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**OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF
GST AND CENTRAL EXCISE**

TAMILNADU AND PUDUCHERRY ZONE

26/1, महात्मा गांधी मार्ग, नुंगम्बाक्कम, चेन्नै-600 034

26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034

सी सं /C.No.II/39/11/2020-CCA.RTI.APPEAL

दिनांक/Dated : 14/02/2020

ORDER-IN-APPEAL NO. 02/2020-CCA-RTI(Appeals)

**(Order passed by B. Senthilvelavan I.R.S.,
Additional Commissioner and First Appellate Authority)**

1. This Order-in-Appeal is issued under Sub-Section (1) of Section 19 of the Right to Information Act, 2005.
2. An appeal against this order can be preferred to the Central Information Commission, 2nd Floor, 'B' Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi - 110 066, under Sub-Section(3) of Section 19 of the Right to Information Act, 2005.
3. An appeal against this order must be filed within 90 days from the date of receipt of this order.
4. For further information regarding procedure of appeals, please visit <http://cic.gov.in>

✓ Shri P. Ponmurugesapandian
Advocate, No. 29-B,
Lakshmipuram, 6th Street, East Gate,
Near Chinthamani Theatre,
Madurai - 625 001.

..... Appellant

Versus

The CPIO, Assistant Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise,
Chennai Zone, 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai - 600034.

..... Respondent

Sub : Right to Information Act, 2005 – Shri P. Ponmurugesapandian –
Appeal against the information furnished by the CPIO, Assistant
Commissioner, vide C.No.II/39/375/2019-CCA.RTI dated 16.12.2019
– Passing of Order by First Appellate Authority under RTI Act, 2005 –
Reg.

Shri P. Ponmurugesapandian, Advocate, No. 29-B, Lakshmipuram, 6th
Street, East Gate, Near Chinthamani Theatre, Madurai – 625 001 (hereinafter
referred to as “the appellant”) filed an appeal dated 29.01.2020 received in this
office on 31.01.2020 under the Right to Information Act, 2005 (hereinafter referred
to as “the RTI Act”) against the reply given by the Central Public Information
Officer, Office of the Principal Chief Commissioner of Central Excise, Chennai Zone,
vide C.No.II/39/375/2019-CCA.RTI dated 16.12.2019.

2.1 The brief facts of the issue are that the appellant in his RTI application dated
25.11.2019 received in this office on 27.11.2019 had sought the following
information :

“Action taken on GST Council letter dated 24.07.2019 by the department”.

2.2 The CPIO vide letter C.No. II/39/375/2019-CCA.RTI dated 16.12.2019
furnished reply in respect of the query mentioned in the said RTI application.

3.1 The appellant filed an appeal dated 27.12.2019 received in this Office on
30.12.2019 before the First Appellate Authority under Section 19(1) of the RTI Act,
2005 and stated that though 30 days had passed, CPIO had not furnished the
reply. The Nodal Officer vide letter C.No. II/39/11/2020-CCA.RTI.APPEAL dated
09.01.2020 informed the appellant that the reply to the RTI application has already
been sent to the appellant vide letter C.No. II/39/375/2019-CCA.RTI dated
16.12.2019 and that the same has been delivered on 17.12.2019 which was evident
from the Tracking status sheet of the Speed Post (reference number
ET351384285IN). However, the copy of the CPIO’s reply vide letter C.No.
II/39/375/2019-CCA.RTI dated 16.12.2019 was once again sent to the appellant

by the Nodal Officer vide letter C.No. II/39/11/2020-CCA.RTI.APPEAL dated 09.01.2020.

Aggrieved by CPIO reply vide letter C.No. II/39/375/2019-CCA.RTI dated 16.12.2019, the appellant filed another appeal dated 29.01.2020 received in this office on 31.01.2020. Now, the appellant states that he is not satisfied with CPIO's reply as the information sought for was not provided.

3.2 The appellant requested the First Appellate Authority to pass OIA to provide him information as per his RTI application.

DISCUSSIONS & FINDINGS

4. I have carefully gone through the RTI application, reply given by CPIO and appeal filed by the applicant.

5. The appellant vide RTI application dated 25.11.2019 received in this office on 27.11.2019 has sought information regarding the Action taken on GST Council letter dated 24.07.2019 by the department. In this regard, it is informed that GST Council vide letter F.No.251/Clarification on GST/GSTC/2019/7233 dated 24.07.2019 addressed to the Principal Chief Commissioner of CGST, Chennai Zone and marking a copy to the appellant stated that they have received a complaint from Shri P. Ponmurugesapandian against M/s GAIL (India) Ltd., a Government Company in Tamilnadu wherein the complainant mentions that M/s GAIL (India) Ltd. (GST No. 33AAACG1209J2Z2) is paying GST on transmission charge to ONGC and collecting GST from their customers on transmission charges as "reimbursement of GST cost on transmission charges" and that there is no provision in the statute for collecting GST showing it as reimbursement on invoices and that M/s GAIL (India) Ltd. seems incorrect. The letter further states that the complainant has requested that the matter may be taken up with M/s GAIL (India) Ltd. seeking appropriate clarification in the matter or recovery of GST.

6. The CPIO vide letter C.No. II/39/375/2019-CCA.RTI dated 16.12.2019 furnished reply stating that the information called for in the RTI application pertains to an active investigation/enquiry being conducted by the department on a tax payer registered with the department and hence, as per Section 8 (1)(h) of RTI Act, 2005, no information on the subject can be disclosed by the department.

7. With regards to the appellant's contention that CPIO had not furnished the requested information, it is informed that the information as requested by the appellant, comes within the ambit of the exemptions under Section 8(1)(h) of the RTI Act. This Section prohibits disclosure of information connected with on-going investigations and prosecutions. It will be pertinent to mention that Section 8(1)(h) of the RTI Act exempts an information which would impede the process of investigation or apprehension or prosecution of offenders.

Also, the term "investigation" includes not only initial investigation but all subsequent actions which include all levels of appeals and final determination of the liability based upon the initial investigation. Till that has been completed no investigation can be said to be complete. A decision as to whether or not to prosecute the tax payer investigated against, is taken only after all the above-mentioned stages of investigation are completed. Any disclosure of the information connected with the initial investigation, at any stage prior to final conclusion of prosecution, if any, would be detrimental to the public authority's case.

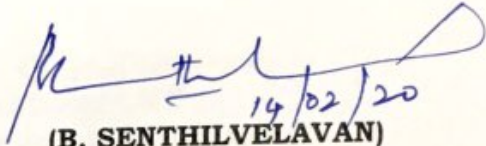
In this regard, I would like to rely on the decision of Central Information Commission (CIC) in the case of Shri Vijay Kamble Vs Customs Department, Mumbai (F.No.CIC/AT/A/2008/01466 dated 23.03.2009) which agreed with the decision of CIC in a similar case – Rakesh Kumar Gupta Vs. Income Tax Appellate Tribunal (ITAT) in Appeal No.CIC/AT/A/2006/00586 dated 18.09.2007 wherein it was held that :

“Once it is established that a certain information requested by an applicant is related to a quasi-judicial proceedings, RTI Act cannot be invoked to access the information related to that proceeding”.

8. In view of the above, I proceed to pass the following order.

ORDER

- (i) I hold that there is no justification in the grievance of the appellant. Hence, I reject the appeal as not maintainable under Right to Information Act, 2005.


14/02/20
(B. SENTHILVELAVAN)
ADDITIONAL COMMISSIONER
FIRST APPELLATE AUTHORITY

To

✓
Shri P. Ponmurugesapandian
Advocate, No. 29-B,
Lakshmipuram, 6th Street, East Gate,
Near Chinthamani Theatre,
Madurai - 625 001.

[By Speedpost with A/D]

Copy to:
The CPIO, Assistant Commissioner,
Office of the Principal Chief Commissioner of Central Excise, Chennai Zone.