

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2023-24)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PPR/P/124/2016/DD/331/INF/2017/DC/1735/2023

In the matter of

CA. Jimmy Thomas,
IInd Floor, Koothrat Tower,
Court Road,
Manjeri,
Malappuram 676 121
KERALA

.....Respondent

MEMBERS PRESENT

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Piyush S Chhajed, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 25th July, 2023 through Video Conferencing

PARTIES PRESENT

- (i) CA. Jimmy Thomas – the Respondent
(appeared from his personal location)

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 Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule states as under:

Part I of Second Schedule: Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

...

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

Brief background and allegations against the Respondent

2. The Commissioner, Office of the Commissioner of Customs, Custom House, Willingdon Island, Cochin (hereinafter referred to as the "**Informant**") stated that while submitting applications for obtaining refund of 4% Additional Duty of Customs the importers had to submit amongst several prescribed documents, a certificate from the Statutory Auditor/Chartered Accountant correlating the payments of VAT/CST on the imported goods, in respect of which refund was claimed, with the invoices of sale.

In the extant case, it was alleged that in many of the correlation sheets certified by the Respondent errors were noticed by the Informant Department in respect of - M/s Proxima, M/s Tharol Enterprises and M/s Classy The Antique Designed Furniture thus alleging that the Respondent had issued the alleged certificates without taking due care.

Proceedings

3. During the hearing held on 25th July 2023, the Committee noted that the Respondent appeared before it for the hearing through video conferencing. Thereafter, he gave a declaration that there was nobody else present in the room from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form.

Being first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charge(s) to be read out or it could be taken as read. The Respondent stated that he was aware of the allegation(s) raised against him and the same might be taken as read. On being asked as to whether the Respondent pleaded guilty, he replied that he did not plead guilty and opted to defend his case.

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Based on the documents available on record and after considering the oral and/or written submissions of the parties concerned, the Committee concluded hearing in the matter.

Findings of the Committee

4. At the outset, it was noted that the Respondent had issued the purported certificates in respect of **M/s Proxima (A-6 to A-8)**, **M/s Tharol Enterprises (A-47 to A-49 and A-51 to A-53)** and **M/s Classy The Antique Designed Furniture (A-69 to A-71)**, correlating goods imported with sale invoices and certified that goods, so imported, were sold and on such sale appropriate VAT/ CST was paid and that the claimant had not passed on incidence of 4% Additional Duty of Customs to the buyer in respect of goods imported and sold.

It was noted extant allegation pertains to following certificates issued by the Respondent in respect of the three alleged firms during July 2016 to November 2016:

| S NO. | NAME OF FIRM | Amount of Refund Claimed | DOCUMENTS SUBMITTED ALONG WITH CERTIFICATE |
|-------|--|--------------------------|---|
| 1. | M/s Proxima - Certificate dated 07/09/2016 issued by Respondent (A-6 to A-8) | 1,55,316/- | Details of Bill of Entry, 4% SAD, VAT Amount and Quantity of items imported and sold, Bill of Entry for Home Consumption, Correlation Statement of quantity imported, sold and VAT paid and Copy of Invoices |
| 2. | M/s Tharol Enterprises - Certificate (Revised) dated 01/11/2016 issued by Respondent (A-47 to A-49) and Original Certificate dated 26/07/2016 (A-51 to A-53) | 2,03,472/- | Correlation Statement of quantity imported, sold and VAT paid (Revised), Details of products imported sold & VAT paid, Details of products imported sold & VAT paid and Bill of Entry for Home Consumption Correlation Statement of quantity imported, sold and VAT paid |
| 3. | M/s Classy The Antique Designed Furniture - Certificate dated 08/09/2016 issued by Respondent (A-69 to A-71) | 29,415/- | Correlation Statement of quantity imported, sold and VAT paid, Bill of Entry for Home Consumption and Copy of Invoices |

On account of errors noticed by the Informant Department in respect of the alleged certificates, it was alleged that the Respondent had issued the said certificates without taking due care.

4.1 The Committee further noted that the Respondent in his defence inter-alia submitted that he had issued the certificates on the basis of the information provided by his client after due verification of the same. However, in view of the volume of invoices being furnished, certain discrepancies occurred but no other discrepancies occurred other than the alleged

three Refund applications. He stated that the alleged discrepancy was neither willful nor contumacious. He further informed the reasons for the said difference and the corrective measure, if any, that were taken in respect of the same:

- a. Regarding M/s Classy Furniture, the Respondent submitted that the discrepancy noted by the Informant Department was that the product was not identifiable due to the change in the name when the tally was formulated. On realizing the claim was erroneous, the client relinquished the claim for a refund which was acknowledged by the Department. Therefore, as per the Respondent, the certificate issued by him was withdrawn. It was noted that the Respondent had brought on record the stated letter as issued by the Company to the Informant Department.
- b. Regarding M/s Tharol Enterprises, the Respondent submitted that the amount of the discrepancy was 4.96% (₹10,086/-) of the total claim. That this reduction in the claim was made because no original sales invoices were furnished by the Importer. The Refund application was accompanied only by photocopies of the sales invoices, as the client kept manual sales bills. He argued that said ground could not be attributed to his negligence.
- c. Regarding M/s Proxima, the Respondent stated that the error that occurred was 1.25% (₹1,942/-) of the total claim and the same was not material.

It was noted that the Respondent had also brought on record the refund orders issued by the Customs authorities for all three parties which clearly demonstrates that the quantum involved in allegations was only marginal when claimed with total amount of refunds. To substantiate the same, the Respondent also produced a statement showing the party's claim and the quantum which was disallowed. The Respondent further stated that the omission that occurred was an inadvertent omission. The Respondent pleaded that he had been in practice since 2008 and that he was regularly attending to the alleged nature of work since 2009. Except for the extant case, no such errors had occurred.

4.2 On perusal of documents available on record, the Committee noted that alleged certificates and its annexures for refund, were issued by the Respondent when he had verified the bill of entry, customs duty challan, invoices, bills/registers, sheet indicating date of sale, name of party, invoice no, quantity, item wise quantity sold, basic amount of sales, applicable tax and total invoices. It was further noted that alleged discrepancies had also been mentioned in the refund orders of each firm thereby reducing the claim of refund. On review of the said Orders of the Informant Department, the impact of the said discrepancies was noted as under:


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| S NO. | NAME OF FIRM | Amount of Refund Claimed | Amount of Refund found eligible | Impact | Percentage of refund rejected |
|-------|---|--------------------------|---------------------------------|----------|-------------------------------|
| 1. | Order dated 08.11.2016 was issued wrt M/s Proxima - Certificate dated 07/09/2016, | 1,55,316/- | 1,53,374/- | 1942/- | 1.25% |
| 2. | Order dated 02.11.2016 was issued wrt M/s Tharol Enterprises - Certificate (Revised) dated 01/11/2016 and Original Certificate dated 26/07/2016 | 2,03,472/- | 1,93,386/- | 10,086/- | 4.96% |
| 3. | Order dated 23.11.2016 was issued wrt M/s Classy the Antique Designed Furniture - Certificate dated 08/09/2016 | 29,415/- | 25,618/- | 3,797/- | 12.91% |

It was noted that the alleged certificates involved verification of voluminous data viz in the matter of M/s. Proxima, there were 1032 products out of which only 7 products were mismatched. Further the amount involved was Rs. 1,942/- i.e. 1.25% of refund claimed. Further, on perusal of the Order in the matter of M/s Tharol Enterprises, it was noted that out of total claim of Rs.10,086/-, Rs.5374/- was rejected as only photocopies of sales invoices were submitted with the Informant Department. It was viewed that non-submission of original copy of invoice could not be attributed to the professional duty of the Respondent. Similarly, in case of M/s Classy the Antique Designed Furniture, it was noted that the firm itself had relinquished its claim for the alleged difference vide its letter dated 22nd Oct 2016 stating that said mistake had occurred on account of formatting of the computer.

4.3 The Committee considering the overall facts and documents produced on record, viewed that the amount involved in the extant case was not material in nature considering the quantum of bills/ invoices and products against which said certificates were issued by the Respondent. Accordingly, the Committee viewed that such errors on the part of the Respondent cannot be stretched to Professional Misconduct and fall within the purview of gross negligence. Thus, the Committee is of the considered view that the Respondent is **Not Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule. However, the certification work carried out by the Respondent contain certain errors and the Respondent should be extremely careful while carrying out due diligence while filing refund applications with the Custom authorities and should check and verify the invoices and other required documents with more caution in his future professional assignments.

Conclusion

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

6. 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 passes Order for closure of this case.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

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

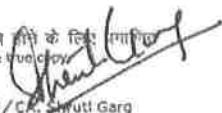
Sd/-
[Dr. K Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Piyush S Chhajed]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 3rd October, 2023

Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

सोए सुषि गर्ग / CA. Sushil Garg
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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