

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]

[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/138/19-DD/142/2019/DC/1364/2020]

In the matter of:

Shri Shreyas K M,

Deputy Director,

Directorate of Revenue Intelligence,

Mangalore Regional Unit,

Bharathi Bhawan,

Bejai Church Road, Bejai,

Mangalore 575 004.

....Complainant

Versus

CA. Yazdi Pirojshah Patel (M No. 36104),

5, Muncherjee Seth Building,

262, Tardeo Road,

Mumbai 400 007

.....Respondent

MEMBERS PRESENT:

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

DATE OF FINAL HEARING : 27.12.2022 (Through Physical/ Video Conferencing Mode)

Shri Shreyas K.M. Dy. Director, Directorate of Revenue Intelligence, Mangalore Regional Unit, Mangalore -Vs-CA. Yazdi Pirojshah Patel (M.No.036104), Mumbai

PARTIES PRESENT :

Complainant's Representative : Shri Perla Chandrashekhara Bhat
Respondent : CA. Yazdi Pirojshah Patel
Counsel for Respondent : Mr. Kunal Kataria, Advocate alongwith
Mr. Yashodhra Deshmukh, Advocate

CHARGES IN BRIEF:-

1. The Committee observed that the instant matter before it originated on account of the filing of a complaint that arose on the basis of intelligence developed by DRI, Mangalore Regional Unit, in which a case O.R. No. 07/2015 DRI dated 23/09/2015 relating to the mis-use of the EPCG Scheme was registered against M/s. Spenta Multimedia, i.e., the Respondent's client. Broadly, the facts of the case are that the said entity, having IEC No. 0301059535, imported offset printing machinery and accessories under the EPCG Scheme during April 2011 by availing of the 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 within a period of 6 years from the date of issue of License or Authorization.
2. However, in order to fulfil such export obligation the entity i.e. the Respondent's client, had counted the unrelated third-party exports of M/s. Riddhi Enterprises, Mumbai/Palghar (M/s. Riddhi); M/s. Sundaram Multipap Ltd., Mumbai (M/s. SML); M/s. FFI International, Bhiwandi (M/s. FII); M/s. Arun Art Printers Pvt. Ltd., Mumbai (M/s. AAPPL); M/s. IL&FS Education and Technology Services Ltd., Mumbai (M/s. IL&FS) and M/s. Provogue (India) Ltd. Division Acme Global, Mumbai (M/s. Provogue) through Jawaharlal Nehru Custom House (JNCH), JNPT, Nhava Sheva/ New Custom House, Mumbai/ ACC, Sahar.

3. Thereafter, the Respondent's client secured an 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.
4. The Committee noted that in the present case, the Director (Discipline) had held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Item (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The charge against the Respondent was that he failed to see that his client, i.e., M/s Spenta Multimedia, contravened the provisions of the Foreign Trade Policy and the relevant Customs notification by claiming unrelated third-party exports and thereby securing the Export Obligation Discharge Certificate. Allegedly, despite knowing the fact that the said entity did not export goods and had only domestic sales, the Respondent counted the exports of M/s. Riddhi Enterprises, Mumbai/Palghar (M/s. Riddhi); M/s. Sundaram Multipap Ltd., Mumbai (M/s. SML); M/s. FFI International, Bhiwandi (M/s. FII); M/s. Arun Art Printers Pvt. Ltd., Mumbai (M/s. AAPPL); M/s. IL&FS Education and Technology Services Ltd., Mumbai (M/s. IL&FS) and M/s. Provogue (India) Ltd. Division Acme Global, Mumbai (M/s. Provogue) through Jawaharlal Nehru Custom House (JNCH), JNPT, Nhava Sheva/ New Custom House, Mumbai/ ACC, Sahar towards the former's obligation (his client entity) and thus assisted it in taking an undue advantage of the EPCG scheme. By aiding and abetting the commissions and omissions of the entity, which resulted in the evasion of Customs Duty, the Respondent rendered himself liable to penal action under Section 114AA of the Customs Act, 1962, as the said EODC was issued by the DGFT office based on Appendix 26A and ANF 5B, which were issued by the Respondent without exercising due diligence.

BRIEF FACTS OF THE PROCEEDINGS:

5. On 31st October 2022, the Committee noted that Mr. Mohandas VV, Senior Intelligence Officer from the Complainant Department was present through Video Conferencing Mode. The Respondent was present with his Counsel(s) Sh. Kunal Katariya, Advocate and Sh. Yashwardhan Patel, Advocate through Video Conferencing Mode.

- 5.1 The authorized representative from the Complainant Department presented the charges against the Respondent, and thereafter, the Respondent's Counsel presented his line of defence by presenting the arguments and stating that the issue relates to the jurisdiction of the show cause notice to be adjudicated by Customs or DRI (Department of Revenue Intelligence). He further stated that the jurisdiction issue is sub-judice and has yet to be decided by the higher court. The Respondent's Counsel further mentioned that he relied upon the judgement of the Hon'ble Supreme Court in the case of Canon India.
- 5.2 The Committee posted questions regarding the EPCG scheme and FTP policy that were relevant at the time. The Respondent's Counsel submitted that he had made representations in this regard and had forwarded a copy of the same to the complainant as well. On the same note, the Complainant sought time to reply. The Committee looking into the time sought by the Complainant, decided to adjourn the hearing in this matter.
6. In the hearing held on 7th Novemeber,2022 the Committee noted that Mr. Mohandas VV, Senior Intelligence Officer from the Complainant Department was present through Video Conferencing Mode. The Respondent was present with his Counsel(s) Sh. Kunal Katariya, Advocate and Sh. Yashowardhan Patel, Advocate through Video Conferencing Mode. The Respondent Counsel seeks time to reply to the submissions made by the Complainant Department. Thereafter, looking into the facts of the case, the Committee acceded to the Respondent's Counsel request, and decided to adjourn the hearing to a future date.
7. On the day of the final hearing held on 27th December 2022, the Committee noted that Shri Perla Chandrashekhara Bhat, authorized representative from the Complainant Department was present through video conferencing mode and the Respondent, alongwith his counsel, Mr. Kunal Kataria and Mr. Yashodhra Deshmukh Advocates were also present through video conferencing mode.

- 7.1 Thereafter, the Respondent's Counsel presented his line of defence by presenting the arguments. The Committee also posed questions to him to understand the issue involved and the role of the Respondent in the case. The Complainant stated that their submissions/rejoinder dated 5th November, 2022 may be considered.
- 7.2 The Committee posed questions to the representative of the Complainant Department to arrive at logical conclusion. After consideration of the same, the Committee decided to conclude the hearing in the instant case.

FINDINGS OF THE COMMITTEE

8. The Committee noted that the Respondent in the instant matter had issued three Certificates under Appendix 26A (pages C-7 to C-8, C-9 to C-10 & C-11 to C-22 of prima-facie opinion) and also certified under ANF 5B forms (Statement of Export for Redemption of EPCG/ Annual EPCG Authorisation) (pages C-23 to C-28, C-29 to C-38 & C-39 to C-46 of the prima-facie opinion) to M/s. Spenta Multimedia that all physical exports made as shown in the respective item 7 & 8 of the respective form (pages C-28, C-38 & C-46 of the prima-facie opinion) are in freely convertible currency and payment of the same has been realised in ANF 5B.
9. The Committee noted that, as per the charges the Respondent certified the realisation of foreign exchange by M/s. Spenta even though he was fully aware that they could not realise foreign exchange without the appropriate quantum of exports and despite the fact that there was no business link or transaction between M/s. Spenta and the said Third Party Exporters.
10. The Committee noted that the Respondent's Counsel in the defence stated that the present complaint is unsustainable due to the following two reasons:
- a. Firstly, there is no finding of any fault on the part of Spenta Multimedia (i.e. the importer) and the complaint against the chartered accountant i.e.

B
Patel

Respondent is unsustainable because all the certifications that have been done by the Respondent were on the basis of the documents before him.

- b. Secondly, the Hon'ble Supreme Court very categorically held that perhaps no show-cause notice is sustainable or maintainable because of the issue of limitation, which is decided in paragraph 25 of the Supreme Court's judgement in Canon, India. He further added that the competent authority in this matter is the Commissioner of Customs, who has not decided the issue in favour of or against M/s Spenta Multimedia. In other words, he mentioned that the issue relates to the jurisdiction of Show Cause notice yet to be adjudicated by Customs or DRI.
11. The Committee noted that the Complainant Department had filed similar complaints against other Chartered Accountants also, and in those cases, erstwhile Disciplinary Committee, extended the benefit of doubt in favour of the Respondent due to a lapse in foreign trade policy and held them not guilty. The Committee noted that those cases were represented by the same representative from the Complainant Department, i.e., Mr. Chandrashekhra Bhat.
12. The Committee noted the present case was similar to cases earlier decided on similar facts and in view thereof and in view of the earlier decisions bearing case file no. [PR/G/311/17/DD/329/17/DC/1324/2020] and [PR/G-140/19-DD/145/2019/DC/1367/2020] wherein the Committee held that the concerned Respondent(s) are 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, by observing as under:

In [PR/G/311/17/DD/329/17/DC/1324/20]

"3.3 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 2012 – 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 notes 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. The Committee accordingly in its considered view extend the benefit of doubt to the Respondent and accordingly, decided to hold him 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.”

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

- “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."*

13. The Committee thereafter categorically asked the representatives from the Complainant Department whether their department had preferred any appeal against the abovesaid findings of the Disciplinary Committee to which the Complainant's representative(s) replied in the negative. The Committee further specifically asked the Complainant representatives as to whether the instant matter is different from the other two matters (referred above). On the same, the Complainant representative informed that they had referred the matter to their Departmental Committee for its opinion. The Committee noted that the act of the Complainant was not justified because the remedy available to the Complainant was to approach the Jurisdictional High Court. The Committee again categorically asked the Complainant representatives whether they had approached the High Court, to which the Complainant's representative(s) replied in negative. The Committee accordingly opined that all three cases are the same and this fact was also communicated to the Complainant's representative. On the same, the Complainant representative remained silent and did not contradict to the observation drawn by the Committee.
14. In the absence of any appeal from the Complainant Department side, the Committee noted the present matter is also an interpretation issue, which was clarified by a later departmental circular. Applying the same rationale to the present case, the Committee in its considered view, extended the benefit of the doubt to the Respondent and accordingly decided to hold him not guilty.

CONCLUSION:

15. In view of the above observation, considering the arguments, counter arguments and submissions of the parties and the documents on record, 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 with respect to charges mentioned in para 4 above.
16. 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 an order for the closure of this case.

Sd/-

CA. (Dr.) DEBASHIS MITRA
PRESIDING OFFICER

Sd/-

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

बिना नाथ शिखरी / Bishwa Nath Thwar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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