



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

[PR/161/2015-DD/09/2016-DC/752/18]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No. : [PR/161/2015-DD/09/2016-DC/752/18]

In the matter of:

Shri Shamboo Nath,

Addl. Commissioner (Anti Evasion)

Officer of the Commission of Customs, Central Excise & Service Tax,

Hyderabad-III Commissionerate

LB Stadium Road, Basheerbagh

Hyderabad-500 004

.....Complainant

Versus

CA. Ghanta Venkateswara Rao (M.No.216153)

Proprietor, M/s. G.V.Rao & Co (FRN 011131S)

G-4, Santi Apartments, Anand Nagar Colony

Khairatabad

Hyderabad-500 060

.....Respondent

Members present:

CA. Nihar Niranjan Jambusaria, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

CA. Chandrashekhar Vasant Chitale, Member

Date of Final Hearing: 23rd July, 2021

Place of Final Hearing: Mumbai

Parties Present:

CA. Ghanta Venkateswara Rao (M.No.216153)-Respondent (From personal location)

1. That vide report dated 28th August 2020 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Ghanta Venkateswara Rao (M.No.216153)** was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in respect of the Statutory audit of M/s. Celestail Bio-Labs (hereinafter referred to as the "**Company**") for the Financial Years 2005-06 to 2009-10 and Tax audit of the Company for the Financial Years 2006-07 and 2007-08. It was alleged against the Respondent that during the course of audits, he had not thoroughly verified the books of accounts of the Company as he failed to point out fictitious transactions recorded in the name of 'Sales-Bio-IT'. It was noted that Clause (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 state as under:

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Part I Second schedule: -

“(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity; and

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”.

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 9th July 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 23rd July 2021 through video conferencing.

3. The Respondent appeared before the Committee on 23rd July 2021 through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. The Committee considered the oral submissions made by the Respondent. The Respondent, at the outset, submitted that he had been rendering professional services for the past 30 years and the extant case was the first complaint against him. He accordingly requested for lenient punishment.

4. The Committee considered the oral submissions made by the Respondent and noted that during the FY 2008-09 and 2009-10, the revenue/sales from 'Sales--Bio-IT' were stated at Rs. 1340.07 lakhs, and Rs.705.99 respectively which as per the Investigation Report of the Complainant Department, were not monetary transactions as evident from the bank accounts of the Company beside the confessional statement made by the Managing Director of the Company. The Committee noted that the Respondent while acting as a statutory auditor of the Company for the said period(s) was under a statutory obligation to express opinion on the Financial Statements based on verification of books of accounts and evidences and information as obtained or provided by the management but he had, in extant matter, failed to explain the audit procedure adopted by him while carrying out the statutory audit of the Company for the said period(s) and did not gave his defence on merits. It was also noted that during the FY 2008-09 and 2009-10, the revenue/sales from 'Sales-Bio-IT' was Rs. 1340.07 lakhs and 705.99 lakhs respectively when PAT was at Rs. 531.00 lakhs and Rs. 233.68 lakhs respectively which signified that the alleged sales were indeed material for maintaining profits of the Company. Thus, it was noted that the Respondent had not only failed detect the sales transactions alleged to be fictitious but also failed to report material misstatement appearing in the Financial Statements with which he was concerned in a

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professional capacity and as such failed to exercise due diligence in conduct of his professional duties.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning within the meaning of Items (6) and (7) of Part I of Second Schedule and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent, **CA Ghanta Venkateswara Rao (M.No.216153)** be removed from the register of members for a period of 2 (two) years along with a fine of Rs. 50,000/- be levied upon him that shall be payable within a period of 3 months from the date of receipt of the Order. In case, the Respondent failed to pay the same as stipulated, the name of the Respondent **CA Ghanta Venkateswara Rao (M.No.216153)** be removed for a further period of 1(one) month from the Register of members on the lines of Section 64 of the Indian Penal Code. (u)

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

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

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
Approved and confirmed through e-mail

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Certified to be true copy
Mohita Khanna
CA. Mohita Khanna
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[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/161/2015-DD/09/2016-DC/752/18]

In the matter of:

**Shri Shamboo Nath,
Addl. Commissioner (Anti Evasion)
Officer of the Commission of Customs
Central Excise & Service Tax, Hyderabad-III Commissionerate
LB Stadium Road, Basheerbagh
Hyderabad-500 004**

.....Complainant

Versus

**CA. Ghanta Venkateswara Rao (M.No.216153)
Proprietor, M/s. G.V.Rao & Co (FRN 011131S)
G-4, Santi Apartments, Anand Nagar Colony
Khairatabad
Hyderabad-500 060**

.....Respondent

MEMBERS PRESENT:

**CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member**

Date of Final Hearing: 2nd July 2020 through Video Conferencing

PARTIES PRESENT:

- 1. Shri J. Suresh Babu – Official of the Complainant Department (appeared from ICAI's Centre of Excellence in Hyderabad)**
- 2. Shri S. Vivekananda – Authorized Counsel of the Respondent (appeared from ICAI Office in Bengluru)**

Allegations of the Complainant:

1. The Respondent was the Statutory auditor of M/s. Celestail Bio-Labs (hereinafter referred to as the “**Company**”) for the Financial Years 2005-06 to 2009-10. He was also the tax auditor of the Company for the Financial Years 2006-07 and 2007-08. It was alleged against the Respondent that during the course of his audit, he had not thoroughly verified the books of accounts of the Company as he failed to point out fictitious transactions recorded in the name of ‘Sales-Bio-IT’.

Proceedings:

2. At the outset on 2nd July 2020, the Committee noted that the representative on behalf of the Complainant Department and the authorized Counsel for the Respondent were present in person before it. Since, the Official of the Complainant Department appeared for the first time before the Committee, he was put on oath. It was noted that the transactions of first hearing had already been undertaken by the Counsel for the Respondent at its last hearing and that the case was part heard but no substantial hearing had taken place in the matter. Still, the Committee gave the option to both the parties that either the hearing be continued from the stage it was left at the last hearing or they might opt for de-novo hearing. Both the parties requested that hearing in the matter be continued from the stage it was left at the last hearing.

The Committee, thereafter, proceeded in the matter and asked the Official of the Complainant Department to present his case. The Committee, thereafter asked the Counsel for the Respondent to make his submissions in the matter. During hearing, the representatives for both parties i.e. of the Complainant and the Respondent made their respective submissions before it. The Committee examined both the parties on the submissions made by them. The Counsel for the Respondent made his final submissions in the matter. Based on the documents available on record and after considering both oral and written submissions made by both the parties, the Committee concluded hearing in the matter.

Findings of the Committee:

3. The Committee noted that the allegation raised against the Respondent was that while acting as the statutory auditor for the years from 2005-06 to 2009-10 and also as the Tax auditor for the years 2006-07 & 2007-08, he failed to point out fictitious transactions recorded in the name of 'Sales-Bio-IT'. The Committee noted that as per the Investigation Report (C-4 to C-6), the Company was engaged in herbal and biotech research and formulations and was also providing services relating to data testing and analysis to the clients in the field of clinical data management and analysis. During the course of investigation, the Bank statement of the Company were obtained from State Bank of India, ICICI Bank, wherein it was noticed by the Complainant Department that there were no monetary transactions related to the services rendered by the Company to its clients pertaining to head 'Sales-Bio-IT'. The investigation report concluded as under:-

"The investigation concludes that fictitious transactions were recorded in the name of Bio- IT Services to project a rosy picture of the company to the shareholders. There was no money received against such sales. All the amounts shown as Bio-IT sales would subsequently be written off as bad debts (as per the statement of Dr. A.N. Singh). Auditors claim that they are not responsible for day to day affairs of the company and their role is limited to taxation and reasonableness of transactions on record. Two independent directors claimed their ignorance as they are not involved in day to day transactions of the company. They stated that their signature on the annual statements of accounts is a mere formality." (C-6)

4. The Committee noted the submissions made by the Respondent with respect to the allegation wherein he had stated that during the relevant period i.e. Financial Years 2010-11 and 2011-12, in which the Complainant alleged evasion of tax by the Company, some other Audit Firm i.e. M/s. Lakshmi Purna & Associates, Hyderabad were the Statutory Auditors and that the Respondent was not in a position to explain facts as he was not privy to the same as he ceased to be a Statutory Auditor way back in 2009-2010 and much prior to this in 2007-08 itself, he ceased to be a Tax Auditor of the Company. Further, a Show Cause Notice dated 24.03.2015 was issued by the Complainant department to the Company and not to the Respondent at all and on perusal of the same, it was clear that the period under enquiry were financial years 2010-11 and 2012 and not the years when he was the Statutory or Tax Auditor of the Company.

5. The Committee further noted on perusal of the Investigation Report that the Complainant Department had sought various document from the Company including list of clients, copies of service agreements, copies of invoice raised and copies of Annual Report to arrive at a finding. On perusal of the Financial Statements of the Company , the following turnover inclusive of exports from products viz. Formulations, Bioinformatics, Data warehousing and mining and software developments is shown as under:-

Financial Year	Description of Revenue	Turnover as per Balance Sheet (Amount in Lakhs)
2006-07	Sales-products	1412.75
2007-08	Sales-products	2031.12
2008-09	Sales- Formulations	585.01
	Sales- Bio IT	1340.07
2009-10	Sales- Formulations	1447.23
	Sales- Bio IT	705.99
2010-11	Sales- Formulations	1760.31
	Sales- Bio IT	762.01
2011-12	Sales- Formulations	1324.35
	Sales- Bio IT	734.53
2010-11	Sales-Traded Goods- Formulations	1760.31

6. The Investigation Report further stated that since certain part of Turnover reflected in the Balance Sheets were consideration towards services rendered to various customers, accordingly, the investigation was aimed to ascertain the nature of services rendered by the Company. It further stated that when the Company did not submit any contract/work order, ledger, journal Voucher, a search was conducted at the premises of the Company but no evidence was available in the premises also which could ascertain the nature of services. Thereafter, as per the copy of invoices submitted and

address contained therein, letters were addressed to major customers which informed that they neither entered into agreement with the Company nor received any service from it.

7. The Committee further perused the copy of Investigation Report and pertinently noted that to ascertain the fact of manipulation of the financial records, copies of Bank Statements were obtained from the State Bank of India , Somajiguda, Hyderabad and ICCI Bank, Banjara Hills Branch and it was established that there were no monetary transactions related to these Bio-IT services in these Bank accounts. Further, the report stated that on 7th January 2013, a final statement of Dr. A.N.Singh was recorded wherein he confessed that the Company did not receive any amount regarding Bio-IT or clinical data testing and also he was not aware of the details of the services stated to have been rendered.

8. On perusal of the submissions made by the Respondent, with respect to his regarding show cause notice issued by the Complainant Department being confined to periods when the Respondent was neither the Statutory Auditor nor the Tax Auditor, the Committee viewed that it is not a relevant ground for ignoring the findings in the investigation report, which also covers the period when audit was conducted by the Respondent. The Committee pertinently noted that the Respondent was provided with the entire copy of the Investigation report and not merely the show cause notice while seeking his response. Further, on perusal of the facts, as discussed in paragraphs above, the Committee concluded that the contention of the Respondent that he was not in a position to explain facts as he was not privy to the Investigation conducted by the Complainant department during Financial Years 2010-11 and 2011-12 since, he ceased to be a Statutory Auditor way back in 2009-2010 and much prior to this, in 2007-08, he ceased to be a Tax Auditor of the Company does not hold any ground. The Committee noted that for the purpose of conducting Investigation , the Department examined the turnover details since 2006-2007 to 2012-13 (C-4) which were certified by the Respondent from 2005-06 to 2009-10 but he had failed to bring on record the working papers based on which sales recorded under the head "Sales-Bio-IT" were

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verified. It is noted that neither the Respondent was able to bring the documents/information verified by him during audit before the Committee nor anything to support the same was brought on record before the Complainant Department either by him or by the Company during its investigation. The Committee noted following excerpts from the Statement of Oath of the Respondent as recorded by the Complainant Department under Sec 14 of the Central Excise Act, 1944 on 18th Feb, 2013 reproduced below:

Question No.4: Are you aware whether M/s Celestial Bio Labs have rendered any Services to any client? If so, please furnish the details.

Ans: I am not aware about the specific details of individuals/firms to whom the services were rendered.

Question . N.o .8: Please go through the Annual Statements of accounts for the years 2007-08 and 2008-09 wherein Income from Sales Formulations was started in 2008-09. Please explain in brief the samplings conducted before certifying the same.

Ans: We have not certified specifically about income from sales formulations or any other specific issue. Based on a general sampling study, we have given our overall opinion on financial statements.

The excerpts from the Statement of Oath of Dr. A N Singh, the then Managing Director of the Company, recorded by the Complainant Department under Sec 14 of the Central Excise Act, 1944 on 5th July, 2012, as noted by the Committee, is reproduced as below:

Question Q.12.Please name your clients to whom you have rendered above services and amounts received from them.

Answer: I was out of station and arrived today after-noon in the city and came directly to appear before you as summoned. I can assure you to provide all the relevant details

including the documents/information as called for in the summons dated 27/6/2012 by 9th July 2012.

Further excerpts, as noted, from Statement on Oath recorded on 5th Sept, 2012 is reproduced as below:

Question No 8: Please furnish the copies of month wise/ customer wise receipt ledgers from April, 2007 to March, 2012.

Ans: Since the office has been shifted from Banjara Hills to Nacharam, certain data with the computer has been corrupted. We are trying to retrieve the data as the data was put in an ERP package called PACT. Fter a lot of effort we are trying to retrieve the data and we will be able to submit all the relevant data the movement we are able to synchronize the data from the PACT.

Question No 9: Have you informed any statutory authorities like Income Tax, SEBI/NSE/BSE etc., about the loss of data and the status of retrieval?

Ans: We have engaged the services of the ERP provider who have given this product to us and also we are taking the help of Tally people where we are trying to migrate the data from the PACT to Tally as Tally is more user friendly and the services are available easily unlike PACT as only one agency is dealing with the PACT. We are confident to retrieve the major portion of the data and we will be able to synchronize and put in the Tally. If we are not able to retrieve the data to our satisfaction, then only we will bring to the knowledge of the appropriate authorities.

Question No.13: In your earlier statement you stated that you would be submitting all the details including the names of your clients and other information/documents by 9th July, 2012. Why the same has not been done so far?

*Ans: We have given the details of the clients along with the invoices **except ledgers** which are under progress.*

Question No.14: Please furnish details of Bank accounts your company is having for day to day operations and other loan purposes. Please furnish details along with account numbers.

Ans: We have the accounts in SBI, Industrial Finance Branch, Somajiguda, Hyderabad and also ICICI, Jubilee Hills, Hyderabad and the account number details shall be furnished within two days.

It was also noted that during the FY 2008-09 and 2009-10, the revenue/sales from 'Sales-Bio-IT' shown as Sales –Product & Services are stated at Rs. 1340.07 lakhs and 705.99 lakhs respectively when PAT was at Rs. 531.00 lakhs and Rs. 233.68 lakhs respectively. This signifies that the said sales were indeed material for maintaining profits of the Company which substantiate the conclusion drawn in Investigation Report that the fictitious transactions in the name of Bio-IT services were recorded to project a rosy picture of the Company to its shareholders and no money was received against such sales. In the absence of any document/ information verified by the Respondent to cross check the sales that took place, debtors balance confirmation and the amounts realised from them during the period indicates the casual approach of the Respondent towards his professional duties. ,

9. The Committee noted that the Respondent while acting as a statutory auditor for the FY 2005-06 to 2009-10 was under a statutory obligation to express opinion on the Financial Statements based on verification of books of accounts and evidences and information provided by the management but in the extant case wherein serious allegations were raised against him which posed serious questions on his professional skills and skepticism, he chose not to come forward to establish his bonafide and explain the audit procedure adopted by him while carrying out the statutory audit of the Company rather tried to avoid giving his defence on merits. Further, in light of the findings of the Investigation Report that there were no monetary transactions related to these Bio-IT services in Bank accounts of the Company beside the confessional statement made by the Managing Director of the Company that the Company did not receive any amount regarding Bio-IT, the Committee was of the considered opinion that

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the Respondent not only failed to report a material misstatement appearing in the Financial Statements with which he was concerned in a financial capacity but also failed to exercise due diligence in conduct of his professional duties. The Committee, accordingly, held the Respondent guilty of professional misconduct falling within the meaning of Clauses (6) and (7) of Part I of Second Schedule of Chartered Accountant Act 1949.

Conclusion :

10. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of professional misconduct falling within the meaning of Clauses (6) and (7) of Part I of Second Schedule of Chartered Accountant Act 1949.

Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-mail)

Sd/-
[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

DATE: 28th August, 2020 (through video conferencing)

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Certified to be True Copy
Mohita Khanna
Mohita Khanna
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India