

GOA STATE INFORMATION COMMISSION

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Appeal No. 79/2021/SCIC

Mr. Mohammed Rafic Faniband,
H.No. E-487, Housing Board,
Rumdamol Davorlim, Post Navelim,
Salcete-Goa 403707.

-----Appellant

v/s

1. The Public Information Officer,
Commerical Tax Officer,
Shri Naresh Gaude,
C & D Wings, 3rd Floor,
Osia Commercial Arcade,
Margao-Goa.

2. The First Appellate Authority,
The Asstt. Commissioner of Commercial Taxes (Legal),
Vikrikar Bhavan, M.G. Road,
Panaji-Goa 403001.

-----Respondents

Shri Vishwas R. Satarkar - State Chief Information Commissioner

Filed on:-01/04/2021

Decided on: 20/04/2022

FACTS IN BRIEF

1. The Appellant Mr. Mohammed Rafic Faniband, r/o. H.No. E-487, Housing Board, Rumdamol, Davorlim, Navelim, Salcete-Goa, by his application dated 27/10/2020 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as Act) sought following information from the Public Information Officer (PIO) of Commerical Tax Officer, Margao-Goa.

"The undersigned required the following particulars of Information

Copy of Department or Government circular or provision stating the limitation period for Recovery of Sales Tax

Dues/ Arrears under the Sale Tax Act/ The limitation Act or any other relevant Act.”

2. The said application was responded by the PIO on 25/11/2020 in following manner

"With reference to your RTI application cited above, seeking information under RTI Act, 2005, I am stating herewith the information as under.

No such copies of Department or Government circular or provision stating the limitation period for Recovery of Sales Tax dues / Arrears under the Sales Tax Act/ The limitation Act/s or any other relevant Act are available with this office record. However, Act Notifications, circulars issued by this Department are available in public domain i.e. on this department website www.goacomtax.gov.in.”

3. Being aggrieved with the order of the PIO, the Appellant preferred first appeal under section 19 (1) of the Act, before the Deputy Commissioner of State Taxes at Panaji-Goa being First Appellate Authority (FAA).
4. The FAA by its order dated 31/03/2021 partly allowed the first appeal and directed the PIO to produce the correct information to the Appellant.
5. Accordingly to the Appellant, instead of complying the order of FAA, the PIO provided him misleading information vide letter dated 15/04/2021. Aggrieved with the said reply he landed before the Commission with this second appeal under section 19 (3) of the Act.

6. Notice was issued to the parties, pursuant to which the PIO Shri. Naresh Gaude appeared and filed his reply on 13/07/2021, FAA Shri. Vivek Naik appeared and filed his reply on 16/09/2021, representative of then PIO, Shri. Amey Mayekar appeared and placed on record Affidavit cum reply of Ms. Neha A. N. Panvelkar.
7. Perused the pleadings, replies, additional reply and scrutinised the documents on records.
8. On perusal of the RTI application dated 27/10/2020, which is produced at para No.1 hereinabove, it reveals that the Appellant is seeking the copy of circular issued by either Department or Government with regards to provision of limitation period for Recovery of Sales Tax, which is categorically replied by the PIO that no such Circular/ Notification is available in the office records. However, Act Notification, Circular issued by the Department are available in the website of Department on www.goacomtax.gov.in
9. As the information asked for is not available, and therefore not maintained by the public authority thus it cannot be furnished. The PIO under the Act is bound to furnish information which covers under section 2 (f) of the Act. Under the Act, PIO can only facilitate in providing the information to the citizens which is available in material form.
10. While analyzing the provisions of section 2 (f) and 2 (j) of the Act which reads as follows:

"2. (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material

held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in forces;”

“2. (j) " right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to

(i) inspection of work, documents , records; (ii) taking notes extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other devices;”

The wording of these sections implies that the information can be something that is available in material form and same is retrievable from the original records. The PIO is obliged to give only the information as is available with him in the form described above.

11. On perusal of the content of pleadings, it seems that, instead of obtaining the information, the Appellant is seeking an interpretation of the Act/Law from the public authority. The Appellant is not entitled to receive the advice, view or explanation of the public authority to his queries, especially when such advice or views do not find mention in the records. Moreover, the PIO has informed that all the Acts, notification and circular issued by the Department are available in public domain under the website of the Department. It is open to the Appellant to refer to this and draw his own conclusions and consult his lawyer if necessary.

12. Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 in the Central Board of Sec. Education & Anr. v/s Aditya Bandopadhyaya & Ors. has held that

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and /or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' of the section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

13. In the present case the PIO acted delegently and replied to the RTI application on 25/11/2020 that is within stipulated period and categorically put the facts before the Appellant that information sought for is not available in his office records. The Commission is therefore of the view that there is no denial of information by PIO.

14. Since the information sought for by the Appellant is not in existence, the question of giving any direction to furnish the same does not arise and accordingly the appeal is dismissed.

Proceedings closed.

Pronounced in open court.

Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner
Goa State Information Commission,
Panaji-Goa.