

**CENTRAL INFORMATION COMMISSION**

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Appeal No.:-CIC/CBECE/A/2017/187664-BJ

Appellant : Mr. V. Stanley Paulus,  
Respondent : CPIO  
Central Board of Excise & Customs,  
New Delhi.  
Date of Hearing : 11.08.2017  
Date of Decision : 11.08.2017

Date of filing of RTI applications	22.07.2016
CPIO's response	26.08.2016
Date of filing the First appeal	01.09.2016
First Appellate Authority's response	30.09.2016
Date of diarised receipt of second appeal by the Commission	24.11.2016

**ORDER**

**FACTS:**

The Appellant vide his RTI application sought information on 02 points regarding whether an importer/ exporter transacting any business at a customs station, solely on his account could file bill of entry and shipping bill on his own account, whether an employee of a firm holding an identity card could transact business on behalf of such a person or firm, etc.

The CPIO and Under Secretary (Customs-VI), vide its letter dated 26.08.2016, stated that the information sought on points 1 and 2 were in the nature of queries and as per RTI guidelines issued vide no. 1/4/2008-IR dated 25.04.2008 could not be provided to the Appellant. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The FAA, vide its order dated 30.09.2016, stated that the CPIO had correctly held the view that only such information could be provided which was held by the CPIO and not the information which has to be created or interpreted.

**HEARING:**

**Facts emerging during the hearing:**

The following were present:

**Appellant:** Absent;

**Respondent:** Mr. Kishan Singh Rawat, Assistant Section Officer;

The Appellant remained absent during the hearing. However, vide his written submission dated 03.08.2017, the Appellant submitted that on the date of hearing, he would be attending a meeting in Male' (Republic of Maldives), hence he would not be available at Trivandrum for the video conferencing. The Appellant therefore prayed to postpone the date of VC after 15<sup>th</sup> August or a decision may be taken based on his written submission. While stating that the information sought by him was of considerable importance, the Appellant stated that the ground on which the application had been denied was not at all sustainable for reasons explained in his second appeal. It was further stated that the CPIO had advised him to refer to Chapter 3 and 29 which dealt with entirely different subjects namely Self Assessment and CBLR and did not contain the information required by him regarding self clearance. While stating the objective of the RTI Act, the Appellant submitted that the attitude adopted by the CPIO and FAA in the instant case had the effect of nullifying the facilities contemplated in the RTI Act and the Act did not prohibit the CPIO from furnishing the exact chapter or Page Number of the Customs Manual which answered his queries. It was also stated that the issues raised by him were quite simple and direct and neither ambiguous nor interpretative. The observation of the FAA that the CPIO could furnish the information which was held by him suggested that the information in respect of issues raised by him were not held by the CPIO. This was contradicted by the CPIO himself since he had advised him to refer to Chapter 3 and 29 of the Customs Manual perhaps in the belief that the information sought by him may be available in the said chapters. However, the information sought by him was not available therein hence he made a specific request in Para 1 of his Appeal to furnish the Paras or Page Number in the manual dealing with the matter enabling an importer or exporter transacting any business at the Customs Station solely on his account to file bill of entry and shipping bill. While stating that the information would be available in the Customs Manuals and Circular for the guidance of the Customs officials in all the stations, which were in the custody of the Customs Department, the Appellant submitted furnishing information in that regard would not create creation/ interpretation/ clarification on the part of the CPIO. The Appellant also prayed for directing the CPIO to provide a copy of the RTI guideline No. 1/4/2008-IR dated 25.04.2008.

The Respondent explained that the CPIO had earlier replied to the Appellant giving details of the website where the information was available. In addition, vide their letter dated 11.08.2017 further details were being provided for ready reference. On a query from the Commission whether the details of Circulars as sought by the Appellant were available on their

website or not, the Respondent replied in the affirmative and referred to the response of the CPIO dated 26.08.2016 wherein details of the website were communicated.

The Commission observed that 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 PIO 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 Commission referred to the Hon'ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

*35..... "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."*

Furthermore, the Commission observed that the Hon'ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had 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.”*

**DECISION:**

Keeping in view the facts of the case and the submission made by the Respondent, the Commission directs the Respondent to forward a copy of their communication dated 11.08.2017 to the Appellant, within a period of 07 days from the date of receipt of this order.

The Appeal stands disposed with the above direction.

**(Bimal Julka)**  
**Information Commissioner**

Authenticated True Copy:

(K.L.Das)  
Deputy Registrar