



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-III (2024-2025)]

[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

PPR/P/029/2018/DD/214/INF/2018/DC/1770/2023

In the matter of:

CA. Jayaraman Dindigul Viswanathan (M. No. 014050)

A-55, M V M Nagar,

Karur Road,

Dindigul (Tamilnadu) - 624001

.....Respondent

MEMBERS PRESENT:

CA. Charanjot Singh Nanda, Presiding Officer (Present in Person)

Smt. Anita Kapur, Government Nominee (Present in Person)

Dr. K. Rajeswara Rao, Government Nominee (Present through Video Conferencing Mode)

CA. Piyush S. Chhajed, Member (Present in Person)

Date of Hearing: 2nd May 2024

Date of Order: 31st July, 2024

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 22nd January 2024, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Jayaraman Dindigul Viswanathan (M. No. 014050)** (hereinafter referred to as the "Respondent") was **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That charge against the Respondent was that he was grossly negligent in the conduct of his professional duties as he had issued a certificate wherein it was stated that the goods exported under the impugned shipping bills were manufactured by M/s Pavathal Spinning Mills Private Limited (hereinafter referred as the 'Company') without verifying the documents, which resulted in revenue loss to the Government.

3. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/through video conferencing and to make representation before the Committee on 2nd May 2024.

Order- CA Jayaraman Dindigul Viswanathan (M. No. 014050)



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4. The Committee noted that on the date of hearing held on 2nd May 2024, the Respondent was present through Video Conferencing Mode and made his verbal submissions on the findings of the Disciplinary Committee. The Committee noted that the Respondent had also submitted his written representation dated 4th March 2024. In the verbal and written submissions, the Respondent had, inter-alia, submitted as under:

- a. That he had relied on the work of another Chartered Accountant who had conducted a thorough examination of Company's documents and operations while issuing the alleged certificate.
- b. That he had also considered the custom clearance procedures wherein the customs officials themselves certified that the client is indeed a supporting manufacturer of the exported yarn.
- c. That any oversight or error in judgement on his part was unintentional and does not constitute gross negligence and requested to consider his old age (around 80 years) while making the decision.

5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis representation of the Respondent made before it.

6. Keeping in view the facts and circumstances of the case, along with the material on record including representations on the findings, the Committee viewed that the Respondent had issued impugned certificates during March 2014 and in the certificates, he certified that exported goods were manufactured by the Company. However, in his statement before the Informant Department (Department of Revenue Intelligence, Tuticorin) on 28th December 2017 the Respondent admitted his mistake by stating that he had not verified that the exported goods had been manufactured by the Company. It is viewed by the Committee that a professional is expected to perform his duty diligently and was responsible for accuracy of the fact stated in the Certificate.

7. The Committee further observed that the Respondent was required to be more cautious while relying on work of another Chartered Accountant. Being a Chartered Accountant he cannot blindly rely on another person's work. This conduct of the Respondent constitutes Professional Misconduct as per Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8. The professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 22nd January 2024 which is to be read in conjunction with the instant Order being passed in the case.

9. The Committee, hence, viewed that the ends of justice will be met if appropriate punishment commensurate with his professional misconduct is given to him.



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10. Accordingly, the Committee, upon considering the nature of charge, facts of the matter and also the old age of the Respondent ordered that **CA. Jayaraman Dindigul Viswanathan (M. No. 014050)** be reprimanded.

sd/-

(CA. CHARANJOT SINGH NANDA)
PRESIDING OFFICER

sd/-

(SMT. ANITA KAPUR)
GOVERNMENT NOMINEE

sd/-

(DR. K. RAJESWARA RAO)
GOVERNMENT NOMINEE


sd/-

(CA. PIYUSH S CHHAJED)
MEMBER

DATE: 31ST JULY, 2024

PLACE: NEW DELHI

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


नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. 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, Shahdara, Delhi-110032

CONFIDENTIAL

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

[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. [PPR/P/029/2018/DD/214/INF/2018/DC/1770/2023]

In the matter of

CA. Jayaraman Dindigul Viswanathan
A-55, M V M Nagar,
Karur Road,
Dindigul (Tamilnadu)- 624001

.....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

Date of Final Hearing: 4th November 2023

PARTIES PRESENT

- (i) CA. Jayaraman Dindigul Viswanathan – the Respondent
(ii) Shri S. Ramanujam – the Counsel for the Respondent
(both appeared together from personal location through videoconferencing)

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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. Item (7) of Part I to the Second Schedule state as under: -

Part I of Second Schedule:

PART I: 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 the allegations against the Respondent

2. In the extant case, Additional Director, Ministry of Finance, Department of Revenue, Directorate of Revenue Intelligence, Chennai (A-2 to A-41) (hereinafter referred to as 'Informant') vide letter No. DRI/CZU/TTN/VIII/48/01/INT-1/2017 dated 19th April, 2018 alleged against the Respondent with respect to a Certificate issued by him wherein it was certified that the goods exported under the impugned shipping bills were manufactured by M/s Pavathal Spinning Mills Private Limited (hereinafter referred to as 'the Company') which was stated to be attached to ANF 5B certified by another chartered accountant that led to the fraudulent availment of Customs duty concession benefits under EPCG Scheme by the importer. It was alleged against the Respondent had issued the said Certificate without completely verifying the documents. It was stated that the certificate signed by the Respondent was submitted by the Company to the office of Joint DGFT, Madurai for obtaining Export Obligation Discharge Certificate (EODC) which resulted in revenue loss to the Government.

Proceedings

3. During the hearing held on 4th November 2023, the Committee noted that the Respondent along with his Counsel appeared before it for a hearing and that the matter was part heard. The Committee asked the Counsel for the Respondent to make further submissions. Thereafter, the Counsel for the Respondent made final submissions in the extant matter. The Committee directed the Counsel for the Respondent to submit the copy of Order(s) passed by Directorate of Revenue Intelligence (DRI) in the matter of M/s. Pavathal Spinning Mills Private Limited as referred in his oral submissions. Accordingly, hearing in the matter was concluded and decision on the matter was reserved.

3.1 On 22nd January 2023, the Committee considered the documents on record, oral and written submissions made by both parties, and upon consideration of the facts and circumstances of the case, decided the matter.

Findings of the Committee

4. At the outset, the Committee noted the matter pertains to a Certificate issued by the Respondent certifying that the goods exported under the impugned shipping bills were manufactured by the Company. It was alleged that the said Certificate was issued without completely verifying the documents. It was stated that using the said certificate which was attached to ANF 5B certified by another chartered accountant, the Company had fraudulently availed the Customs duty concession benefits under EPCG Scheme which resulted in revenue loss to the Government. The Informant had brought on record a copy of certificate (C-122) issued by the Respondent along with his Statement recorded before the Senior Intelligence Officer, DRI, Tuticorin u/s 108 of the Customs Act, 1962 on 28th December 2017 (C-211 to C-213). The excerpt of the certificate (C-122) is reproduced below:

*"It is certified that product exported under the following shipping bills against EPCG Licence No. 3530001644/3/11/00 dated 31.03.2006 **have been manufactured by M/s Pavathal Spinning Mills Private Limited**, Kolumam road, Neikkarapatti, Palani TK, Dindigul District-624615*

<i>S.no.</i>	<i>Shipping Bill No. and Date</i>
<i>1.</i>	<i>6550655 dated 06.12.2011</i>
<i>2.</i>	<i>6603451 dated 09.12.2011</i>
<i>.</i>	<i>.....</i>
<i>.</i>	<i>.....</i>
<i>.</i>	<i>.....</i>

I further declare that the statement made above is correct. I fully understand that the statement made in this certificate, if proved incorrect or false will render me liable to face any penal action or other consequences as may be prescribed in law or otherwise warranted.

Further, the Statement of the Respondent as recorded on 28th December 2017 before the Senior Intelligence Officer, DRI, Tuticorin u/s 108 of the Customs Act, 1962 is noted as hereunder:

"We are doing auditing work like Bank Audit, Company Audit and taxation work for individuals, firms, co-operative societies, companies and other entities and project finances. M/s Pavathal Spinning Mills Pvt. Ltd., Neikkarapatti is one of the clients and we are the company auditors for them from the inception of the company. M/s Pavathal Spinning Mills Pvt. Ltd., in order to improve the quality of the yarn produced by them, they imported two Auto cone winders by availing the concessional rate of duty under EPCG licence No. 3530001644. Though they tried to export yarn produced by using the imported machinery and complete their Export Obligation (EO), they could not obtain direct export orders. Hence, they tried to complete the EO through third party exports. In the beginning

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of the year 2014, I heard from M/s Pavathal Spinning Mills Pvt. Ltd., that they had completed the EO by exporting through third party and they further informed that in order to get discharged the bond and bank guarantee executed by them at the time of import, Export Obligation Discharge Certificate (EODC) had to be obtained from JDGFT, Madurai for which the signature of a Chartered Accountant was required in the certificate for proof of completion of their export obligation. They requested to issue necessary certificates in respect of the above said EPCG licence No. 3530001644. Based on their request, I asked the Audit staff of our firm, who normally visited the company once in three months for verification of the financial transactions and concurrent audit, to verify the documents like the shipping bills provided by M/s Pavathal Spinning Mills Pvt. Ltd. During verification, our staff found that the EPCG licence No. 3530001644 reflected in the shipping bills filed by the exporters M/s Cheran Spinners Limited, M/s Pallava Textile Limited and M/s Cheran Synthetics India Limited. On further verification of the export documents such as Form ANF 5B (Statement of Exports for redemption of EPCG Authorisation), Appendix 26A, Certificate showing the shipping bills details relating to the EPCG Licence submitted by the company, our staff confirmed the genuineness of the export details. Accordingly, the certificate was issued by me on behalf of our firm certifying that the product exported under the shipping bills against EPCG licence no. 3530001644 had been manufactured by M/s Pavathal Spinning Mills Private Limited, Neikkarapatti. You have shown me the statement dated 12.12.2017 of Shri N. Sathish Kumar, Director of M/s Pavathal Spinning Mills Pvt. Ltd. and copy of the certificate issued by me and which formed part of the ANF-5B application filed by them and I have appended my signature for having seen the same. In this connection, I state that I have been associated with M/s Pavathal Spinning Mills Pvt. Ltd., right from the time they purchased the mill functioning in the name of M/s Palani Karthik Spinning Mills Pvt. Ltd., some 20years ago. We are their company auditors right from the beginning. Hence, I had not even an iota of doubt about their claim that they had exported yarn through third party and hence got their EPCG licence no. reflected in the shipping bills. In fact, a similar certificate issued by Shri V. Jayaraman, a director of the company, was also shown to me for signing the certificate. As our staff had already verified the shipping bills in which the EPCG licence number 3530001644 was found mentioned and Shri V. Jayaraman had also signed a similar certificate, in a routine manner. I, on behalf of our firm, signed the certificate to enable them obtain Export Obligation Discharge Certificate. I issued the certificate in good faith, since I have been their auditor from the time, they purchased the company and on belief that they would never hide facts from me. I admit that it is mistake on my part not to have verified whether M/s Pavathal Spinning Mills Pvt. Ltd. had indeed supplied the export goods to the above said exporters and had any commercial transaction with the above exporters. As I said, I signed the certificate in good faith, and I had no reason to doubt the words of the Directors of the company. In fact, I have not received any extra amount for the certificate issued by me and it is a routine that they get certain certificates from me for furnishing to various authorities. I know that one of the prime conditions for availing EPCG scheme is that the export goods should be manufactured by using the capital goods imported under the EPCG Scheme for fulfilment of export obligation. I admit that it is a mistake on my part, to have issued the certificate

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without verifying whether the exported goods had been manufactured by M/s Pavathal Spinning Mills Pvt. Ltd. and sold to the third-party exporters for export. Immediately on receiving your summons I enquired Shri Satheesh, one of the Directors of M/s Pavathal Spinning Mills Pvt. Ltd. and found that they had got the shipping bills endorsed with their EPCG license without supplying any export goods to the third-party exporters, which is not correct. Only then I realized that a mistake was committed by me by issuing the certificate without proper verification and hence, I requested him to pay the duty amount immediately (emphasis supplied)."

4.1. At the outset, the Respondent pleaded under Rule 12 stating that the Customs Duty Concession was availed in 2006 by the Company and documents were scrutinized by the Foreign Trade Policy wing of the GOI and approved in 2014 while the case was made against him in 2018. Further, in his defense, he submitted that it is wrong to allege that he had issued the certificate without verification of records. He submitted that the certificate was issued after verifying the following documents: -

- a) EPCG license number endorsed in all the shipping bills filed by the Third-Party exporters.
- b) Verification of export documents - Form ANF-5B (Statement of Exports for redemption of EPCG Authorisation) appendix 26A
- c) Certificate showing the shipping bills, details relating to the EPCG license submitted by the Company, duly vetted by the Customs authorities.

He also informed that the Company got the endorsement in the Condition sheet attached to EPCG Licence changed from 'Cotton blended Yarn' to "Viscose Staple Fibre Yarn" in the years 2011 to 2013 to utilize the export of third-party manufacturers to discharge its export obligation. It was argued that every export invoice carried the EPCG license number and that all these were duly scrutinized by the Customs Department also wherein the unconnected exports were linked. He submitted that it was the top management of the Company that was involved in wrongfully availing the Customs Duty exemption and that he had no role to play in any of their documentation. He confessed of having no direct knowledge of the Customs Act nor an Expert in the relevant / allied notifications and that he had not obtained any payment for issuing the alleged certificate. Further, the Respondent also submitted the Order of the Commissioner of Customs dated 28.08.2019 and Order of the Commissioner of GST and Central Excise (Appeals) dated 28.06.2023 to provide the details of the action taken by the authorities concerned.

5. With respect to the Respondent's plea regarding Rule 12 of CA Rules, 2007, it was noted that it states as under:

Rule 12 of CA Rules, 2007

12. Time limit on entertaining complaint or information. – Where the Director is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that

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changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of section 21

From the above, it was noted that discretionary power has been given to the Director Discipline to consider before registering the matter if due to time lag there would be difficulty in securing evidence or that the Respondent would find it difficult to lead the evidence. It was noted that there was enough evidence based on which the performance of the Respondent could be assessed and that the Respondent had not pleaded under Rule 12 before the Director (Discipline). Accordingly, the extant plea of the Respondent was not acceptable. The Committee, thus, decided to proceed with the matter on merits.

5.1 On perusal of documents available on record and considering the submissions made by the Respondent, the Committee noted that in extant case, the allegation is limited to the fact certified by the Respondent. It is noted that the Respondent had certified the fact that the goods exported were manufactured by the Company which he had contended to have verified by referring to the shipping bills (B-11 to B-66) wherein the alleged EPCG licence no. was written, Form ANF 5B (Statement of Exports for redemption of EPCG Authorisation) (C-109 to C-114), Appendix 26A Certificate showing the shipping bills details relating to the EPCG Licence. It was viewed that the said documents reflected the details of exports made through the alleged shipping bills but could not be considered as evidence of manufacturing the goods by the Company. With respect to his argument about the involvement of top management of the Company in fraudulently obtaining the exemption, it is viewed that a professional is expected to perform his duty diligently. The Respondent was responsible for accuracy of the fact stated in the Certificate irrespective of the fact that condition sheet attached to EPCG Licence was changed or that top management being involved in the matter. It is evident that the Respondent had not verified the veracity of facts stated in the certificate issued by him which he has admitted in his statement recorded by the Informant Department on 28th December 2017.

5.2 Further, the Committee noted that vide Order of the Commissioner of Customs dated 28.08.2019, the penalty of Rs. 10,00,000/- and Rs. 5,00,000/- was imposed on the Respondent under section 112(a) and 114AA respectively of the Customs Act, 1962, which was appealed before the Commissioner of GST and Central Excise (Appeals). The Commissioner of GST and Central Excise (Appeals) in his order dated 28.06.2023 had also held the Respondent for wrongly certifying the fact but reduced the penalty to Rs. 3,00,000/- and Rs. 2,00,000/- under section 112(a) and 114AA respectively of the Customs Act, 1962.

6. Thus, in light of above, the Committee was of the considered view that the Respondent had not carried out his duties diligently at the time of issuing the certificate and for the said gross negligence, the Committee was of the view that the Respondent is Guilty of Professional Misconduct.

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Conclusion

7. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional misconduct Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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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

Date: 22nd January, 2024
Place: New Delhi

करी प्रतिनिधि होने के लिए प्रमाणित /
Certified to be true copy

मिनी गुप्ता / Meenu Gupta
परिचय कार्ड के अधिकारी / for Executive Officer
अध्यापक / Director
इस प्रकार /
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