



The State Information Commission, Kerala

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AP. No. 2163(5)/18/SIC

File No. 10934/SIC-G7/2018

Present

Smt. Srilatha P.R, State Information Commissioner

Smt. Suchetha.L.G,
Kavil Ganga,
Mampallikunnam,
Chathannoor
Kollam - 691 572.

} Appellant

The State Public Information Officer -2 &
Assistant Commissioner (Legal Wing),
O/o the Commissioner of State Tax,
State Goods and Services Tax Department,
Tax Tower, Karamana, Thiruvananthapuram

} Respondents

The Appellate Authority,
Principal Secretary/Commissioner,
State Goods and Services Tax Department,
Tax Tower, Karamana, Thiruvananthapuram

ORDER

Date of application u/s 6(1)	08.08.2018
Date of reply from the SPIO	14.08.2018
Date of First Appeal	17.08.2018
Date of decision on the first appeal	08.10.2018
Date of filling second appeal	03.10.2018
Hearing Date	29.10.2019

Smt. Suchetha L.G had approached the State Information Commission with a Second Appeal on 04.10.2018. The Facts leading to the case were:

1. In the case of assessments related to M/S Bhima Jewellery & Diamonds, Adoor for the year 2011-12 and M/s Bhima Gems Adoor (Pvt) Ltd for the year 2012-13, whether the defect of irregular allowance of turnover related to the sister concerns (Madurai, Thirunelveli and Nagarcoil) is now established by an interstate investigation or at least by a confirmation letter from the assessing authority at the other end

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2. If so copy of the investigation Report
3. If there is only confirmation letter copy of the letter from outside state
4. Name of the officer who conducted interstate investigation and who obtained confirmation from outside state
5. Fresh pre-assessment notices if any issued to Bhima for the said years date of acknowledgment by Bhima
6. (a). Letters if any received from the Hon'ble Secretary, Taxes (D) Department calling for the remarks on her reply to memo of charges (from 04.10.2017 onwards) (b) If so date of receipt of the letters
7. If remarks have been offered from the Commissionerate, copy of the letter offering remarks.

Information regarding questions 1 to 4 was not granted by the State Public Information Officer stating that the questions violated section 8(1)(d),(e) and (h) of the RTI Act.

There upon Smt. Suchetha L.G had preferred Ist appeal before the Ist Appellate Authority. In the appeal petition the appellant prayed to "provide Information related to the first four questions as there was violation of natural justice in denial of the same to her". The Ist Appellate Authority upheld the decision of the SPIO stating the following reasons: that there had been no change in the circumstances under which the reply of SPIO was given; there was no question of violation of Natural Justice in the denial of certain information requested for in the application and the act of the SPIO is in accordance with the provisions of the RTI Act 2005; the information sought by the appellant is under investigation and disciplinary proceedings are going on and the petitioner is part of assessment matters under investigation; in a pending enquiry proceedings with respect to assessment, regarding third party information petitioner cannot claim any "Public Interest"; in a case of financial misappropriation of this magnitude by the dealer, in larger public interest, till finalization of all the enquiry with respect to assessment and departmental enquiry, the information sought cannot be given. Based on the above reasons Ist appeal was rejected.

Appellant filed the 2nd appeal before the State Information Commission. The Commission accepted the IInd appeal. Both the Appellant and the Ist Respondent was heard in person.

There were 7 items on which the appellant had sought information and the appellant has no case against the information provided for items 5 to 7. Information for item numbers 1 to 4 were denied under section 8(1),(d),(e) &(h) of the RTI Act claiming it was privileged communication between the department and the company in their fiduciary relationship. This contention could not hold good for the reason that the sought information is not a secret and transparency demands the dissemination of information. There fore the rejection of the application by the SPIO and the Appellate Authority is not in tune with Section 8(1) (e) of the RTI Act.

The Appellate Authority has misconceived the meaning of term ‘ investigation’ as appears in Sn 8(1) (h) of the RTI Act 2005 and had loosely understood or taken it as the process of disciplinary action launched against a Govt Servant through a departmental enquiry . The term ‘enquiry’ and ‘investigation’ in this context has to be understood on its effect and differences. Section 8(1) h of the RTI act is a provision that can be made applicable only in criminal cases leading to Prosecution as laid down in chapter XII of the Criminal Procedure Code, and its application to a departmental enquiry as contemplated under KCS (C C & A) Rules 1960 as resorted to by the Appellate Authority is legally unsustainable and hence 8(1) (h) has been misapplied.

Similarly, applying section 8(1) (d) also appears to have been misapplied in as much as the internal enquiry would in no way affect the commercial confidence/trade secret or intellectual property of the company which would harm its competitive position.

For the reasons mentioned above the IInd appeal is allowed. The Respondents are, therefore , directed to give all the information as requested in Question No. 1 to 4 within 5 days of the receipt of a copy of this order and furnish action taken report to the commission.

The Commission disposes of the appeal petition accordingly on this the 19th day of March 2020.

Sd/-
P.R. Srilatha
State Information Commissioner

Authenticated Copy



Secretary to Commission



