

**COMMERCIAL BANK OF CEYLON LTD.**  
**v.**  
**SALAHUDEEN**

COURT OF APPEAL  
EDUSSURIYA, J.,  
JAYASINGHE, J.  
C.A. NO. 400/94(F).  
D.C. COLOMBO NO. 11653/MR.  
JUNE 26, 1998.  
FEBRUARY 02, 1999.

*Letter of Credit – Honoured – Bank not reimbursed – Defence that the goods have been shipped after the expiry date of the letter of credit – Liability to pay – Unified Customs and Practice for Documentary Credit (U.C.P.D.C).*

**Held:**

1. Article 46 (a) U.C.P.D.C. stipulates that all credits must stipulate an expiry date for presentation of documents for payment acceptance or negotiation. Article 46 (b) provides that except as provided in Article 48 (a) documents must be presented on or before such expiry date.
2. The expiry date, therefore, is significant and, once it expires it can only be revived at the request of the importer or where the importer accepts the document, notwithstanding the lapse.

**APPEAL** from the District Court of Colombo.

*Ajantha Cooray* with *C. J. Ladduwahetty* for the plaintiff-appellant.

*Nigel Hatch* for the defendant-respondent.

*Cur. adv. vult.*

April 29, 1999.

## **JAYASINGHE, J.**

The plaintiff filed action in the District Court of Colombo for the recovery of a sum of Rs. 71,903.37 together with legal interest thereon being the rupee value paid by the plaintiff upon a letter of credit favouring China National Metal and Minerals Import and Export Corporation of China. By P4 of 02.01.1989 the defendant requested the plaintiff to open on account of the defendant an irrevocable documentary credit for US\$ 1,625 in favour of China National Metal and Mineral Import and Export of China; that by advice of 22.06.1989 P2 the plaintiff informed the defendant that the documents under the said letter of credit had been received by the plaintiff and required the defendant to examine the said documents and to pay the plaintiff the value of the said letter of credit together with the bank charges, etc. The plaintiff in the ordinary course of business paid US\$ 1,660.10 being the value of the said letter of credit or Rs. 67,146.38; that notwithstanding several requests and letter of demand the defendant has wrongfully and unlawfully failed and neglected to pay the plaintiff an aggregated sum of Rs. 71,903.37. The defendant's position was that on the said letter of credit the goods were required to be shipped on or before 28.02.1989 and that the letter of credit marked P3 expired on 15.03.1989; that the goods have been shipped after the expiry of the letter of credit and that since the plaintiff satisfied a third party without notice and approval of the defendant he denied liability. The defendant also made a claim in reconviction which he abandoned at the argument stage.

The main contention of the appellant was that there was unreasonable delay by the defendant in rejecting the letter of credit which delay caused the plaintiff Bank to pay the amount reflected in the said letter of credit. The counsel for the plaintiff submitted that in the event of a discrepancy in the letter of credit the importer was required to reject the letter of credit without delay. He submitted that the 9

days which the defendant took to reject the documents were excessive. Mr. Cooray conceded that once the letter of credit lapses the importer is not bound by the letter of credit but stressed that the importer must reject the letter of credit within a reasonable time. Counsel for the defendant contended that if the goods have been shipped after the expiry of the letter of credit the importer is not obliged to accept the documents. He classified a letter of credit that expired as a dead letter of credit. The counsel for the defendant also submitted that the question of reasonable time does not arise because the letter of credit was not discrepant but non-existent as far as the importer was concerned as the goods were shipped after the expiry date. Such a letter of credit he submitted can be revived only at the request of the importer or if the importer accepts the documents notwithstanding the lapse. He did not contest the plaintiff's submission that all payments duly made on a letter of credit, the importer was obliged to pay the issuing Bank but submitted that these payments were not duly paid because on the face of the document the letter of credit had expired. He submitted that according to P3 the documents are required to be presented within 15 days after shipment but within the validity of the credit. Therefore, the payments were not duly made.

It must be said that the issuing Bank has its own responsibilities. Article 15 of the Unified Customs and Practice for Documentary Credits (U.C.P.D.C.) mandates that the Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. It seems, therefore, that, is a duty cast on the issuing Bank primarily to examine the accuracy of the documents.

Mr. Cooray referred Court to Article 16 (d) and sought to bring P3 within the said Article on the basis that P3 is discrepant. However, it would seem that Article 16 (d) cast on the issuing Bank certain obligations. If the issuing Bank refuses documents it must give notice to the Bank from which it received documents or to the beneficiary. Such notice must state the discrepancies in respect of which the

issuing Bank refuses the documents. Therefore, it seems that there is a duty cast on the issuing Bank to refuse documents in the event of a discrepancy. The question is whether P3 is discrepant as Mr. Cooray contended or dead as submitted by Mr. Hatch. Mr. Hatch referred us to Article 46 (a) which stipulates that all credits must stipulate an expiry date for presentation of documents for payment acceptance or negotiation and 46 (b) provides that except as provided in Article 48 (a) documents must be presented on or before such expiry date and 48 (a) provides that if the expiry date falls on a day on which the Bank to which the presentation has to be made is closed . . . the last day . . . for presentation shall be extended to the first following business day on which such bank is open. Therefore, it appears that the expiry date is significant and therefore once it expires it can only be revived at the request of the importer or where the importer accepts the document notwithstanding the lapse. Counsel for the defendant also submitted that the discrepancies referred to in Article 16 refers to discrepancies in the body of the letter of credit and not to situations where it has expired. For the reasons stated above, the appeal is dismissed with costs fixed at Rs. 2,100.

**EDUSSURIYA, J.** – I agree.

*Appeal dismissed.*