

CONFIDENTIAL

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

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

Findings 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/41/14/DD/31/INF/14/DC/659/17]

In the matter of:

CA. Harshadkumar Jivrambhai Thakkar (M. No.101638) in Re:

41, Stadium House,
Opp. Municipal Snanagar,
Stadium Cross Road,
Navrangpura,
AHMEDABAD-380 009.

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Shri Rajeev Kher, IAS Retd. (Govt. Nominee)
CA. Chandrasekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 10.08.2019

PLACE OF FINAL HEARING : ICAI Tower, Mumbai

PARTIES PRESENT :

Respondent : CA. Harshadkumar Jivrambhai Thakkar
Counsel for Respondent : CA. Deepak R Shah

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of

Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is guilty under Clause 7 of Part I of the Second Schedule of Chartered Accountant Act 1949. The aforesaid Clause (7) of the Second Schedule states as under :-

“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”

2. This case which was initiated as per the ‘information’ letter dated 30th June, 2016 read with the letter of RBI dated 20th August, 2015. Later on, it was treated as “information” within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
3. Briefly stated, this case is based on the reports taken as ‘Information case’ wherein the Hon’ble High Court of Gujarat while delivering its judgment vide the Special Civil Application No. 13924 of 2013 has directed to take action against the Respondent for having issued certificate on 24th April, 2013 in respect of M/s Suz Dent (India) Private Limited regarding the turnover submitted to Gujarat Medical Corporation, which is Government of Gujarat undertaking, to fulfill the conditions of the tenders. The gross variation in the value of sales was reported in the year 2012 -13. However, increase in number of units sold as compared to 2011 was by 2 units whereas value of sales was move by more than Rs.2.89 crores/-.

Brief facts of the Proceedings:

4. On the day of hearing i.e. 10/08/2019, the Respondent along with his Counsel appeared before the Committee. The matter was earlier adjourned on 21st July 2019 on the request of Respondent. The Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wishes the charge to be read out or it can be taken as read. The Respondent stated before the Committee that he was aware of the charges made against him and same may be taken as read. On being asked to the Respondent whether the Respondent pleads guilty, he replied in negative. Thereafter, the Committee sought whether

he wishes to proceed with his defence. Thereafter, he placed his defence. After considering all papers available on record, the Committee decided to proceed with the matter.

Findings of the Committee

5. The Committee enquired about issue of certificate and the Respondent submitted that he relied on the audit report of earlier years wherein sales turnover was as follows :

	2010-11 (Rs.)	2011-12(Rs.)
Sales	3,81,03,288/-	4,09,35,617/-
Service charges	72,202/-	84,404/-
TOTAL	3,81,75,490/-	4,10,20,021/-

6. It is further noted that in respect of second certificate issued by the Respondent, it is observed that the Respondent had certified that the Company had manufactured, marketed, sold and exported supplied products as under:

Financial Year	Production Qty.	Sales Qty.	Sales (Rs.)
2010-11	321 units (B26)	321 units (B27)	3,81,75,490/-
2011-12	322 units	322 units	4,10,20,021/-
2012-13	323 units	323 units	6,70,01,683/-

7. The Committee noted that The Respondent in his written statement had given workings of the same as under:
- For F.Y. 2010-11 he relied on audit report wherein the quantity of production and sales are given on B26 and B27 respectively.
 - For F.Y. 2011-12 he relied on production and sales quantity given in excise records.
 - For F.Y. 2012-13 he relied on production and sales quantity given in excise records.

8. The committee also noted that the Respondent also relied on the production and sales quantity given in the excise records. As far as the corresponding units sold and the turnover includes the units sold for 'Dental Bed and Platform along with Dental Chair/Stool'. The Respondent further submitted that along with the Dental Bed/Platform, the above said Company was also engaged in selling the units of Dentist Chair /Stool which was not included in the quantity and production but included in the sales in the financial statements and certificates issued.
9. The Committee noted all the relevant documents like excise records which is available on record and found that the units (dental bed/platform apparatus so reported in the turnover (323 units *Rs.75,805.342/-) for only to the value of Rs.2,44,85,125/- whereas the other parts which were valued at Rs.4,09,00,000/- and service charges is only Rs.84,000/- are not being disclosed in the certificate which leads to a conclusion that there are the inflated turnover in respect of quantity of units sold which is the same as given in the earlier year.
10. The Committee noted that the Respondent would have clarified in the certificate that the turnover pertaining to sale of dentist bed/platform apparatus was of 323 units. The value for the same was Rs.2,44,85,125/- and the balance of turnover pertains to other equipment and on the basis of these particular figures the Company had filed the tender and might have taken a right decision.
11. The Committee after reviewing the entire documents/certificate/other details is of the view that there is no "gross negligence" on the part of the Respondent but at the same time the Respondent must be more cautious to review these kinds of clerical mistakes which may have resulted in bringing disrepute to the entire profession.

Conclusion

12. In view of the above facts and finding available on record and reasoning stated above exonerates the Respondent from being guilty and directs the Disciplinary Directorate to issue a letter of caution to the Respondent to be more diligent while performing his professional duties. Accordingly, in the considered opinion of the

Committee, the Respondent is **NOT GUILTY** in terms under Clause 7 of Part I of the Second Schedule of Chartered Accountant Act 1949.

13. **Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.**

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

**Sd/-
(SHRI RAJEEV KHER, IAS RETD.)
GOVERNMENT NOMINEE**

**Sd/-
(CA. CHANDRASEKHAR V. CHITALE)
MEMBER**

**DATE: 10-02-2020
PLACE: New Delhi**