

केन्द्रीय सूचना आयोग
Central Information Commission
बाबागंगनाथमार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नईदिल्ली, New Delhi – 110067

File No : CIC/DGSTCX/A/2021/129351

Anil Khanna

.....अपीलकर्ता/**Appellant**

VERSUS

बनाम

CPIO,

Tax Research Unit-II,
CBIC, North Block, New Delhi-110001.

....प्रतिवादीगण /**Respondent**

Date of Hearing : 19/09/2022

Date of Decision : 19/09/2022

INFORMATION COMMISSIONER : Saroj Punhani

Relevant facts emerging from appeal:

RTI application filed on : 27/03/2021

CPIO replied on : Not on record

First appeal filed on : 24/05/2021

First Appellate Authority order : Not on record

2nd Appeal/Complaint dated : 09/07/2021

Information sought:

The Appellant filed an RTI application dated 27.03.2021 with CPIO, GST Council, New Delhi seeking the following information:

"I Anil Khanna S/O Late Shri Prem Nath Khanna having Aadhaar card No 3582 3027 1246 is Registered Civil Government Contractor (with turnover between Rs 1.50 to Rs 2 crores per year) have an agreement clause/special condition in one of its agreement(construction/addition alteration work completed in Delhi) of

Incentive for early completion of work being Financial amount payable by Department to undersigned.

Invoking my right under section 6 of RTI Act 2005, kindly provide attested photocopy of order of GST Department, Govt of India of what percentage on amount received as incentive amount is to be payable to GST Department (Delhi) by undersigned as GST Tax. Please provide only relevant orders in reference to incentive GST % tax only."

The CPIO, GST Council, New Delhi transferred the RTI application on 09.04.2021 to the CPIO/TRU-II, CBIC, North Block, New Delhi under section 6(3) of the RTI Act, 2005 for providing information directly to the appellant.

Being dissatisfied, the appellant filed a First Appeal dated 24.05.2021. FAA's order, if any, is not available on record.

Feeling aggrieved and dissatisfied, the appellant approached the Commission with the instant Second Appeal.

Relevant Facts emerging during Hearing:

The following were present:-

Appellant: Present through intra-video conference.

Respondent: Rajeev Ranjan, U.S. & CPIO, TRU-II, CBIC present through intra-video conference.

The CPIO relied on his written submission dated 09.09.2022 wherein it was mentioned that although the original RTI Application was transferred to him by the CPIO, GST Council, New Delhi; however, it was not traceable in their office records. It was only after receipt of its copy along with hearing notice a categorical reply was provided to the Appellant on 09.09.2022 inviting his attention towards specific hyperlink of the Website from where the specific notification of GST can be accessed. He further explained that all GST Rules and notifications are already in the public domain and which are self explanatory. As per various rulings of Hon'ble CIC the CPIO is not supposed to interpret such Rules/Notifications as per choice of applicants.

The Appellant interjected to state that after visiting the weblink as suggested by the CPIO it is difficult for him as a layman to deduce or cull out the exact order of

GST Department, Govt of India as to what percentage of the amount received as incentive amount is to be payable to GST Department (Delhi) by him towards the GST Tax. He, therefore requested the Commission to direct the CPIO to provide a copy of the relevant orders/ notification of GST in this regard.

The CPIO explained that if the Appellant has any grievance/doubt regarding this issue pertaining to incentive/consideration he may knock the doors of competent adjudicating authority of GST so constituted to deal with such issues. Upon Commission's instance, he further clarified that under GST, there is no concept of an incentive rather a related term is in place i.e. 'consideration'; and for which he agreed to provide a copy of the relevant extract of notification to the Appellant which may suffice the information sought for.

Decision:

The Commission at the outset upon a perusal of the facts on record and upon hearing both the parties observes that the relief claimed in the instant matter is not as much as about seeking access to information as much it is about the Appellant's seeking clarification/inference to be drawn by the CPIO against his query.

From the standpoint of the RTI Act, the Appellant shall note that outstretching the interpretation of Section 2(f) of the RTI Act to include deductions and inferences to be drawn by the CPIO is unwarranted as it casts immense pressure on the CPIOs to ensure that they provide the correct deduction/inference to avoid being subject to penal provisions under the RTI Act.

In this regard, his attention is also drawn towards a judgment of the Hon'ble Supreme Court on the scope and ambit of Section 2(f) of RTI Act in the matter of **CBSE vs. Aditya Bandopadhyay & Ors.**[CIVIL APPEAL NO.6454 of 2011] wherein it was held as under:

*"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.....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.” (Emphasis Supplied)

However, by taking a liberal view in the matter and also in furtherance of hearing proceedings the Commission hereby directs the CPIO to provide an extract of a copy of relevant rules/notifications pertaining to ‘consideration’ which will suffice the information sought by the Appellant regarding percentage on amount received as incentive which needs to be payable to GST Department (Delhi) by him towards GST Tax.

The above said information should be provided by the CPIO free of cost to the Appellant within 15 days from the date of receipt of this order under due intimation to the Commission.

ADVISORY

A pertinent issue emanating from the instant case and similar nature of cases dealt with by this bench in the recent past is that a number of RTI Applications are being filed for seeking clarifications on various policy/ procedure matters of Public Authorities with regards to the applicant’s grievances for any claim as per their Rules/Notifications/Orders. It will be in the best interest of Respondent Public Authority to explore the viability of introducing/updating a FAQs Section on their website wherein the most commonly sought issues/clarifications and/or respective orders/circulars/their jurisdictions and also their powers/roles can be easily identified and relevant information in that regard can be placed in the public domain in keeping with the letter and spirit of *suo motu* disclosures prescribed under Section 4 of the RTI Act. This will also relieve the public authority from the burden of RTI Applications which are filed for merely seeking clarifications and not any specific record.

In pursuance of the aforesaid advisory, **the CPIO is directed to place a copy of this order before their competent authority for taking appropriate action.**

The appeal is disposed of accordingly.

**Saroj Punhani (सरोजपुनहानि)
Information Commissioner (सूचनाआयुक्त)**

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

(C.A. Joseph)

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सी. ए. जोसेफ, उप-पंजीयक

दिनांक /

