



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

PPR/10/N/2013-DD/9/N/INF/2013/BOD/275/2017

ORDER UNDER SECTION 21 A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

CA. Pradeep Kumar (M.No. 072140), Delhi
[PPR/10/N/2013-DD/9/N/INF/2013/BOD/275/2017]

MEMBERS PRESENT:

CA. Prasanna Kumar D, Presiding Officer
Mrs. Rani Nair, (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member

Date of final hearing: 9th March 2020

1. The Board of Discipline vide Report dated 30th January, 2020 was of the opinion that **CA. Pradeep Kumar(M.No. 072140)** is guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Pradeep Kumar** and communication dated 26th February 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 9th March, 2020.
3. **CA. Pradeep Kumar** vide letter dated 7th March 2020 filed his written representation on the findings of the Board and also appeared personally before the Board on 09th March, 2020. Since it was the first time that the Respondent appeared before the Board, he was put on oath and made his oral submissions thereat.
4. **CA. Pradeep Kumar** in his written representation, inter-alia, submitted as under:-
 - (a) Registration of FIR does not result in disrepute unless convicted by Trial Court. He also quoted a case of Roop Singh Negi V Punjab National Bank & Ors Civil Appeal No. 7431 Of 2008 (Arising Out Of SLP (C) No. 14429 Of 2007) SC:-FIR is not proof of guilt and no action can be taken without Order of guilt by the Criminal Court. The Part IV of the First Schedule has very clearly dealt/explained /demarcated both the issues namely (a) other misconduct pertaining to conviction of the member (b) disrepute whether related to



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professional misconduct or otherwise and Powers of Council. Registration of FIR should be dealt within the meaning of clause (1) of Part IV of the First Schedule as a member should not be subject to double jeopardy firstly at the time of Registration of FIR and secondly if he is convicted by the competent Court.

- (c) The Hon'ble Board of Discipline in its findings dated 30th January, 2020 did not consider/over looked following important facts and various citations and judgements which were mentioned in support of the matter :-
- (i) Methodology to be adopted vis-a-vis Right of the Assessee in the statement Recorded u/s 108 of the Customs Act:-
The Supreme Court held in Poolpandi that a person being interrogated under Section 14 of the Central Excise Act or under Section 108 of the Customs Act is not an accused nor can he plead that there is a possibility of being made an accused in future.
In Paramjit Singh vs. Commissioner of Customs & Others 2002 (2) JCC 916 further observed that the statement of any person called for enquiry by the customs officer under the Customs Act can be recorded by such officer and such a statement is admissible in evidence by virtue of Section 30 of the Evidence Act and the protection under Article 20 (3) of Constitution of India is not available at the stage of recording of such statement to the person giving the statement who is not an accused.
- (ii) Retraction of Statement recorded u/s 108 of the Customs Act, 1962:- The Respondent had already retracted from his statement recorded u/s 108 of the Customs Act, 1962 on 09th November, 2009 and cognizance was taken by ACMM-01/New Delhi on 17th November, 2009. The retracted statement only shows that the same was recorded under some inducement, under duress, physical and mental abuse, threat or promise and as such is not a voluntary statement per se.
- (iii) Show Cause Notice issued by Directorate of Revenue Intelligence on 15th May, 2014 was beyond their powers and the matter was remanded to The Customs, Excise and Service Tax Tribunal.
- (iv) The criminal complaints referred by the informant in the Complaint are on account of disputes of civil nature with the Department which were converted into criminal dispute because of political pressure.
The Hon'ble Apex Court in the case of Mohammed Ibrahim and others Vs. State of Bihar and another [(2009) 8 SCC 751] has held that "*this Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are*



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essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offenses and if so, will have to be tried as criminal offenses, even if they also amount to civil disputes."

The Respondent can be held guilty of Other Misconduct if he is held guilty by any civil or criminal Court for an offence which is punishable for a term not exceeding 6 months in terms of Clause (1) of Part IV of the First Schedule read with section 8(v) of the CA Act, 1949. Thus, if the complaints are pending against the Respondent in any Court, the present clause (1) of Part IV cannot be invoked. Clause (2) of Part IV cannot also be invoked under these circumstances as matters pending for Criminal Offence is to be dealt under Clause (1) of Part IV of the First Schedule read with section 8(v) of the Chartered Accountants Act 1949, as this would cause grave prejudice to the Respondent and may result in double jeopardy. Therefore it is against the principles of natural justice. The harmonious interpretation of clause (1) and (2) would mean that where the cases are pending before any Court, the same fact cannot be used to apply clause (1) and (2) unless the Respondent is held guilty by any Civil or Criminal Court.

- (v) The Hon'ble Board of Discipline overlooked the fact that the matter is in Appeal before the Hon'ble Commissioner (Appeals), New Custom House, IGI Airport, New Delhi and there is no matter pending in any Court of Law. No Charge Sheet is to be filed in any Court.
- (d) The Hon'ble Board of Discipline has placed wrong reliance on appellate authority Order in case of in the Appeals earlier namely Gyan Prakash Agarwal (Appeal No.08/ICA1/2014), Rajiv Maheshwari (Appeal No. 05/ICA1/2014) and Sameer Kumar Singh Vs. /CAI (Appeal No. 07/ICA1/2014) about the power of Director Discipline to form an opinion in the First Schedule, part IV, clause (2), of the Chartered Accountants Act, 1949. The Council has expressly retained the power in the case of clause 2 of Part IV of First schedule and till today has not done any amendment since year 2006 years inspite of direction of the appellate authority since approving authority i.e. council of ICAI does not think to amend the aforesaid provisions and wanted to retain such powers with them only hence there is no requirement of any change in aforesaid clause. As such, as a pre-requisite, to be charged under the aforesaid provision for 'Other Misconduct' and for proceedings to commence thereon, it is necessary for the 'Council' to arrive at a clear finding or opinion that the actions of the member, proposed to be charged of 'Other



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Misconduct', have brought disrepute to the profession or the Institute. However, the same has admittedly not been done in the present case and thus, all the Orders arising out of the said proceedings stand vitiated and unlawful in nature.

(e) The Respondent requested the Board of Discipline for calling the witness with the relevant supporting documents, approvals of appropriate authorities and the approval note files to support their arguments, which was rejected by the Hon'ble Board of Discipline.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Pradeep Kumar**. Considering the above representation, the Board was of the view that the said submissions are basically a re-iteration of the submissions made by the Respondent at the time of hearing and have been duly considered by the Board while giving its findings that the Respondent is involved in illegal and unlawful activities of claiming duty drawback on the basis of manipulated invoices/ shipping bills/ other documents/ records.. Further, the plea of Respondent as to invoking of Clause (2) Part IV of First Schedule is concerned, it may be noted that initiation and continuation of criminal proceedings per se is not a bar to concurrent and continuation of disciplinary proceedings on somewhat similar facts. In certain cases, the Supreme Court has even sustained the argument of the Department that departmental proceedings could continue even after the delinquent is acquitted by a criminal Court of such charge. At this stage, it may be relevant to refer to the view expressed by the Hon'ble Apex Court in various cases relating to desirability of continuation of disciplinary proceedings despite criminal charge having been filed against the delinquent official. The Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Ltd. v. Kushal Bhan 1960 AIR 806, 1960 SCR (3) 227 held as under:

"Though very often employers stay enquiries into the misconduct of the employees pending the decision of the criminal trial courts dealing with the same facts and that is fair, it cannot be said that principles of natural justice require that an employer must wait for the decision, at least of the criminal trial Court, before taking action against an employee".

In the case of NOIDA Entrepreneur Association Vs. NOIDA and Ors., (2007) 10 SCC 395, the Hon'ble Supreme Court has held as under:

"12. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible."



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Furthermore, the Hon'ble Supreme Court reiterated that the acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in departmental proceedings, the Department has to prove only preponderance of probabilities (**Samar Bahadur Singh v. State of U.P decided on 5 September, 2011**). It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge." (**Southern Railway Officers Association v. Union of India Southern Railway Officers Assn.& ... vs Union Of India & Ors on 4 August, 2009**). Thus, one has to go by preponderance of probability, to apply the mind to the surrounding circumstances to understand what a situation is. Accordingly, in the instant case, the Respondent has been charged for 'Other Misconduct' falling within the meaning of Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with section 22 of the said Act

6. As per the findings of the Board as contained in its report, it has already been conclusively proved that the Respondent is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Further, based on the oral admission of the Respondent during the course of proceedings for award of punishment, the Board also held that the Respondent is guilty of Professional Misconduct falling within the meaning of clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

7. Upon consideration of the facts of the case, the consequent misconduct of CA. Pradeep Kumar and keeping in view his oral and written representation before it, the Board decided to remove the name of CA. Pradeep Kumar (M.No.072140) from the Register of Members for a period of three (3) months and further imposed a fine of Rs.1,00,000/- (Rupees One Lac only) upon him payable within a period of 60 days from the date of receipt of the Order.

Sd/-

CA. PRASANNA KUMAR D
(PRESIDING OFFICER)

Certified to be true copy

R.S. Srivastava
R.S. Srivastava
Assistant Secretary,

Disciplinary Directorate

The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

BOARD OF DISCIPLINE(BENCH I)

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PPR/10/N/2013-DD/9/N/INF/2013/BOD/275/2017

CORAM:

CA. Sushil kumar Goyal, Presiding Officer
Smt. Rani Nair (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member

In the matter of:

CA. Pradeep Kumar (M.No. 072140)
S-505, 2nd Floor,
Flat No. 2F, School Block,
Vikas Marg, Shakarpur,
NEW DELHI – 110092

...Respondent

DATE OF FINAL HEARING : 4th November, 2019

PLACE OF HEARING : New Delhi

PARTIES PRESENT:

Counsel for the Respondent : CA. Sandeep Manaktala

FINDINGS:

Brief background of the case:

1.1 The Directorate of Revenue Intelligence (DRI) has booked a case on 25/10/2009 against a syndicate involved in fraudulent availment of duty drawback on export of inferior quality of readymade garments using bogus/ fictitious/ front firms of which the Respondent was one of the members.

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1.2 The searches were conducted at the office of M/s Mohan Gyan and Associates, S-505, 2nd Floor, School Block, Laxmi Nagar, Delhi, Proprietor, Sh. Pradeep Kumar Mangalik (Respondent) and at his residence premises and various documents/ records were found and accordingly, panchnama dated 25/10/2009 was prepared by the IO. The scrutiny of the records revealed that the Respondent alongwith other members of the syndicate had created seven firms/ companies and used them for exporting cheap and inferior quality of Readymade Garments through various ports under duty drawback scheme. The details of the cases registered by the DRI are as follows:-

1. Gautam Exports - SCN in C No.VIII/ICD/10/TKD/SIIB/DRI/Gautam Export/28/2014 dated 28/03/2014
2. New Vision Fashion - SCN in C No.VIII/ICD/10/TKD/SIIB/DRI/Gautam Export/28/2014 dated 28/03/2014
3. P.M. Overseas - SCN in C No.VIII/ICD/10/TKD/SIIB/DRI/P.M.Overseas/12/2014 dated 12/02/2014
4. Sanam Exports - SCN in F.No.23/42/2009-DZU (Sanam)/ 3512 to 3518 dated 31/07/2012
5. Ahlcon International - SCN in C No.VIII/ICD/10/TKD/SIIB/DRI/Ahlcon Intl./27/2014 dated 15/05/2014
6. Ashadeep Exports Pvt. Ltd. - SCN in C No.VIII/ICD/10/TKD/SIIB/DRI/Ahlcon Intl./27/2014 dated 15/05/2014
7. Kritika Exports - SCN in C No.VIII/ICD/10/TKD/SIIB/DRI/Ahlcon Intl./27/2014 dated 15/05/2014

1.3 The statements of the Respondent were recorded under Section 108 of the Customs Act, 1962 wherein the Respondent inter-alia admitted his role in fraudulent availment of duty drawback and the Respondent was arrested under Section 104 of the Customs Act, 1962 read with Section 135 of the Act ibid on 28/10/2009.

1.4 The Respondent was the mastermind behind the entire fraud of siphoning off duty drawback from government accounts by overvaluing the inferior quality of Readymade Garments in the above mentioned seven firms. The Respondent created these firms to fraudulently avail high amount of drawback by export of cheap/ inferior quality RMG at highly over invoiced prices and availed excess drawback. The Respondent further managed disposal of inferior quality of goods at Dubai and receipt of actual value through illegal channels. The Respondent managed withdrawal of drawback from the current accounts without submitting the documents for receipt of foreign remittances and due to these acts of omission and commission, the Respondent rendered the goods liable for confiscation under Section 113 of the Customs Act, 1962 and himself liable to penalty under Section 114(i) and (iii) ibid.

13

Charge alleged

2. The Respondent was part of a syndicate which was involved in fraudulent availment of duty drawback. The Respondent by overvaluing the inferior quality of Readymade Garments exported through his created 7 bogus firms has availed fraudulent duty draw back to the tune of Rs. 2.66 Crores causing irreparable loss to the Government Exchequer.

3. The Board noted that at the time of hearing held on 4th November, 2019 at New Delhi, the Counsel for the Respondent was present before it. Thereafter, the charges alleged against the Respondent were read by the office and the Counsel for the Respondent made his submissions before the Board.

On consideration of the submissions and the documents on record, the Board concluded the hearing in the case with the direction to the Respondent to file his Written Submissions, if any, within 15 days and also directed the office to write a letter to DRI seeking the following documents:-

a) Copy of statement of the Respondent and his alleged associates recorded by DRI under Section 108 of the Customs Act, 1962, being referred to in the following Show Cause Notices:

1. C.No. VIII/ICD/10/TKD/SIIB/DRI/P.M.Overseas/12/2014 dated 12.02.2014
2. C.No. VIII/ICD/10/TKD/SIIB/DRI/Gautam Export/28/2014 dated 28.03.2014
3. C.No. VIII/ICD/10/TKD/SIIB/DRI/Ahlcon Intl./27/2014 dated 15.05.2014
4. F.No.23/42/2009-DZU (Sanam)/3512 to 3518 dated 31.07.2012

b) Details of action initiated, along with the copy of the Final Order passed therein, if any, on the basis of the Show Cause Notices as mentioned above.

Accordingly, the judgment in the case was kept reserved.

3. Thereafter, the Respondent submitted his written submissions dated 19/11/2019 and the Informant, Department of Revenue Intelligence also submitted their submissions/ documents vide letter dated 31st December, 2019. Considering the same together with the other papers on record, the Board took a decision as regard the misconduct of the Respondent at its meeting held on 30th January 2020.

4. The Board noted that the Respondent vide his letter dated 21/12/2017 has contended that the Department of Revenue Intelligence is not competent to issue Show Cause Notice being not proper officers as defined under the Customs Act, 1962, and the present proceedings initiated based on such SCNs are not maintainable.

5. The Board further noted that the Respondent vide his submissions dated 04/11/2019 and 19/11/2019 has, inter-alia, stated as under:-

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- a. The present enquiry cannot proceed as the Board of Discipline is not competent to adjudicate and further objected on treating the matter as information case.
- b. The Respondent contended that recording of statement under Section 108 of Customs Act, 1962 does not result in disrepute unless convicted by Ld. Trial Court.
- c. The Respondent further requested for examination of Sh. D.P. Mishra, Deputy Director, Directorate of Revenue Intelligence, the officer who initiated the information case against the Respondent and the Director(Discipline) who formed the Prima Facie Opinion against the Respondent.
- d. The Respondent made an application dated 09/11/2009 before Ld. ACMM, Patiala House Courts, New Delhi through Jail Superintendent (Tihar Jail) for retraction of his statements taken by DRI officers during the period of his detention from 25/10/2009 to 28/10/2009 and also submitted the Order dated 17/11/2009 passed by Ld. ACMM, New Delhi regarding the said retraction.
- e. The Respondent has also filed an appeal before Hon'ble Commissioner (Appeals), New Custom House, IGI Airport, New Delhi against Order-in-Original No. RD/ADC/ACE/60/2017 dated 28/04/2017 issued vide letter F. No. VIII (HQ)/10/ACE/Adj/246/2014 of Additional Commissioner.

6. The Board noted that, with regard to the preliminary objection of the Respondent regarding the competence of Board of Discipline and basis for treating the matter as 'Information' against the Respondent, the Board took the decision of the Hon'ble Appellate Authority in the matter of P. Siva Prasad versus ICAI (Appeal No. 1/ICAI/2012) and Chintapatla Ravindernath –Vs- ICAI (Appeal No. 2/ICAI/2012), which provides as under:-

".....It is not necessary that there has to be an informant to invoke Section 21 and that the Director (Discipline) cannot suo moto take action after coming to know of a serious professional mis-conduct of a CA through news report or media. Clause (1) of part 4 of First Schedule provides that if a Member is held guilty by civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months, the Member shall be deemed to be guilty of other misconduct. If a news item appears either in print media or in other media about a Chartered Accountant having been convicted by a court for an offence say of cheating, fraud, Rape, theft etc., it would be obligatory on the part of Director (Discipline) to find out truthfulness of such news item and thereafter issue notice to the Member and verify the facts from him. The Director (Discipline) has to send its prima facie opinion even in respect of information received through media to the Board of Discipline or the Disciplinary Committee as the case may be. The action on the basis of information includes and means the information received from any source, including media." (emphasis added).

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Therefore, in view of the above, it is clear that Section 21 of the Chartered Accountants Act 1949 gives powers to the Director (Discipline) to initiate action on the basis of 'Information' received from any source and further on the basis of contents of information, the same can be adjudicated by Board of Discipline or Disciplinary Committee. Thus, the preliminary objection of the Respondent is not maintainable and the case is dealt with on merits of the facts/ documents on record.

6.1 The Board further noted that the Respondent requested for examination of witnesses vide his written submissions dated 04/11/2019, i.e. the date on which hearing had been concluded and did not provided any satisfactory reply for such a belated request and also failed to provide relevance for such examination. It is pertinent to mention that the hearing in the matter was first fixed for 13th December, 2018 and thereafter, was fixed for 16th May, 2019 and on both these dates, the Respondent sought an adjournment, thus, the Board is not inclined to consider such a request at fag end of proceedings and accordingly, the contention of the Respondent is hereby declined.

7. As regards the charges leveled against the Respondent, the Board noted that the Respondent made a submission that he made an application dated 09/11/2009 before Ld. ACMM, Patiala House Courts, New Delhi through Jail Superintendent (Tihar Jail) for retraction of his statements taken by DRI officers during the period of his detention from 25/10/2009 to 28/10/2009 and the Department substantiated its case by submitting all the relied upon documents along with respective Show Cause Notice issued against the Respondent. It is further noted that the subsequent statement of the Respondent dated 21/04/2011 was also recorded under Section 108 of the Customs Act.

The Board on perusal of the submissions made by DRI noted as under:

7.1 in the matter of M/s Gautam Exports, during the period 20/07/2009 to 28/08/2009, declared FOB value as per 13 shipping bills was Rs. 4,82,15,372/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said FOB as Rs.80,35,895/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 47,96,617/-.

7.2 In the matter of M/s New Vision Fashion, during 02/07/2009, declared FOB value as per 2 shipping bills was Rs. 80,96,596/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said FOB as Rs.13,46,675/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 7,94,244/- and should be recovered back under the provisions of Customs Law.

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7.3 In the matter of M/s P.M. Overseas, during the period 08/11/2007 to 02/05/2008, declared FOB value as per 8 shipping bills was Rs. 2,39,06,862/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 26,66,443/- and should be recovered back under the provisions of Customs Law.

7.4 In the matter of M/s Sanam Exports, during the period 06/09/2008 to 28/11/2008, declared FOB value as per 6 shipping bills was Rs. 96,84,199/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said value of FOB as Rs. 21,24,290/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 9,07,406/- and should be recovered back under the provisions of Customs Law.

7.5 In the matter of M/s Ahlcon International, during the period 31/08/2004 to 29/09/2004, declared FOB value as per 4 shipping bills was Rs. 1,91,23,088/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said value of FOB as Rs. 31,87,181/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 19,50,553/- and should be recovered back under the provisions of Customs Law.

7.6 In the matter of M/s Ashadeep Exports Pvt. Ltd., during the period 24/05/2008 to 01/09/2008, declared FOB value as per 9 shipping bills was Rs. 3,02,44,153/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said value of FOB as Rs. 50,40,692/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 33,83,139/- and should be recovered back under the provisions of Customs Law.

7.7 In the matter of M/s Ashadeep Exports Pvt. Ltd., during 08/08/2006, declared FOB value as per 3 shipping bills was Rs. 98,00,839.20/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said value of FOB as Rs. 16,33,423/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 8,25,949/- and should be recovered back under the provisions of Customs Law.

7.8 In the matter of M/s Kritika Exports, during the period 07/09/2007 to 19/01/2008, declared FOB value as per 5 shipping bills was Rs. 1,47,10,561/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said value of FOB as Rs.

23,51,478/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 16,15,007/- and should be recovered back under the provisions of Customs Law.

7.9 In the matter of M/s Kritika Exports, during the period 06/09/2007 to 06/10/2007, declared FOB value as per 5 shipping bills was Rs. 68,67,838/- which were exported by over invoicing and undue export incentive under drawback scheme have been availed/ utilized by the Respondent. The department Re-determined the said value of FOB as Rs. 11,96,336/-. Thus, duty drawback was wrongly availed by the Respondent amounting to Rs. 6,75,150/- and should be recovered back under the provisions of Customs Law.

Thus, the total Duty Drawback wrongly availed by the Respondent alongwith the syndicate is as follows:-

S.No.	Particulars	Amount
1.	Gautam Export	47,96,617
2.	New Vision Fashion	7,94,244
3.	P.M. Overseas	26,66,443
4.	Sanam Exports –TKD	24,97,404
5.	Sanam Exports – PPG	9,07,406
6.	Ahlcon International – TKD	19,50,553
7.	Ahlcon International – N Delhi	5,76,385
8.	Ashadeep Exports Pvt. Ltd. – TKD	33,83,139
9.	Ashadeep Exports Pvt. Ltd. – N Delhi	8,25,949
10.	Kritika Exports – TKD	16,15,007
11.	Kritika Exports – N Delhi	6,75,150
	Total	2,06,88,297

7.10 The Board also noted the statement of other persons including the proprietor/ director of respective firms/ companies was also recorded by the Department under Section 108 of Customs Act, 1962 and various documents including invoices, packing list, shipping bills, account opening forms, bank statements etc. were also seized and respective panchnama were also prepared by the Department.

8. The Board further noted that, vide Order dated 28/04/2017, Ld. Additional Commissioner in F No. VIII (AP)/10/Adj./246/2014/3728 has observed as under:-

- a. The declared FOB value of Rs. 90,84,810/- in the matter of M/s Ahlcon International was rejected and re-determined the same as Rs. 15,14,135/-. Further, the goods were confiscated and as the said goods were not available redemption fine of Rs. 3,00,000/- was imposed. Further, the duty drawback amounting to Rs. 5,76,385/- already availed by M/s Ahlcon International was disallowed and penalty of Rs. 3,00,000/- was also imposed.
- b. The declared FOB value of Rs. 68,67,838/- in the matter of M/s Kritika Exports was rejected and re-determined the same as Rs. 11,96,336/-. Further, the goods were confiscated and as the said goods were not available redemption fine of Rs. 2,50,000/-

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was imposed. Further, the duty drawback amounting to Rs. 6,75,150/- already availed by M/s Kritika Exports was disallowed and penalty of Rs. 2,50,000/- was also imposed.

- c. The declared FOB value of Rs. 98,00,839.20/- in the matter of M/s Ashadeep Exports Pvt. Ltd. was rejected and re-determined the same as Rs. 16,33,423/-. Further, the goods were confiscated and as the said goods were not available, redemption fine of Rs. 3,00,000/- was imposed. Further, the duty drawback amounting to Rs. 8,25,949/- already availed by M/s Ashadeep Exports Pvt. Ltd. was disallowed and penalty of Rs. 3,00,000/- was also imposed.
- d. Further, a penalty of Rs. 10,00,000/- was imposed on Shri Pradeep Kumar Manglik (Respondent) and Rs. 10,00,000/- upon Shri Sunil Kumar Walia.

9. The Board also noted that the Respondent filed an appeal before Hon'ble Commissioner (Appeals), New Custom House, IGI Airport, New Delhi against the aforesaid Order. But, till date, no decision on the same has been taken.

10. The Board on the basis of the documents and submissions on record was of the view that it is clearly established that the Respondent is involved in illegal and unlawful activities of claiming duty drawback on the basis of manipulated invoices/ shipping bills/ other documents/ records. Such an act on the part of the Respondent is clearly unbecoming of a chartered accountant and needs to be condemned. Accordingly, the Board held the Respondent guilty in respect of the charge.

CONCLUSION:

11. Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said act.

Sd/-
CA. SUSHIL KUMAR GOYAL
(PRESIDING OFFICER)

Sd/-
SMT. RANI NAIR (IRS, Retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA. DURGESH KUMAR KABRA
(MEMBER)

DATE: 30TH JANUARY, 2020

PLACE: NEW DELHI

Certified Copy
Mell
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002