



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-I (2023-2024)]]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

In the matter of:

Ref. No. PR/G/119/18-DD/140/18/DC/1438/2021

Commissioner,
CGST & Central Excise Commissionerate
Office of the Commissioner, Govt. of India
Belapur, 1st Floor
CGO Complex, CBD Belapur
NAVI MUMBAI – 400 0614.

.....Complainant

Versus

CA. Pronab Kumar Bandyopadhyay
Partner, M/s Bandyopadhyay & Co
Chartered Accountants
30/1/1, Basudevpur Road, 1st Floor
KOLKATA – 700 061.

.....Respondent

MEMBERS PRESENT:-

CA. ANIKET SUNIL TALATI, PRESIDING OFFICER
SHRI JUGAL KISHORE MOHAPATRA, IAS (RETD.), (GOVERNMENT NOMINEE)
SHRI PRABHASH SHANKAR, IRS (RETD.), (GOVERNMENT NOMINEE)
CA. GYAN CHANDRA MISRA, MEMBER

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, the Disciplinary Committee was inter-alia of the opinion that **CA. Pronab Kumar Bandyopadhyay (M. No. 055658)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act 1949.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent, and a communication was addressed to him thereby granting opportunities of being heard in person or through video conferencing, and to make written & verbal representation before the Committee on 22.03.2023.

3. The Committee noted that on the date of hearing held on 22.03.2023, the Respondent was present through video conferencing wherein he made his verbal representations on the findings of the Disciplinary Committee. The Committee noted that the Respondent has also filed his

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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written representation dated 19.10.2022. The brief of the representations made by the Respondent through his written and verbal representations are as under:-

i) He was not statutory auditor of the Company. The concerned statutory auditor has already completed his work for the financial year ended 31.03.2012 before the issuance of his certificate. The Statutory auditor report did not contain any qualification or modification with respect to the fact of the case. The statutory auditor clearly mentioned that contingent liability is existed in respect of disputed service tax demanded by the authority on abandoned cargo during the year 2003-04 to 2011-12.

ii) The Respondent stated that he had clearly mentioned in his written statement that he had verified the payment of service tax. Further, the amount recoverable on account of service tax was not disclosed on the face of the balance as a separate line item, but the said amount was included as part of "advances recoverable in cash or kind or for value to be recovered" amounting to Rs. 3.44 crores. The Respondent had obtained the break-up of the amount of Rs. 3.44 crores from the Company before the issuance of the certificate which clearly includes an amount of Rs. 50,25,485.00 for service tax. The Respondent further stated that when refund was being claimed by the entity which maintains its accounts on double entry basis, the amount pertaining to service tax would naturally be included in the amount disclosed as recoverable in the balance sheet.

4. The Committee considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal representation of the Respondent. The Committee noted that details of break-up of "advances recoverable in cash or kind or for value to be recovered" was not provided by the Respondent earlier and now he is submitting the same as fresh evidence.

5. Keeping in view the facts and circumstances of the case and material on record including verbal and written submissions on the findings, the Committee is of the view that though the professional misconduct on the part of the Respondent is established, however, keeping in view the fresh documents brought on record at this stage of award of punishment, the said misconduct does not qualify for a severe punishment. Accordingly, in terms of the requirement of Section 21B (3) of the Chartered Accountants Act, 1949, the Committee ordered that **the Respondent i.e., CA. Pronab Kumar Bandyopadhyay (M. No. 055658) be reprimanded.**

Sd/-
(CA. ANIKET SUNIL TALATI)
PRESIDING OFFICER,

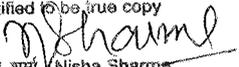
Sd/-
SHRI JUGAL KISHORE MOHAPATARA, I.A.S.
(RETD.), (GOVERNMENT NOMINEE)

Sd/-
(SHRI PRABHASH SHANKAR, I.R.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. GYAN CHANDRA MISRA)
MEMBER

DATE: 10.05.2023
PLACE: New Delhi

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


निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आर.ए.आई. भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (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

Ref. No. PR/G/119/18-DD/140/18/DC/1438/2021

In the matter of:

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SHRI PRABHASH SHANKAR, IRS (RETD.), (GOVERNMENT NOMINEE)
CA. GYAN CHANDRA MISRA, MEMBER
CA. PRITI PARAS SAVLA, MEMBER**

**DATE OF FINAL HEARING : 05.07.2022
PLACE OF FINAL HEARING : Through Video Conferencing**

PARTIES PRESENT (Through VC):-

**Complainant's representative : Shri Desh Gautam
Respondent : CA. Pronab Kumar Bandyopadhyay
Counsel for the Respondent : CA. A.P. Singh alongwith his assistant**



BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. On the date of hearing held on 05.07.2022, the Committee noted that the Complainant's representative was present. The Respondent along with his Counsel was also present. Thereafter, the hearing in the above matter continued from the stage as it was left in last hearing. The Complainant's representative made his contentions on the charges. Thereafter, the Counsel for the Respondent made his submissions on the charges. The Committee also posed questions to the Complainant's representative and the Counsel for the Respondent as well. After hearing the submissions of both the parties, the Committee decided to conclude the hearing in the above matter.

1.2 In respect of previous hearings(s) held in the above matter, the Committee observed as under:-

1.2.1 On the day of hearing held on 15th June, 2022, the Complainant's representative was present. The Respondent along with his Counsel was also present. The Counsel for the Respondent requested for de-novo hearing in the matter. On the same, the Committee decided to conduct a de-novo hearing in the matter. Thereafter, the Complainant's representative and the Respondent were put on oath. The Respondent confirmed receipt of Prima Facie Opinion in the above matter and pleaded not guilty to the charges. With this, the hearing in the matter was partly heard & adjourned to a later date.

1.2.2 The Committee also noted that the hearing fixed for 21st December, 2021 was partly heard & adjourned. Thereafter, hearing fixed for 1st June, 2022 was adjourned due to unavoidable circumstances.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. It is alleged that the Respondent issued an incorrect certificate dated 02/05/13 in favour of M/s United Liner Agencies of India Pvt Ltd (hereinafter referred to as the "Company") certifying that the Company has not recovered service tax and interest from the customers and nor from any other persons with respect to period 01/10/2004 to 31/03/2009. The

Respondent in his certificate had given bifurcation relating to pending service tax and interest as under:

(Amount in Rs.)

Sl. No.	Period	Date of payment	Service Tax (incl Cess)	Interest	Total
1	01.10.04-31.03.05	27.11.06	1,70,926	45,719	2,16,645
2	01.04.05-31.03.06	27.11.06	1,26,196	10,911	1,37,107
3	01.04.06-31.03.07	31.06.07 and 04.12.2007	4,80,235	53,857	5,34,092
4	01.04.07-31.03.09	In regular course within due dates	15,18,724	--	15,18,724
TOTAL			22,96,081	1,10,487	24,06,568

It is further alleged by the Complainant that the Company was treating service tax as normal expenditure, which was being shown as expenditure in their books of account. In such circumstances, it is the obvious that said amount had been passed on to the service recipient (customer).

3. In respect of above charge made against the Respondent, apart from contentions / submissions on record, the Complainant made the following submissions to substantiate the charges:-

- 3.1. The Complainant stated that the post of the Complainant was equivalent to the rank of Joint Secretary in the Central Government.
- 3.2. That service tax should not be passed on to the Customer when the entity is claiming refund from the Department as it amounts to unjust enrichment. The Complainant's representative also referred to para 4.1 of the Order dated 16.06.2017 of CESTAT wherein it is stated that the Respondent has made a blind observation regarding the non-recovery of Service Tax and interest from the customers or any other person. If the said amount has not been recovered from anybody then the same should appear somewhere in the Balance Sheet as amount receivable from the Govt.
- 3.3. The Complainant's representative also stated that it was not the Complainant department which went to the appeal. The Complainant's representative stated that by the Order dated 25.02.2013 of Deputy Commissioner of Service Tax, although a refund of Rs.24.06 lakh was sanctioned under the provisions of Section 11B of Central Excise Act, 1944, it was also ordered that amount of refund was to be credited to the Consumer Welfare Fund as per the provisions of Section 11B(2) as the assessee has shown service tax paid as expenses and claiming benefit of income tax as well as apportioning the same in their cost of service which eventually is passed on to their regular customer. It was the Assessee (company) who approached the Appellate

Tribunal and challenged the aforesaid order to get the refund of the service tax paid. However, the Appellate Tribunal also rejected the appeal of the entity.

4. The submissions of the Respondent brought on record are in brief as under:-
- 4.1. No proper authorisation was filed with the complaint and the Director (Discipline) failed to rectify the said defect.
 - 4.2. No Item(s) and scheduled under which the professional misconduct fall was not mentioned in complaint. In absence of Item / schedule, the Respondent cannot defend himself against the charges. The Director (Discipline) should get the defects removed before proceedings to the stage of forwarding the complaint to the Respondent.
 - 4.3. The letter dated 08th January, 2008 was never made available to the Respondent by the management of the Company before he had issued the certificate. The figures contained in the certificate are different from the letter dated 8th January, 2008, which evidences that the certificate was not issued in light of, or after perusal of, the said letter.
 - 4.4. The Director (Discipline) had relied upon the letter dated 8th January, 2008 which was not available to the Respondent at the time of issuing certificate.
 - 4.5. The Respondent had relied upon the letter from the management dated 2nd May, 2013 and had checked the bank statements and verified the figures in the books of accounts of the Company. He also stated that he had issued the certificate after verification of documents, statement and records of the Company provided before him. He has verified the statement of calculation of Service Tax Liability for the given period on the auction of abandoned cargo and also the payment of Service Tax through TR-6 challan as produced before him.
 - 4.6. The Respondent further stated that the financial statements for financial year 2012-13 would have been prepared by the Company in August, 2013. The Respondent had issued his certificate on 02nd May, 2013. Therefore, the Respondent did not have the benefit of hindsight and access to financial statements of F.Y. 2012-13.
 - 4.7. The Respondent cannot be held guilty for not being diligent enough to examine documents which were non-existent at the time of issuance of the certificate.
 - 4.8. In absence of financial statement of the alleged period, the Director (Discipline) should not have relied upon the CESTAT Order.
 - 4.9. On the date of issuance of the certificate, the order of the Deputy Commissioner of Service Tax was the only order.
5. Since the Respondent raised some technical objections / issues in respect of Form I, the Committee decided to deal with the same first before giving any findings on merits of the case as under:-

5.1 In respect of objection relating to authorisation, in this regard, it is seen that the complaint was filed by the Commissioner, CGST & Central Excise, Belapur. The Complainant department itself confirmed vide submissions dated 28.10.2021 that the post of Commissioner, CGST is equivalent to the post of Joint Secretary. Though the Respondent claimed that the rank of Commissioner, CGST & Central Excise is not equivalent to the post of Joint Secretary, yet he did not submit anything to support the same. Hence, it is viewed that the level of the Commissioner, CGST and Joint Secretary appears to be of the same rank. Hence, it cannot be stated that the Commissioner, CGST & Central Excise, Belapur was not eligible to file the Complaint.

5.2 Apart from above, the Respondent stated that as per Rule 3(2) of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, there must have been two separate officers to file a complaint in Form 'I'. First officer holding the post of not below the rank of Joint Secretary would give authorisation and second officer holding post of not below the rank of Under Secretary would sign the complaint after getting authorisation from the first officer. On perusal of the facts on record, it is seen by the Committee that the instant complaint was filed by the Commissioner, CGST & Central Excise who was holding the post equivalent to the rank of Joint Secretary. The provision of the aforesaid rule reads as under:-

" A complaint filed by or on behalf of the Central Government or any State Government, shall be authorized by an officer holding a post of not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be."

From the above, it is seen that the provisions of Rule 3(2) does not says that there shall be two separate persons / officials of different ranks for filing a complaint against a member of the Institute. It only put conditions that complaint shall be authorised by the officer holding a post of not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent. Since the Complainant was holding the post of not below the rank of Joint Secretary or equivalent and he was also eligible to sign the complaint as well. Hence, the objection raised by the Respondent is not tenable.

5.3 In respect of objection relating to Item (s) / schedule(s) not mentioned by the Complainant in Form 'I', it is observed that not mentioning the Item(s) on the Form 'I' does not render the complaint invalid as allegation of misconduct was duly mentioned on the same. Further, the Director (Discipline) appears to have the power to levy or amend the Item(s) in accordance with his final observation on the allegations as mentioned in Form 'I'. Therefore, it is viewed that objection raised by the Respondent in respect of non-mentioning of Item(s) in Form I is not tenable.

5.4 Further, in view of the fact that the letter dated 08.01.2008 was not available to the Respondent at the time of issuing the certificate, the Committee decided not to give weightage to the said letter.

6. The Committee noted that the Respondent issued the Certificate dated 02.05.2013 wherein he certified as under:-

"We have examined the audited books of accounts, financial statements, records and TR-6 challans to verify the amount of service tax paid by M/s. United Liner Agencies of India Pvt. Ltd. ("ULAI") for the period 01.10.2004 to 31.03.2009 on the amount of 'appropriation towards balance ground rent' [see note 2 below the table] out of the amount of 'net realisation' [see note 1 below the table] received from the auction of abandoned cargo. On the basis of verification and review, the amount of service tax (incl. cess) and interest paid for the aforesaid period is as shown in the table below:-

Sl. No.	Period	Date of payment	Service Tax (incl Cess)	Interest	Total
1	01.10.04-31.03.05	27.11.06	1,70,926	45,719	2,16,645
2	01.04.05-31.03.06	27.11.06	1,26,196	10,911	1,37,107
3	01.04.06-31.03.07	31.06.07 and 04.12.2007	4,80,235	53,857	5,34,092
4	01.04.07-31.03.09	In regular course within due dates	15,18,724	—	15,18,724
TOTAL			22,96,081	1,10,487	24,06,568

Note 1: Net realisation refers to the amount of the proceeds obtained on sale of abandoned cargo after reducing the expenses of sale and customs duty.

Note 2: Appropriation towards balance ground rent refers to the amount of net realization appropriated towards any outstanding ground rent due to ULAI on the abandoned cargo.

On examination and verification of the audited books of account, financial statements, records and TR-6 challans as maintained and produced by ULAI for the purpose of our review and verification and based on the information furnished to us, we certify that ULAI has not recovered the amounts of service tax (incl. cess) and interest paid as shown in the above from the customers."

7. From the above, it is seen that the Respondent has certified that he had issued after verification of audited books of accounts and the Company has not recovered the amounts of service tax and interest thereon from the customers. The Committee also noted that the Company has filed an application for refund of service tax paid by him which was though sanctioned yet the amount of refund was not given to the Company and it was transferred to the Consumer Welfare Fund as the service tax was passed on by the Company to the customer. The Respondent stated that he had issued the certificate after verification of books of accounts. Though the Respondent certified that the amount of service tax and interest thereon was not recovered from the customer yet he could not give corroborative answer as to why the amount of service tax paid was not shown as recoverable in the Balance Sheet

specifically when the Company is claiming refund of service tax from the Complainant department on the ground that it has not been passed on to the Customer. Hence, it is viewed that the amount of service tax being claimed as refund from the Complainant department must have been shown as amount recoverable from the Complainant Department and non-disclosure of the same clearly indicates that amount of service tax has been passed on to the Customer by debiting the same as expenses in the books of accounts.

7.1 The Committee is of the view that before issuing the certificate, the Respondent was required to verify the books of accounts to ensure himself that the amount of service tax paid has been shown as recoverable in the Balance Sheet and it is not passed on to the Customer by debiting the same as expenses in the books of accounts but it appears that the Respondent failed to do so and the benefit of which appears to be taken by the Company by filing of respondent's certificate with refund application which was rejected by the Appellate Tribunal on the ground of unjust enrichment. Hence, the Committee is of the view that the Respondent failed to exercise due diligence while performing his professional duties, thus, he is guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Scheduled to the Chartered Accountants Act, 1949.

Conclusion:-

8. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. ANIKET SUNIL TALATI)
PRESIDING OFFICER

(approved and confirmed through e-mail)
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

(approved and confirmed through e-mail)
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Certified to be true copy

(approved and confirmed through e-mail)
(CA. PRITI PARAS SAVLA)
MEMBER

DATE : 10.08.2022
PLACE: NEW DELHI

नीतू गुप्ता / Msenu Gupta
कार्यकारी अधिकारी / Executive Officer
अनुशासनमय विभाग / Disciplinary Directorate
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