Speed post

Shri Sydney D'Silva,
Joint Commissioner & 1st Appellate Authority,
Central Tax, Howrah GST Commissionerate,
M.S. Building (6th Floor),
15/1, Strand Road,
Kolkata-700001

Respected Sir,

Subject:- Filing of the First Appeal against the decision dated 08.06.2018 of the CPIO-reg.

Shri Bidyut Talukdar, the CPIO has malafidely, arbitrarily and illegally rejected my RTI application bearing Registration No. CCUKL/R/2018/50038 filed on 20.05.2018. The under-mentioned are the grounds of my appeal for consideration by you in the interest of justice.

I had requested to provide me the copies of the requisition letters sent to SSC by your office for the various years specified in my application under reference and copies of the replies received theron, but the CPIO has malafidely denied me the information on the pretext that the letters are not traceable. He has given the false information in so far as per the Records Retention Schedule of Government of India, the files relating to the Recruitment fall in Category C -10 implying thereby that the files shall be preserved for a period of 10 years. Your kind reference to sub-serial no. 26 of Serial No. 12 of the Records Retention Schedule of the Government of India (recruitment otherwise than through UPSC) is invited. However, the said preservation period of 10 years is subject to the condition that the application of the successful candidate and an authenticated copy of the order of the appointment being kept in the personal file. According to the said Record Retention Schedule the personal files are further preserved for a period of 5 years after issue of final pension/gratuity payment order. Thus the records from which the information sought by me is undoubtedly available with your office at least in the personal files of the concerned officers and thus I am entitled to get the information from your office without further delay.

Both the informations sought by me relate to the files mentioned against the sub-serial no. 26 of Serial No. 12 of the Records Retention Schedule of the Government

of India (recruitment otherwise than through UPSC) read with the corresponding Condition.

The CPIO has not denied that the information is not available with him. He has simply stated that such letters are not found. The reply furnished by the CPIO appears to be false for the reasons explained above.

On the basis of above facts I request you to:-

(a) Ask the CPIO to prove in terms of Section 19(5) that the denial of the request was justified. The onus lies on him/her.
(b) Provide me the information at the earliest.

Thanks and Regards.

Yours sincerely,

Date – 25.06.2018

25.06.18

Akash
House No. 493,
Sector 5, Gurgaon
(Haryana)-122001

भारत सरकार
GOVERNMENT OF INDIA
प्रधान मुख्य आयुक्त का कार्यालय
OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER
केन्द्रीय वस्तु एवं सेवा कर , कोलकाता क्षेत्र
CENTRAL GOODS SERVICE TAX AND CENTRAL EXCISE, KOLKATA ZONE
केन्द्रीय वस्तु एवं सेवा कर भवन, दूसरा तल, 180, शांतिपल्ली, आर. बी. कानेक्टर, कोलकाता – 700 107
Kendriya GST Bhawan (2nd Floor), 180 Shanti Pally, R. B. Connector, Kolkata – 700 107
Phone No. 033-2441-6797/6842: Fax No. 033- 2441-6834/6798

F.No. V (30)32/CGST/PCCO/RTI/May-18/Kol/2018/ 10765 Date: 26.05.2018

To
Shri Akash,
House No. 493, Sector 5,
Gurugram, Gurgaon,
Haryana-122001.

Sir,

Sub: RTI Application dated 20.05.2018 filed by Shri Akash under Right to Information Act 2005 –reg.

Please refer to your RTI application having Registration No. CCUKL/R/2018/50038 on the above mentioned subject. The application has been transferred to this CPIO vide letter under F.No S(RTI-05)-10/2018 (A&A) dated 22.05.2018 by Vinay Misra, CPIO & Assistant Commissioner of Customs, RTI Cell (Airport & Admn.), Custom House,15/1, Strand Road, Kolkata- 700001. The application has been received at this end on 24.05.2018 and subsequently been registered at this office vide Regn No.224/RTI/CGST/CCO KOL/2017 dated 25.05.2018.

The information sought on the point no. 1 & 2 raised in your RTI application is not available with this CPIO and may be available with the CPIOs, Office of the Commissioner, **Howrah CGST & CX Commissionerate**, under Kolkata Zone. Accordingly, a copy of your application is being transferred to the CPIOs of the above mentioned Commissionerate, for providing you the requisite information directly under Section 6(3) of the Right to Information Act, 2005.

If you are aggrieved or dissatisfied with the reply provided by this CPIO, you are at liberty to prefer an appeal within 30 days to the 1st Appellate Authority Mr. K.S.V.N. Suryateja, Joint Commissioner, Office of the Principal Chief Commissioner of CGST, Kolkata Zone, Kendriya GST Bhawan, 2nd floor, 180 Shantipally, Rajdanga Main Road, R.B. Connector, Kolkata -700107.

Yours faithfully,

Vikram Chand

(Vikram Chand Meka)
CPIO & Deputy Commissioner, CCO

F.No. V (30)32/[illegible]/CCO/RTI/May-18/Kol/2018/ 10766-67

Date: 25.05.2018

Copy to:

1. The CPIO, [illegible] of the Commissioner, **Howrah CGST & CX Commissionerate,** with request to provide [illegible] information directly to the applicant on the point no.1 & 2 within the stipulated time provided under the RTI Act under intimation to this office. Copy of the said RTI application of Shri [illegible] aforesaid letter by CPIO & Assistant Commissioner of Customs, Kolkata dated 22.05.2018 [illegible] enclosed.

2. Vinay [illegible] Assistant Commissioner of Customs, RTI Cell (Airport & Admn.), Custom House [illegible] Road, Kolkata- 700001 with reference to the letter F.No S(RTI-05)-10/2018 (A&A) [illegible]

Yours faithfully,

(Vikram Chand Meka)
CPIO & Deputy Commissioner, CCO

RTI Matter/URGENT

भारत सरकार
GOVERNMENT OF INDIA
सीमा शुल्क आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS
सीमा शुल्क सदन, 15/1, स्ट्रैण्ड रोड, कोलकाता -- 700001
CUSTOM HOUSE, 15/1, STRAND ROAD,KOLKATA- 700001

F. No. S (RTI – 05) - 10/2018 (A & A) Date: 22/05/2018

To
The CPIO & Assistant Commissioner of Customs (P & E), Custom House, Kolkata.

Sir,

Subject: Transfer of RTI application under Section 6(3) of the Right to Information Act, 2005 - reg.

Please find enclosed herewith one (01) RTI Application of Shri Akash (Reg.No.CCUKL/R/2018/50038 date of Receipt 20.05.2018) which was forwarded to this section under the covering letter vide F.No.VIII (48)-19/CCO/KOL/CUS/RTI/2016(Pt.VI)/3031 dated 21.05.2018 of Chief Commissioner of Customs' office, Kolkata and received by this Cell on 21.05.2018.

The matter has been examined and it appears that the information as sought is closely connected with your department. Hence, the said application is being transferred to you as per the provision of Section 6(3) of the RTI Act, 2005 with a request to furnish the requisite information to the applicant directly under intimation to RTI Cell (Airport & Admin.) and to the Chief Commissioner's Office. You are also requested to upload the same to the official website of Kolkata Customs.

Yours sincerely,

Encl: As above.

(Vinay Misra)
CPIO & Assistant Commissioner of Customs
R.T.I. Cell (Airport & Admn.)
Custom House, Kolkata.

Copy to:-

1. The CPIO, O/o the Principal Chief Commissioner, Central Excise, Kolkata Zone Kendriya Utpad Shulka Bhawan, 180, Shantipally, Rajdanga Main Road, R. B. Connector, Kasba, Kolkata – 700 107 with request to provide information directly to the applicant (Enclosed as mentioned above).
2. The CPIO & Asst. Commissioner of Customs, Chief Commissioner's Office, Custom House, Kolkata-700001 for information.
3. Shri Akash, House No.493, Sector 5, Gurugram, Gurgaon, Haryana, PIN –122001 for information.

RTI REQUEST DETAILS

Registration No. :	[illegible]/00018/500018	Date of Receipt :	20/05/2018
Mode of Receipt :	Online Receipt	Language of Request :	English
Name :	Akash	Gender :	Male
Address :	H No. 493, Sector 5, Gurugram, Pin:122001		
State :	Haryana	Country :	India
Phone No. :	Details not provided	Mobile No. :	+91-8851556866
Email :	duddoo1991@gmail.com		
Status(Rural/Urban) :	Details not provided	Education Status :	Above Graduate
Is Requester Below Poverty Line ? :	No	Citizenship Status	Indian
Amount Paid :	10)	Mode of Payment	Payment Gateway

Request Pertains to :

Information Sought :

Respected Sir/Madam,
Kindly provide me the under-mentioned information.
1 Copies of the Requisition letters sent by your zone to Staff Selection Commission, New Delhi for the appointment of the candidates against direct recruitment of Inspectors of Central Excise in your zone for the Vacancy Years 1983, 1984, 1985, 1986, 1987, 1988, 1989 and 1990.
2 Copies of the Forwarding letters (along with the copies of the Annexures) sent to your zone by Staff Selection Commission, New Delhi forwarding their under the dossiers of the selected candidates on the basis of the Inspectors of Central Excise, Income Tax etc. Examinations,1983, 1984, 1985, 1986, 1987, 1988, 1989 and 1990 for their appointment in the post of Inspector of Central Excise.
Thanks and Regards.

Print | Save | Close

21/5/18
Pl. send to ~~Supdt~~ CPIO (A&A)
Supdt (R71).

ne.gov.in/RTIMIS/NODAL/RTIDetails.php?reqno=7RBa9OJ0Yo...

RTI MATTER/MOST URGENT
BY SPEED POST

भारत सरकार GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, HOWRAH GST COMMISSIONERATE
एम.एस. बिल्डिंग, 15/1, स्ट्रैण्ड रोड, कोलकाता- 700001
M.S. BUILDING,1st floor, 15/1, STRAND ROAD, KOLKATA- 700001
दूरभाष सं/PHONE NO. 033-2262-8490, फैक्स/ FAX 033-2262-8490

C. No. IV (16)22/RTI/CGST/HWH/Akash/2018-19/ 3438-B Date: 08.06.2018

To
Shri Akash
H. No. 493, Sector 5,
Gurugram, Gurgaon,
Haryana-122001.

Sir,

Sub: - Furnishing of information under RTI Act, 2005.

Please refer to your RTI application dated 20.05.2018 which has been received at this office on 28.05.2018 from the CPIO & Deputy Commissioner, Pr. CCO, Kolkata Zone.

The reply of your RTI application as available with the records in this office is mentioned below.

Point No. 1: Such requisition letters are not available in this office. Such letters are not found in spite of efforts given by this office to find out the same.

Point No. 2: Such forwarding letters are not available in this office. Such letters are not found in spite of efforts given by this office to find out the same.

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 **Sydney D'Silva**, Joint Commissioner & 1st 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,

O/L

Bidyut Talukdar 08/06/18

(BIDYUT TALUKDAR)
CPIO & ASSISTANT COMMISSIONER,
CENTRAL TAX,
HOWRAH GST COMMISSIONERATE

C.No. As above / 3439-B. Date: 08.06.2018

Copy forwarded to:

The Deputy Commissioner & CPIO, Principal Chief Commissioner's Office, 180, Shantipally, Rajdanga Main Road, Kolkata-700107, with reference to his letter under C.No. V(30)32/CGST/ Pr. CCO/RTI/May-18/Kol/2018/10766-67 dated 20.05.2018.

Bidyut Talukdar 08/06/18

(BIDYUT TALUKDAR)
CPIO & ASSISTANT COMMISSIONER,

RTI MATTER

भारतसरकार/GOVERNMENT OF INDIA

केन्द्रीयकर, होवराजीएसटीकमिशनरकेआयुक्तकाकार्यालय

OFFICE OF THE COMMISSIONER OF CENTRAL TAX, HOWRAH GST COMMISSIONERATE

एम.एस. बिल्डिंग, 15/1, स्ट्रैण्डरोड, कोलकाता- 700001

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

दूरभाषसं/PHONE NO. 033-2262-8490

ORDER [illegible] Dated 24/07/2018

PASSED BY : Shri. Sydney D'Silva,
Joint Commissioner of Central Tax
&
1st Appellate Authority of Central Tax, Howrah CGST 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 Akash House No. 493, Sector 5, Gurugram, Gurgaon, Haryana-122001, against the reply/information furnished by the CPIO, HWH GST Comm'te vide his office letter under C.No. IV(16)22/RTI/CGST/ HWH/Akash/2018-19/3438B dated 08.06.18.

I. The appellant submitted an application dated 20.05.2018 seeking certain information to the CPIO & Assistant Commissioner, Howrah CGST Comm'te. The point-wise information, answer and point of appeals are depicted herein below:

Information/Query 1 : Copies of the requisition letters sent by your Zone to Staff Selection Commission, New Delhi for the appointment of the candidates against direct recruitment of Inspectors of Central Excise in your Zone for the Vacancy Year 1983,1984,1985,1986,1987, 1988, 1989 and 1990.

Reply of the CPIO : Such requisition letters are not available in this office. Such letters are not found in spite of efforts given by this office to find out the same.

Information/Query 2: Copies of the forwarding letters(along with the copies of Annexure) sent to your Zone by Staff Selection Commission, New Delhi forwarding thereunder the dossiers of the selected candidates on the basis of the Inspectors of Central Excise, Income Tax etc. Examination 1983, 1984, 1985, 1986, 1987, 1988, 1989 and 1990 for their appointment in the post of Inspectors of Central Excise.

Reply of the CPIO: Such forwarding letters are not available in this office. Such letters are not found in spite of efforts given by this office to find out the same.

Grounds of Appeal: The CPIO has given the false information insofar as per the Records Retention Schedule of the Government of India, the files relating to the Recruitment fall in Category C – 10 implying thereby that the files shall be preserved for a period of 10 Years. Reference to sub-serial No.26 of Serial No.12 of the Records Retention Schedule of the Government of India recruitment otherwise than through UPSC) is invited. However, the said preservation period of 10 years is subject to the condition that the application of the successful candidate and an authenticated copy of the order of the appointment being kept in the personal file. According to the said Record Retention Schedule, the personal files are further preserved for a period of 5 years after issue of final pension/gratuity payment order. Thus, the records from which the information sought by me undoubtedly available with your office at least in the personal files of the concerned officers and thus I am entitled to get the information from your office without further delay.

II. Aggrieved with the reply dated 08.06.18 the appellant has preferred the instant appeal.

The Appellant has thus prayed for the following relief:

Prayer for supply of information with relevant copies of supporting documents.

III. An opportunity for Personal Hearing was granted to the appellant on17.07.2018 at 11AM. However, the appellant did not turn up on the said date and time before the First Appellate Authority.

Discussion and findings:

(i) Points of Appeal No.1 & 2 : On going through the instant appeal, I find that the appellant has not made grounds of appeal point wise rather he has detailed on/taken recourse to the provisions of Records Retention Schedule of the Government of India specifically Sub-serial No.26 of Serial No.12 of the Records Retention Schedule of the Government of India (i.e. recruitment otherwise than through UPSC) in defence of his entitlement to get the desired information .

(ii) So far as the documents sought for by the appellant, I find that those relate to the period as long back as 35 Years to 28 years which is, without a grain of salt, too old. In this regard, I intend to iterate that the Right to Information Act, under which information/documents are sought for by an applicant, has come into being only in the year 2005. Moreover, since, the documents have been sought for by the appellant under the RTI Act 2005 itself, I like to examine and consider the appeal exclusively against the backdrop/perspective of the RTI Act. Also, since the RTI Act overrides any Act in the country, the instant case is to be governed by it only. However, before going into the merits/demerits of the appeal, I find that the time gap between the period to which the documents sought for relate, and the year of

enactment/implementation of the RTI Act is 22 years. Now, coming to the context of discussing the contention of the appellant for not being provided with the desired copies of the documents, I am of the view that since the same were/are not available with the CPIO, he was not in a position to furnish the same.

(iii) Over and above, the stand taken by the CPIO is in consonance with the provisions of the RTI Act 2005 and to buttress his position, 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 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.

(iv) 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/ excerpt 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-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."

(v) 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, the desired documents are not available with the CPIO, he was/is not in a position to provide the same.

In the light of the above discussion and findings, I proceed to pass the following orders.

IV. ORDER

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

(2) The appellant is, however, at liberty to prefer a 'Second Appeal' before the Central Information Commission, Room No.326, 2nd Floor, August Kranti Bhavan, Bhikaji Cama Place, New Delhi-110 066 within 90-days from the date of receipt of this order.

The appeal is disposed of accordingly.

(Sydney D'Silva)
1st Appellate Authority
&
Joint Commissioner of Central Tax
Howrah CGST Commissionerate

C. No. IV(16)06/RTI/Appeal/CGST/HWH/Akash/2018-19/7264-65A Date: 25/07/2018

Copy for information to:

(1) Shri Akash, House No. 493, Sector 5, Gurugram, Gurgaon, Haryana-122 001.

(2) The CPIO & Assistant Commissioner, Central Tax, Howrah CGST Commissionerate.

(Sydney D'Silva),
1st Appellate Authority,
&
Joint Commissioner of Central Tax
Howrah CGST Commissionerate

O/c