



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PPR/222/16-DD/102/INF/16/DC/977/2018]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

In the matter of:

CA. Rajeev Kumar (M. No. 501207)

P – 141, Shivalik Nagar,

BHEL

Hardwar - 249403

[PPR/222/16-DD/102/INF/16/DC/977/2018]

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. CA. Amarjit Chopra, Government Nominee**
- 3. CA. Rajendra Kumar P, Member**

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 04.09.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Rajeev Kumar (M. No. 501207)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 26th November, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 16th December, 2019 at New Delhi.

3. Further, on 16th December, 2019, the Committee noted that the Respondent was not present and even there was no intimation for his presence. Further, he has not made any



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submission on the findings of the Committee holding him Guilty of professional misconduct within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. The Committee noted that there is only one charge against the Respondent i.e. he had issued 9 certificates in Form 15CA/CB in favor of M/s J. K. Trading Corporation, New Delhi (hereinafter referred to as the '**Entity**') for making Advance Import Payment to Hong Kong and US. These certificates were issued without verifying its credentials. The proprietor, Mr. Jiban Krishna Goswami of said entity is not traceable and no bill of entry has been submitted to the Informant/complainant bank for the Advance Import Payment transactions done through the account of the Entity. The Informant/Complainant Bank has allowed Advance Import Payment to the Entity on the basis of Form 15 CA/ 15CB certificates issued by the Respondent.

On visiting the Respondent for whereabouts of Jiban Krishna Goswami, the bank was unable to locate the office of the Respondent.

5. The Committee noted the findings contained in Report of the Disciplinary Committee holding the Respondent guilty of professional misconduct, which are as under:-

5.1 The Committee noted that the Respondent had issued 9 certificates in Form 15CA, 15CB in favour of M/s J.K. Trading Corporation, New Delhi. The said certificates are issued under Rule 37BB of the Income Tax Rules. As per the said Rules, the person responsible for paying to a non-resident any sum chargeable under the Income Tax Act shall obtain this certificate from a Chartered Accountant. It is to be understood that this is a certificate and is governed by Guidance Note "Audit Reports for Special Purpose Certificates". In specific clause 2.1 (c) contains the scope for issue of such certificates which is "Compliance with requirements of any Agreement or Statute or Regulations". Paragraph 4.2 A of the said Guidance Note is important and is reproduced as under:



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“4.2 A reporting auditor is not an expert on purely technical matters and as such, when he is required to report on or certify such matters (e.g., composition or quality of a product) which are of paramount importance and constitute the very basis of the figures contained in the statement, he should state his limitations clearly in the report or certificate. At the same time, he should indicate the extent to which he has been able to exercise his own professional skill and judgment with regard to the matter being reported upon. For instance, he may state that, for the purpose of forming his opinion, he has relied upon a certificate from technical experts. He should, of course, satisfy himself about the technical qualifications of the expert, and subject the expert’s certificate to a reasonable review.”

5.2 At the time hearing, the Respondent submits that the said person to whom he issued the certificates is not known to him and is not in the list of his regular clientele. This is the only professional work which the Respondent did for the said person. The Respondent is also not properly aware of the business address nor the trade practices of the said person. It is found from the records of the ICAI that the Respondent has his office in Haridwar. From the certificates produced before the Committee, it found that from the letter-head on which the said certificate has been signed by the Respondent, the office address is located at Delhi. It has brought to the notice of the Committee that the Delhi address of the Respondent is not in the records of the ICAI.

5.3 It is necessary, at this juncture, to understand what is the purpose of issue of such certificates? Once these certificates are issued, the banker transfers funds from India to a bank account outside India. As precious foreign exchange of the country goes out based on the certificate issued by the Chartered Accountant, the Committee is of the view that the Chartered Accountant should have exercised proper due diligence and obtain all information and explanation to satisfy himself before issue of such certificate. The Committee at the time hearing directed the Respondent to submit the working papers based on which the



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certificates were issued by him. The Respondent did not produce any working papers as demanded by the Committee.

5.4 The attention of the Committee is drawn to the invoice No. FCL-419/15 dated 7-9-2015 of M/s. Famous Concept Enterprise Limited, Unit-F, 10th Floor, Tack Building, 48 Gillamen Street, Central Honkong.

The Committee found that the same are mere print outs. The words 'bill of landing' is misprinted instead of 'bill of lading'. The Committee fails to understand as to how the suspicion of the professional was not drawn on such document which prima facie appears fake.

5.5 Shri Sachin Bilas Dharm, Assistant General Manager of Bank of Maharashtra appeared as witness on behalf of the bank. He has reiterated the fact that since the invoices are fake, the certificate also meets the same fate. The Committee informed him that the bank should have discharged its responsibility by filing a formal complaint and not merely sending information to a statutory body like ICAI. The witness informed that the bank discounts the bills based on the Form 15CA and Form 15CB and not otherwise.

5.6 When the witness was asked whether they have done due diligence before financing the said transaction, they replied that they placed reliance on the certificate issued by the Chartered Accountant. The Committee wanted to know whether any action was taken by the bank against the said official who processed the said papers. The witness pleaded ignorance. The Committee informed the witness that had the official concerned applied minimal due diligence, it would have resulted in the fraud coming to light. Hence, it is not the case that only the Chartered Accountant is at fault, the careless manner in which the papers have been passed by the bank officials is noted with pain by the Committee. However, as the Committee cannot proceed against the banks or its officials, the recording of Committee's pain is the best that can be done.



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5.7 The Respondent, as premised above, is Chartered Accountant in practice, issues certificates without applying proper due diligence, thereby becomes a party to outflow foreign exchange outside the Country. The Respondent has not followed the relevant provisions of the Guidance Note as premised above.

6. The Committee perused the above facts and noted that there is gross negligence on the part of the Respondent as he has issued 9 certificates in Form 15CA/CB without knowing whereabouts of the assessee entity, based upon fake/forged invoices.

Based on the above findings the Respondent being held guilty of professional misconduct, the Committee is of the view that ends of justice will be met, if the punishment awarded to the Respondent is commensurate with the seriousness of the nature of misconduct.

7. Thus, keeping in view the facts and circumstances of the case, the material on record before it, the Committee ordered that the name of the Respondent i.e. CA. Rajeev Kumar (M. No. 501207) be removed from the register of members for a period of 01 (One) year.

**Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER**

**Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE**

**Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER**

DATE : 16/12/2019

PLACE : New Delhi



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[PPR/222/16-DD/102/INF/16/DC/977/2018]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PPR/222/16-DD/102/INF/16/DC/977/2018]

In the matter of:

CA. Rajeev Kumar (M. No. 501207)

P – 141, Shivalik Nagar,

BHEL

Hardwar - 249403

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, Government Nominee

CA. Rajendra Kumar P, Member

DATE OF HEARING : 15.05.2019

PLACE OF HEARING : ICAI Bhawan, New Delhi

CA. Rajeev Kumar (M. No. 501207)

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[PPR/222/16-DD/102/INF/16/DC/977/2018]

PARTIES PRESENT:

Respondent : CA. Rajeev Kumar
Witness : Mr. Sachin Vilas Dharm, AGM, Bank of
Maharashtra

Charges in Brief:-

1. The Respondent had issued 9 certificates in Form 15CA/CB in favor of M/s J. K. Trading Corporation, New Delhi (hereinafter referred to as the '**Entity**') for making Advance Import Payment to Hong Kong and US. These certificates were issued without verifying its credentials. The proprietor, Mr. Jiban Krishna Goswami of said entity is not traceable and no bill of entry has been submitted to the Informant/complainant bank for the Advance Import Payment transactions done through the account of the Entity. The Informant/Complainant Bank has allowed Advance Import Payment to the Entity on the basis of Form 15 CA/ 15CB certificates issued by the Respondent.

On visiting the Respondent for whereabouts of Jiban Krishna Goswami, the bank was unable to locate the office of the Respondent.

Brief facts of the Proceedings:

2. The Committee noted that the Respondent was present and appeared before the Committee on the date of hearing i.e. 15.05.2019. The office apprised the Committee that a witness i.e. official of Bank of Maharashtra also present. The witness appeared before the Committee and was put on oath.



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2.1 The witness submitted that the Respondent and his client was not traceable and then they have filed the subject complaint. The witness was examined by the Committee and then discharged.

2.2 After recording the submissions of the Respondent, the Committee directed him to file his final submission (if any) within 7 days time.

2.3 With above directions, the Committee concluded the hearing in the captioned matter.

Findings of the Committee:

3. The findings of the Committee in subject case are as under:-

3.1 The Committee noted that the Respondent had issued 9 certificates in Form 15CA, 15CB in favour of M/s J.K. Trading Corporation, New Delhi. The said certificates are issued under Rule 37BB of the Income Tax Rules. As per the said Rules, the person responsible for paying to a non-resident any sum chargeable under the Income Tax Act shall obtain this certificate from a Chartered Accountant. It is to be understood that this is a certificate and is governed by Guidance Note "Audit Reports for Special Purpose Certificates". In specific clause 2.1 (c) contains the scope for issue of such certificates which is "Compliance with requirements of any Agreement or Statute or Regulations". Paragraph 4.2 A of the said Guidance Note is important and is reproduced as under:

"4.2 A reporting auditor is not an expert on purely technical matters and as such, when he is required to report on or certify such matters (e.g., composition or quality of a product) which are of paramount importance and constitute the very basis of the figures contained in the statement, he should state his limitations clearly in the report or certificate. At the same time, he should indicate the extent to which he has been able to exercise his own professional skill and judgment with regard to the matter being reported upon. For



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instance, he may state that, for the purpose of forming his opinion, he has relied upon a certificate from technical experts. He should, of course, satisfy himself about the technical qualifications of the expert, and subject the expert's certificate to a reasonable review."

3.2 The Committee heard the Respondent. The Informant/complainant Bank of Maharashtra had brought to the notice of the concerned authority about issue of such certificate and since no formal complaint was filed by them the matter has been treated as an information case by the Director Discipline. Hence, official from bank was summoned as witness by the Committee.

3.3 The Respondent submits that the said person to whom he issued the certificates is not known to him and is not in the list of his regular clientele. This is the only professional work which the Respondent did for the said person. The Respondent is also not properly aware of the business address nor the trade practices of the said person. It is found from the records of the ICAI that the Respondent has his office in Haridwar. From the certificates produced before the Committee, it found that from the letter-head on which the said certificate has been signed by the Respondent, the office address is located at Delhi. It has brought to the notice of the Committee that the Delhi address of the Respondent is not in the records of the ICAI.

3.4 It is necessary, at this juncture, to understand what is the purpose of issue of such certificates? Once these certificates are issued, the banker transfers funds from India to a bank account outside India. As precious foreign exchange of the country goes out based on the certificate issued by the Chartered Accountant, the Committee is of the view that the Chartered Accountant should have exercised proper due diligence and obtain all information and explanation to satisfy himself before issue of such certificate. The Committee directed the Respondent to submit the working papers based on which the certificates were issued by him. The Respondent did not produce any working papers as demanded by the Committee.



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3.5 The attention of the Committee is drawn to the invoice No. FCL-419/15 dated 7-9-2015 of M/s. Famous Concept Enterprise Limited, Unit-F, 10th Floor, Tack Building, 48 Gillamen Street, Central Honkong.

The Committee found that the same are mere print outs. The words 'bill of landing' is misprinted instead of 'bill of lading'. The Committee fails to understand as to how the suspicion of the professional was not drawn on such document which prima facie appears fake.

3.6 Shri Sachin Bilas Dharm, Assistant General Manager of Bank of Maharashtra appeared as witness on behalf of the bank. He has reiterated the fact that since the invoices are fake, the certificate also meets the same fate. The Committee informed him that the bank should have discharged its responsibility by filing a formal complaint and not merely sending information to a statutory body like ICAI. The witness informed that the bank discounts the bills based on the Form 15CA and Form 15CB and not otherwise.

3.7 When the witness was asked whether they have done due diligence before financing the said transaction, they replied that they placed reliance on the certificate issued by the Chartered Accountant. The Committee wanted to know whether any action was taken by the bank against the said official who processed the said papers. The witness pleaded ignorance. The Committee informed the witness that had the official concerned applied minimal due diligence, it would have resulted in the fraud coming to light. Hence, it is not the case that only the Chartered Accountant is at fault, the careless manner in which the papers have been passed by the bank officials is noted with pain by the Committee. However, as the Committee cannot proceed against the banks or its officials, the recording of Committee's pain is the best that can be done.



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3.8 The Respondent, as premised above, is Chartered Accountant in practice, issues certificates without applying proper due diligence, thereby becomes a party to outflow foreign exchange outside the Country. The Respondent has not followed the relevant provisions of the Guidance Note as premised above.

3.9 In conclusion, the Committee is of the opinion that the respondent is guilty of not applying due diligence under Clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

Conclusion:

4. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of 'Professional Misconduct' falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER



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DATE : 04-09-2019

PLACE : Mumbai