

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA A

v.

M. S. RATHI

(Civil Appeal No. 10326 of 2011)

JULY 11, 2017 B

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Chartered Accountants Act, 1949 – ss.21 and 22; Second Schedule, Part I, Clauses (7) and (8) – Professional misconduct – Allegation of manipulation of accounts and issuance of incorrect certificates – Disciplinary Authority found respondent guilty of professional misconduct – Matter placed before Council – Council agreed with finding of Disciplinary Authority and recommended to High Court reprimand of respondent – High Court set aside the order of Disciplinary Authority as well as of Council – On appeal, held: Neither the complainant nor the Disciplinary Authority chose to call for books of accounts available and, therefore, no adverse inference could be drawn against the respondent – High Court rightly set aside the order of Disciplinary Authority. C D

Dismissing the appeal, the Court

HELD: The High Court considered the statements made on behalf of the Respondent to hold that there was no material on record to establish that the units had paid an amount more than what was mentioned in the CIF value or purchase vouchers and merely because the sellers from whom the units had purchased the goods had imported the same, it does not mean that the units in question had paid the custom duty. Thus, no adverse inference can be drawn against the Respondent on this ground. So far as non-maintenance of books of accounts by the units is concerned, the High Court held that it is also without any substance as it has found that the only witness examined before the Disciplinary Committee had stated that the books and the record were available at Bombay. Neither the complainant nor the Disciplinary Committee chose to call for those books of accounts and, therefore, no adverse inference can be drawn against the Respondent on this ground. [Paras 6, 7, 8] E F G [355-B-D]

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A **CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 10326 of 2011.

From the Judgment and Order dated 12.08.2004 of the High Court of Judicature at Bombay in Chartered Accountant Reference No. 5 of 2000.

B K. K. Mohan, Adv. for the Appellant.

The Judgment of the Court was delivered by

C **R.K. AGRAWAL, J.** 1. The present appeal arises out of the order dated 12.08.2004 passed by the Division Bench of the High Court of Judicature at Bombay in Chartered Accountants Reference No.5/2000.

D 2. Disciplinary action was taken against the Respondent herein for issuing certificates for consumption of raw materials showing the value of imported raw material as CIF value to the units without seeing the records since imported value of the raw materials should have been shown as value of the raw materials and not the CIF value. Further, the units did not maintain any record for past production, still the certificates were issued which shows that the figures were manipulated and the certificates issued were not correct.

E 3. After taking into consideration the reply filed and the submissions made by the Respondent herein, the Disciplinary Committee vide order dated 12th January, 1995 held that the Respondent while issuing the certificates to the units had failed to obtain sufficient information to warrant the expression of his opinion and found him guilty of professional misconduct within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 read with Sections 21 and 22 of the said Act. The matter was thereafter placed before the Council of the Institute of Chartered Accountants of India, hereinafter referred to as the 'Council'. The Council, after considering the submission of the Respondent herein, vide order dated 17th January, 1998 agreed with the findings of Disciplinary Committee and decided to recommend to the High Court that the Respondent be reprimanded.

G 4. We have heard learned counsel for the Appellant. Nobody has appeared on behalf of the Respondent despite service of notice.

H 5. Learned counsel for the Appellant submitted that the High Court had committed an error of law in setting aside the findings of fact

recorded by the Disciplinary Committee as also the Council which referred the matter to the High Court under the statutory provisions for the Respondent to be reprimanded. A

6. From a perusal of the judgment and order passed by the High Court, we find that the High Court has considered the statements made on behalf of the Respondent to hold that there is no material on record to establish that the units had paid an amount more than what was mentioned in the CIF value or purchase vouchers and merely because the sellers from whom the units had purchased the goods had imported the same, it does not mean that the units in question had paid the custom duty. Thus, no adverse inference can be drawn against the Respondent on this ground. B C

7. So far as non-maintenance of books of accounts by the units is concerned, the High Court has held that it is also without any substance as it has found that the only witness examined before the Disciplinary Committee Mr. Phillips, proprietor of M/s. Progressive Storage Systems had stated that the books and the record are available at Bombay. D

8. Neither the complainant nor the Disciplinary Committee have chosen to call for those books of accounts and, therefore, no adverse inference can be drawn against the Respondent on this ground.

9. We are in full agreement with the findings and observations made by the High Court. We do not find any good ground to interfere with the order passed by the High Court. E

10. In view of the foregoing discussions the Appeal fails and is hereby dismissed.

11. However, the parties shall bear their own costs. F