

438
18/04/22



MOST URGENT
RTI MATTER

GOVERNMENT OF INDIA
OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST & CENTRAL TAX:
KOLKATA- NORTH COMMISSIONERATE, CGST BHAWAN:
1ST FLOOR:180, SHANTIPALLY, RAJDANGA MAIN ROAD, E.M BYPASS KOLKATA-700107
C. No. V(30)36/RTI/HQ/CGST & CX/Kol-North/2022 Dated: -
To
Shri Dipak Kumar Mukherjee,

Sir/Madam,

Sub: Information under the RTI Act, 2005 — Regarding.

Please refer to your RTI application dated-17.03.2022 which were received in this Commissionerate on 24.03.2022. Subsequently the said RTI applications were registered at this office vide Registration No.37/RTI/Kol-North/2022 dated- 28.03.2022.

The desired informations as received from the AC(Legal), CGST&CX Kolkata North Commissionerate is enclosed herewith.

If you are aggrieved or dissatisfied with the above information, you may prefer an appeal within 30 (thirty) days of receipt of the information before the 1st Appellate Authority namely **Ms Mohsina Tabassum**, Joint Commissioner & FAA, CGST & CX, Kolkata-North Commissionerate, O/o The Principal Commissioner of CGST & CX, 2nd Floor, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.

Encl- 06(Six) Sheets.

Yours faithfully,

sdf

(Indu Bikash Das)
CPIO & Assistant Commissioner
HQ, RTI Cell
CGST: Kol-North Comm'te.

Dated :

C. No. As above/ 958
Copy forwarded for information to: -

13 APR 2022

1. The Assistant Commissioner (Systems), Computer Cell, CGST & CX, Kolkata North Commissionerate with a request to upload the RTI applications dated-18.03.2022, 18.03.2022 & 22.03.2022 Shri Dipak Kumar Mukherjee, L-III Ekata Housing Coperative. Flat No. 3/22, 2nd floor, Baishnabghata Patuli Township, PO_ Panchasayar, Kolkata-700094 (enclosed Seven sheets).

18/04/22
System

Indu Bikash Das
13/04/22

(Indu Bikash Das)
CPIO & Assistant Commissioner
HQ, RTI Cell
CGST: Kol-North Comm'te.

407 A
24/3/22

Sup (RTI)

[Signature]
24/3/22



To
The CPIO & Assistant Commissioner
C.G.S.T, Kolkata North Commissionerate
C.G.S.T. Bhawan, 1st floor, shantipally,
Rajdanga Main Road E.M. Bypass
Kolkata – 700107

Subject : An application u/s. 60 of the Right to Information Act. 2005

Respected Sir,

With due respect to state that on the basis of my given information a case had been started vide Service Tax/208/which had been disposed of by CESTAT on 29.06.2018 in course of proceedings M/S General Security and information services Beliaghata, Kolkata filed on Appeal CEXA NO.16 of 2016 and stay Application GA NO.1352 of 2019 before the Honourable High Court at Calcutta (Division Bench) and the Honourable High Court at Calcutta interim order there in an 18.08.2019. In this regard I earnestly request you to provide me the following information and oblige thereby.

- How many orders has been passed by the Honourable High Court in connection with the above mentioned case ?
- Details of delivered Judgements ?
- What is the Current status of the above noted case?
- Whether the mentioned case is pending or not?

In this connection again I draw your kind attention the Last order I have been received from the Website of Honourable High Court hereby attached.

Thanking you,

Yours Sincerely

[Signature]
17.3.2022
(Dipak Kumar Mukherjee)

Enclo.:- Copy of order sheet by Honourable High Court, Kolkata vide case no.CEXA 16 OF 2019

I.P.O. NO.04F 970616 Dt .29.11.21
Payable to Assistant Chief Accounts Officer, Kolkata
CGST & CX Kolkata.

Date : 17/3/2022

Place : Kolkata



GOVERNMENT OF INDIA
OFFICE OF THE Pr. COMMISSIONER OF CGST & CX, KOLKATA NORTH
COMMISSIONERATE
GST BHAWAN:180, SHANTIPALLY:RAJDANGA MAIN ROAD:KOLKATA-700 107
Phone:: 2441-7026 :: E-mail: stkol.legal@gmail.com

C.No.V(30)22/Law/RTI/CGST&CX/Kol-North/2019/

Dated:

To
The CPIO & Assistant Commissioner
CGST & Cx
HQ, RTI Cell
Kolkata North Commissionerate

Sub: RTI application dated 17.03.2022 filed by Shri Dipak Kumar Mukherjee,
being
transferred under Sec.5(4) of RTI Act,2005- Reg.

Please refer to your letter issued under C.No.V(30)36/RTI/HQ/CGST&CX/Kol North/2022/28718 dated 30.03.2022 on the above mentioned subject.

Reply of the RTI are as follows;

- a) The Hon'ble High Court of Calcutta has passed one order in relation to the appeal no.CEXA-16 of 2019.
- b) Copy enclosed.
- c) The subject order passed by the Hon'ble High Court in relation to the appeal no.CEXA-16 of 2019 has been accepted by the department.
- d) No.

This is for your information and necessary action at your end.

Encl: As above/


(Subrato Mukherjee)
12/4/22
Deputy Commissioner (Legal)
CGST & CX,
Kolkata North Commissionerate

OD-17

ORDER SHEET
CEXA 16 OF 2019
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Customs)
ORIGINAL SIDE

M/S. GENERAL SECURITY AND INFORMATION SERVICES
Versus
COMMISSIONER OF CGST AND CX, KOLKATA

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 6th February, 2020.

Appearance:

Mr. P.K. Das, Adv.
Mr. Indranil Banerjee, Adv.
Mr. Bhaskar Sengupta, Adv.

Mr. K.K. Maity, Adv.
Ms. A. Rajyashree, Adv.

The Court: On 13th August, 2019 this appeal was admitted under Section 35G of the Central Excise Act, 1944, expressly keeping the point of maintainability raised by the revenue that the appeal lay before the Hon'ble Supreme Court under Section 35L(1)(b) of the Central Excise Act, 1944, open by the following order:-

"The Court: Mr. Das, learned advocate for the appellant submits that the service rendered by his client was essentially watch and ward service to the metro railways and it was classifiable as such. But the respondent had erroneously classified it as security service. Learned counsel submits that for the service rendered, no service tax was leviable.

Mr. Maiti for the revenue submits that this is a classification dispute to be determined by the Supreme Court.

Whether at all it is a classification dispute or not is disputed. The question has to be gone into by this Court. Only after the point of maintainability is decided can the merits be gone into by this Court.

In those circumstances, this intended appeal under section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 is admitted on the following substantial questions of law:

(i) *Whether the dispute between the parties was a classification dispute?*

- (ii) Whether on the facts and in the circumstances of the case the impugned order of the tribunal dated 29th June 2018 was perverse for not properly adjudicating the dispute of the parties with regard to classification and passing the order in breach of the principle of natural justice?

As the respondent is represented by learned counsel, issuance and service of notice of appeal are dispensed with. Advocate-on-record for the appellant is directed to file informal paper books by 20th September 2019, serving a copy thereof upon the advocate-on-record for the respondent at least seven days before the date of hearing of the appeal.

List the appeal for hearing on 14th November 2019.

The stay application (GA No. 1352 of 2019) is disposed of."

On 3rd February, 2020 in the course of hearing of the appeal we formulated certain additional questions of law which are as follows:

1. "Whether on the facts and in the circumstances of the case, the appeal based on the ground of breach of the principles of natural justice does not relate to a question having a relation to the rate of duty?"
2. Whether on the facts and in the circumstances of the case, when the assessee seeks dismissal of the demand of the revenue on the ground of limitation, the appeal does not involve a question having a relation to the rate of duty?"
3. If the aforesaid questions are answered in the affirmative, whether this Court has the jurisdiction to hear the instant appeal?"

In short, the appellant has raised two grounds in support of this appeal.

The first one is that the impugned order of the tribunal dated 29th June, 2018 was passed in breach of the principles of natural justice.

Secondly, the longer period of limitation was erroneously invoked to fix the service tax liability on the appellant in relation to service rendered between September, 2001 and May 2005 in respect of which the show cause notice was issued on 27th March, 2007. The limitation for issuing the show cause notice is

one year, extendable to five years in case of suppression of materials by the assessee.

However, the real disputes between the parties are with respect to the type of service rendered. According to the appellant, they are rendering watch and ward service, which is not a taxable service.

Mr. Das, learned advocate appearing for the appellant relies on a certificate dated 4th December, 2018 issued by the chief operations manager of Metro Railway certifying that the appellant was acting "as facilitators for directing passengers through automated ticket gates, to guide commuters regarding purchase of tickets, carrying baggages and other miscellaneous jobs relating to overall upkeep of the premises. Their services are not similar to the services for general purpose security duty."

According to the respondent revenue, a watch and ward service is exempt from service tax whereas the service of security agency is not. Further, they contend that the appellant is rendering the latter service. The appellant contests the demand from service tax raised upon them by the revenue for the aforesaid period.

For this reason, Mr. Maity, learned advocate appearing for the respondent, revenue opposed entertainment of this appeal by this Court on the ground that it involved adjudication with regard to the rate of tax, classification of service and so on for which this Court had no jurisdiction under Section 35G read with Section 35L (1) (b) of the said Act.

Mr. Das, learned advocate appearing for the appellant argued the case in a different light.

He said that in this appeal, he was not asking the court to go into any question with regard to the rate of duty or classification of goods.

The only grounds were the breach of the principles of natural justice and the error on the part of the tribunal to consider the question of limitation.

He argued that the tribunal had advanced no reason in support of its order and failure to provide reasons also amounts to breach of the principles of natural justice. He relied on the following cases to support his submission :

- i. Assistant Commissioner, Commercial Tax Department - Versus - Shukla And Brothers (2010) 4 SCC 785.
- ii. Annapurna Plastic Products Pvt. Ltd. - Vs. - Commissioner of Central Excise 2019 (367) ELT 220 (ALL)
- iii. Commssioner of CGST & Central Excise, Mumbai - Vs. - Development Credit Bank Ltd. 2019 (365) ELT252 (Bom)
- iv. Padmavati Tubes - Vs. - Commissioner of Central Excise & ST. Vapir, 2017 (351) ELT38 (Guj.)
- v. Chamunda Synprocess (1) Pvt. Ltd. - Vs.m - Jt. Commr. C. Ex. Commissionerate, Jaipur-II, 2019 (365) 12 (Raj)

He argued that the demand was barred by the laws of limitation. It was for the period as stated by us i.e. from September, 2001 till May, 2005 for which the show cause notice was issued on 27th March, 2007. The same dispute arose between the parties earlier as apparent from demand notice dated 17th September, 2004 referred to in paragraph 6.1 of the show cause notice dated 27th March, 2007 in this case. Hence, the respondent revenue was aware of the exact facts of the case. There was no question of any suppression.

For that reason, the impugned demand of the appellant raised after one year was beyond the period of limitation. The revenue could not invoke the longer period of limitation of five years, which was available only in the case of, *inter alia*, suppression of material facts by the assessee.

Mr. Das submitted that he was confining the appeal to these grounds.

The points of law concerning the breach of the principles of natural justice, are an important element of administrative law. It is to a great extent procedural in nature. If a proper procedure is not followed, the proceeding and the impugned order become vulnerable for breach of the principles of natural justice and are liable to be set aside.

On going through the impugned order of the tribunal, we find that no proper reasons have been given in support of its finding. It has also not taken into account, the certificate dated 4th December, 2018 of the Metro Railway certifying the nature of service rendered by the appellant.

Secondly, we do not find that the question of limitation has been gone into by the tribunal in its proper perspective. The question of limitation is a mixed question of law and fact. The appellant has pleaded that the respondents had knowledge of the transactions relying on their earlier show cause notice dated 17th September, 2004 on the self-same issue, relied upon in the subject show cause notice dated 27th March, 2007. Thus, everything was to their knowledge. There was no suppression of any fact. That question and any other factual issue with regard to the suppression of facts ought to have been gone into in detail by the learned tribunal.

When the impugned order of the tribunal is challenged on the above ground that it was passed in breach of the principles of natural justice and in ignorance of the law of limitation, then, in our opinion, it cannot be said that the appeal has a relation to classification of goods, its valuation or the rate of duty. It is neither directly nor indirectly related to these questions.

Therefore, on the above two grounds, we set aside the impugned order of the tribunal dated 29th June, 2018.

Since, mixed questions of facts and law are involved, it would be proper to remand the entire matter to the tribunal for re-consideration and re-determination.

We direct the tribunal to re-hear the appeal and pass a reasoned order within six months of communication of this order preferably.

The appeal (CEXA 16 of 2019) is allowed to the above extent.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)