

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.:- CIC/DGVAL/A/2018/102968-BJ

Mr. Piyush Thakkar

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO & Assistant Commissioner
Directorate General of Valuation (Central Board of Excise & Customs)
New Custom House, 7th Floor, Ballard Estate
Mumbai – 400001

...प्रतिवादीगण /Respondent

Date of Hearing : 03.06.2019
Date of Decision : 04.06.2019

Date of RTI application	11.09.2017
CPIO's response	09.10.2017
Date of the First Appeal	23.10.2017
First Appellate Authority's response	18.11.2017
Date of diarised receipt of Appeal by the Commission	12.01.2018

ORDER

FACTS:

The Appellant vide his RTI application sought information regarding the import of goods from all custom ports in India under Chapter 4, 8, 9, 10, 11, 15, 18, 19, 20, 21, 29 and 72 and export of goods from all custom ports in India under Chapter 17, 18, 19, 21, 29 and 84.

The CPIO, vide its letter dated 09.10.2017 denied disclosure of information u/s 8 (1) (d) and (j) of the RTI Act, 2005. Dissatisfied by the response, the Appellant approached the FAA. The FAA, vide its order dated 18.11.2017 concurred with the response of the CPIO.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Mr. Sachin K. Momaya Appellant's representative in person;

Respondent: Mr. S. S. Ahmed, Dy. Comm. through VC;

The Appellant's representative reiterated the contents of the RTI application and stated that the information sought was incorrectly denied under Section 8 (1) (d) & (j) of the RTI Act, 2005

since the details sought by the Appellant were generic in nature and did not pertain to any specific Third Party. Therefore, while relying on the decision of the High Court of Delhi in the matter of Paras Nath Singh vs. UOI (W. P. No.7845/2013 dated 12.02.2018), the Appellant prayed for disclosure of information including the bills of entry of all exports- imports under the Chapters mentioned in the RTI application. In its reply, the Respondent reiterated the response of the CPIO / FAA and submitted that the information sought being related to the commercial and trade secrets of Third Parties was exempted from disclosure under Section 8 (1) (d) & (j) of the RTI Act, 2005. It was also emphasized that they collect such details for analytical purpose and in pursuance of the exercise to equip themselves to curb tax evasion by exporters – importers and that no larger public interest warranting the disclosure of information was justified by the Appellant. In support of their contention, the Respondent referred to the decisions of the Commission in Shri Sitalkumar T. Agarwal vs. Directorate General of Valuation (CIC order No. CIC/AT/A/2008/00084 dated 30.06.2008), Md. Akhatar Usman Moulvi Vs. Directorate General of Valuation (CIC order No. CIC/AT/A/2009/000312 dated 15.06.2009) and Shri Om Prakash Saraf Vs. Directorate General of Valuation (CIC order No. CIC/SS/A/2012/001032 dated 18.03.2013). On being queried by the Commission whether the generic numerical details of the imports / exports under the Chapters mentioned in the RTI application were maintained by them and, if so, whether the same could be disclosed to the Appellant, the Respondent replied in the affirmative and submitted that they did maintain such details for their internal record keeping.

The Commission was also in receipt of a written submission from the Respondent dated 21.05.2018, wherein it was inter alia stated that the CPIO while denying information u/s 8 (1) (d) and (j) of the RTI Act, 2005 relied on the decisions of the Commission in Shri Sitalkumar T. Agarwal vs. Directorate General of Valuation (CIC order No. CIC/AT/A/2008/00084 dated 30.06.2008), Md. Akhatar Usman Moulvi Vs. Directorate General of Valuation (CIC order No. CIC/AT/A/2009/000312 dated 15.06.2009) and Shri Om Prakash Saraf Vs. Directorate General of Valuation (CIC order No. CIC/SS/A/2012/001032 dated 18.03.2013). In his First Appeal, the Appellant sought to revise his queries by seeking information under the fields i.e., (i) Name of the Product; (ii) Quantity (iii) Value in INR; (iv) Bill of Entry Number and (v) Chapter heading. Thus information under three different heads i.e., Name of the Importer, Name of the supplier, Country of origin was not asked for and in addition the information was asked in respect of the field viz., Bill of entry number. The FAA upheld the order of the CPIO and observed that the information in the instant case had no discernible public interest. It was further stated that the information sought for was bill of entry related information which was contained in the National Import database (NIDB) which was administered by the Directorate General of Valuation. The National Import database which also contained analyzed information was generated and updated by using customized software owned by the Directorate General of Valuation. It was also mentioned that the case law relied by the Appellant in the matter of Ms. P.P.K. Rana vs. Shalini Singh, Dy. Commissioner of Police, Delhi in CIC/AT/A/2006/00322 dated 11.12.2006 was not applicable in the instant case since it dealt with the applicability of Section 8 (1) (h) of the RTI Act, 2005.

The Commission referred to the definition of information u/s 2(f) of the RTI Act, 2005 which is reproduced below:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information

relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

Furthermore, a reference can also be made to the relevant extract of Section 2 (j) of the RTI Act, 2005 which reads as under:

“(j) right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes”

In this context a reference was made to the Hon’ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

35..... “It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

Furthermore, the Hon’ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. *“...Under the RTI Act “information” is defined under Section 2(f) which provides:*

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed.”

7. *“...the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”*

Furthermore, the Commission also observed that the CPIO while responding to the RTI application incorrectly applied Section 8 (1) (d) and (j) of the RTI Act, 2005 on the queries raised by the Appellant. While claiming exemption under Section 8 (1) (d) and (j) of the RTI

Act, 2005, the preliminary requirement was to ascertain whether the information sought would harm the competitive position of a Third Party or result in disclosure of their trade secrets or were in the nature of personal information. In the present instance the information sought pertained to generic numeric export/ import details and not specific Third Party information which could not be denied u/s 8 (1) (d) and (j) of the RTI Act, 2005.

In this context, the Commission referred to the decision of the Hon'ble High Court of Kerala in *Treesha Irish v. The CPIO and Ors.* WP (C) No. 6532 of 2006 dated 30.08.2010 wherein it was held as under:

“23. There is no provision anywhere in the Act to the effect that information can be refused to be disclosed if no public interest is involved. Of course in a case of personal information, if it has no relationship with any public activity or interest, the information officer has discretion to refuse to disclose the same, if the larger public interest does not justify disclosure of such information. But on the ground of lack of public interest involved alone, the public information officer cannot refuse to disclose the information, without a finding first that the information is personal information having no relationship to any public activity or interest.”

Furthermore, the High Court of Delhi while analyzing the scope of Section 8 (1) (j) in the matter of *Kamal Bhasin v. Radha Krishna Mathur and Ors.*, W.P.(C) 7218/2016 dated 01.11.2017 held as under:

8. It is apparent from the plain reading of the aforesaid clause that in order to claim exemption from disclosure of any information, the essential conditions that must be satisfied are: (i) that it is personal information the disclosure of which has no relationship to any public activity or interest; or (b) that it would cause unwarranted invasion of the privacy of the individual. However, even if the aforesaid conditions are satisfied, the Central Public Information Officer or the State Public Information Officer or the Appellate Authority may disclose the information if they are satisfied that the larger public interest justifies the disclosure of such information.

10. By virtue of the aforesaid proviso to Section 8(1) of the Act, it is enacted that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. In the present case, it was doubtful whether information as to the fate of the complaints can be considered as personal information that has no relationship with public interest or public activity. The activity of the Central Vigilance Department includes investigation and taking action in cases of corruption. Secondly, the complaint related to the allegations of misconduct and how these complaints were treated were clearly matter of public interest.

However, in the context of disclosure of specific import-exporter related information including the Bills of Entry u/s 8 (1) (d) and (j) of the RTI Act, 2005, the Commission referred to the decision of the High Court of Delhi in *Naresh Trehan vs Rakesh Kumar Gupta* (W.P(C) 85/2010) decided on 24.11.2014, wherein it was held as under:

14. “....Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is

necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.”

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties, the Commission instructs the Respondent to disclose the generic numerical export / import details as sought in the RTI application to the Appellant within a period of 15 days from the date of receipt of this order, as agreed.

The Appeal stands disposed accordingly.

(Bimal Julka) (बिमल जुल्का)
(Information Commissioner) (सूचना आयुक्त)

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