



केन्द्रीयकरआयुक्तकाकार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX

सिकंदराबादजीएसटीआयुक्तालयः

SECUNDERABAD GST COMMISSIONERATE

जीएसटीभवन : बशीरबाग : हैदराबाद-५००००४

GST Bhavan: Basheerbagh: Hyderabad-500 004

C. No. IV/16/14/2020 – RTI (Sec.)FAA

Date: 24.02.2020

Order No.09/2020-RTI(SEC.) - FAA.

(Order passed by Shri. P Jayadev, Joint Commissioner, First Appellate Authority (FAA) under the Right to Information Act, 2005.)

PREAMBLE

As per Section 19 (3) of the Right to Information Act, 2005, the second appeal against this order shall lie within **ninety days (90 days)** with the Central Information Commission, CIC Bhawan, Baba Gang Nath Marg, Near Staff Quarters, Old JNU Campus, Munirka, New Delhi – 110067 from the date on which this order should have been passed or was actually received by the appellant.

Sub: Right to Information Act, 2005 – Appeal filed before the First Appellate Authority by Shri M. A. Lateef under Section 19(1) of the RTI Act, 2005 –Reg.

Shri M. A. Lateef (Advocate), Flat No 403, Classic Mustafa Tower, Feelkhana Lane, Old Mallepally, Nampally, Hyderabad -Telangana State, vide application dated 09.12.2019 sought certain information from Deputy Commissioner (CPIO), Secunderabad Division under the RTI Act, 2005 regarding a Show Cause Notice OR.No.54/2012-Adjn(Addl.Commr) dt 24.4.2012 issued to his client M/s. Paramount Builders, Secunderabad.

02. The information was denied to the applicant by CPIO vide Order No.39/2019 dated 07.01.2020 (C.No. IV/16/39/2019-RTI) on the grounds that the matter is presently pending de-novo adjudication having been remanded by Commissioner(Appeals) to original adjudicating authority. Hence the matter is *sub-judice* and information requested cannot be provided.

APPEAL PLACED BEFORE THE FAA:

03. Being aggrieved by the order of the CPIO, the applicant preferred an appeal dated 23.01.2020 (which was received on 28.01.2020) before the First Appellate Authority (FAA), on the following grounds:

- a) That the RTI application was filed by him to obtain certain information relating to service tax demands raised by the Department against his client M/s Paramount Builders.
- b) That the Department has demanded service tax only on the value of agreement of construction after excluding the values mentioned in sale deeds.
- c) That the calculations were made by the department based on information provided by his client.
- d) That the matter is pending before Hon' ble CESTAT.
- e) While raising the demand on his client for payment of service tax, the sale deed values were wrongly computed by the department.
- f) That the appellant is entitled to receive information relating to the SCN issued to his client and he is ready to pay the charges, if any.

❖ **DISCUSSIONS AND FINDINGS:**

04. I have gone through the RTI application, CPIO's Order, and the grounds of appeal submitted by the appellant and also the information available on record.

- i. The appellant in his RTI application had furnished the background details as follows-

That his client M/s. Paramount Builders, are developers of residential complex known as Paramount Residency and a SCN in OR. No. 54/2012-Adjn(Addl.Commr) dt 24.4.2012 was issued to his client wherein service tax was demanded on revenues including consideration received toward sale deed (for land and/semi finished construction) and towards agreement of construction post execution of sale deed.

- ii. In this context, he sought from the CPIO to provide the details of bifurcation of amounts received towards sale deed and agreement of construction, to ascertain the actual service tax liability of his client in relation to the SCN issued against them.

- iii. The appellant enclosed a copy of the RTI application, CPIO's Order and the SCN dated 24.4.2012 issued to his client M/s. Paramount Builders demanding service tax on the amounts received towards rendering the taxable services.

05. From the above, I find that the applicant is an advocate and he is seeking information which is subject matter of a Show Cause Notice issued by the department to his client. The appellant also stated that the matter is now pending before Hon'ble CESTAT.

06. The appellant is seeking to know as to how the taxable amounts were arrived in the Show Cause notice from out of the total consideration received by his client. And, the information sought by the applicant is in the nature of clarification with regard to a quasi-judicial proceedings which is underway.

07. It is to be noted that the show-cause notices are documents linked to a quasi-judicial proceeding and it was not open to the CPIO to infer anything regarding that proceeding to provide to the appellant the type of information he had requested.

copy Attached → 08. It has been the decision of the Central Information Commission in "Shri. Vijay Kamble Vs. Customs Department, Mumbai (F. No CIC/AT/A/2008/01466 dated 23.03.2009)" & "Rakesh Kumar Gupta Vs. Income Tax Appellate Tribunal (ITAT)- Appeal No.CIC/AT/A/2006/00586", Date of decision: 18.09.2007, that once it is established that a certain information requested by an applicant is related to a quasi-judicial proceeding, RTI Act cannot be invoked to access the information related to that proceeding.

09. In this regard, it is pertinent to mention that the CIC while disposing an appeal in the case of 'K.S.Jain Vs Central Excise Department (No.CIC/AT/A/2010/000119)' vide order dated 05.04.2010 has made certain categorical observations, which are reproduced below;

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"the factor which I consider that needs some attention is the attempt by certain RTI-applicants to use the provisions of the Act to start a side dialogue in matters of quasi-judicial adjudication, all in the name of disclosure of information. In fact, the relevant Acts, under which enquiries are conducted against such applicants, themselves have enough provision for meeting the party's demand for specific information such as the one raised by this applicant. Adjudicating disclosure of a set of information which might be relevant in an adjudicating or quasi-judicial process, through the process of RTI Act, would amount to interfering with that process and compromising its integrity. It is not open to any applicant to come before the CIC claiming to receive information from an adjudicating authority when he could well have received the same information within the adjudicating process from that authority. The provisions of the RTI Act cannot and should not be used for starting a parallel process about information disclosure. The power to give any information relevant to an adjudicating or quasi-judicial process exclusively belongs to the quasi-judicial authority or the judicial authority concerned. The same set of information cannot be subjected to two independent proceedings, especially when one such proceeding is decidedly a process of adjudication or a quasi-judicial process. "

10. Further, the appellant is seeking information in his professional capacity as a lawyer on behalf of his client which is a business entity. Hon'ble Madras High Court (Madurai Bench) in the case of 'N.Saravanan vs The Chief Commissioner / 2nd Appellate Authority -W.P(MD)No.4336 of 2017 ' has clearly held that an advocate cannot seek information relating to the cases instituted by him on behalf of his client which situation does not advance the objects of the scheme of the RTI Act.

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11. In view of above, the appellant cannot take recourse to the RTI forum to resolve a matter of dispute between his client and the department, particularly when the proceedings are still pending before the Hon'ble Tribunal (i.e., CESTAT).

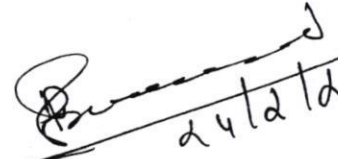
12. If the appellant required any clarification with respect to the calculation / quantification of the taxable amounts relating to the subject quasi-judicial proceedings, it is open for his client to obtain the same from the competent quasi-judicial authority during the adjudication proceedings i.e while replying to the Show Cause Notice, appearing for Personal Hearing etc. or thereafter before the appellate authority.

13. In view of the above discussions, I find the order of the CPIO rejecting the RTI application filed by the appellant does not suffer from infirmity and does not call for interference.

14. Therefore, I pass the following order:

ORDER

The Order No.39/2019 dated 7.1.2020 (C.No. IV/16/39/2019-RTI) passed by the Deputy Commissioner (CPIO), Secunderabad Division is upheld. Accordingly, the appeal is dismissed.


24/2/2020

(P.JAYADEV)
JOINT COMMISSIONER (FAA)

To
✓ Shri M. A. Lateef, (By Speed Post)
Flat No 403, Classic Mustafa Tower ,
Feelkhana lane, Old Mallepally
Nampally Hyderabad
Telangana State

Copy to:

1. The Deputy Commissioner (CPIO), Central Tax & Central Excise, Secunderabad Division.

