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कार्यालय प्रधान आयुक्त  
OFFICE OF THE PRINCIPAL COMMISSIONER  
माल और सेवाकर आयुक्तालय, लुधियाना  
GOODS & SERVICES TAX COMMISSIONERATE, LUDHIANA  
जीएसटी भवन , ऍफ ब्लॉक, ऋषि नगर, लुधियाना- 141001  
GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001

दूरभाष/TELE: 0161-2679426 फैक्स/FAX: 0161-2304881; ईमेल-/Email: gstldhtech@gmail.com

मि० सं०.: IV(16)Hqrs/ Ldh/RTI-Appeal/ B Rai/16/18-19 /11276-77 दिनांक: 30.10.2018

Order-in-Appeal No. : 16/RTI/GST/Ldh/18

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED] s/o [REDACTED]

[REDACTED] (hereinafter referred to as "the appellant"), vide his RTI application dated 03.08.2018, received in the office of Central Public Information Officer (RTI), Goods & Services Tax Commissionerate-Ludhiana (hereinafter referred to as "the CPIO") , under the Right to Information Act, 2005 (hereinafter referred to as "the Act"), had desired certain information.

**2. Grounds of Appeal:**

2.1: That the CPIO vide his office letter C.No.IV(16)Hqrs/Tech/RTI/Ldh/[REDACTED] dated 04.09.2018 had provided reply to the RTI application.

2.2: The Appellant, being not satisfied, has filed an appeal dated 06.10.2018 (received on 08.10.2018 through e-mail) on the ground that CPIO has not provided the information in r/o Point No. 1 (v) & (vi) of his RTI application dated 03.08.2018.

**3. Reply to the Notice by CPIO:**

3.1: A notice vide C.No. IV(16)Hqrs/Ldh/RTI-Appeal/[REDACTED] dated 08.10.2018 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO vide his letter C.No. IV(16)30/Tech/RTI/Ldh/[REDACTED] dated 24.10.2018 has replied to the notice.

5-12

4. Discussion and Findings:

4.1: I have carefully examined the appeal filed by the Appellant, CPIO's reply to notice and relevant provisions of the Act.

4.2: I find that the appellant was aggrieved for not replying in r/o Point No. 1 (v) & (vi) of his RTI application.

4.3: I also find that the CPIO has now procured the desired information from the concerned branch and submitted the same to this office.

In view of the above, I pass the following order.

5. Order:

I direct the CPIO to provide the information available directly to the appellant within 10 days from the receipt of this order.

30.10.2018  
OIC

(Rajan Lachala, IRS)

1<sup>st</sup> Appellate Authority (RTI)

GST Commissionerate, Ludhiana.

Speed Post/copy to:-

- (i) Sh. R. [REDACTED] S/o [REDACTED]  
[REDACTED] Bus Stand Road, Ludhiana, [REDACTED]
- (ii) The CPIO, GST Commissionerate-Ludhiana for information and necessary action.

Regd Post.

To,

Ms. Parul Garg,

IRS, Joint Commissioner (1<sup>st</sup> Appellate Authority),

GST Commissionerate,

Ludhiana.

Respected Madam,

Subject : Appeal against the information is given as per IV (16) Hqr / Tech / RTI / LDH / [REDACTED]  
 [REDACTED] Dated: 04.09.2018 With regard to the point number (v) and (vi) under Point No.1.

I have received the information of the above RTI on date 15.09.2018 or later on Speed Post No. EP537306097IN. I asked the information from the date 05.08.2018 on your office. You did not provide me the full information of point No.1. You have reported the date of the search was conducted on 18.07.2018 against Master Capital Services Ltd. and action taken under the provisions of section 57 of the Central Goods and Services Tax Act, 2017. I have given incomplete informations received from your office. I request that I be provided the Right of Information Act, 2005, to find point number (v) and (vi) under point no. 1 which is recorded in the register of this office. I should provide the following information:-

1. Point No 1/ (v). Date and place of issue.
2. Point No.1 / (vi). Serial number of the search warrant

Madam, I appeal to you that the information requested above should be provided as soon as possible, under the information sought for under the Point No. (v) and (vi) under Point No 1, above. This information does not come in the Right of information Act 2005 under section 2 (f). Thanking You.

(Attached Adhar Card Photo Copy)

Dated: 06.10.2018

Your Truly,



सत्यमेव जयते

कार्यालय प्रधान आयुक्त

OFFICE OF THE PRINCIPAL COMMISSIONER

वस्तु एवम् सेवा कर आयुक्तालय

GST Commissionerate, Ludhiana

एफ ब्लॉक, ऋषि नगर, लुधियाना

F-Block, Rishi Nagar, Ludhiana



पञ्जाब का  
अधिकार

मि० सं०.: IV(16)Hqrs/ Ldh/RTI-Appeal/ T S/17/18-19 / 114090-500

दिनांक: 27.10.2018

Order-in-Appeal No. : 17/RTI/GST/Ldh/18

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED] Prop. M/s [REDACTED] (hereinafter referred to as "the appellant"), vide his RTI application dated 30.08.2018, submitted to Central Public Information Officer (RTI), Goods & Services Tax Division-Barnala (hereinafter referred to as "the CPIO") , under the Right to Information Act, 2005 (hereinafter referred to as "the Act"), had desired certain information.

**2. Grounds of Appeal:**

2.1: That the CPIO vide his office letter C.No.II(39)RTI/Misc/[REDACTED] dated 11.09.2018 had provided reply to the RTI application:

2.2: The Appellant, being not satisfied, has filed an appeal dated 11.10.2018 (received on 15.10.2018) on the following grounds:

**Point No. 1,2,3 and 5 Information denied u/s 8(1)(j) of the Act:**

Point No.1: Attested copy of complaint was required which is must to know the nature and correctness and genuineness of the complaint.

Point No. 2: The copy of Action Taken report of Barnala office was required which is very much important for the appellant for his further action on the complaint.

Point No. 3: The appellant has demanded name and address of the complainant but not the personal information of the complainant.

Point No. 5 and 6: The appellant had required the source of receipt of the complaint to know about the complainant.

**3. Reply to the Notice by CPIO:**

3.1: A notice vide C.No. IV(16)Hqrs/Ldh/RTI-Appeal [redacted] dated 23.10.2018 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO vide his letter C.No. II(39)RTI/MISC/[redacted] dated 25.10.2018 has replied to the notice as under:

*Point No. 1: Denied because the attested copy of the letter of the complaint contains Name, address, mobile number and e mail ID of the complainant.*

*Point No. 2: Denied because Action Taken r contains Name and address of the complainant.*

*Point No. 3: Denied because the point requires Name and address of the complainant.*

*Point No. 4: Information provided to the appellant.*

*Point No. 5: Denied because the attested copy of the letter of the complaint contains Name, address, mobile number and e mail ID of the complainant.*

*Point No. 6: Information provided partially because the other half requires, mobile number and e mail ID of the complainant.*

In view of the above, the information has been denied under Section 8(1)(j) of the Act. Also, the Point No. 1,2,3,5,6 do not serve the Public Interest and doesn't seem to override Section 8(1)(j) of the Act

**4. Discussion and Findings:**

4.1: I have carefully examined the appeal filed by the Appellant, CPIO's reply to notice and relevant provisions of the Act.

4.2: I find that the appellant was aggrieved for denying the information in r/o point No. 1,2,3,5 and 6 under Section 8(1)(j) of the Act.

I observe that the information sought by the appellant is regarding the raid conducted by the department in r/o the business premises of the appellant which has been denied by the CPIO citing various reasons and relevant clause of the Act.

In this regard, it would be apt and legally correct to go through the Act and in particular, the Section 8(1)(g) which is reproduced below:

**“Exemption from disclosure of information--(1)** Notwithstanding anything contained in this act, there shall be no obligation to give any citizen,-

- 12 -
- (a) \*\*\*\*\*
  - (b) \*\*\*\*\*
  - (c) \*\*\*\*\*
  - (d) \*\*\*\*\*
  - (e) \*\*\*\*\*
  - (f) \*\*\*\*\*
  - (g) *information, the disclosure of which would endanger the life or physical safety of any person or identity the source of information or assistance given in confidence for law enforcement or security purposes.*
  - (h) \*\*\*\*\*
  - (i) \*\*\*\*\*
  - (j) \*\*\*\*\*”

The plain reading of this section clearly reveals that in addition to some other situations, the information need not be divulged in case:

- (a) the life or liberty of a person is endangered.
- (b) when the information given in confidence for law enforcement or security purposes identifies the source of information.

It is also inferred from the above that the first part deals with the information, the disclosure of which endangers life and liberty of a person and here the words *Life and Liberty* are of wider connotation.

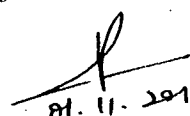
The second part simply prohibits information when the identity of the source of information or assistance is given in confidence for law enforcement or security purpose. Thus, the second part talks about the cases where information is given by a person regarding the commission of an offence.

It is, therefore plainly concluded, from the second part as mentioned above, that in such a case where there is apprehension of danger to the life or physical safety of any person by identifying him, the information under the Act need not to be disclosed.

In view of the above discussion, I do not deem it fit to pass on the information to the appellant and accordingly pass the following order.

5. **Order:**

In view of above, the appeal filed by the appellant is not tenable and rejected accordingly.

  
 01. 11. 2018  
 (Rajan Lachala, IRS)

1<sup>st</sup> Appellate Authority (RTI)

ok GST Commissionerate, Ludhiana.

Speed Post/copy to:-

- (i) Shri [REDACTED]
- (ii) The CPIO(RTI), GST Division, Barnala.

All Subject to [REDACTED] Jurisdiction

(A House of Fine Art Materials)

# DI HATTI

BOOK SELLERS & STATIONERS

Ref. No. ....

Dated 11/10/2018

To  
The Joint Commissioner,  
Appellate Authority, under the RTI, Act, 2005,  
O/O The Principal Commissioner,  
GST Commissionerate Ludhiana,  
F-Block, Rishi Nagar,  
Ludhiana - 141001

केन्द्रीय वाणिज्य एवं सेवाकर आयुक्तालय  
CENTRAL GST COMMISSIONERATE  
लुधियाना/Ludhiana  
15 OCT 2018  
प्राप्ति संख्या: 5455

Sub.: Appeal against Assistant Commissioner-cum-CPIO GST Division  
Barnala, Punjab, for non-supply of complete information as  
required under RTI Act, 2005.

for my  
15.10.2018

Sir,

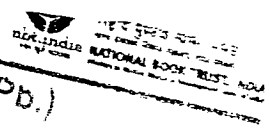
With due honour it is submitted that I had applied for supplying of information under RTI Act 2005 vide letter dated 30-08-2018 to your Barnala office. In the said letter point-wise information was required vide para (i) to (vii). The competent Authority i.e. Assistant Commissioner-cum-CPIO, Barnala, Punjab has sent incomplete information to me vide his letter No.C.No.II(39)RTI/MISC BNL 01 2017 410 dated 11.09.2018 which has been delivered to me by the postal authorities on 13-09-2018 as such my appeal falls within limits, Photocopies of my letter dated 30-08-2018. letter of your Barnala office dated 11.09.2018 are enclosed herewith. Regarding replies under paras 1, 2, 3 and 5. The information has been denied by invoking Section 8(1)(j) of the RTI Act 2005. In para No. (iii) I had demanded name and address of the complainant but not the personal information of the complainant. There is no cause of unwarranted invasion of the privacy provision of the complainant. Regarding para No.2, I had required copy of action taken report of the Barnala office which is very much important for me for my further action on the

DC  
(RTI)  
23/10  
SIRTA



H.O. : [REDACTED]

GAZAR  
[REDACTED]  
- 148101 (Pb.)



(A House of Fine Art Materials)

# DI HATTI BAH

BOOK SELLERS & STATIONERS

Ref. No. ....

Dated .....

-2-

complainant. Regarding para No.1, attested copy of letter of the complainant was required which is must for me to know the nature, correctness and genuineness of the complaint. Regarding paras No. V and VI, I had required the source of receipt of the complaint to know more about the complainant. Para No. IV has been approved, but the name and address of the complainant required under para No. III has been denied. It is further intimated that the complainant has damaged the reputation of my firm which I earned during the last 60 years of business.

It is further submitted that unless and until complete information is not supplied I am unable to know the genuineness of the complaint as well as the complainant.

Being the Appellate Authority I am preferring this appeal to your goodself and request your Honour to arrange the supply of complete information under RTI Act, 2005.

Thanking you.

Yours faithfully,

October 11, 2018

Encls: As/Above

*[Handwritten Signature]*  
 [Redacted]  
 [Redacted]  
 [Redacted]  
 [Redacted]



H.O. [Redacted]

[Redacted]  
[Redacted]  
[Redacted]



कार्यालय प्रधान आयुक्त  
OFFICE OF THE PRINCIPAL COMMISSIONER

माल और सेवाकर आयुक्तालय, लुधियाना  
GOODS & SERVICES TAX COMMISSIONERATE, LUDHIANA  
जीएसटी भवन, एफकृषि, ब्लॉक- नगर, लुधियाना- 141001  
GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001

दूरभाष/TELE: 0161-2679426 फेक्स/FAX: 0161-2304881; ईमेल-/Email: [gstldhtech@gmail.com](mailto:gstldhtech@gmail.com)

मि० सं०.: IV(16)Hqrs/ Ldh/RTI-Appeal/ PK/18/18-19 / 12468

दिनांक: 12.2018

Order-in-Appeal No. : 18 /RTI/GST/Ldh/18

(An appeal against this order lies with the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED] (hereinafter referred to as "the appellant"), vide his application dated 04.09.2018, received in Central Public Information Officer (RTI), office- Ludhiana on 26.09.2018, under the Right to Information Act. 2005 (hereinafter referred to as "the Act"), had desired certain information..

**2. Grounds of Appeal:**

2.1: That the CPIO vide his letter C.No. IV(16)Hqrs/LDH/RTI/[REDACTED] dated 24.10.2018 had replied the RTI application.

2.2: The Appellant, being not satisfied, has filed an appeal dated 23.11.2018 (received on 30.11.2018) on the ground that CPIO has denied information in r/o Column 3 & 4 of his RTI application dated 04.09.2018.

**3. Reply to the Notice by CPIO:**

3.1: A notice vide C.No. IV(16)Hqrs/ Ldh/RTI-Appeal/[REDACTED] dated 04.12.2018 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO vide his letter C.No. IV(16)Hqrs/LDH/RTI/[REDACTED] dated 11.12.2018 has replied to the notice as under:

That the reply dated 24.10.2018 to the appellant, in response to RTI application dated 04.09.2018 received on 26.09.2018, was based on the information provided by Prev. Branch. Moreover, information in r/o Column 4 has not been denied but replied as "No enquires are closed without taking any action as required under law. Therefore, report in respect of this point is nil". Further information in r/o is not denied but replied as "No such information is available in this office".

Above all the appellant has filed appeal on 30.11.2018 which is beyond the prescribed time limit under the Act as the RTI reply dated 24.10.2018 was duly received by the appellant on 30.10.2018 (copy of proof of postal authority is enclosed), i.e. appeal is filed after the expiry of 30 days from the receipt of RTI reply.

**4. Discussion and Findings:**

4.1: I have carefully examined the appeal filed by the Appellant, CPIO's reply to various relevant provisions of the Act.

4.2: I find that the appellant was aggrieved for denying the information in r/o Column 3 & 4 of RTI application dated 04.09.2018.

4.3: I find that the appeal filed by the appellant is hit by time bar limit of 30 days as provided under Section 19 of the Act.

In view of the above, I pass the following order.

**5. Order:**

The appeal is rejected it being hit by time bar limit.

*(Handwritten signature)*  
14.12.2018

(Rajan Lachala. IRS)  
1<sup>st</sup> Appellate Authority (RTI)  
GST Commissionerate, Ludhiana.

**Speed Post/copy to:-**

- (i) Shri [Redacted]
- ✓ (ii) The Deputy Commissioner cum CPIO,  
GST Commissionerate-Ludhiana.

Before 1<sup>st</sup> Appellate Authority RTI Act 2005,

CGST Commissionerate, Ludhiana

[REDACTED]  
[REDACTED]  
[REDACTED]

..... Appellant

Verses

The Central Public Information Officer,

CGST Commissionerate, Ludhiana

..... Respondent

Appeal against non- supply of requested for information in respect of Column 3 & 4 vide letter dated 04.09.2018 under RTI Act 2005 by the CPIO, CGST Commissionerate, Ludhiana as conveyed by the said CPIO vide letter C.No.IV(16)/HQRS/LDH/RTI/[REDACTED] Dt.24.10.2018 received on 30.10.2018.

**Facts of the case**

1. That the appellant had requested for information under RTI Act 2005 vide his letter dated 4.09.2018 to the CPIO, CGST Commissionerate, Ludhiana, which is enclosed as Annexure A, and is self-explanatory.
2. That the said CPIO, CGST Commissionerate, Ludhiana vide letter C.No.IV(16)/HQRS/LDH/RTI/[REDACTED] Dt.24.10.2018 (copy enclosed as Annexure B) has not supplied the information in respect of Column. 3 & 4.

Hence, this appeal is being filed.

[Handwritten signature]

### Grounds of Appeal

- i. That the basis of non-supply of requested for information is illegal and unwarranted as the CPIO has failed to appreciate the provisions contained in RTI Act, 2005 which defines information under Section 2(f) of the said Act as under :

*"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;*

Apart, the Apex Court in **C.A. No.6454 of 2011**, arising out of **SLP(C) No. 7526 (2009)** in the case of **Central Board of Secondary Education &Anr V/s AjityaBandopadhyay & Others** have commented as under:

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 analyzed 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.

- ii. That the information in respect of Column 3 i.e. 'Number of inquiries where Hqrs. Prev. or Special Cell Recommended for issue of show cause notice' & 4 'Number of inquiries were closed without any action with approval from the competent authority' relates to the information in respect of Column 1 and information in respect of Column 1 has been already provided by the CPIO, the information in respect of Column 3 & 4 ought to be available with the CPIO. Hence the CPIO has willfully denied the requisite information.
- iii. That the information was accordingly required to be supplied in respect of Column No.3 & 4 in view of the discussion in para II above. The information requested for is related to monitoring of inquiries to curb the tax evasion and avoidance of corrupt practices and undue favour, and if it is

not so, it puts a question mark upon the foundation of department. And to say that no such information is available in respect of column No.3 and no inquiry was closed without approval as referred in column No. 4 does not serve the purpose as the reply on these points is vague one. The sole purpose appears to be suppress the things. If there is proper monitoring, question of non-availability of data will not arise. Thus the CPIO has adopted a wrong and round about approach to deny the information and such denial shows that truth is being prevented to shield the defaulting one.

- iv. That in view of the above, the information was required to be supplied by the CPIO under the provisions of RTI Act, 2005.

Prayer

In view of the submissions vis-à-vis grounds of appeal above, it would be appreciated that non-supply of information in respect of Column No. 3 & 4 by the CPIO was not within the purview of law i.e. RTI Act, 2005. And thus it is prayed that the CPIO may be directed to supply the called for information as detailed in the RTI application dated 04.09.18, the subject under consideration and appeal may be allowed with costs accordingly.

Place : Jalandhar

Date : 23.11.18

  
Appellant

- 21 -

**कार्यालय प्रधान आयुक्त**  
**OFFICE OF THE PRINCIPAL COMMISSIONER**  
**माल और सेवाकर आयुक्तालय, लुधियाना**  
**GOODS & SERVICES TAX COMMISSIONERATE, LUDHIANA**  
**जीएसटी भवन ,एफब्लॉक ,ब्लॉक- नगर, लुधियाना- 141001**  
**GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001**

दूरभाष/TELE: 0161-2679426 फैक्स/FAX: 0161-2304881; ईमेल-/Email: [gsfldhtech@gmail.com](mailto:gsfldhtech@gmail.com)

मि० सं०.: IV(16)Hqrs/ Ldh/RTI-Appeal/ PK-1/19/18-19/12 602-3 दिनांक: .12.2018  
19

**Order-in-Appeal No. : 19 /RTI/GST/Ldh/18**

(An appeal against this order lies with the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED] (hereinafter referred to as "the appellant"), vide his application dated 03.09.2018, received in Central Public Information Officer (RTI), office- Ludhiana (hereinafter referred to as "the CPIO") on 08.10.2018 through CPIO, Office of the Chief Commissioner of GST Zone-Chandigarh under the Right to Information Act, 2005 (hereinafter referred to as "the Act"), had desired certain information..

**2. Grounds of Appeal:**

2.1: That the CPIO vide his letter C.No. IV(16)Hqrs/LDH/RTI/[REDACTED] dated 30.10.2018 had replied the RTI application as "This information is not warranted to be disclosed to the applicant because the same is covered under the exemption in terms of Section 8(1)(h) of RTI Act, 2005".

2.2: The Appellant, being not satisfied, has filed an appeal dated 24.11.2018 (received on 30.11.2018) on the ground that CPIO has not supplied the information in r/o RTI application dated 03.09.2018.

**3. Reply to the Notice by CPIO:**

3.1: A notice vide C.No. IV(16)Hqrs/ Ldh/RTI-Appeal/[REDACTED] dated 04.12.2018 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO vide his letter C.No. IV(16)Hqrs/LDH/RTI/[REDACTED] dated 19.12.2018 has replied to the notice that the information was called for from the concerned branches i.e. Hqrs adjudication and Legal branch and in response to this the requisite information has now been supplied by the concerned branches.

**4. Discussion and Findings:**

- 4.1: I have carefully examined the appeal filed by the Appellant, CPIO's reply to notice and relevant provisions of the Act.
- 4.2: I find that the appellant was aggrieved for not supplying the information requested by the appellant vide RTI application dated 03.09.2018.
- 4.3: Now the CPIO has prepared the desired information.

In view of the above, I pass the following order.

**5. Order:**

I direct the CPIO to provide the information available directly to the appellant within 10 days from the receipt of this order.

*[Handwritten Signature]*  
19.12.2018

(Rajan Lachala, IRS)  
1<sup>st</sup> Appellate Authority (RTI)  
GST Commissionerate, Ludhiana.

**Speed Post/copy to:-**

- (i) Shri [REDACTED] -144003
- (ii) The Deputy Commissioner cum CPIO,  
GST Commissionerate-Ludhiana.

-Y6-

केन्द्रीय माल एवं सेवाकर आयुक्तालय  
CENTRAL GST COMMISSIONERATE  
लुधियाना/Ludhiana  
30 NOV 2018  
आपि संख्या..... 6059

Before 1<sup>st</sup> Appellate Authority RTI Act 2005

CGST Commissionerate, Ludhiana

[REDACTED]  
[REDACTED]  
[REDACTED]

for nla  
30.11.2018  
Supda (RTI)

..... Appellant

Verses

The Central Public Information Officer,

CGST Commissionerate, Ludhiana

..... Respondent

Appeal against non-supply of requested for information vide letter dated 03.09.2018 under RTI Act 2005 by the CPIO, CGST Commissionerate, Ludhiana as conveyed by the said CPIO vide letter C.No.IV(16)HQRS/LDH/RTI/[REDACTED] dated 30.10.18 received on 05.11.2018.

Facts of the case

1. That the appellant had requested for information under RTI Act 2005 vide his letter dated 03.09.2018 to the CPIO, CGST Zone, Chandigarh, which is enclosed as Annexure A, and is self-explanatory.
2. That the CPIO CGST Zone, Chandigarh transferred the said RTI application to the GST Commissioners' offices falling under the jurisdiction of CGST Zone, Chandigarh vide his letter C.No.44/Zone-14/[REDACTED] (received on 01.10.2018) (copy enclosed as Annexure B).
3. That in the said CGST Zone, office of the Commissioner, CGST Commissionerate, Ludhiana also falls, to whom the RTI application has been transferred as stated above.
4. That the said CPIO, CGST Commissionerate, Ludhiana has not supplied the information and vide his letter C.No.IV(16)HQRS/LDH/RTI/[REDACTED] dated 30.10.18 received on 05.11.2018 (copy enclosed as Annexure C) stated that the disclosure of the information is not warranted because the same is covered under the exemption in terms of Section 8(1)(h) of the

[REDACTED]



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RTI Act 2005 relying upon the case of "Vinod Kumar V/s Directorate General of Central Excise Intelligence (No.CIC/AT/A/2010/000910/SS dated 31.05.11)".

Hence, appeal is being filed.


### Grounds of Appeal

- i. That the basis of non-supply of requested for information is illegal and unwarranted as the CPIO has failed to appreciate the provisions contained in RTI Act, 2005 which defines information under Section 2(f) of the said Act as under :

*"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;*

Apart, the Apex Court in **C.A. No.6454 of 2011**, arising out of **SLP(C) No. 7526 (2009)** in the case of **Central Board of Secondary Education & Anr V/s Ajitya Bandopadhyay & Others** have commented as under:

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 analyzed 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.

- ii. That while denying the information, the CPIO has taken the shelter of Section 8(1)(h) of RTI Act 2005 by saying that the information can't be provided because it would impede the process of investigation or apprehension or prosecution of offenders. While doing so, the CPIO has relied upon the case of Vinod Kumar V/s Directorate General of Central Excise Intelligence which relates to seeking of information relating to investigations. The version of CPIO is completely
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baseless as no information was requested for in respect of investigations or cases under the process of approval for launching of prosecutions. Simply relying upon Section 8(1)(h) of the RTI Act is not sufficient and the CPIO was required to show as to how the requested for information will impede the process for seeking the liberty/ exemption of the provisions of the RTI Act 2005. Thus the CPIO has adopted a baseless route to deny the information.

- iii. That the following case laws clearly stipulate that Section 8(1)(h) of the RTI Act cannot be attracted in the way the CPIO has taken the shelter:

**Delhi High Court**

**B S Mathur vs Public Information Officer Of ... on 3 June, 2011**

Author: S. Muralidhar

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 295/2011

Reserved on: 23rd May 2011

Decision on: 3rd June 2011

B S MATHUR

..... Petitioner

Through: Mr. Amit S. Chadha, Senior Advocate with  
Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER  
OF DELHI HIGH COURT

..... Respondent

Through: Mr. Rajiv Bansal, Advocate.

AND

W. P. (C) 608/2011

B S MATHUR

..... Petitioner

Through: Mr. Amit S. Chadha, Senior Advocate with



Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER

OF DELHI HIGH COURT

..... Respondent

Through: Mr. Rajiv Bansal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

### JUDGMENT

03.06.2011

1. In Writ Petition (Civil) 295 of 2011, the Petitioner challenges an order dated 6th September 2010, passed by the Central Information Commission („CIC“) dismissing his appeal against an order dated 28th April 2010 of the Appellate Authority of the High Court of Delhi under the Right to Information Act, 2005 („RTI Act“) declining to furnish the complete information sought by him in RTI Application No. 184 of 2008.

2. In Writ Petition (Civil) 608 of 2011 the Petitioner challenges the same order insofar as it relates to the dismissal of his Appeal Nos. 314 and 315 dated 13th August 2010 in relation to RTI Application Nos. 35 and 36 of 2010.

#### Factual matrix

3. The Petitioner was a Member of the Delhi Higher Judicial Service. Pursuant to a Resolution dated 26th August 2008 of the Full Court, a Committee of five Judges of the High Court heard the Petitioner on 29th May 2008 and decided that it was desirable to place him under suspension pending disciplinary action. While disposing of his writ petition challenging the order of suspension, the Supreme Court by an order dated 13th August 2008 directed that the inquiry against the Petitioner may be completed within a period of five months. On 3rd November 2008, a memorandum was issued to the Petitioner furnishing him the articles of charges, statement of imputation of misconduct, list of witnesses and documents along with the documents. The Petitioner's statement of defence was considered by the Full Court at a meeting held on 27th November 2008. A learned Judge of the High Court was appointed as the Inquiry Officer.

4. On 19th August 2008, the Petitioner filed an application No. 149 of 2008 under the RTI Act seeking the following information:

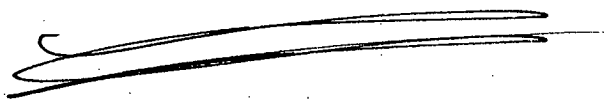
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- (i) Copy of directions of Committee of Hon'ble Inspecting Judges allowing Registrar (Vig.) to scrutinise personal file of applicant containing intimations supplied under the Conduct Rules
  - (ii) Copy of the report of the Registrar (Vig.) dated 06.02.2008 in compliance of (i) above.
  - (iii) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges dated 14.2.2008.
  - (iv) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges held on 03.04.2008.
  - (v) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges dated 14.05.2008.
  - (vi) Copy of the minutes of the meeting of the Administrative Committee held on 19.5.2008.
  - (vii) Copies of the comments and/or material supplied/placed before the committee of the Hon'ble Inspecting Judges.
  - (viii) Copies of the comments and/or material supplied/placed before the Hon'ble Full Court prior to its meeting dated 26.5.2008.
  - (ix) Copies of the Agenda and the minutes of the Hon'ble Full Court held on 26.5.2008.
  - (x) Copy of the minutes/decision of the Committee headed by the Hon'ble Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.
  - (xi) Subject and date wise list of all the intimations submitted by the applicant to the Hon'ble High Court from time to time since the date of his joining service till date.
  - (xii) Copy of the minutes/decision of the Committee of the Hon'ble Inspecting Judges held post intimation dated 1.6.2007 by the applicant.

5. On 16th September 2008, the Public Information Officer („PIO“) of the High Court of Delhi informed the Petitioner that the information sought by him could not be supplied as "the same is exempt under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Delhi High Court (Right to Information) Rules, 2006" (hereinafter „the Rules“).

6. Aggrieved by the above decision, the Petitioner filed Appeal No. 21 of 2008 which was dismissed by the Appellate Authority on 31st October 2008. It was held by the Appellate Authority that the documents referred at serial No. (xi) could be supplied to the Petitioner. However, as far as the remaining information was concerned it was observed that the disciplinary authority was still examining the material for holding inquiry and, therefore, disclosure of any such material at that stage might impede the inquiry.

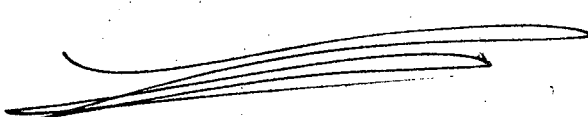
7. Aggrieved by the above decision, the Petitioner filed Appeal No. 203 of 2009 before the CIC on 16th December 2008.

8. After completion of the inquiry the Inquiry Officer submitted a report on 18th November 2009. With the inquiry being over, on 23rd January 2010 the Petitioner filed another RTI Application No. 35 of 2010 seeking the following information:

- i. Copy of directions of Committee of Hon'ble Inspecting Judges allowing Registrar (Vig.) to scrutinize personal file of applicant containing intimations supplied under the Conduct Rules.
  - ii. Copy of report of the Registrar (Vig.) dated 6.2.2008 in compliance of (i) above.
  - iii. Copy of the minutes of the meeting of the Committee of the Hon'ble the Inspecting Judges dated 14.2.2008.
  - iv. Copy of the minutes of the meeting of the Committee of the Hon'ble Inspecting Judges dated 3.4.2008.
  - v. Copy of the minutes of the meeting of the Committee of the Hon'ble Inspecting Judges dated 14.5.2008.
  - vi. Copy of the minutes of the Administrative Committee held on 19.5.2008.
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- vii. Copies of comments and/or material supplied/placed before the Committee of the Hon<sup>ble</sup> Inspecting Judges to its meeting dated 26.5.2008.
  - viii. Copies of comments and/or material supplied/placed before the Committee of the Hon<sup>ble</sup> Inspecting Judges to its meeting dated 26.5.2008.
  - ix. Copy of the agenda and minutes of the Full Court meeting held on 26.05.08.
  - x. Copy of the minutes/decision of the Committee headed by the Hon<sup>ble</sup> Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.
  - xi. Copy of the minutes/decision of the Committee of the Hon<sup>ble</sup> Inspecting Judges held post intimation dated 1.6.2007 by the applicant.
  - xii. Copy of the decision of the Committee of the Hon<sup>ble</sup> Judges headed by Hon<sup>ble</sup> Chief Justice on representation/review petition filed by the applicant on 28.6.2008.
  - xiii. Copy of the minutes/decision of the meeting of the Committee above (xii) which was communicated to the applicant vide communication No. 1222/DHC/Gaz/VI.E.2(a)/2008 dated 3.7.2008.
  - xiv. Copy of the agenda for Full Court meeting dated 29.9.2008.
  - xv. Copy of the minutes of the meeting regarding the decision taken by the Full Court on 29.9.2008 qua applicant.
  - xvi. Copies of agenda and the minutes of the Full Court meeting dated 1.9.2008.
  - xvii. Copy of the minutes of the Administrative Committee held on 4.9.2008.
  - xviii. Copies of the agenda and minutes of the Full Court meeting held on 5.9.2008.

9. The Petitioner also filed Application No. 36 of 2010 in which he sought the following information:

- i. Copy of agenda for the Full Court meeting dated 27.09.2008 with respect to the applicant.
  - ii. Copy of the minutes of the Full Court meeting dated 27.09.2008.
  - iii. Details of the number and names of the Judges (who) actually participated in the discussion for and against the agenda.
  - iv. Details of the number and names of the Judges who participated in the discussion and approved the finalization of Article of Charges subsequently issued against the applicant.
  - v. Copy of the minutes of the Full Court meeting dated 27.11.2008.
  - vi. Copy of the agenda laid before the Full Court meeting held on 27.11.2008.
  - vii. Detail as to how many inquiries have been initiated against the applicant. If more than one, then furnish the detail about the pending inquiry preliminary or otherwise, if any.
  - viii. Copy of the agenda and minutes of the Full Court meeting held on 18.08.2009.
  - ix. Copy of the agenda and minutes of the Full Court meeting held on 18.11.2009.
  - x. Copy of the agenda and minutes of the Full Court meeting held on 15.12.2009.
  - xi. Copy of the agenda and minutes of the Full Court meeting held on 15.01.2010.
  - xii. Copy of the criteria/policy of the Hon<sup>ble</sup> High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2007.
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xiii. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2008.

xiv. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judges and District Judges in the year 2009.

10. By an order dated 16th February 2010 the PIO of the High Court declined the information at serial Nos. (i) to (xiii) of the Application No. 35 of 2010 under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Rules. Part of the information sought at serial Nos. (xiv) to (xviii) was disclosed. By a separate order dated 16th February 2010 passed in Application No. 36 of 2010, the information at serial Nos. (i) to (iii) was declined stating that no Full Court Meeting was held on 27th September 2008. Information at serial No. (vii) was also declined claiming exemption under Section 8 (1)

(h) RTI Act. Aggrieved by the PIO's orders dated 16th February 2010 the Petitioner filed Appeal Nos. 16 and 17 of 2010 before the Appellate Authority of the High Court.

11. On 28th April 2010, the Appellate Authority partly allowed Appeal No.16 of 2010 by directing the Full Court Agenda to be supplied to the Petitioner. However, the decision of the PIO declining information at serial No. (vii) of Application No. 36/2010 was upheld. By a separate order on the same date the Appellate Authority dismissed Appeal No. 17 of 2010 by noting that the information sought at serial Nos. (i) to (xiii) in the application 35/2010 was a verbatim reproduction of the information sought at serial Nos. (i) to (xi) of the earlier Application No. 184 of 2008 in respect of which an appeal was pending before the CIC and notice has been issued to the High Court in the said appeal. The representation made by the Petitioner against the Inquiry report was under consideration by the High Court. The Appellate Authority held that the matter was sub judice before the CIC and any decision taken in the appeal might conflict with the decision to be taken by the CIC.

12. Aggrieved by the orders dated 28th April 2010, the Petitioner filed Appeal Nos. 314- 15 of 2010 before the CIC. The CIC heard the Petitioner's Appeal Nos. 203 of 2009 and 314-15 of 2010 together.

13. Meanwhile, on 14th July 2010 the Full Court of the High Court accepted the inquiry report dated 18th November 2009 and imposed a penalty of withholding two increments without cumulative effect on the Petitioner. On 11th August 2010, the Full Court decided not to extend the superannuation of the Petitioner beyond 58 years by invoking Rule 26 B of the Delhi Higher Judicial Service Rules, 1971 („DHJS Rules“).

14. On 6th September 2010, the CIC dismissed the Petitioner's three appeals by a common order. The CIC noted that at the hearing on 30th August 2010, the Joint Registrar („JR“) of the High Court submitted that there were two investigations. The second investigation was initiated "even before the closure of the first with wider ramification, which is still under process and regarding which information could not be disclosed under Section 8 (1) (h)". It was stated that "this investigation file is with the Vigilance Division of the Delhi High Court to which even the Registry does not have access." The operative portion of the impugned order dated 6th September 2010 of the CIC reads as under:

"On the question of whether there is an attempt to mislead the Supreme Court this Commission has no authority to opine. Nevertheless, it has now been clarified to appellant Shri Mathur that there were, in fact, two enquiries, one of which stands completed and the other that is still in progress. It is the contention of respondents that disclosing even the nature of the second enquiry will seriously compromise the enquiry itself. Insofar as the appellant's plea that he should have been informed of why he is being penalized, this information had already been provided to him with regard to the enquiry that has been completed on the basis of which report he has, in fact, been penalised. When and if a formal enquiry is initiated in consequence of the second investigation appellant Shri Mathur will be duly informed of the consequences of the investigation. However, before that investigation is complete disclosure of any information would seriously undermine the process. PIO has separately disclosed a paper in confidence to this Commission providing the subject of the ongoing investigation.

The Commission has already, in our interim decision, ruled on the question of application of exemption under Sec. 8 (1) (h) to departmental investigation. In the hearing, the question of appellant on the number of investigations

initiated by the High Court of Delhi stands answered in the hearing. On the remaining issue of whether the case merits application of Sec. 8(1) (h) to the simple question enquiring on the subject of the investigation, to which this Commission is privy, remains to be decided. In the view of the Commission, disclosure of the subject of investigation will "impede" the process of investigation. Delhi High Court in W.P. (C) 7930/2009 held "The word impede therefore does not mean total obstruction and compared to the word obstruction or prevention, the word impede requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle."

Contextually in Section 8 (1) (h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not mere belief and a camouflage to deny information. To claim exemption under the said sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. In this context the Commission is satisfied that disclosure of the subject will indeed "impede" the process of investigation in view of the peculiar facts and circumstances of this case. The appeals are disposed of accordingly."

15. While hearing W.P. (C) 608 of 2011 on 1st February 2011 the following order was passed by this Court:

- "1. Mr. Chadha states that the information at Serial No. (i) to (xv) & (xvii) in the first application (details of which are at Pages 53 and 54 of the paper book) as well as the information sought in Serial No. (i) to (iii) & (vii) of the second application (details of which are at Page 56 of the paper book) have not been furnished to the Petitioner on the ground that there is a second inquiry pending against the Petitioner.
- 2. Mr. Bansal, appearing for the Respondent on advance notice, states that a chart showing how much of the above information has already been provided to the Petitioner and how much of it is connected with the second inquiry will be placed on record by the Respondent by way of an affidavit within a period of three weeks. The affidavit will also indicate when the second inquiry commenced.
- 3. List on 7th March 2011."

16. An affidavit was filed on behalf of the High Court on 25th March 2011 enclosing a copy of the information sought and to what extent information sought was connected with the second inquiry. Further, in para 5 it was stated as under:

"That it is pertinent to mention here that when the case of the second enquiry was placed before Hon'ble the Chief Justice for directions, His Lordship has been pleased to direct on 03.03.2011 that the enquiry against Shri B.S. Mathur (petitioner) be kept in abeyance."

17. Mr. Amit S. Chadha, learned Senior Counsel appearing for the Petitioner submitted that once the second inquiry has been kept in abeyance, there was no question of the disclosure of information as sought by the Petitioner "impeding such inquiry". At the hearing on 21st April 2011 the Court was shown the original file. The Court then observed in its order passed on that date as under:

"3. In light of the above development, it requires to be examined whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) of the Right to Information Act, 2005. On this specific aspect Mr. Bansal, learned counsel for the Respondent states that the matter will be considered once again and a decision taken within three weeks."

18. At the hearing on 23rd May 2011 Mr. Rajiv Bansal learned counsel appearing for the Respondent stated that he had been sent a letter dated 21st May 2011 enclosing therewith a note containing the "stand" of the Delhi High Court pursuant to the order dated 21st April 2011. The note states that "the documents in question, the copy of which is sought by Shri B.S. Mathur related to the first enquiry which is already over" and the second inquiry "are so much interconnected that it is difficult to segregate the two to avoid any kind of bearing on the investigation ordered to be kept in abeyance for present." The next reason is that the CIC had in its impugned order already held that "disclosure of the subject will indeed „impede" the process of investigation in view of the peculiar facts and circumstances." The third reason is that "it would be desirable to stick to the stand taken in the affidavit" dated 25th March 2011 filed by the Respondent in these proceedings. Fourthly the note states that the Petitioner could be



supplied information against serial No. (vii) that the second inquiry "which was at the fact finding stage has been kept in abeyance at present." As far as the information at serial No. (vii) is concerned, the Petitioner already knew of it during the hearing of his appeals before the CIC.

19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would "impede" the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry.

20. The stand of the Respondent that the documents sought by the Petitioner "are so much interconnected" and would have a "bearing" on the second enquiry does not satisfy the requirement of showing that the information if disclosed would "hamper" or "interfere with" the process of the second enquiry or "hold back" the progress of the second enquiry. Again, the stand in the chart appended to the affidavit dated 25th March 2011 on behalf of the Respondent is only that the information sought is either "intricately connected" or "connected" with the second enquiry or has a "bearing" on the second enquiry. This does not, for the reasons explained, satisfy the requirement of Section 8 (1)

(h) RTI Act.

21. Mr. Bansal submitted that this Court could examine the records and determine for itself which of the information would if disclosed impede the second enquiry. This submission is untenable for the simple reason that it is not for this Court to undertake such an exercise. This is for the PIO of the High Court to decide. However, the PIO nowhere states that the disclosure of the information would "hamper" or "interfere with" the process of the second enquiry. There is consequently no need for this Court to form an opinion in that regard.

22. The reliance placed by the Respondent on the conclusion of the CIC in the impugned order that the disclosure of the information would impede the process of investigation "in the peculiar facts and circumstances" begs the question for more than one reason. First, there is a marked change in the circumstances since the impugned order of the CIC. The second enquiry has, by a decision of the Chief Justice of 3rd March 2011, been kept in abeyance which was not the position when the appeals were heard by the CIC. Secondly, it is difficult to appreciate how disclosure of information sought by the Petitioner could hamper the second enquiry when such second enquiry is itself kept in abeyance. The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. This burden the Respondent has failed to discharge.

23. It was submitted by Mr. Bansal that this Court could direct that if within a certain timeframe the second enquiry is not revived, then the information sought should be disclosed. This submission overlooks the limited scope of the present writ petition arising as it does out of the orders of the CIC under the RTI Act. It is not within the scope of the powers of this Court in the context of the present petition to fix any time limit within which the Respondent should take a decision to recommence the second enquiry which was kept in abeyance by the order dated 3rd March 2011 of the Chief Justice.



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24. No grounds have been made out by the Respondent under Section 8 (1) (h) of the RTI Act to justify exemption from disclosure of the information sought by the Petitioner.

25. The writ petitions are accordingly allowed and the impugned order dated 6th September 2010 of the CIC is hereby set aside. Information to the extent not already provided in relation to the three RTI applications should be provided to the Petitioner by the Respondent within a period of four weeks from today. While providing the information it will be open to the Respondent to apply Section 10 RTI Act where required.

S. MURALIDHAR, J. UNE 3, 2011 akg

Delhi High Court

Bhagat Singh vs Chief Information Commissioner ... on 3 December, 2007

Equivalent citations: 146 (2008) DLT 385

Author: S R Bhat

Bench: S R Bhat

JUDGMENT S. Ravindra Bhat, J.

1. The Petitioner in the present writ proceeding approaches this Court seeking partial quashing of an order of the Central Information Commission and also for a direction from this Court that the information sought by him under the Right to Information Act, 2005 (hereinafter referred to as 'the Act') should be supplied with immediate effect.

2. The facts relevant to decide the case are as follows. The petitioner was married in 2000 to Smt. Saroj Nirmal. In November 2000 she filed a criminal complaint alleging that she had spent/paid as dowry an amount of Rs. Ten Lakhs. Alleging that these claims were false, the Petitioner, with a view to defend the criminal prosecution launched against him, approached the Income Tax Department with a tax evasion petition (TEP) dated 24.09.2003. Thereafter, in 2004 the Income Tax Department summoned the Petitioner's wife to present her case before them. Meanwhile, the Petitioner made repeated requests to the Director of Income Tax (Investigation) to know the status of the hearing and TEP proceedings. On failing to get a response from the second and third Respondents, he moved an application under the Act in November, 2005. He requested for the following information:

(i) Fate of Petitioner's complaint (tax evasion petition) dated 24.09.2003

(ii) What is the other source of income of petitioner's wife Smt. Saroj Nimal than from teaching as a primary teacher in a private school ?

iii) What action the Department had taken against Smt. Saroj Nimal after issuing a notice u/s 131 of the Income 'tax Act, 1961, pursuant to the said Tax Evasion Petition.

3. The application was rejected by the second Respondent (the Public Information Officer, designated under the Act by the Income Tax department) on 10th January 2006 under Section 8(1) of the Act, by reasoning that the information sought was personal in nature, relating to dowry and did not further public interest. The relevant portion of this provision is extracted below:

Exemption from Disclosure of Information: (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.

XXXXXXXXXXXXXXXX



(j) information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause un-warranted 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.

4. The petitioner, thereafter, appealed to third Respondent- the Appellate Authority which too rejected his request to access the information. While doing so, not only did he reiterate section 8(1)(j) as a ground for rejection but also observed that the information sought could also be denied under Section 8(1)(h), which is reproduced below:

(h) information which would impede the process of investigation or apprehension or prosecution of offenders

5. Against the order of the Appellate Authority, the petitioner filed a second Appeal on 1st March, 2006, before the Respondent No. 1, the Central Information Commission (hereafter 'the CIC') praying for setting aside the Orders of Respondent No. 2 and 3. The petitioner sought the following reliefs:

- a) issue directions to Respondent No. 2 and 3 to furnish information,
- b) to order an inquiry against Respondent's No. 2 and 3 for not implementing the Right to Information Act properly
- c) to impose penalties and disciplinary action against Respondent No. 2 and 3 under Section 20 of the RTI Act and
- d) to award cost of proceedings to be recovered from Respondent No. 2 and 3.

6. The CIC, on 8th May 2006 allowed the second appeal and set aside the rejection of information, and the exemption Clause 8(1) (j) cited by Respondents No. 2 and 3. The CIC further held that-

as the investigation on TEP has been conducted by DIT (Inv), the relevant report is the outcome of public action which needs to be disclosed. This, therefore, cannot be exempted u/s 8(1) (j) as interpreted by the appellate authority. Accordingly, DIT (Inv) is directed to disclose the report as per the provision u/s 10(1) and (2), after the entire process of investigation and tax recovery, if any, is complete in every respect.

7. The Petitioner contends that the first Respondent was correct in allowing disclosure of information, by holding that Sections 8(1)(j) did not justify withholding of the said information, but incorrectly applied Sec 8(1)

(h) of the Act. He submits that the disclosure of the said information could not in any way impede the investigation process and that the Respondents have not given any reasons as to how such disclosure would hamper investigation. On the other hand, he contends, the information would only help in absolving himself from the false prosecution and criminal harassment. Moreover, he contends that under Section 10 of the Act non-exempt information could have been provided to him after severing it from the exempt information. He in fact applied to the second and third respondent under the aforesaid provision but was informed that the matter was still under investigation.

8. In August 2006 the petitioner filed a contempt petition before the CIC for non compliance of order dated 8th May 2006. Pursuant to this, the CIC asked the second and third respondent to take necessary action. The Petitioner also wrote a letter to the Chief Information Commissioner, seeking his indulgence for compliance of impugned order dated 8th May 2006. Pursuant to this, the first Respondent issued a notice to the other Respondents asking for comments with respect to non-compliance of the order and to show cause as to why a penalty should not be imposed as per Section 20 of the Act. On 15th February, 2007, the Petitioner again

appealed to the first Respondent requesting him to impose penalties on the concerned officer of Income Tax Department (Investigation) for non compliance of the order of the Central Information Commission.

9. The petitioner in this writ petition requests this Court to partially quash the order of the first Respondent dated 8th May 2006 in so far as it directs disclosure after the entire process of investigation and tax recovery is completed; to direct the other respondents to forthwith supply the information sought; to direct the CIC to impose penalties under Section 20 and to compensate him for damages suffered due to non supply of information. It was urged that the CIC, after appreciating that there was no merit in the plea regarding applicability of Section 8(1)(h), and being satisfied, should have not imposed the condition regarding completion of proceedings, which could take years. Such power to restrict the access to information did not exist under the Act.

10. The second and third respondents, pursuant to an order of this Court aver that the Petitioner misconstrued letters sent by the Income Tax officer and the Director General of Income Tax in relation to the fact that the investigations are complete. They submit that although there was a preliminary investigation undertaken by the Income Tax officer, Delhi and a report was submitted pursuant to that, the Assessing officer has issued notices under section 148 of the Income Tax Act, 1961 and the investigation and procedures under the assessing officer are yet to be completed. Learned Counsel Sonia Mathur, appearing on behalf of the Respondents submitted that, as per the directions of the CIC, the information sought would be supplied after 31st March 2008, after completion of investigation and recovery.


11. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, assures, by Article 19, everyone the right, 'to seek, receive and impart information and ideas through any media, regardless of frontiers'. In Secretary Ministry of Information and Broadcasting, Govt. of India and Orsv. Cricket Association of Bengal and Ors. 1995 (2) SCC 161] the Supreme Court remarked about this right in the following terms:

The right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them.

This right, to information, was explicitly held to be a fundamental right under Article 19(1)(a) of the Constitution of India for the first time by Justice KK Mathew in State of UP v. Raj Narain, . This view was followed by the Supreme Court on a number of decisions and after public demand, the Right to Information Act, 2005 was enacted and brought into force.

12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release



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of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view ( See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor v. State of Tamil Nadu V. Tulasamma v. Sessa Reddy . Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.

14. In the present case, the orders of the three respondents do not reflect any reasons, why the investigation process would be hampered. The direction of the CIC shows is that the information needs to be released only after the investigation and recovery in complete. Facially, the order supports the petitioner's contention that the claim for exemption made by respondent Nos. 2 and 3 are untenable. Section 8(1)(j) relates only to investigation and prosecution and not to recovery. Recovery in tax matters, in the usual circumstances is a time consuming affair, and to withhold information till that eventuality, after the entire proceedings, despite the ruling that investigations are not hampered by information disclosure, is illogical. The petitioner's grouse against the condition imposed by the CIC is all the more valid since he claims it to be of immense relevance, to defend himself in criminal proceedings. The second and third respondents have not purported to be aggrieved by the order of CIC as far as it directs disclosure of materials; nor have they sought for its review on the ground that the CIC was misled and its reasoning flawed. Therefore, it is too late for them to contend that the impugned order contains an erroneous appreciation of facts. The materials available with them and forming the basis of notice under the Income Tax act is what has to be disclosed to the petitioner, i.e the information seeker.

15. As to the issue of whether the investigation has been complete or not, I think that the authorities have not applied their mind about the nature of information sought. As is submitted by the Petitioner, he merely seeks access to the preliminary reports investigation pursuant to which notices under Sections 131, 143(2), 148 of the Income Tax have been issued and not as to the outcome of the investigation and reassessment carried on by the Assessing Officer. As held in the preceding part of the judgment, without a disclosure as to how the investigation process would be hampered by sharing the materials collected till the notices were issued to the assessee, the respondents could not have rejected the request for granting information. The CIC, even after overruling the objection, should not have imposed the condition that information could be disclosed only after recovery was made.

16. In view of the foregoing discussion the order of the CIC dated 8th May 2006 in so far as it withholds information until tax recovery orders are made, is set aside. The second and third respondents are directed to release the information sought, on the basis of the materials available and collected with them, within two weeks.

17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lack-lustre approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act, cannot be issued.

18. The writ petition is allowed in the above terms. In the peculiar circumstances of the cases, there shall be no order on costs.

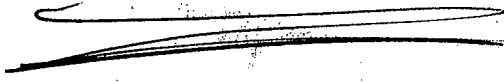


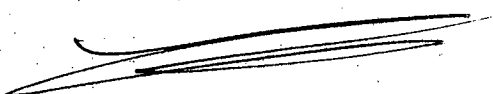
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Central Information Commission CIC/OK/A/08/00893-AD Dated May 15, 2009 Name of the Applicant : Mr. Sunil Kumar Bansal Name of the Public Authority : Southern Railway, Chennai Background 1. The Applicant filed his RTI application dated 21.04.08 with the CPIO, Southern Railways, Chennai requesting for the following documents: i) Report sent by the Southern Railway Vigilance to the Board for obtaining the first stage advice of the CVC – Ref – Charge memo vide No. P (G)CON/1/17/2205 dated 15.4.05. ii) Copy in full – the 1st stage advice of the CVC in above case. 2. The CPIO replied on 02.05.2008 denying the information “.... since the D&AR process is yet to come to finality, u/s 8(1)(h) of RTI Act 2005....” The information was also denied on the ground that the same could not be parted with due to the embargo created under provisions of u/s 8(1)(e) of the RTI Act 2005 since the report sought by the Applicant contained information on the other officers and officials other than the Applicant. 3. Being denied information, the Applicant filed a First Appeal on 09.05.2008 with the Appellate Authority reiterating the contents of his RTI request. Among the various arguments and submissions made by the Appellant the following are the primary ones: i) The Appellant contended in his Appeal the inapplicability of both the exemptions as sought by the CPIO under provisions of Section 8(1) (e) and Section 8(1) (h) of the RTI Act 2005 in the instant case. ii) Reliance was also placed by the Appellant on the judgment passed by the Hon'ble High Court of Delhi in the matter of Bhagat Singh Vs. Central Information Commission, followed by the decision passed by the Hon'ble Chief Information Commissioner in the matter of Dhirendra Krishna vs. CBI in Case No. CIC/WB/2008/00964, as well as couple of other decisions passed by the Commission. iii) In the Appeal the Appellant also referred to the letter of the Adviser Vigilance, Railway Board, Ministry of Railways addressed to the General Manager, Southern Railway stating inter alia that although clauses 8(1) (g), (h) and (j) of the RTI Act 2005, exempts the Vigilance Department from divulging any information while investigations are in progress, the same protection ceases to exist after the completion of the enquiry. The Appellant states that since in his case the investigation (enquiry) was completed long back and even the chargesheet was issued to him, hence the exemption as sought by the CPIO under Section 8(1)(h) of the RTI Act 2005 is not applicable in view of the clear position of law which is reaffirmed in the letter of the Adviser Vigilance, Railway Board, Ministry of Railways. iv) The Appellant also challenged the act of non application of the provisions of the Section 11 of the RTI Act 2005 by the CPIO while dealing with the Appellant's request for information even if it is considered that the information sought contained information about some other officers apart from the Appellant. The Appellate Authority replied vide the letter dated 03.06.2008 reiterating the CPIO's arguments while denying the information and upholding the decision of the CPIO. 4. Being thus aggrieved by constant denial of information, the Appellant filed an Appeal before the Central Information Commission on 09.06.2008. The Appellant reiterated the entire facts of the case in his contentions and addressed arguments on the following key issues: i) the First Appeal was disposed off by the CPIO instead of the Appellate Authority which is the proper course of law, as has also been held in a decision of the Commission being CIC/AT/A/2007/00080 dated 04.07.2007; ii) despite specific request of the Appellant, the First Appeal was disposed off by the CPIO [not even the Appellate Authority] without granting any hearing to the Appellant, which is against the spirit of law as also held by the CIC in decisions CIC/OK/A/2007/01453 dated 09.04.2008 and CIC/AT/A/2006/00072 dated 31.05.2006; iii) the CPIO has failed to address with the specific issues raised in the First Appeal while disposing off the Appeal vide the non speaking order dated 03.06.2008; iv) inapplicability of the provisions of Section 8 (1) (e) of the RTI Act 2005 in the instant case specially in view of the Central Vigilance Commission's letter no. 99/VGL/66 dated 28.09.2000 directing all Ministries to supply its first stage advice and second stage advice to the concerned Charged Official in keeping with the principles of natural justice and fair play. Furthermore reliance was also placed on the CIC decision no. 1323/IC (A)/2007 dated 10.10.2007 deciding similar issues in favor of disclosure of information; v) inapplicability of the provisions of Section 8 (1) (h) of the RTI Act 2005 while placing reliance on CIC decisions on this issue as also the decision of the Hon'ble High Court of Delhi in the matter of Bhagat Singh vs. CIC deciding the scope of applicability of the Section 8 (1)(h) of the RTI Act 2005; vi) deliberate non application of the provisions of Section 11 of the RTI Act 2005 by the Respondent Public Authority;

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vii) insufficiency of the partial information supplied etc. 5. The Bench of Mrs. Annapurna Dixit, Information Commissioner, scheduled the hearing for May 15, 2009 and a communication dated 29.04.2009 was accordingly sent to the parties intimating the date of hearing of the appeal. 6. Mrs. K. Bhuvaneshwari, PIO & Dy. CVO/A, Mr. A.P. Mishra, Appellate Authority & AGM and Mr. B Nageshwara Rao, APIO & JD/PG represented the Public Authority. 7. The Applicant was not present during the hearing. Decision 8. The Respondent Public Authority submitted their reply to the Appeal vide a communication dated 12.05.2009. However the rebuttal was neither too specific nor directly answering the contentions raised by the Appellant. While dealing with the exemption sought by The Respondent on the ground of Section 8 (1) (h) of the RTI Act 2005, it is noted that the Respondent has submitted that relevant portion of the CVC'S 1st stage advice has been provided as per CVC circular No. 99/VGL/66 dated 28.09.2000. However, perusal of the facts of the case clearly indicates that the investigation in the case is already over and the Appellant has been chargesheeted already, hence there can be no apprehension so as to seek exemption from disclosure of information under provisions of Section 8 (1) (h) of the RTI Act 2005. Moreover even natural justice demands that the information relevant to the accused should be disclosed in order that the accused be granted opportunity to prove his innocence. 9. The Commission, while considering the second argument of the Respondent with respect to Section 8 (1) (e) of the RTI Act 2005 about denial of disclosure of information since the same is held in fiduciary capacity; the meaning of the word "fiduciary relationship" was analysed from various perspectives and the following connotations could be summarised: • Various decisions of the Commission indicate that fiduciary relationship is a relationship of trust which may also be between an individual and a juristic person such as Government, University or a Bank. The word "fiduciary" is derived from the Latin fiducia meaning "trust", a person (including a juristic person such as Government, University or Bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. • The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a particular transaction or one's general affairs of business. • In Fiduciary Relationship, a person with the legal duty to act primarily for another's benefit enjoys a position of trust, good faith and responsibility. Thus the word "Fiduciary" is often used as an alternative term for "trustee". In the instant case, no such relationship emerges or exists giving rise to "Fiduciary relationship". Hence, the Commission has arrived at the conclusion that CVC was not holding any document in confidence, but inquired into the whole incident and prepared an Inquiry Report and handed it over to Southern Railways. Therefore, the instant case does not fall within any of the categories of the definitions as stated hereinabove. Hence the plea of the Respondent Public Authority seeking exemption under the garb of "fiduciary relation" is incongruous. Accordingly, the Commission decides that since the documents have not been held in a fiduciary capacity since no "fiduciary relationship" existed, hence the denial of the Public Authority to furnish the information sought by the Appellant under the garb of the Section 8 (1) (e) is completely ruled out. 10. In the light of the settled law as mentioned hereinabove and in view of the peculiar facts of this case, the Commission hereby directs the Respondent to disclose the information asked for by the Appellant by 10th June 2009. 11. Appeal is disposed off accordingly in the above terms. (Annapurna Dixit) Information Commissioner Authenticated true copy: (G.Subramanian) Asst. Registrar  
Cc: 1. Mr.Sunil Kumar Bansal Deputy Chief Engineer/Works O/o General Manager Southern Railway Headquarters Office 2nd Floor, Park Town Chennai 600 003 2. The CPIO Southern Railway Headquarters Office Vigilance Branch Chennai 600 003 3. The Appellate Authority Southern Railway Headquarters Office Vigilance Branch Chennai 600 003 4. Officer in charge, NIC 5. Press E Group, CIC

- iv. That without prejudice to above, it is needless to mention here that there are 5 Commissionerates in the Chandigarh Zone and the CPIOs' of all the Commissionerates i.e 4 in number except CGST Commissionerate, Ludhiana have already supplied the information (details
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- given in Annexure 'D') at their level itself, correctly appreciating that the information pertains to Commissionerate office and this is a fact which is evident from the plain reading of RTI request in question.
- v. That moreover, it is pertinent to mention here that the said RTI application was also transferred to the Divisions and Sub-Commissionerate falling under the CGST Commissionerate, Ludhiana by the CPIO (himself) in question vide letter C.No.IV(16)HQRS/LDH/RTI/[REDACTED] dated 10.10.18 particularly when information requested for was related to the Commissionerate office itself and surprisingly all the mentioned formations have already supplied the available information although the same is not complete being pertaining to the Commissionerate office as contended by most of the CPIOs' of the individual Divisions and it all shows that CPIO CGST Commissionerate Ludhiana has worked in a casual way.
- vi. That discussions made in para iv and v above speak ill-will on the part of CPIO CGST Commissionerate Ludhiana in denying the information willfully and intentionally, as if he was sure of exemption under Section 8(1)(h) of the RTI Act 2005, then there was no need to issue a letter to Sub-Commissionerate Mohali and Divisions falling under his charge as mentioned in Para v above. It further shows that the CPIO has tried to derail the things without application of mind i.e. in the capacity All India Officer too; to which public talk day-to-day when the question of working of Govt. administration comes. The things never stop at this stage as he in the capacity of CPIO, CGST Central Division Ludhiana too has sent a reply to RTI request in question without attracting the provisions of Section 8(1)(h) of the RTI Act 2005. In the capacity of CPIO of Ludhiana Commissionerate, he replied on 30.10.18 attracting the provisions of Section 8(1)(h) of the RTI Act 2005 and in the capacity of CPIO CGST Central Division Ludhiana, reply was straightaway given on 02.11.18. But what should be the conclusion? Either he gained knowledge on 02.11.18 that provisions of Section 8(1)(h) of the ibid Act are not applicable or he is working in an absentee way. Sending of wrong reply in the capacity of CPIO CGST Commissionerate Ludhiana does not speak ill-will of the CPIO itself but it puts bad image of the Commissionerate office too. Anyhow if he had gained knowledge on 02.11.18, he could have amended letter dated 30.10.18 issued in the capacity of CPIO CGST Commissionerate Ludhiana and should have supplied the information but this is not done. It all shows that CPIO under reference has worked in a casual way derailing the matter and putting extra expenditure on the public exchequer, in addition to tarnishing the image of Ludhiana Commissionerate and CCU office which is very painful to the appellant in the capacity of citizen.
- vii. That further the CPIO, CGST Commissionerate, Ludhiana has not only denied the requested for information willfully but has tried to derail the things by misusing the public position at government cost, inspite of the fact that public servants are required to be sincere to the government. Often it is noticed in our country, that public is put to the inconvenience by the public authorities, and they are successful because the senior one to the concerned, save them because of the reasons broadly known to everyone, but when such unbecoming servants of government face heat of good and loyal officers, they find no way. Had the CPIO in question; the only one in the Zone in as far as RTI request under reference is concerned, been sincere to the government, expenses incurred in compliance to transfer of RTI request to the Sub-Commissionerate Mohali and Divisions of this very Commissionerate as well as valuable time
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and energy of the staff of lower formations, which are already coping-up with shortage of staff could have been avoided, in addition to saving of expenses made by them in replying the RTI request. Thus the need of hour is that FAA should consider reference of the matter to the appropriate Public Authority for suitable action against the CPIO as denial or delay in supplying information is not act against individual but against the nation as the Act is passed by Parliament.

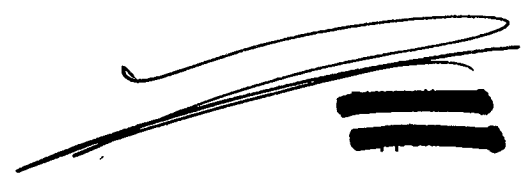
- viii. That in view of the above, the information was required to be supplied by the CPIO under the provisions of RTI Act, 2005.

**Prayer**

In view of the submissions vis-à-vis grounds of appeal above, it would be appreciated that non-supply of information by the CPIO was not within the purview of law i.e. RTI Act, 2005. And thus it is prayed that the CPIO may be directed to supply the called for information as detailed in the RTI application dated 03.09.18, the subject under consideration and appeal may be allowed with costs accordingly.

Place : Jalandhar

Date : 24.11.18





OFFICE OF THE PRINCIPAL COMMISSIONER

वस्तु एवम् सेवा कर आयुक्तालय  
GST Commissionerate, Ludhiana  
एफ ब्लॉक, ऋषि नगर, लुधियाना  
F-Block, Rishi Nagar, Ludhiana

15/01/2019

**Order-in-Appeal No. : 20 /RTI/GST/Ldh/18**

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED]

[REDACTED] (hereinafter referred to as "the appellant"), vide his application dated 21.09.2017, received in Central Public Information Officer (RTI), office-GST Division-Khanna on 25.09.2017 (hereinafter referred to as "the CPIO"), under the Right to Information Act, 2005 (hereinafter referred to as "the Act"), had desired certain information.

**2. Grounds of Appeal:**

2.1: That the application in r/o Point No. 5 was disposed of by the CPIO, Goods & Services Tax Division-Khanna vide letter C.No.IV(16)RTI/[REDACTED] dated 09.10.2017 and in r/o Points No. 1 to 4 and 6 & 7 transferred to CPIO, GST Commissionerate-Ludhiana under Section 6(3) of the RTI Act which was disposed of by the CPIO, Goods & Services Tax Commissionerate-Ludhiana vide letter C.No.IV(16)HQR/Ldh/Tech/RTI/[REDACTED] dated 14.11.2017. Whereas, the said applicant is aggrieved for not providing any information and has filed an appeal under RTI Act, 2005 received in this office on 27.12.2018.

2.2: The Appellant, being not satisfied, has filed an appeal received through e-mail on 27.12.2018 on the ground that CPIO has not provided any information in r/o RTI application dated 21.09.2017.

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**3. Reply to the Notice by CPIO:**

3.1: A notice vide C.No. IV(16)Hqrs/ Ldh/RTI-Appeal [REDACTED] dated 31.12.2018 was issued to both the CPIOs to provide comments on the appeal filed by the Appellant. The comments of both the CPIOs are as under

(i) The CPIO Khanna vide their office letter C.No. IV(16)/RTI/[REDACTED] dated 18/09 dated 03.01.2019 has replied that the claim of the appellant regarding Non Supply of information is totally incorrect as the information pertains (in r/o Point No. 5 ) and available with this office was supplied vide office letter of even C.No. 570 dated 09.10.2017, which was posted through India Post Khanna Regd letter No. A-RP-670745722IN dated 12.10.2017. Further, the RTI application was transferred/s 6(3) of the Act to CPIO-GST Commissionerate-Ludhiana for replying Point No. 1 to 4 and 6 to 7.

(ii) The reply of the RTI has already been given and dispatched vide even C.No. 10410 dated 14.11.2017 (within 30 days from the receipt of RTI application). The reply of RTI was dispatched by the Admin branch vide Speed Post consignment No. EP427030333IN dated 15.11.2017.

Being aggrieved for not supplying the information the appellant filed RTI appeal dated 27.12.2018, which almost **after expiry of 13 months** from the date of reply of RTI application.

The Admin branch was asked to know the delivery of RTI reply to the applicant. The admin branch sent an e-mail to Postal Authority to intimate the date of delivery of the reply to the applicant. The postal authority vide their e-mail dated 10.01.2019 has intimated that "*As the presentation period for records of Speed Post articles is of 6 months only so information asked is not available due to weeded out of records at NSH Ludhiana*". Moreover, the dispatched letter has also not been received back undelivered, which proves that the same has been delivered to the applicant. In view of the above, the RTI appeal is hit by time bar limit of 30 days under Section 19 of the RTI Act.

**4. Discussion and Findings:**

4.1: I have carefully examined the appeal filed by the Appellant, CPIOs' reply to notice and relevant provisions of the Act.

4.2: I find that the appellant was aggrieved for not supplying the information of RTI application dated 21.09.2017.



4

GSTICU LDH <gsticuldh@gmail.com>

Gmail

*Handwritten notes:*  
Kumar  
2018  
1

Fwd: Appeal u/s 19 of RTI ACT

Messages

Thu, Dec 27, 2018 at 12:10 PM

To: gsticuldh@gmail.com

This is an appeal with 1st Appellate Authority against decision of CPIO Central Division Khanna by not supplying the required information.

The appellant Davinder Kumar had filed an application under RTI act with the CPIO dated 21/09/2017. (Copy of application attached).

Ull date no any information is supplied. Hence this appeal to order the CPIO to supply information within 15 days failing which 2nd appeal/Complaint will be filed with the Hon'ble Commission

[Redacted]

RTI Appl.pdf  
111K

Thu, Dec 27, 2018 at 12:24 PM

GSTICU LDH <gsticuldh@gmail.com>

Cc: Ludhiana GST Technical <gstldhtech@gmail.com>

Sir,  
It is requested to make correspondences in r/o RTI matters at email : gstldhtech@gmail.com

Regards,

**GST-Implementation Coordination Unit**  
CGST Commissionerate Ludhiana

[Redacted]

RTI Appl.pdf  
111K

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/55 /2019

कार्यालय प्रधान आयुक्त

OFFICE OF THE PRINCIPAL COMMISSIONER

माल और सेवाकर आयुक्तालय लुधियाना

GOODS &amp; SERVICES TAX COMMISSIONERATE, LUDHIANA

जीएसटी भवन ए एफ ब्लॉक ऋषि नगर लुधियाना- 141001

GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001

दूरभाष/TELE: 0161-2679426 फ़ैक्स/FAX: 0161-2304881; ई-मेल/Email: [tech-gstldh@gov.in](mailto:tech-gstldh@gov.in)

07.02.2019

Order-in-Appeal No. : 21/RTI/GST/Ldh/18

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED], [REDACTED] (hereinafter referred to as "the appellant"), vide his RTI application dated 15.12.2018, received in the office of Central Public Information Officer (RTI), Goods & Services Tax Division-Bathinda (hereinafter referred to as "the CPIO") , under the Right to Information Act, 2005 (hereinafter referred to as "the Act"), had desired certain information.

**2. Grounds of Appeal:**

2.1: That the CPIO has denied to provide the desired information related to his office in terms of Section 8(1)(j) of the Act. The CPIO has also transferred under Section 6(3) of the Act in r/o point related to Customs- Ludhiana.

2.2: The Appellant, being aggrieved, has filed an appeal dated 06.01.2019 (received on 17.01.2019) pleading that the information not provided.

**3. Reply to the Notice by CPIO:**

3.1: A notice vide File No.TECH-RTI0APL/ [REDACTED] HQ-GST-LDH [REDACTED] dated 21.01.2019 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO vide his letter C.No. IV(16)30/GST/RTI/[REDACTED] dated 24.01.2019 has replied to the notice as under:

(i) This office received an application dated 15.12.2018 filed under RTI Act 2005 by the appellant on 26.12.2018.

1/5542/2019

(ii) Vide application dated 15.12.2018, the appellant sought information about Sh. [REDACTED] Inspector posted in [REDACTED] falling under the jurisdiction of this office, as below:

- (a) Attendance record for the period [REDACTED] alongwith the nature of leave availed during this period and the reason for such leave.
- (b) The nomination record ([REDACTED])

(iii) During the period [REDACTED] Inspector was posted at CPD Shipkila (H.P.) under Customs Commissionerate Ludhiana. Therefore, the information was partly connected to the Customs Commissionerate Ludhiana. Hence the application was transferred to Customs Commissionerate Ludhiana under Section 6(3) of the RTI Act, 2005 vide this office letter even C.No.2058 dated 27.12.2018 with a copy endorsed to the appellant bearing even C.No.2059 dated 27.12.2018.

(iv) As far as the supply of information by this office was concerned, [REDACTED] Inspector was apprised about the information sought by the appellant. Further, the consent of Sh. [REDACTED] Inspector was sought as the desired information was related to "Third Party Information" which is restricted under Section 8(1)(j) of the RTI Act 2005, reproduced as below:

*8. Exemption from disclosure of information. —(i) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

*(j) 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.*

(v) [REDACTED], Inspector was agitated and vide his letter dated 27.12.2018, submitted that the desired information was personal in nature and that his personal information should not be supplied to anybody. Therefore, the application dated 15.12.2018 of the appellant filed under RTI Act 2005 was rejected, vide this office letter even C.No.2060 dated 27.12.2018, under the provisions of Section 8(1)(j) of the RTI Act 2005 (to the extent of information required to be provided by this office).

(vi) It is pertinent to mention here that while rejecting the subject application, this office had relied on the Hon'ble Supreme Court's judgments, which are mentioned below :

- (a) Order dated 03.10.2012 in Special Leave Petition (Civil) No. 27734 of 2012 case titled as Girish Ramchandra Deshpande (Petitioner) Versus Central Information Commissioner. & Ors. (Respondents).

/5542/2019

- (b) Order dated 31.08.2017 in Civil Appeal No.22 of 2009 case titled as Canara Bank Represented by its Deputy General Manager (Appellant) Versus C.S. Shyam & Anr. (Respondent).

(vii) In Girish Deshpande's case, the Apex Court has considered the scope and interpretation of Clause (e), (g) and (j) of Sub-Section-1 of Section-8 of RTI Act 2005. The question that had come up for consideration was whether the information sought for by Girish Deshpande qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act. The Apex court interpreted the scope and defined what qualifies to be *personal information*. The broad interpretation of Apex Court was -

*"The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right."*

Further, in Civil Appeal No.22 of 2009 case, the Apex Court cited the above Girish Deshpande's judgement in support and ruled that the details of employees sought by the respondent amounts to "Personal information" and held that the application filed under RTI by the respondent was rightly rejected by the CPIO under Section 8(1)(j) of the RTI Act 2005 and set aside the order of High Court & Central information Commission which were against the appellant.

(viii) The perusal of above judgments passed by the Hon'ble Apex Court, this office was of considered opinion that the attendance record, leave record and nomination record of an employee is governed by the service rules and hence qualified to be 'personal information' which is exempted from disclosure under section-8(1)(j) of the RTI Act 2005, unless the appellant makes out bonafide public interest in seeking such information. The appellant had not made out any bonafide public interest in seeking the desired information. The application was also transferred to the Customs Commissionerate

Ludhiana under Section 6(3) of the RTI Act, 2005 as part information pertained to their office. The request for information, to the extent required to be supplied by this office, was rejected under the provision of Section 8(1)(j) of the RTI Act 2005, vide this office letter even C.No.2060 dated 27.12.2018, keeping in view the above judgments passed by the Hon'ble Apex Court.

1/5542/2019

**4. Discussion and Findings:**

**4.1:** I have carefully examined the appeal filed by the Appellant, CPIO's reply to notice and relevant provisions of the Act.

**4.2:** I find that the appellant was aggrieved for denying the information sought.

From the perusal of RTI application, I find that the said RTI application pertains to the category of personal and third party information. Section 8(1)(j) provides:

*"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".*

The CIC in the case of A.P Singh Vs Punjab National Bank (Appeal No. 12/IC(A)/2006 dated 14.03.2006) as also in the case of Rajan Madhav (Appeal No. CIC/MP/A/2015/001240, CIC/MP/A/2015/001242 and CIC/MP/A/2015/001243) held that no disclosure of third party information is to be made in respect of a person with whom the applicant had no professional or business relationship.

The Supreme Court in ICAI vs. Shaunak H. Satya, (2011) 8 SCC 781 has held:

**"This court is also of the view that misuse of the RTI Act has to be appropriately dealt with otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law".**

Thus the decision of the CPIO in present case is justified and holds good.

**5. Order:**

In view of above, the appeal filed by the appellant is not tenable and rejected accordingly.

Rajan Lachala  
1<sup>st</sup> Appellate Authority (RTI)  
GST Commissionerate, Ludhiana.

**Speed Post/copy to:-**

- (i) Shri P. Singh, Plot No. [REDACTED], [REDACTED], [REDACTED], [REDACTED]
- (ii) The CPIO(RTI), GST Division, Bathinda-I.



CENTRAL GST COMMISSIONERATE  
17 JAN 2019

PROFORMA OF FIRST APPEAL UNDER SECTION 19(1) OF THE  
RIGHT TO INFORMATION ACT, 2005.

I.D. No. \_\_\_\_\_  
(for official use)

To श्री राजन लाल, रा.ए. आभुक्त,  
केन्द्रीय मन्त्र एवं सेवाकार आभुक्तालय  
केन्द्रीय मन्त्र एवं सेवाकार गृह, एफ-ब्लॉक,  
अक्षय हॉटel, लुधियाना, पंजाब | 141001  
(Name & address of the Senior Officer acting as First Appellate Authority).

आभुक्त  
कार्यवाही क्र. 1  
21-12-2018  
17-1-2019

- Name of the Applicant : [Redacted]
- Address of the Applicant : post No. [Redacted] [Redacted] [Redacted] (Rajasthan)
- Particulars of the Central/ State Public Information Officer:  
(a) Name : कामील कौशिक, आभुक्त- रा.ए. केन्द्रीय मन्त्र सूचना अधिकारी  
(b) Address : केन्द्रीय मन्त्र एवं सेवाकार गृह-1, एम.आर. कॉम्प्लेक्स, एम.सी.ओ. इकोक 25-26, लुधियाना, पंजाब
- Date of submission of application for seeking information : 15.12.2018
- Date on which 30/35/40 days from submission of application are over:
- Reasons for appeal:  
(Please indicate separately for each question)  
(a) No response received within the specified period:  
(b) Aggrieved by the response received (15.12.2018 to 4/1/2019) within the specified period  
(c) Grounds for appeal : मांगी गई सूचना उपलब्ध नहीं करायी गई
- Last date for filing the appeal : 06/01/2019
- Particulars of Information  
(a) Information requested  
(b) Subject  
(c) Period
- A fee of 20 Rs. for appeal has been deposited in By postal order vide Receipt No. 41F-469929 Dated 41F-469931 (only if applicable)

Place \_\_\_\_\_  
Date 06/01/2019

Signature of Appellant  
[Redacted]  
Tel. No. (office) [Redacted]  
(Residence) [Redacted]  
Email [Redacted]

Please attach :  
(a) Copy of RTI application.  
(b) Copy of the response received from CPIO with which the appellant is aggrieved.

1/6/2019

कार्यालय प्रधान आयुक्त  
 OFFICE OF THE PRINCIPAL COMMISSIONER  
 माल और सेवाकर आयुक्तालय, लुधियाना  
 GOODS & SERVICES TAX COMMISSIONERATE, LUDHIANA  
 जीएसटी भवन , एफ ब्लॉक, ऋषि नगर, लुधियाना- 141001  
 GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001  
 दूरभाष/TELE: 0161-2679426 फैक्स/FAX: 0161-2304881,

ई-मेल/Email: tech-gstldh@gov.in

दिनांक: .02.2019

**Order-in-Appeal No.: 22/RTI/GST/Ldh/18**

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED] S/o [REDACTED], [REDACTED] (hereinafter referred to as the "appellant"), vide his RTI application dated 14.12.2018, received on 21.12.2018 in the office of Central Public Information Officer (RTI), Goods & Services Tax Commissionerate-Ludhiana (hereinafter referred to as the "CPIO"), under the Right to Information Act, 2005 (hereinafter referred to as the "Act"), had desired certain information.

**2. Grounds of Appeal:**

2.1: That the CPIO vide his office letter File No. TECH-RTI0APL/2019-HQ-GST-LDH/22 dated 17.01.2019 had provided reply to the RTI application and denied to provide the information under Sections 8(1)(d), 8(1)(j) and 8(1)(h) of the Act.

2.2: The Appellant, being not satisfied, has filed an appeal dated 21.01.2019 (hard copy received on 24.01.2019) on the grounds that the information sought is in the interest of country, public and investors on the following point:

i. that M/s Master Capital Services Ltd. is collecting GST on Brokerage, transactions and other services which are against the rules of Stock Exchange. M/s Master Capital Services Ltd is collecting GST on Brokerage on "Contract Note" and GST on Transaction and other Services on "Contract Invoice". In RTI application it was asked only that whether the party is depositing the tax collected or not.

I/6153/2019

ii. that the information sought is that whether the Tax Challan issued by the party is as per Law or not.

iii. that the information provided by an individual in fulfilment of statutory requirement is neither covered by the exemption under Section 8(1)(j) of the Act nor can it be called an unwarranted invasion of his privacy.

### 3. Reply to the Notice by CPIO:

3.1: A notice vide File No. TECH-RTI0APL/2019-HQ-GST-LDH/I/3499/2019 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO asked the concerned branch to give comments. The concerned branch replied that the investigation against the party is under process. Hence the information sought cannot be supplied under Section 8(1)(h) of the Act.

### 4. Discussion and Findings:

4.1: I have carefully examined the appeal filed by the Appellant, CPIO's/concerned branch's reply to notice and relevant provisions of the Act.

4.2: I find that the appellant was aggrieved for not getting the information in r/o Point No. 1 to 3 of his RTI application.

4.3: I have gone through the contents of the RTI application, reply of the CPIO as well as the contents of the RTI appeal.

4.4: I find that the appellant is not satisfied with the observations of the CPIO viz. that the information sought by the appellant falls under Section 8(1)(d), 8(1)(j) and 8(1)(h) of the Act and hence the present appeal. Thus the main issue before me is to decide whether the CPIO is legally correct treating the information as sought by the appellant as exempted under the relevant provisions of the Act.

*Section 8(1)-Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

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*(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*

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

Now the question arises as to when the investigation is said to be completed. The reply to this relevant question has been provided by the CIC in the case Shri Vinod Kumar

1/61/2019

Jain Vs. Directorate General of Central Excise Intelligence, New Delhi Appeal No. CIC/AT/A/2010/000969/SS.

In this case, the Appellant has sought the details of complete proceedings/records of the investigation being carried out against the appellant with regard to enquiry into the Lakhanpur and Bhanuth/Shambhu check post in J&K and Punjab respectively as the SCN in the matter has been issued and the investigations are complete. The CPIO denied the information to the appellant under Section 8(1)(h) of the RTI Act, 2005 by stating that the investigations in the matter are still pending in view of the Hon'ble CIC's decision in the case of Shri Shanker Sharma and M/s First Global Stock Broking Pvt. Ltd and others Vs. Director of Income Tax (Inv.)-II & CPIO, Deptt. of Income Tax. Mumbai.

It was held categorically by the CIC that, "the term 'investigation' used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of 'investigation' one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken."

The Commission had upheld the order passed by the First Appellate Authority in this case and the appeal was accordingly dismissed.

In view of the above, I pass the following order:

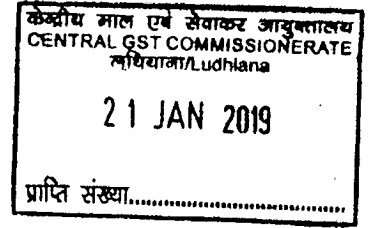
**5. Order:**

I hereby reject the appeal filed by the appellant.

(Rajan Lachala, IRS)  
1<sup>st</sup> Appellate Authority (RTI)  
GST Commissionerate, Ludhiana.

**Speed Post/copy to:-**

- (i) Sh. [REDACTED] S/o [REDACTED]
- (ii) The CPIO, GST Commissionerate-Ludhiana for information.



To,

Sh. Rajan Lachala, IRS

Joint Commissioner (1st Appellate Authority),

GST Commissionerate, Ludhiana.

Subject : माल और सेवाकर आयुक्तालय, लुधियाना द्वारा की गई जानकारी के खिलाफ अपील. File No. TECH-RTIOAPP /15/2019-HQ-GST-LDH के विरुद्ध अंक संख्या 1, 2, 3 के संबंध के तहत।

Respected Sir,

विक्रम निवेदन है कि मुझे उपरोक्त आरटीआई की जानकारी दिनांक 17.01.2019 को ईमेल के माध्यम से प्राप्त हुई है। मैंने दिनांक 14.12.2018 को माल और सेवाकर आयुक्तालय, लुधियाना से निम्नलिखित जानकारी मांगी थी।

(1) मास्टर कैपिटल सर्विसेज लिमिटेड एनएसई/बीएसई नियमों के खिलाफ ब्राह्मणे को अनुबंध नोट और कर चालान दे रहा है। उनमें से दोनों में जीएसटी की अमाउंट एकल समीकृत आकृति (Consolidated figure) नहीं है। मास्टर कैपिटल सर्विसेज लिमिटेड विभाग को 'अनुबंध नोट' में एकत्रित किया टैक्स जमा करवा रहा है या 'कर चालान' में एकत्रित किया टैक्स जमा करवा रहा है। मुझे यह जानकारी प्रदान की जाए।

(2) 'कॉन्ट्रैक्ट नोट' पर MCSL के डिजिटल सिग्नेचर विषय दृष्ट है। यह एक्सचेंज के नियमों के अनुसार कानूनी दस्तावेज है। इसमें लिखा हुआ है :- Transaction mentioned in this contract note shall be governed and subject to the Rules, By-law and Regulations and Circulars of the respective Exchange etc etc. इसमें ब्राह्मणे को आर्बिट्रेशन का कानूनी अधिकार भी दिया गया है। कर चालान में MCSL के डिजिटल सिग्नेचर नहीं है। कर चालान कानूनी तौर पर कॉन्ट्रैक्ट नोट के समान नहीं है। मुझे यह सूचना प्रदान की जाए कि डिपार्टमेंट ने की गयी सर्वे में MCSL द्वारा दिया जा रहा कर चालान विभाग के सभी नियमों का पालन करता है।

3. विभाग ने मास्टर कैपिटल सर्विसेज लिमिटेड पर किए गए खोज में कितनी जीएसटी तारी की गई एकत्र की है। मुझे इसके बारे में जानकारी दी जाए।

मुझे उपरोक्त सूचना के सदर्भ में माल और सेवाकर आयुक्तालय, लुधियाना द्वारा सूचना प्रदान नहीं की गई है। कार्यालय ने मुझे पॉइंट नंबर 1 की सूचना आरटीआई अधिनियम, 2005 की धारा 8 (1) (डी) और धारा 8 (1) (जे) के तहत, पॉइंट नंबर 2 की सूचना धारा 8 (1) (डी), 8 (1) (जे) और धारा 8 (1) (एच) के तहत, पॉइंट नंबर 3 की सूचना धारा 8 (1) (एच) के तहत सूचना उपलब्ध नहीं करवाई है।

मांगी गई सूचना देश हित और सार्वजनिक हित के अधीन - में प्रेषित करना है कि पॉइंट नंबर 1 और पॉइंट नंबर 2 की सूचना धारा 8 (1) (डी), 8 (1) (जे) और धारा 8 (1) (एच) के तहत नहीं है। क्योंकि मैंने यह सूचना देश हित, सार्वजनिक हित तथा निवेशकों के हितों की सुरक्षा करने के उद्देश्य से विभाग से जानकारी मांगी है। जिसके हक में निम्नलिखित दलीलें प्रस्तुत की गई हैं।

1. मास्टर कैपिटल सर्विसेज लिमिटेड ने निवेशकों से ब्रोकरेज पर जीएसटी और एक्सचेंज के नियमों के खिलाफ दाखलेशन और अन्य शुल्कों पर जीएसटी एकत्रित कर रहा है। मास्टर कैपिटल सर्विसेज लिमिटेड ब्रोकरेज पर एकत्रित किया जीएसटी डिजिटल सिगनेचर अनुबंध नोट (कॉन्ट्रैक्ट नोट) में एकत्रित कर रहा है। तथा ब्रोकरेज और दाखलेशन एंड अन्य शुल्कों पर एकत्रित किया गया जीएसटी कर चालान (टैक्स इनवॉइस) में एकत्रित कर रहा है। जिस पर डिजिटल सिगनेचर नहीं है और ना ही विल भेजने का स्थान दिया गया है। इसलिए अगर कोई भी प्रकपर से जीएसटी के नाम पर जीएसटी इकट्ठा कर रहा है, उस टैक्स को विभाग में जमा करवाना अनिवार्य है।

अगर देश के टैक्स चोरी करने वाले लोग किसी भी प्रकार का टैक्स चोरी करके संवर्धित विभाग में जमा नहीं करवाएंगे और जीएसटी के नाम से इकट्ठा किया गया जीएसटी विभाग में जमा नहीं करवाएंगे। तो विभाग और देश को भारी आर्थिक क्षति होगी। जिससे आम लोगो की भलाई के लिए विकास के लिए जाने वाले कर्म और सुविधाओं में कमी आएगी। इस प्रकार मॉने पॉइंट नंबर 1 में मांगी गई सूचना देश हित तथा सार्वजनिक हित के अधीन है। मॉने विभाग से मांगी गई सूचना में यह नहीं पूछा है कि मास्टर कैपिटल सर्विसेज विभाग में कितना जीएसटी जमा करवा रहा है। मॉने अपनी सूचना में सिर्फ इतनी जानकारी पूरी है कि मास्टर कैपिटल सर्विसेज लिमिटेड विभाग को अनुबंध नोट (Contract Note) में लिया गया जीएसटी जमा करवा रहा है या कर चालान (Tax Invoice) में लिया गया टैक्स जमा करवा रहा है। सो यह वियोरिंगता सूचना के अधीन नहीं है।

2. माल और सेवाकर आयुक्तलय तुधियाना ने मास्टर कैपिटल सर्विसेज लिमिटेड पर दिनांक 18.07.2018 को खोज (Search) की थी। जिसका सर्वे कार्ट रजिस्टर में श्रद्धा नंबर 186 है। मॉने इस दिशि से कई मास पूर्व विभाग को मास्टर कैपिटल सर्विसेज लिमिटेड के खिलाफ टैक्स चोरी की इनफार्मेशन दी थी तथा साथ ही से शिकायत दर्ज करवाई थी कि वह अनुबंध नोट और कर चालान अलग-अलग जारी कर रहा है। जबकि पूरे विश्व समेत भारत में एक गुड्स/सर्विसेज पर एक ही विल जारी करने का नियम है। माल और सेवाकर आयुक्तलय तुधियाना के अधिकारियों ने मास्टर कैपिटल सर्विसेज लिमिटेड पर खोज (search) के बावजूद उसे कॉन्ट्रैक्ट नोट कम टैक्स इनवॉइस (अंडर जीएसटी एक्ट -31) जारी करने के निर्देश नहीं दिये हैं। मास्टर कैपिटल सर्विसेज लिमिटेड के खिलाफ सर्वे की कारवाई का अगला 6 मास से ज्यादा विल चुका है। लेकिन यह सचवाई नहीं है कि विभाग के अधिकारियों को अभी तक पता नहीं चल सका है कि कर चालान (Tax Invoice) जीएसटी के सभी नियमों का पालन करता है या नहीं। इसलिए टैक्स चोरी की संभावना से विल में किसी भी प्रकार की हो रही अनियमितियों की जानकारी की सूचना शर्त पार्टी की सूचना नहीं है। सभी विभागों का दायित्व है कि देश के नागरिकों द्वारा विभाग के नियमों की पूरी गई जानकारी प्रदान करें। अगर किसी भी अधिकारी की लापरवाही से देश के राजस्व का नुकसान होता है। तथा देश का कोई भी नार्मल विभाग का राजस्व बढ़ाने के लिए विभाग की मदद करता है तो विभाग उसे सूचना देने के लिए मना नहीं कर सकता। इसलिए मुझे देश हित तथा सार्वजनिक हित के लिए पॉइंट नंबर 2 में मांगी गई सूचना जारी आई अधिनियम के तहत सूचना प्रदान की जाए।

महोदय, माल और सेवाकर आयुक्तलय, तुधियाना ने मास्टर कैपिटल सर्विसेज लिमिटेड के विरुद्ध 18.07.2018 को खोज (search) दोस सबूतों के आधार पर ही की होगी। ये बात समझ से परे है कि सर्वे के बाद 6 मास का समय बीत चुका है कि मांगी गई सूचना धारा 8(1) (h) के अधीन है। जब पूरे देश की जीएसटी का राजस्व प्राप्त होने की साताना/मासिक रिपोर्ट कुछ दिनों में ही प्रकाशित हो जाती है। तो यह भी समझ से परे है कि

विभाग की जांच टीम को अभी तक से नहीं पता नहीं चल सका है कि मास्टर कैपिटल सर्विसेज लिमिटेड ने विभाग को ब्रोकरेज पर कितना जीएसटी जमा करवाया है। तथा ट्रांसवेशन एंड अन्य चार्ज पर कितना जीएसटी जमा करवाया है। अगर जांच दल के अधिकारी दल से जांच करने की ठान लें तो इसकी इन्क्वायरी चंद मिनटों में ही पूरी की जा सकती है। इसे साफ जाहिर है कि जांच दल के अधिकारियों ने मास्टर कैपिटल सर्विसेज लिमिटेड के विरुद्ध जाम मान search की है। जिन्होंने टैक्स की चोरी को रोकने के लिए सर्व के बाद भी मास्टर कैपिटल सर्विसेज लिमिटेड को कॉन्ट्रैक्ट नोट कम बिल जारी करने का आदेश नहीं दिया है।

विभाग के जांच दल के अधिकारियों की search के बाद का मास्टर कैपिटल सर्विसेज लिमिटेड द्वारा लिया जा रहा अनुबंध नोट तथा टैक्स इनवॉइस इस अपील के साथ (Ann- 1,2 ) संलग्न हैं। अनुबंध नोट के मुद्दाबले जाती टैक्स इनवॉइस में अंतर तथा अनियमताएँ हैं उसका वर्णन इस प्रकार से है :- 1. डीटिम आफिस एड्रेस नहीं है , 2. ऑथोरिज्ड सिग्नट्री नहीं है , 3. सेवी/एसवेंज नियमानुसार कॉन्ट्रैक्ट नोट कम बिल नहीं है , 4. कॉन्ट्रैक्ट नोट तथा टैक्स इनवॉइस की जीएसटी अनाउंट एक नहीं है, 5. GST रजिस्ट्रेशन पंजाब की है अनुबंध नोट चंडीगढ़ से जारी किया गया है तथा टैक्स इनवॉइस में भोजने का स्थान और तारीख नहीं है, 6. टैक्स इनवॉइस में डिजिटल सिग्नट्री नहीं है, 7. कॉन्ट्रैक्ट नोट चंडीगढ़ से पंजाब में जारी है, IGST की जगह CGST-SGST ली गयी है , 8 टैक्स इनवॉइस एक्सचेंज के नियमों अनुसार कानूनी तथा आर्बिट्रेशन का अधिकार अंकित नहीं है , 9. टैक्स इनवॉइस के अंत में E&OE छपा हुआ है जिसका अर्थ है कि टैक्स इनवॉइस में कोई भी गलती हो सकती है। मास्टर कैपिटल सर्विसेज लिमिटेड द्वारा दी जारी टैक्स इनवॉइस में उपरोक्त अनियमताएँ हैं। जिसे मास्टर कैपिटल सर्विसेज लिमिटेड द्वारा विभाग के जांच अधिकारियों की कृपा से भारी अनियमताएँ की जा रही है। मास्टर कैपिटल सर्विसेज लिमिटेड ने नेशनल स्टॉक एक्सचेंज चंडीगढ़ की IGRP प्रोसेडिंग में ट्रांसवेशन एंड अन्य शुल्कों को लेने का ग्रेकअप दिया था तथा आर्बिट्रेशन की प्रोसेडिंग में शपथ पत्र (Affidavit) दिया था जो इस अपील के साथ Ann- 3,4,5 साथ संलग्न है। मास्टर कैपिटल सर्विसेज लिमिटेड को बताया गया है, वह IGRP प्रोसेडिंग्स में कह रहा है कि उसने स्टाम्प ड्यूटी पर सर्विस टैक्स लिया है तथा आर्बिट्रेशन प्रोसेडिंग में शपथ पत्र दे रहा है कि उसने स्टाम्प ड्यूटी नहीं ली है। पर अन्य चार्ज में सर्विस टैक्स इस्तेमाल है। मैंने विभाग को जीएसटी चोरी पकड़ने की मदद की है। इसलिए मुझे सूचना दी जाए कि सर्व में कितनी टैक्स चोरी पकड़ी गई है। मुझे पकड़ी गई चोरी की सूचना आस्टीआई ऑथोरिजेशन के तहत उपलब्ध कराई जाए। भूतपूर्व सेंट्रल सूचना कमिश्नर शैलेश गान्धी ने अपनी महत्वपूर्ण जजमेंट दी है कि :-

RTI Judgement Series: Information provided by individuals in fulfilment of statutory requirements not exempted under Section 8 (1)(j)

Information provided by an individual in fulfilment of statutory requirements is neither covered by the exemption under Section 8 (1)(j) of the RTI Act nor can it be called an unwarranted invasion of his privacy. This is the 39th in a series of important judgements given by former Central Information Commissioner Shailesh Gandhi that can be used or quoted in an RTI application

The Central Information Commission (CIC), said that given our dismal record of mis-governance and rampant corruption which colludes to deny citizens their essential rights and dignity, it is in the fitness of things that the citizen's right to information is

9917(1)/2019/ADMN-GST-LDH

given greater primacy with regard to privacy. Hence, information provided by individuals in fulfilment of statutory requirements will not be covered by the exemption under Section 8 (1)(j). While giving this important judgement, Shailesh Gandhi, former Central Information Commissioner, said even if any of the exemption clauses of Section 8 (1) of the Right to Information (RTI) Act were applicable, it certainly serves a larger public interest, if tax evasion is curbed.

महोदय, मैं आपसे पुनः आग्रह है कि मेरे द्वारा पॉस्ट नंबर 1 और 2 में मांगी गई सूचना का संबंध थर्ड पार्टी की निजी सूचना नहीं है। क्योंकि मारटर कंपैटल सर्विसेज लिमिटेड द्वारा अनुबंध जोद तथा कर वातान में जीएसटी की अलग-अलग राशि दिखाना आमक है। चूंकि जीएसटी टैक्स मात/सेवा पर देश की जनता द्वारा देय है। यह देश की जनता का अधिकार है कि उनके द्वारा चुकवाया गया टैक्स देश के भंडार में जाए। ताकि वाट में यही टैक्स सार्वजनिक हित के विकास कार्यों में काम आ सके। आप मेरी उपरोक्त दलीलों से सहमत होकर मात और सेवाकर आयुक्ततास लुधियाना से पॉस्ट नंबर 1,2,3 में देश हित तथा सार्वजनिक हित के लिए मांगी गई सूचना आरटीआई अधिनियम के तहत जल्दी से जल्दी सूचना पतान करवाई जाए। मैं आपका तह ढित से आभारी हूँगा। धन्यवाद।

(नोट : इस प्रतीत के साथ मेरे आधार कार्ड की कॉपी संलग्न है।)

Dated: 21.01.2019.

Your Truly,

Address :-

[Redacted Address Line 1]

[Redacted Signature]

P.N. [Redacted], Corner [Redacted]

Bus-stand Road. [Redacted]

Mob. [Redacted], Email: [Redacted]



1/61/2/2019

कार्यालय प्रधान आयुक्त

## OFFICE OF THE PRINCIPAL COMMISSIONER

माल और सेवाकर आयुक्तालय, लुधियाना

GOODS &amp; SERVICES TAX COMMISSIONERATE, LUDHIANA

जीएसटी भवन , एफ ब्लॉक, ऋषि नगर, लुधियाना- 141001

GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001

दूरभाष/TELE: 0161-2679426 फैक्स/FAX: 0161-2304881;

ई-मेल/Email: tech-gstldh@gov.in

दिनांक: .02.2019

## Order-in-Appeal No. : 23/RTI/GST/Ldh/18

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

## Brief Facts:

Shri [REDACTED] S/o [REDACTED], H.No. [REDACTED] Corner, Backside [REDACTED] New Bus Stand Road, [REDACTED] (hereinafter referred to as the "appellant"), vide his RTI application dated 14.12.2018, received on 21.12.2018 in the office of Central Public Information Officer (RTI), Goods & Services Tax Commissionerate-Ludhiana (hereinafter referred to as the "CPIO"), under the Right to Information Act, 2005 (hereinafter referred to as the "Act"), had desired certain information.

## 2. Grounds of Appeal:

2.1: That the CPIO vide his office letter File No. TECH-RTI0A [REDACTED] HQ-GST-LDH/3161 dated 17.01.2019 had provided reply to the RTI application and denied to provide the information under Sections 8(1)(d), 8(1)(j), 8(1)(h) and 2(f) of the Act.

2.2: The Appellant, being not satisfied, has filed an appeal dated 21.01.2019 (hard copy received on 24.01.2019) on the grounds that the information sought is in the interest of country, public and investors on the following point:

i. M/s Findoc Investmart Pvt. Ltd. is collecting GST on Brokerage, transactions & other services under two different heads. In RTI application it was asked only that whether the party is depositing the tax collected or not.

ii. The information sought is as to how much Tax has been recovered and as such the recovery made by the department cannot be denied.

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iii. The denial of information sought regarding loss of revenue on Service Tax after GST regime and who is responsible for that is not comes under Section 2(f) of the Act and does not fall under the exemption Section of the Act.

### 3. Reply to the Notice by CPIO:

3.1: A notice vide File No. TECH-RTI0 [REDACTED] HQ-GST-LDH/1/3492/2019 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO asked the concerned branch to give comments. The concerned branch replied that the investigation against the party is under process. Hence the information sought in r/o Points No. 1 & 2 cannot be supplied under Section 8(1)(h) of the Act and information in r/o Point No. 3 does not fall under Section 2(f) of the Act.

### 4. Discussion and Findings:

4.1: I have carefully examined the appeal filed by the Appellant, CPIO's/concerned branch's reply to notice and relevant provisions of the Act.

4.2: I find that the appellant was aggrieved for not getting the information in r/o Point No. 1 to 3 of his RTI application.

4.3: I have gone through the contents of the RTI application, reply of the CPIO as well as the contents of the RTI appeal.

4.4: I find that the appellant is not satisfied with the observations of the CPIO viz. that the information sought by the appellant falls under Section 8(1)(d), 8(1)(j), 8(1)(h) and 2(f) of the Act and hence the present appeal. Thus the main issue before me is to decide whether the CPIO is legally correct treating the information as sought by the appellant as exempted under the relevant provisions of the Act.

*Section 8(1)-Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

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*(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*

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

Now the question arises as to when the investigation is said to be completed. The reply to this relevant question has been provided by the CIC in the case Shri Vinod Kumar

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Jain Vs. Directorate General of Central Excise Intelligence, New Delhi Appeal No. CIC/AT/A/2010/000969/SS.

In this case, the Appellant has sought the details of complete proceedings/records of the investigation being carried out against the appellant with regard to enquiry into the Lakhanpur and Bhanuth/Shambhu check post in J&K and Punjab respectively as the SCN in the matter has been issued and the investigations are complete. The CPIO denied the information to the appellant under Section 8(1)(h) of the RTI Act, 2005 by stating that the investigations in the matter are still pending in view of the Hon'ble CIC's decision in the case of Shri Shanker Sharma and M/s First Global Stock Broking Pvt. Ltd. and others Vs. Director of Income Tax (Inv.)-II & CPIO, Deptt. of Income Tax. Mumbai.

It was held categorically by the CIC that, "the term 'investigation' used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of 'investigation' one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken."

The Commission had upheld the order passed by the First Appellate Authority in this case and the appeal was accordingly dismissed.

**4.5:** The RTI Act does not cover queries/Interrogative question. The information has been defined under section 2(f) of RTI Act, 2005 which means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, 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. Queries are not covered under the definition of information under section 2(f) of the RTI Act, 2005. Act does not cast obligation to answer queries, as in the case when the petitioner attempts to elicit answers to his question with prefixes such as why, what, when and whether. Such queries are not "information" under section 2(f). Therefore, the information sought in Point 3 does not fall under definition of "information" as per section 2(f) of the RTI Act 2005.

In view of the above, I pass the following order:

**5. Order:**

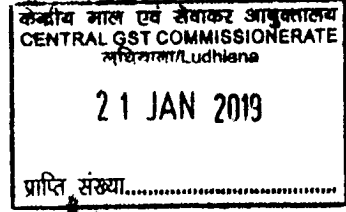
I hereby reject the appeal filed by the appellant.

(Rajan Lachala, IRS)  
1<sup>st</sup> Appellate Authority (RTI)  
GST Commissionerate, Ludhiana.

1/6152/2019

**Speed Post/copy to:-**

- (i) Sh. [REDACTED] S/o [REDACTED] in, H.N. [REDACTED] Corner, Backside  
[REDACTED], New Bus Stand Road, [REDACTED]
- (ii) The CPIO, GST Commissionerate-Ludhiana for information and necessary  
action.



To,

Sh. Rajan Lachala, IRS

Joint Commissioner (1st Appellate Authority),

GST Commissionerate, Ludhiana.

Subject : माल और सेवाकर आयुक्तालय, लुधियाना द्वारा दी गई जानकारी के खिलाफ अपील, File No. TECH-RTIOAPP/16/2019-HQ-GST-LDH के विरुद्ध नक़ अख्या 1, 2, 3 के प्रथम के तहत।

Respected Sir,

विभिन्न निवेदन हैं कि मुझे उपरोक्त आर्टीआई की जानकारी दिनांक 17.01.2019 को ईमेल के माध्यम से प्राप्त हुई है। मैंने दिनांक 14.12.2018 को माल और सेवाकर आयुक्तालय, लुधियाना से निम्नलिखित जानकारी मांगी थी।

1. फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड आइटकों को दिए गए अनुबंध नोट में ब्रोकरेज पर लिया गया सर्विस टैक्स अलग 'हेड' में एकत्रित किया गया है। अनुबंध नोट में अन्य वाजेज पर वसूल किया गया सर्विस टैक्स दूसरे अलग 'हेड' में एकत्रित किया गया है। फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड के अनुबंध नोट में सर्विस टैक्स की जमाऊत एकता (consolidated figure) नहीं है। मुझे यह सूचना प्रदान की जाए कि फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड अनुबंध नोट में दो अलग-अलग 'हेड' में एकत्रित किया सर्विस टैक्स विभाग में जमा करता रहा है या ब्रोकरेज पर लिया गया सर्विस टैक्स विभाग में जमा कराया रहा है।

2. मुझे यह सूचना प्रदान की जाए कि विभाग ने अभी तक फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड के विरुद्ध कारवाई करके किन्तनी सर्विस टैक्स की वीरी वसूल की है।

3. सर्विस टैक्स की जमा GST लागू हुए लगभग डेढ़ वर्ष बीत चुका है। विभाग ज्यादा से ज्यादा फेकला पाव वर्ष का टैक्स वीरी वसूल कर सकता है। इस तरह देश को लगभग डेढ़ वर्ष में सर्विस टैक्स की वीरी से प्राप्त होने वाले राजस्व के नुकसान की भरपाई कहीं से होगी और कौन जिम्मेवार होगा। इसकी सूचना प्रदान की जाए।

मुझे उपरोक्त सूचना के अन्तर्ग में माल और सेवाकर आयुक्तालय, लुधियाना द्वारा सूचना प्रदान नहीं की गई है। कार्यालय ने मुझे पॉइंट नंबर 1 की सूचना आर्टीआई अधिनियम, 2005 की धारा 8 (1) (डी) और धारा 8 (1) (जे) के तहत, पॉइंट नंबर 2 की सूचना धारा 8 (1) (डी), 8 (1) (जे) और धारा 8 (1) (एच) के तहत, पॉइंट नंबर 3 की सूचना धारा 2 (एफ) के तहत सूचना उपलब्ध नहीं कराई है।

मांगी गई सूचना देश हित और सार्वजनिक हित के अधीन: - मैं अपील करता हूँ कि पॉइंट नंबर 1 और पॉइंट नंबर 2 की सूचना धारा 8 (1) (डी), 8 (1) (जे) और धारा 8 (1) (एच) के तहत नहीं है। क्योंकि मैंने यह सूचना देश हित, सार्वजनिक हित तथा निवेशकों के हितों की सुरक्षा करने के उद्देश्य से विभाग से जानकारी मांगी है। जिसके हक में निम्नलिखित उतीते परचुत की गई है।

1. फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड ने निवेशकों से ब्रोकरेज पर सर्विस टैक्स और ट्रांसवशन और अन्य शुल्कों पर सर्विस टैक्स दो अलग-अलग 'हेड' में वसूल कर रहा है। फिनडॉक इन्वेस्टमार्ट

प्राइवेट लिमिटेड ने ब्रोकरेज पर वसूल किया सर्विस टैक्स अनुबंध नोट के एक अलग 'हेड' में एकत्रित रखा है। तथा अन्य श्रुतकों पर एकत्रित किया गया सर्विस टैक्स दूसरे अलग 'हेड' में एकत्रित कर रखा है। फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड ने सर्विस टैक्स चोरी करने की मंशा से कॉन्ट्रैक्ट में सर्विस टैक्स एक 'हेड' में एकत्रित नहीं किया हुआ है। अगर कोई भी किसी भी प्रकार से सर्विस टैक्स के नाम पर टैक्स इकट्ठा कर रखा है तो उसके लिए उस टैक्स को विभाग में जमा करवाना अनिवार्य है।

अगर देश के लोग किसी भी प्रकार का टैक्स चोरी करने संबंधित विभाग में जमा नहीं करवाएंगे और सर्विस टैक्स के नाम से इकट्ठा किया गया टैक्स विभाग में जमा नहीं करवाएंगे। तो विभाग और देश को भारी आर्थिक क्षति होगी। जिससे आम लोगों की भलाई के लिए विकास के लिए आने वाले कार्य और सुविधाओं में कमी आएगी। इस प्रकार मैंने पॉइंट नंबर 1 में मांगी गई सूचना देश हित तथा सार्वजनिक हित के अधीन है। मैंने विभाग से मांगी गई सूचना में यह नहीं पूछा है कि फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड विभाग में कितना सर्विस टैक्स जमा करता रहा है। मैंने अपनी सूचना में सिर्फ इतनी जानकारी पूरी है कि फिनडॉक विभाग को अनुबंध नोट में ब्रोकरेज पर एकत्रित किया गया सर्विस टैक्स जमा करता रहा है या अनुबंध नोट में सर्विस टैक्स के दोनो 'हेड' ब्रोकरेज तथा अन्य श्रुतकों पर एकत्रित किया गया सर्विस टैक्स जमा करवा रहा है। सो यह विवरणगत सूचना के अधीन नहीं है।

2. मैंने पॉइंट नंबर 2 में यह सूचना मांगी थी कि फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड से कितनी सर्विस टैक्स की चोरी पकड़ी गई है। मैंने यह इनफॉर्मेशन 20 जून 2017 को सेक्टर एवसाइज एंड सर्विस टैक्स आयुक्तलय-1 चंडीगढ़ को सौंपी थी। जो बाद में चंडीगढ़ आयुक्तलय द्वारा मात और सेवाकर आयुक्तलय तुंगीराना को कारवाई करने हेतु भेज दिया गया था। मुझे विभाग के अधिकारियों ने धारा 8 (1) (डी) , 8 (1) (जे) , 8(1) (एच) के तहत सूचना नहीं दी। अगर विभाग ने फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड से सर्विस टैक्स की चोरी पकड़ी है, तो फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड सूचना देने के लिए मजबूत नहीं कर सकता है। क्योंकि खुद विभाग के अधिकारी पकड़ी गई चोरी को देश के समाचार पत्रों में प्रकाशित करते हैं। अगर किसी भी अधिकारी ने वापसवाही से देश के राजस्व का नुकसान होता है तथा देश का कोई भी नागरिक विभाग का राजस्व बढ़ाने के लिए विभाग को मदद करता है तो विभाग उसे सूचना देने के लिए मजबूत नहीं कर सकता। इसलिए मुझे देश हित तथा सार्वजनिक हित के लिए पॉइंट नंबर 2 में मांगी गई सूचना आरटीआई अधिनियम के तहत सूचना प्रदान की जाए।

महोदय, मात और सेवाकर आयुक्तलय तुंगीराना के पास सर्विस टैक्स चोरी की शिकायत फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड विरुद्ध 20.06.2017 से पेंडिंग पड़ी हुई है। ये बात समझ से परे है कि डेड वर्थ से ज्यादा वक्त समय बीत चुका है कि मांगी गई सूचना धारा 8(1) (h) के अधीन है। जब पूरे देश को जीएसटी राजस्व प्राप्त होने की सालाना/मासिक रिपोर्ट कुछ दिनों में ही प्रकाशित हो जाती है। तो यह भी समझ से परे है कि विभाग की जांच टीम को अभी तक ये नहीं पता नहीं चल सक्ता है कि फिनडॉक इन्वेस्टमार्ट प्राइवेट लिमिटेड ने विभाग को ब्रोकरेज तथा अन्य चार्ज पर कितना सर्विस टैक्स जमा करवाया है। अगर जांच दल के अधिकारी दल से जांच करने की टाल लें तो इसकी इन्वॉयसी चट मिनिटों में ही पूरी की जा सकती है। मैंने विभाग को सर्विस टैक्स की चोरी पकड़ने की मदद की है। जो शब्द के हित

तथा सार्वजनिक हित के लिए हैं। इसलिए मुझे सूचना दी जाए कि फिनडॉक से कितनी सर्विस टैक्स की कोरी पकड़ी गई है। मुझे पकड़ी गई कोरी की सूचना आरटीआई अधिनियम के तहत उपलब्ध करवाई जाए। भूतपूर्व सेंट्रल सूचना कमिश्नर शैलेश गांधी ने अपनी महत्वपूर्ण जजमेंट दी है कि :-

RTI Judgement Series: Information provided by individuals in fulfilment of statutory requirements not exempted under Section 8 (1)(j)

Information provided by an individual in fulfilment of statutory requirements is neither covered by the exemption under Section 8 (1)(j) of the RTI Act nor can it be called an unwarranted invasion of his privacy. This is the 39th in a series of important judgements given by former Central Information Commissioner Shailesh Gandhi that can be used or quoted in an RTI application

The Central Information Commission (CIC), said that given our dismal record of mis-governance and rampant corruption which colludes to deny citizens their essential rights and dignity, it is in the fitness of things that the citizen's right to information is given greater primacy with regard to privacy. Hence, information provided by individuals in fulfilment of statutory requirements will not be covered by the exemption under Section 8 (1)(j). While giving this important judgement, Shailesh Gandhi, former Central Information Commissioner, said even if any of the exemption clauses of Section 8 (1) of the Right to Information (RTI) Act were applicable, it certainly serves a larger public interest, if tax evasion is curbed.

3. पॉइंट नंबर 3 में मांगी गई सूचना धारा 2 (एफ) के अधीन नहीं है। अधिकारी अपनी ड्यूटी और कर्तव्यों का पालन करने के लिए बाध्य है। अगर किसी अधिकारी की लापरवाही से देश के राजस्व का नुकसान हो रहा है तो उसकी जिम्मेदारी किस पर होगी। डेड वर्क का समय भीत चुका है। या तो विभाग के अधिकारी फिनडॉक इवेस्टमेंट प्राइवेट लिमिटेड को वलीन रिट दें या सर्विस टैक्स की कोरी पकड़कर विभाग को राजस्व का फायदा दें। मुझे सूचना अधिनियम CHAPTER-2 के तहत सूचना दी जाए इनफॉर्मेशन देने के बाद कार्यवाई पूरी करने की समय सीमा को सूचना दें।

महोदय, मैं आपसे पुनः आग्रह है कि मेरे द्वारा पॉइंट नंबर 1 और 2 में मांगी गई सूचना का समय थर्ड पार्टी का निजी सूचना नहीं है। क्योंकि फिनडॉक इवेस्टमेंट प्राइवेट लिमिटेड द्वारा अनुबंध नोट में दो अलग-अलग 'हेड' में एक्जिबिट किया सर्विस टैक्स की अलग-अलग राशि दिखाना आमक है। चूंकि सर्विस टैक्स मात/सेवा पर देश की जनता द्वारा देय है। यह देश की जनता का अधिकार है कि उनके द्वारा चुकाया गया टैक्स देश के भंडार में जाए। ताकि बाद में यही टैक्स सार्वजनिक हित के विकास कार्यों में काम आ सके। आप मेरी उपरोक्त कठिनाई से सहमत होकर मात और सेवाकर आयुक्तलय लुधियाना से पॉइंट नंबर 1,2,3 में देश हित तथा सार्वजनिक हित के लिए मांगी गई सूचना आरटीआई अधिनियम के तहत जल्दी से जल्दी सूचना प्रदान करवाई जाए। मैं आपका यह हेल से आभारी हूँगा। धन्यवाद।

(नोट : इस अपील के साथ मेरे आधार कार्ड की कॉपी संलग्न है)

9921/2019/ADMN-GST-LDH

Dated: 21.01.2019.

Your Truly,

Address :-

[Redacted]

[Redacted] s o Sh. [Redacted]

[Redacted]

[Redacted] Corner, Backside [Redacted]

Bus-stand Road. [Redacted]

[Redacted]. Email: [Redacted]



I/84/2019

कार्यालय प्रधान आयुक्त

OFFICE OF THE PRINCIPAL COMMISSIONER

माल और सेवाकर आयुक्तालय लुधियाना

GOODS &amp; SERVICES TAX COMMISSIONERATE, LUDHIANA

जीएसटी भवन, एफ ब्लॉक, ऋषि नगर, लुधियाना- 141001

GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001

दूरभाष/TELE: 0161-2679426 फ़ैक्स/FAX: 0161-2304881 ई-मेल/Email: gstldhtech@gmail.com

दिनांक:

12/03/2019

**Order-in-Appeal No. : 24/RTI/GST/Ldh/18**

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Shri [REDACTED] ( [REDACTED] S/o S. [REDACTED] [REDACTED], [REDACTED] (hereinafter referred to as the "appellant"), vide his RTI application dated 26.09.2018, received in the office of Central Public Information Officer (RTI), Goods & Services Tax Division Bathinda-I (hereinafter referred to as the "CPIO") , on 16.01.2019 under the Right to Information Act, 2005 (hereinafter referred to as the "Act"), had desired certain information.

**2. Grounds of Appeal:**

2.1: That the CPIO vide his office letter C.No.IV(16)30/GST/RTI/[REDACTED] 73 dated 25.01.2019 had provided reply to the RTI application.

2.2: The Appellant, being not satisfied, has filed an appeal dated 11.02.2019 (received on 12.02.2019 through e-mail) on the ground that CPIO has not provided the information in r/o of the whole period as requested by the appellant.

**3. Reply to the Notice by CPIO:**

3.1: A notice vide C.No. TECH-RTI0APL/2019-HQ-GST-LDH/I/5548/2019 dated

1/8451/2019

12.02.2019 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO vide his letter C. No. IV(16)30/GST/RTI/Misc/ /441 dated 27.02.2019 has replied to the notice.

**4. Discussion and Findings:**

**4.1:** I have carefully examined the appeal filed by the Appellant, CPIO's reply to notice and relevant provisions of the Act.

**4.2:** I find that the appellant is aggrieved as he has not received information in full i.e. he has requested for information upto May, 2006, but it was provided upto March, 2016 only. In other words, the appellant has filed the present appeal for not providing information in respect of the the months of April, 2006 and May, 2006.

**4.3:** I further observe that the information as requested by the appellant has already been supplied to the appellant in respect of the period requested by him but for the months of April, 2006 and May, 2006. The reason for not providing information by the concerned CPIO has been given as non-traceability of records related to the payments in respect of the period in question.

**4.4** I find that the information as in possession of the CPIO has been provided by him as also acknowledged by the appellant in his appeal. This is an established corollary of the RTI Act that the CPIO is bound to provide the information as is available with him and the information cannot be created by him. Thus, in my opinion, the CPIO has fulfilled his duty to that extent. On the other hand, the spirit of the Act is to furnish information for the purpose of transparency.

In view of the above, I pass the following order.

**5. Order:**

I direct the CPIO to make further efforts to trace the records in respect of the information as requested by the appellant. In case he deems it fit, the RTI application may be forwarded to any branch/office or department where such information may be available under the relevant Sections of the Act.

(RAJAN LACHALA )

8451/2019

1<sup>st</sup> Appellate Authority (RTI)  
GST Commissionerate, Ludhiana.

Speed Post/copy to:-

- i. Sh [REDACTED], S/o S. S. [REDACTED]  
[REDACTED]
- ii. The CPIO, GST Division, Bathinda-1 for information and necessary action.

**16329/2019/Tech**Subject: **Fwd: Appeal against RTI reply dated 25.01.2019 of CPIO,CGST Div.-I,Bathinda-reg. RTI APPEAL**

Date: 02/12/19 12:05 PM

From: Rajan Lachala &lt;rajan.lachala@gov.in&gt;

To: commissioner Principal <tech-gstldh@gov.in>,  
VDHESH MEENA <avdhesh.meena0901@gov.in>,  
BDUL BHAT <abdulhamid.bhat2503@gov.in>

For necessary action

----- Original Message -----

From: **Central GST Commissionerate Ludhiana** <cexldh@nic.in>

Date: Feb 12, 2019 10:55:22 AM

Subject: Fwd: Appeal against RTI reply dated 25.01.2019 of CPIO,CGST Div.-I,Bathinda-reg.

To: rajan.lachala@gov.in

----- Original Message -----

From: [REDACTED] &lt;[REDACTED]@gmail.com&gt;

Date: Feb 11, 2019 4:03:01 PM

Subject: Appeal against RTI reply dated 25.01.2019 of CPIO,CGST Div.-I,Bathinda-reg.

To: cexldh@nic.in

Cc: cexdbti@gmail.com

PROFORMA OF FIRST APPEAL UNDER SECTION 19(1) OF THE RIGHT TO INFORMATION ACT, 2005.

I.D. No. \_\_\_\_\_

(for official use )

To

Sh. Rajan Lachala,  
Joint Commissioner-First Appellate Authority,  
CGST Commissionerate,  
GST Building, F-Block, Rishi Nagar,  
Ludhiana.

1. Name of the Applicant: [REDACTED]

2. Address of the Applicant: [REDACTED]

3. Particulars of the Central Public Information Officer:

(a) Name : Not Mentioned, Assistant Commissioner-cum-CPIO

(b) Address: CGST Division-I, M.R. Complex, Model Town, Bathinda.

4. Date of submission of application for seeking information: 26.09.2018.

5. Date on which 30/35/40 days from submission of application are over: Reply received on 30.01.2019.

6. Reasons for appeal: (Please indicate separately for each question)

(a) No response received within the specified period: N.A.

(b) Aggrieved by the response received within the specified period- Yes.

The information has been provided for the period 01/2006 to 03/2006 but not provided for the period April, 2006 to May, 2006. I remained posted in Range Barnala upto May,2006.

(c) Grounds for appeal: Complete information was required to be provided i.e. upto May,2006. But, it was provided upto March,2006 only. It is, therefore, requested that the CPIO of the concerned Office may be directed to supply the requisite information at the earliest. Thanks please.

7. Last date for filing the appeal: 02.03.2019.

8. Particulars of Information

(a) Information requested- Details of all payments made to me w.e.f. Jan.2006 to May, 2006 along with photocopies of the Pay Bill Register.

(b) Period- Jan.2006 to May, 2006.

9. A fee of \_\_\_\_\_ for appeal has been deposited in \_\_\_\_\_ vide Receipt No. \_\_\_\_\_ Dated \_\_\_\_\_ (only if applicable)

Signature of Appellant

E-mail address - [REDACTED]

Mobile No. [REDACTED]

1/100/2019

कार्यालय प्रधान आयुक्त  
OFFICE OF THE PRINCIPAL COMMISSIONER  
माल और सेवाकर आयुक्तालय लुधियाना  
GOODS & SERVICES TAX COMMISSIONERATE, LUDHIANA  
जीएसटी भवन, एफ ब्लॉक, ऋषि नगर, लुधियाना- 141001  
GST BHAWAN, F-BLOCK, RISHI NAGAR, LUDHIANA- 141001

दूरभाष/TELE: 0161-2679426 फेक्स/FAX: 0161-2304881; ई-मेल/Email: tech-gstldh@gov.in

26/03/2019

Order-in-Appeal No. : 25/RTI/GST/Ldh/18

(An appeal against this order lies to the Central Information Commission, Block No. 5 (5<sup>th</sup> Floor), Old JNU Campus, New Delhi. This copy is issued to the individual for his/her personal use free of cost. The person feeling aggrieved with this order can file appeal to the Appellate Authority within 90 days of the receipt of this order)

**Brief Facts:**

Sh. [REDACTED] s/o Sh. [REDACTED] m, M/s [REDACTED] ers, Outside [REDACTED] [REDACTED] (hereinafter referred to as "the appellant"), vide his RTI application dated 15.01.2019, received on 17.01.2019 in the office of Central Public Information Officer (RTI), Goods & Services Tax Commissionerate-Ludhiana (hereinafter referred to as "the CPIO") , under the Right to Information Act, 2005 (hereinafter referred to as "the Act"), had desired information related to tender submitted in r/o GST Building at Ferozepur and to provide:

- a. Attested copies of complete report submitted by Asstt. Commissioner, Bathinda to the senior.
- b. Attested copy of notings, if any, by the Commissioner/Joint Commissioner on the report of Asstt. Commissioner.
- c. Copy of order dated 16.11.2017 vide which the appellant (the party in the tender) black listed by the department.

**2. Grounds of Appeal:**

2.1: That the CPIO vide his office letter File No.TECH-RTI0[REDACTED]HQ-GST-LDH dated 15.02.2019 had provided reply to the RTI application and denied to provide the information under Sections 8(1)(h) of the Act as the matter is still pending.

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2.2: The Appellant, being not satisfied, has filed an appeal through e-mail dated 26.02.2019 (hard copy received on 12.03.2019) on the grounds that the desired information doesn't attract Section 8(1)(h) of the Act as the process of that tender has already been completed.

3. **Reply to the Notice by CPIO:**

3.1: A notice vide File No.TECH-RTI0APL /2019-HQ-GST-LDH dated 26.02.2019 was issued to the CPIO to provide comments on the appeal filed by the Appellant. The CPIO asked the concerned branch to give comments. The concerned branch replied that at present the investigation is going on and further vide their letter received on 26.03.2019, they have elaborated that all the documents/file in the relevant matter have been transferred to DGoV, NZU, New Delhi for full fledged investigation as desired by the higher authorities. Thus the matter is still under process and investigation is not completed and as such the information is barred under Section 8(1)(h) of the Act.

4. **Discussion and Findings:**

4.1: I have carefully examined the appeal filed by the Appellant, CPIO's reply to notice and relevant provisions of the Act.

4.2: I find that the appellant was aggrieved for not providing the information desired in the RTI application.

4.3: I have gone through the contents of the RTI application, reply of the CPIO as well as the contents of the RTI appeal.

4.4: I find that the appellant is not satisfied with the observations of the CPIO viz that the information sought by the appellant falls under Section 8(1)(h) of the Act and hence the present appeal. Thus the main issue before me is to decide whether the CPIO is legally correct treating the information as sought by the appellant as exempted under the relevant provisions of the Act.

*Section 8(1)-Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

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*(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*

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1/100/4/2019

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

Now the question arises as to when the investigation is said to be completed. The reply to this relevant question has been provided by the CIC in the case Shri Vinod Kumar Jain Vs Directorate General of Central Excise Intelligence, New Delhi Appeal No. CIC/AT/A/2010/000969/SS.

In this case, the Appellant has sought the details of complete proceedings/records of the investigation being carried out against the appellant with regard to enquiry into the Lakhanpur and Bhanuth/Shambhu check post in J&K and Punjab respectively as the SCN in the matter has been issued and the investigations are complete. The CPIO denied the information to the appellant under Section 8(1)(h) of the RTI Act, 2005 by stating that the investigations in the matter are still pending in view of the Hon'ble CIC's decision in the case of Shri Shanker Sharma and M/s First Global Stock Broking Ovt. Ltd and others Vs Director of Income Tax (Inv.)-II & CPIO, Deptt. of Income Tax. Mumbai.

It was held categorically by the CIC that, " the term 'investigation' used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of 'investigation' one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken."

The Commission had upheld the order passed by the F.A.A. in this case and the appeal was accordingly dismissed.

It is pertinent to mention here that currently the investigation is being conducted by DGoV, NZU, New Delhi and as such the investigation cannot be said to be completed in any case. In view of the legal position as discussed above.

Hence, I find that the decision of the CPIO holds good and pass the following order.

5. **Order:**

Accordingly, I reject the appeal.

(RAJAN LACHALA\_  
1<sup>st</sup> Appellate Authority (RTI)  
GST Commissionerate, Ludhiana.

Speed Post/copy to:-

//100/4/2019

- i. Sh. [REDACTED] s/o [REDACTED], M/s [REDACTED] Outside [REDACTED]  
[REDACTED]
- ii. The CPIO, GST Commissionerate-Ludhiana for information.



To

Sh. Rajan Lachana

Joint Commissioner

1st Appellate Authority

GST Commissionerate

Rishi Nagar, Ludhiana

Subject:- Appeal regarding not providing of information Under The RTI Act 2005- Reg.

Sir,

I had applied for information Under RTI Act dated 15/01/2019. Your office vide reply dated 15/2/2019 (Copy enclosed) has not provided information by citing provisions of section 8 (1)(h). This section deals with exemption to disclosure of information which may hamper the process of Investigation etc. It is informed that I had only requested for information (or documents) whereby the earlier tender dated 27/04/2017, in which I was L1, was subsequently cancelled by the department. I don't have any information which concerns any inquiry or investigation of the department.

Further it surely be the case of the department that process of that tender is complete. I am just requesting for the copies of certain documents which pertained to cancellation of my earlier tender and leading to blacklisting. Since I had been divested of my natural right of not participating in the tender. Therefore under natural rights guaranteed to all citizens also, I may be providing information which formed the basis of blacklisting me. As such also there was no rule under the terms and conditions through which a person can be blacklisted vide tender dated 27/04/2017.

If you feel right to attach section 8 (1) H of RTI Act then kindly confirm me how information being provided to me would attract this section.

Note the decision of CIC on this matter:

From a plain reading of the above provision, it follows that section 8(1)(h) of the RTI Act exempts disclosure of information which would impede the process of investigation or apprehension or prosecution of offenders. Merely because the



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process of investigation or apprehension or prosecution of offenders is continuing, the bar stipulated under section 8 (1)(h) of the RTRI Act is not attracted; It must be clearly established by the PIO that disclosure of the information would impede the process of investigation or apprehension or prosecution of offenders. If parliament wanted to exempt all information relating to investigation or apprehension or prosecution, it would not have imposed the condition that disclosure should 'Impede' the investigation or prosecution. In this regard, it would be relevant to note the observations Ravindra Bhat, J. of the high Court of Delhi in Bhagat Singh V. CIC W.P I No. 3114/2007 dated 03/12/2007.

Thanking You.

1. I have e mailed this letter to your email id: [tech-gstldh@gov.in](mailto:tech-gstldh@gov.in) also.
2. Also sending Postal Order of Rs. 20 with this letter.

Yours Faithfully


Dated: 26/02/2019