

CENTRAL INFORMATION COMMISSION  
Block IV, 5<sup>th</sup> Floor, Old JNU Campus  
New Delhi 110067

**Appeal No. CIC/AT/A/2006/00588 dated 30.11.'06**

Dated July 9, 2007

**Name of the Complainants:** Shri Vibhor Dileep Barla  
15, Mukti, 9, Samarth Nagar  
Nashik-422 005.

**Public Authority:** Central Excise & Customs,  
Nashik-422 002.

Date of Hearing 19.06.2007

Date of Decision 09.07.2007

**FACTS:**

The appellant submitted an application to Shri Amarnath Kesari, Assistant Commissioner, Customs & Excise, under the RTI Act on 9.10.2006 seeking the following information:

- a) Whether any dues of Excise exist on M/s Steel Knight Castings; if yes, please give the amount of dues till date and date since when the said dues are pending.
- b) Whether Excise Department has inspected the premises bearing No.D-32, MIDC, Satpur, Nashik-422007 as on date. If yes, whether there are machineries on the aforesaid premises. If yes, whether the excise has been paid on those machines. If yes, please give receipts of having received excise payment on the aforesaid Machines and name of the Units having paid such Excise on the aforesaid Machines. If no excise is collected on the aforesaid machines, reasons for not collecting the same from the Promoter/occupiers of the premises.
- c) Whether any Bank is responsible for financing the aforesaid machines so located on the aforesaid plot bearing no.D-32, MIDC, Satpur, Nashik and on whom the excise is not paid or collected. If yes, please give details of Banks and other institutions/agencies

who have participated in defrauding Excise Department of its revenue with the Promoters/Occupants of the aforesaid premises and reasons for same being ignored by the Excise Department.

- d) Please give details on any litigation pending in respect of Units bases at D-32, MIDC, Satpur, Nashik-7; Please give details of inspection and other reports in respect of units located at D-32 MIDC, Satpur.
- e) Please give details of any action initiated for recovery of any dues on aforesaid units based at plot No.D-32, MIDC, Satpur, Nashik-7; Please give action taken on promoters/occupants of Units based at plot No.D-32, MIDC, Satpur, Nashik-7 along with the Lessor i.e. MIDC and Financial Institutions such as MSFC responsible for transferring/disposing the unit and its assets in order to protect the interests of Excise Department in public interest.
- f) If there has been no action on the defaulting promoters/occupants/institutions if found on inspection or otherwise. Please give reasons for not taking any action on such promoters of the units located at D-32, MIDC, Satpur, Nashik-7 and names and designation of Excise officials responsible for loss of revenue;
- g) Please give details of Excise exemptions, if any, available to aforesaid units located at plot No.D-32, MIDC, Satpur, Nashik-7;
- h) Whether revenue authorities have been informed of any recovery action to be initiated on the registered premises bearing No.D-32, MIDC, Satpur, Nashik-7. If yes, please give details of such information made to revenue authorities and nature of action to prohibit transfer of any fixed asset including the plot on which the aforesaid units are situated and any movable assets situated in any manner.

Please inform the date since the said recovery proceedings are in progress with Revenue authorities.”

2. CPIO vide his reply dated 18.10.2006 furnished information regarding total excise dues recoverable from M/s Steel Knight Castings but said that their other units are not registered with the Central Excise Department and, as such, no information as regards them is available. CPIO refused to furnish information asked at Serial Nos. (b) to (h) and stated that the same do not constitute `information' as defined under the Act.

3. Not satisfied with the reply of the CPIO, the appellant approached the 1<sup>st</sup> Appellate Authority pleading that the CPIO while furnishing him information about

excise dues of the 3<sup>rd</sup> party has not stated the date since when the said dues are pending and at what rate interest is leviable on such dues. He also pleaded that his request for information pertaining to Sr.No. (b) to (h) of his RTI application has been rejected by the CPIO on erroneous ground, as these come under the category of reports, documents, circulars, orders and opinions. He submitted that they constitute information relating to a private party, M/s Steel Knight Castings that can be accessed by the respondent Public Authority.

4. The 1<sup>st</sup> Appellate Authority partly agreed with appellant Shri Barla and held that information regarding the date since when the dues are pending and the details of rate of interest should be provided to the appellant. The Appellate Authority, however, held that information relating to points (b) to (h) are just questions made in the form of enquiry and, therefore, do not fall within the ambit of Right to Information Act, 2005.

5. Aggrieved by the decision of the 1<sup>st</sup> Appellate Authority appellant Shri Barla approached the Central Information Commission in 2<sup>nd</sup> Appeal dated 30.11.2006. In his 2<sup>nd</sup> appeal, the appellant has cited Section 2(j) of the Act and submitted that the right to information as defined under the Act includes:

- (i) inspection of work, documents, records;
- (ii) taking notes extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, videocassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

6. The 2<sup>nd</sup> appeal of the appellant came up before the single Bench of Mr. A.N. Tiwari, Information Commissioner on 15<sup>th</sup> February, 2007, which was attended by the CPIO and the Appellate Authority. The Single Bench considered the matter and since it was of the opinion that the 2<sup>nd</sup> appeal involved matters of

vital importance it decided that the matter be heard and decided by the Full Bench of the Commission and both the appellant and the respondents be given sufficient time to prepare and present their case as may be considered necessary by them. Since the appellant and the respondents were located at Nashik, Maharashtra the Full Bench heard the matter through video conferencing on 19.6.2007. The following are present:

**Appellant:**

1. Shri Vibhor Dileep Barla

**Respondents:**

1. Ms. F.M. Jaswal, CPIO

8. The arguments advanced at the time of hearing by the appellant are summarized as under:

- (i) that the information both u/s 2(f) and 2(j) is of the kind which can be accessed by the Excise department under the RTI Act.
- (ii) that the information which pertains to a private body and can be accessed by a public authority can also be provided to him and he has done nothing wrong in asking this information.
- (iii) that a fraud has been committed in respect of Plot No.D-32, MIDC, Satpur, Nasik where M/s Steel Knight Castings are located and on which the Government has a first charge. This first charge of the Government is badly affected due to trespassers like M/s Shri Electrical & Engineering and M/s Himanshu Print O'Pack. The bank has also falsely implicated him in this matter. He also said that the bank in fact has not given any loan. The 3<sup>rd</sup> party has just taken that amount. The machineries lying in the plot have been brought from somewhere and, as a matter of fact, have not been purchased. So, there is a total fraud as regards the money given by the bank. He said that he had asked for a copy of report after inspection of the plot in question but the respondents have done nothing in this regard.

9. The arguments advanced at the time of hearing by the respondent are summarized as under:

- (i) The respondent submitted that the CPIO has already replied the questions raised by the appellant as to what are the dues pending against the 3<sup>rd</sup> party, M/s Steel Knight Castings. This amount has already been recovered and now what remains to be recovered is only interest and respondents are making efforts to realize the said amount of interest.
- (ii) The respondents further submitted that on inspection of the premises at D32, MIDC, Satpur, Nasik, it was found that one Himansu Print-O-Pack owned the same.
- (iii) The respondent submitted that a criminal case No.132/2005 under Sections 468, 467, 419 and 420 of the Indian Penal Code has been filed in which the appellant is the main accused.
- (iv) The appellant is asking for the information in his own private interest and not in public interest.
- (v) As far as the authenticity about the FIR, charge sheet etc. is concerned, it was submitted that a copy of the same has already been sent to the Central Information Commission.
- (vi) The respondents further submitted that they are not concerned with the cases going on in the Court. They are concerned with only pending dues of excise, which has already been recovered, and they are making efforts to recover the interest that has accrued on the pending dues.

**ISSUES FOR DETERMINATION:**

- I. Whether the “information” asked for by the appellant can be treated as “information” as defined under Section 2(f) read with Section 2(j) of the Act and therefore accessible under Section 2(j) of the RTI Act?

- II. Whether there has been any denial of information by the respondent public authority in this case?
- III. What directions,, if any, the Commission can issue?

**DECISION NOTICE WITH REASONS:**

10 The Right to Information Act, 2005 was enacted in order to promote transparency and accountability in the working of every public authority. The Act however recognizes that revelation of information in actual practice could conflict with other public interests, which may include preservation of confidentiality of sensitive information. The principal object of the Act is therefore to harmonize these conflicting interests by preserving the paramountcy of the democratic ideal. In this perspective, enshrined in the Preamble to the RTI Act, 2005, it may be inferred that **a public authority is obliged to provide access to information to a citizen unless furnishing of such information is covered by one of the exemptions provided for in the Act either under Section 8 or under Section 9.**

11. Right to Information Act confers on all citizens a right to access information and this right has been defined under Section 2(j) of the said Act. An analysis of this Section would make it clear that the right relates to information that is held by or under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it under Section 2(f) or if the information is *non-est*, the public authority cannot provide the same under the Act. The Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination. The definition also makes it clear that the Right to Information includes the right to inspection of work, documents or records or taking notes, extracts or certified copies of documents or records or taking certified samples of material or obtaining information through some electronic device.

12. It will be pertinent to refer to the definition of the word 'information' itself appearing in Section 2(f) of the Act and which reads as under:

- (f) "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;

13. The definition of the word 'information' has to be read in conjunction with the definition of 'record' appearing in Section 2(i) of the RTI Act which reads as under:

- (i) "record" includes—
  - (a) any document, manuscript and file;
  - (b) any microfilm, microfiche and facsimile copy of a document;
  - (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
  - (d) any other material produced by a computer or any other device;

14. Thus, information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created. An "opinion" or an "advice" if it is a part of the record is "information" but one cannot seek from a PIO either an "opinion" or an "advice" as seeking such opinion or advice would be in effect seeking a decision which the CPIO may not be competent or authorized to take. Similarly, the existing report is information but preparing a report after an enquiry cannot be treated as available "information". Likewise, the data maintained in any electronic form is "information" and the whole of such data or a part thereof can be made available to an applicant by a public authority under the RTI Act. But making an analysis of data or deriving certain inferences or conclusions based upon the data so collected cannot be expected to be done by the CPIO under the RTI Act. On the same analogy, answering a question or proffering advice or making suggestions to an applicant is clearly beyond the purview of the Right to Information Act.

15. The case of the applicant seeking information from the respondent Public Authority need be analysed in view of what has been observed in the preceding paragraphs.

16. It is true that it is not the duty of the CPIO to cause an enquiry or undertake an investigation or prepare answers to the questions posed by the appellant. But the CPIO is certainly obliged to locate the information available with the public authority and held by it so that it could be made available to the information seekers under the RTI Act, seeking the assistance of any officer u/s 5(4).

17. On perusal of the RTI application submitted by the appellant, it appears that the it appears that information at point (a) has already been provided by the CPIO. In regard to point (b) to (h) of the RTI application, the information has been denied on the ground that the question posed by the appellant are not falling under the definition of `information' as defined under section 2(f) of the Right to Information Act. But on perusal of para (b),it appears that appellant is seeking factual information as is evident from the information sought at para (b) of his RTI application:

“(b) Whether Excise Department has inspected the premises bearing No.D-32, MIDC, Satpur, Nashik-422007 as on date. If yes, whether there are machineries on the aforesaid premises. If yes, whether the excise has been paid on those machines. If yes, please give receipts of having received excise payment on the aforesaid Machines and name of the Units having paid such Excise on the aforesaid Machines. If no excise is collected on the aforesaid machines, reasons for not collecting the same from the Promoter/occupiers of the premises.”

Whether the inspection has taken place or not is a question of fact. The CPIO is required, therefore, to respond as to whether the said premises were ever inspected and if so on which date. If the information concerning



inspections, if conducted, is available, the same constitutes information that should be provided and, if not, the CPIO should make an affirmative statement about the non-availability of the information. Nonetheless, it is incumbent on the part of the CPIO to ascertain about the availability or otherwise of the concerned information, keeping in mind that he is obliged to give information if there is any information either held or under the control of the concerned public authority. If the information relates to a third party, he should follow the procedure prescribed by Section 11 of the RTI Act. Similarly, other points raised by the applicant in his RTI application should be accordingly dealt with.

18. 18. In paras (c) & (f) of his RTI application, the appellant is asking a hypothetical question which apparently cannot be answered by the Excise Department . Paras (d), (e) and (g) of the application, however, relates to questions of facts and the concerned public authority should be in a position to tell as to whether any inspections were carried on or whether any litigation is pending in respect of those units or whether any action was initiated for recovery of any dues. Similarly, if any information is available in respect of para (h) of the RTI application, the CPIO should provide the same.

**Issues No. I and II are decided accordingly.**

19. It is, however, a matter of concern that the Appellate Authority instead of dealing with the matter properly has mechanically decided the matter without making any proper analysis of the issues involved. The 1<sup>st</sup> Appellate Authority being a senior officer of the department was better equipped to deal with the matter and if he should have examined the matter, there would have been no necessity on the part of the appellant to approach this Commission. The Commission trusts and believes that the 1<sup>st</sup> Appellate Authority would sincerely discharge his statutory obligations under the Right to Information Act so that the right to information guaranteed to the citizens is facilitated properly.

20. In view of the above facts and circumstances of the case, the Commission directs the CPIO to provide the available information to the appellant within a

period of 15 days from the date of receipt of this order. If any information is not available or held by the public authority, the CPIO shall so state explicitly. If the information sought is held by another public authority action will be taken u/s 6(3).In case the information relates to a third party, the procedure as prescribed under Section 11 will be followed by CPIO. **This disposes of issue III**

Announced. Dated this the 9<sup>th</sup> day of July, 2007

(Wajahat Habibullah)  
Chief Information Commissioner

(A.N. Tiwari)  
Information Commissioner

(Mrs. Padma Balasubramanian)  
Information Commissioner

Authenticated true copy.

(L.C. Singhi)  
Additional Registrar

**Note:** Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.