

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.684 of 1989**

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Date	Order with Signature of Judge
Present: <b>Mr. Justice Nazar Akbar</b>	
Plaintiff	: Mian Akbar Trading Corporation through Mr. Farogh Naseem, Advocate
Defendant No.1	: The Senior Deputy Director Exchange Control Department, State Bank of Pakistan.
Defendant No.2	: State Bank of Pakistan Both through Mr. Hassan Akbar, Advocate
Defendant No.3	: Government of Pakistan. (Nemo).
Date of hearing	: 06.04.2018
Decided on	: 29.06.2018

**JUDGMENT**

**NAZAR AKBAR, J.** Plaintiffs had filed this suit on **24.5.1989** for recovery of **Rs.13,653,877/-** from the defendants towards his claim of compensatory rebate on earning foreign exchange on export of certain goods covered by relevant Foreign Exchange Circulars.

2. Brief facts of the case are that the plaintiff is exporter of textiles and cotton products. The Government of Pakistan (defendant No.3) from time to time had issued directions to the State Bank of Pakistan (defendant No.2) to provide incentives to the exporters for earning foreign exchange for the country. The State Bank, therefore, issued Foreign Exchange **Circular No.40** dated **5.10.1978** providing an incentive of compensatory rebate to exporters to exporters with list of eligible items and rate of rebate in annexure 'A' attached to it. However, on **18.06.1986** defendant No.2 issued F.E **Circular No.36** whereby the Export Compensatory Rebate Scheme was abolished

with effect from **29.05.1986**. In F.E **Circular No.36** dated 18.6.1986 it was clearly stipulated that the abolition of the Export Compensatory Rebate Scheme will not, in any manner, affect the export made after **29.05.1986** against irrevocable letters of credit establishment before that date as well as firm contracts for cotton cloth and cotton bags are registered with Export Promotion Bureau (hereinafter EPB) before **29.05.1986**. It was averred that long before F.E Circular No.36 of 1986, the plaintiff in the course of business had entered into a contract for the supply and sale of goods covered by F.E **Circular No.40** of 1978 with the foreign buyers M/s Al-Nida Textiles and Readymade Garments, Dubai U.A.E. The said foreign buyer in performance of the said contract has established a Letter of Credit on **22.05.1986** on Habib Bank A.G Zurich, Deira, Dubai, U.A.E and advised Union Bank of the Middle East Ltd., Karachi in favour of the plaintiffs for **U.S \$ 7800,000/-**. The advising bank M/s Union Bank of the Middle East Ltd., I.I Chundrigar Road, Karachi, with covering letter dated **25.05.1986** sent the said **original** letter of credit for U.S \$ 7,800,000/- to the plaintiffs. The said letter of credit was unrestricted and as such the plaintiffs carried out the exports and negotiated the documents under the L/C with Union Bank of the Middle East Ltd., Karachi. The plaintiffs in compliance with the requirements of the **F.E Circular No.11** of 1987 also registered the said L/C with the Export Promotion Bureau well before **08.03.1987**.

3. The plaintiff exported total 54 consignments under the registered L/C and the said export was carried out in the usual and prescribed manner. The consignments were examined and cleared by the Customs authorities after examination of relevant export documents filed by the Plaintiffs' clearing Agents. The export consignments were received by the Foreign Buyers/importers and the

foreign exchange was admittedly remitted to Pakistan by the Foreign Bank under the Letter of Credit through the normal banking channels. After export of each consignment/ shipment, the plaintiffs filed an application in the prescribed form with defendant No.1 for payment of compensatory rebate on the export and submitted the evidence of export. In all 54 such applications were filed. The first application was lodged on **25.8.1987** and the 54<sup>th</sup> application on **03.11.1987**. On **11.10.1987** defendant No.1 wrote to the Manager, Union Bank of the Middle East Ltd., that the Compensatory Rebate Applications submitted by the Plaintiffs were under enquiry and that certain details be made available to the said defendant. The Union Bank of the Middle East Ltd., forwarded the said letter to the plaintiffs. The plaintiffs on **18.10.1987** provided all the details required by defendant No.1. On **01.12.1987** defendant No.1 wrote another letter to the Union Bank of the Middle East, alleging certain discrepancies in their record. The plaintiffs again clarified the entire position to defendant No.1. Thereafter further queries were raised by defendant No.1 and whatever information sought were promptly supplied by the plaintiffs. Then on **15.2.1988**, after almost one year, the plaintiff sent a telex to defendant No.2 as there was excessive delay in the payment of rebate. In reply defendant No.1 by letter dated **20.2.1988** informed the plaintiff that their case was under consideration. However, as nothing was heard for quite some time, the plaintiff sent a legal notice dated **13.3.1988** to defendants 1 and 2 demanding that the compensatory rebate amounting to Rs.13,653,877.00 is due and payable to the plaintiff be paid within seven days. Again on **6.6.1988** the plaintiff sent another legal notice to the defendants pointing out that there was no reason for the State Bank of Pakistan to retain payment of compensatory export rebate

due and payable to the plaintiff and that the same be paid. The plaintiff also sent letters dated **28.9.1988** and **26.11.1988** to the Joint Secretary, Finance Division, Government of Pakistan and the Minister of Finance expressing their grievance. However, the defendants failed and neglected to pay to the plaintiff the said export compensatory rebate amounting to **Rs.13,653,877/-** due and payable to the plaintiff inspite of the fact that the defendants have admitted that the goods were duly exported and remittances in foreign currency were received under the L/C in question. Thereafter the plaintiff filed C.P No.D-656 of 1988 under the constitutional jurisdiction of this Court for appropriate direction to the State Bank. The said C.P was disposed of on **01.2.1989** on the undertaking of learned counsel for the respondents that applications filed by the petitioner in respect of payment of compensatory rebate would be decided by the State Bank of Pakistan. On **16.2.1989** the plaintiff through their letter addressed to defendant No.1 reminded that during hearing of the constitutional petition No.656 of 1988 an undertaking had been given by the respondents' counsel promising disposal of the claim of the petitioners. It was further pointed out that the plaintiff had also asked the Middle East Bank Ltd. to obtain a categorical statement from Habib Bank A.G Zurich, Deira, Dubai and that the Central Bank of Dubai had after the due enquiry confirmed the fact that the letter of Credit was opened on **22.5.1986** and as such the controversy stood resolved. In view of the aforesaid confirmation of the date of the opening of the L/C the plaintiff was confident that the State Bank would have no valid reason to delay action on the plaintiff's application for compensatory rebate. Defendant No.1 addressed letter dated **26.2.1989** to the Middle East Bank Ltd. I.I Chundrigar Road, Karachi stated that the State Bank

was satisfied that the letter of credit No.DR-27250-A was **not** established prior to **29.5.1986** and that the same had been back dated and on the above plea arbitrarily and unlawfully rejected the plaintiff's application for payment of compensatory rebate. Therefore, the plaintiff filed the instant suit and prayed for the following relief(s):-

- a) *For judgment and decree against the defendants in the sum of Rs.13,653,877.00 being the amount of compensatory rebate due and payable to the plaintiffs.*
- b) *For interest and/or appropriate profit/mark-up/compensation at 20% per annum from the date of applications for payment of compensatory rebate and/ or from the date of rejection (26.2.1989) and/or from the date of the institution of the suit.*
- c) *For costs.*
- d) *Any such other reliefs/orders which this Hon'ble Court deems just and proper in the facts and circumstances of the case.*

4. Defendants No.1 and 2 filed their written statement wherein they denied the claim of the plaintiff while claiming that the Export Compensatory Rebate Scheme was introduced by the Government of Pakistan (Defendant No.3) was abolished by Public Notice No.10(1)(86-E.II dated **29.5.1986**, issued by Ministry of Commerce, Government of Pakistan. The F.E **Circular No.36** dated **18.6.1986** was issued by defendants No.1 and 2 in order to implement the terms and requirements of the said Public Notice. Defendants No.1 and 2 denied that the plaintiffs had executed the alleged contract, before issuance of F.E **Circular No.36** of 1986. It was averred that the said letter of credit was a manipulated document which was collusively back-dated in order to avail the benefit of the Public Notice dated **29.5.1986**. It was also denied that the Union Bank of the Middle East Limited sent or could send the letter dated **25.5.1986** as according to the material collected by defendants No.1 and 2, the

said letter of credit was not received in Pakistan before **29.5.1986**. It was averred that the claims for export compensatory rebate after the abolition of the “Export Compensatory Rebate Scheme” were to be ascertained, scrutinized and determined on the basis of the qualifying conditions laid down in Public Notice No.10(1)/86-E-II dated 29.5.1986 and reflected in the F.E Circular No.36. At the time of the scrutiny it was noticed that the letter of credit on the basis whereof the compensatory rebate was being claimed, did not appear to be irrevocable. In the matter of alleged shipment an unusual course was adopted, inasmuch as, the first shipment was allegedly made after over one year of the alleged date of the letter of credit in question and when the scheme had already/been abolished. It was, therefore, considered necessary in the interest of public revenue to make detailed enquiry and investigation in respect of the claim filed by the plaintiffs.

5. This court from pleadings of the parties on **13.5.1990** framed the following issues:-

1. *Whether the plaintiff having exported the 54 consignments in question as certified by the Customs Authorities is entitled to compensatory rebate of Rs.13,653,877.00 under the Governments Export Policy?*
2. *Whether the Letter of Credit in question was not established on 22.5.1986 and whether it was back-dated as alleged in para-8 of the Written Statement of the defendants Nos.1 and 2? If so its effect?*
3. *Whether the disputed letter of credit was un-restricted as alleged in para-10 of the plaint?*
4. *Whether the alleged contract with Al-Nida Textile & Readymade Garments of Dubai was actually concluded before 19.5.1986?*
5. *Whether the plaintiff actually exported the alleged consignments pursuant to the disputed letter of credit?*

6. *Whether the rejection of the claim of the plaintiffs, for Export Compensatory Rebate, by defendants No.1 & 2 is arbitrary, unlawful and malafide, if so its effect?*
7. *To what relief, if any, the plaintiffs are entitled?*
8. *Decree.*

6. The plaintiff produced affidavit in evidence of one Haji Ameen, Proprietor of M/S Mian Akbar Trading Corporation. He produced more than 450 documents / exhibits and he was cross-examined by the learned counsel for the defendant. The defendant has examined one Muhammad Akram Zaki, Assistant Director Foreign Exchange, State Bank of Pakistan. He was cross-examined by the learned counsel for the Plaintiff.

7. I have heard learned counsel for the parties and perused the record. My findings on the above issues with reasons are as follows.

**Issue No.1 and 4**

8. Learned counsel for the Plaintiff has contended that since the foreign exchange payment on delivery of 54 consignments to M/s. Al-Nida Textile and Garments covered under Letter of Credit, opened on **22.5.1986** by Habib Bank AG Zurich Dera Dubai and received in the Union Bank of the Middle East Ltd., in favour of plaintiff therefore, the plaintiff is entitled for the compensatory rebate in terms of F.E Circular No.36. The plaintiff has filed claim of rebate with the following documents.

- i. Credit Advice
- ii. Application of Compensatory Rebate
- iii. Form Annexure D  
Customs Certificate for Rebate
- iv. Bill of Lading (Certificate)
- v. Bill of Lading (duplicate)

- vi. Invoice
- vii. Declaration Under Sec.12(1) of Foreign Exchange Regulation Form E
- viii. Shipping Bill

He further contended that there is no denial of shipment and each shipment was covered by F.E Circular No.40. These documents were even endorsed by custom authorities. Learned counsel for the plaintiff has referred to annexure-A to F.E Circular No.40 to show that the goods exported as per the bill of lading and other documents were included in the list annexed with the said circular.

9. Learned counsel for the defendant in rebuttal contended that in terms of FE Circular No.36 rebate was admissible only on the export of **“cotton clothes” & “cotton bags”** provided Letter of Credit and the contracts between the plaintiff and foreign buyer were registered with the Export Promotion Bureau before **29.5.1986**. The plaintiff has not registered his contract and even the Letter of Credit with the EPB before **29.5.1986** and Exhibit P/16 which is alleged to be an application form allegedly filed in the office of EPB was not enough compliance of requirement of FE Circular No.36 for entitlement to claim of compensatory rebate. He has pointed out by referring to several documents as well as application forms for compensatory rebate that the description of goods in most of the consignment is **“canvas shoes”** etc. which were not eligible items on which exporters can claim compensatory rebate through F.E Circular No.36. Both the counsel have attempted to interpret these Circulars and also referred to circular No.46 and 11 dated **24.07.1986** and **4.3.1987** respectively which are clarification / explanation of F.E Circular No.36 issued by the State Bank of Pakistan.



10. To appreciate the contentions of either side, I have examined the scheme of rebate introduced in 1978 through F.E. Circular No.40 and continued with certain amount until 1986 when it was abolished through F.E Circular No.36. It is clear that according to F.E Circular No.36 only two items on export were eligible for compensatory rebate i.e **Cotton Cloths & Cotton Bags** and rebate on anything else was automatically abolished in respect of exports cover by Letter of Credit opened before **29.5.1986**. To be exact it reads as follow:-

2. Export made on or after 29<sup>th</sup> May, 1986 against **irrevocable Letter of Credit established before 29<sup>th</sup> May, 1986 and firm contracts registered with Export Promotion Bureau in respect of Cotton Cloth and Cotton bags before 29<sup>th</sup> May, 1986 shall**, however, **remain eligible for payment of compensatory rebate** provided shipments are made and payment realized in accordance with the original terms of Letter of Credit/registered contracts.

It means from **29.05.1986** rebate was permissible only on two items and not on every item mentioned in annexure 'A' to the F.E. Circular No.40 and it was subject to two eventualities to be fulfilled by the exporters namely:-

- i.** Irrevocable Letter of Credit established prior to **29.5.1986**; and
- ii.** Firm contract registered with Export Promotion Bureau before **29.5.1986**.

Therefore, before claiming rebate on the goods exported by the plaintiff, he was required to prove that he has established an Irrevocable Letter of Credit before 29.5.1986 and a firm contract was registered with the EPB before the said date and on registration EPB has issued a registration number which he was required to mention on the claim form for rebate. The perusal of Exh.16 which appears to be an application form for registration of Irrevocable Letter of Credit filed by the plaintiff with the EPB is apparently undated and the

endorsement of Export Promotion Bureau on Ex.16 under signature of an officer shows **08.3.1987** a date which at best can be a date of receiving this application form in EPB office. It was filed after **29.5.1986** contrary to the requirement FE Circular No.36. In fact in para 6 of the plaint, the plaintiff himself has averred that in terms of **F.E. Circular No.11**, the exporters whose shipments continued beyond **28.2.1986** were directed to register Letter of Credit with EPB by **8.3.1987** and this is how he justifies date under signature of an officer of EPB on **Exh.16**. In fact it is fatal to the case of the plaintiff. It may be mentioned here that even in **F.E Circular No.46** dated 24.7.1986 and **F.E Circular No.11** dated 4.3.1987, it has been repeatedly emphasized that both, irrevocable Letter of Credit and contract were required to be registered with EPB before **29.5.1986**. In **F.E. Circular No.11** dated 4.3.1987 para-3 was inserted to include the buyer who have "contracts signed with the state owned enterprises in socialist countries before 29.5.1986", such exporter should get particular of their Letter of Credit / contracts registered with EPB by **8.3.1987**. Para-3 of F.E. Circular No.11 is reproduced below:-

3. It has also been decided by the Government that in case of irrevocable letters of credit established by buyer in any country and **contracts signed with the state owned enterprises in socialist countries** before 29<sup>th</sup> May, 1986 which originally provided for shipment beyond 28.2.1987, **the particulars of the letters of credit / contracts should be got registered by the exporters with the Export Promotion Bureau by 8.3.1987**. A copy of the Press Note issued in this regard is enclosed.

The date of registration of Letter of Credit for the foreign buyer in the case of the plaintiff was **29.5.1986** and not as given in para-3 above for the simple reason that contract between the plaintiff and his foreign buyer cannot be termed as "contracts signed with the State

owned enterprises in socialist countries". The date of registration of Letter of Credit by plaintiff in respect of contract with Al-Nida Garment ought to have been **29.5.1986** and not **8.3.1987** since the Al-Nida Textile & Readymade Garments is neither in socialist country nor the plaintiff is state owned enterprises.

11. The other important requirement of F.E. Circular No.36 was that along with irrevocable Letter of Credit, a firm contract was also required to be registered with EPB. There is no mention of particulars of any contract between the plaintiff and M/s.Al-Nida Textile and Readymade Garment on Exh.16 nor any copy of the contract has been filed or produced by the plaintiff along with his plaint. The contract is essential and integral part of information to be given by the exporter to the EPB and the State Bank for the purpose of scrutiny of rebate claim in the light of clause 3 & 4 of the FE Circular No.36 as the possibility of any change in terms of contract by and between the parties at any later date cannot be ruled out. Clause 3 & 4 of F.E. Circular No.36 are reproduced below:-

3. Exports made upto 30<sup>th</sup> September, 1986 against other firm contracts which were recorded with a Trade Association or a bank before 29<sup>th</sup> May, 1986 will also remain eligible for compensatory rebate provided payment is realized within the prescribed time limit in accordance with the **original terms of the recorded contracts**.

4. **Any amendment made on or after 29<sup>th</sup> May, 1986 in the Letter of Credit established / contracts registered with Export Promotion Bureau / other contracts recorded with a Trade Association or a bank upto 28<sup>th</sup> May, 1986 involving change in the value, quantity, product description, date of shipment and the change of buyers will constitute fresh contract and will not be eligible for payment of compensatory rebate.** Authorized Dealers are, therefore, advised not to entertain requests from the exporters in such cases and not to forward compensatory rebate claims applications to the State Bank of Pakistan.

The requirement of a certificate from Authorized Dealer which plaintiff claims to have fulfilled on the back of Application form for rebate (annexure 'B') also confirms that CONTRACT should have been filed with Export Promotion Bureau at the time of registration before **29.5.1986**, otherwise the purpose of following stipulation in F.E. Circular No.36 would be of no consequences.

iv) . . . . .

(a) . . . . .

(b) A certificate from Authorized Dealer indicating complete particulars of the contract and the date of export finance, if any, provided to the exporters; the number and date of refinance obtained from the State Bank of Pakistan and **the date when the contract was recorded by them.**

12. Unfortunately the plaintiff has not produced any of the alleged contracts with foreign buyer nor any of the contract was registered with EPB before **19.5.1986** or even on **8.3.1986** alongwith the alleged irrevocable Letter of Credit for a sum of US\$ 7800,000/-. Actual contract should have also be produced by the plaintiff and exhibited in evidence showing exact value of the contract, quantity, product description and the agreed date of shipment. In absence of all these essential details of a trade contract it cannot be said that a contract was allegedly concluded for the purpose of examining the compensatory rebate on export. The plaintiff has relied only on **Exhibit.16** in support of his claim that in compliance of F.E Circular No.36 the plaintiff was registered with EPB. The defendant has objected to the production of photocopy of Exh.16 in evidence. But neither the objection was replied nor original of this Exh.16 was produced. The plaintiff has not even produced or caused to be

produced record of Export Promotion Bureau in support of his claim “irrevocable Letter of Credit established before **29.5.1986** and firm contracts registered with Export Promotion Bureau in respect of **Cotton Cloths and Cotton Bags before 29.5.1986**” or even after the mandatory date of registration given in the F.E. Circular No.36 “to remain eligible for payment of compensatory rebate”. Therefore, irrespective of the dispute about the validity and legitimacy of the irrevocable Letter of Credit, or the controversy that the goods exported were other than **“cotton clothing”** and **“cotton bags”** the plaintiff himself was not qualified to fall within the category of Exporters who could be entitle to claim compensatory rebate on the exports made by him since the plaintiff has failed to discharge initial burden of proof that his Letter of Credit and firm contract were registered with EPB within time as stipulated in F.E. Circular No.36.

13. In view of the above facts none of the consignment was qualified for compensatory rebate on account of the failure of the plaintiff to register the Letter of Credit and firm contract with EPB before **29.5.1986** and also on account of the fact that most of the consignments were not in respect of the **“cotton cloths”** and **“cotton bags”**. He has not even produced any contract. Consequently issue No.1 and 4 are answered in negative.

#### **Issues No.2, 3 & 5**

14. In view of my findings on issue No.1 & 4, these three issues have in fact become redundant. The irrevocable Letter of Credit irrespective of its date has become irrelevant for the purpose of rebate since the said letter of credit was not registered with EPB nor firm contracts were registered with EPB to verify whether the goods were covered by the FE Circular No.36 or not. The suit already stands

disposed of with the finding on the main issue between the parties. However, in a case already pending for more than **30** years, I cannot take the liberty for a judge provided under **Order XX Rule 5 CPC** by not deciding these issues on the ground that my findings on issue Nos.1 & 4 have sufficiently decided the suit. Rule 5 of Order XX CPC is reproduced below:-

**5. Court to state its decision on each issue.—**

In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

15. The burden of proof of these issue is on the plaintiff on the general principle of jurisprudence that whoever goes to the court and seeks a judgment on the basis of existence of certain facts, first he has to prove the said facts through a cogent and convincing evidence (**Article 117** of Qanoon-e-Shahadat Order, 1984). The plaintiff has approached the Court for a decree of an amount of **Rs.1,36,53,877/-** on the basis of various documents prepared by different authorities to constitute a final transaction leading to accrual of a right to the plaintiff to claim compensatory rebate from the defendant on exports which has been denied by the defendant, therefore, he seeks a judgment in his favour. The plaintiffs for claiming compensatory rebate worth **Rs.1,36,53,877/-** has relied on more than 400 documents, which he has produced in evidence as **Exh.7** to **Exh.451**. The burden of proof of the lawful existence of the documents enforceable through the Court even otherwise is on the plaintiff being beneficiary of the said documents. The need to establish lawful existence of facts on the basis of these documents was multiplied when the defendant in written statement has denied the correctness / authenticity and validity of the documents referred to and relied

upon by the plaintiff in his plaint. It may be mentioned here that each and every document produced by the plaintiff in evidence was taken on record subject to OBJECTION raised by the counsel for the defendant as to their contents and admissibility and proof of documents which were only photocopies. The plaintiff himself was not author of any of these documents. The plaintiff to claim compensatory rebate on exports has averred in the plaint that the plaintiff in due course of business had entered into a contract for supply and sale of goods covered by F.E. Circular No.40 with M/s. Al-Nida Textile and Readymade Garments situated in UAE for a sum of US\$ 78,00,000/- guaranteed under an irrevocable Letter of Credit dated **22.5.1986** issued by M/s. Habib Bank AG Zurich (**para-8** of the plaint). However, no specific contract has been placed on record even with plaint as already discussed in the reasoning on issue No.1. The first document on which the plaintiff has heavily relied upon and produced is an original Irrevocable Letter of Credit (**Exh.13**) showing **22.5.1986** as a date originating from Habib Bank AG Zurich, Deira Dubai, UAE and sent to Union Bank of the Middle East, I.I. Chundrigar Road, Karachi. The defendant has challenged the production and authenticity of this Letter of Credit, therefore, the first burden was on the plaintiff to show that this is a genuine document as it was relied upon by the plaintiff. The plaintiff has not produced any of the officer of Habib Bank AG Zurich or receiving bank, namely the Union Bank of the Middle East, I.I. Chundrigar Road, Karachi to affirm that this **Exh.13** filed by the plaintiff himself is a genuine document. It is difficult for me to appreciate that the plaintiff has produced **original** Letter of Credit from his on record. Even if by relying on **Exh.12** which is a covering letter of M/s. Union Bank of the Middle East, if we believe that **original** Letter of Credit

has been handed over to him by the said Union Bank of the Middle East, I.I. Chundrigar Road, Karachi then to establish credibility of both the **Exh.12** (the covering letter) and **Exh.13** (the original L/C) an officer of Union Bank of the Middle East Ltd., should have appeared in witness box to confirm it. It may be mentioned here that **Exh.12** does not disclose its mode of delivery to the plaintiff. It was by post, by TCS or even by hand is a mystery as the Exh.12 itself is silent about it. Neither the plaintiff has filed any envelop nor the advising bank in its covering letter has disclosed its date of receipt of original Letter of Credit in their office. Similarly author of Letter of Credit namely Habib Bank AG Zurich should have come forward to support claim of the plaintiff that irrespective of questionable number carrying suffix "A" this document (**Exh.13**) was the same letter of credit send by Habib Bank AG Zurich to the Union Bank of the Middle East Karachi. Then to prove the transaction on the basis of Exh.13, the plaintiff has relied on **12** original entries of the negotiating bank at the back of original Letter of Credit and all other **original** entries of the negotiating bank are at the back of photocopies of **Exh.12** and photocopy of **Exh.13** respectively. All these original entries are with the customer (the plaintiff) then what is the record in the bank about these transactions. How can we expect from the bank that if compelled by Court to produce certified copies of these transactions, the bank will certify them from its own record or get it certified from the plaintiff, or certify the same from some photocopies in their own record. In any case the bank has not come forward to confirm whether these entries on the back of **photocopies** of exhibits in the hands of plaintiff are genuine and the bank also has duplicate entry in its record from where said Union Bank of Middle East can verify these entries. These are not just one



or two entries, these are original entries of almost 53 or 54 in number on the back of two photocopies, which are available with the plaintiff alone. The plaintiff has not produced even his statement of account with the Union Bank of Middle East for the period from **22.5.1986** to date of so called last entry on **8.9.1987** covering the transaction of more than **US\$ 7800,000** to confirm the amount mentioned in the said entries was actually credited into his account. In the same fashion, the plaintiff who is not author of any of the credited advice produced by him, has not called any one from his own bank to produce bank record as confirmation of credit advice from the Union Bank of the Middle East Limited. Even otherwise mere credit advice not subsequently reflected in the regular account of the exporter is not an exhaustive prove of remittance in the account of exporter. Even the so called credited advices are doubtful. Many are incomplete as I have noticed that in several credit advices the column of account number is blank and many of them are duplicate. Mere production documents of bank and other government institution by the plaintiff not being corroborated by an of the bank officer of the two banks namely Habib Bank AG Zurich or Union Bank of the Middle East regarding huge transaction of **US\$ 78,00,000/-** is neither cogent nor confidence inspiring evidence for discharge of the initial burden of proof on the plaintiff. The plaintiff has not even bothered to produce any of the custom officers or officer of Export Promotion Bureau to support that the documents originating from these two offices are genuine. It cannot be said that the plaintiff was unable to produce or caused to be produced record of the two banks, customs and EPB in support of his claim on the basis of these documents on account of any legal disability. In my humble view the best available evidence was withheld by the plaintiff himself. Therefore, it was a case of no

evidence. The burden of proof was never shifted on the defendant. In view of awful evidence of the plaintiff discussed above, all these issues are decided against the plaintiff.

**Issues No.6 to 8.**

16. In view of my findings on issues No.1 to 5 the rejection of claim of the plaintiff by the defendant was neither arbitrary nor unlawful. The plaintiff is not entitled to any relief. The suit is therefore, dismissed, however, with no order as to cost.

JUDGE

Karachi,  
Dated:**29.06.2018**

Ayaz Gul/PA\*