

GOA STATE INFORMATION COMMISSION

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Appeal No. 147/2023/SCIC

Shri. Deepak Gracias,
R/o. Karishma Apartments,
'C' Block, Behind Punjab National Bank,
Aquem, Margao-Goa 403601.

.....Appellant

V/S

1. The First Appellate Authority,
Office of Commissioner of State Tax,
Rajya Kar Bhavan, 2nd Floor,
Althinho, Panaji-Goa, 403001.

2. The Public Information Officer,
Department of Commercial Tax Office,
Margao-Goa 403601.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 09/05/2023

Decided on: 27/10/2023

ORDER

1. The Appellant Mr. Deepak Gracias r/o. Falt No. C-1, and C-2, Karishma Apartment, Aquem, Margao-Goa vide his application dated 01/03/2023 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), Commercial Tax Office, Margao-Goa:-

"I hereby request for information and certified copies of my complaint dated 01/02/2023 (copy enclosed) under Right to Information Act, Please provide the following information pertaining to the said complaint as mentioned below:-

- 1) Inquiry report of the complaint dated 01/02/2023.*
- 2) Status report of the complaint dated 01/02/2023.*
- 3) Inspection report of the complaint dated 01/02/2023.*
- 4) Details of action taken by your authority upon receiving the complaint dated 01/02/2023.*

5) Details of proceedings/ noting of the complaint dated 01/02/2023.

6) Any other details pertaining to the said complaint."

2. The said application was responded by the PIO on 30/03/2023 in the following manner:-

"With respect to point No. 1 to 6 of your RTI application referred above, I am to state that the action is already initiated by this office and the documents have been obtained from the taxpayer however, such documents cannot be provided to you as it is covered u/s 8 of the RTI Act, 2005 Vis-a-vis Section 8(d) and Section 8(h) of the said act.

The applicant, if aggrieved by the reply may prefer an appeal u/s 19 within 30 days from the receipt of this information before the Deputy Commissioner of State Tax (Legal), Goa Rajya Kar Bhavan, Altinho, Panaji-Goa."

3. Aggrieved and not satisfied with the reply of the PIO, the Appellant filed first appeal before the Deputy Commissioner of State Tax (Legal), Rajya Kar Bhavan, Panaji-Goa, being the First Appellate Authority (FAA).
4. The FAA vide its order upheld the reply of the PIO and dismissed the first appeal on 02/05/2023.
5. Being aggrieved and dissatisfied with the order of the FAA dated 02/05/2023, the Appellant landed before the Commission by this second appeal under Section 19(3) of the Act.
6. Notices were issued to the parties, pursuant to which, the Appellant appeared in person on 22/06/2023, the PIO Shri. Kalpesh

Amonkar appeared and filed his reply on 22/06/2023, the FAA duly served opted not to appear in the matter.

7. Perused the appeal memo, reply, rejoinder, scrutinised the documents on record and considered the judgement relied upon by the rival parties.
8. It is the case of the Appellant that, he filed complaint before the Office Incharge, Commercial Tax Office, Margao, Salcete-Goa on 01/02/2023 for illegal commercial activities being carried out in his property at Malbhat, Margao-Goa. In order to know the outcome of his complaint, he filed RTI application before the public authority and sought Inquiry Report, Status report, Inspection report, Action taken report, details of proceeding/ noting of his complaint dated 01/02/2023.
9. The grievance of the Appellant that, the PIO has denied to provide information under Section 8(1)(d) and 8(1)(h) of the Act. The Appellant claims that information is denied to him by merely quoting the Sections of the RTI Act and the PIO failed to give any reasoning as to how said information is coming within the said exemption clause. He also contended that he is entitled to know the outcome of his own complaint.
10. On the other hand, the PIO contended that, the action is already initiated by the public authority against the complaint of the Appellant and obtained various documents from the concerned party, however, said documents cannot be provided as it covered under Section 8(1)(d) and 8(1)(h) of the Act.

Further according to the PIO, Section 158(1) of the Goa Goods & Services Tax Act, 2017, prohibits public servants to disclose the information. To support his case he relied upon the judgement of the Hon'ble Supreme Court, in the case

Girish Ramchandra Deshpande v/s Central Information Commissioner ((2013) 1 SCC 212).

11. Considering the contention of the rival parties, it would be appropriate to refer to the provisions of Section 8(1)(d) and 8(1)(h) of the Act which reads as under:-

" 8. Exemption from disclosure of information. _____
(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, _____

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;"

From the plain reading of the above, it is clear that information related to commercial confidence, trade secrets or intellectual property is exempted, if the disclosure of such information would harm the competitive position of third party.

Further under 8(1)(h), the information which would impede the process of investigation or which would impede the apprehension of offenders or which would impede the process of prosecution of the offenders have been exempted from disclosure.

12. On perusal of the application filed under Section 6(1) of the Act, filed by the Appellant, it is revealed that the Appellant is seeking information pertaining to the outcome of his complaint dated 01/02/2023 filed before the Incharge of Commercial Tax

Office, Margao-Goa more particularly the copy of Inquiry Report, Status Report, Inspection Report, Action taken etc.

13. The PIO through his initial reply contended that, upon the receipt of the complaint from the Appellant, the Tax Inspector carried out inspection/ visit and visit report was drawn to that effect. Further, according to the PIO, the public authority verified the documents of one Shri. Ganapat Mahadev Chari r/o. Malbhat, Margao-Goa who deals with furniture business, during the verification they collected the financial statement for last three years from him, Electricity bills, Water bills etc. On verification of statement they found that said Shri. Ganapt M. Chari is not liable for Registration under GGST Act, 2017.

14. The PIO through his additional reply reiterated that under Section 158(1) of the Goa Goods and Service Tax Act, 2017, he is barred from disclosing the information. In that context, it would be necessary to refer to the provisions of Section 158(1) of the Goa Goods and Service Tax Act, 2017 which reads as under:-

"158. Disclosure of information by a public servant-

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed."

15. Considering the above contention of the PIO it is relevant to go through provision of Section 22 of the RTI Act, which reads as under:

" 22. Act to have overriding effect.____

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

From the bare reading of the above, it manifest that the provisions of the RTI Act would prevail over the provisions of the Official Secrets Act 1923 and any other law for time being in force, which are inconsistent with.

16. Considering the above overriding clause of Section 22 of the Act, it is abundantly clear that in case of any inconsistency between the provisions of RTI Act, 2005 and the Goa Goods and Service Tax Act 2017, the provisions of the RTI Act would prevail. Therefore, even if a document is considered as privileged one under Section 158(1) of GGST Act, 2017, still public authority as defined under Section 2(h) of the RTI Act can disseminate the information, if exemption under Section 8 and 9 is not applicable.

17. Hon'ble High Court of Delhi in the case **Union of India v/s Central Information Commission & P.D. Khandelwal & Ors. (W.P. No. 8396/2000)** has held that:-

"Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and

another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Sections 8 or 9 of the Act. The Public Information Officer or the Appellate authorities cannot add and introduce new reasons or grounds for rejecting furnishing of information.”

18. In the present case, the PIO initially took a stand that information is not liable to be disclosed as the same is exempted under Section 8(1)(d) and 8(1)(h) of the Act.

However, in this second appeal there was a complete change in his position and he submitted that information cannot be furnished in view of provisions of Section 158(1) of the Goa Goods and Service Tax Act, 2017. This is clearly inconsistent with his original stand and does not hold well. Such a change in stand would go on to show that there was an intention to withhold the information. It appears that the conduct of the PIO is not bonafide and consistent.

19. Moreover, it is difficult to imagine how copies of inquiry report, action taken report would lead to commercial confidence, trade secrets or intellectual property. It is also pertinent to note that there is no slightest iota to show that the Appellant is seeking the information with regards to a profit and loss account, Balance sheet or the Income Tax Returns sheet. The PIO unnecessarily stretched the provisions of Section 8(1)(d) and 8(1)(h) of the Act to deny the information. Therefore, I do not find any force in the submissions of the PIO.

20. It is also admitted fact that, action is already initiated by the public authority and related documents have been collected from the party concerned. If the enquiry has been conducted by the public authority and if said inquiry is complete and over, the public authority cannot deny the inquiry report to the Appellant under Section 8(1)(h) of the Act. The said inquiry report is a creation of the public authority while discharging the statutory provisions under the Goa Goods and Service Tax Act, 2017. Hence any document supplied by the concerned party to obtain the permission to run the business is certainly not confidential information.
21. It is a matter of fact that purported information is in the exclusive custody of the Office of Commissioner of State Tax. It is also admitted that, said document has been collected for fulfilment of statutory requirement, therefore the said document belongs to the public authority and same is in public domain.
22. Hon'ble High Court of Madras in the case of **Ms. V.V. Mineral v/s The Director of Geology & Mining (W.P. No. 5427/2007)** has held that:-

"12. If the information is available with the State and such information is in exclusive custody of the State, the question of seeking any opinion from the third party on such issue may not arise, especially when they are public documents. By disclosure of such information, no privilege or business interest of the petitioner are affected. On the other hand, such a disclosure may help any party to act upon those documents and take appropriate steps.

Considering the above ratio laid down by the High Court and the fact that no harm and injury would be caused to the third party

if information is disclosed, I am of the opinion that, Appellant is entitled for the information and therefore the appeal is allowed with the following:-

ORDER

- The appeal is allowed.
- Shri. Kalpesh Amonkar, PIO, Office of the Commissioner of State Tax, Panaji-Goa is directed to provide the information free of cost to the Appellant as per his RTI application dated 01/03/2023, within **FIFTEEN DAYS** from the date of the receipt of the order, except profit and loss account, Balance sheet and Income tax return of the party Shri. Ganapt Mahadev Chari.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner