



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

PR/G/192/2019-DD/217/2019/DC/1356/2020

[DISCIPLINARY COMMITTEE [BENCH-II (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**

[PR/G/192/2019-DD/217/2019/DC/1356/2020]

In the matter of:

Sh. Devendra Kumar, New Delhi
Advisor (Cost), Cost Audit Branch,
Ministry of Corporate Affairs, Govt. of India,
B-1 Wing, 2nd Floor,
Pt. Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road
New Delhi-110003.

.... Complainant

Versus

CA. Sachin Rajnikant Parekh (Membership No. 107038)
M/s Price Waterhouse Chartered Accountants LLP,
Chartered Accountants,
C-101, Building No. 1, Kalpataru Gardens,
Near Rajguru East West Flyover,
Ashok Nagar, Kandivali - East
Mumbai -400101.

.... Respondent

Members Present:-

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Mrs. Rani S. Nair, IRS (Retd.), Government Nominee (through VC)
Shri Arun Kumar, IAS (Retd.), Government Nominee (in person)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (in person)

Date of Hearing: 19th March, 2024

Date of Order: 9th May, 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, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Sachin Rajnikant Parekh (Membership No. 107038)** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional Misconduct falling within the meaning of Item (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sh. Devendra Kumar, Advisor (Cost), Cost Audit Branch -vs- CA. Sachin Rajnikant Parekh (Membership No. 107038)



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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 an opportunity of being heard in person / through video conferencing and to make representation before the Committee on 19th March 2024.

3. The Committee noted that on the date of the hearing held on 19th March 2024, the Respondent was present in person and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that all material disclosures had been done by him in his Audit report and no material non-disclosure was there. Looking into the fact that he was in the audit profession for around 25 years and practicing since last 10 years, he requested for a lenient view in the case. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under:

- (a) The Companies (Cost Records and Audit) Rules, 2014 were notified on June 30, 2014, pursuant to which maintenance of cost records were not applicable to Company. There was a subsequent amendment vide notification dated December 31, 2014 which introduced the CETA code of the product manufactured by the Company which he was not able to trace despite reviewing the amendment. The Company also confirmed that maintenance of cost records was not applicable to the Company.
- (b) The Respondent in his report on CARO appropriately reflected applicability of maintenance of cost records in the succeeding Financial year 2016-17 on immediately becoming aware of the fact that the CETA code of Company's product was covered in between the Block reference (From To) under the amended Companies (Cost Records and Audit) Rules, 2014.
- (c) He independently performed additional procedures and not merely relied on the management representation.
- (d) The comments on the cost records in CARO report have not resulted in any loss, financial or otherwise to any stakeholder or benefit to him.
- (e) The matter does not relate to Item 5 and Item 6 of Part I of the Second Schedule.
- (f) No such finding of gross negligence has been made out against him.

4. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of Professional Misconduct vis-à-vis written and verbal representation of the Respondent.

5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the Findings, the Committee is of the view that as per Para 3 of SA 580 on Written Representations, an auditor should not only depend on representation received from the management but should also collect other necessary evidence which are necessary and relevant at the time of doing the audit. However, the Respondent merely relied upon the representations of the management and failed to check whether cost records as prescribed are made and maintained. The Company as well as the Respondent in his defence and reply before the Ministry accepted the mistake that the product in question i.e., with CETA code 8481 is covered under the requirements of sub-section (1) of section 148 of the Companies Act, 2013 read with Companies (Cost Records & Audit) Rules 2014 and thus, failed to exercise requisite due diligence while auditing and was grossly negligent in reporting material fact and misstatement. Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case. The Committee also held that keeping in view the fact that the Respondent was in audit profession for around 25 years and practicing since last 10 years, it was expected of him to be more diligent while carrying out the audit assignment.



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6. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to him in commensurate with his professional misconduct.

7. Thus, the Committee ordered that CA. Sachin Rajnikant Parekh (M.No.107038), Mumbai be reprimanded and also a Fine of Rs. 1,00,000/- (Rupees One Lakh only) be imposed upon him payable within a period of 60 days from the date of receipt of the Order.

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

(MRS. RANI S. NAIR, IRS RETD.)
GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. COTHA S. SRINIVAS)
MEMBER

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[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/192/2019-DD/217/2019/DC/1356/2020]

In the matter of:

**Sh. Devendra Kumar, New Delhi
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**CA. Sachin Rajnikant Parekh (Membership No. 107038)
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C-101, Building No. 1, Kalpataru Gardens,
Near Rajguru East West Flyover,
Ashok Nagar, Kandivali - East
Mumbai -400101**

.....Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)
CA. Sanjay Kumar Agarwal, Member (In person)**

**DATE OF FINAL HEARING: 10.08.2023
DATE OF JUDGEMENT : 25.08.2023**

PARTIES PRESENT

Complainant: Not Present

Respondent : Not Present

**Counsel for Respondent: CA. A.P. Singh along with his Assistant CA. Utsav Hirani
(Through Video Conferencing Mode)**

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. That the complaint was filed by the Complainant on behalf of the Cost Audit Branch of Ministry of Corporate Affairs.
 - b. The Respondent was the statutory auditor of M/s Danfoss Power Solutions India Private Limited (hereinafter referred to as the “**Company**”) for the financial year 2015-16.
 - c. As per form AOC-4 filed by the Company for the Financial Year 2014-15, the Company was engaged in manufacturing of products having CETA code 8481 which is specified in Item no 31 of Table-B of Rule 3 of the Companies (Cost Records and Audit) Rules, 2014.
 - d. The turnover of the Company during the previous year 2014-15 was Rs. 163 crores (approx.), thus maintenance of cost records was mandatory for the Company for the FY 2015-16 as per Section 148(1) of the Companies Act 2013 read with Rule 3 of the Companies (Cost Records and Audit) Rules, 2014.
 - e. However, the Respondent had stated in his CARO report mentioned that maintenance of cost records is not applicable for the Company.

CHARGES IN BRIEF: -

2. The Committee noted that the charge against the Respondent is that he, inspite of having knowledge of the fact that maintenance of cost records is applicable on the Company, he in his audit report under CARO (Companies (Auditor's Report) Order) reporting for the financial year 2015-16 had mentioned that maintenance of cost records is not applicable for the Company. Thus, the Respondent had not complied with SA 200, SA 250 and SA 580 and had contravened the provisions of Section 143(9) of the Companies Act 2013 for which he was liable for action u/s 147(2) of the said Act.

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - a. That Para 41(e) of the Guidance Note on Companies (Auditor's Report) Order requires the auditor to report whether cost accounts and records have been made and maintained. The Order does not require a detailed examination of such records.
 - b. The auditor should therefore conduct a general review of the cost records to ensure that the records as described are made and maintained. He should make such reference to the records as is necessary for the purpose of his audit.
 - c. As required under paragraph 41(e) of the Guidance Note on the Companies (Auditor's Report) Order, 2016 issued by Institute of Chartered Accountants of India, the Respondent had obtained a written representation letter dated 8th August 2016 from the Director and Company Secretary of the Company.
 - d. The Respondent has further claimed that it is ample clear that he was diligent in making inquiries as called forth under Standards on Auditing / guidance note issued by ICAI and had believed in the representations of the management of the Company as bonafide. In such a case, any subsequent misplaced / wrong representation, if found, is attributable to the Company's management only.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 16th June 2020, noted as under:
 - a. That an auditor cannot solely depend on the information provided in the representation letter received from the management of the Company and must perform his audit procedures to come to the conclusion. Further, the Guidance Notes only gives the guidance/ suggestive course of action to an auditor, and it is not mandatory in nature.
 - b. In the extant matter, the Respondent was already aware of the fact that turnover of the Company is exceeding Rs. 35 crores during the previous

- year 2014-15 and its CETA Code number 8481 which has been covered / falls under heading of 'Other Machinery and Mechanical Appliances' under Table-B for Non-regulated sectors according to the provisions of Companies (Cost Records and Audit) Amendment Rules, 2016.
- c. The Respondent should have performed his audit procedures and referred the aforesaid provisions instead of completely relying on the Management's Written Representation and therefore he had given a false and misleading statement in his Audit Report under Companies (Auditor's Report) Order in relation to maintenance of cost records by the Company.
5. Accordingly, the 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, held the Respondent **Prima-facie Guilty** of Professional Misconduct falling within the meaning of Items (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (5) of Part I of Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(5): fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

Item (6) of Part I of Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(6): fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity."

Item (7) of Part I of Second Schedule:

“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.”

**SUBMISSIONS OF THE RESPONDENT IN RESPONSE TO PRIMA FACIE
OPINION:-**

6. The Committee noted that the Respondent in his Written Submissions had, inter-alia, mentioned as under:
 - a. That the conclusions in PFO are drawn without considering the facts and circumstances of the case and hence denied.
 - b. That if an allegation is not included in Form I, that allegation cannot be the basis of any inquiry for professional misconduct against a member of the Institute. A complaint filed by a Complainant cannot be expanded at any stage, not even by the Complainant.
 - c. That Form I does not provide any allegations, whether serially numbered or not and does not provide any reference to any clause/part of the relevant schedule of the Act under which charges of professional misconduct may be levied against a member of the Institute.
 - d. That before initiating an inquiry in respect of Complaint, the officers of Disciplinary Directorate are under an obligation to perform a scrutiny and to take appropriate steps for the removal of the defects in accordance with the applicable Rules. However, the said matter was initiated without any such scrutiny.
 - e. That the Respondent prayed that the inquiry be closed forthwith considering that the proceedings had not been initiated in accordance with legal requirements.

- f. That the Director (Discipline) in his PFO had chosen to refer to just one paragraph of his written statement whose contents had not been understood and appreciated comprehensively, hence the relevant contents of the said paragraph are reproduced with this letter.
- g. That the details of the procedures performed by the engagement team were as follows:
- Assessed the applicability of Companies (Cost Records and Audit) Rules, 2014 to the Company w.r.t. the overall turnover threshold prescribed in the said rules for maintenance of cost records.
 - Inquired with the management of the Company in respect of CETA codes applicable for its products.
 - Independently corroborated the CETA codes with the return (ER-1) for the year ended 31st March, 2016 filed by the Company with Central Board of Excise and customs.
 - In respect of CETA code 7204 (scrap), sighted the FAQs issued by the Institute of Cost Accountants of India dated 19th March, 2015 which suggested that scrap cannot be construed to be covered under the Rules.
- h. Further, he had obtained the written representation letter wherein it had been mentioned that the maintenance of cost records was not applicable on the Company.
- i. That he had dealt with the contents of the Guidance Note issued by ICAI which included reference to reliance on the management representation by the statutory auditor.
- j. That the Company had received notices from MCA but he was not informed of such notices by the management at that time.
- k. That the comments on the cost records made in the audit report had not resulted in any loss, financial or otherwise to any stakeholder.
- l. That the assertion of the Complainant that he had full knowledge of the facts that maintenance of cost records under cost rules was applicable to the Company is denied and disputed. The Complainant made this assertion as a foregone conclusion without understanding the facts of the case.

- m. That since the Complainant had expressed his intent to move this matter to judicial authorities, the disciplinary proceedings on the same points of fact and law before the quasi-judicial body must be kept in abeyance.
- n. That this is not a case of material misstatement in financial statements hence reference of Para 15 of SA 200 is not relevant in this case.
- o. That this is also not a case of professional judgement, this is a case of alleged non-reporting of a particular matter required to be reported under CARO.
- p. That the Company had resorted to making an application for compounding of its offences before MCA. The Company had submitted before NCLT that the Company and its officers inadvertently didn't notice the amendment to the Rules under section 148.
- q. That the Director (Discipline) had erroneously referred to the notification of 14th July, 2016 whereas the notification did not contain any provisions with retrospective effect for the FY 2015-16. Thus, the PFO had been made without proper application of mind.
- r. That the engagement team had performed each of the audit procedures included in Para A11 of SA 250. Further, as per SA 250 it is evident that no burden of professional misconduct can lie on the shoulders of the Respondent merely by referring to one particular para of SA 250.
- s. That reference to Para 12 of SA 580 is absolutely out of context in the instant case.
- t. That there is a vast difference between negligence and gross negligence. The latter refers to culpable negligence and the element of *mens rea* is involved.
- u. In the instant case, the Respondent had not even been charged with gross negligence. The show cause notice refers to negligence only.
- v. Thus, in view of above submissions, the inquiry needs to be closed forthwith in the interest of justice and he should be declared not guilty of any professional misconduct.

BRIEF FACTS OF THE PROCEEDINGS:-

7. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	27.12.2021	Adjourned at the request of the Respondent
2.	11.04.2023	Part- Heard and Adjourned.
3.	20.06.2023	Adjourned at the request of the Respondent
4.	10.07.2023	Fixed and Adjourned at the request of the Respondent
5.	28.07.2023	Fixed and Adjourned at the request of Respondent's Counsel
6.	10.08.2023	Concluded and Judgement Reserved
7.	25.08.2023	Final decision taken on the case

8. On the day of the first hearing held on 27th December 2021, the Committee noted that the Complainant Department vide email dated 22nd December, 2021 had requested that their office be exempted to appear before Bench and also mentioned that their office had nothing further to present in this case and the case may be decided on merits. The Committee also noted that the Respondent vide email dated 21st December 2021 had sought an adjournment in the matter to retrieve old documents and discuss with the lawyer. The Committee looking into the same decided to adjourn the matter.
9. On the day of the second hearing held on 11th April, 2023, the Committee noted that the Respondent alongwith his Counsels CA. A.P. Singh and CA. Utsav Hirani were present from their place through Video Conferencing. The

Committee noted that the Complainant was not present. The Respondent was administered on Oath.

Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The Committee, looking into the absence of Complainant and the fact that this was the first hearing before the present bench, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

10. On the day of the third hearing held on 20th June, 2023, the Committee noted that the Complainant vide email dated 16th June, 2023 informed that their submissions dated 17th May, 2019, 27th September, 2019 and 31st December, 2020 may be considered as final and that they have nothing to add further and accordingly their appearance is not required and the Committee may proceed on facts/documents on record. The Committee noted that the Respondent had sought adjournment vide email dated 17th June, 2023 on ground that he is outstation due to certain professional commitments. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent and accordingly, the case was adjourned.
11. On the day of fourth hearing held on 10th July, 2023, the Committee noted that the Complainant, vide his email dated 16th June, 2023 had informed that no personal hearing is required and the Committee may proceed on facts/documents on record and did not sent any further intimation for participation in the hearing. The Committee noted that the Respondent had sought adjournment vide email dated 04th July, 2023 on the ground that his Counsel was travelling abroad. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent and accordingly, the case was adjourned. The Committee also directed the Office to inform the parties that no more extensions would be granted.

12. On the day of fifth hearing held on 28th July, 2023, the Committee noted that the Respondent's Counsel, CA. Utsav Hirani stated that since chief Counsel, CA. A.P. Singh is busy in hearing before another Disciplinary Bench, the matter may be adjourned. On the same, the Committee informed CA. Ustav Hirani that the hearing in the matter has been passed-over and CA. A.P. Singh can attend the hearing later. When the hearing in the above matter was resumed, the Committee noted that CA. A. P. Singh was present and he requested for an adjournment of the hearing. On the same, the Committee decided to adjourn the hearing. With this, the hearing in the above matter was adjourned at the request of the Respondent.
13. On the day of final hearing held on 10th August, 2023, the Committee noted that the Complainant Department vide their earlier email dated 16th June, 2023 informed that their submissions dated 17th May, 2019, 27th September, 2019 and 31st December, 2020 may be considered final and that they have nothing to add further and accordingly, their appearance is not required and the Committee may proceed on facts/documents on record. The Committee further noted that the Respondent was not present only his Counsel along with his Assistant was present through Video Conferencing Mode.
- 13.1 Thereafter, the Respondent's Counsel was asked to make their submissions. The Respondent's Counsel in their submissions had, inter-alia, submitted as under:
- a. That no cost audit rule existed in December 2014 for item of scrap and the notification for the same was already produced before the Committee.
 - b. That after December 2014, a notification was issued wherein the scrap was included in the cost audit rules however as a block of item.
 - c. That the notice issued by MCA to the auditor was dropped by them and they would submit the document in due course of time.
 - d. That the management of the Company had also confirmed vide the management representation letter (MRL) that the said item was not included in cost audit rules.

- e. That the Company in response to the notice issued to them by MCA had accepted that they were not aware of the December notification wherein the said item was included and therefore the same was informed to the auditor.
 - f. Further there is no material misstatement in the financial statements due to this impact.
 - g. There was no reason to doubt the MRL.
 - h. That guidance note on CARO had clearly stated that in such case MRL concept can be applied.
- 13.2 The Committee posed certain questions to the Respondent Counsel to understand the issue involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Respondent Counsel to submit the status of the action initiated against the Respondent by the Complainant within next ten days.
- 13.3 Thereafter, the Committee, looking into the Respondent's submissions against the charges levelled, recorded his plea and accordingly concluded the hearing by reserving its judgement.
14. Thereafter, this matter was placed in hearing held on 25th August 2023 wherein the same members who heard the case earlier were present for consideration of the facts and arriving at a decision by the Committee. The Committee noted that pursuant to its directions given in the meeting held on 10th August, 2023, the Respondent has submitted the required documents stating as under:
- a. That MCA (Cost Audit Branch) had issued show cause notices under section 448 of the Companies Act, 2013 dated 11th January, 2017 and 17th April, 2017 which were replied vide letters dated 27th January 2017 and 5th May 2017, respectively. The same were also annexed by the Complainant with the complaint.
 - b. That MCA has forwarded the matter to the ICAI to decide the matter on basis of merits/facts of the case.

- c. That no action has been initiated by MCA against him under section 448 of the Companies Act, 2013.
- d. Further, the Complainant had not brought forward any document evidencing any action against him under section 448 of the Companies Act, 2013 and hence the question of compounding of offence by him does not arise.
- e. That he had performed his duties due diligently by inquiring from the management and obtaining written representation letter in accordance with the contents of the Guidance Note on CARO.
- f. That the management of the Company had accepted the fact that they had missed the December notification consequent to which the relevant code had been covered under the rules of 2014. Further such omission was bonafide in nature and there was no intent to hide any facts since the Company continued to maintain the cost records.

14.1 Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgement.

FINDINGS OF THE COMMITTEE:-

- 15. The Committee noted that the charge against the Respondent was that he failed to exercise requisite due diligence while auditing and was grossly negligent in reporting material fact and misstatement as the Respondent inspite having knowledge of the fact that maintenance of cost records was applicable on the Company had mentioned in his audit report under Companies (Auditor's Report) Order reporting that maintenance of cost records is not applicable for the Company.
- 16. The Committee noted that the Respondent in his submission on PFO had raised certain preliminary objections on registration of complaint, charge consideration, clauses etc.

- 16.1 On perusal of the objections raised by the Respondent, the Committee was of the view that non-mentioning of clauses or incorrect mentioning of clauses pertaining to misconduct does not, in any manner vitiate the proceedings and it is the obligation of Disciplinary Directorate to identify the specific acts of professional and/or other misconduct. Further, mentioning of specific clause or schedule under which the allegation fall is not the job of the Complainant. It is for the Disciplinary Authorities to find out as to under what clause the act complained is to fall.
- 16.2 Accordingly, the Committee did not found any preliminary objection as a valid ground for not proceeding the matter further and the Committee has dealt with the matter on merits.
17. The Committee on the merits of the case noted that Section 148(1) of the Companies Act 2013 reads as under:

*(1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, **direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies:***

*Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act **(emphasis added)***

18. The Committee further noted that Rule 3 of the Companies (Cost Records and Audit) Rules, 2014 prescribes the class of Companies which shall be required to include cost records in their books of account and read as under:

*3. Application of cost records —For the purpose of sub-section (1) of section 148 of the Act, the following class of companies, including Foreign Companies defined in sub-section (42) of section 2 of the Act, engaged in production of the goods or providing services, shall be required to include cost records in their books of account, namely**(emphasis added)***

19. It is noted that Rule 3 of the Companies (Cost Records and Audit) Rules, 2014 has classified sectors under Regulated and Non-Regulated sectors which are covered under Table A and Table B respectively. Every Company engaged in the production of the goods or providing services, specified in Tables having an overall turnover from all its products and services of Rs. 35 crores (Rupees thirty-five crore) or more during the immediately preceding financial year, shall include cost records for such products or services in their books of account. It means that applicability of maintenance of Cost Records shall be for those sectors which are mentioned in the tables i.e. Table-A for Regulated sectors and Table-B for Non-regulated Sectors and if Company's product / services shall fall under one or more categories given under Table A and / or Table B and the respective Central Excise Tariff Act (CETA) headings.
20. The Committee on perusal of XBRL report of the Company filed with MCA noted that the turnover of the Company for the immediately preceding year i.e. Financial Year 2014-15 exceeded Rs 35 crores.
21. The Committee noted that the Company was engaged in manufacturing of products which falls under the CETA code 8481. On perusal of amendment dated 31st December, 2014 in Cost Audit Rules, 2014 noted that the said CETA code is specified in Item no 31 of Table-B of Rule 3 of the Companies (Cost Records and Audit) Rules, 2014. Thus, the maintenance of cost records was applicable on the Company.
22. The Committee noted that the Respondent had taken the defense that he relied on written representation letter from the management of the Company in accordance with Guidance Notes on CARO issued by ICAI. It is noted that paragraph 41(e) and (f) of the Guidance Notes on CARO issued by ICAI states as under:

(e) The Order requires the auditor to report whether cost accounts and records have been made and maintained. The word "made" applies in respect of cost accounts (or cost statements) and the word "maintained" applies in respect of cost records relating to materials, labour, overheads, etc. The auditor has to report under

the clause irrespective of whether a cost audit has been ordered by the central government. The auditor should obtain a written representation from the management stating (a) whether cost records are required to be maintained for any product(s) or services of the company under section 148 of the Act, and The Companies (Cost Records and Audit) Rules, 2014; and (b) whether cost accounts and records are being made and maintained regularly. The auditor should also obtain a list of books / records made and maintained in this regard. The Order does not require a detailed examination of such records. The auditor should, therefore, conduct a general review of the cost records to ensure that the records as prescribed are made and maintained. He should, of course, make such reference to the records as is necessary for the purposes of his audit (emphasis added).

(f) It is necessary that the extent of the examination made by the auditor is clearly brought out in his report. The following wording is, therefore, suggested:

“We have broadly reviewed the books of account maintained by the company pursuant to the Rules made by the Central Government for the maintenance of cost records under section 148 of the Companies Act, 2013 and are of the opinion that prima facie, the prescribed accounts and records have been made and maintained.” (emphasis added)

23. It is also noted that Para 3 of the Guidance Note on the Companies (Auditor's Report) Order 2016 states as under:

3. The purpose of this Guidance Note is to enable the members to comply with the reporting requirements of the Order. It should, however, be noted that the clarifications and explanations contained in this Guidance Note are not intended to be exhaustive and the auditors should exercise their professional judgment and experience on various matters on which they are required to report under the Order (emphasis added)

24. The Committee also noted that Para 3 of SA 580 on Written Representations reads as under:

“Although written representations provide necessary audit evidence, they do not provide sufficient appropriate audit evidence on their own about any of the matters with which they deal. Furthermore, the fact that management has

provided reliable written representations does not affect the nature or extent of other audit evidence that the auditor obtains about the fulfilment of management's responsibilities, or about specific assertions".

From the above, it is amply clear that an auditor should not only depend on representation received from the management but should also collect other necessary evidence which are necessary and relevant at the time of doing the audit.

25. The Committee further noted that though the management of the Company in response to the show cause notice issued had accepted the fact that they had missed the amendment dated 31st December, 2014 in Cost Audit Rules, 2014 due to which they had given the representation to the Respondent that cost records are not applicable on the Company, however, the said acceptance of the Company does not absolve the Respondent from his duties to exercise due diligence during the course of audit. Thus, the contention of the Respondent that he obtained the written representation letter from the Company and in accordance with guidance notes relied on them is not tenable.
26. The Committee also noted that the Company had applied for the compounding of offence in response to notice issued under section 148 of the Companies Act, 2013. Hence, the contention of the Respondent that MCA had not taken any action against him is also not tenable because prayer for compounding of an offence is itself an admission of an offence.
27. The Committee noted that the Respondent had merely relied upon the representations of the management and failed to check whether cost records as prescribed are made and maintained. He was grossly negligent in reporting material fact and misstatement. The Committee was not satisfied with the submissions of the Respondent and noted that the Company as well as the Respondent in his defence and reply before the Ministry had accepted the mistake that the product in question i.e., with CETA code 8481 is covered under the requirements of sub-section (1) of section 148 of the Companies Act, 2013 read with Companies (Cost Records & Audit) Rules 2014.

28. The Committee, after consideration of the facts of the case vis-à-vis oral and written submissions of the Respondent, was not satisfied with the submissions of the Respondent and noted that the Respondent has merely relied upon the representations of the management and failed to exercise requisite due diligence while auditing and was grossly negligent in reporting material fact and misstatement.

CONCLUSION

29. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Items (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

SD/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

SD/-

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

SD/-

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

SD/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE : 07.02.2024

PLACE: New Delhi