

CONFIDENTIAL

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

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

Findings cum Order under Rule 18(17) and Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PPR/P/22/S/13/DD/14/INF/14/DC/700/17]

In the matter of:

CA. Moti Philip (M. No. 022088)

No. 06, 3rd Street,

Railway Colony

AMINJIKARAI,

CHENNAI - 600029

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, Government Nominee

CA. Rajendra Kumar P, Member

CA. Chandrashekhar V. Chitale, Member

DATE OF HEARING : 05.06.2019

PLACE OF HEARING : ICAI Bhawan, Chennai

PARTIES PRESENT:

CA. Moti Philip – Respondent

CA. R G Rajan – Counsel for Respondent

Charges in Brief:-

1. The Respondent had issued a vague certificate dated 18th May, 2011 to M/s. Sagar Grandhi Exports (P) Ltd., Chennai [hereinafter referred to “**Company**”] without giving any reasons as to how he had arrived at conclusion that the Agriculture Produce Cess collected on export of Prawns/ Shrimps was not passed on to the foreign buyers. On the strength of the said certificate, the Custom officers ordered for refund of Rs. 1,19,95,259/- to the Company causing wrongful loss to the Government of India. Further, said certificate was not in specified format.

Brief facts of the Proceedings:

2. The Committee noted that the Respondent along with Counsel was present and appeared before it.
 - 2.1 Since this was the first hearing, the Respondent was put on oath. As this was an Information case, the Office read out the charges. On being asked whether the Respondent pleads guilty to the charges, he replied in negative and wished to defend the same.
 - 2.2 Thereafter, the Counsel for the Respondent made oral submissions to defend the charges and show the invoices to the Committee.
 - 2.3 After recording the submissions of the Counsel for the Respondent, the Committee concluded the hearing in the caption matter.

Findings of the Committee:

3. The findings of the Committee in subject case are as under:-
 - 3.1 The Committee noted that in subject case, the Respondent had issued a certificate to the Company for refund of Agriculture Produce cess paid by it for period 1998-2005. On the basis of said certificate, the Customs Department ordered for refund of Rs. 1,19,95,259/- to the Company thus causing wrongful loss to the Government of India.
 - 3.2 The Committee noted the submissions of the Respondent, in which he has stated that certificate issued by him was based on books of account produced, information and explanation given by the Company. There is no vagueness either in figures or source of figures.
 - 3.3 The claim of “*unjust enrichment*” is based on the presumption and not in accordance with Accounting Practices. As per the records submitted before him the Company had not shown the cess as a separate item either in the bill nor any

mention of this has been made in purchase order or any other correspondence. In the absence of any indication about the same it is presumed that the same was not included in the cost.

- 3.4 As regards the cess paid was not shown as due in the accounts of the Company. The same was not shown by the Company as due in the accounts as the possibility of refund has risen only after judgment followed by orders of Commissioner Appeals & CESTAT (Custom, Excise) on 03.08.2007
- 3.5 After recording the submissions as above of the Respondent and other papers/documents available on record, the Committee observed from perusal of Financial Statements that the Company has shown refund of custom duty as other Income for Financial Year 2011-12. Further, the Company in its Financial Statements has disclosed Custom expenses on the debit side of Profit & Loss Account under the heading selling expenses for Financial Years 1999-00, 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05.

Hence, the Respondent's submission that the Company is not claiming cess from its foreign importers seems to be correct. If the Company would have been claiming cess from its foreign importers then the Company would have been showing the cess amount as cess recoverable or outstanding in the Balance Sheet. Hence, booking of expenses in P/L account and booking of refund as other income shows that the Company had not claimed cess from foreign importers.

- 3.6 The Respondent brought on record the invoices for the period relevant to the certificate. The Committee noted that the claim made by the Company for refund and certified by the Respondent is totally based on the said invoices and there is no mismatch/discrepancies in refund claim.
- 3.7 The Committee perused the written submissions of the Respondent dated 17/03/2014, which are re-produced here as below:-

"As directed by the Custom authorities the Company was directed to pay 5% Agricultural Cess under Agricultural Produces Cess Act 1940 to the Customs at the time of export of their products. On a petition filed by the Company before Hon' ble High Court of Madras, it was held that the shrimps and prawns are not fish and hence the levy collected from the Company was incorrect and hence Cess was to be refunded as the same was applicable on Fish and Fish products. This was also confirmed by the Commissioner Appeals, Chennai CESTAT (Customs, Excise) and Refund was ordered on 03.08.2007".

- 3.8 In view of above, the Committee was of the view that the Company was eligible for claiming refund on export made by it and the respondent has relied on documentary evidences for the issue of the said certificate.

- 3.9 Therefore, based upon above findings and documents before the Committee, the Committee is of the opinion that there is no misconduct on the part of the Respondent as alleged by the Customs Department.
- 3.10 As regarding second leg of the allegation relating to format of certificate, the Committee was of the view that there was no specified format for issuance of said certificate. The certificate issued by the Respondent was accepted by the Customs Department in respect of issuance of refund.

Further, the informant Department (i.e. CBI) had not provided any specified format, which was required to be filled by the Respondent. Hence, in absence of any pre-existing format this allegation against the Respondent is not tenable.

Conclusion:

4. Thus, in the opinion of the Committee, the Respondent is **NOT GUILTY** of professional Misconduct falling within the meaning of Clauses (2) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
5. **Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.**

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

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHHANDRASHEKHAR V. CHITALE)
MEMBER

DATE : 04-09-2019
PLACE : MUMBAI