



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

[PR/G/264/2017-DD/263/2017-DC/1391/2020]

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.

[PR/G/264/2017-DD/263/2017-DC/1391/2020]

In the matter of:

Shri Krishan Kumar, Jt. Development Commissioner,
Office of Development Commissioner,
Kandla Special Economic Zone,
Gandhidham-Kutch-Gujrat
GUJARAT-370 230

.....Complainant

Versus

CA. Jitendra Mehta (M.No.76530)
M/s. Jitendra Gautam Mehta & Co.,
D-3, Green Park, Ground Floor
Plot no. 113/114, Ward no. 8,
Tagore Road
Gandhidham - 370201

.....Respondent

MEMBERS PRESENT:

1. **Mrs. Rani Nair, I.R.S. (Retd.), Presiding Officer and Government Nominee** (Present through Video Conferencing mode)
2. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present in person)
3. **CA. Rajendra Kumar P, Member** (Present in person)
4. **CA. Cotha S Srinivas, Member** (Present in person)

DATE OF MEETING : 27.12.2022 (Through Video Conferencing Mode)

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 31st October 2022, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Jitendra Mehta (M.No.76530), Gandhidham** (hereinafter referred to as the **Respondent**) was **GUILTY** of



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

[PR/G/264/2017-DD/263/2017-DC/1391/2020]

professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. The Committee noted that the Respondent was present through video conferencing mode. The Committee noted that the Respondent, in his submissions before it, mentioned that the matter is very old and relates to the APR for the F.Y. 2006-07. He further submitted that the error in such an APR was unintentional.

3. The Committee noted that the Respondent at every stage of the case, including his representation at the hearing stage, followed a very casual approach, as he failed to submit the copy of documents checked by him relied prior to certification. He rather takes shelter of matter being old. The Committee noted that in the absence of any documentary evidence the Respondent failed to justify his submissions. The Committee further noted casual approach of the Respondent as regards reporting aspects in his APR such as non-mentioning of clear facts in APR, non-mentioning of the signing date in APR. Accordingly, the Committee viewed that the ends of justice can be met if reasonable punishment is given to the Respondent in commensurate with his above professional misconduct.

4. Therefore, keeping in view the facts and circumstances of the case, the material on record, and the submissions of the Respondent before it, the Committee ordered that the name of the Respondent - CA. Jitendra Mehta (M. No. 076530) of M/s. Jitendra Gautam Mehta & Co., Gandhidham, be removed from the Register of Members for a period of three months along with a fine of Rs 30,000 (Rupees Thirty Thousand only).

sd/-

(MRS. RANI NAIR, I.R.S. RETD.)

PRESIDING OFFICER & GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, I.A.S. RETD.)

GOVERNMENT NOMINEE

sd/-

(CA. RAJENDRA KUMAR P)

MEMBER

sd/-

(CA. COTHA S SRINIVAS)

MEMBER

DATE: 11.02.2023

PLACE: NEW DELHI

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

मीनू गुप्ता / Meenu Gupta
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

Shri Krishan Kumar, Jt. Development Commissioner, Gujarat -Vs- CA. Jitendra Mehta of M/s. Jitendra Gautam Mehta & Co., Gandhidham

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]
[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/264/2017-DD/263/2017-DC/1391/2020]

In the matter of:

Shri. Krishnan Kumar,
Joint Development Commissioner
Office of the Development Commissioner,
Kandla Special Economic Zone,
Gandhidham-Kutch-Gujarat
GUJARAT – 370 230

.....Complainant

Versus

CA. Jitendra Mehta (M.No.76530)
M/s Jitendra Gautam Mehta & Co.,
D-3, Green Park, Ground Floor,
Plot No.113/114 Ware No.8, Tagore Road,
GANDHI DHAM (KUTCH)

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
Shri Arun Kumar, I.A.S.(Retd.), Government Nominee (Present in person)
CA. Cotha S Srinivas, Member (Present through Video Conferencing Mode)

DATE OF FINAL HEARING : 05.08.2022 (through physical/video conferencing mode)

PARTIES PRESENT :

Complainant: Shri Satyadeep Mahapatra, Jt. DC, KASEZ on behalf of the
Complainant Department (Through Video Conferencing Mode)

CHARGES IN BRIEF:-

1. The Committee noted that the Respondent was held Prima-Facie Guilty by the Director (Discipline) of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent in respect of M/s Sameer Industries has certified the Annual Performance Report (APR) for the financial year 2006-07 which was showing false information in respect of Net Foreign Exchange (NFE).

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing held on 05th August 2022, the Committee noted that the Shri Satyadeep Mahapatra, Jt. DC, KASEZ on behalf of the Complainant Department, was present through Video Conferencing Mode. The Respondent was not present, and no intimation was received from him in reply to the notice duly served. The Committee noted that this case was earlier fixed on 1st June 2022 and was adjourned in the absence of the Respondent. The Committee noted the casual approach of the Respondent while dealing with serious matter against him. The Committee noted that reasonable opportunities are already given to the Respondent to submit his defense and in the absence of any communication from the Respondent, the Committee decided to proceed further in the matter in the absence of the Respondent.

After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

FINDINGS OF THE COMMITTEE

3. The Committee noted the Authorized Representative from the Complainant Department while explaining the charges submitted that every SEZ unit is monitored with a block of 5 years. In the present case, the block is from years 2006-07 to 2010-11 and due to the wrong certification by the Respondent the statutory body (i.e. their Department) was wrongly led into believing that the unit

had fulfilled the export obligation and on the basis of which their Department has filed a complaint with ICAI regarding professional misconduct of the Respondent. He further mentioned that the unit (i.e. Company) escaped penal action due to wrong certification by the Respondent.

4. The Committee noted that all SEZ units are required to achieve positive NFE during the block of 5 years based on the APR and in case of failure of the unit to achieve positive NFE the unit is subjected to a process of adjudication which may lead to cancellation of LOA under the provisions of the SEZ Act and Rules. It has been further alleged that the Respondent has certified that consumption of imported raw material as NIL instead of Rs.24. 50 lakhs and also failed to mention that the unit had achieved negative NFE during the said block period.
5. The Committee noted that as per APR for F.Y. 2006-07 to 2010-11 were reviewed by M/s Mukund and Rohit CA and the following differences were observed by the latter.
 - a. As per APR of F.Y. 2006-07 (certified by the Respondent), the imported raw material consumed was Nil, whereas the same as per calculation of the latter was Rs. 24.50 Lakhs.
 - b. Further, as per APR of F.Y. 2006-07 (certified by the Respondent), the unit has "Achieved" NFEE whereas it was Rs. 24.50 lakhs negative.
6. The Committee noted that the Respondent neither at the prima-facie stage nor at the hearing stage submitted his submissions to the charges against him. The only submission from the Respondent was on 15th July 2018 which was in response to calling for additional documents at 8(5) by the Director (Discipline). The Committee noted that the Respondent vide those submissions mentioned as under:
 - a. That the unit had valid LOA till October 2005.
 - b. the unit again applied for renewal of the LOA and the same was rejected by the concerned authorities.

- c. As the LOA was expired in October, 2005 and the Hon'ble Supreme Court Monitoring Committee directed them to dispose off the material as it is without any processing and the Respondent was informed that such disposal could not be considered as sale or as exports, there was no question of NFE in that particular year, because there was no new purchase or value addition done during the year only the stocks were cleared.
- d. If the LOA is not in existence, then there is no question about NFE.
7. The Committee in this regard on perusal of the letter dated 8th August 2022 submitted by the Complainant Department noted that unit LOA of the unit was extended on 26.06.2009 from the date of expiry i.e. 01.11.2005 to 30.10.2010. The Complainant vide this letter also submitted that LOA is required to be renewed in continuous blocks of five years without any gap and hence, by this LOA was issued by their office, stood valid in 2006-07 and hence, the unit was under obligation to submit APR for F.Y. 2006-07 to 2010-11.
8. The Committee in this regard noted that the charge against the Respondent was in respect of the APR issued for F.Y. 2006-07 only. The Committee also noted that APR's of next years were issued by M/s Kiran Seth and Associates, Chartered Accountant. The Committee on perusal of the letter dated 8th August 2022 noted that the LOA of the unit was extended on 26.06.2009 and the Respondent while certifying APR of 2006-07 was not aware about the extension.
9. That the Respondent is claiming that since LOA was expired in October 2005 and it was not renewed by the authorities, there was no requirement to report about NFE. The Committee noted that even if this plea of Respondent be admitted, it is not clear as to how and why the Respondent was required to issue APR in respect of the Company at the same time when NFE requirement was not applicable on the Company due to non-renewal of LOA. Since, the Respondent has failed to bring on record the necessity of certifying the APR report for the financial year 2006-07, the Committee opined that the bonafide of the Respondent cannot be established.

10. The Committee noted that at the time of filing of submission dated 15th July 2018, the Respondent plead that the LOA was not extended by the competent authority and while certifying APR in Form I, he, under column 3 (C4) of APR in Form I, mentioned that "Approval No. & Date KFTZ/IA/1587/95/7670 dt. 23.09.1995. Thus, the Respondent is taking contradictory stands as his reporting in APR is giving an impression that the approval dt. 23/09/1995 was valid till the certification date. Hence, the Committee noted that the Respondent failed to bring clear fact that the previous approval was up to October 2005 and approval of LOA for the financial year 2006-07 had not been extended by the concerned Authority till date of submission of APR. Further, the Committee noted that no date was mentioned in APR by the Respondent which proves his casual approach in certification.
11. The Committee on perusal of APR also noted that the opening stock of imported goods was Rs.74.20 lakhs and the closing stock was Rs.49.70 lakhs, thereby resulting in a difference of Rs.24.50 lakhs which, according to the Respondent, is disposal of the material as per the direction of the Hon'ble Supreme Court Monitoring Committee. This disposal led to a reduction in the stock of imported goods and the same being material was required to be shown specifically in the APR.
12. The Committee noted that the causal approach of the Respondent neither appeared before the Committee in any of the hearings held on 1st June 2022 and 5th August 2022 nor filed any intimation/written submission regarding the case. Further, looking into fact such as non-mentioning of clear facts in APR, non-mentioning of the signing date in APR, and taking contradictory stands, the Committee concluded that the Respondent does not exercise due diligence while certifying the APR, and was grossly negligent in the conduct of his professional duties.

CONCLUSION

13. In view of the above findings stated in the above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent is

GUILTY of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-

(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

sd/-

(SMT RANI NAIR,IRS (RETD.)
GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, IAS (RETD.)
GOVERNMENT NOMINEE

sd/-

(CA. COTHA S. SRINIVAS)
MEMBER

DATE : 31.10.2022

PLACE : NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032