

**OFFICE OF THE APPELLATE AUTHORITY (RTI),
CENTRAL EXCISE, AHMEDABAD-III, CUSTOM HOUSE,
NAVRANGPURA, AHMEDABAD – 380 009.**

BY SPEED POST / REGD. A.D.

- A. File Number : II/16-02/RTI/APL/2013-14 ¹⁰⁷⁶
- B. Order-in-Appeal No. : 02/APPEAL/RTI/2013-14
- C. Passed by : Manpreet Arya
Additional Commissioner
& First Appellate Authority,
Central Excise,
Ahmedabad-III.
- D. Date of Order/Issue : 13.05.2013
- E. Name & address of the applicant : Shri Manohar Maheshwari,
C-401, Sumadhur-II,
B/h Bimanagar,
Near Azad Society,
Ambawadi, Ahmdabad-380015

1. This Order-in-Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order-in-Appeal may prefer a Second Appeal under section 19(3) of the Right to Information Act, 2005 to :

**Central Information Commission, Block No. IV, 5th floor, Old JNU campus,
New Delhi-110067**

3. Appeal shall be filed within ninety days from the date of receipt of this order in accordance with the provisions of section 19(3) of the Right to Information Act, 2005, before the Central Information Commission.

**OFFICE OF THE APPELLATE AUTHORITY (RTI),
CENTRAL EXCISE, AHMEDABAD-III, CUSTOM HOUSE,
NAVRANGPURA, AHMEDABAD – 380 009.**

Telefax: 079 27545021

F.No.II/16-02/RTI/APL/2013-14

Dt.13.05.2013

ORDER NO. 02/APPEAL/RTI/2012

Facts of the Case :-

Shri Manohar Maheshwari (hereinafter referred to as "the appellant") has filed First Appeal under section 19(1) of the Right to Information Act, 2005, being aggrieved by the decision/order No. GNR/CPIO/RTI/2012-13 dated 18.03.2013 of CPIO, Central Excise, Gandhinagar Division. The said First Appeal has been received on 12.04.2013.

Information sought by the appellant :-

The appellant had made an application dated 16.01.2013 under the said Act addressed to the Under Secretary, CBEC, New Delhi and the same was received by the CPIO, Central Excise, Gandhinagar Division on 01.03.2013. The applicant in his application under the Right to Information Act, 2005 requested the CPIO information regarding :-

- 1) number of 100% EOU units working in India as on 31.03.2012 and number of DTA clearance made by these units in last five years,
- 2) Are the DTA clearances in a year similar to goods exported by each of them in corresponding previous year, if not what action is been taken for violation of notification of 23/2003 CE dated 31.03.2003 against erring units, if any
- 3) Except Ahmedabad-I Commissionerate(In Gujarat) , how many show cause notices are been issued to 100% EOUs in the matter of "Similar Goods" and amount involved there in.
- 4) Is there any matter been decided by any appellate authority, if yes, the status thereof.

Decision of CPIO, Gandhinagar Division :-

Reply given to point 1 to 4 is reproduced as below:

1. There are 3 EOU units are working in the jurisdiction namely (1) Kalptaru Power Transmission Ltd. Gandhinagar (2) Lumen Magnetic Wires Ltd. Gandhinagar & (3) Sonic Technology (India) Inc. Gandhinagar as on 31.03.2013. The data pertains to DTA clearance is pertains personal information in nature of unit hence no data disclosed as per Section (8) J of RTI ACT 2005.
2. Yes
3. No
4. N.A

Grounds of Appeal :

That the appellant has not received the desired information from CPIO, Gandhinagar

Division. The appellant submitted that the CPIO, Central Excise Division, Gandhinagar had made a grave error in treating the information sought for, as personal information under the exemption category as provided u/s 8 (j) of RTI Act, 2005 without considering the nature of information asked for, thereby defeating the very purpose of this Act.

Section 8 of the RTI Act, 2005 deals with the Exemption from disclosure of information under this Act.

The contention of the CPIO denying the information under the pretext of section 8 (1) (j) is misplaced. The information sought was exempt under Section 8(1)(j) of the RTI Act, which provides as follows: "*information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: ...*"

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

CIC, in a number of decisions (including Mr. Vinod K. Jose V/s PIO & Deputy Secretary, M/o I & B, BPL Section, New Delhi and Sun Direct TV (P) Ltd, Chennai, a copy of which is enclosed here with as Annexure =III) has held that to qualify for the exemption under Section 8(1)(j) of the RTI Act, the information must satisfy the following criteria:

1. It must be personal information: Words in a law should normally be given the meaning given in common language. **In common language, we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an institution or a Corporate. Therefore, it flows that 'personal' cannot be related to institutions, organizations or corporate.** Hence Section 8(1)(j) of the RTI Act cannot be applied when the information concerns institutions, organizations or corporates.

2. The phrase 'disclosure of which has no relationship to any public activity or interest means that the information must have been given in the course of a public activity. Various public authorities in performing their functions routinely ask for 'personal' information from citizens, and this is clearly a public activity. Public activities would typically include situations wherein a person applies for a job, or gives information about himself to a public authority as an employee, or asks for a permission, license or authorization, or provides information in discharge of a statutory obligation.

3. The disclosure of the information would lead to unwarranted invasion of the privacy of the individual. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade the privacy of a citizen. In those circumstances special provisions of the law apply usually with certain safeguards. Therefore where the State routinely obtains information from citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

The Act treat commercial confidence or Trade Secret or Intellectual property or

personal information under exemption category and if one goes by the definition of these words & terms, as discussed here in above and in various judgments, one can easily make out what it meant to be, however, the CPIO despite knowing the facts that the information sought for are merely statistical information and the same is available within their divisional office based on the monthly return filed by the assessee, denying the same under wrong pretext.

The details of number of EOU, Value of DTA clearance by them and SCN issued to these units for violation of any notification, are by no stretch of imagination can be treated as Trade Secret or Intellectual property or personal information, rather, it is in the larger interest of the department and the trade so that uniformity in the interpretation and decision can be maintained. By denying the required information under wrong pretext, there appears to be some favor to larger tax payer unit falling under his jurisdiction discriminating them against and detrimental to the interest of the trade in general.

Section 8 (h) of RTI Act, 2005 "Provided that the decisions of Council of Ministers, the reasons thereof and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Proviso to Section 8(j) of the RTI Act, 2005 " Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

In view of the foregoing, the contentions of the CPIO that the information sought was exempt from disclosure under Section 8(1)(j) of the RTI Act is incorrect.

2. **The CPIO, Central Excise Division, Gandhinagar, had erred in denying the information despite of knowing the facts that the information is being sought for from other divisional office in the same zone and been provided by them. When one office of the same Chief Commissioner's office can provide the information how it can be denied by others under the pretext of claiming exemption of section 8 (j) of the Act, when it is not.**
3. **The concerned CPIO had not disclosed the facts that the information sought for had been objected by all the units falling under his jurisdiction and procedure as prescribed u/s 11 of the Act is being followed, before denying the disclosure of the information**
Therefore, if the CPIO is denying the information u/11, he should have made the facts clear in his order so that the party concerned can also be made a party to this appeal.
4. **Without prejudice to above, the information sought are in the larger interest of trade and industry and to ascertain that all the 100% EOUs are treated equally and without any discrimination. Any error and omission on part of the some officer may lead to undue advantage to others which may be detrimental to the interest of the revenue and against the interest of the assessee who are discriminated. If the information sought for is denied, then it will tantamount to justice denied. In *CPIO, Supreme Court of India v. S.C. Agarwal W. P.***

(C) No. 188/2009, the High Court of Delhi observed that the RTI Act is premised on disclosure being the norm, and refusal, the exception.

5. The appellant craves leave to add, to alter, to amend, modify, emphasis and/or withdraw all or any of the forgoing submissions before or during personal hearing if so necessitated.

Accordingly, the appellant has requested the undersigned to direct the concerned authority as under:-

- (a) The CPIO may please be directed to provide the necessary information in the interest of natural justice.
- (b) Penal action u/s 20 (1) & (2) should be initiated against concerned CPIO for malafidely denying the information sought for.
- (c) Any other and further reliefs as may be deemed just and proper on the facts and circumstances of the case may kindly be granted.

Discussion & Findings :-

1. I have gone through the appeal filed by the appellant, perused the application and the impugned order disposing of the said application under the Right to Information Act, 2005.
2. Though I do not agree with the argument given by the appellant w.r.t definition or concept of 'personal' and cases cited mentioned herein before, yet I find that the information sought for are merely statistical information and giving the specific information in respect of figure of DTA clearance does not come within the purview of personal information of the concerned unit, as the requisite information does not decipher any information of confidential nature. Similarly SCN issued to them is a matter of public record.

ORDER

In view of the above discussion, I allow the appeal and direct the CPIO, Gandhinagar to provide the information requested for in the original application of the appellant immediately without any further delay. The Appeal is disposed off in the above terms.

Manpreet Arya
13/5/13

(MANPREET ARYA)
Additional Commissioner
& First Appellate Authority,
Central Excise,
Ahmedabad-III.

BY SPEED POST/REGD POST AD

To,
Shri Manohar Maheshwari,
C-401, Sumadhur-II,
B/h Bimanagar,
Near Azad Society,
Ambawadi, Ahmedabad-380015

Copy to:- The Assistant Commissioner (CPIO), Central Excise,
Gandhinagar Division, Ahmedabad-III.