

**CONFIDENTIAL**

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

**[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-68/18/DD/71/2018/DC/1346/2020]**

**In the matter of:**

**The Deputy Director,  
Directorate of Revenue Intelligence,  
Mangalore Regional Unit,  
Bharathi Bhavan,  
Bejai Church Road,  
Manglore-575 003**

**.....Complainant**

**Versus**

**CA. Sriramulu Naidu (M.No.018244)  
Partner, M/s. Sriramulu Naidu & Co.,  
Chartered Accountants  
13-12-1394/51,  
Rama Bhavan Complex,  
Kodialbail,  
Mangalore 575003**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Nihar N Jambusaria, Presiding Officer  
Smt. Anita Kapur, Member (Govt. Nominee)  
CA. Chandrashekar Vasant Chitale, Member**

**Date of Final Hearing: 23<sup>rd</sup> July, 2021 through Video Conferencing  
Place of Final Hearing: Mumbai**

**Parties Present:**

- (i) CA. Sriramulu Naidu – Respondent**
- (ii) Shri G. Venkatesh, Advocate – Counsel for Respondent  
(all appeared from ICAI Bangalore Office)**

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**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 Misconduct falling within the meaning of Items (7) and (8) of Part-I of Second Schedule to the Chartered Accountants Act, 1949. The said Items to the Schedule states as under: -

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

“(8) Fails to obtain sufficient information for expressing 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. Prakash Offset Printers (hereinafter referred to as ‘M/s POP’) which had imported offset printing machinery and accessories under the EPCG scheme during February 2009 by availing concessional rate (3%) of Customs duty provided under the Scheme. As per the conditions of the relevant Customs Notification read with Foreign Trade Policy, the importer of capital goods had to fulfil export obligation, by exporting the products manufactured with the use of capital goods imported, on FOB basis equivalent to eight times of duty saved on capital goods under EPCG Scheme within a period of 8 years from the date of issue of Licence or Authorisation. However, it was noticed that M/s. POP in order to fulfil their export obligation, had considered unrelated third party exports (of Excise Note Books) of one M/s. Riddhi Enterprises, Mumbai (hereinafter referred to as ‘M/s. Riddhi’) and later obtained Export Obligation Discharge Certificate (EODC) issued by the Joint/Additional DGFT office, Mumbai based on the above said exports.

It was thus alleged that the Respondent had issued a Certificate in Appendix 26A dated 04/09/2012 (C-7 to C-8) in favour of M/s. POP 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 M/s. POP which resulted in revenue loss to the Government.

**Proceedings:**

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3. On 23<sup>rd</sup> July 2021, the Committee noted that the Respondent along with his authorized Counsel was present before the Committee. The Complainant was, however, not present and since neither any communication nor any request for adjournment was received from his end, the Committee decided to proceed ahead in the matter. The Counsel for the Respondent made his submissions on the allegations raised in the extant case. The Committee thereafter examined the Respondent on the submissions made by his Counsel. The Counsel for the Respondent made his final submissions in the matter.

Based on the documents available on record and after considering the oral and written submissions made before it, the Committee concluded hearing in the matter.

**Findings of the Committee:**

4. The Committee noted that the allegation raised against the Respondent was that he had issued a Certificate in Appendix 26A dated 04/09/2012 (C-7 to C-8) in favour of **M/s. POP** without verifying the genuineness of the third party exports being claimed by it 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 M/s. POP that resulted in revenue loss to the Government.

5. The Committee in this regard noted the submissions made by the Respondent that M/s POP had approached the Respondent in 2012 in respect of EPCG license No. 0730007750 and he had issued certificate dated 04.09.2012 in Appendix 26A format as per the provisions of FTP 2004-09 and not as per FTP 2015-20. Rest all other certificates and forms were certified by CA. P.K. Dangi, Mumbai. Subsequently, the office of Customs/DRI initiated allegations against M/s POP and the Respondent that the EPCG scheme was misused and unrelated third party exports were counted for export obligation on the belief that the Respondent had issued all Certificates including the main form ANF 5B and made all the attestations in connection with the EPCG redemption and that the amended provisions in FTP 2015-20 were applicable retrospectively.

5.1 He further stated that Appendix 26A, being a limited purpose Certificate, was issued as an annexure to main Form ANF 5B to verify the accuracy of the Shipping bills in connection with the relevant EPCG License Number. The Respondent argued that while applying for EPCG redemption, M/s POP had submitted several documents to the authority including Forms ANF

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5B, Appendix 9A, Appendix 22A, Appendix 26A and many other documents of more than 500 pages and it was only after verification of all such documents, DGFT had issued EODC/EPCG Redemption letter. He further submitted that the entire issue happened because there was certain ambiguity in the provisions of FTP 2004-09, FTP 2009-14 and FTP 2015-20 and M/s POP misinterpreted the provisions related to third party exports which was a bonafide misstatement but the Respondent was not aware of the said misstatement at the time of certifying Appendix 26A as there was no material evidence on record to doubt the intentions of M/s POP or M/s Riddhi Enterprises. Thereafter, M/s POP alongwith the Respondent vide letter dated 17.08.2016 made an application before the Settlement Commission which conclusively vide its Order dated 31.01.2017 settled the issues directing the Respondent to pay the penalty of Rs. 25000/-.

5.2 The Respondent also contended that the main issues raised by the Complainant and the Disciplinary Committee were on aspects of –

- Nexus between the Manufacturer and Third Party exporter (Agreement Copy)
- Foreign exchange realized being reflected in the manufacturer's account through normal banking channels
- Proof of goods exported by Third Party exporter being manufactured by EPCG license holder
- Proof of goods being dispatched from manufacturer's factory to the third party exporter's premises etc. (Para 5.10(d) of H.B.P. of FTP 2015-20)

He stated that the above queries were all related to the amendments brought by in FTP 2015-20 and were never a part of the limited scope Certificate Engagement of the Respondent and that there was an interpretational issue about the applicability of these amendments. He submitted that the Department itself had issued Circular clarifying that the new conditions/amendments were applicable prospectively and not retrospectively (Policy Circular No. 3/2015-20).

6. The Committee further noted the submissions made by the Complainant Department in his further Rejoinder that the Respondent was the statutory auditors of the importer and was aware of the entire facts. Further there was no dispute in the fact that Respondent had issued Annexure 26A which was mandatory to redeem /cancel EODC from DGFT to M/s POP which resulted in huge loss to the government.

7. The Committee, thereafter, on perusal of documents and submissions made by both the parties 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 viz. Form ANF 5B, Appendix 9A and Appendix 22A as third party exporter which were, thereafter, duly signed and confirmed by M/S POP, 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.

8. The Committee further noted that to fulfil export obligation, M/s POP and M/s Riddhi Enterprises as third party exporter, had declared that the goods exported was 'Exercise Books' which M/s POP was capable of manufacturing on the machinery so imported 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."

9. The Committee further noted the arguments of the Respondent 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 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 pertains to period 2012 when FTP 2009-14 was applicable, the same is 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. The Committee further noted that since the Respondent along with M/s POP went before Settlement Commission to settle the issues which vide its Order dated 31.01.2017 directed the Respondent to pay a penalty of Rs. 25000/- , thus the effect of loss, if any, to exchequer would have mitigated. 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 :**

10. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **Not Guilty** of professional misconduct falling within the meaning of Items (7) an (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

11. 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.

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

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

**Sd/-**  
**[CA. Chandrashekar Vasant Chitale]**  
**Member**

**DATE: 17th December, 2021**

**PLACE: New Delhi**

प्रमाणित सत्य प्रतिलिपि / Certified true copy  
**Mohita Khanna**  
सो. मोहिता खन्ना / CA. Mohita Khanna  
सहायक सचिव / Assistant Secretary  
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