

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]

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

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

File No. : [PR/G/311/17/DD/329/17/DC/1324/20]

In the matter of:

Shri Vinayak Bhat
Deputy Director
Directorate of Revenue Intelligence
Mangalore Regional Unit
Bharathi Bhawan, Bejai Church Road, Bejai
Mangalore-575 004

..... Complainant

Versus

CA. Ashish H Shah... (M.No.103750)
Partner, M/s Manubhai & Shah LLP
Chartered Accountants
Maker Bhavan, No.2
18, Marine Lines
Mumbai – 400020

..... Respondent

MEMBERS PRESENT AS ON 29.12.2020:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Govt. Nominee
Sh. Rajeev Kher, I.A.S. (Retd.), Government Nominee
CA. Rajendra Kumar P, Member
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 29.12.2020 (through Video Conferencing)

PARTIES PRESENT:

Complainant's Representative : Shri Perla Chandrashekhara Bhat
Respondent : CA. Ashish H. Shah
Counsel for Respondent : CA. A. P. Singh

CHARGES IN BRIEF:

1. The Committee observed that the instant matter before it was originated on account of filing of a complaint which arose on the basis of an intelligence developed by the Complainant's Department, whereby a case (OR No.12/2015-DRI dated 04.11.2015) relating to misuse of EPCG Scheme was registered against M/s Ajay Offset Printers, Mumbai i.e., the Respondent's client. Broadly, the facts of the case are that the said entity having IEC No. 0301029148 had imported offset printing machinery and accessories under the EPCG Scheme during April 2011 by availing zero rate of Customs duty provided under the scheme. While, as per the conditions contained in the relevant Customs Notification read with Foreign Trade Policy required that any importer of capital goods has to fulfil the export obligation, by exporting the products manufactured with the use of capital goods imported, on FOB basis equivalent to six times of duty saved on capital goods imported under EPCG Scheme within a period of 6 years from the date of issue of License or Authorization. However, as a matter of fact the said entity i.e., the Respondent's client, in order to fulfil such export obligation, had counted the unrelated third-party exports of one M/s Riddhi Enterprises, Mumbai and M/s Kokuyo Riddhi Paper Products Pvt Ltd., Mumbai (hereinafter to be referred to as "**M/s Kokuyo Riddhi**"). Thereafter, the Respondent's client secured Export Obligation Discharge Certificate (EODC) issued by the Joint/Additional DGFT office, Mumbai based on the above said exports as claimed by the Respondent's client.

1.1 The charge against the Respondent was that he failed to see that his client i.e., M/s Ajay Offset Printers contravened the provisions of the Foreign Trade Policy and the relevant Customs notification by claiming unrelated third-party exports and thereby securing the Export Obligation Discharge Certificate. Allegedly, despite knowing the fact that the said entity did not export goods and had only domestic sales, the Respondent counted the exports of M/s Riddhi Enterprises and M/s Kokuyo Riddhi towards the former's obligation (his client entity) and thus assisted it in taking an undue advantage of the EPCG scheme. By aiding and abetting the commissions and omissions of the entity, which resulted in the evasion of Customs Duty,

the Respondent rendered himself liable to penal action under Section 114AA of the Customs Act, 1962 as the said EODC was issued by DGFT office based on the Appendix 26A/ANF 5B which was issued by the Respondent without exercising due diligence.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of hearing i.e., on 29th December, 2020, the Committee noted that the Shri Perla Chandrashekhara Bhat was present as representative from the Complainant Department and the Respondent along with his Counsel CA A P Singh was present before it through video conferencing mode. The parties introduced themselves to the Bench and thereafter gave self-declaration as to the fact that they were alone in their respective rooms from where they were appearing and were not recording the proceedings of the Committee.
- 2.1 The Committee, initiated the proceedings of the day in the present matter and noted the arguments presented by the Complainant's side and submissions made by the Respondent's side and cross questioned the parties to clarify the things and to understand the issue involved in the matter for consideration before it. The Committee lent a very patient hearing to the parties and deliberated to connect the dots to arrive at a logical conclusion in the charge alleged against the Respondent whereby he, allegedly, had issued a certificate to his client – M/s Ajay Offset printers (hereinafter to be referred to as **“the Respondent's Client/ entity”**) based on which the latter had secured an Export Obligation Discharge Certificate (EODC) from the Customs/ Complainant's Department which the Complainant's Department had claimed to be false and was being issued by the Respondent without complying with the conditions of the custom's relevant notification and foreign trade policy.
- 2.2 The Committee considered various aspects relating to the matter, documents on record and arguments & submissions of the parties and then concluded the hearing by reserving its decision in the matter and to pronounce its decision at a later date.

2.3 Thereafter this matter was placed in meeting dated 1st of February, 2021 for consideration of the facts and arriving at a decision by the Committee.

MEMBERS PRESENT AS ON 01.02.2021:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, Govt. Nominee

CA. Rajendra Kumar P, Member

CA. Pramod Kumar Boob, Member

FINDINGS OF THE COMMITTEE:

3. The Committee noted that the Respondent, in his defense, has submitted that a certificate was produced before the Respondent in ANF 5B issued by M/S Dangi & Associates, Chartered Accountants duly signed by Mr. R. K. Dangi- M. No. 31274 and the said certificate certified 33 invoices of M/S Riddhi Enterprises claimed by his client entity as third-party exports. Also, as per his submissions, 33 invoices of M/s Riddhi Enterprises in which the name of the entity appeared as a supporting manufacturer along with their EPCG Licence no. were produced before him by his client. The Respondent also produced one invoice of M/S Kokuya Riddhi in which the name of the entity appeared as a Supporting manufacturer along with their EPCG Licence no. Moreover, the Committee also noted that the Respondent claimed that a declaration by M/s Riddhi Enterprises and M/s Kokuya Riddhi Paper Products Pvt. Ltd. each was also submitted by these entities to Addl. Director of DGFT declaring that they had no objection to consider their exports for fulfilment of export obligation of the Respondent's client. He added that he had also inquired into the nature of third party exports and how it could be used to fulfil the export obligation of the entity and he submitted that he was told that this was the normal practice followed and as per the law, third party exports could be considered for the purpose of fulfilling the export obligations. Furthermore, he emphasised that he had no reason to doubt on the genuineness of the transactions based on all the documents produced before him and accordingly he issued the certificate in ANF 5B and Appendix

26A believing in the facts produced before him without doubting any kind of malpractices in this case. The Respondent submits that the matter of complaint is an issue of interpretation whether third party exports could be taken for the purpose of fulfilling export obligation when there is no clarity and the provisions in this regard are amended at a later date. A professional shall not be proceeded against for a certificate issued by him based on good faith and documentary evidence.

3.1 The Committee noted the arguments of the Complainant that for applying EPCG License, there was a precondition that the applicant entity had to give a declaration / undertaking that the capital goods imported are to be used in the pre-production or post-production stages and if it is not established at a later date, then, it had to pay back the customs duty saved together with 15% interest on such imported goods which are found to have no relation with product/ service exported. Also, in the condition sheet of the EPCG authorization, the export obligations was to be fulfilled by the imported capital goods and the Respondent had certified in Annexure 5 that funds had been realized on the export so certified.

3.2 The Respondent's side rebutted the claim of the Complainant's representative stating that these preconditions were not in writing in the condition sheet. Respondent's counsel emphasized that authorization holder of license could discharge export obligation either through direct export or through third party export. To this the Committee posed various questions to the Respondent's side as to whether goods were required to be produced on the imported machine or be routed through third party with documents like BRC, GR declaration, shipping bills, export order and invoices etc. having name of the Respondent's client as supporting manufacture along with its license number. The Committee queried the Respondent whether it was a necessary condition that the goods exported should have been manufactured in the same machine which was imported and on which the benefit of import duties were claimed. To this the Counsel for the Respondent

submitted that this condition was introduced through foreign trade policy 2015-2020 and not in 2009-2014. Moreover, the Counsel for the Respondent also emphasized that the Department itself had introduced a circular in this respect clearly mentioning that this new condition requiring manufacturing of goods to be exported through the imported capital good shall be applicable from the time new Foreign Trade Policy (FTP 2015-20) was made applicable and not be applied retrospectively for the earlier FTP 2009-14. Therefore, he submitted that the Respondent was not at fault and had not conducted any professional misconduct as he had performed his duties diligently.

- 3.3 The Committee listened to Complainant's representative & the Counsel for the Respondent and considered the documents on record to arrive at a logical conclusion to decide the role of the Respondent in the alleged matter. The Committee examined the provisions of the FTP 2009-14 and compared the same with the new FTP 2015-20 in specific contrast with the new condition explicitly introduced in the latest/ latter FTP introduced which required necessary manufacturing of goods through the imported capital goods only for availing third party export benefit. It also made note of the DGFT Circular highlighting the fact that this new condition was not made applicable retrospectively. As the matter under consideration pertains to period 2012 – a period to which FTP 2009-14 was applicable, clearly new condition introduced in FTP 2015-20 was not applicable to the professional assignment carried out by the Respondent. The Committee is convinced that the Respondent has exercised his due care while issuing the certificate. The Committee also notes the submission of the Respondent that the matter is an interpretation issue which was clarified by a circular of the Department at a later date. The Committee accordingly in its considered view extend the benefit of doubt to the Respondent and accordingly, decided to hold him not guilty of professional and other misconduct falling within the meaning of Items (7) and (8) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule respectively to the Chartered Accountants Act, 1949.

CONCLUSION:

4. In view of the above observation, considering the arguments, counter arguments & submissions of the parties and documents on record, the Committee held that the Respondent is not guilty of professional and other misconduct falling within the meaning of Items (7) and (8) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule respectively to the Chartered Accountants Act, 1949.
5. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed order for closure of this case.

sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

(approved & confirmed through email)

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

(approved & confirmed through email)

(CA. PRAMOD KUMAR BOOB)
MEMBER

DATE: 11TH FEBRUARY, 2021

PLACE: DELHI

Certified to be true copy

Jyotika

Jyotika Grover
Assistant Secretary,
Disciplinary Directorate

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