



केंद्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवाकर प्रधान आयुक्त का कार्यालय
पो. बॉ. नं. 81, तेलंगखेडी रोड, सिविल लाईन्स, नागपुर - 440 001.

**ORDER - IN - APPEAL PASSED UNDER SECTION 19 OF THE
RIGHT TO INFORMATION ACT, 2005**

ORDER-IN-APPEAL NO. 03 /2016 DATED 03 .06.2016

आवेदन कर्ता का नाम	डॉ. प्रसाद रामचंद्र जोशी, पथ्यम हेल्थ केअर & न्युट्रासुटिकल, LLP, 34/58, सुखनीवास, गणपती चौक, आगरा रोड, कल्याण (W)- 421301 (महाराष्ट्र)
केन्द्रीय लोक सूचना अधिकारी का नाम	श्री ए. जे. वर्मा, प्रथम अपीलीय अधिकारी तथा अपर. आयुक्त, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर, नागपुर - 1.
सूचना अधिकार आवेदन पत्र दिनांक	09.03.2016
केन्द्रीय लोक सूचना अधिकारी का जवाब पत्र दिनांक	04.04.2016
प्रथम अपील पत्र दाखल दिनांक	05.05.2016

PREAMBLE

1. यह प्रतिलिपी आपके व्यैयक्तीक उपयोग हेतु बिना किसी भूगतान किये जारी है।
2. इस आदेश पत्र प्राप्ती से 90 दिन के भीतर केन्द्रीय सूचना आयोग, दूसरा माला, वि विंग, क्रांति भवन,
भीकाजी कामा प्लेस, नई दिल्ली - 110 066 को सूचना अधिकार अधिनियम 2005 के तहत अपील दायर
कर सकते हैं।

नि.नं. 1(22)16/RTI/NGP.3/2016 / 5646-48 दि. 03.06.2016

Brief facts of the case:-

1. Shri Prasad Ramchandra Joshi, Pathyam Health Care & Neutraceuticals LLP, 34/58, Sukhniwas, Ganpati Chowk, Agra Road, Kalyan (W)- 421301 (herein after called as the appellant) has filed this appeal on dated 30.04.2016 received by post master Kalyan City H.O on 02.05.2016 under Section 19 of the Right to information Act, 2005 (herein after called as the RTI ACT).

2. The said appeal aroused out of the communication issued by the following CPIO of Custom, Central Excise and Service Tax, Nagpur I Commissionerate.

- i. CPIO/Deputy Commissioner, Central Excise and Service Tax, Division Hingna-II letter of F.No. IV(16)01/RTI/2014/H-II/878 dated 04.04.2016.

The appellant was not satisfied with the above referred Communication and thus filed this appeal.

3. On going through the records it is seen that:-

- (i) The appellant had filed an application No. PA/346/15-16 dated 09.03.2016 under RTI Act, 2005 with the POST master, Kalyan city, H.O. 421301 and the application was received on 04.02.2016 by the POST master.
- (ii) The post Master, Kalyan city, H.O. 421301 has forwarded the RTI application to CPIO/ Assistant Commissioner Central Excise, Chief Commissioners Unit, Nagpur Zone, Nagpur.
- (iii) The application was received by CCO, Nagpur Zone on 15.03.2016 and the CCO, Nagpur Zone has forwarded the RTI application to CPIO/Deputy Commissioner (RTI) Custom, Central Excise, headquarters, Nagpur I Commissionerate under Section 6(3) of the RTI Act, 2005.
- (iv) As the subject matter pertained to the jurisdiction of Division Hingna II of Nagpur I Commissionerate again the RTI application was forwarded to under Section 6(3) of the RTI, ACT, 2005 with direction to directly provide the information to the applicant.
- (v) The RTI application was received by the CPIO/Deputy Commissioner Custom, Central Excise & Service Tax, Division Hingna -II of Nagpur -I Commissionerate on 29.03.2016.
- (vi) The CPIO/Deputy Commissioner, Central Excise & Service Tax, Division Hingna-II has communicated the decision on dated 04.04.2016.

4. The information called by the appellant in the RTI application dated 09.03.2016 was as stated below:-

i) Subject Matter of information applied

Information regarding Central Excise Registration of M/s Nisha Herbal products, at B-5, MIDC, Hingna, Nagpur.

ii) Period to which the information relates

Updated information is required

iii) Description of information required.

- 1) Please provide copy of application & its enclosures for grant of Registration above said.

2) Please provide copy of registration certification granted to above named assessee.

5. In response to the Appellant's RTI application dated 9.03.2016 received on 29.03.2016 by the CPIO/ Deputy Commissioner, Custom, Central Excise and Service Tax, Division Hingna-II of Nagpur I Commissionerate informed the applicant as under:-

i. The applicant has sought information in the formats specified by the applicant which are not being maintained by this office. As per Section 8(1) d of RTI Act 2005 the term information means-

"Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

ii. Therefore, in view of the above provisions, the information sought for by the applicant cannot be provided vide application dated 09.03.2016 as no larger public interest justifies the disclosure of such information. Moreover a no objection was sought from the third party vide Range officer's letter dated 01.04.2016. The third party M/s Nisha Herbal Products has replied that the said information will harm his competitive position and need not be provided to the applicant and may be rejected.

Grounds of appeal

6. Being aggrieved with the CPIO's order/communication, the appellant filed an appeal dated 30.04.2016 received in this office on 05.05.2016. The appellant has stated that the applied information was not provided without any valid reason within stipulated time.

7. The grounds of appeal as elaborated by the appellant in his appeal are as under:-

i. Appellant has applied for information mentioned in point 7 (i) of the appeal under Right to information Act, 2005. This application for same dated 09.03.2016 is submitted to Central Assistant Public Information Officer, Kalyan City H.O. Post Office, Kalyan on 10.03.2016 for onwards to Central Public Information Officers, Central Excise, Chief Commissioner Unit, Nagpur. Necessary fees of Rs 10/- is paid by IPO No.19F168319 of like amount. Said application is transferred to respondent by Central Public Information Officer, Central Excise, Chief Commissionerate, Nagpur vide letter dated 21.03.2016. (Copy of the said application is enclosed here with & marked as Ex.1).

ii. As per provisions of section 7(1) of The Right to information Act-2005 it is obligatory on part of respondent to provide applied information within 30 days of receipt of application. This statutory time to provide applied information is expired on 21.04.2016.

- iii. But the respondent has failed & wilfully neglected to provide applied information. By not providing the applied information without valid reason within statutory time limit respondent has committed breach of provisions of Right to Information Act-2005.
- iv. In view of above appellant most respectfully prays:
 - a) The Central Public Information be ordered to provide applied information free of cost as provided in section 7(6) of the right to Information Act, 2005.
 - b) The Central Public Information Officer be fined as provided in section 20(1) of The Right to Information Act, 2005.
 - c) Necessary disciplinary action be initiated Central Public Information Officer as provided in section 20(2) of The Right to Information Act, 2005.
 - d) Appellant may please be compensated by paying him Rs 1,500/- from the fine to be recovered from Central Public Information Officer.
- v. Particulars of Information
 - i) **Nature & subject matter of the information required.**
Information regarding Central excise Registration of Nisha Herbal, Nagpur.
 - ii) **Name of the office or Department to which information relates.**
Central Excise, Nagpur-I-Commissioner

Personal hearing recorded

8. The appellant was given personal hearing on 19.05.2016 at 03:00 p.m. The appellant did not turn up for the hearing nor given any letter for another date for personal hearing. However another date for personal hearing was given on 31.05.2016 at 3.00 p.m. Again the appellant did not turn up for the hearing.

Discussion and Finding

9. I have carefully gone through the appellant's appeal dated 30.04.2016 filed against the CPIO/Deputy Commissioner order issued vide letter of F.No. IV(16)01/RTI/2014/H-II/878 dated 04.04.2016.
 - (a) At the outset, it must be mentioned that the RTI Act sets out the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of such authority. The Supreme Court of India has recognised the right to information as a fundamental right of the citizens of India under the article 19 of the Constitution of India. The RTI Act codifies this fundamental right. Section 3 of the RTI Act clearly confers such right on a citizen in as much as it stipulates that – "subject to the provisions of this Act, all citizens shall have the right to information".
 - (b) The appellant has called for information vide RTI application No. PA/346/15-16 dated 09.03.2016 under RTI Act, 2005 and
 - (i) The application was received on 04.02.2016 by the Post master, Kalyan city, H.O. 421301.

- (ii) The post Master, Kalyan city, H.O. 421301 has forwarded the RTI application to CPIO/ Assistant Commissioner Central Excise, Chief Commissioners Unit, Nagpur Zone, Nagpur.
 - (iii) The application was received by CCO, Nagpur Zone on 15.03.2016 and the CCO, Nagpur Zone has forwarded the RTI application vide letter dated 21.03.2016 to CPIO/Deputy Commissioner (RTI), Custom, Central Excise & Service Tax, headquarters, Nagpur I Commissionerate under Section 6(3) of the RTI, ACT, 2005.
 - (iv) As the subject matter pertained to the jurisdiction of Division Division Hingna II of Nagpur I Commissionerate again the RTI application was forwarded to the said CPIO under Section 6(3) of the RTI, ACT, 2005 with direction to directly provide the information to the applicant.
 - (vi) On verification of records it is seen that the RTI application was received by the concerned CPIO/ Deputy Commissioner, Central Excise & Service Tax, Division Hingna II of Nagpur I Commissionerate on **29.03.2016** and **replied to the applicant on 04.04.2016 vide their office letter No. IV(16)01/RTI/2014/H-II/878 dated 04.04.2016.**
- (c) *As per section 7 (1) of the RTI Act, 2005, the CPIO as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fees as may be prescribed or reject the request for any or the reasons specified in section 8 and 9.*
- (d) On going through above facts of the case, it can be seen that the concerned CPIO i.e Deputy Commissioner, Central Excise & Service Tax, Division Hingna II of Nagpur I Commissionerate received the RTI application on 29.03.2016 and communicated the decision vide letter No. IV(16)01/RTI/2014/H-II/878 dated 04.04.2016 and the said letter was despatched on 05.04.2016. Thus it is seen that no delay has occurred and CPIO had forwarded the reply well within the time limit as laid down under section 7 (1) of the RTI Act, 2005. Therefore the penalty under section 20(1) of The Right to Information Act, 2005 cannot be imposed nor is any disciplinary action warranted under section 20(2) of The Right to Information Act, 2005. The question of paying Rs 1500/- to the appellant therefore, does not arise.
- (e) From the above Para No.4 it is seen that the information is to provide copy of application & its enclosures submitted by M/s Nisha Herbal products for obtaining of Central Excise Registration.
- (f) The information sought was rejected by the concerned CPIO as per Section 8(1) d of RTI Act, 2005. On the grounds that the information cannot be provided as no larger public interest justifies the disclosure of such information. Moreover a no objection was sought from the third party vide Range officer's letter dated 01.04.2016. The third party M/s Nisha Herbal Products vide their letter dated 01.04.2016 has replied that the said information asked for was of personal nature. Anybody can misuse the same and

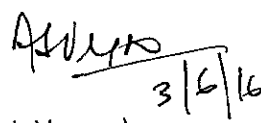
put them in trouble. Also it was not of any Public interest and the information need not be provided to the applicant and may be rejected.

- (g) The registration numbers of Central Excise assessee is based on PAN Number issued by the Income Tax department i.e. to say the first 10 digits of the Central Excise Registration number will be the PAN Number allotted to the assessee by the Income Tax department and the remaining digits relating to Central Excise Department. I find that CIC vide their decisions in case of Arun Verma, Vs Director General of Income Tax (Systems), New Delhi in appeal No. 05/IC(A)/CIC/2006 dated 03.03.2006 has held that PAN/TAN is confidential in nature and the same cannot be provided to the appellant.
- (h) Thus it can be seen that the copy of application & its enclosures for grant of Registration consist of PAN No. which is of confidential in nature. In this case M/s Nisha Herbal Products has provided the documents to the department for obtaining Central Excise Registration, as per the requirement of Central Excise Rules which are confidential in nature.
- (i) The right to information Act, 2005 was enacted in order to promote transparency and accountability in the working of every public authority. The Act however recognizes that revelation of information in actual practice could conflict with other public interests, which may include preservation of confidentiality of sensitive information. The principal object of the Act is therefore to harmonise these conflicting interests by preserving the paramountcy of the democratic ideal. In this perspective, enshrined in the Preamble to the RTI Act, 2005 it may be inferred that a public authority is obliged to provide access to information to a citizen unless furnishing of such information is covered by one of the exemptions provided for in the Act either under Section 8 or under Section 9.
- (j) A public authority shall refuse to disclose any information or records requested under Section 8 of the Act that contains information and disclosure of which could reasonably be expected to interfere with the third party. This is an exemption based on an injury test, applied to any third party who could be reasonably be expected to be prejudiced by the disclosure. In applying the injury test the CPIO rightfully rejected the request on considering that the information requested may affect or impair the ability of the third party. Further the exemption is also subjected to Larger Public interest test. From the RTI application of the appellant there appears to be no Larger Public interest involved in obtaining the third party information.
- (k) On applying the injury test and Larger Public interest test the CPIO rightfully rejected the request of the appellant under Section 8(1) (d) of the RTI Act, 2005. The CPIO had forwarded the reply well within the time limit as laid down under section 7 (1) of the RTI Act, 2005. Therefore the concerned CPIO cannot be penalised under section 20(1) of The Right to Information Act, 2005 nor can any disciplinary action be taken under section 20(2) of The Right to Information Act, 2005. The question of paying Rs 1500/- to the appellant does not arise.

- (I) Further the appellant was given two personal hearing on 19.05.2016 and 31.05.2016 to justify his stand. But the appellant failed to appear personally for the hearing and also did not provide any written submission to prove that Larger Public interest is involved in obtaining the third party information. Again the appellant has failed the test, to prove Larger Public interest involved.

ORDER

10. Accordingly I hereby upheld the decision of the CPIO being legally tenable and dismiss the appeal. The appeal is thus dismissed.
11. If the appellant is aggrieved with the decision of FAA he is free to file appeal with Central Information Commission, 2nd Floor, August Kranti Bhawan, Bhikaji Kama place, New Delhi- 110066 within 90 days from received copy of order in appeal.


3/6/16
o/c (A.J. Verma)
Additional Commissioner
First Appellate authority
Customs, Central Excise & service Tax
Nagpur – I Commissionerate

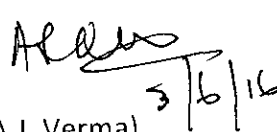
F.No.I(22)16/RTI/NGP-I/2016

Nagpur Date 03.06.2016

To
Shri Prasad Ramchandra Joshi,
Pathyam Health Care & Neutraceuticals LLP,
34/58, Sukhniwas, Ganpati Chowk,
Agra Road, Kalyan (W)- 421301

Copy to:-

1. Central Information Commission second floor B –wing kranti Bhawan Bhikaji Kama place, New Delhi 110066 submitted for information.
2. CPIO/ Deputy Commissioner Central Excise, Customs and Service Tax, Division II, Nagpur-I Commissionerate, Nagpur for information


3/6/16
(A.J. Verma)
Additional Commissioner
First Appellate authority
Customs, Central Excise & service Tax
Nagpur – I Commissionerate

o/c