

CONFIDENTIAL

**DISCIPLINARY COMMITTEE [BENCH – II (2021-2022)]**

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

**Findings under Rule 18(17) and Order under 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/15/18-DD/191/INF/18-DC/1320/2020]**

**In the matter of:**

**CA. Jagdish Kumar Radheshyamji Banka, (M. No. 035019),**

401/402, Silver Oak Raheja Willows CHS Ltd.,

Akurli Road,

**MUMBAI – 400 101**

**... Respondent**

**MEMBERS PRESENT AS ON 25.06.2021:**

**CA. (Dr.) Debashis Mitra, Presiding Officer,**

**Sh. Rajeev Kher, I.A.S. (Retd.), Government Nominee,**

**CA. Amarjit Chopra, Government Nominee**

**CA. Babu Abraham Kallivayalil, Member**

**DATE OF FINAL HEARING : 25.06.2021 (through Video Conferencing)**

**PARTIES PRESENT:**

**Counsel for Respondent : CA. Bhupinder Shah**

**CHARGES IN BRIEF:**

1. In the instant case, the Committee observed that the said matter originated vide letter dated 05<sup>th</sup> March, 2018 alongwith an annexure which was received from Shri R. K. Rawat, Assistant Commissioner of Customs, SIIB (Export), New Customs House, Mumbai (hereinafter referred to as the “**Informant**”) containing allegations against the Respondent. The Committee noted that the broad charges against the Respondent are as under:

- a. That he had submitted certain documents to DGFT based on which Advance Authorisation Licenses were issued which were misutilized for duty free import.
- b. That he falsely issued a Solvency Certificate for the importer based on which the importer got exemption from submission of Bank Guarantee to Customs Authorities.

This action of the Respondent resulted loss of revenue to the Informant Department i.e., the Customs Department.

**BRIEF FACTS OF THE PROCEEDINGS:**

2. The Committee noted that this matter was listed for three times earlier, however, no hearing could take place on any of the occasion due to adjournment sought by the Respondent on one date while the other two times, meeting could not take place due to unavoidable circumstances. The Committee noted that on 25<sup>th</sup> of June, 2021, though, the Respondent was not personally present before the Committee. However, his Counsel CA. Bhupinder Shah, was present before the Bench through Video Conferencing mode.
3. After taking brief of the case, the Committee requested the Counsel of the Respondent to make submissions in defense of his client i.e., the Respondent. Among others, he submitted that his client had taken adequate care and verified all the documents considered necessary to ascertain solvency of an entity or individual to the best of his knowledge and belief. Simultaneously, he also emphasized the fact that this matter was a time barred. The Committee also posed certain questions to the Counsel of the Respondent to bring more clarity about the facts of the case & the issue involved. Among others, to a specific question of the Committee as to whether the Counsel was having the copy of impugned Solvency Certificate with him to which, he replied that the said certificate was issued long back in the year 2002 and presently he was not having copy of the same.

**FINDINGS OF THE COMMITTEE:**

4. The Committee observed that the said certificate in question was issued long back in 2002 and the same is not provided even by the Informant Department. Further, the copy of the impugned certificate could not be expected to be retained by the Respondent till the time of this case was filed in 2018.

5. The Committee also observed para 14 of AAS -3 (Documentation) which states as under:

*"The auditor should adopt reasonable procedures for custody and confidentiality of his working papers and should retain them for a period of time sufficient to meet the needs of his practice and satisfy any pertinent legal or professional requirements of record retention."*

6. The Committee looking into the above vis-à-vis facts and circumstances of the case, material on record and submissions of Counsel of the Respondent, decided to exonerate the Respondent from the charges levelled against him.

**CONCLUSION:**

7. In view of the above observation, considering the submissions of the parties and documents on record, the Committee held the Respondent **NOT GUILTY** of professional misconduct falling within the meaning of Item (2) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

8. 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 closing the case against the Respondent.

sd/-  
(CA. (DR.) DEBASHIS MITRA)  
PRESIDING OFFICER

(approved & confirmed through email)  
(SH. RAJEEV KHER, I.A.S. (Retd.)  
GOVERNMENT NOMINEE

(approved & confirmed through email)  
(CA. AMARJIT CHOPRA)  
GOVERNMENT NOMINEE

sd/-  
(CA. BABU ABRAHAM KALLIVAYALIL)  
MEMBER  
प्रमाणित सत्य प्रतिलिपि / Certified true copy

Date : 19.1.2022  
Place : New Delhi

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover  
सहायक सचिव / Assistant Secretary  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
अटलबिहारी वाजपेयी विमान नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032