

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2021-22)]

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

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

File No. : [PR-G-141/19/DD/179/2019/DC/1347/2020]

In the matter of:

**Shri Shreyas K M,
Dy. Director, Directorate of Revenue Intelligence,
Manglore Regional Unit,
Bharathi Bhawan
Bejai Church Road, Bejai
Mangalore – 574 004**

.....Complainant

Versus

**CA. Chamarajanagar Narahari Sastry Sridhara,
M/S Sridhara & Sastry,
Chartered Accountants,
No. 2, 6th Cross, II Phase,
Manjunathnagar,
West of Chord Road,
BANGALORE - 560 010**

.....Respondent

MEMBERS PRESENT:

**CA. Nihar N Jambusaria, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhhar Vasant Chitale, Member
CA. P.K. Boob, Member**

**Date of Final Hearing: 21st June 2021 through Video Conferencing
Place of Final Hearing: Mumbai**

The following persons were present:

- (i) Shri P. Chandrashekhara Bhatt – Counsel for Complainant
 - (ii) CA. Chamarajanagar Narahari Sastry Sridhara - Respondent
 - (iii) Shri Mallahrao, Advocate – Counsel for Respondent
- (All appeared from their respective personal location)





Charges in Brief:

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of Professional and Other Misconduct falling within the meaning of Items (7) and (8) of Part-I of Second Schedule and Item (2) of Part IV to First Schedule to the Chartered Accountants Act, 1949. The said Items to the Schedule states as under: -

Part-IV of First Schedule

"(2) Brings disrepute to the profession/Institute as a result of his action whether or not related to his professional work"

Part-I of Second Schedule

"(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties" and

"(8) Fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion"

Brief background and allegations against the Respondent:

2. On the basis of intelligence developed by the Department of Revenue Intelligence, Mangalore Regional Unit, a case relating to misuse of EPCG Scheme was registered against M/s. Ravi Graphics (hereinafter referred to as 'the Company') which had imported one High Performance Five Colour Offset Press Roland and accessories under the EPCG scheme during January 2005 by availing concessional rate (5%) of Customs duty provided under the Scheme. As per the Complainant, in terms of the conditions of the relevant Customs Notification read with Foreign Trade Policy, the goods exported through third party were required to be manufactured with the use of capital goods imported, to fulfil export obligation by the Importer. However, the Company in order to fulfil their export obligation, had considered unrelated third party of one M/s. Riddhi Enterprises, Mumbai (hereinafter referred to as 'M/s. Riddhi') and later obtained Export Obligation Discharge Certificate.

It was thus alleged that the Respondent had issued Form 26A (C-28 to C-31) and ANF 5B (C-32 to C-35) in favour of the Company without verifying the genuineness of the third party exports being claimed by them for fulfilment of export obligation which was relied upon by the office of Joint Director General of Foreign Trade, Bangalore for issuing export obligation discharge certificate to the Company which resulted in revenue loss to the Government.

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Proceedings:

3. On 21st June 2021, the Committee noted the Counsel for the Complainant and the Respondent along-with his Counsel were present during the hearing. Thereafter, they all gave a declaration that there was nobody except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. The Committee informed the parties that the composition of the Committee had undergone change since last hearing in the matter and asked if they wished to proceed denovo or proceedings might continue from the stage it was left. Both the parties agreed that the proceeding be continued from the stage it was left.

Thereafter, the Counsel for the Respondent made his further submissions on the allegations. The Committee examined the Respondent on the facts of the case as well as submissions made by him. The Respondent was thereafter, directed to make certain submissions within next 15 days and that the said Written Submissions of the Respondent be sent to the Complainant to enable them to file their Rejoinder, if any, within next 15 days of the receipt of the same. Accordingly, hearing in the matter was concluded and judgment was reserved.

3.1 Thereafter, on 24th January 2022, the Committee noted that the Respondent vide his e-mail dated 9th July 2021, submitted the information as required by the Committee and thereafter the Complainant Department vide its e-mail dated 19th July 2021 submitted the Rejoinder on the matter. Accordingly, the Committee considered the documents available on record and oral and written submissions made by both the parties before it at the time of hearing on 24th January 2022 and, thereafter, decided on the matter.

Findings of the Committee:

4. The Committee noted that the allegation raised against the Respondent was that he had signed the statements Appendix 26A (C-28 to C-31) - Certificate of Chartered Accountant for redemption of EPCG authorization as well as ANF 5B (C-32 to C-35)- Statement of Exports for redemption without completely verifying the documents with regard to fulfilment of export obligation by M/s Ravi Graphics. It was alleged that even though the Respondent was fully aware that M/s Ravi Graphics could not fulfil their obligation and that it had resorted to unjust means by

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claiming unconnected 'Third Party Exports' as their own, he issued Appendix 26A. As per the Complainant, the Respondent knew that there was no business link/transaction between M/s Ravi Graphics and the said Third Party Exporter, M/s Riddhi Enterprises. Even after scrutinizing all the documents of M/s Ravi Graphics and that they were totally unrelated and hence the third party exports being claimed by M/s Ravi Graphics for fulfilment of their obligation were not genuine still the Respondent issued Appendix 26A and ANF 5B.

5. The Committee in this regard noted the submissions made by the Respondent that the DGFT had issued EPCG certificate based on the same set of documents produced before the Revenue Intelligence and they had also gone through the entire set of exports made by the Riddhi Enterprises using the licence number of M/s Ravi Graphics before raising issue of such certificate. As per the Respondent, it clearly established that the authority which had been empowered for issue of EPCG had not raised any disputes with regard to the claim of M/s Ravi Graphics but the Complainant Department had gone beyond the purview of the DGFT to cast aspersions on the conduct of the Respondent who has served the society for more than four decades.

5.1 The Respondent further submitted that he had issued the said certificate in ANF5B and Appendix 26A after perusal/verification of various relevant documents produced before him by M/s Ravi Graphics and after getting satisfied before issuing the said certificates. He had no intention to avoid any tax to the government.

5.2 The Respondent further submitted that there was a provision to claim third party exports as per the condition sheet issued by Joint Director General of Foreign Trade issued to M/s Ravi Graphics and therefore M/s Ravi Graphics was entitled to claim third party exports made by M/s Riddhi Enterprises. He also stated that the licence was issued under Chapter 5 of Foreign Trade Policy 2004-2009 and carried export obligation to export to GCA countries and clause 4 of the said condition sheet stated that firm might discharge export obligations by way of third party export and in all such cases name of the exporter, name of EPCG licence holder, date and number of EPCG licence should be indicated in shipping bills. Hence, the export obligation had been fulfilled by M/s Ravi Graphics and the same had been endorsed by Office of DGFT, Bangalore on 28.06.2013. The redemption letter so issued clearly stated that on the basis of documents submitted towards discharge of export obligation of M/s Ravi Graphics, it was

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observed that the export obligation stipulated in the license had been met in full proportion to duty amount utilized by M/s Ravi Graphics and consequently the export obligation had been discharged against the said authorization in terms of Para 5.13 of Hand Book of Procedure. The Respondent also argued that Foreign Trade Policy 2005-09 and Foreign Trade Policy 2009-14 were applicable on his matter wherein there was ambiguity on the nature of third party exports.

6. The Committee, thereafter, on perusal of documents/information as available on record, noted that the Foreign Trade Policy 2004-09 define the various terms pertinent to the matter as follows:

(i) Para 2.34 of Chapter 2 defines "*Third Party Exports*" as "*defined in Chapter 9 shall be allowed under FTP*".

(ii) Further Para 9.62 of Chapter 9 states that "*Third Party Exports*" means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and Third Party exporter(s). BRC, GR Declaration, export order and invoice should be in the name of third party exporter."

The Committee noted that various declaration forms were signed by M/s Riddhi Enterprises as third party exporter which were, thereafter, duly signed and confirmed by M/s Ravi Graphics, which as per the Respondent had given him an impression that it satisfied the clause laid under the definition of 'Third party which simply state that it also include exports made by another exporter.

7. The Committee further noted that to fulfil export obligation, M/s Ravi Graphics and M/s Riddhi Enterprises as third party exporter, had used the outer wrapper manufactured by M/s Ravi Graphics and while giving declarations, the same, according to the Respondent was believed to be in compliance with the provisions of Custom Notification No. 64/2008 wherein it is stated that "*Export Obligation*" means obligation on the importer to export to a place outside India , goods manufactured or capable of being manufactured or services rendered by the use of the capital goods imported in term of this notification."

8. The Committee further noted that the provisions of the FTP 2009-14 in comparison to the new FTP 2015-20 were amended which introduced explicit new conditions requiring necessary

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manufacturing of goods through the imported capital goods only for availing third party export benefit. It also noted that the DGFT had issued clarification vide Policy Circular No. 3/2015-20 dated 02.09.2015 highlighting the fact that this new condition would be applicable to third party exports made on or after 01.04.2015 and not retrospectively. The Committee noted that as the matter under consideration pertained to period 2013 when FTP 2009-14 was applicable, the same was in itself sufficient to opine that new condition introduced in FTP 2015-20 was not applicable to the professional assignment carried out by the Respondent. Considering the fact that extant matter involved an interpretational issue which was clarified vide circular issued by the Complainant Department, the Committee viewed that benefit of doubt be extended to the Respondent and accordingly, decided to hold him **Not Guilty** of professional misconduct as alleged in the extant case.

Conclusion :

9. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **Not Guilty** of Professional and Other Misconduct falling within the meaning of Items (7) an (8) of Part I of the Second Schedule and Item (2) of Part IV to the First Schedule to the Chartered Accountants Act, 1949 to the Chartered Accountants Act, 1949.

10. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case.

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Sd/-
[CA. Nihar N Jambusaria]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[Shri Ajay Mittal]
Member (Govt. Nominee)
[Approved and confirmed through e-mail]

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. P.K. Boob]
Member

Place: New Delhi
Date: 8th February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy
सी.ए. मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहजहाँ रोड, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahjahan Road, Delhi-110032

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