

DHAWAL SHARMA

B.Tech (Chemical), M.B.A (Finance + Marketing)
105/2A, Girish Ghosh Road
Liluah, Howrah - 711204
M - 9038491429/9331000163
e-mail - d.sharma@live.in

To,
The Central Public Information Officer
Howrah CGST & CX Commissionerate
HQ RTI and Sevottam
M.S. Building
15/1, Strand Road
Kolkata-700 001.

30.10.2018

Sub:- Seeking information under RTI Act, 2005

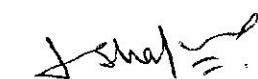
1. (a) **Name of the Applicant** : Dhawal Sharma (AR of M/s Ajoy Transport Organisation)
(b) **Father's Name** : Ram Bilas Sharma
(c) **Age** : 34
(d) **Occupation** : Self Employed.
2. **Address** : 105/2A, Girish Ghosh Road, Liluah, Howrah- 711204
3. **Particulars of Information:**
 - (a) **Concerned Department/Section**: CGST, Howrah Commissionerate, Anti Evasion Department.
 - (b) **Particulars of Information required**: M/s. Ajoy Transport Organisation of 66/1C, G.T. Road, Liluah, Howrah- 711204.
 - (i) **Details of Information required**:
 - a) Whether any written complaint has been registered against the above named organization? Copy and/or contents of the written complaint.
 - b) Whether the complaint has been acted upon?
 - c) What was nature of complaint is it related to non- compliance of GST?
 - d) Whether any statement has been recorded from the complainant or any complainant authorized representative?, if yes, please attach the copy of statement recorded of complainant or authorized representative.
 - (ii) **Period for which information asked for**:
For the period of 1st August 2018 to 20th September 2018.
 - (iii) **Other details**:
N.A.

4. I state that the information sought does not fall within the restrictions contained in Sections 8 and 9 of the Act and to the best of my knowledge it pertains to your office.

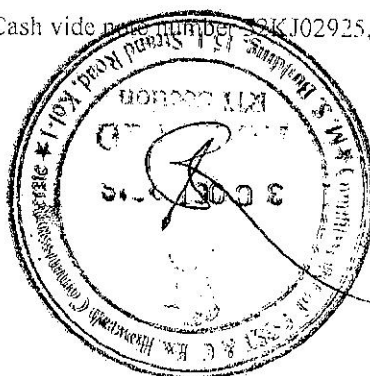
5. A fee of Rs. 10/- (Rupees Ten only) in Cash vide no. dated , attached herein to.

Awaiting you prompt reply & support.

Yours faithfully,



(Dhawal Sharma)
M-9038491429





MINISTRY
OF TAXES
& FINANCE

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, 1st floor, 15/1, STRAND ROAD, KOLKATA- 700001

दूरभाष सं/PHONE NO. 033-2262-8490, फैक्स/ FAX 033-2262-8490, Email: rtigstlwh@gmail.com

C. No. IV (16)80/RTI/CGST/HWH/DS/2018-19/127239

Date: 15.11.2018

To
Shri Dhawal Sharma,
105/2A, Girish Ghosh Road,
Liluah,
Howrah-711204

Sir,

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

Please refer to your RTI application dated 30.10.2018 .

The desired information as sought for in your application are furnished herein below.

Point Nos.3(i)(a), (b), (c) & (d) : So far as the information sought for by you are concerned, this is for your information that the same cannot be provided in terms of the provision under Section 8 (1)(h) of RTI Act, 2005 since the disclosure of the information can impede the investigation.

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 & 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,


15.11.2018

(RAM KUMAR BHADURY)

सीपीआईओ और सहायक कमिशनर
CPIO & ASSISTANT COMMISSIONER

केन्द्रीय कर/CENTRAL TAX

हावड़ा जीएसटी कमिशनरेट

HOWRAH GST COMMISSIONERATE

DHAWAL SHARMA

B.Tech (Chemical), M.B.A (Finance + Marketing)
105/2A, Girish Ghosh Road
Liluah, Howrah - 711204
M - 9038491429/9331000163
e-mail - d.sharma@live.in



Date :11-12-2018....

To,
Shri Chetan Lama,
1st Appellate Authority
&
Addl. Commissionerate,
M.S. Building, 1st floor,
15/1, Strand Road, Kolkata - 700001

C. B.
12/12/2018
Super (FAA)

Ref : C.No.IV(16)11/RTI/Appeal/CGST/HWH/DS/2018-19/14042A dated 07-12-2018

Sub : First Appeal of RTI application dated 30-10-2018 as per format stated

Dear Sir,

With due respect, in reference to above, Please find the attach First Appeal in the prescribed format as stipulated under Section 19(1) of the Right to Information Act 2005.

Please find the attach copy of my RTI application dated 30-10-2018 and also reply received.

Please do the needful and oblige.

Thanking You

Yours faithfully

(Dhawal Sharma)
M-9038491429

FORM-D
See Rule – 7(1)

Form of Memorandum of Appeal to the First Appellate Authority u/s 19(1) of the Act

From DHAWAL SHARMA
105/2A, Girish Ghosh Road, Liluah,
Howrah- 711204

(Applicant's Name & address)

Before

The First Appellate Authority

1. Full name of the Appellant DHAWAL SHARMA
2. Address 105/2A, Girish Ghosh Road, Liluah,
Howrah- 711204
3. Particulars of Public Information Officer Shri RAM KUMAR BHADURY
CPIO & ASSISTANT COMMISSIONER
CENTRAL TAX
Howrah CGST Commissionerate
4. Date of receipt of the order appealed against 17-11-2018
5. Last date for filing the appeal 17-12-2018
6. Particulars of information:
 - (a) Nature and subject matter of the information required
Particulars of Information required: M/s. Ajoy Transport Organisation of 66/1C, G.T.
Road, Liluah , Howrah-711204.
 - (i) Details of Information required:
 - a) Whether any written complaint has been registered against the above named organization? Copy and/or contents of the written complaint.
 - b) Whether the complaint has been acted upon?
 - c) What was nature of complaint is it related to non- compliance of GST?
 - d) Whether any statement has been recorded from the complainant or any complainant authorized representative?, if yes, please attach the copy of statement recorded of complainant or authorized representative.
 - (ii) Period for which information asked for:
For the period of 1st August 2018 to 01 October 2018

- (b) Name of the office or department to which the information relates

CGST, Howrah Commissionerate,
Anti Evasion Department

7. The grounds for appeal

(Details if any to be enclosed in separate sheet)

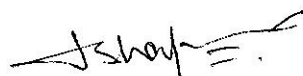
Section 8(1)(h) of the RTI Act exempts disclosure of information which would impede the process of investigation or apprehension or prosecution of offenders, Where as, Section 8 of the RTI Act states, Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall communicate to the person making the request,—

(i) the reasons for such rejection;

But in this case, PIO has failed to explain how such disclosure would actually be an impediment to the process of investigation. The denial of information by the PIO appears to be a mere blanket statement not supported by any cogent evidence or material on the basis of which it can be clearly demonstrated that such disclosure would in fact attract the exemption contained in Section 8(1)(h) of the RTI Act. In other words, the PIO has failed to discharge the burden placed upon him under Section 19(5) of the RTI Act to prove that the denial of information under Section 8(1)(h) of the RTI Act was justified

Verification

I, DHAWAL SHARMA, son of RAM BILAS SHARMA hereby declare that the particulars furnished in the appeal are to the best of my knowledge and belief, true and correct and that I have not suppressed any material fact.



Signature of the Appellant

Place: KOLKATA.

Date: 11/12/2018

To

Shri Chetan Lama
1st Appellate Authority
&
Addl. Commissioner of Central Tax
Howrah CGST Commissionerate
M.S. Building, 1st floor,
15/1, Strand Road, Kolkata - 700001

Name and address of Appellate Authority



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, 1st floor, 15/1, STRAND ROAD, KOLKATA- 700001

दूरभाष सं/PHONE NO. 033-2262-8490

ORDER-IN-APPEAL NO. 11/RTI/2018-19

Dated 04/01/2019

PASSED BY Shri. Chetan Lama
Additional Commissioner, 1st Appellate Authority,
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 Dhawal Sharma, 105/2A, Girish Ghosh Road, Liluah, Howrah-711204 against the reply/information furnished by the CPIO, Central Tax, Howrah CGST Commissionerate under C.No. IV(16)80/RTI/CGST/HWH/DS/2018-19/12723A dated 15.11.2018 to his RTI application dated 30.10.2018.

I. The appellant filed application dated 30.10.2018 seeking following information from the CPIO & Assistant Commissioner, Howrah CGST Comm'te. The point-wise information/query, reply and grounds of appeal are depicted herein below:

Query (a) Whether any written complaint has been registered against the above named company M/s. Ajoy Transport Organisation of 66/1C, G.T. Road, Liluah, Howrah-711204? Copy and/or contents of the written complaint.

Query (b) whether the complaint has been acted upon?

Query (c) What was nature of complaint is it related to non-compliance of GST?

Query (d) Whether any statement has been recorded from the complainant or any complaint's authorized representative? If yes, please attach the copy of statement recorded of complainant or authorized representative?

Reply of the CPIO to Point Nos.3(i)(a), (b), (c) & (d) : So far as the information sought for by you are concerned, this is for your information that the same cannot be provided in terms of the provision under Section 8 (I)(h) of RTI Act, 2005 since the disclosure of the information can impede the investigation.

Grounds of Appeal: In his grounds of appeal, the appellant intimated 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 offender, Whereas, Section 8 of the RTI Act states, Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request-

- (i) the reasons for such rejection

The appellant has further contended that in this case, PIO has failed to explain how such disclosure would actually be an impediment to the process of investigation. The denial of information by the PIO appears to be a mere blanket statement not supported by any cogent evidence or material on the basis of which it can be clearly demonstrated that such disclosure would, in fact, attract the exemption contained in Section 8(1)(h) of the RTI Act. In other words, the PIO has failed to discharge the burden placed upon him under Section 19(5) of the RTI Act to prove that the denial of information under Section 8(1) (h) of the RTI Act was justified.

II. Aggrieved with the reply dated 15.11.2018 the appellant has preferred the instant appeal.

The Appellant has thus prayed for the following relief:

Prayer for providing him with reasons as to invocation of Section 8(1) (h) of the RTI Act by the CPIO in course of furnishing information to his RTI application.

III. An opportunity for Personal Hearing was granted to the appellant on 26.12.2018 at 12.30PM. Accordingly, the appellant appeared on the said date before the First Appellate Authority for Personal Hearing. During the hearing, the appellant reiterated the submission made by him in his RTI application dated 30.10.2018 and appeal dated 11.12.2018.

IV. Discussion & findings

(a) I have gone through the case records, the appeal dated 12.12.2018 vis-à-vis the reply dated dt.15.11.2018 furnished by the CPIO & Assistant Commissioner, Central Tax, Howrah CGST Commissionerate pertaining to the RTI application dated 30.10.2018 filed by the instant appellant.

(b) In the instant case, I find that the moot point of the instant appeal, to all intents and purposes, is to be decided as to whether information pertaining to a case booked by the Anti Evasion Wing of this Commissionerate can be provided to an RTI applicant particularly when the investigation in respect of the said case is afoot.

On examination of the available records, I find that an offence case was booked by the Anti evasion of this Commissionerate against M/s. Ajoy Transport Organization of 66/1C, G.T. Road, Liluah, Howrah-711204 and as evident from the reply dated 15.11.2018 of the CPIO, the investigation in respect of the offence case is under process. Accordingly, the CPIO has denied the information as sought for by the appellant in his application dt. 30.10.2018 by invoking the provisions of Section 8(1) (h) of the RTI Act, 2005.

(c) However, it is amply clear that all the information desired by the applicant/appellant in the instant case relate to the ongoing investigation of an offence case involving evasion of Govt. revenue and viewed against the backdrop of gravity of the case, I am of the view that chances/possibility of the investigation being impeded by disclosure/dissemination of any information at this stage cannot be ruled out. Thus, I hold that the CPIO has quite rightly and justifiably denied any information to the applicant by taking recourse to the provisions of Section 8(1)(h) of the RTI Act 2005 and the legality and provisional backing for such denial of information lies intrinsically in the textures of Section 8(1)(h) *ibid.*, *ipso-facto*, the appellant's contention that "denial of information by the PIO appears to be a mere blanket statement not supported by any cogent evidence or material on the basis of which it can be clearly demonstrated that such disclosure would, in fact, attract the exemption contained in Section 8(1)(h) of the RTI Act" falls flat hence is neither tenable nor sustainable on the face of the facts and circumstances of the case vis-à-vis the provisional backing. Hence, I do not feel any need to interfere with the stand taken by the CPIO in the instant case.

Over and above, to support the above point, I place my reliance on the different judgments pronounced / passed by the different Hon'ble CICs on invocation of Section 8(1) (h) of the RTI Act 2005 which are delineated hereinbelow:

(1) CIC/AT/A/2007/007/00234 --The Hon'ble CIC in the case of K.S.Prasad vs SEBI has, *inter-alia*, observed that "...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." This Commission in CIC/DS/A/2013/000138/MP -- Narender Bansal vs Oriental Insurance Co. Ltd., 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."

(2) No.CIC/AT/A/2010/000969/SS : (Information can not be disclosed till the investigations are over.) -- In the case of Shri Vinod Kumar Jain V/s Directorate General of Central Excise Intelligence, New Delhi the Hon'ble CIC has, amongst others, upheld the CPIO's stand of denying information to the appellant by stating that the investigation in the matter are still pending in view of Hon'ble CIC's decision in the case of Shri Shankar Sharma and M/s First Global Stock broking Pvt. Ltd. and others Vs. Directorate of Income Tax, Mumbai. While upholding the CPIO's stand, the Hon'ble Commission had also confirmed an earlier order passed on the same issue wherein, it was categorically held by one of the Ld. Information Commissioner vide Appeal No.CIC/AT/A/2007/00007/ dated 10.7.2007 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."

(3) Further, in the case of Dr. B.L. Malhotra Vs. The National Small Industries Corporation Ltd. (No. 783/IC(A)2007 dated 06.06.2007) wherein, the appellant asked for the information which contained material pertaining to corruption involving the appellant, some other officers of respondent and a few business concerns. The major portion of investigation in the case was still pending/or was contemplated. The information was denied under Section 8(1) (h) by the CPIO.

During discussion the Hon'ble CIC has held that the " information sought contains the details of the individuals as well as business organizations, which are involved in the alleged corruption. The investigation process is in progress and is also contemplated against some other officers and business concern. In view of this, the exemption claimed under Section 8(1)(h) from disclosure of information is justified."

(4) No. CIC/AT/A/2006/00004 dated 30.06.2006 : The Hon'ble CIC in the case of Ravinder Kumar vs. B.S. Bassi, Joint Commissioner, Police has dismissed the appeal by ruling that the disclosure of information in cases under investigation by the police was exempted according to the provisions of Sections 8(1) (g) and 8(1) (h) of the RTI Act. It has further been held that non disclosure of information in cases of ongoing police investigations (which have not yet been completed) is justified inasmuch as such a disclosure could hamper the investigation process.

(5) In another case between Sarvesh Kaushal Vs. F.C.I and others (Appeal Nos. 243 /ICPB /2006 and 244 / ICPB /2006, dated 27.12.2006), the Hon'ble CIC has dismissed the appeal relating to the disclosure of information by holding that the departmental enquiry, which was in progress against him, was a pending investigation under law, and the same attracted the provisions of Section 8(1)(h). Therefore, there is no question of disclosing any information relating to his prosecution.

(d) From the above, particularly from the provisions of the RTI Act 2005 and the different judgments pronounced by the Hon'ble CICs, it is explicitly clear that the CPIO has quite rightly invoked the provisions of Section 8(1)(h) of the RTI Act 2005 and lawfully denied the information sought for by the appellant in the instant case.

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

V. ORDER

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

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-110066 within 90-days from the date of receipt of this order.

The appeal is disposed of accordingly.


04/01/2019

(Chetan Lama)
1st Appellate Authority

&
Addl. Commissioner of Central Tax
Howrah CGST Commissionerate

C. No. IV(16)11/RTI/Appeal/CGST/HWH/DS/2018-19 / 11538-878 Date:- 04/01/2019

Copy for information to:

- (1) Shri Dhawal Sharma, 105/^{2A,} Girish Ghosh Road, Liluah, Howrah-711204.
- (2) The CPIO & Assistant Commissioner, Central Tax, Howrah CGST Commissionerate.


04/01/2019
(Chetan Lama),
1st Appellate Authority,

&
Addl. Commissioner of Central Tax
Howrah CGST Commissionerate

o/c