

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]
(Constituted under section 21B of the Chartered Accountants
Act, 1949)

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

File No. : PPR/P/15/2014-DD/28/INF/14/DC/733/2017

In the matter of :

CA. Rusabh Rameshbhai Shah (M.No.136956)
208, Chanakya Building
Behind Sales India
Near Torrent House
Ashram Road Income Tax Office
Ahmedabad - 380 009

.....Respondent

Members Present:

CA. Naveen N.D. Gupta, Presiding Officer
Smt. Anita Kapur, IRS (Retd.), Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member

Date of Final Hearing: 20th November, 2018

Place of hearing : Mumbai

Parties Present :

Respondent : CA. Rusabh Rameshbhai Shah
Counsel for Respondent : Shri Dipak R. Shah

**Allegations of the Informant, Shri M.R. Mohanty, Additional Commissioner,
Office of Commissioner of Central Excise, Ahmedabad**

1. The Informant has alleged that the Respondent had prepared Balance Sheet of M/s Neesa Leisures Ltd. (hereinafter referred to as the "Company") for the financial period ending on 30th September 2012 and had issued a certificate dated 4th May, 2013 (A-8) which was alleged to be issued for the purpose of evasion of service tax of more than Rs.10 Lakhs. As per the Informant, Note 22 (C-22) of the financials for the period ending 30th September, 2012 shows an income of Rs. 4.57 crores under the head "Lease and Rent Income", however there was short payment of service tax on the revenue income to the extent of Rs. 1.08 crores under the taxable service namely "Renting of immovable property". It was further mentioned by the Informant that the Respondent in his statement recorded under Section 14 of the Central Excise Act 1944 on 24th May, 2013 (A-5 to A-7) before the Superintendent of Central Excise, Ahmedabad-III had admitted that the said certificate was issued without verifying any documents.

Proceedings:

2. At the time of hearing on 20th November, 2018, the Respondent was present in person along with his authorized Counsel to appear before the Committee. The Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or these could be taken as read. The Respondent stated before the Committee that he was aware of the allegations raised against him and the same may be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would opt to defend his case.

4., The Counsel for Respondent made his submissions in the matter before the Committee. The Respondent was examined by the Committee on the submissions made by him. The Counsel for Respondent thereafter made his final submissions in the matter. Based on the documents available on record and after considering the oral and written submissions made by the Respondent before it, the Committee concluded the hearing in the matter.

Findings of the Committee :

5. The Committee perused the papers on record along with the documents/submissions received from the Respondent vide his letter dated 30th April 2018 whereby he had submitted month-wise summary of Laundry Income of Neemrana unit and his response explaining the status of 'Lease & Rental Income' under the parameters of materiality concept. The Committee noted that the charge against the Respondent was that the company had not deposited service tax on the entire revenue earned by it during the financial period ended 31st September, 2012 based on the certificate dated 04th May, 2013 (A-8) prepared by the Respondent. It was noted that while under 'Note 22: Other Income' shows Lease & Rental Income of Rs. 4.57 crores (C-22) the certificate stated that it comprises of rental income of Rs. 3.49 crores (A-8) and sales of Rs. 1.08 crores (A-8). It was noted that due to sales not being subject to Service Tax, the difference had arisen.

6. It was further noted that the Respondent had submitted, in his defence, that while grouping "other income" under the head "Lease and Rental Income", miscellaneous sales of insignificant nature were included under the said head by mistake and such income from miscellaneous sales was neither in the nature of rental income nor subject to service tax. As per the Respondent, certificate dated 04th May, 2013 (A-8) was issued only to rectify his inadvertent mistake relating to grouping of income. The Respondent further submitted that when original audit was conducted, bills were verified by applying appropriate auditing techniques.

7. The Committee noted in this context that there was no dispute regarding classification of income under the head revenue from operations, sales of services under Note 21 (C-21). It also noted that the total income shown as "Lease and Rental Income" of Rs. 4.97 crores constitutes 2.6% of the total revenue of Rs. 189 crores (C-21) and that the inadvertent error committed by the Respondent was clerical in nature which could not be considered to have caused any loss to the exchequer. It was further noted that incorrect grouping of an insignificant amount of income Rs 1.08 Crores remained unnoticed by the Respondent at the time of conducting audit by way of sampling technique. Subsequently the Respondent had acknowledged the same by

way of issuing a certificate (A-8) to depict the effect of such incorrect grouping. It was also noted that the Respondent had produced monthly summary of ledgers of income falling within Sales(others) of the concerned unit, which was taken into consideration by him at the time of issue of the said certificate. Thus, it was observed by the Committee that this was not a case of gross negligence on the part of the Respondent. Accordingly, the Committee is of the considered opinion that 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.

Conclusion :

8. Thus, in conclusion, 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.

9. The Committee accordingly passes Order for closure of this case against the Respondent.

Sd/-

(CA. Naveen N.D. Gupta)
Presiding Officer

Sd/-

[Smt. Anita Kapur]
Member (Govt Nominee)

Sd/-

Shri Ajay Mittal, IAS (Retd.)
Member (Govt. Nominee)

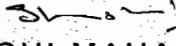
Sd/-

(CA. Shyam Lal Agarwal)
Member

Date : 11th January, 2019

Place : New Delhi

Certified Copy


SHASHI MAHAJAN

Deputy Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
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