

**DISCIPLINARY COMMITTEE [BENCH – I (2020-2021)]
[Constituted under Section 21B of the Chartered Accountants 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/19/18/DD/192/INF/18- DC/1289/2020

In the matter of Information treated against:

CA. Gaurav Rastogi

A-21, Deen Dayal Nagar

Phase -2, Sector-1

Near Sai Baba Mandir

MORADABAD (U.P) – 244 001

...Respondent

MEMBERS PRESENT:

CA. Nihar Niranjan Jambusaria, Presiding Officer

Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),

CA. G. Sekar, Member

CA. Pramod Jain, Member

DATE OF FINAL HEARING/ORDER : 28.01.2021

PLACE OF FINAL HEARING/ORDER : Through Video Conferencing

PARTIES PRESENT:

Respondent - CA. Gaurav Rastogi (Through Video Conferencing)

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of hearing held on 28.01.2021, the Respondent was present. The Respondent was put on oath. On being enquired from the Respondent as to whether he pleads guilty to the charge leveled against him, the Respondent pleaded not guilty. While making submissions, the Respondent admitted that there was technical mistake in case of one company. The Committee also posed questions to the Respondent. After hearing the submissions on the charges, the Committee decided to conclude the hearing.

CHARGES IN BRIEF AND FINDINGS OF THE COMMITTEE:-

2. It was stated by Moradabad Special Economic Zone, Moradabad (hereinafter referred to as the "Informant Department") that as per SEZ Rule no.54 of SEZ Act & Rules, 2006, every unit operating in Special Economic Zone has to file their Annual Performance Report (APR)(financial year-wise) which contains all the financial information of the SEZ unit. The APR has to be certified by a Chartered

Accountant as per the balance sheet of SEZ unit. The APRs of M/s OSR International and M/s Trendz Inc for financial year 2016-17 were certified by the Respondent on 28th October, 2017 and 31st October, 2017 respectively. The following charge was alleged against the Respondent:-

i) The Respondent certified wrong information on point no. 5(2) of the APR for the year 2016-17 as 'NA' was mentioned in the column of pending foreign remittances but the SEZ Units, M/s OSR International and M/s Trendz Inc. had Rs.49,26,02,138/- & Rs.64,03,30,193/- pending foreign exchange for realization beyond nine months respectively as per records available to Informant's office.

In a response to the Complainant Department, the Respondent vide his letter dated 5th February, 2018 stated that the said error occurred due to ambiguity which was due to misinterpretation of requirement of point no. 5(2) of APR. It is noted that the Respondent has amended APR of his client M/s OSR International for financial year 2016-17 and submitted the same on 27th March, 2018.

3. In respect of above charge, the Respondent through his verbal and written submissions made following submissions in his defence:-

3.1 The Respondent stated that as per client's explanation, pending foreign exchange for realization beyond nine months for the financial year to be reported in the APR and the same is to be calculated from the end date of that financial year itself only i.e., in case of financial year 2016-17 it would be 31/3/17. He had misunderstanding over calculation of period of nine months. Subsequent to filing of APRs, it was his client (M/s. OSR International) who suo- moto, after raising enquiry by the Informant Department with him, approached the Informant department and filed amended APR with the Informant Department. In case of M/s Trendz Inc., there was no case of pending foreign exchange for realization beyond nine months in the financial year 2016-17 which was required to be reported.

3.2 The Respondent also stated that in routine course, the verified copy of APRs was taken by his clients along with the audited financial statements. In the aforesaid case, the same were taken by his clients in the month of October, 2017 itself with audited financial statement for the financial year 2016-17, therefore, if as per otherwise interpretation for calculation of period of nine months from the end of financial year, there was no violation. Further, all the APRs were filed along with the audited financial statements.

3.3 The Informant Department through Custom Authorities issued show cause notice to his both the clients for recovery of incentives on outstanding foreign currency pending for realization from international market, but custom authorities dropped such show cause proceedings. The reason for dropping of such show cause proceedings was because his clients have not claimed any export incentives just claimed refund of duties paid on inward supplies exported in the international market. As informed by his client they have not claimed any export incentive and/or benefits on exports made by them.

4. After perusal of the documents and submissions on record, the Committee noted that as per RBI circular no. 16/2015-16 dated 01/1/2016, it had been decided, period of realization and repatriation of exports proceeds shall be nine months from the date of export for all exporters including units in Special Economic Zones(SEZs). Chapter 2 of Foreign Trade Policy (FTP) deals with general provisions regarding imports & exports. As per 2.54(a) of FTP 2015-20 if an exporter fails to realize export proceeds within time specified by RBI, he shall without prejudice to any liability or penalty under any law in force, be liable to return all benefits / incentives availed against such export and action in accordance with provisions of FTP (D & R) Act, Rules and orders made thereunder.

4.1 In respect of first Unit, M/s OSR International, it is observed that the Respondent submitted amended APR on 27th March, 2018. In respect of Second Unit, the Respondent claimed that there was no pending foreign remittance for realization beyond nine months. The Committee observed that it is undisputed fact that there was mistake in certifying column 5(2) of APR in case of M/s OSR International. According to the Respondent, the same was due to misinterpretation of period of realization. It is also observed that the Informant Department had also called explanation of the Respondent in this regard and the Respondent had also given his explanation.

4.2 The mistake in the certification in case of M/s. OSR International has also been accepted by the Respondent himself. The Respondent also submitted that he corrected the mistake by submitting amended APR and apology letter. In case of Trendz Inc, the Respondent brought on record a letter dated 31.01.2018 of Corporation bank wherein they extended time for realization up to 30.04.2018.

4.3 The Committee observed that though the Respondent misinterpreted the period of realization and calculated the period of realization from the end date of the financial statement yet the said mistake was suo-moto rectified by the Client after filing the amended APR filed with the Informant Department. The Respondent also brought on record that M/s. OSR International and Trendz Inc. did not claim any exports incentive / benefit in respect of exports of which realization was pending. In view of the same, the Committee is of the view that the mistake on the part of the Respondent appears to be technical mistake which was duly rectified by the Respondent and accordingly, the same cannot be construed as gross negligence in the conduct of professional duties or as failure to exercise due diligence while discharging his professional duties. Accordingly, the Committee decided to hold the Respondent Not Guilty of the professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the chartered Accountants Act, 1949.

4.4 Keeping in view the nature of mistake, the Committee also directs the Respondent to be more careful and cautious in the conduct of his professional duties in future.

Conclusion


5. Thus in the considered opinion of the Committee, the Respondent is **Not GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
- 5.1 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. NIHAR NIRANJAN JAMBUSARIA)
PRESIDING OFFICER

approved & confirmed through email
(MS. RASHMI VERMA, I.A.S. (Retd.))
MEMBER

sd/-
(CA. G. SEKAR)
MEMBER

sd/-
(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy

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