



सत्यमेव जयते

भारत सरकार
GOVERNMENT OF INDIA
वित्त मंत्रालय, राजस्व विभाग

MINISTRY OF FINANCE, DEPARTMENT OF REVENUE
आयुक्त का कार्यालय OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

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F.No. IV/RTI-03/Appeal/2022-23

Date: 30.05.2022

स्पीड पोस्ट/पंजीकृत पावती डाक द्वारा

By Speed Post/Reg. AD

- क. फाइल संख्या/File Number : **IV/RTI-03/Appeal/2022-23**
- ख. मूल आदेश संख्या/
Order-in-Appeal : **03/APPEAL/RTI/2022-23**
- ग. जारीकर्ता/Passed By : **आर. गुलज़ार बेगम, प्रथम अपील अधिकारी,
केंद्रीय वस्तु एवं सेवा कर, अहमदाबाद उत्तर**
- घ. आदेश जारी करने की तारीख/
Date of Order/Issue : **30.05.2022**
- ड. आवेदक का नाम व पता/Name &
address of the applicant : **श्री मोहित अग्रवाल, 501 A, सरकार अपार्टमेंट,
10 रोड न. 10, पटेल कॉलोनी, जामनगर,
गुजरात - 361008**

- यह अपील का आदेश आवेदक को निःशुल्क उपलब्ध करवाया गया है ।
This Order-in-appeal is granted free of charge to the applicant.
- इस अपील के आदेश से असंतुष्ट होने पर सम्बंधित व्यक्ति सूचना के अधिकार अधिनियम, 2005 की धारा 19(3) के अंतर्गत निम्नलिखित को अपील कर सकता है:
केंद्रीय सूचना आयोग, बाबा गंगनाथ मार्ग, मुनिरका, नई दिल्ली - 110067

The person aggrieved by this Order-in-Appeal may file an appeal under Section 19(3) of the Right to Information Act, 2005 to the following:
Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi - 110067

- सूचना के अधिकार अधिनियम, 2005 की धारा 19(3) के अनुसार एक आदेश की प्राप्ति से 90 दिन के अंदर केंद्रीय सूचना आयोग को अपील की जा सकती है।
Appeal shall be filed before Central Information Commission, within Ninety (90) days from the date of receipt of this order as per Section 19(3) of the Right to Information Act, 2005

ORDER-IN-APPEAL No. 03/APPEAL/RTI/2022-23
(UNDER RIGHT TO INFORMATION ACT, 2005)

Brief facts of the case:-

1. Shri Mohit Agrawal, 501 A, Sarkar Apartment, 10 Road No. 10, Patel Colony, Jamnagar, Gujarat - 361008 (hereinafter referred to as "the appellant") has filed First RTI appeal vide letter dated 27.04.2022 (received in this office on 02.05.2022), under Section 19(1) of Right to Information Act, 2005. The said appeal is filed against RTI reply, supplied vide letter F. No. IV/RTI-54/2021-22 dated 22.04.2022 by the Central Public Information Officer, CGST & Central Excise, Ahmedabad North in respect of the RTI application dated 30.03.2022 (received in this office on 31.03.2022) filed by the appellant under Section 6 of the RTI Act, 2005.

2. The appellant vide the above RTI application dated 30.03.2022 requested to provide the following information:-

- a. Please inform the status of the acceptance of the said order by the Department.
- b. If the order has been accepted, please inform the name of authority, which has accepted the order.
- c. If the order has not been accepted, please inform the date of review of the order. Please also provide copy of Review Petition.
- d. Please inform if Rs. 25,000/- cost imposed by Hon'ble Court paid by the petitioners.
- e. Please inform if the recovery of Rs. 25,000/- affected from the officers responsible for the delay.
- f. Please provide me the name and designation of officers from whom the recovery was made.
- g. Please inform the name of in charge Chief Commissioner, CGST of the Jurisdictional Ahmedabad Zone, at the time of receipt of the order.
- h. Please inform who was in charge Commissioner, CGST of the Jurisdictional Commissionerate at the time of pronouncement of judgement.
- i. Please inform whether certificate of recovery of the said amount filed in Hon'ble Court.
- j. Please provide me a copy of the certificate of recovery of the said amount.

Further, the appellant, also requested to provide the information in relation to the SLP filed by the revenue department:-

- a. Provide a copy of the SLP filed by the revenue department.
- b. Please provide the 'grounds' on which SLP was filed along with the 'substantial question of law' framed for the purpose.
- c. Please inform the amount of revenue involved in the matter.

Decision of CPIO:-

3. The CPIO, Central GST & Central Excise, Ahmedabad North has provided the point wise information vide reply letter file No. IV/RTI-54/2021-22 dated 22.04.2022 as under:-

Point (a):- The Supreme Court order dated 29.06.2021 has not been accepted by the Department.

Point (b):- Nil in view of point (a).

Point (c):- Date of the review of the order is 08.07.2021. Restoration application has been filed in Hon'ble Supreme Court on 02.09.2021 vide Dy No. 20735/2021. Copy of the review petition is enclosed herewith.

Point (d, e, f):- Information is not available with this office.

Point (g):- Information in this regard is available in the public domain.

Point (h):- Information in this regard is available in the public domain.

Point (i, j):- Information is not available with this office.

Point (a):- Copy of the SLP is enclosed herewith.

Point (b):- Copy of the 'grounds' on which SLP was filed along with the 'substantial question of law' framed for the purpose is enclosed herewith.

Point (c):- Amount of revenue involved in the matter is interest portion on duty of ₹ 128.63/- Crore for the period from 21.09.2017 to October, 2019.

Grounds of Appeal:-

4. The appellant filed the aforesaid appeal with prayer on following points:-
- a. It is requested to direct the CPIO to provide the information in respect of points d, e, f, g, h, i and j of the RTI Application.
 - b. It is requested to direct the CPIO to specify the 'public domain', where relevant information is available since information has been sought in respect of name of authorities at the time of pronouncement of judgement and not at present.
 - c. Pass an order, as deemed fit, on merits of the case providing suitable relief to the applicant.

Discussion & Findings: -

5. I have carefully considered the facts on records and contentions in the appeal application by the appellant.
6. The RTI application dated 30.03.2022 was disposed off vide letter F. No. IV/RTI-54/2021-22 dated 22.04.2022 of CPIO, CGST & Central Excise, Ahmedabad North and provided the information as required by the appellant. Hence, the CPIO, CGST & Central Excise, Ahmedabad North provided the desired information within the prescribed time limit of 30 days mentioned under Section 7(1) of the RTI Act, 2005.
7. Before scrutiny of facts of the case, the appeal filed by the applicant should be tested as whether it has been filed within the time stipulated. As per Section 19(1) of the RTI Act, 2005, the appeal against any RTI order has to be filed, before the First Appellate Authority within 30 days from the date of receipt of the RTI reply. The appellant filed the First RTI appeal on 27.04.2022, which is within 5 days from the receipt of reply of RTI application. Hence, I accept the appeal as the same is filed within the prescribed time limit of 30 days under Section 19(1) of the RTI Act, 2005.
8. Ongoing through the records, it seems that the appellant vide his RTI application dated 30.03.2022 had sought the information has been submitted by the CPIO vide reply letter file No. IV/RTI-54/21-22 submitted that the Supreme Court order dated 29.06.2021 has not been accepted by the

Department and date of the review of the order is 08.07.2021. Restoration application has been filed in Hon'ble Supreme Court on 02.09.2021 vide Dy No. 20735/2021 and also submitted the copy of the review petition or copy of the 'grounds' on which SLP was filed along with the 'substantial question of law' framed for the purpose and amount of revenue involved in the matter is interest portion on duty of ₹ 128.63/- Crore for the period from 21.09.2017 to October, 2019. In respect of point no. d, e, f, i & j of the RTI application, the CPIO submitted that "information is not available with this office. Further, in respect of point No. g & h, CPIO replied that information in this regard is available in the public domain.

9. With reference to reply submitted in respect of point No. d, e, f, i & j of the RTI dated 30.03.2022:- Under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The CPIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions. Similarly, redressal of grievance, reasons for non-compliance of rules/contesting the actions of the respondent public authority are outside the purview of the Act. 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."

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."

9.1. 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."

9.2. Furthermore, the High Court of Bombay in Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education) vs The Goa State Information on 3 April, 2008 (2008 (110) Bom L R 1238) has held as under:

"Section 2(f) -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; The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

9.3. The High court of Madras in W.P.No.26781 of 2013 & M.P.No.1 of 2013(The Public Information Officer And others v. The Central Information Commission) decided on 17.9.20 14 had also held the following:

"Before we go into the merits of the case, let us consider the relevant provisions of the RTI Act for the purpose of deciding this case, which read as follows: The RTI Act defines "information" under Section 2(f) as follows: "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." Likewise, it defines "right to information" under Section 2(j) as follows: "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 the right to-(i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device."

10. With reference to reply submitted in respect of point No. g and h of the RTI dated 30.03.2022:- the CPIO replied vide letter file No. IV/RTI-54/2021-22 dated 22.04.2022 that "information in this regard is available in the public domain". But not submitted the specific name of the public domain. In this regard, the CPIO is hereby directed to submit the specific name of the public domain as requested by the applicant vide his RTI application dated 30.03.2022 within a period of 30 days.

11. In view of the above discussion and findings, I pass the following order:-

ORDER

The CPIO is directed to comply with within 30 days. with this direction to the CPIO, the appeal dated 27.04.2022 (received in this office on 02.05.2022) is disposed of.

R. Ant By
अंत 5/5

6/c

(आर. गुलज़ार बेगम),
प्रथम अपील अधिकारी,
केंद्रीय वस्तु एवं सेवा कर,
अहमदाबाद उत्तर

F.No. IV/RTI-01/Appeal/2022-23

By Speed Post/RPAD

To,
श्री मोहित अग्रवाल, 501 A, सरकार अपार्टमेंट,
10 रोड न. 10, पटेल कॉलोनी, जामनगर,
गुजरात - 361008

प्राप्त किया
वस्तु एवं सेवा कर, अहमदाबाद उत्तर
दिनांक: 31/05/2022
हस्ताक्षर: <i>Prasanna Pandey</i>
नाम: (1) Received