBI, MADURAI L/C No. MADURA 95 07 INLC 001 Our Correspondents: Yours faithfully, CENTRAL BANK OF INDIA For Central Bank of India JEEVANTARA BUILDING PARLIAMENT STREET Sd/- Sd/- NEW DELHI-110001.

Authorized Signatures N.B. : Negotiating Bank should mark all negotiations on the reverse. Except as otherwise expressly stated, this credit is subject to Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500. Amended L.C. dated 07.06.1995 08.06.95 12:35 03165490 3165490 CBIB IN 445 237 CENT IN CENTSAPHA NEW DELHI ATTN; ZONAL FGN EXCHANGE CELL CYPHER FOR NO AMOUNT DT. 7.6.95 REF OUR LC MADURA 95INLC 001 DT. 19.4.95 FOR RS. 66,00,000/- FVG. M/S. SWADESHI POLYTEX LTD. F-60 MALHOTRA BUILDING CONNAUGHT PLACE, NEW DELHI-

110001 ON A/C OF THE SREE MEENAKSHI MILLS LTD. TPK ROAD MADURAI 625003
STOP BY ORDER OF APPLICANT WE AMEND THE LC AS FOLLOWS. 1) SIGNED
INVOICE IN DUPLICATE 2) THE RATE PER KG OF JAILENE POLYSTER STAPLE
FIBRE IS RS. 80/- INSTEAD OF RS. 56.50 N TOTAL VALUE IS RS. 66.00 LACS ONLY
N QUANTITY MAY BE ADJUSTED TO THAT VALUE 3) LAST DATE OF SHIPMENT IS
30.6.95 N LAST DATE OF NEGOTIATION IS 15.7.95 TO BE PRESENTED WITHIN 15
DAYS FM DESPATH DATE 4) ALL BANK CHARGES ARE FOR A/C OF CREDIT
OPENERS 5) INSURANCE CHARGE BY SEPARATE DEBIT NOTE SHOULD BE
ACCOMPANIED OTHER DOCUMENTS 6) MOTOR TRANSPORT DOCUMENT
SHOULD BE FM IBA APPROVED TRANSPORT COMPANY 7) ADDL. CONDITION 1(B)
OF PAGE 2 SIGNED INVOICE IN DUPLICATE REQUIRED 8) IN ADDL. CONDITION 5
ADVISE THE LC THROUGH SBI, INDUSTRIAL FINANCE BRANCH VIJAYA BUILDING,
17 BARAKHAMBHA ROAD, NEW DELHI- 110001 WHO ARE ALSO AUTHORISED TO
NEGOTIATE THE DOCUMENTS N REIMBURSEMENT MAY BE CLAIMED FM US BY
SUBMISSION OF DOCUMENTS COMPLYING TO LC TERMS ALL OTHER TERMS N
CONDITIONS REMAIN UNCHANGED THIS IS OPERATIVE AMENDMENT N NO MAIL
CONFIRMATION WILL FOLLOW PLS ADVISE BENEFICIARY ACCORDINGLY
CERTAIN MADURAI MSG OF 7.6.95 MSG CONVEYED ON 8.6.95 TM 12.45 3165490
CBIB IN 445 237 CENT IN (ILLEGIBLE)

4. THERE is no dispute that the invoices Nos. 95/97, 98, 102, 103, 104 were submitted
by the complainant alongwith certain documents to opposite party No. 2 through its
banker, therefore, it is useful to take note of the letter of the opposite party No. 2
addressed to SBI, Industrial Finance BR New Delhi- the banker of the complainant which,
omitting immaterial portion, reads as under:-

REG BILLS DRAWN BY SWADESHI POLYTEX LTD. UNDER OUR LC
MADURA9507INLC001 YR REF IB COLL/95/97, 98, 102, 103, 104 DT. 17.6.95, 21.6.95
N 22.6.95 FOR RUPEE 735,192,727, 040, 712,864/-, 730, 640 N 723056/- REPLY WE
OBSERVE FLG DISCREPENCIES IN ABV BILLS 1) INVOICE ; NO MENTION OF
LICENCE NUMBERS N DATE, NO MENTION OF ORDER NUMBER N DATE 2) LORRY
RECEIPTS; CORRECTIONS IN LR NOT AUTHENTICATED, TRUCK NUMBER NO
MENTIONED 3) INSURANCE; POLICY OR CERTIFICATE NOT RECD. WE ARE
CONTACTING OPENERS HOLDING DOCS AT YR RISK N RESPONSIBILITY.

It is pertinent to note that no prompt action was taken by the complainant to remove or
rectify the above discrepancies pointed out by opposite party No. 2. However, on 7.7.95,
the opposite party No. 2 addressed a communication to opposite party No. 4 giving
reference to the said LC and the invoices holding out as under:-

Please note that the said bills are drawn on DP basis as per LC. We have not received so far any communications from you for clearance of the bills which are drawn under irrevocable LC established by us on your account. We request you to provide sufficient funds in your cash credit account immediately and send us your letter for clearance of bills. Please acknowledge the receipt. This was followed by a communication dated 18.7.95 which is to the following effect:- Please refer to our abovementioned intimations and letter. You have not so far cleared the bills nor informed us rejections of the bills for discrepancies noted in our intimations. Please note that the bills are drawn on DP basis under LC opened on your account. We once again request you to arrange for funds and clear the bills or send us your letter for rejections of the bills to enable us to return the bills. Vide a communication dated 21.7.1995 opposite party No. 4 responded and conveyed their waiver of the discrepancies pointed out by opposite party No. 2 with a request to accept said documents and effect payment of bills to the suppliers. This communication obviously emanated after the LC had lapsed on 15.7.95.

On the strength of above referred documents, the main plank of submission of the counsel for the complainant is that deficiency on the part of the opposite party No. 1 & 2 is writ large because they have failed to honour the commitment under LC on wholly untenable / flimsy grounds. In fact, learned counsel argued that discrepancies pointed out by opposite party No. 2 can not be termed as discrepancy and in any case material ones or the major discrepancy on the face of which the opposite party No.2 could withhold the payment of the invoices submitted by the complainant. It was also hinted that discrepancies pointed out by opposite party no.2 were merely a pretext for not releasing the payment which was on account of some set back to the financial arrangement which the opposite party No. 4 had with opposite party No. 2- bank. The Learned Counsel for opposite party No.1 & 2 controverted the above submissions.

5. IN support of their respective contentions both sides have relied upon the Uniform Customs and Practices of Documentary Credits (for short UCP 500) and in particular reference has been made to Article 13,14,28, 32,34 of the UCPs which we would like to notice in some details. Article 13 of the UCPs provides for Liabilities and Responsibilities of the Bank and the Standard for Examination of Documents. One of the stipulation made in clause a) of the said Article enjoins upon the bank to examine all documents stipulated in the Credit with responsible care to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the credit. Compliance of the stipulated documents on their face with the terms and conditions of the credit, shall be determined by international standard banking practice as reflected in these Articles under the UCP. It further states that documents not stipulated in the Credit will not be examined by bank and if such documents are received, the same shall be returned to the Presenter.

Article 14 is rather important for our purpose as it relates to the procedure to be followed in case of discrepant documents etc. We would like to reproduce clauses a), b) & c) of the said Article here:- a) When the Issuing Bank authorizes another bank to pay, incur a deferred payment undertaking, accept Draft(s), or negotiate against documents which appear on their face to be in compliance with the terms and conditions of the Credit, the Issuing Bank and the Confirming Bank, if any, are bound: (i) to reimburse the Nominated Bank which has paid, incurred a deferred payment undertaking, accepted Draft(s), or negotiated. (ii) to take up the documents. b) Upon receipt of the documents the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit, such banks may refuse to take up the documents. c) If the Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgment approach the Applicant for a waiver of the discrepancy(ies). This does not, however, extend the period mentioned in sub-article 13 (b).

6. ARTICLE 28 of the UCD provides that if a Credit calls for a Rail, Road, Inland Waterway Transport Documents, banks will, unless otherwise stipulated in the Credits, accept a document of the type called for whatever named.

Article 34 relates to the insurance documents submitted to the creditor. We reproduce the relevant clause a), b), c) & d) hereunder:-

a) Insurance documents must appear on their face to be issued and signed by insurance companies or underwriters or their agents. b) If the insurance document indicates that it has been issued in more than one original, all the originals must be presented unless otherwise authorized in the Credit. c) Cover notes issued by brokers will not be accepted, unless specifically authorized in the Credit. d) Unless otherwise stipulated in the Credit, banks will accept an insurance certificate or a declaration under an open cover pre-signed by insurance companies or underwriters or their agents, if a Credit specifically calls for an insurance certificate or a declaration under an open cover, banks will accept, in lieu thereof, an insurance policy.

What are the duties and obligations of a bank in regard to scrutiny of the documents submitted to it before it can release the payment based on a letter of credit has been considered by the Supreme Court in the case of United Commercial Bank Vs. Bank of India & Ors. [1981 (2) SCC, 766]. In the said case, the Supreme Court reiterated the legal

position as laid down in English, Scottish and Australian Bank Ltd. v. Bank of South Africa [(1922) 13 LI L Rep 21-24] by observing as under:- 34. The authorities are uniform to the effect that a letter of credit constitutes the sole contract with the banker, and the bank issuing the letter of credit has no concern with any question that may arise between the seller and the purchaser of the goods, for the purchase price of which the letter of credit was issued. There is also no lack of judicial authority which lay down the necessity of strict compliance both by the seller with the letter of credit and by the banker with his customers instructions. In English, Scottish and Australian Bank Ltd. v. Bank of South Africa, Bailhache, J. said: It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened. 35. As Lord Sumner said in Equitable Trust Co. of New York v. Dawson Partners Ltd., approving the dictum of Bailhache, J.: It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines.

7. SUPREME Court also reiterated the position as laid down in English cases: (i) Rayner v. Hambros Bank Ltd. [(1943) 1 KB 37] (ii) Bank Melli Iran v. Barclays Bank [(1951) 2 LI L Rep 367] (ii) Lamborn v. Lake Shore Banking Co. [(1921) 196 Appl Div 504, 507: 188] (iii) Laudisi v. American Exchange National Bank [(1924) NY 234, 146 NE 347, 348 After doing so, the court laid down that in dealing with the commercial letters of credit, the documents tendered by the seller must comply with the terms of the letter of credit and that the banker owes a duty to the buyer to ensure that the buyers instructions relative to the documents against which the letter of credit is to be honoured are complied with. The court also referred to the rights of a banker as stated in Halsburys Laws of England, 4th Edition, Vol.-III, para 141 at page 106 as under:-

Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the paying or negotiating banker, the beneficiary cannot claim against the paying banker and it is the paying bankers duty to refuse payment. The documents must be those called for, and not documents which are almost the same or which will do just as well. The banker is not called upon to know or interpret trade customs and terms. It has been held that where a mandate is ambiguous and a paying banker acts in a reasonable way in pursuance of it, he may be protected. But this general rule cannot be stretched so far as to protect a banker who

pays against documents describing goods in terms which are similar to, but not exactly the same as, those stipulated in the credit. The description of the goods in the relative bill of lading must be the same as the description in the letter of credit, that is, the goods themselves must in each case be described in identical terms, even though the goods differently described in the two documents are, in fact the same. It is the description of the goods that is all important. The reason for this requirement is stated in Davis Law Relating To Commercial Letters Of Credit, 2nd Edn., p.76: It is not only the buyer who faces the risk of dishonesty or sharp practice on the part of the seller. For, in many instances, the banker looks to the goods for reimbursement of the whole or part of the amount he pays under the letter of credit. It is equally to his interests to ensure that such documents are called for by the letter of credit as will result in goods of the contract description being ultimately delivered. The buyer is not compelled to issue the letter of credit. If either of these contracts is entered into then it is for the buyer and the banker respectively to safeguard themselves by the terms of the contract. Otherwise they must be prepared to bear any ensuing loss. But the liability thus imposed on the issuing banker carries with it a corresponding right that the seller shall, on his part, comply with the terms of the letter of credit and the sellers obligations have been construed as strictly as those of the banker. We have already referred to the statement of law in Halsburys Laws Of England which found a place in Pagets Law of Banking, 8th Edn. At page 648, and we may at the risk of repetition reproduce the same, to the effect: Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the intermediary or issuing banker, the beneficiary cannot claim against him; and it is the bankers duty to refuse payment. The documents must be those called for and not documents which are almost the same or which seem to do just as well. The SUPREME Court taking note of the above principles held: The opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods which imposes on the banker an absolute obligation to pay. A banker issuing or confirming an irrevocable credit usually undertakes to honour drafts negotiated, or to reimburse in respect of drafts paid, by the paying or negotiating intermediate banker and the credit is thus in the hands of the beneficiary binding against the banker. A letter of credit constitutes the sole contract with the banker and a bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit. The banker owes a duty to the buyer to ensure that the documents tendered by the sellers under a credit are complied with those for which the credit calls and which are embodied in terms of paying or negotiating bank. The description of the goods in the relative bill of exchange must be the same as the description in the two documents are, in fact, the same. It is the description of the goods that is all important and if the description is not identical it is the paying banks duty to refuse payment.

The Supreme Court in its order dated 28.7.2009 by which the complaint has been remanded to this Commission for fresh decision has directed that it will be so done after taking into consideration the judgment in the case of United Commercial Bank (Supra) and after taking into consideration the terms & conditions of the letter of credit. We must, therefore, bear in mind the above legal position when we consider the terms & conditions of the letter of credit.

8. COMING to the facts of the case in hand, there is no denial of the factual position that signed invoices, in duplicate, goods receipt (GRs) from the transporter (Surat Transport Co.) as also a certificate in regard to the insurance of the goods issued by the complainant itself were submitted to the opposite party No. 2 through its banker- opposite party No. 3. Whether these documents were in order and in compliance of the terms and conditions of the LC is the crucial question which would decide if the action of the opposite party No. 2 in not releasing the payment was correct or can it be faulted?

Learned counsel representing the complainant vehemently argued that the alleged discrepancies highlighted by opposite party no.2 are completely frivolous and baseless since the documents submitted by the complainant were in complete conformity with the terms of the L.C. According to him, opposite party no.2 had declined to release the payment of the invoices deliberately and with malafide intentions on account of unhealthy financial position of opposite party no.4 which was facing severe financial crunch. In this connection our attention has been invited to a deposition made by the complainant in the additional affidavit which has been filed after the remand of the matter wherein the complainant has deposed that in the recovery proceedings pending before the DRT, Chennai, the opposite party no.2-bank had admitted and acknowledged that the account of opposite party no.4 had become irregular from April 1995. Although neither any pleadings filed before the DRT nor any proceedings taken there have been brought on record of this Commission. Still assuming for the sake of arguments that there was some change in the financial status of the opposite party no.4 after the latter had established the L.C., we can not go into the said question or reason so as to infer any motive on the part of opposite party no.2 in not honouring the commitment under the Letter of Credit. The question whether the action of the opposite party no.2 in refusing the payment of the invoices submitted by the complainant was on justifiable grounds or otherwise has to be decided keeping in view the terms & conditions of Letter of Credit and the principles laid down in the International Chamber of Commerce Publication No.500 (UCP 500) and the settled legal position in that behalf.

While refusing to release the payment of the invoices, the opposite party no.2 had raised the three objections / discrepancies in their communication. We propose to deal with

them one by one. 1. Invoices: No mention of license number and date and no mention of order number and date. In this regard, it was strongly contended by the learned counsel for the complainant that this discrepancy in the invoices pointed out by the opposite party no.2 bank was due to the non application of the mind of opposite party no.2 because the condition in regard to mentioning of license & order numbers and their respective dates in the invoices, though appeared in the original L.C. dated 19.4.1995 but it was done away with in the amended L.C. dated 08.06.1995. It is true that certain stipulations appearing in the original L.C were altered but the question is as to whether even as per the amended L.C., the complainant was required to mention the license number, the order number and their dates in the invoices or not. On a careful perusal of the original as well as the amended L.C. (supra), it would be apparent that the only change brought about in the amended L.C was in Clause-I in regard to the requirement of submitting the copies of the invoices, i.e., the requirement of submitting the invoices in quadruplicate was altered to submission of invoices in duplicate copies. In our view, by no stretch, it can be said that the requirement of mentioning the license number and the order number with their dates were done away with in the amended L.C. In any case, in the amended L.C., there is a clear stipulation at the end to the effect that all other terms & conditions remained unchanged. The fact that the license number and order number were not mentioned in the L.C., is not in dispute. So, there is no escape from the conclusion that the invoices did not contain all the necessary particulars.

9. THAT apart, Article 13(a) of UCP provides that the documents which are not stipulated in the L.C, will not be examined by the bank and, therefore, we can safely hold that non-mentioning of the license number in the accompanying documents was not in compliance of the terms of L.C.

10. AS per Article 13(b), the opposite party bank was given 7 days time to examine the documents which would imply that they had to make up their minds going through the documents as they appeared ex facie rather than to have carried out a detailed investigation in that behalf. This Article enjoins upon the bank to determine on the basis of the documents alone whether on the basis of it they appear to be in compliance with the terms & conditions of the L.C. or not. The bank was expected to realize the payment on the basis of L.C. and it was not concerned with the underline contract. Besides, Article 14(c) provides that if the documents are not in compliance with the terms and conditions

of the L.C., the bank is under no obligation rather it has a duty to refuse the payment. 2. Discrepancies in the lorry receipts

It is not disputed that as per the terms & conditions of the L.C., the complainant was required to submit the lorry receipts containing the details like truck number etc. Opposite party bank pointed out to the complainant through the negotiating bank that corrections in lorry receipts have not been authenticated. Learned counsel for the complainant strongly contended that the discrepancy pointed out by the bank was nonest / frivolous because the lorry receipts submitted by the complainant were strictly in conformity with the relevant terms of the Letter of Credit which is as under: Original consignee copy of lorry receipt approved by IBA evidencing dispatch of the merchandise duly signed and marked freight prepaid and made out to Central Bank of India and notify both credit openers and ourselves

The above submission is countered by the learned counsel for the opposite party bank and stand of the bank is sought to be justified by submitting that lorry receipts submitted by the complainant had over writings and cuttings which were not authenticated. It is pointed out that the complainant has not deliberately filed the copies of the original lorry receipts submitted by them and rather submitted the copies of the lorry receipts on which the over writing and cutting was later on authenticated which were submitted after the expiry of L.C. Submission of such authenticated copies of the lorry receipts was of no avail because the period of L.C. had already expired. Article 42 of UCP 500 provides that the documents must be presented on or before the expiry date of the L.C. We may also notice that Article 28 (a) (i)(1) UCP 500 provides that the documents must be signed or authenticated by the carrier or his agent. Since the lorry receipts presented by the complainant had some cuttings / over writing which had not been authenticated, we must hold that the documents submitted were not in conformity with the said Article. The opposite party bank, therefore did no wrong in not making the payment of the invoices under L.C for that reason. 3. Non submissions of insurance policy or certificate

11. THE third discrepancy pointed out by the opposite party bank was that the complainant had neither submitted the copy of the insurance policy or the certificate of insurance. Covering the consignments. Learned counsel for the complainant submits that the complainant had annexed a certificate of insurance. THE copy of the same is placed on record and reads as under:- Dated: 13-6-95 TO WHOMSOEVER IT MAY CONCERN This is to certify that the consignment with the details noted below has been declared for insurance under Open General declaration policy No.40100/21/26/0174/94-95 dated 1.11.1994 issued by M/s United India Insurance Co. Ltd., D.O.I. 54, Janpath, New Delhi w.e.f. 1.11.94 to 31.10.95. Details of consignment (A) Description of material : Jailene

Polyester Staple Fibre (B) No. of bales : 37 (C)Qty. : 9088.0 Kgs. (D) GR No. : 201-37574 (E) Destination From : Ghaziabad to : Paravai Unit, Madurai (F) Invoice Value : Rs.7,27,040.00 (G) Insured value (cost & : Rs.7,99,744.00 insured + 10%) (H) Terms of insurance : All risks including SRCC risks as per current instructions strike, riots and civil commotion clause and TEND at transit risks warehouse to warehouse for SWADESHI POLYTEX LIMITED sd/- Authorised Signatory

A bare perusal of the above certificate would show that it is a self created document stating that it had an open general cover. Strangely the complainant had not produced the said insurance policy/general cover referred to in the said certificate. When we specifically enquired from the learned counsel for the complainant whether the complainant is in a position to produce the said policy even at this stage, the complainants counsel responded that it may not be possible to do so at this stage. According to the complainant, the certificate giving the particulars of the open general declaration policy was good enough for the bank to be assured that the goods have been insured under a particular insurance. In any case, the submission is that this was done under a standard trade practice. It is also pointed out that in the past, opposite party no.2 bank had been releasing payments in favour of the complainant on submission of similar certificates. However, our attention has not been invited to any material which can establish that in the past, the bank had accepted such a certificate issued by the beneficiary as a substitute of the insurance policy or the certificate issued by the insurer. Going by the general terms & conditions of insurance policy which undertake to cover large unspecified consignments, the practice for the insurer is to issue separate declaration (s) in respect of each consignment sought to be covered under the general cover policy. We have, therefore, reasons to believe that in the present case also, such declaration (s) by means of cover notes must have been issued by the concerned insurance company. In the absence of the complainant forwarding either the policy itself or the declaration / cover notes issued by the insurance company, the above referred certificate could not have been treated as a substitute for the said documents or due compliance of the clause relating to the submission of insurance policy / certificate. We have, therefore, no hesitation in holding that there has been no compliance what to talk of strict compliance of Article 34 of UCP 500.

12. HAVING considered the entire material and the submissions made by the counsel for the parties, the irresistible conclusion is that the discrepancies pointed out by the opposite parties no.1 & 2 bank were based on the correct application of the instructions contained in UCP 500. The discrepancies were not removed / reconciled promptly or within the currency of the L.C. and, therefore, the opposite parties no.1 & 2 have done no wrong in not releasing the payment under the L.C established by the opposite party no.4. On the

face of the said discrepancies, the bank had not only the right but duty to refuse payment as has been held by the Supreme Court in the case of United Commercial Bank vs. Bank of India (supra). In our opinion, the bank cannot be faulted for not releasing the payment of the invoices. We, therefore, hold that the complainant has miserably failed to establish any deficiency in service on the part of the opposite parties no.1 and 2.

Assuming for the sake of arguments that by any stretch, the opposite party no.1 did not exercise the requisite care in examining the documents submitted by the complainant through negotiating bank and on that account their refusal to release the payment under the L.C. could tantamount to some deficiency in service. Still the question would have been as to whether opposite parties were liable to indemnify the complainant to the extent which has been claimed by the complainant i.e. entire invoice values of the consignment plus interest and damages. In our view, the answer would be in NEGATIVE because despite the opposite party-bank having refused payment due to the said discrepancy in the documents, the bank had made an offer to process the matter further on collection basis for which it had sought OP No.4 to put in funds which was never forthcoming and, therefore, payment could not be made even on collection basis. This will clearly show that bank has not acted mala fide. In any case, it is the admitted case of the parties that all the consignments were duly delivered to OP No.4 and, therefore, the property in the goods will be deemed to have passed on to OP No.4 making them liable to pay the price of the said goods as per the invoice, to the complainant. In the complaint there is no whisper from the side of the complainant as to whether they have received the price of goods from the opposite party no.4 or if not whether any attempt was made to recover the said amount from OP No.4, once the complainant had failed to receive the value of the invoices under LC. In this regard, we wanted the complainant to throw light on this aspect and the learned counsel for the complainant simply submitted that whether the complainant has received the value of the goods or it could receive the same is not the question which can be considered by this Commission because cause of action of the present complaint is based on deficiency in service on the part of OP No.1 & 2-bank in not honouring their commitment to release the payment of the invoice in terms of the LC. We have noted the submission simply to be rejected because if the complainant had received the payment of goods so supplied, the complainant cannot lay claim for the same again against the bank alleging deficiency on their part. In any case it was for the complainant to take appropriate action against OP No.4 for the realization of the price of goods supplied by them which was otherwise necessary to minimize the loss alleged to have been suffered by the complainant. We accordingly hold that this conduct of the complainant would have disentitled them to make any claim against OP No. 1 & 2 bank at least equivalent to the loss which they claimed to have suffered.

In the result and for the foregoing reasons, we dismiss the complaint, leaving the parties to bear their own costs. After the passing of the order dated 17.2.2004 by this Commission, opposite parties no.1 & 2 had deposited a sum of Rs.1,48,60,266/- (One crore forty eight lakh sixty thousand two hundred and sixty six only) in this Commission.

The said amount has been released to the complainant under the orders of the Supreme Court passed from time to time on their furnishing bank guarantee. Consequent upon the dismissal of the complaint, the complainant is liable to restitute the said amount to the opposite parties no.1 & 2. We accordingly direct the complainant to pay back the aforesaid amount to the opposite parties no.1 & 2 within a period of four weeks from the date of this order, failing which they shall be liable to pay interest @ 9% per annum till the date of payment.