

**CONFIDENTIAL**

**COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
396<sup>TH</sup> MEETING OF THE COUNCIL –24<sup>TH</sup> SEPTEMBER, 2020  
FINDING OF THE COUNCIL – 24<sup>TH</sup> SEPTEMBER, 2020  
UNDER SECTION 21 OF THE CHARTERED ACCOUNTANTS ACT, 1949**

**KAMAL RAGHUNATH MANIK IN RE.  
[25-CA (S-61)/2008]**

**MEMBERS PRESENT:**

CA. Atul Kumar Gupta (President)(In the chair)  
CA. Jay Chhaira  
CA. Chandrashekhar Vasant Chitale  
CA. Nandkishore Chidamber Hegde  
CA. Durgesh Kabra  
CA. Aniket Sunil Talati  
CA. Babu Abraham Kallivayalil  
CA. Dayaniwas Sharma  
CA. Prasanna Kumar D  
CA. Rajendra Kumar P  
CA. G Sekar  
CA. Ranjeet Kumar Agarwal  
CA. (Dr.) Debashis Mitra  
CA. Manu Agrawal  
CA. Pramod Kumar Boob  
CA. Anuj Goyal  
CA. Prakash Sharma  
CA. Hans Raj Chugh  
CA. Pramod Jain  
CA. Charanjot Singh Nanda  
CA. Rajesh Sharma  
CA. Sanjeev Kumar Singhal  
Shri Vijay Kumar Jhalani

[Out of Four Signatories, one signatory to the Report of the Disciplinary Committee dated 13<sup>th</sup> June, 2018, namely, CA. Naveen N.D. Gupta was no longer member of the Council. The remaining three signatories to the Report namely, CA. Prafulla Preme Sukh Chhajed, Dr. P.C. Jain, Govt. Nominee and CA. Nihar Niranjana Jambusaria were not present at the time of consideration of this Report on 24<sup>th</sup> September, 2020.]

[CA. Atul Kumar Gupta, President was in the Chair when this Report was taken up for consideration on 24<sup>th</sup> September, 2020]

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1. On a perusal of letter dated 19<sup>th</sup> October, 1995 received from Shri K. M. Mondal, the Additional Commissioner of Customs, Prosecution Cell, Mumbai, it was observed that CA. Kamal Raghunath Manik (hereinafter referred to as '**the Respondent**') has been alleged to issue Bogus Certificates in respect of past exports on the basis of which importers were able to obtain advance licenses and DEEC Book for duty free imports. It was alleged that due to this act of the Respondent, there has been evasion of duty to the extent of over Rs. One Crore. It was further alleged that without these certificates of the Respondent, the duty free imports against those fraudulently obtained licenses would not have been possible. For this act of the Respondent, he was penalized to the extent of Rs. 5 lakhs each in 3 cases by 3 separate orders of the Collector of Custom and ICAI was requested for cancellation of his Certificate and/or Registration. After receipt of the afore-stated letter containing allegations, the Institute vide its letter dated 7<sup>th</sup> April, 2004 forwarded a copy of the said letter to the Respondent and sought his clarifications. The Respondent by letter dated nil received on 30<sup>th</sup> April, 2004 informed that the complaint made by the Department was not specific and neither contained the name and address of the concerned firm nor the name of the proprietor/partner. He further submitted that the complaint did not contain in any manner, as to the reason for which the Respondent's firm had been mentioned as negligent. Further, as per Regulation 14 of the Chartered Accountants Regulations, 1988, since the matter was more than 10 years old, the Respondent had no comments to offer. On an overall examination of the allegations alongwith the clarifications received as above, it was decided to treat the matter as "Information" under Section 21 of the Chartered Accountants Act, 1949.

2. **Accordingly, the specific charges against the Respondent as per "Information" letter dated 13<sup>th</sup> October, 2008 are as under:-**

- 2.1. The Respondent had allegedly issued bogus certificates of past exports based on which the concerned importers were able to obtain advance licenses and DEEC Book for duty free imports. This has resulted in evasion of duty to the Govt. to the extent of over Rs. 1 Crore so far.
- 2.2. On account of the fraud committed by the Respondent, he has been separately prosecuted under the Customs Act, 1962 and a penalty of Rs. 5 lacs been imposed on him.
- 2.3. In respect of the entity, M/s. Kokil Traders Bombay for past exports, the Respondent has admitted before the Customs authorities that he has issued a bogus certificate.

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2.4. Thus, in effect, the Respondent has not adhered to the requirements of Guidance Note on Audit Reports and Certificates for Special Purpose whereby he appeared to have issued certificate(s) to the entities without checking the books of accounts and mainly relying on the assertion letter issued by the Management.

3. The Respondent submitted his duly verified Written Statement dated 5<sup>th</sup> November, 2008.

4. Thereafter, in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the said "Information" alongwith the Written Statement and other papers on record were considered by the Council at its meeting held in January, 2009. The Council being *prima-facie* of the opinion that the Respondent was guilty of Professional Misconduct and/or other misconduct, decided to cause an enquiry to be made in the matter by the Disciplinary Committee.

5. The Disciplinary Committee conducted the enquiry in the case and the hearing in the matter was concluded at its meeting held on 18<sup>th</sup> March, 2013 at Mumbai. However, the Report in the matter could not be finalized as the then Committee could not reach to any decision in the matter based on documents on record. Thereafter, the Committee gave opportunity to the Respondent to present his defence / submissions on the allegations on 8<sup>th</sup> June, 2017. The hearing in matter was finally concluded on 4<sup>th</sup> April, 2018 at Mumbai. Disciplinary Committee submitted its report dated 13<sup>th</sup> June, 2018 with the conclusion that the Respondent was GUILTY of "Other Misconduct" falling within the meaning of Section 22 read with Section 21 of the Chartered Accountants Act 1949.

6. While arriving at its aforesaid conclusion, the Disciplinary Committee had relied on the following reasonings /arguments:-

6.1. The Committee noted that the charges against the Respondent have arisen from a letter dated 19<sup>th</sup> October 1995, wherein the Additional Commissioner of Customs, Bombay had alleged that the Respondent had issued bogus certificates of past exports based on which the entities were able to obtain advance licenses and DEEC booked for duty free imports. It was also alleged that as a result, there has been evasion of duty to the extent of Rs.1Crore. Further, for his

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abetment in the aforesaid fraud, the Respondent has been penalised to the extent of Rs.5 lakhs each in three different cases through three separate Orders of the Collector of Customs, Bombay.

- 6.2. The Committee noted that although names and addresses of the concerned firms against whom bogus certificates were issued by the Respondent were not mentioned in the complaint, however, the details of the involvement of the Respondent have been mentioned in the Orders of the Collectors of Customs. Moreover, in the Order of Collector of Customs in para 17, it was pointed out that *"Shri K.R. Manik, Chartered Accountant and Proprietor of M/s. K.R. Manik & Co. has clearly admitted that he had issued a bogus certificate in the name of M/s. Kokil Traders, Bombay for past exports. This resulted in obtaining advance licence under DEEC Scheme in the name of M/s. Kokil Traders merely on the execution of L.U.T. with the licensing authority. He (Manik) thus abetted importing the material under DEEC Scheme which M/s. Kokil Traders were not entitled to. Shri K.R. Manik, therefore, is liable for penalty under Section 112 (a) of the Customs Act, 1962"*.
- 6.3. The Respondent explained that the D.G.F.T. being the licensing authority had acted in a cavalier manner in issuing import licenses entitlements for reasons as given below:-
- A) D.G.F.T. has not bothered to check whether a firm by the name of K.P. Manik & Co. is in existence.
  - B) D.G.F.T. has handed over the Licences to the main accused across the table, instead of sending them by Registered Post.
  - C) D.G.F.T. has not cared to confirm with them, as per the norms so that the issuance of certificate could be denied there and then.
  - D) Various other irregularities committed by DGFT are under their investigation.
- 6.4. The Respondent gave his written submissions dated 18<sup>th</sup> March, 2013 which have been taken on record. Explaining the circumstances, the Respondent submitted that in respect of M/s. Kokil Traders, he was confronted with 6 export performance certificates purported to have been signed by him. After close

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scrutiny with magnifying glass, he informed the Customs Department that the certificates were fake and not signed by him. The seal and address stamp were not his and the name on them appeared as "K.P. Manik & Co. and not K.R. Manik. He, therefore, denied having issued the said certificates. Thereafter, he brought a copy of the certificate of Kokil Traders issued in April, 1991 and owned upon issuing certificate about export performance.

- 6.5. In respect of Shree Mahalaxmi Exports, the Respondent submitted that after the Customs people were satisfied about his contention regarding Kokil Traders, they got furious. They threatened him about physical harm and about conducting a raid at his residence and office. They pressurised him to admit by force, undue coercion and duress. He admitted issuing the export performance certificates. They had detained him from 11 A.M. to 8 P.M. without any food, water or a cup of tea. He was also asked to raise his hands and keep it raised for one hour. They also invited his attention to the thrashing of some persons in the interrogation room. Therefore, although he had not issued any certificates to Mahalaxmi Exports, he admitted to having issued them under abovementioned circumstances.
- 6.6. The Committee has carefully considered the papers on record and also the oral submission made by the Respondent before it. The Committee noted that the primary submission of the Respondent was that he has not issued the certificates under question and there is also a difference of the name and rubber stamp whereby his firm has been mentioned as "K.P. Manik & Co." and not "K.R. Manik & Co." He explained that he had issued only one certificate and that too was issued by him under extreme duress caused by the Customs Authorities. Even though some evidences are not available due to passage of many years but on the basis of available records and proceedings it clearly comes out that the Respondent was certainly involved in issuance of bogus certificates. The witness from Customs & Excises Department submitted copy of certificate showing past Exports in Shree Mahalaxmi Exports and M/s. Kolil Traders (**Annexure – 'F'**). On perusal of these certificates, it is seen that these certificates were signed by the Respondents and bore the rubber stamps impression as "K.R. Manik & Co."

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- These facts dilute the Respondent's submissions that certificates were issued in name of *M/s. K.P. Manik & Co.*
- 6.7. The Respondent further mentioned that the Complainant department works in a totally opaque manner and there is only a token Redressal Forum manned by the head of the department which rebuts their defence at that stage itself. For these reasons they have refrained from using the above Forum of Redressal and instead filed an appeal before the Custom Central exercise and Gold Control Tribunal, Mumbai against the Complainant's Orders. The Committee noted that the Respondent vide his letter dated 4<sup>th</sup> April, 2018 submitted copy of order passed by the Customs, Excise & Gold (Control) Appellate Tribunal, West Regional Bench, Bombay reducing the total amount of penalty from Rs. 15 lakhs to Rs.1.50 lakhs (i.e. from Rs.5 lakhs in each of three cases to Rs.0.50 lakhs in each of three cases).
- 6.8. It is noted that the Respondent had pleaded the Tribunal to reduce the penalty and the reduced penalty was admitted by the Respondent to have been paid. It is viewed that the said act of the Respondent show his admissions regarding issuance of certificates. The complaints made by the Respondent against other government authorities and alleged wrong tactics and methods adopted by the other authorities cannot form the basis of not holding the Respondent guilty by the Committee. The Committee has independently gone through the available papers and documents and formed the view that the Respondent has issued some bogus certificates. Though, with the passage of time, the original certificate could not be made available and copy of only few certificates were placed on record, however once the Respondent became aware that the matter regarding genuineness of the certificate are going on with the DGFT, he should have ensured that the original certificates or at least the copies of all of alleged certificates are made available.
- 6.9. In the light of the above facts and circumstances based documents on record and after hearing the submission of the Respondent, the Committee holds the Respondent guilty of "**Other Misconduct**" falling within the meaning of Section 22 read with 21 of the Chartered Accountants Act, 1949.

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7. The Council considered the Report of the Disciplinary Committee dated 13<sup>th</sup> June, 2018 alongwith written representation dated 05/01/2019 received from the Respondent. The Council noted that the Respondent was not present.

8. Upon consideration of Report of the Disciplinary Committee, The Council noted that this matter is related to where the Respondent had issued bogus certificates of past exports based on which three entities were able to obtain advance licenses and DEEC booked for duty free imports and result of this has been evasion of duty to the extent of Rs.1Crore. Further, for this abetment/ fraud, the Respondent has been penalised to the extent of Rs.5 lakhs each in three different cases through three separate Orders of the Collector of Customs, Bombay.

8.1 The Council noted the primary submission of the Respondent that he has not issued the certificates under question and there is also a difference of the name and rubber stamp whereby his firm has been mentioned as "K.P. Manik & Co." and not "K.R. Manik & Co." He explained that he had issued only one certificate and that too was issued by him under extreme duress caused by the Customs Authorities. Even though some evidences are not available due to passage of many years but on the basis of available records and proceedings it clearly comes out that the Respondent was certainly involved in issuance of bogus certificates.

The Council observed that witness from Customs & Excises Department submitted copy of certificate showing past Exports in Shree Mahalaxmi Exports and M/s. Kollil Traders. On perusal of these certificates, the Council noted that these certificates were signed by the Respondent and bore the rubber stamps impression as "K.R. Manik & Co." These facts dilute the Respondent's submissions that certificates were issued in name of *M/s. K.P. Manik & Co.*

8.2 The Council noted that the Respondent vide his letter dated 4<sup>th</sup> April, 2018 submitted copy of order passed by the Customs, Excise & Gold (Control) Appellate Tribunal, West Regional Bench, Bombay reducing the total amount of penalty from Rs. 15 lakhs to Rs.1.50 lakhs (i.e. from Rs.5 lakhs in each of three cases to Rs.0.50 lakhs in each of three cases). Further, the Council noted that the Respondent had pleaded the Tribunal to reduce the penalty and the

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reduced penalty was admitted by the Respondent to have been paid. It is viewed that the said act of the Respondent show his admissions regarding issuance of certificates.

9. The Council upon consideration of the Report of the Disciplinary Committee dated 13<sup>th</sup> June, 2018 and also the written representation made by the Respondent before it, decided to accept the conclusion of the Disciplinary Committee holding the Respondent Guilty of "Other Misconduct" falling within the meaning of Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

10. Further, the Council also decided to recommend to the Hon'ble High Court that the name of the Respondent CA. Kamal Raghunath Manik (M.No.009550) be removed from the Register of Members for a period of 03 (three) Months.

11. The Council further resolved that CA. Atul Kumar Gupta, Chairman of the meeting at the time of consideration of the report be authorised to sign the Finding of the Council in the case, on behalf of the Council.

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Certified to be true copy  
Mohit Chandel  
Assistant Secretary  
The Council of the Institute of  
Chartered Accountants of India  
New Delhi

Sd/-  
(CA. ATUL KUMAR GUPTA)  
CHAIRMAN