

A METRO EXPORTERS PVT. LTD. AND ANOTHER  
v.  
STATE BANK OF INDIA & ORS.  
(Civil Appeal No. 4807 of 2014)

B APRIL 23, 2014

**[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN, JJ.]**

*Bank/Banking – International Banking – Transfer of funds relating to export-import transaction – Reversal of account entry – Challenge to – Appellant-exporter used to bank with State Bank of India’s Overseas Branch – Appellant used to export the goods directly and submit documents to State Bank of India and it was for the bank to claim payment – Credit entry made to appellant-exporter’s EEFC account in 2006 – Two and half years later, the State Bank of India, Overseas Branch, Mumbai debited amount from EEFC account of appellant-exporter on ground that it was wrongly deposited in the account of appellant by mistake – Justification – Held: On facts, not justified – In view of s.72 of the Contract Act, the Bank does have a right to recover the money paid under a mistake – In the instant case, however, the importer had already made the payment and SBI, Foreign Department had received the amount in the Nostro account with remittance advice to Bank of India, instead of SBI, Overseas Branch, Mumbai – Appellant was also informed of the export collection advice by the SBI and the appellant had received the amount – The Bank might have committed a mistake, but now it would be impossible for the appellant to recover the amount from the importer since, so far as the importer is concerned, it had already paid the amount – If SBI, Overseas Branch had not given credit of the amount, then, appellant could have proceeded against the importer at the earliest opportunity – For mistake committed by the Bank, the appellant should not be made to suffer – Contract Act, 1872 – s.72.*

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*Bank/Banking – International Banking – Funds transfer A  
– Transfer of payment messages – SWIFT Message – Nostro  
and Vostro accounts – Discussed.*

The appellant-exporter had exported steel coils and received part payment against the invoice on the basis of the credit advice raised by the State Bank of India, Overseas Branch, Mumbai. The appellant had been informed of the export collection payment advice by the State Bank of India for US \$ 199, 959.74. Two and a half years later, the State Bank of India, Mumbai, sent a letter to the appellant with reference to the aforesaid credit entry of US \$ 199, 959.74 to appellant's EEFC account and advised that credit was erroneously passed on to the SBI's Nostro account by Bank of America and that the SBI had marked a lien on the appellant's EEFC account (pending rectification). After exchange of correspondences, the bank lifted the lien and debited appellant's EEFC account, realizing an amount of Rs.94,56,094/-.

In the instant appeal, the appellant contended that the bank had no legal right to reverse a legal entry after having credited the same in the appellant's bank account and in any view, without obtaining the consent of the appellant, the entry should not have been reversed.

The respondent-Bank, on the other hand, submitted that the amount in question exclusively belonged to the Bank, which was deposited in the appellant's account by mistake and hence the same could be recovered by debiting the account of appellant which was a normal banking practice done in good faith.

The question for consideration before this Court was whether the State Bank of India was right in debiting the account of appellant, after a long lapse of time, on the

A ground that the amount was wrongly credited into the appellant's account.

Allowing the appeal, the Court

B HELD:1.1. An international fund transfer occurs with either the payer's or the payee's bank, or both banks, located in a country other than that of the currency of the transfer. Most international funds transfers are credit transfers and they operate in a similar way to domestic credit transfers, although international credit transfers C generally involve greater use of correspondent (intermediary) banks. Furthermore, unlike a domestic credit transfer, an international funds transfer may be subject to more than one law. Each account relationship in the transfer – for example, as between the payer and D his own bank, the payer's bank and a correspondent bank, the correspondent and the payee's bank and a payee's bank and the payee – may be subject to its own applicable law which, in each case, may be different from the law governing the underlying obligation between the E payer and the payee. [Para 19] [85-C-D]

1.2. In international funds transfers, each payment message, whether between the payer and his bank, the payee and his bank, or the banks themselves, may be F communicated orally, in writing, or by electronic means. In the past, overseas or cross-border inter-bank payment messages were sent by airmail, telegram, or telex, whereas now most banks communicate with their overseas, or cross-border counterparts using the telecommunication network operated by SWIFT. SWIFT G (Society for Worldwide Interbank Financial Telecommunication), established in the year 1973, is a non-profit making co-operative society organized under the Belgian Law with its headquarters in Brussels. SWIFT operates an international financial message system which H enables payment instructions and related messages,

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including statements, foreign exchange and money market confirmations, collections. SWIFT, therefore, deals with transfer of relevant payment messages. [Paras 13, 20] [85-G; 77-D-E]

1.3. An international funds transfer may be either onshore or offshore. The transfer will be onshore where either the payer's bank or the payee's bank is located in the country of the currency of the transfer and offshore where neither bank is located in the country of the currency of the transfer. [Para 21] [85-G]

1.4. SBI Foreign Department, Kolkata, maintains several Nostro accounts with various foreign banks for transacting global business. Nostro account is an overseas account which is held by a domestic bank in the foreign bank or with the own foreign branch of the Bank. For example, accounts held by State Bank of India with Bank of America, New York is Nostro account of State Bank of India in Bank of America. The SBI, FD, Kolkata, in the instant case, has opened a Nostro account with Bank of America, an account which is Nostro for one bank is Vostro for another. So when, State Bank of India, FD opens a Nostro account with Bank of America, it is Vostro for State Bank of India and Nostro for Bank of America. [Paras 22, 23] [86-A-C]

*A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation* AIR 1967 96; 1966 SCR 796; *ABL International Limited and another v. Export Credit Guarantee Corporation of India Limited and others* (2004) 3 SCC 553 and *Shri Vallabh Glass Works Limited and another v. Union of India and others* (1984) 3 SCC 362; 1984 (3) SCR 180 – cited.

*Paget's Law of Banking, Twelfth Edition*, p.304 and *Law of Bank Payments - Third Edn. (Michael Brindle Raymond Cox) Sweet & Maxwell, 2004* – referred to.

A 2.1. The appellant used to export goods to Abdul  
Zafar Ghulam (importer) and used to bank with State  
Bank of India's Overseas Branch for a number of years.  
Appellant used to export the goods directly and submit  
documents to State Bank of India and it was for the bank  
B to claim payment and report the transaction to Reserve  
Bank of India to claim export benefits. In the instant case,  
SBI, FD, Kolkata records would indicate that on 25.8.2006,  
the Appellant had raised an Invoice No.MV/028/08/2006  
and shipped the goods directly to the importer at  
C Mozambique, Nigeria and subsequently lodged the  
documents with the State Bank of India Overseas Branch,  
Mumbai. The Appellant on 2.11.2006 submitted a copy of  
the export bills to SBI Overseas Branch, Mumbai to see  
the credit of US\$ 199,959.74 in the name of Metro  
D Exporters Pvt. Ltd. (Appellant) in "Smart Screen  
Reconciliation" (SBI used to offer credit entry in SSR  
Software/Swift Message received from Bank of America,  
who had been crediting the amounts from time to time in  
the foreign currency denominated Nostro accounts  
E maintained with them by the State Bank's Foreign  
Department, Kolkata) and in good faith credited the  
above-mentioned amount to the account of the Appellant  
on the same date i.e. 2.11.2006. [Para 25] [88-D-G]

F 2.2. The SBI Foreign Department, Kolkata received  
US\$ 199,959.74 in the Nostro account of Bank of America  
with remittance advice, but the swift message advising  
actual transfer of funds by Bank of America had gone to  
"Bank of India, Mumbai" rightly, instead of "State Bank  
of India, Mumbai". Bank of America, in its statements had  
G correctly informed the credits, but the mistake in naming  
the Bank of India might have occurred either at the end  
of Bank of America, City Bank New York, United National  
Bank, London, AL Zaroone Exchange or at the level of  
the Importer, but, of course, not at the end of SBI, FD,  
H Kolkata or SBI, Mumbai. The Bank of India had informed

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the Bank of America and also the SBI, FD, Kolkata that they have no account in the name of the Appellant. Consequently, the Bank of America recalled the fund on 9.11.2006 and recovered the said amount from the Nostro account of State Bank of India on 13.11.2006. Since Nostro account has been maintained by the SBI, FD, Kolkata with Bank of America having the Account No.006550692214 legally, the SBI, FD, Kolkata had no option but to return the funds to Bank of America as the amount was recalled by the Bank of America since it was the remitter. [Para 26] [88-H; 89-A-D]

2.3. The SBI Overseas Branch, Mumbai, however, committed a mistake when the Appellant had submitted copies of the export bills to it. The SBI Overseas Branch, Mumbai, after seeing the credit of US\$ 199,959.74 in the name of Metro Exporters Pvt. Ltd. (Appellant) in the "Smart Screen Reconciliation" (SSR Software Mumbai), evidently in good faith credited the said amount to the account of Metro Exporters Pvt. Ltd. which was meant for Bank of India. Bank of India had no account in the name of Metro Exporters Pvt. Ltd., hence that Bank had, in turn, informed the Bank of America as well as the State Bank of India. Consequently, the Bank of America had recalled the funds on 9.11.2006 and recovered the said amount from the Nostro account of State Bank of India maintained for Bank of America on 13.11.2006. In other words, an amount of US\$ 199,959.74 had never come into the credit of State Bank of India, either at Kolkata or Mumbai, at any point of time. The amount was credited by Bank of America in the Nostro account of State Bank of India maintained for Bank of America and that the Bank of America had credited the amount in the account of "Bank of India A/c Metro Exporters Pvt. Ltd.", not in the credit of SBI, FD, Kolkata or Mumbai. SBI Overseas Branch, Mumbai, of course, might have committed a mistake in crediting the amount in the appellant's

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A account. SBI Overseas Branch, Mumbai or the SBI Foreign Department, Kolkata, it may be true, had no control over the US\$ 199,959.74 which was lying in Nostro account maintained by SBI, FD, Kolkata for Bank of America. [Para 27] [89-E-H; 90-A-C]

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3. The Bank, of course, has a right to recover the money paid under a mistake as per Section 72 of the Indian Contract Act. Facts, in this case, however clearly indicate, so far as importer is concerned, he had already paid the amount and the SBI, Foreign Department, Kolkata had received the amount in the Nostro account of Bank of America with remittance advice to Bank of India, instead of SBI, Overseas Branch, Mumbai. Appellant was also informed on 2.12.2006 of the export collection advice by the SBI for US\$ 199,959.74 and the appellant received the amount. Bank might have committed a mistake, but now it would be impossible for the appellant to recover the amount from the importer since, so far as the importer is concerned, it had paid the amount. If the SBI, Overseas Branch had not given credit of the amount, then, appellant could have proceeded against the importer at the earliest opportunity, but now the question is whether the appellant should suffer for the mistake committed by the Bank, to which the answer is in the negative. [Paras 28, 32] [90-D; 92-C-F]

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*Jammu & Kashmir Bank Ltd. v. Attar-Ul-Nissa and others* AIR 1967 SC 540: 1967 SCR 792 and *Thomas Abraham and six others v. National Tyre and Rubber Co., Kottayam* (1973) 3 SCC 458 – referred to.

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*United Overseas Bank v. Jiwani* (1977) 1 All ER 733; *R.E. Jones Ltd. v. Waring and Gillow Ltd.* (1926) AC 670 and *Kelly v. Solari* (1841) 9 MW 54 – referred to.

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4. The judgment of the High Court is set aside and the reliefs prayed for in the writ petition, are granted to

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the appellant. Bank is directed to comply with the order within one month. However, it is open to the SBI to use their good offices to follow up the matter with the Bank of America or Bank of India or any other entity, which is in receipt of control of subject money and recover the amount, if the amount is still available, for which, of course, the appellant cannot raise any objection. [Para 33] [92-G-H; 93-A]

**Case Law Reference:**

1966 SCR 796	cited	Para 4	C
(2004) 3 SCC 553	cited	Para 4	
1984 (3) SCR 180	cited	Para 4	
1967 SCR 792	referred to	Para 29	D
(1977) 1 All ER 733	referred to	Para 30	
(1926) AC 670	referred to	Para 30	
(1973) 3 SCC 458	referred to	Para 30	E

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 4807 of 2014.

From the Judgment and Order dated 16.07.2010 of the High Court of Judicature at Bombay in Writ Petition No. 2202 of 2009.

Dushyant Dave, Bharat Sangal, Sanaya Dadachanji, Saumya Agarwal, I. Abenla Aier for the Appellants.

J. P. Cama, Sanjay Kapur, Anmol Chandan, S. R. Patodia, Dua Associates for the Respondents.

The Judgment of the Court was delivered by

**K.S. RADHAKRISHNAN, J. 1.** Leave granted.



A 2. We are, in this case, concerned with the question  
whether the State Bank of India, Overseas Branch, Mumbai is  
right in debiting the appellant's EEFC A/c EURO  
No.10937619705 an amount of €136,027.03, after a long lapse  
of time, on the ground that it was wrongly deposited in the  
B appellant's account and driving the appellant to recover the  
amount by way of civil proceedings.

3. Writ Petition under Article 226 was filed by the Appellant  
challenging the action of the Bank which was dismissed by the High  
Court on the ground that it is a dispute which arose out of a  
C contractual relationship between the parties and hence the  
appropriate remedy for the appellant was by way of a civil suit and  
not a writ petition under Article 226 of the Constitution of India.  
Aggrieved by the same, this appeal has been preferred by way of  
special leave.

D 4. Shri Dushyant Dave, learned senior counsel appearing  
for the appellant, submitted that the High Court has committed  
a grave error in holding that the remedy available to the  
appellant is to approach the civil court since the dispute arose  
is of contractual nature. Learned senior counsel submitted that  
E since the State Bank of India is a nationalized bank and is a  
State within the meaning of Article 12 of the Constitution of  
India, the writ petition under Article 226 is maintainable and the  
bank has no legal right to reverse a legal entry after having  
credited the same in the appellant's account. Learned senior  
F counsel submitted that, in any view, without obtaining the  
consent of the appellant, the entry should not have been  
reversed. In support of his contention reliance was placed on  
the Judgment of this Court in *A.K. Gupta and Sons Ltd. v.  
Damodar Valley Corporation* AIR 1967 96. Learned senior  
G counsel also submitted that the writ petition is perfectly  
maintainable and the reliance was placed on the Judgment of  
this Court in *ABL International Limited and another v. Export  
Credit Guarantee Corporation of India Limited and others*  
(2004) 3 SCC 553 and *Shri Vallabh Glass Works Limited and  
H another v. Union of India and others* (1984) 3 SCC 362.

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5. Shri J.P. Cama, learned senior counsel appearing for the respondent-bank, explained the circumstances which led to the bank in reversing the entry. Learned senior counsel submitted that the amount credited in the appellant's account is not its, but the amount exclusively belonged to the Bank, which was deposited in the appellant's account by mistake, and hence could be recovered debiting its account, which is a normal banking practice and was done in good faith. Learned senior counsel submitted that only when the Bank debits an amount which exclusively belongs to the account holder, then only the bank needs consent of the account holder. Learned senior counsel submitted that the Bank had a lien on the amount deposited in the appellant's account and it is that which could be debited from the appellant's account. Learned senior counsel submitted that, in any view, the High Court is justified in holding that even if the appellant has any grievance, the same could be remedied only through a regular civil suit and not by way of writ petition under Article 226 of the Constitution of India.

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**FACTS**

6. The appellant, in the course of its business activities, exported steel coils to M/s Abdul Zafar Ghulam at Nacala, in Mozambique (for short 'the importer') in August 2006 and raised an invoice No.MV/028/08/2006 on the importer for an amount of US\$ 581,841.65 dated 25.08.2006. Appellant received part payment in relation to the above-mentioned invoice on 18.10.2006, 20.10.2006, 08.11.2006 and 17.11.2006, on the basis of the credit advice raised by the SBI Overseas Branch, Mumbai from time to time. On 02.11.2006 the appellant was informed of the export collection payment advice by the State Bank of India for US\$ 199,959.74.

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7. The appellant stated that after two and a half years on 07.03.2009 State Bank of India, Mumabi, sent a letter to the appellant with reference to the credit entry of US \$ 199,959.74 dated 02.11.2006 to appellant ECFC account and advised that credit was erroneously passed on to the SBI's Nostro account

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A by Bank of America and that the SBI had marked a lien on the  
appellant's EEFC account (pending rectification). Few  
correspondence and meetings took place between the parties  
on this aspect. Later, the appellant received a letter on  
22.10.2009 from the SBI calling upon the appellant to restore  
B the credit of US\$ 199,959.74 within few days failing which, the  
appellant was informed, they would initiate further steps. Yet  
another letter dated 28.10.2009 was also received by the  
appellant from the bank calling upon it to restore the credit of  
US\$ 199,959.74 along with overdue interest @ 18 p.a. from  
C the date of credit to the date of re-payment i.e. Rs.48,18,149/  
- Later on 29.10.2009 the bank lifted the lien and debited  
appellant's EEFC account (EURO No.10937619705), realized  
the amount of Rs.94,56,094/-.

D 8. We have gone through the writ petition as well as the  
various affidavits filed by the parties including the counter  
affidavit filed by the Bank of America and the report of the Chief  
Operating Officer, submitted following the order passed by this  
Court on 22.2.2012. The fact that emerges is that the appellant  
was maintaining a Current Overseas Account with the State  
E Bank of India, Cuffe Parade Branch, Mumbai. In August 2006  
it exported steel coils to the importer at Mozambique. The  
export documents were not routed through the SBI and SBI was  
neither the collecting bank, nor the bills were discounted with  
SBI Mumbai. Any foreign remittance to overseas branch, Cuffe  
F Parade would carry the said branch code which is 047991 in  
addition to the beneficiary's name.

G 9. The SBI, Foreign Department, Kolkata (SBI, FD,  
Kolkata) maintains several Nostro accounts with various foreign  
banks for transacting business for global exporters, wherein  
large number of debit and credit transactions take place. The  
SBI, FD, Kolkata on 02.11.2006 received the remittance advice  
from the Bank of America in favour of the appellant's account  
at "Bank of India, Overseas Branch, Mumbai". The SBI, FD,  
H Kolkata, as instructed by Bank of America sent the amount to

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Bank of India on 03.11.2006. The Bank of India, in turn, informed the SBI, FD, Kolkata that they do not have any account of the Metro Exporter (the appellant) which fact was, in turn, informed to the Bank of America. The Bank of America on 09.11.2006 recalled the funds and accordingly the SBI, FD, Kolkata refunded the amount to Bank of America on 13.11.2006.

10. SBI Overseas Branch, Mumbai, while reconciling its account with the SBI, FD, Kolkata, in the year 2009, came to know that the amount which was credited in the account of the appellant was re-called by the Bank of America in the year 2006 itself, and therefore, the amount was not available with SBI, FD, Kolkata. SBI, Overseas Branch, Mumbai, then on 6.3.2009 marked a lien on the appellant's EEFC account. In other words, the SBI, Cuffe Parade Branch had credited an amount of US \$ 199,959.74 in the appellant's EEFC account erroneously, contrary to the advice made by Bank of America, which is clearly reflected in the letter dated 07.03.2009 sent by the SBI, Overseas Branch, Mumbai to the appellant, which reads as under:

"STATE BANK OF INDIA  
Overseas Branch, World Trade Centre,  
Post Box No.16094, Cuffe Parade, Mumbai-400005  
Tel:22189262, 22189161, Fax:221844328, 22188550  
Email:sbi04791@sbi.co.in  
Cable:OSBRANDY-MUMBAI, Branch Code:4791

Dated 07.03.2009

The Managing Director,  
Metro Exporters Pvt. Ltd.  
132, Kakad Chambers,  
Dr. Annie Beasant Road,  
Worli, Mumbai-400019

Dear Sir,

A Credit entry of USD 1,99,959.74 dated 02.11.2006 to your EEFC Account

B We refer to the above amount credited to your EEFC account and have to advise that the credit was erroneously passed on to us by Bank of America (BOA). They had claimed from our FD Deptt. Kolkatta citing that the same was meant for Bank of India and not for our NOSTRO account.

C Accordingly, our FD Deptt. Kolkata had repaid the amount to BOA on 13.11.2006 at their request. Due to this amount credited by us to your EEFC account remained unreconciled in the close of corresponding credit.

D As the matter is old and we are required to square off the above outstanding NOSTRO unreconciled entry from our books, we are in the process of verifying our old records. In the meanwhile we request you to submit us the full details of the amount credited to your account to enable us to take a view. We further advise that we have today lien-marked your EEFC account pending rectification of our outstanding entry.

E Yours faithfully,

Sd/-

F Chief Operating Officer”

G 11. SBI, Overseas Branch, Mumbai, as already stated, on 29.10.2009 lifted the lien and debited Euro 1.36 lakhs and realized Rs.94 lakhs from the appellant. We have to examine whether the SBI, Overseas Branch, Mumbai or even the SBI, FD, Kolkata had ever received US\$ 199,959.74 in the SBI's account sent by the importer to the appellant. The stand of the bank is that the amount had never come to the SBIs account either at Mumbai or at Kolkata, but in the account of Bank of India.

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12. We have to first examine, before dealing with the main issue, what is actually meant by SWIFT Message and what is meant by Nostro account and whether the SBI, FD, Kolkata or the SBI, Overseas Branch, Mumbai had got any control over the Nostro account maintained by the SBI, FD, Kolkata for Bank of America when the advice given by the Bank of America states "Bank of India A/c Metro Exporters Pvt. Ltd.", instead of "SBI". The importer, in this case had made a payment of US\$ 581.841.65 meant for the appellant, but one part of the said amount i.e. US\$ 199.959.74 was received by the SBI, FD, Kolkata in Nostro account of Bank of America, New York with remittance advice to Bank of India.

**SWIFT:**

13. SWIFT (Society for Worldwide Interbank Financial Telecommunication), established in the year 1973, is a non-profit making co-operative society organized under the Belgian Law with its headquarters in Brussels. SWIFT operates an international financial message system which enables payment instructions and related messages, including statements, foreign exchange and money market confirmations, collections. SWIFT, therefore, deals with transfer of relevant payment messages. (For further details, see *Paget's Law of Banking, Twelfth Edition, Page 304*)

14. Bank of America sent an Electronic SWIFT Message dated 01.11.2006 to SBI, Overseas Branch, which reads as under:

WTX0010

PAGE 421857

Fulltran Report

WORK OF 11/01/06

RUN 11/07/06 04:32

BANK OF AMERICA –CONFIDENTIAL

< < AIX VERSION 1.2 > > >

A RCVD FROM CITIBANK N A NEW YORK NEW YORK  
SENDER'S DDA # \*\*\*Message: NOT TESTED\*\*\*  
TRN REF #:20061101-00125666

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B \*\*\* MESSAGE ENVELOPE\*\*\* (Bank: NYK)  
SRC:CHP CALLER SND DATED: 06/11/01  
RPT# AMT:199,959.74 CUR:USD TRDR#  
TEST: DUE: TYPE: FTR/ FUNDS:S CHG:DB:N CD:N  
COM:X CBL:N

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C DBT P/0008 CDT D/006550692214 ADV:WIR  
DEBIT VAL:06/11/01 CREDIT VAL:06/11/01  
DEPT: IDFMT STATE BANK OF INDIA  
CITI BANK N A DOLLAR RECONCILIATIONS,  
19 FLOOR

D NEW YORK NEW YORK JEEVAN SUDHA 42/C,  
JAWAHAR LAL NEHRU  
KOLKATA 700071, INDIA

SNDR REF NUM: SPECIAL INSTRUCTIONS  
S0763050E5F401

E ORDERING BANK: AC 655892218 IS FOR ALL  
S/NBPAGB2L  
UNITED NATIONAL BANK DEBIT MT103  
2, ROOK STREET AND RELATED REFUND ONLY  
LONDON, GB

F ORIG: BNF BANK:S/BKIDINBBBOS WIR:Y  
AL ZAROONI EXCHANGE BANK OF INDIA  
P O BOX 116348 (OVERSEAS BRANCH)  
AL SABKHA STREET MUMBAI, INIDA  
DEIRA DBAI (U.A.E.) BNF:/ CHG:S BK?N

G METRO EXPORTERS PVT.LTD.  
ORIG TO BNF INFO:  
B/O AL TAWFEER TRADING  
LESS CHARGES

H \*\*\*\* CREDIT PAYMENT MESSAGE TEXT\*\*\*\*

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Message Text

A

Destination:

D/SBININBBFXD

STATE BANK OF INDIA

B

DOLLAR RECONCILIATIONS, 19 FLOOR

JEEVAN SUDHA 42/C, JAWAHARLAL NEHRU

KOLKATA 700071, INDIA

C

Output Time:12:29:32 Output sequence number:071446

Input:

S/BOFAUS3N

BANK OF AMERICA, NA

NEW YORK BRANCH

D

15. SWIFT Message, referred to above, would indicate that Nostro Account No.CDTD/006550692214 was maintained by the SBI, FD, Kolkata for Bank of America. On receiving the electronic SWIFT Message from Bank of America, the SBI, FD, Kolkata sent the amount to the Bank of India because that was the advice given by Bank of America. Bank of India then through their null and void SWIFT Message dated 3.11.2006 informed the Bank of America that they did not have any account in the name of 'Metro Exporters' (the appellant herein), the said communication is extracted herein:

E

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"mid M061122-000689 current list status RATTACH type COMIN

G

Attached iid 3105-03NOV06 memo CLOSED CASE 3105-03NOV06

Next 22-NOV-06

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A PCRM468819

QQPCRM

VFFV MTP:199 CUR:USD AMT:199959.74 SRC:SWF-  
SWF

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CRM

STX TRN:WTX/20061122-00064705 (01)

\*\*AUTHENTICATED MSG\*\*

C

FROM:/MI-061122BKIDINBBACOS5378814423

BANK OF INDIA

(OVERSEAS BRANCH)

D

KOLKATA / KOLKATA, INDIA

TO: /MO-061122BOFAUS3NBXXX5751696203

BANK OF AMERICA N.A.

NEW YORK BRANCH

E

NEW YORK, NY 10048

(CUSTOMER SERVICE USE ONLY)

DATE:061122

::199 CUSTOMER TRANSFER FREE FORMAT

F

MESSAGE

:20 SENDERS REF:4048/REM/AS/012

:21 RELATED REF:BOA3105-03NOV06

G

:79 TEXT

REF YOUR MT-199 DTD.15.11.06 TO BKIDINBBCOS  
FOR CANCELLATION OF MT-103 DTD.01.11.06 FOR  
USD199.959.74 UNDER YOUR REF.2006110100125666

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IN FAVOUR OF METRO EXPORTERS PVT. LTD. WE  
HAVE ALREADY INTIMATED YOU THAT WE ARE NOT

EFFECT THE PAYMENT AND TREAT THE MT-103 AS  
NULL AND VOID.

AS THE RECEIVER OF THIS MESSAGE WAS OUR  
MUMBAI OVERSEAS BRANCH, WE HAVE SENT ALL  
ORIGINAL PAPERS TO THEM FOR FINAL DISPOSAL.  
WITH THIS WE CLOSE OUR FILE.

REGARDS

REMITTANCE.

AMT:2006112200064705

\_11220700

WTX2006112200064705-1

WXB089841 11220405

|GATEWY\IID:3105-03NOV06\MEMO:SWF 199959.74  
usd 199\

MSN:061122-001034\AMT:199959.74\USD|

EUPD By SYSTEM to Z8JR /CLOSED CASE3105-  
03NOV /22-NOV-06 07:11

EATT By Z8JR /CLOSED CASE3105-  
03NOV06 /22-NOV-06 08:28

Attached to iid :3105-03NOV06"

16. Bank of America, in turn, sent a recall message dated  
3.11.2006 to the SBI, FD, Kolkata, which reads as under:

"Template name RTN-FULLRECALL Corr type SWF  
Queue NORMAL verify flat Y iid 3105-03NOV 06 party name  
STATE BANK OF INDIA

CEDIT:SWIFTT

A :CMAP : SWFHDRT  
:DEST : TEMP : RTN-FULLRECALLSWF  
QQ NYKO  
.NYCS MTP:199 CUR:NOA AMT:0.00

B SBININBB  
STX  
a  
:TEXT:X  
:20:BOA3105—3NOV06

C :21: 2006110100125666  
:79:PLEASE RETURN OUR PAYMENT DATED  
01-NOV-06  
REFERENCE 2006110100125666

D PAYMENT DETAILS AS FOLLOWS, AVOIDING  
DUPLICATION. VALUE DATE 01-NOV-06  
AMOUNT 199,959.74USD  
BENEFICIARY CUSTOMER  
METRO EXPORTERS PVT LTD.

E ORDERING CUSTOMER AL ZAROONI EXCHANG  
PER  
REMITTER REQUEST  
PLEASE ADVISE US THE DATE YOU

F HAVE RETURNED THE PAYMENT, QUOTING  
OUR REFERENCE BOA3105-03NOV06.  
REGARDS  
MNELLESIA HENRY  
BANK OF AMERICA WT INVESTIGATIONS

G PHONE 646.733.4550 FAX 212-378-4900”

17. Bank of America then, on the basis of the debit authorization from the SBI, FD, Kolkata debited the Nostro account No.6550692214, which is reflected in the communication dated 13.11.2006 and the same reads as

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METRO EXPORTERS PVT. LTD. v. STATE BANK OF INDIA [K.S. RADHAKRISHNAN, J.] 83

under:

"mid mo61113-000610 current list status RATTACH type  
COMIN attached iid 3105-03NOV06 memo CLOSED  
CASE 3105-03NOV06 next 13-NOV-06

PCRM450151

QQ PCRM

.RBKN MTP:199 CUR:USD AMT: 199959.74 SRC:SWF-  
SWF

CRM

STX TRN:WTX/20061113-00045762 (01) \*\*  
AUTHENTICATED MSG \*\*

FROM: /MI-061113BOFAUS3NBXXX5734497703  
STATE BANK OF INDIA  
(FOREIGN DEPARTMENT)  
'TATA CENTRE 43 JAWAHARLAL NEHRU RD  
KOLKATA (CALCUTTA), INDIA

TO: /MO-061113BOFAUS3NBXXX5734497703

BANK OF AMERICA N.A.A

NEW YORK BRANCH

NEW YORK, NY 10048

(CUSTOMER SERVICE USE ONLY)

DATE: 061113

:: 199 CUSTOMER TRANSFER FREE FORMAT  
MESSAGE

: 29 SENDERS REF:E2/BOFA/407/06

:79 TEXT:

AS PER BANK OF AMERICA REQUEST UNDER

REFERENCE MT 199 DATED 08 NOVEMBER 2006

WE HEREBY AUTHORISE YOU TO DEBIT NOSTRO A/

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A C. NO. 6550692214 WITH VALUE DATE : 11 NOVEMBER  
2006 WITH A SUM OF USD 199939.74 IN REVERSAL  
OF YR CREDIT FOR USD 199,959.74  
DATED 01 NOVEMBER 2006 UNDER YR  
TRANSACTION

B REF. NO. 2006110100125666  
2. PLS AVOID DUPLICATION.  
3. REASON FOR REFUND: FUNDS NOT MEANT FOR  
US.

C REMITTING BANK REQUESTING REFUND.  
4. DEDUCTION OF USD 20.00 REPRESENTS OUR  
HANDLING CHARGES.  
5. PLS QUOTE OUR REFERENCE NUMBER IN  
FUTURE

D CORRESPONDENCE  
6. YR REF BOA 3105 – 03 NOV 06  
AMI: 2006111300045762

- 11130251  
E - WTX2006111300045762-1  
- WXB670843 11122357  
- |GATEWY\IID:3105-OCNOV06\MEMO:SWF  
199959.74 USD 199\

MSN: 061113-000363\AMT: 1999959L.74/USD\  
F ·EUPD BY SYSTEM to Z8JR / CLOSED CASE3105-  
03NOV06 / 13-NOV-06 02:57  
·EATT BY Z8JR /CLOSED CASE3105-03NOV06 /14-  
NOV-06 09.17

G attached to iid: 3105-03NOV06”

18. The above communication would clearly indicate that  
the SBI, FD, Kolkata has maintained a Nostro account  
No.6550692214, with Bank of America. It was on the debit  
authorization of Bank of America, the SBI, FD, Kolkata debited

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the amount of US\$ 199,939.74 from its Nostro account.

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**INTERNATIONAL FUNDS TRANSFER**

19. An international fund transfer occurs with either the payer's or the payee's bank, or both banks, located in a country other than that of the currency of the transfer. Most international funds transfers are credit transfers and they operate in a similar way to domestic credit transfers, although international credit transfers generally involve greater use of correspondent (intermediary) banks. Furthermore, unlike a domestic credit transfer, an international funds transfer may be subject to more than one law. Each account relationship in the transfer – for example, as between the payer and his own bank, the payer's bank and a correspondent bank, the correspondent and the payee's bank and a payee's bank and the payee – may be subject to its own applicable law which, in each case, may be different from the law governing the underlying obligation between the payer and the payee.

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20. In international funds transfers, each payment message, whether between the payer and his bank, the payee and his bank, or the banks themselves, may be communicated orally, in writing, or by electronic means. In the past, overseas or cross-border inter-bank payment messages were sent by airmail, telegram, or telex, whereas now most banks communicate with their overseas, or cross-border counterparts using the telecommunication network operated by SWIFT.

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21. An international funds transfer may be either onshore or offshore. The transfer will be onshore where either the payer's bank or the payee's bank is located in the country of the currency of the transfer and offshore where neither bank is located in the country of the currency of the transfer.

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[From the Law of Bank Payments - Third Edn. (Michael Brindle Raymond Cox) Sweet & Maxwell, 2004]

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A 22. SBI Foreign Department, Kolkata, maintains several  
Nostro accounts with various foreign banks for transacting  
global business. Nostro account is an overseas account which  
is held by a domestic bank in the foreign bank or with the own  
foreign branch of the Bank. For example, accounts held by  
B State Bank of India with Bank of America, New York is Nostro  
account of State Bank of India in Bank of America.

23. The SBI, FD, Kolkata, in the instant case, has opened  
a Nostro account with Bank of America, an account which is  
Nostro for one bank is Vostro for another. So when, State Bank  
C of India, FD opens a Nastro account with Bank of America, it  
is Vostro for State Bank of India and Nostro for Bank of  
America.

#### **NOSTRO AND VOSTRO ACCOUNTS:**

D 24. This banking principle is well articulated in the above-  
mentioned book and we extract the same as under :

##### *“(a) Onshore transfers*

E *Where the transfer is onshore, the payer’s bank and the*  
*payee’s bank may be correspondents, i.e. one maintains*  
*an account with the other, thereby allowing bilateral*  
*settlement between them. In such cases, the nostro*  
*account is usually denominated in the foreign currency*  
F *and the vostro account in the domestic currency. Thus,*  
*for example, where a London bank maintains a US dollar*  
*account at a New York bank, the account would be nostro*  
*on the books of the London bank and vostro on the*  
*books of the New York bank. Inter-bank payment between*  
G *the correspondents would appear as a credit to the*  
*account on the books of the payer’s bank and a debit to*  
*the account on the books of the payee’s bank. In the case*  
*of a US dollar payment from the New York bank to the*  
*London bank, the New York bank credits the vostro*  
H *account and the London bank debits the nostro account,*

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*but where the US dollar payment is from the London bank to the New York bank, the London bank credits the nostro account and the New York bank debits the vostro account. The movement of credit balances in these US dollar transfers can be illustrated as follows:*

*(b) Account transfers between correspondent banks*

**(a) US\$ transfer from New York to London**

New York ..... London

US\$ account                      US\$ account

“vostro”                              “nostro”

credit                                      debit

**(b) US\$ transfer from London to New York**

London ..... New York

US\$ account                      US\$ account

“vostro”                              “nostro”

debit                                      credit

Where the payer’s bank and the payee’s bank are not correspondents, it will be necessary to employ the services of at least one correspondent bank. Where funds are transferred from the payer’s bank located overseas to the payee’s bank located in the country of the currency, the payer’s bank will employ a correspondent bank in the country of the currency to transfer funds to the payee’s bank. Typically, the transfer between the local correspondent and the payee’s bank will be through the local clearing system, but where the payer’s bank and the payee’s bank use the same local correspondent the

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A transfer will be through account adjustments on the local  
correspondent's books. Where funds are transferred from  
the payer's bank located in the country of currency to the  
payee's bank located overseas, the payer's bank will  
transfer funds to the local correspondent of the payee's  
B bank, typically through the local clearing system, and that  
correspondent will complete the transfer to the payee's  
bank."

25. We may, bearing in mind the above-mentioned  
C principles of international banking, examine the point of  
controversy. Appellant, as already indicated, used to export  
goods to Abdul Zafar Ghulam (importer). Appellant used to  
bank with State Bank of India's Overseas Branch for a number  
of years. Appellant used to export the goods directly and submit  
D documents to State Bank of India and it was for the bank to  
claim payment and report the transaction to Reserve Bank of  
India to claim export benefits. In the instant case, SBI, FD,  
Kolkata records would indicate that on 25.8.2006, the Appellant  
had raised an Invoice No.MV/028/08/2006 and shipped the  
E goods directly to the importer at Mozambique, Nigeria and  
subsequently lodged the documents with the State Bank of India  
Overseas Branch, Mumbai. The Appellant on 2.11.2006  
submitted a copy of the export bills to SBI Overseas Branch,  
Mumbai to see the credit of US\$ 199,959.74 in the name of  
Metro Exporters Pvt. Ltd. (Appellant) in "Smart Screen  
F Reconciliation" (SBI used to offer credit entry in SSR Software/  
Swift Message received from Bank of America, who had been  
crediting the amounts from time to time in the foreign currency  
denominated Nostro accounts maintained with them by the  
State Bank's Foreign Department, Kolkata) and in good faith  
G credited the above-mentioned amount to the account of the  
Appellant on the same date i.e. 2.11.2006.

26. The SBI Foreign Department, Kolkata received US\$  
199,959.74 in the Nostro account of Bank of America with

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remittance advice, but the swift message advising actual transfer of funds by Bank of America had gone to "Bank of India, Mumbai" rightly, instead of "State Bank of India, Mumbai". Bank of America, in its statements, referred to in the earlier part of this judgment, had correctly informed the credits, but the mistake in naming the Bank of India might have occurred either at the end of Bank of America, City Bank New York, United National Bank, London, AL Zaroon Exchange or at the level of the Importer, but, of course, not at the end of SBI, FD, Kolkata or SBI, Mumbai. The Bank of India had informed the Bank of America and also the SBI, FD, Kolkata that they have no account in the name of the Appellant. Consequently, the Bank of America recalled the fund on 9.11.2006 and recovered the said amount from the Nostro account of State Bank of India on 13.11.2006. Since Nostro account has been maintained by the SBI, FD, Kolkata with Bank of America having the Account No.006550692214 legally, the SBI, FD, Kolkata had no option but to return the funds to Bank of America as the amount was recalled by the Bank of America since it was the remitter.

27. The SBI Overseas Branch, Mumbai, however, committed a mistake when the Appellant had submitted copies of the export bills to it. The SBI Overseas Branch, Mumbai, after seeing the credit of US\$ 199,959.74 in the name of Metro Exporters Pvt. Ltd. (Appellant) in the "Smart Screen Reconciliation" (SSR Software Mumbai), evidently in good faith credited the said amount to the account of Metro Exporters Pvt. Ltd. which was meant for Bank of India. Bank of India had no account in the name of Metro Exporters Pvt. Ltd., hence that Bank had, in turn, informed the Bank of America as well as the State Bank of India. Consequently, the Bank of America had recalled the funds on 9.11.2006 and recovered the said amount from the Nostro account of State Bank of India maintained for Bank of America on 13.11.2006. In other words, an amount of US\$ 199,959.74 had never come into the credit of State Bank of India, either at Kolkata or Mumbai, at any point of time. The

A amount, as already stated, was credited by Bank of America  
in the Nostro account of State Bank of India maintained for  
Bank of America and that the Bank of America had credited  
the amount in the account of "Bank of India A/c Metro Exporters  
Pvt. Ltd.", not in the credit of SBI, FD, Kolkata or Mumbai. SBI  
B Overseas Branch, Mumbai, of course, might have committed  
a mistake in crediting the amount in the appellant's account.  
SBI Overseas Branch, Mumbai or the SBI Foreign Department,  
Kolkata, it may be true, had no control over the US\$ 199,959.74  
which was lying in Nostro account maintained by SBI, FD,  
C Kolkata for Bank of America. But the question is whether the  
SBI Overseas Branch, Mumbai was right in debiting Euro 1.36  
lakh and realizing Rs.94 lakh from the account of the Appellant,  
on 29.10.2009, after a period of more than two years, eating  
away the valuable time of the appellant to proceed against the  
importer to recover the amount, if the Bank was at fault  
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28. The Bank, of course, has a right to recover the money  
paid under a mistake as per Section 72 of the Indian Contract  
Act, which reads as under :

E **"72. Liability of person to whom money is paid or  
thing delivered by mistake or under coercion.- A  
person to whom money has been paid, or anything  
delivered, by mistake or under coercion, must repay or  
return it."**

F 29. Learned counsel appearing for the Appellant brought  
to our notice a judgment of this Court in *Jammu & Kashmir  
Bank Ltd. v. Attar-Ul-Nissa and others* AIR 1967 SC 540. In  
that case, this Court had held that if a third party, by mistake  
deposits the money in account of some other person, as soon  
G as the money is deposited in the account of such third person,  
who is a customer of the bank, the money becomes the money  
of customer, and it is not open to the bank in such  
circumstances, without obtaining the consent of the customer,  
to reverse the entry of credit made in his account and in effect  
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METRO EXPORTERS PVT. LTD. v. STATE BANK OF INDIA [K.S. RADHAKRISHNAN, J.] 91

pay back the money to the person who had deposited it, even though it might have been deposited by mistake. In this connection, we may refer to a judgment in *United Overseas Bank v. Jiwani* (1977) 1 All ER 733, wherein the defendant had an account in Switzerland in which there was a credit of US\$ 11000. The defendant intended to purchase a hotel as an investment. The Bankers in Switzerland sent by telex US\$ 11000 to London bankers at the instance of the defendant and also an advice confirming the telex. The London bank by a mistake credited two sums of US\$ 11000 to the defendant. Later, when the defendant enquired about its balance, it was shown to be about US\$ 32000. The defendant purchased a hotel out of the amount with the London Bankers. Facts would reveal, but for this balance shown, he would not have been able to purchase the hotel. The bankers rectified its error. Consequently, there was a debit balance of US\$ 9000 as against the defendant. Plaintiff bank demanded the money of the overdraft. It was held by the Court that the extra money credited to the defendant's account was under mistake of fact and the bank was entitled to recover it.

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30. In *R.E. Jones Ltd. v. Waring and Gillow Ltd.* (1926) AC 670, the House of Lords upheld the principle of *Kelly v. Solari* (1841) 9 MW 54 stating that however grossly negligent a payer may be and whatever lapses he may be guilty of, he is entitled to recover if he had paid the money under a mistake of fact, provided always that he owes no duty to the payee not to make a mistake. In *Thomas Abraham and six others v. National Tyre and Rubber Co., Kottayam* (1973) 3 SCC 458, this Court held that the law implied an obligation to repay the money which is an unjust benefit.

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31. We are of the view, even if the amount was credited by the Bank to the appellants' account by a mistake, the question is whether, in the facts and circumstances of this case, the Bank is justified in marking a lien on the appellants' EEFC

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A account, thereby realizing the amount paid. Bank, as already  
stated, had credited the amount in the appellants' EEFC  
account on 2.11.2006 and, so far as the appellants are  
concerned, their claim as against the importer stood satisfied,  
since the same forms part of a series of transactions. The  
B question is whether the Bank can, after a lapse of more than  
two years, that is on 6.3.2009, could mark a lien on the  
appellants' EEFC account and later receive amount by making  
a debit entry on 29.10.2009 for an aggregate amount of Euro  
1,36,027.

C 32. Facts, in this case, clearly indicate, so far as importer  
is concerned, he had already paid the amount and the SBI,  
Foreign Department, Kolkata had received the amount in the  
Nostro account of Bank of America with remittance advice to  
Bank of India, instead of SBI, Overseas Branch, Mumbai.  
D Appellant was also informed on 2.12.2006 of the export  
collection advice by the SBI for US\$ 199,959.74 and the  
appellant received the amount. Bank might have committed a  
mistake, but now it would be impossible for the appellant to  
recover the amount from the importer since, so far as the  
E importer is concerned, it had paid the amount. If the SBI,  
Overseas Branch had not given credit of the amount, then,  
appellant could have proceeded against the importer at the  
earliest opportunity, but now the question is whether the  
appellant should suffer for the mistake committed by the Bank,  
F to which our answer is in the negative.

G 33. Under such circumstances, we are inclined to allow the  
appeal and set aside the judgment of the High Court and grant  
the reliefs prayed for in the writ petition, to the appellant. Bank  
is directed to comply with the order within one month from today.  
However, we make it clear that it is open to the SBI to use their  
good offices to follow up the matter with the Bank of America  
or Bank of India or any other entity, which is in receipt of control  
of subject money and recover the amount, if the amount is still

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INDIA [K.S. RADHAKRISHNAN, J.]

available, for which, of course, the appellant cannot raise any objection. A

34. The Appeal is allowed as above, however, there will be no order as to costs.

Bibhuti Bhushan Bose

Appeal allowed. B