



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. 01 /2016 DATED 22.03.2016

आवेदन कर्ता का नाम	श्री टी. व्ही. श्रवनकुमार, 606, 6 वी मंजील रिघ्दी सिघ्दी अपार्टमेंट 24/24A हिन्दुस्तान कालोनी, अमरावती रोड, नागपुर - 440033
केन्द्रीय लोक सूचना अधिकारी का नाम	श्री ए. जे. वर्मा, केन्द्रीय लोक सूचना अधिकारी तथा अपर. आयुक्त, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर, नागपुर - । .
सूचना अधिकार आवेदन पत्र दिनांक	04.11.2015
केन्द्रीय लोक सूचना अधिकारी का जवाब पत्र दिनांक	03.12.2015
प्रथम अपिल पत्र दाखल दिनांक	25.02.2016

PREAMBLE

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

Brief facts of the case:-

1. Shri T.V.Shravan Kumar, 606, 6th floor, Riddhi Siddhi Apartment, 24/24A Hindustan colony, Amaravati Road Nagpur-440033 (herein after called as the appellant) has filed this appeal on 25.02.2016 under Section 19 of the Right to information Act, 2005 (herein after called as the RTI ACT).
2. The said appeal arose out of the communication issued by the CPIO/Deputy Commissioner (RTI) Custom, Central Excise and Service Tax, Nagpur I Commissionerate. The appellant not satisfied with the Communication sent vide F.No. I (22) 108/RTI/2015 /8230 dated 03.12.2015 has filed this appeal.
3. From the records it is seen that the appellant had filed an application dated 04/11/2015 under RTI Act, 2005 before CPIO Custom, Central Excise, Nagpur Commissionerate to provide the following information as stated below:-
 - i) Copy of purchase order placed on M/s Siddesh Enterprises for supply of Desktops and all in one Computer during December 2014 and January 2015 for all the offices including Amravati, Chandrapur and all other Offices in Vidarbha under Nagpur Office's jurisdiction.
 - ii) Copy of invoice and delivery challan of the computer Desktops and all in one supplied by M/s Siddesh Enterprises.
 - iii) Copy of NIC Officer certifying receipt of material as per order
 - iv) Sr. No. of Desktop and Windows- OS.

Discussion and Finding

4. In response to the Appellant's RTI application dated 14.11.2015 the CPIO/ Deputy Commissioner (RTI) Custom, Central Excise and Service Tax, Nagpur I Commissionerate vide his letter F.No. I (22) 108/RTI/2015 /8230 dated 03.12.2015 informed the applicant as under:-
 - i. As per Section 8(1) d of RTI Act 2005 this department is exempted from disclosure of information as under :-
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. The information sought by you pertains to third party information. The third party is not willing to disclose information to anybody else. The RTI application is therefore disposed of accordingly under Section 8 (1) (d) of the RTI Act, 2005.
5. Being aggrieved with the CPIO's order/communication dated 03.12.2015, the appellant filed an appeal, the appellant has stated that the order of the CPIO is illegal arbitrary and is passed in gross violation of the provisions of the Act.

6. The grounds of appeal as elaborated by the appellant in his grounds of appeal is as under:-

- i. CPIO has disposed of the application of the appellant in the utmost casual manner and no reasons much less sufficient to arrive at the decision are stated. Therefore, the impugned communication needs to be quashed and set aside on this count alone.
- ii. The CPIO has failed to appreciate that the information sought for was in no way violating the right of third party or it was in breach of privacy of the third party. The respondent No.1 has disposed of the application merely stating that the same is not disclosable under the provisions of the Act and that he is exempted from such disclosure under section 8 (1) of the Act. Therefore, the impugned communication needs to be quashed and set aside on this count alone.
- iii. The CPIO has grossly erred in understanding and applying the import of section 8 of the Act qua information sought and object behind the Act. It is pointed out that the information sought by the appellant is not for private use. The information sought for, in turn, relates to the public money. The disclosure of such information is an exceptions mentioned in section 8 of the Act. The information sought for overweighs the right to privacy of the third party. This fact is lost sight of by the respondent therefore, the impugned communication needs to be quashed and set aside on this count alone.
- iv. The CPIO has erred in not giving an opportunity of hearing to the appellant in so far as to represent and make out as to how the information sought for does not come in way of Section 8 of the Act. It is a settled law that the applicant need not accord reasons for seeking information. As per the provisions of Section 11, the Officer has to issue notice to the third party and has to seek its reply as to whether it intends or not to allow the officer to disclose information under the Act. The CPIO has failed to give opportunity of hearing to the appellant to show as to how the information is disclosable under the Act, if at all the third party had refused for such disclosure. Nothing in the Act had prevented the CPIO from according an opportunity of hearing to the appellant. Therefore, the impugned communication needs to be quashed and set aside on this count alone.
- v. The impugned communication is in violation of the provisions of Act and also the principles of natural Justice. Therefore, the impugned communication needs to be quashed and set aside on this count alone.
- vi. The appellant has filed documents as per the list and craves leave to file more is required and permitted.
- vii. The appellant has not challenged the impugned communication before any other authority or Court including Hon'ble Supreme Court or the Hon'ble High Court, herein before.
- viii. The appellant asserts that there is no delay in filing of the present appeal as the CPIO had failed to uniform the details of Appellate Authority as is required under the act. It is after the request of the appellant that the CPIO has furnished details of the present appellate authority. However, they have also filed application for condonation of delay.

7. The appellant was given personal hearing on 15.03.2016 at 11:00 hrs wherein the appellant has recorded the hearing as under:-

- i. Shri T.V.Shravan Kumar the appellant appeared before me, submitted copy of PAN Card for the identity.
- ii. He submitted that the information sought is not personal information per se, as what has been sought are Purchase order, delivery challan etc.,
- iii. While passing the order by below authority, he failed to appreciate that the information sought was no way violating the third party information.
- iv. That no opportunity of personal hearing was given (PNJ was not observed by CPIO).
- v. Further he submitted the copy of judgement in case of Mr Vinod K. Jose, New Delhi Vs Mr K.S Rejimon, PIO & Deputy Secretary, M/o Information and Broadcasting, New Delhi passed by CIC in support of the contention that the information sought is not personal.
- vi. He therefore requested to provide information.

8. I have carefully gone through the appellant's appeal dated 25.02.2016, the CPIO's order / Communication dated 03.12.2015 and the submissions made during Personal hearing held on 15.03.2016. Further I have also gone through the case records.

- i. 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".
- ii. Section 6(2) of the RTI Act lays down that an applicant making a request for information shall not be required to give any reasons for requesting the information. Therefore, considerations such as whether the information sought relates to any Public/ national activity or interest, or if it has any relevance to public at large, are immaterial when a request for information is received by the CPIO under the RTI Act. So long as the information sought is available on the records of the public authority and is not exempted from disclosure under section 8(1) and 9 of the RTI Act, the information shall be provided to the applicant.
- iii. I find that in their appeal, the appellant has submitted that they had supplied desktop computers and laptops to one M/s Siddesh Enterprises, Nagpur. Against the said transaction, the appellant has lawful claim against M/s Siddesh Enterprises, Nagpur. The appellant had learnt that by giving fraudulent material to one of the State Government office, M/s Siddesh Enterprises, Nagpur has duped the State Government. It is pointed out that the original material which was supplied by the appellant has been tampered with by said M/s Siddesh Enterprises, Nagpur. As a matter of record, the said M/s Siddesh Enterprises has supplied Desktop computers

connivance with influential persons. It is on the strength of these facts that the application seeking information was filed before the CPIO.


- iv. Prima facie on going through the RTI application dated 04/11/2015 the facts as stated above were not known. Notice was served to the third party and reply was sought. The third party in his written submission had refused to disclose the information to anybody else. As information appeared to be pertaining to third party the CPIO has disposed the case under section 8(1) d of the RTI Act, 2005.
- v. It is seen that the information sought by the appellant is not for private use. The information sought for, in turn, relates to the public money. The disclosure of such information is an exceptions mentioned in section 8 of the Act. The information sought for overweighs the right to privacy of the third party in this particular case.
- vi. I don't agree with the contention of the appellant that the CPIO has erred in not giving an opportunity of hearing to the appellant in so far as to represent and make out as to how the information sought for does not come in way of Section 8 of the Act. As per RTI Act the CPIO is not required to call for the reason nor can a Personal Hearing be given. When there is no provision to give Personal Hearing the question of giving an opportunity of hearing to the appellant at the primary stage does not arise.
- vii. I allow the condonation of delay in filing the appeal as the details of Appellate Authority were not informed to the applicant vide the communication dated 03.12.2015. The details of the First Appellate Authority were submitted to the applicant on date 9.02.2016 on the written request made by the applicant on the same day.
- viii. Further the appellant has also submitted the copy of Judgement dated 30.01.2012 passed by Information Commissioner in the appeal No. CIC/SG/A/2011/002664 in case of Mr Vinod K. Jose, New Delhi Vs Mr K.S Rejimon, PIO & Deputy Secretary, M/o Information and Broadcasting, New Delhi, in support of the contention that the information sought is not personal. On going through the above referred judgement it is seen that the information called for pertains to shareholding pattern. Where the applicant desired to have the names of stakeholder along with percentage of stake held by them. Thus the factual matrix and the information sought in the above cited decision is different from that in the present matter. Therefore the precedents cited are not relevant to the present matter.
- ix. On going through the RTI application of the appellant it is seen that the purchase order placed on M/s Siddesh Enterprises for supply of Desktops computer and all in one during December 2014 and January 2015 for all the offices including Amravati, Chandrapur and all other Offices in Vidarbha under Nagpur Office's jurisdiction is not a third party information and is readily available with the Department and is a

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purchase of the desktop Computers and is issued in relevance to the purchase order. The SR No. of Desktop and windows-OS again is available with the department. This information pertains to department and in no case is third party information. Therefore I set aside the order/Communication dated 03.12.2015 passed by CPIO /Deputy Commissioner (RTI) Nagpur-I Commissionerate and pass the order as under:-

ORDER

9. **Accordingly the appeal is allowed.** The CPIO/ Deputy Commissioner (Systems), Central Excise, Customs and Service Tax, Headquarters, Nagpur-I Commissionerate, Nagpur is directed to provide the available information to the applicant Shri T.V.Shravan Kumar as per the records within 15 days from the receipt of this order.


(A.J. Verma) 22/3/16

Additional Commissioner
First Appellate authority
Customs, Central Excise & service Tax
Nagpur – I Commissionerate

F.No.I(22)01/Appeal/RTI/2016 /2887 To 2889


Nagpur Date 22/03/2016
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To
T.V.Shravan Kumar
606, 6th floor
Riddhi Siddhi Apartment,
24/24A Hindustan colony,
Amaravati Road
Nagpur-440033

SPEED POST

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 (Systems), Central Excise, Customs and Service Tax, Headquarters, Nagpur-I Commissionerate, Nagpur for information and to provide the available information to the applicant Shri T.V.Shravan Kumar within 15 days from receipt of the Order-in –Appeal. It is also requested to submit copy of reply to this office.


(A.J. Verma) 22/3/16

Additional Commissioner
First Appellate authority
Customs, Central Excise & service Tax
Nagpur – I Commissionerate