

To  
The CPIO,  
Howrah CGST Commissionerate,  
M.S. Building,  
15/1, Strand Road,  
Kolkata-700001

Sir,

Subject: RTI -Regarding

I am a citizen of India. I seek the following information. The information sought is not barred by the RTI Act 2005 as amended.

1. Who has given the two stages of approval under Rule 14 of CCS (CCA) 1965 to the charged Memorandum under C. No. II (8) 10/Vig/CE/Kol-VI/07/406 (C) dated 22.08.2008.

Kindly state the name, designation and date of such approving Authority.

2. Please fix a date and time to show the concern files with note sheet(s) of such approval.

In this regard Supreme Court Judgement regarding GOI vs B.V.Gopinath may be consulted.  
It is not a third party query.

Enclosed: IPO of Rs 10 bearing No—

- i) GIC 663734 for Rs. 5/-
- ii) GIC 663735 for Rs. 5/-

Yours faithfully

*Arun Chakraborty*  
02/04/2019

Arun Chakraborty

687/2 Block O, New Alipore,

Kolkata-700053

Ph-8697029692



*Copy (P71)*  
*3/4/19*



NATION  
TAX  
MARKET

**RTI MATTER**

भारत सरकार GOVERNMENT OF INDIA

OFFICE OF THE COMMISSIONER OF CENTRAL TAX, HOWRAH GST COMMISSIONERATE

एम.एस. बिल्डिंग, 15/1, स्ट्रैंड रोड, कोलकाता- 700001

M.S. BUILDING, 1<sup>st</sup> floor, 15/1, STRAND ROAD, KOLKATA- 700001

दूरभाष सं/PHONE NO. 033-2262-8490, फैक्स/ FAX 033-2262-8490, Email: [rtigsthwh@gmail.com](mailto:rtigsthwh@gmail.com)

C. No. IV (16)02/RTI/CGST/HWH/AC/2019-20 / 210A Date: 04.04.2019

To  
Shri Arun Chakraborty,  
687/2 Block O, New Alipore,  
Kolkata-700053.

Sir,

**Sub: - RTI application under RTI Act, 2005 filed by Shri Arun Chakraborty  
- Request for furnishing of information - reg.**

Please refer to your RTI application dated 02.04.2019 which has been received at this office on 03.04.2019 duly registered vide Registration No. 02/RTI/CGST/HWH/AC/2019-20 seeking certain information. The desired information as sought for by you as received from the section concerned i.e., Headquarter Vigilance section in respect of Howrah CGST & CX Commissionerate are mentioned below:-

**Reply of Point No.01:-**

Sr.No.	Charged Memorandum issued under	Approval for initiation of proceedings given by	Approval of the Charge Memorandum given by.
01.	C.No.II(8)10/Vig/CE/Kol-VI/07/406(C) dated 22.08.2008	No records available	Shri S.B. Mishra, Commissioner, Kolkata-VI Commissionerate on 22.08.2008.

**Reply of Point No.02:-** It is hereby stated that the files sought to be shown to the applicant relate to disciplinary proceedings instituted against the applicant himself. Therefore if those files are allowed to be inspected, it would impede and prejudicially affect the process of investigation. Hence the request cannot be entertained in terms of section 8(1)(h) of the Right to Information Act, 2005 which reads as follows:

‘8. Exemption from disclosure of information – (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - ... (h) information which would impede the process of investigation or apprehension or prosecution of offenders;’

If you are aggrieved or dissatisfied with the reply, you are at liberty to prefer First Appeal within the stipulated time i.e. 30 (thirty) days from the date of receipt of this reply before Shri **Chetan Lama**, Additional Commissioner & 1<sup>st</sup> Appellate Authority under RTI Act, 2005, Central Tax, Howrah GST Commissionerate, M.S. Building (6th Floor), 15/1 Strand Road, Kolkata - 700 001.

Yours sincerely,

(RAM KUMAR BHADURY)  
CPIO & ASSISTANT COMMISSIONER

सीपीआईओ और सहायक कमिशनर,

CENTRAL TAX केंद्रीय कर

HOWRAH GST COMMISSIONERATE

0/2

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

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

To  
Shri Chetan Lama, Addl. Commr & 1st Appellate Authority  
Howrah CGST Commissionerate  
M.S. Building, 6th Floor, 15/1 Strand Rd. Kol-700001

(Name & address of the  
Senior Officer acting as  
First Appellate Authority).

1. Name of the Applicant : Arun Chakraborty
2. Address of the Applicant : 687/2, Block 'O', New Alipore  
Kolkata - 700053
3. Particulars of the Central/  
State Public Information Officer:  
(a) Name : Ram Kumar Bhadury CPIO & Asstt. C.  
(b) Address : Howrah CGST Commitee, 15/1 Strand Rd. 6th  
Kol-700001
4. Date of submission of application  
for seeking information : 02.04.2019
5. Date on which 30/35/40 days from  
submission of application are over : 01.05.2019
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: Deliberate attempt to hide inform.  
under false pretext.  
(c) Grounds for appeal: Misinterpretation on the part of CPIO  
with an attempt to hide information  
05.05.2019
7. Last date for filing the appeal :
8. Particulars of Information  
(a) Information requested: Access to files with wife sheets  
(b) Subject: Two stages approval under Rule 14 of CCS(CA)  
(c) Period: Rules 1995.
9. A fee of \_\_\_\_\_ for appeal has been deposited in \_\_\_\_\_ vide Receipt No. \_\_\_\_\_ Dated  
\_\_\_\_\_(only if applicable)

Arun Chakraborty  
10/04/2019  
Signature of Appellant  
E-mail address, if any  
Tel. No. (office)  
(Residence) 24009377

Place Kolkata  
Date 10/04/2019

Please attach :

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

**RTI MATTER****भारत सरकार GOVERNMENT OF INDIA****OFFICE OF THE COMMISSIONER OF CENTRAL TAX, HOWRAH GST COMMISSIONERATE****एम.एस. बिल्डिंग, 15/1, स्ट्रैंड रोड, कोलकाता- 700001****M.S. BUILDING, 1<sup>st</sup> floor, 15/1, STRAND ROAD, KOLKATA- 700001****दूरभाष सं/PHONE NO. 033-2262-8490****ORDER-IN-APPEAL NO. 02/RTI/2019-20****Dated 9/ 05/2019****PASSED BY** Shri. Chetan Lama

Additional Commissioner, 1<sup>st</sup> Appellate Authority of  
 Central Tax, CGST & Central Excise,  
 Howrah Commissionerate, Custom House  
 M.S.Building(6th Floor),  
 15/1 Strand Road, Kolkata-700 001.

**Brief fact of the case**

**Subject:** Appeal filed under Section 19(1) of the RTI Act, 2005 by Shri Arun Chakraborty, 687/2, Block-O, New Alipore, Kolkata-700 053 against the reply furnished by the CPIO under letter C.No.IV(16)02/RTI/CGST/HWH/AC/2019-20/210A dt.04.04.19 to his application dated 02/04/19.

I. The appellant filed an application dated 02/04/19 seeking following information from the CPIO & Assistant Commissioner, Howrah CGST Comm'te. The point-wise information, reply, reasons for appeal and grounds of appeal are depicted herein below:

**Information/Query 1:** Who has given the two stages of approval under Rule 14 of CCS(CCA) 1965 to the charged Memorandum under C.No.II(8)10/Vig./CE/Kol-VI/07/406(C) dated 22.08.2008

Kindly state the name, designation and date of such approving Authority.

2. Please fix a date and time to show the concern files with note sheet(s) of such approval.

In this regard Supreme Court Judgment regarding GOI vs. B.V. Gopinath may be consulted. It is not a third party query.

**Reply of Point No.01:-**

Sr.No.	Charged Memorandum issued under	Approval for initiation of proceedings given by	Approval of the Charge Memorandum given by.
01.	C.No.II(8)10/Vig/CE/Kol-VI/07/406(C) dated 22.08.2008	No records available	Shri S.B. Mishra, Commissioner, Kolkata-VI Commissionerate on 22.08.2008.

**Reply of Point No.02:-** It is hereby stated that the files sought to be shown to the applicant relate to disciplinary proceedings instituted against the applicant himself. Therefore if those files are allowed to be inspected, it would impede and prejudicially affect the process of investigation. Hence the request cannot be entertained in terms of section 8(1)(h) of the Right to Information Act, 2005 which reads as follows:

‘8. Exemption from disclosure of information – (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - ... (h) information which would impede the process of investigation or apprehension or prosecution of offenders;’

**Reasons for appeal:** Deliberate attempt to hide information under false pretext.

**Grounds of appeal:** Mis-interpretation on the part of the CPIO with an attempt to hide information.

II. Aggrieved with the reply dated dt.04.04.19 the appellant has preferred the instant appeal.

The Appellant has thus prayed for the following relief:

**Relief Sought for:** Access to files with note sheets-Two stages approval under Rule 14 of CCS (CCA) Rules 1995(probably wrongly quoted as 1995 in lieu of 1965)

III. An opportunity for Personal Hearing was granted to the appellant on 29.04.2019 at 11.30 AM. Accordingly, the appellant appeared on the said date before the First Appellate Authority and reiterated his grounds of appeal. He further stated that since Charge memo has been already issued, report already submitted by I.O. and disagreement note given by Disciplinary Authority, there is no question of investigation being impeded.

#### **IV. Discussion & findings**

(a) I have gone through the case records, the appeal dated 10.04.19 vis-à-vis the reply dated dt.04.04.2019 furnished by the CPIO & Assistant Commissioner, Central Tax, CGST & CX, Howrah Commissionerate pertaining to the RTI application dated 02/04/19 filed by the instant appellant.

(b) In the instant case, I find that the moot point of the appeal, to all intents and purposes, revolves around denial of showing note sheets pertaining to the disciplinary proceedings, instituted against the applicant/appellant himself, by the CPIO by invoking the provisions of Section 8(1) (h) of the RTI Act, 2005.

(c) Now, I find that the only point to be decided in the instant case as to whether denial of showing note-sheets with regard to the disciplinary proceedings instituted against the appellant himself by taking recourse to the provisions of Section 8(1)(h) of the RTI Act 2005 is legal and sustainable. Now, on careful examination of the reply of the CPIO concerned vide letter C.No.IV(16)02/RTI/CGST/HWH/AC/2019-20/210A dt.04.04.19, I find that the CPIO has replied to the applicant that in case, the applicant/appellant is allowed to be shown the note-sheets as sought for, that would impede and prejudicially affect the process of investigation. Hence, the request cannot be entertained in terms of section 8(1)(h) of the Right to Information Act, 2005 which reads as follows:

‘8. Exemption from disclosure of information – (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - ... (h) information which would impede the process of investigation or apprehension or prosecution of offenders;’

(d) In order to examine the point of dispute in its proper perspective, I intend to examine the issue in the light of umpteenth judgments passed by the Hon’ble CICs as to determine the right stage of an investigation when note-sheets or any other documents pertaining to a disciplinary proceedings can be allowed to be inspected by/to be shown to an applicant/appellant, as the case, may be. A rapt reading of the following verdicts will clear the position.

CIC: The term ‘investigation’ used in **section 8(1)(h)** of the Act should be interpreted broadly and liberally; **No investigation could be said to be complete unless it has reached a point where the final decision on the basis of that decision is taken in the light of the citations as illustrated hereinbelow:**

File No. CIC/VS/A/2015/001556-BJ in the case of Mr. A. Gangopadhyay v. South East Central Railway – The Hon’ble CIC has passed the order applying the ratio of the undernoted cases.

File No. CIC/SM/A/2012/001020 – A K Agrawal V/S SEBI and RIL,: The Hon’ble CIC has held that this Commission in its decision dated 10.7.2007 in Appeal No. CIC/AT/A/2007/0007, 10 & 11 (Shankar Sharma & Others Vs. DGIT) observed that the term ‘investigation’ used in section 8(1)(h) of the Act should be interpreted broadly and liberally and that **no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that decision is taken.**

File No. CIC/AT/A/2007/007/00234 in the case of K.S.Prasad vs SEBI : the Hon’ble CIC, inter alia, observed that “...as soon as an investigation or an enquiry ..... comes to an end and, the investigation report is submitted to a higher authority, it cannot be said to be the end of investigation. ... which can be truly said to be concluded only with the decision by the competent authority.”

File No. CIC/DS/A/2013/000138/MP in the case of Narender Bansal vs Oriental Insurance Co. Ltd., : The Hon’ble CIC has held that the investigation in the matter was complete but further action was under process, and hence it attracted section 8(1)(h) of the Act.”

Thus, going by the different judgments of the Hon’ble CICs as cited hereinabove, it is manifestly clear that until and unless, disciplinary proceedings attains its finality, it cannot be held that an investigation is complete/over. In other words, 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 by the Competent Authority. Thus, it would not be appropriate to hold that an investigation is over before all subsequent actions which include all levels of appeal(s) and finally determined based upon the initial investigation. Till such entire process is completed, no investigation can be considered to be complete in its true sense, ipso-facto, the possibility of the proceedings being impeded/hampered by disclosure of any information/inspection of note sheets in the instant case pertaining to disciplinary proceedings cannot be ruled out. Hence, considering the instant appeal vis-à-vis the provisions as well as judicial positions as discussed hereinabove, I am persuasively and cogently of the opinion that the CPIO has lawfully invoked the provisions of Section 8(1)(h) of the RTI Act, 2005 in course of denying the inspection of note sheets as sought for by the applicant/appellant.

However, since the appellant has placed his reliance on the verdict of Hon'ble CIC's judgment in case No. CIC/AT/A/2008/01238 dated 19.09.2008, the same has been gone through and it is seen that the Hon'ble CIC in fact has, rejected the appeal. Thus, in the instant case, inspection of note-sheets has been rightly denied by the CPIO by taking recourse to the provisions of Section 8(1)(h) *ibid*.

Now, coming to the context of non-availability of information since the records are not available as reported by the Section concerned, I find that it is a well settled position that in the absence of any information/documents, the same could not be provided by the CPIO to the appellant concerned. In defence of such view, I place reliance on the provisions of the RTI Act 2005, wherein, it has been enshrined that the basic mandate/tenet of the RTI Act is that the information which is available with the CPIO that can only be provided to an applicant, an aspect which derives provisional backing in Section 2(j) *ibid*. wherein, it has, *inter-alia*, been enshrined that the CPIO is not required to collect, compile or create information for the information seeker but he is expected to provide the information 'available' in the material form. This position also derives judicial backing /credence from the ruling as contained in Para 5 of the Hon'ble CIC's order No.CIC/SS/A/2011/ 001527 dated 17.02.2012.

In this context, I also take recourse to the verdict of the Hon'ble CIC in Appeal No.CIC/AT/A/2006/00588, dated 30.11.2006(CIC) and I intend to reproduce the relevant portion of the judgment as contained in para 11 of the subject order:

"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-exist, 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."

From the above, particularly from the provisions of the RTI Act 2005 and the different judgments pronounced by the Hon'ble CIC, it is explicitly clear that the prime condition for furnishing information/documents, as the case may be, to an RTI applicant, is availability of the same with the CPIO concerned. Since, in the instant case, a part of the desired information is not available with the CPIO, the same could not be provided to the appellant.

In view of the above discussion and findings, I find neither any plausible reason to interfere with the stand taken by the CPIO nor any merit in the instant appeal. Accordingly, the appeal is rejected. Accordingly, I proceed to pass the following orders:




V. **ORDER**

- (1) I uphold the stand taken by the CPIO and reject the appeal.

The appellant is, however, at liberty to prefer a 'Second Appeal' before the Central Information Commission, Room No.326, 2<sup>nd</sup> Floor, August Kranti Bhavan, Bhikaji Cama Place, New Delhi-110066 within 90-days from the date of receipt of this order.

The appeal is disposed of accordingly.

  
09/05/2019  
(Chetan Lama)  
1<sup>st</sup> Appellate Authority

&  
Addl. Commissioner of Central Tax  
Howrah CGST Commissionerate

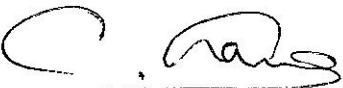
C. No. IV(16)02/RTI/Appeal/CGST/HWH/AC/2019-20/

Date: 09/05/2018

Copy for information to:

1868-69-A

- (1) Shri Arun Chakraborty, 687/2, Block-O, New Alipore, Kolkata-700 053
- (2) The CPIO & Assistant Commissioner, Central Tax, Howrah CGST Commissionerate for information.

  
09/05/2019  
(Chetan Lama),  
1<sup>st</sup> Appellate Authority,  
&

Addl. Commissioner of Central Tax  
Howrah CGST Commissionerate

o/c