

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. : [PR/G-140/19-DD/145/2019/DC/1367/2020]

In the matter of:

Shri Shreyas K M,
Deputy Director, Directorate of Revenue Intelligence,
Mangalore Regional Unit,
Bharathi Bhawan,
Bejai Church Road, Bejai,
MANGALORE - 575004

.....Complainant

Versus

CA. Nikhil Diwakar Sabharanjak (M. No. 107598)
M/s Sabharanjak & Associates
203, Krishna Vihar, CHS Ltd.
CTS-455, Behind Tata Compound,
Off SV Road, Irla Bridge,
Ville Parle (West),
MUMBAI - 400056

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Through VC)
Shri Rajeev Kher, Government Nominee (Through VC)
CA. Babu Abraham Kallivayalil, Member (Through VC)
CA. Rajendra Kumar P, Member (Present in person)

DATE OF FINAL HEARING : 31.01.2022 (Through Video Conferencing)

PARTIES PRESENT :

Complainant : Sh. Chandrashekhara Bhat P and
Sh. Mohandas V.V.
Respondent : CA. Nikhil Diwakar Sabharanjak
Respondent's Counsel : 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 intelligence developed by DRI, Mangalore Regional Unit, an offence case (O.R.No.03/2016 DRI dated 22.01.2016) relating to mis-use of EPCG Scheme (Export promotion Capital goods) was registered against M/s Print Vision i.e., the Respondent's client. Broadly, the facts of the case are that the said entity had imported offset printing machinery and accessories under the EPCG Scheme during November 2012 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. 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 M/s Riddhi Enterprises. 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 the Respondent signed the statement Appendix 26A dated 14.04.2014 without properly verifying documents with regard to realization of foreign exchange even though he was fully aware that M/s Print Vision cannot realise foreign exchange without exports. Even though there was no nexus between the capital goods imported and the goods exported, the Respondent, despite being aware that that no movement of goods took place

between M/s Print Vision and M/s Riddhi Enterprises, had issued Appendix 26A wrongly in favour of M/s Print Vision thereby failing to comply with the legal provisions and in applying due diligence prior to issuing the said Appendix 26A which was misused by M/s Print Vision.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of hearing i.e., on 31st January, 2022, the Committee noted that the Complainant representative(s) Sh. Chandrashekhara Bhat P and Sh. Mohandas V.V., Senior Intelligent Officers were present from their place through Video Conferencing mode. The Respondent and his Counsel CA. A.P Singh were present through Video Conferencing mode from their respective places. The Committee considered various aspects relating to the matter, documents on record and arguments & submissions of the parties and then concluded the hearing.

FINDINGS OF THE COMMITTEE:

3. The Committee noted that the Counsel for the Respondent submitted that the facts of the present case is identical to the facts in another case which is already decided by the Disciplinary Committee in case Ref no **PR/G/311/17/DD/329/17/DC/1324/20**, wherein the Committee had held the Respondent Not Guilty.
- 3.1 The Committee thereafter categorically asked the representatives from the Complainant Department that whether their department had preferred any appeal against the abovesaid findings of Disciplinary Committee and as to whether there is any difference in facts of both the cases to which the Complainant's representative(s) replied in negative.
4. The Committee also 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 were 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.

- 4.1 The Counsel for the Respondent rebutted the claim of the Complainant's representative stating that these preconditions were not in writing in the condition sheet. The Respondent's Counsel also emphasized that authorization holder of license could discharge export obligation either through direct export or through third party export.
- 4.2 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 no. 3/2015-20 dated 02.09.2015 in this respect which clearly mentions 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.
5. 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 2014 – 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 noted 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 by issuing circular in this regard placed on record by the Respondent. The Committee accordingly, extend the benefit of doubt to the Respondent with relation to interpretation of FTP policy 2009-2014 and accordingly, decided to hold him **NOT GUILTY** of Professional and/or 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:

6. In view of the above observations, documents on record & submissions of the parties, 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 read with section 22 of the Act.
- 7: **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. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

sd/-

(SH. RAJEEV KHER, I.A.S. (Retd.))
GOVERNMENT NOMINEE

sd/-

(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

DATE: 11TH FEBRUARY, 2022
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
काइसीएचआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032