

ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

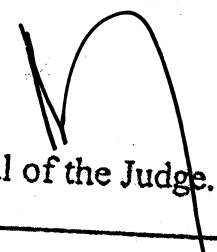
(REVISED FORM OF BLUE SLIP)

Case No. WP-3795 2013

Titled Haji Abdul Raziq Vs FOP etc

- (a) Judgment approved for reporting ✓  
Yes / No
- (b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made. Yes / No

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

  
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

*HCJD/C-121*  
**ORDER SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P. No. 3795/2013**

**Haji Abdul Raziq Khan**  
*Versus*

**Federation of Pakistan, etc.**

Petitioner by:-	Mian Abdul Ghaffar, Khawaja Azhar Rasheed and Liaqat Ali Advocates
Respondent No.1 by:-	Raja Khalid Mahmood Khan, standing counsel
Respondent No.2 by:-	Raja Muhammad Iqbal, Advocate
Respondents No. 3&4 by:-	Ms Misbah Gulnar Sharif Advocate
Respondent No.5 by:-	Qazi Ghulam Dastgir Advocate
Date of hearing:-	<u>26-03-2014 &amp; 01-04-2014</u>

**Riaz Ahmad Khan J:-** This judgment is directed to dispose of W.P. No. 3795 of 2013.

2. Brief facts of the case are that the Government of Pakistan vide Import Policy Order 2009 had permitted the import of spraying lorries or sprinklers. In Appendix-C of the said Policy, it was provided that:-

*“Spraying lorries or sprinklers (8705.9000) [shall be allowed subject to certification by a recognized pre-shipment company listed at Appendix-H to the effect that the said lorries (a) compliant with Euro-II standards (b) in accordance with the original manufacturer specifications and (c) has a useful productive life.]*

Vide S.R.O. No. 193(I)/2013, dated 8<sup>th</sup> March, 2013, new Import Policy Order, 2013 was introduced. In the said Policy, amendment regarding sprinkler lorries was made, which was to the following effect:-

*“(iv) Spraying lorries or sprinklers (8705.9000) not older than five years shall be allowed subject to certification by a recognized pre-shipment company listed at Appendix-H to the effect that the said lorries (a) compliant with Euro-II standards (b) in accordance with the original manufacturer specifications and (c) has a useful productive life.]*

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However, Section 4 of the Policy provided that the aforementioned amendments shall not be applicable to bill of lading or letter of credit issued or established prior to the issuance of amending order. For the sake of convenience, the whole section is reproduced herein below:-

***4. Import of Goods:- Import of all goods is allowed from worldwide sources unless otherwise elsewhere specified to be banned, prohibited or restricted in this Order.***

***Provided that the amendments brought in this Order from time to time shall not be applicable to such imports where Bill of Lading (B/L) or Letters of Credit (L/C) were issued or established prior to the issuance of amending Order.***

In other words, if the importer had established bill of lading or letter of credit prior to 08-03-2013, then in that case, the amendment brought through Import Policy Order, 2013 would not apply to him and his case would be covered by the Import Policy Order, 2009.

3. The petitioner, who is a businessman engaged in the business of import, on 09-01-2013 entered into an agreement with M/s Al Waris Auto Spare Parts Tr. L.L.C. Dubai (UAE) for import of 2000 units used sprinkler lorries. The value of 2000 sprinkler lorries was 12 Million USD. It was agreed that the payment shall be made by confirmed, irrevocable letter of credit opened by the buyer in favour of Party A (foreign seller), which shall reach Party A fifteen days before the date of shipment. The aforementioned agreement was registered with Meezan Bank Ltd., Cloth Market Branch, Karachi, on 15-01-2013. In the Contract, however, the Bank gave the following note:-

***“(NOTE: The Bank assumes no responsibility or engagement for payment under this Contract. This Contract has been registered to meet the requirement of Para 16 of Chapter XIII Of Exchange Control Manual of State Bank of Pakistan).”***

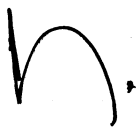


4. The petitioner submitted Proforma Invoice worth 12,000,000 USD (US Dollars Twelve Million) on 11-01-2013. After submission of invoice, the petitioner submitted an application for establishment of irrevocable letter of credit for USD-200,000 (US Dollars Two Hundred Thousand). In the application, the agreement dated January 09<sup>th</sup>, 2013 and performa invoice dated January 11<sup>th</sup>, 2013 were mentioned. The said application for letter of credit was filed on 21-01-2013. Thereafter, the petitioner submitted an application to Meezan Bank with the request to open letter of credit worth USD-200,000 against 110% cash margin for import of sprinkle lorries. Meezan Bank, on 23-01-2013, established letter of credit worth 2,00,000 USD. The internal arrangement between Bank and the petitioner was made that the letter of credit would be for 200,000 USD, but the petitioner would make advance payment for each consignment of the imported lorries, as such, letter of credit as well as date would remain the same. The original invoice would also remain the same, but the lorries would be received in different shipments and on receiving each and every consignment, prior payment would be made by the petitioner. Time period of letter of credit was one year and it was to expire on 23-01-2014, so it was also agreed between the petitioner and the bank that if lorries worth 200,000 USD are imported, then the letter of credit would automatically stand amended and fresh amount of 200,000 USD would be made available through the same letter of credit. The petitioner as such would be able to import all the lorries till 23-01-2014, on the basis of same letter of credit established on 23-01-2013. Prior to import of lorries, the agreement, according to the petitioner, was amended as he had paid an amount of One Million USD advance to the seller/exporter, as security/guarantee. However, according to above said arrangements, 323 vehicles were cleared, whereas 70 vehicles were lying at the Port and

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remaining 1607 vehicles were in the pipeline. At this stage, respondent No.5, Collector of Customs wrote a letter to the Meezan Bank to verify the genuineness of letter of credit and the date of its issuance. The Meezan Bank vide letter dated 30-05-2013 confirmed that the letter of credit was established on 23-01-2013 and that it was genuine. It was further provided that the letter of credit would be amended from time to time up to the amount of Proforma Invoice till the date of expiry i.e. 21-01-2014. The respondent after obtaining the aforementioned clarification withheld the clearance of vehicles and informed the petitioner. Thereafter, the matter was referred to Model Customs Collectorate Hyderabad and the Collector Customs gave its opinion on the basis of aforementioned letter of credit, vide letter dated 01-06-2013. Thereafter, the opinion of F.B.R. was sought, which confirmed and endorsed the opinion of the Collectorate. After the endorsement of opinion of Collectorate by the F.B.R, 265 more vehicle were released without any hindrance, but thereafter, Director General Intelligence & Investigation, FBR, respondent No.3 sought clarification of Ministry of Commerce, respondent No.1. The Ministry of Commerce & Textile Industry approached Governor, State Bank of Pakistan for clarification. No reply was given, however, the Governor, State Bank of Pakistan stopped the clearance of vehicles. As a result, respondent No.2, Federal Board of Revenue, issued letter dated 30-09-2013, by virtue of which, the clearance of vehicles was stopped, so the petitioner challenged the said letter by filing the present writ petition, with the following prayer:-

- (i) *That the import of Sprinkler Lorries in pursuance of binding contract dated 09-01-2013 on the basis of LC established on 23-01-2013 by the petitioner is his vested right which cannot be taken away through the executive orders or instructions;*
- (ii) *That the restrictions on import of Sprinkler Lorries older than 5 years imposed vide Import Policy Order 2013 issued*



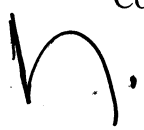
*vide SRO-193(I)/2013 dated 08.03.2013 shall not effect the import of 2000 Sprinkler Lorries in respect of which a binding contract was entered into between the parties on 09.01.2013 in term of Proviso to Para-4 of the said import policy order;*

(iii) *That the petitioner is entitled to import remaining used Sprinkler Lorries on the basis of Import Policy Order 2009 as it was in force on 09-01-2013 and 23-01-2013 and the subsequent amendment made vide SRO-193(I)/2013 dated 08-03-2013 would not be applicable to these vehicles and any hindrance, obstruction or impediment in any manner created by respondent No.2 and 3 or as the case may be denying or withholding release of such vehicles shall be void, illegal and of no legal effect;*

(iv) .....

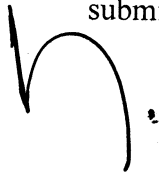
(v) ....."

5. Learned counsel for the petitioner submitted that the letter of credit was established on 23-01-2013 for USD-200,000 (Two Hundred Thousand U.S. Dollars), which is an admitted fact. The said letter of credit was established prior to date of promulgation of Import Policy Order of 2013 and therefore, was outside the ambit of said Policy. The fact as to whether the amount USD-200,000 (Two Hundred Thousand U.S. Dollars) was actually paid or not is a matter between the Bank and the petitioner and F.B.R. has nothing to do with the same. The Bank had given an undertaking that the letter of credit was for USD-200,000 (Two Hundred Thousand U.S. Dollars), therefore, the petitioner was entitled to import of vehicles against the said amount. Learned counsel further submitted that the establishment of such letter of credit was not against any law and therefore, could not be questioned. It was further submitted that the Collectorate as well as F.B.R. had endorsed the view of the petitioner and had permitted the clearance of vehicles, but even then for malafide reasons, the matter was referred to Ministry of Commerce and then to State Bank of Pakistan. Learned counsel also



submitted that the State Bank has nothing to do with the interpretation of letter of credit and for that matter the import of vehicles. It was nowhere provided in the law that the Governor, State Bank has the authority to interpret any fiscal provision. Learned counsel further submitted that the letter of credit was established under an agreement executed between the petitioner and the supplier which was duly registered with the Bank and therefore, the agreement had a binding effect. The said agreement had been executed prior to promulgation of Import Policy Order, 2013 and therefore, the consequential benefits could not be denied to the petitioner. It was further submitted that the petitioner for no fault on his part has been subjected to financial loss as on one hand, Collectorate as well as F.B.R. accepted the view of the petitioner and on the other hand, clearance of vehicle was stopped and the petitioner was burdened with demurrage charges.

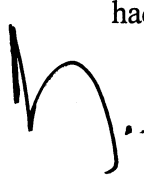
6. On the other hand, learned counsel for respondent submitted that the petitioner was trying to misinterpret the law and in such a way, was trying to make Import Policy Order, 2013 as ineffective. It was further submitted that in connivance with the Bank, the petitioner opened letter of credit worth USD-200,000 (Two Hundred Thousand U.S. Dollar) by depositing only USD-2000 (Two Thousand U.S. Dollar). Again, a fraudulent oral agreement was executed, wherein it was decided that on import of each consignment, the petitioner would deposit amount with the bank, whereas the date of letter of credit would remain the same. Infact, for import and for every consignment the petitioner is required to open a new letter of credit or a new bill of lading. In the present case, the date of letter of credit would remain the same, whereas the vehicles would be imported with time intervals. In such a way, the total concept of letter of credit would change. Learned counsel also submitted that the petitioner has created a situation that forever he would



keep on importing with the same date on which the letter of credit was established and the new Import Policy Order of 2013 would remain ineffective. This act of the petitioner amounts to playing fraud upon law as well as misuse of legal provisions. Learned counsel further submitted that the petitioner had earlier filed a similar writ petition in Lahore High Court, which had already been decided. Since he could not get the required relief, therefore, the writ petition was filed in this Court. In this respect, learned counsel submitted that infact under the said order issued by this Court one lorry was brought from Karachi, but was stopped at Lahore, for release of that lorry, writ was filed before Lahore High Court, but the hon'ble Judge touched other matters as well. The judgment of Hon'ble Judge has now been suspended by the Lahore High Court in I.C.A.

7. I have heard learned counsel for the parties and have also perused the record.

8. The whole dispute in the present case arises, as the petitioner under the Import Policy, 2009 could import sprinkler lorries having useful productive life, whereas under new Import Policy Order, 2013 sprinkler lorries not older than five years and having useful productive life could be imported. In the new Import Policy Order, 2013, it was provided ~~that~~ in proviso to Sec. 4 that the amendments would not effect the imports made on the basis of bill of lading or letters of credit established prior to date of new Import Policy Order i.e. 8<sup>th</sup> March, 2013. The case of the petitioner is that he had established letter of credit worth 200,000 USD on 23-01-2013 and the period of said letter of credit was one year, which was to expire on 23-01-2014, so within that one year he could import old lorries as the letter of credit had been established prior to promulgation of Import Policy Order, 2013.

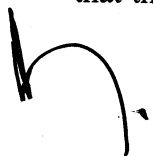




Now the issue involved is to determine the value of letter of credit dated 23-01-2013, established by the petitioner.

9. Imports are being dealt with under Chapter XXIII of The Foreign Exchange Manual, Edition 2013. Section 6 of said Chapter provides modes of payments for imports. According to this Section, payment for imports may be made either through letters of credit, without letters of credit against documents received for collection on the basis of registration of contracts, or as clean remittance without opening of letter of credit and without registration of contract, as described in detail in the subsequent paragraphs. Section 8(a) provides that letters of credit may be established providing for payment to beneficiary either in the country of origin of goods or in the country of shipment of goods. Sub Section 5 provides that opening of letters of credit providing for payment in any other manner requires prior approval of the State Bank. Such requests giving full facts of the case alongwith their recommendations should be forwarded by the authorized dealers to the State Bank. Section 14 provides that it is not permissible to open clean, revolving, transferable or packing credits. Applications for opening such letters of credit should be referred to the State Bank with full particulars. Section 16 is regarding Imports on the basis of registration of contracts. These imports are made without opening of letter of credit and different procedure is provided for these imports. In the same way, a separate procedure is provided for imports not covered by letter of credit or registration of documents.

10. As far as present case is concerned, it is covered by payment through letter of credit. Aforementioned provisions, particularly, Section 14 provides that there are different types of letter of credit. The petitioner infact, required



establishment of revolving letter of credit. The Black's Law Dictionary, Eighth Edition, defines revolving letter of credit as follows:-

*"A letter of credit that self renews by providing for a continuing line of credit that the beneficiary periodically draws on and the bank customer periodically repays. A revolving letter of credit is used when there will be multiple drafts under a single transaction or multiple transactions under a single credit."*

11. In the present case, there was one credit, but different drafts as different consignments were imported, but such issuance of letter of credit was not allowed under Section 14 of the Foreign Exchange Manual, as the requirement for opening such letter of credit was that the petitioner was required to submit an application to the State Bank of Pakistan and without permission of the State Bank, Meezan Bank could not open such letter of credit. The issuance of the impugned letter of credit as such was against law as well as misuse of the procedure of law.

12. Meezan Bank while replying the query of the Custom Authorities submitted that under Sec. 16 (3) they could issue the impugned letter of credit. The reply again was not only based on misinterpretation of law, but also misuse of legal procedure. Section 16 infact deal with the import on the basis of registration of documents, where the importers wants to make the imports on the basis of registration of contract without opening letter of credit. Sub Section 3 deals with that situation and not with a case where letter of credit has been opened. By amalgamating two different sections of law, an effort has been made to create confusion.

13. There is no doubt that the letter of credit could be established on providing the letter of invoice, but then all the consignments mentioned in the invoice were to be imported at one and the same time. If those consignments

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were to be imported through different shipments, then either different invoice and different letter of credits were required or in alternate prior approval of State Bank of Pakistan is required.

14. As far as amendment in letter of credit is concerned that too is not covered by law. Under Section 9 of Foreign Exchange Manual, the Bank could extend the period for 12 more months, but the amount could not be provided through amendment. Infact, the proposed amendment amounted to opening a fresh letter of credit without fresh invoice. Opening of fresh letter of credit on the basis of old invoice infact amounted to fraud upon law. If the argument of the petitioner is accepted, the new Import Policy Order, 2013 would never be implemented. Thus finding no force in this petition, the same is hereby dismissed with cost.

  
(RIAZ AHMAD KHAN)

Judge

*Announced in the open Court on 07/04/2014.*

  
Judge

Approved for reporting.

*Wajid*

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