

CENTRAL INFORMATION COMMISSION

2nd Floor, August Kranti Bhawan
Bhikaji Cama Place, New Delhi-110066
website:cic.gov.in

Appeal No.: -CIC/CCCPC/A/2017/309325-BJ

Appellant : Mr. V. Stanley Paulus,
Respondent : CPIO
O/o. the Commissioner of Customs,
Tiruchirapalli, Tamilnadu
Date of Hearing : 11.08.2017
Date of Decision : 11.08.2017

Date of filing of RTI applications	20.07.2016
CPIO's response	10.08.2016
Date of filing the First appeal	30.08.2016
First Appellate Authority's response	07.09.2016
Date of diarised receipt of second appeal by the Commission	01.10.2016

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, etc.

The CPIO, Hqrs. Trichy, vide its letter dated 10.08.2016, requested the Appellant to refer to Para 3 (1) and 3(b) of the CBLR, 2013 and the Customs Act, 1962 as a whole. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The FAA, vide its order dated 07.09.2016, rejected the Appeal stating that under the RTI Act, the CPIO had to give information held by him only and he was not under obligation to give his opinion/ comments/ interpretations on the information sought. It was also stated that giving clarifications on the Acts/ Rules did not form part of the RTI act.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Absent;

Respondent: Mr. K. Johnson, CPIO/Asst. Commissioner (Customs), Trichi Customs Commissionerate through VC;

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 15th 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 stated that the CPIO had advised him to refer to the Customs Act, 1962 as a whole and for a layman like him it would be practically impossible to locate the exact position which dealt with the queries raised by him. In fact the officers of the Customs Department were handling the issues during the course of their duties every day and were well aware of the chapters or portions in the manuals and without any difficulty could have furnished the information. The First Appellate Authority had grievously erred in presuming that the supply of information like Chapter/ Para in the department manuals to trace the required information constituted opinion/ clarifications/ interpretation. While explaining that he had not sought information which will necessitate any opinion/ clarification/ interpretations of the CPIO, the Appellant stated that what he required from the CPIO was to supply such details in the manuals that would facilitate tracing the information from the departmental manual.

The Respondent explained that whatever information was available on their record had already been furnished to the Appellant. The FAA had also rejected his Appeal on the grounds that the information held had already been shared with the Appellant. It was also submitted that under the RTI Act, 2005, they were not supposed to give opinion/ comments/ interpretations on the information sought.

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:

In the light of the facts available on record and the submissions made by both the parties, no further intervention of the Commission is required in the matter.

The Appeal stands disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar