



केन्द्रीय कर के प्रधान आयुक्त का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL TAX
विशाखापट्टणम केन्द्रीय वस्तु एवं सेवाकर आयुक्तालय
VISAKHAPATNAM CENTRAL GST COMMISSIONERATE
पत्तन क्षेत्र-विशाखापट्टणम ,Port Area, Visakhapatnam-35



पत्र.सं. C.No. IV/16/63/2017-18.RTI

दिनांक Date: 16-08-2018

Order-in-Appeal No. 02/2018-19
(Under the Right to Information Act, 2005)

(Passed by Shri P. Narasimha Rao, Appellate Authority/ Joint Commissioner of Central Tax, Visakhapatnam Central GST Commissionerate, Visakhapatnam)

PREAMBLE

1. This Order-in-Appeal is issued under Section 19 of the Right to Information Act, 2005.
2. An appeal against the Order can be preferred with the Central Information Commission, Old JNU Campus, Block 4, 5th Floor, New Delhi-110067 under Sub-section(3) of Section 19 of the Right to Information Act, 2005.
3. An Appeal against this order must be filed within 90 days from the date of receipt of this order.
4. For further information regarding procedure of appeals, please visit, <http://cic.gov.in>.

Sub: Right to Information Act, 2005 - Appeal filed by Shri Shrikrishna Limaye – Decision under Section 19(1) of the RTI Act, 2005 – Communicated - Regarding.

This is an appeal filed by Sri Shrikrishna Vishwanath Limaye, (hereinafter referred to as the 'Appellant') vide letter no. 411/Com/LI&DC/2017-18/46 dated 25.07.18 (received in this office on 30.07.18) against the information provided vide letter C.No.IV/16/02/2017-RTI dated 15.06.18 by the CPIO (Assistant Commissioner of Central Tax, Rajamahendravaram CGST Division.

BRIEF FACTS OF THE CASE:

2. The appellant filed an application dated 30.04.2018 under the RTI Act, 2005, seeking information pertaining to a paper manufacturing mill i.e., M/s. International Paper APPM Ltd., Unit-Rajahmundry, falling under the jurisdiction of Rajamahendravaram Division.

3. The information requested to be furnished in respect of the said unit under the RTI Act, 2005, is as follows:

1. The details of the basic rates declared for the purpose of excise duty paid with the date of changes, if any, during the period from:

- a. 1 April 2013 to 31 March 2014
- b. 1 April 2014 to 31 March 2015
- c. 1 April 2015 to 31 March 2016
- d. 1 April 2016 to 31 March 2017
- e. 1 April 2017 to 31 May 2017

2. The details of the amount of MODVAT paid during the period from:

- a. 1 April 2013 to 31 March 2014
- b. 1 April 2014 to 31 March 2015
- c. 1 April 2015 to 31 March 2016
- d. 1 April 2016 to 31 March 2017
- e. 1 April 2017 to 31 May 2017

3. The details of any input costs claimed on excise duty and MODVAT during the period from:

- a. 1 April 2013 to 31 March 2014
- b. 1 April 2014 to 31 March 2015
- c. 1 April 2015 to 31 March 2016
- d. 1 April 2016 to 31 March 2017
- e. 1 April 2017 to 31 May 2017

4. The CPIO, Rajamahendravaram Division vide letter C.No. IV/16/02/2017-RTI dated 15.06.18, replied to the appellant as under:

- i) *The information called for i.e., qty cleared for Home clearance in Kg, Assessable value as per ER1 and Rate per Kg of the products falling under Tariff code 48025490/48025790/48025690/48029810 to know and to quantify the price adopted by the assessee M/s.IPAPPM Ltd., Rajamahendravaram at the factory gate, which must be commercial confidence / trade secret and disclosure of the said information may harm the competitive position of a third party.*
- ii) *In terms of subsection 1(d) of Section 8 of the RTI Act, furnishing of information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempted.*
- iii) *Further, as per Section 3 of the RTI Act, 2005 "all citizens shall have*

the right to access information under the provisions of this Act. However, these provisions shall not apply to persons applying for

information under this Act should apply as natural and individual persons (citizens). If a person applies / appeals as a representative of a corporate body or association he is not entitled for the information under this act. The said view has amply been stated in Hon'ble CIC's Order dated 27.06.2006 in Appeal No.CIC/OK/A/2006/00121 in the matter between Shri Inder Grover, M/s.Ashi Private Ltd, D-13/3, Okhla Industrial Area II, New Delhi Vs. Ministry of Railways, Railway Board, New Delhi. The same was informed to you vide Order-in-Appeal No.01/2017-18 dated 23.02.2018 from file C.No. IV/16/32/2017-18.RTI passed by Shri. P.Narasimha Rao, Appellate Authority/ Joint Commissioner of Central Tax, Visakhapatnam CGST Commissionerate, Visakhapatnam.

- iv) Moreover, you were also informed that the information sought is also not disclosable as it pertains to sensitive / personal information of a Central Excise assessee and is protected from disclosure under Section 8(d) of RTI Act, 2005. You are conveniently ignoring the said Order-in-Appeal and seeking another information pertaining to the same assessee from same letter head which clearly shows the signals to harm the competitive position of M/s.IPAPPM Ltd., Rajamahendravaram.
- v) In view of the above, the information called for through the said RTI is denied.

5. Aggrieved by the reply furnished by the CPIO, Rajamahendravaram CGST Division, the appellant Sri Shrikrishna Vishwanath Limaye, has filed the present appeal vide letter no. 411/Com/LI&DC/2017-18/10 dated 25.07.18 (received in this office on 30.07.18). In the said appeal, he has stated that:

- i) the information sought by the applicant cannot in any manner whatsoever be treated as information pertaining to commercial confidence, trade secret and/or intellectual property rights.
- ii) the information sought to be obtained by the Applicant will not in manner whatsoever cause any harm to the International Paper APPM Ltd.
- iii) it is amply clear from a conjoint reading of Section, 2(f) read with Section 8(1)(j) of the RTI Act, which states that any information which can't be denied to the Parliament or State Legislature should not be denied to any person.

iv) the above information is required by the Applicant in connection with an ongoing investigation (which is presently pending against the International Paper APPM Ltd. and several other paper mills across India) by the Hon'ble Competition Commission of India pertaining to a collusive anti-competitive conduct of the various paper mills across India and therefore the information is required for larger public interest of the people of India.

vi) the Applicant, protect and represent the interests and concerns of the Indian Printing Industry, in order to foster them to render better and more useful goods and services to the consumer and the information sought by the Applicant is of vital importance to safeguard their interests who have become a victim of collusive price rise by the International Paper APPM Ltd. and several other paper mills across India.

The Applicant/ Appellant therefore requested that in view of the above facts and circumstances, it is most respectfully submitted that the information requested to be obtained by the Applicant should be provided in the interests of justice.

PERSONAL HEARING:

6. A personal hearing was granted to the appellant on 13.08.2018. The appellant Sri Shrikrishna Vishwanath Limaye, attended the hearing. The appellant demanded that the information called for vide his application dated 30.04.2018 from the CPIO, Rajamahendravaram Division and also in the grounds of appeal dated 25.07.2018 before the FAA, RTI be furnished to him as the information sought is for a larger interest and exclusion under Section 8(d) of the RTI Act, 2005, does not apply.

DISCUSSIONS AND FINDINGS:

7. I have carefully gone through the CPIO, Rajamahendravaram Division's reply, the appeal filed by the appellant and the related documents.

8. As seen from the RTI application filed with the CPIO, Rajamahendravaram CGST Division office, the appellant has requested for information pertaining to a third party i.e., M/s. International Paper APPM Ltd., Unit-Rajahmundry to be provided in the Annexure/format given therein by the appellant.

9. As per the definition of 'information' given at Section 2(f) of the RTI Act, 2005, "information" means any material in any form, including records,

documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, 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. In other words, only 'information' which is already held under its control by the public authority, in whatever form/ format, constitutes information.

10. However, the appellant has requested for information to be extracted or derived from any data available with the public authority and therefore, in the present case information has to be created in the Annexure/format requested by the appellant and is not a case of providing information already existing with the public authority.

11. In this context, the decision of the Hon'ble Supreme Court of India in *Khanapuram Gandiah v. Administrative Officer and Ors.* in SLP (C).34868 OF 2009 (Decided on January 4, 2010) can be cited where it was 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."

Also the Hon'ble Supreme Court in SLP(C) NO. 7526/2009 (CBSE & Anr. Vs. Aditya Bandopadhyay & Ors) had held that:

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section

3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. 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."

12. Further, the information sought pertains to a third party i.e., M/s. International Paper APPM Ltd., Unit-Rajahmundry, and is therefore, not disclosable as it pertains to sensitive/personal information of a Central Excise Assessee (erstwhile) and is protected from disclosure under Section 8(d) of RTI Act, 2005. The appellant has stated that the information is required in connection with an ongoing investigation by the Hon'ble Competition Commission of India pertaining to a collusive anti-competitive conduct of the various paper mills across India and that the information is required for larger public interest of the people of India. However, the appellant has not submitted/ provided any documentary evidence in support of the same.

13. In view of the above, I am unable to treat the appeal filed by Shri Shrikrisha Limaye favourably, as the information requested by the appellant does not satisfy the definition of 'information' as envisaged in the RTI Act, 2005. Further, it pertains to sensitive/personal information of a Central Excise Assessee and is protected from disclosure under Section 8(d) of RTI Act, 2005.

14. In view of above mentioned findings, I proceed to pass the following order.

ORDER

The appeal filed by the appellant Shri Shrikrishna Limaye against the information provided vide letter C.No.IV/16/02/2017-RTI dated 15.06.18 by the CPIO (Assistant Commissioner of Central Tax, Rajamahendravaram CGST Division, is disallowed.

P. Narasimha Rao,
16.8.18

(P.NARASIMHA RAO)
JOINT COMMISSIONER
FIRST APPELLATE AUTHORITY

To,
Sri Shrikrishna Vishwanath Limaye,
605, Madhuban,
55, Nehru Place,
New Delhi-110 019.

Copy submitted to:

The Principal Commissioner of Central Excise, Customs & Service Tax,
Visakhapatnam, Commissionerate, Visakhapatnam - 530 035.

Copy to

1. The CPIO/Assistant Commissioner of Central Excise, Customs & Service Tax, Hqrs. Office, Visakhapatnam Commissionerate, Central Excise Building, Port Area, Visakhapatnam - 530 035.
- ✓ 2. The Superintendent (Systems) - for uploading into Departmental Website.