IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.9685 of 2017
Date of decision:27.07.2017

M/s Aura Creations ... Petitioner

Vs.

Reserve Bank of India and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Atul Nanda, Senior Advocate with
Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.

Mr. D.K.Singal, Advocate
for respondent No.2.

AMIT RAWAL J.

The petitioner has sought indulgence of this Court by raising grievance which has been noticed in the order dated 05.05.2017 that in view of the Circular Nos.70 dated 08.11.2013 (Annexure P-10) and 100 dated 04.02.2014 (Annexure P-11) of Reserve Bank of India, the transactions conducted are in accordance with the Rules, therefore, the intimation of respondent No.2-Bank, vide e-mail dated 20.03.2017 (Annexure P-5) showing its inability to credit in the account of the petitioner and also issuance of credit confirmation and the Bank Remission Certificate (hereinafter called "BRC"), left it in lurch.

Learned counsel for the petitioner submitted that the petitioner being a partnership firm having its office at Gurgaon is engaged in export of readymade garments and in the normal course of business, the said consignment was exported to the buyer M/s Al Khat Al Fizi Trading LLC, Dubai, U.A.E and invoice bearing No.AC/159/16-17 dated 03.11.2016 (Annexure P-1 (collectively) was raised upon the said buyer which was exported by air vide Air Way Bill dated 04.11.2016 and Shipping Bill of even date, Annexure P-2 and Annexure P-3, respectively. The payment was to be made within a period of 180 days of the date of the Air Waybill. The petitioner, thereafter, lodged a bill to its Banker/respondent No.2- M/s Yes Bank, Gurgaon Branch, wherein, the petitioner is maintaining its Current Bank Account bearing No.014063700000471.

He further submitted that as per the terms of the sale, the buyer, vide Transaction Reference No.F9S1703201258100 dated 20.03.2017 (Annexure P-5) duly remitted the part payment in the account of the petitioner through M/s Treasure Island Capital Resources Ltd., in essence, the aforementioned payment was towards the Invoice bearing No.AC/159/16-17/2016. By referring to the SWIFT message details dated 20.03.2017 (Annexure P-5), the office of respondent No.2, vide an e-mail sought the clarification from the petitioner regarding receipt of the remittance from M/s Treasure Island. The petitioner responded to the aforementioned e-mail on 23.03.2017 (Annexure P-7) to the buyer seeking clarification regarding the receipt of remittance from the third party, i.e., M/s Treasure Island qua the Invoice No.AC/159/16-17. The buyer, vide its e-mail of the same date informed the petitioner that the remitter, i.e., M/s Treasure Island was a business associate (Indentor/Buyer/Commission

Agent) of the buyer and the said payment had been sent on their behalf and the buyer requested the petitioner to adjust the amount.

Respondent No.2, vide its e-mail dated 27.03.2017 (Annexure P-8) informed the petitioner that the said remittance so received showed its inability to credit in the petitioner's account and the credit confirmation and the BRC cannot be issued to them. However, vide e-mail dated 06.04.2017 (Annexure P-9), respondent No.2 also informed the petitioner that they are sending the remittance back to the sender as the Bank was not comfortable with third party transaction as they were not in accordance with the RBI guidelines. It is in this aspect of the matter, the petitioner has invoked the jurisdiction of this Court.

In support of his contention, reliance laid upon the Circular Nos.70 dated 08.11.2013 and 100 dated 04.02.2014 issued by the RBI. Para 2 of the Circular Nos.70 and 100 read as under:-

Circular No.70 dated 08.11.2013

"2. With a view to further liberalising the procedure relating to payments for exports/imports and taking into account evolving international trade practices, it has been decided as under:

i Export Transactions

AD bank may allow payments for export of goods/software to be received from a third party (a party other than the buyer) subject to conditions as under:

a. Firm irrevocable order backed by a tripartite agreement should be in place;

b. Third party payment should come from a Financial Action Task Force (FATF) compliant country and through the banking channel only;

c. The exporter should declare the third party remittance in the Export Declaration Form;

d. It would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party names in the EDF;

e. Reporting of outstandings, if any, in the XOS would continue to be shown against the name of the exporter. However, instead of the name of the overseas buyer from where the proceeds have to be realised, the name of the declared third party should appear in the XOS; and

f. In case of shipments being made to a country in Group II of the Restricted Cover Countries, (e.g. Sudan, Somalia, etc.), payments for the same may be received from an Open Cover Country."

Circular No.100 dated 04.02.2014

2. In view of the difficulties faced by exporters/importers in meeting the condition "firm irrevocable order backed by a tripartite agreement should be in place" specified in the abovementioned Circular, it has been decided that this requirement may not be insisted upon in case where documentary evidence for circumstances leading to third party *payments/name of the third party being mentioned in the irrevocable order/invoice has been produced. This shall be subject to conditions as under:*

(i) AD bank should be satisfied with the bona-fides of the transaction and export documents, such as, invoice/FIRC.

(ii) AD bank should consider the FATF statements while handling such transaction."

He further submitted that the aforementioned clarification, vide circular dated 04.02.2014 was specifically enacted due to the difficulties faced by the exporters/importers because of the conditions imposed by Circular No.70 dated 08.11.2013 and thus, urged this Court by submitting that Bank cannot cancel the BRC, if already issued against the receipt of payment towards the export by third party.

Learned counsel appearing on behalf of respondent No.2 submitted that first circular bearing No.70 dated 08.11.2013 though permitted the authorized dealer for export of goods received from third party subject to certain conditions and it should be backed by tripartite agreement and third party should come from the Financial Action Task Force (hereinafter called "FATF"), compliant country. The exporter should declare the third party remittance in the Export Declaration Form. The Bill of entry should mention the name of the shipper as also the narration that the related payment has to be made to the named third party. Even the Circular No.100 clarified the aforementioned fact but stated that the authorized dealer bank should be satisfied with the bonafides of the transaction and export documents such as Invoice and Foreign Invoice Remittance Certificate (FIRC) and this was done owing to liberalization in the procedure of fixing the limit of certain amount of US dollors. He further submitted that since the Invoice did not mention about the type of agreement, therefore, respondent No.2- Bank rightly shown its inability to credit the payment in the account of the petitioner and thus urged this Court for dismissal of the writ petition.

I have heard learned counsel for the petitioner and appraised the paper book.

On conjoint reading of the aforementioned circulars, it is beyond doubt that even RBI guidelines are not absolute embargo existed on the receipt of the third party payment against export made from India as the conditions were imposed only on 08.11.2013 which were relaxed after few months, i.e., on 04.02.2014. The whole purpose of issuing the circular as spelled out is to ensure the remittances against the export received by the exporters, much less to promote the international business and permit third party payments, in case, where the exports are made. There is no ambiguity “before or after” between the period 08.11.2013 to 04.02.2014, thus, for all intents and purposes, the exports made before and after the aforementioned period, the conditions stipulated in the Circular dated 08.11.2013 cannot be insisted and the Banks are obliged to issue certain BRCs, in case of third party payments.

In my opinion, even the exports made between the period aforementioned, in view of the subsequent relaxation, the purpose of issuance of BRC being beneficial to the exporter. In the instant case, the export is evident from the shipping bills presented to the customer authorities, (Annexure P-1 (collectively) at page 22 of the paper book. The third party rights are received by SWIFT message which clearly stated that remittance is being made towards Invoice bearing No. AC/159/16-17/2016 issued to the petitioner by the buyer and vide e-mail dated 23.03.2017, it has been clarified to the petitioner that remittance has been made on their behalf. The relevant portion of the same reads as under:-

> *"On Thu Mar 23, 2017 at 10:12 A.M, AURA CREATIONS<auracreations6gmail.com>wrote*
>
> *Sir,*
>
> *This is to inform you that we had lodged a Bill for Amount USD 147, 726, 726.70/- vide Bank Reference No.003BM82170600018 dated 01.03.2017.*
>
> *We have received a part payment for the same reference number for Invoice No.AC/159/16-17 of USF 41,252/- on 20.03.2017, but the Remitter is – Treasure Island Capital Resources Limited, Hong Kong.*
>
> *Kindly clarify that how the payment is sent by Treasure Island Capital Resources instead of you.*
>
> *Thanking you.*"

The BRC issued by the bank based on realization of payment of export by the exporter and the action of the Bank, in such circumstances, in my view, is totally un-called for. In my view, the Bank should have honoured the remittance, in view of the clarification given by the buyer extracted above.

Resultantly, the writ petition is disposed of with a direction to respondent No.2-Bank to issue credit confirmation, BRC towards the third party remittance received by the petitioner qua Invoice bearing No. No.AC/159/16-17/2016 within a period of one month from today.

With the aforementioned direction, the writ petition is disposed of.

(AMIT RAWAL)
JUDGE

July 27, 2017
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No