



Date of Order: 02-09-2024

Date of Issue: 03-09-2024

Order No.: **06** /ADC/KOL/CUS/RTI(Appeals)/2024(AP&ACC)

Passed By: Shri Shiv Pratap Singh,

First Appellate Authority & Additional Commissioner of Customs (AP & ACC),
Custom House, Kolkata- 700001.**ORDER-IN-APPEAL**

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 Commissioner, CIC Bhawan, Baba Gang Nath Marg, Munirka, New Delhi-110067 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.

Subject:- An Appeal application of Shri Sadhan Naskar dated 11.06.2024 in connection with his RTI Application bearing Registration No. CCUKL/R/E/24/00052 dated 09.04.2024 –reg.

BRIEF FACTS OF THE CASE

Shri Sadhan Naskar (here-in-after referred to as "the said Appellant"), resident of Flat No. D-279, 2nd Floor, Customs & CGST Residential Complex, 179, Shanti Pally, Kolkata-700107 had filed an RTI Appeal Application dated 11.06.2024 which was received in this section on 13.06.2024. This Appeal Application was filed in connection with his RTI Application bearing Registration No. CCUKL/R/E/24/00052 dated 09.04.2024. In his RTI application Shri Sadhan Naskar has requested to provide the following information:

1. Authenticated copies of note sheets marked as I to LXXII of File No. S21(MISC)-01/2004 VIG. having custody under that disciplinary authority of Kolkata Customs Zone.
2. All the documents and correspondences mentioned containing 293 pages of File No. S21(MISC)-01/2004 VIG. having custody under that disciplinary authority of Kolkata Customs Zone.

Reply from CPIO:

In response to the above RTI application, the CPIO & Assistant Commissioner of Customs, Vigilance Unit (AP&ACC) vide her letter dated 06.05.2024 replied that the information sought by the said applicant is exempted as per section 8(1)(h) of RTI Act, 2005.

The appellant being dissatisfied with the reply furnished by the CPIO & Assistant Commissioner of Customs, Vigilance Unit (AP&ACC) preferred an appeal before the First Appellate Authority with a request to provide the information in terms of his application

dated 09.04.2024. In his Appeal Application it is stated that he is aggrieved by the rejection of application as well as denial of providing documents cum information without passing any reason speaking order grossly violating the mandate of the RTI Act and Rules thereof.

The ground of appeal was as follows:

1. The information sought against the point No. 1 to 2 of the RTI Application dated 09.04.2024:

- a. Kindly provide authenticated copies of note sheets marked as-I to LXXII of File No. S21(MISC)-01/2004 VIG. having custody under that disciplinary authority of Kolkata Customs Zone.
- b. Kindly provide all the documents and correspondences mentioned containing 293 pages of File No. S21(MISC)-01/2004 VIG. having custody under that disciplinary authority of Kolkata Customs Zone.

However, point no. a & b were rejected by the CPIO without passing any reason speaking order grossly violating the mandate of the RTI Act and Rules thereof but illegally quoting disclosure of information is denied "Information sought is exempted as per section 8(1)(h) of RTI Act 2005."

In spite of knowing that fact (already mentioned in the said RTI application), i.e., It is to state that in Departmental Proceedings no documents is confidential and all such documents have already under custody of NCSC, New Delhi and DGoV, New Delhi.

The plea adopted by the CPIO is not only illegal but complete ignorance of Law and deliberate denial of settled proposition of Law thereby totally against the mandates of the RTI Act, 2005. That denial of information adopting delay tactics by citing Section 8(1)(h) of RTI Act, 2005 attracts penal action under section 18 & 20 of the Act, 2005 and other provision of Law of the Land. The information sought for by the applicant, was rejected in an arbitral manner by the CPIO citing Section 8(1)(h) of the RTI Act, 2005 without application of mind and without going into the factual matrix of the matter concerned as well as suppressing the details that how Section 8(1)(h) of RTI Act, 2005 is applicable for not providing the desired information. Moreover there is nothing in the letter of the CPIO that would substantiate denial of disclosure of the information sought. This burden lies on the CPIO and, the CPIO has failed to discharge it, which is against the mandates of the RTI Act, 2005, and hence, the desired information should be disclosed to the applicant herein.

2. The matter (Point 1) related to all requisite details, information and documents were available with the office of the CPIO (through Vigilance Unit) mentioned above, the RTI application was made in public interest in order to unearth the actual involvement of the persons behind such illegal and arbitral proceedings continued and correspondences in a fraudulent and unauthorized manner with all Erred Public Servants beyond the scope of sec. 14 (sub rule 6 to 24) of CCS (CCA) Rules 1965.

3. The RTI Application was filed against the 'abuse of the authority' by the said CPIO, 'public servant' purportedly acting in her public capacity, at Vigilance unit during the relevant period, disclosure serves the public interest and the request may, therefore, be conceded.

4. The information sought was rejected by the CPIO citing the exception contained in the Section 8(1) (h) of the RTI Act, 2005 in an arbitrary manner. The broad sprit of the RTI Act is full transparency and accountability. It is an established principle emanating from judicial decisions that disclosure is the norm and recusal from providing information is an exception. Hence, declining the request of information sought by the CPIO on flimsy

grounds and also without mentioning how it will attract the provisions of Section 8(1) (h) of the RTI Act, 2005 is establishes mala fide exercise of official power which is against the purpose and purport of the RTI Act, 2005 and the disclosure of the information sought is warranted.

5. There is nothing in the letter of the CPIO that would substantiate that the disclosure of the information sought would 'impede' or on a lesser threshold, 'hamper' or 'interfere with' the Disciplinary proceedings, if any. This burden lies on the CPIO and, the CPIO has deliberately failed to discharge it (appears to be acted as post master by receiving fabricated/false/baseless information from concerned subordinate officers and forwarded), which is against the mandates of the RTI Act, 2005, and hence, the desired information should be disclosed to the applicant herein.

6. The Appellant, specifically mention here that the information sought for pertain to institutional corruption in the given circumstances that the Applicant was falsely made a party to the proceeding which was actually officiated by another corrupt Departmental officers who had cleared the import consignment by going against the Rules and Regulations prevailing at that point of time, and, to save those corrupt officials for their such act, Applicant was falsely and forcefully implicated in subsequent proceedings initiated by the then Disciplinary Authority fraudulently. The Applicant craves leave to submit that all concerned officers directly dealing with illegally clearance of that Import consignment in violation of laid down guidelines and thereafter initiating and continuously conducting never ending false departmental proceedings and thus failed to honestly discharge their duty but the Applicant have been implicated falsely in the proceeding, though they have violated the prevailing Rules and Regulation, which gives sufficient reason to believe that the issue pertains to deep rooted conspiracy and corruption caused by others, and, the present authorities engaged themselves not to unearth the Truth/Facts which is against the purpose and purport of the RTI Act, 2005 and the disclosure of the information sought is warranted.

7. By denying to supply information establishes that CPIO is trying to hide institutional corruption caused in guise of the arbitrary administrative action in opaque manner, which is against the mandates of the RTI Act, 2005. Further denial to disclosure of requested information/documents does not falls any way to hamper of protracted Enquiry conducted, hence the action of the CPIO is arbitrary, unconstitutional and attracts penal provisions of section 166,167,170,196 and other relevant sections of IPC., and deliberately failed to act in good faith with lack of devotion of Duty and against the mandates of the RTI Act, 2005 thereby such Un-Constitutional activities falls under the ambit of sec.18 & 20 of the said Act and the applicant deserves to get the information sought.

8. That in support of above, the appellant would like to brought before the 1st Appellate Authority followings:-

(A) In the matter of UNION OF INDIA .. Petitioner versus SH. O.P.NAHAR(Delhi High Court) vide W.P.(C) 3616/2012 & W.P.(C) 405/2014 it was held by The HON'BLE MR. JUSTICE RAJIV SHAKDHER on 22.04.2015 at para 12 which are stated as under; "This brings me to the other question, which is: whether the petitioner can take recourse to the provisions of Section 8(1)(h) of the Act to deny information to the respondent. The relevant provisions of Section 8(1)(h) of the RTI Act read as follows:- "8. Exemption from disclosure of information. — (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, ... (h) information which would impede the process of investigation or apprehension or prosecution of offenders; (emphasis is mine) 13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would "impede"

the process of investigation or apprehension or prosecution of the offenders.

14. In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as in the year 2014 & 2015 by both authority as mentioned at para 5 above.

14.1 The question then is, would the information sought for by the respondent “impede” the respondent’s apprehension or prosecution. The respondent is in court based on Charge Sheet filed at competent 3rd spl. court, Bankshal. Therefore, prima facie, the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution.

14.2 In that view of the matter, according to me the provisions of Section 8(1)(h) of the RTI Act will not help the cause of the petitioner. Accordingly, the information, as directed by the CIC, will have to be supplied to the respondent. It so ordered. In support of this proposition, I may only advert to the following judgments of this Court (See Bhagat Singh v. Chief Information Commissioner [2008 (100) DRJ 63]; B.S. Mathur v. Public Information Officer of Delhi High Court [180 (2011) DLT 303]; Adesh Kumar v. Union of India and Ors. [216 (2015) DLT 230]; Director of Income Tax (Investigation) and Anr. v. Bhagat Singh and Anr. [(2008) 168 TAXMAN 190 (Delhi)]; Sudhir Ranjan Senapati v. Addl. Commissioner of Income Tax, W.P.(C) 7048/2011 dated 5.3.2013; and Pradeep Singh Jadon v. UOI, W.P.(C) 7863/2013 dated 2.2.2015, which have taken similar view on this issue. 15. The petitioner will comply with the order of the CIC.”

(B) A co-ordinate Bench of Delhi High Court in the case of B.S. Mathur v. Public Information Officer of Delhi High Court: W.P.(C) 295/2011, decided on 03.06.2011 had considered the contention with regard to withholding information under Section 8(1)(h) of the Act and held as under:-

“19. The question that arises for consideration has already been formulated in the Court’s order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the investigation” in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects (W.P.(C) No. 3543/2014) at Page 5 of 6 and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought “would impede the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would ‘impede’ the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word “impede” would “mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation”, it has still to be demonstrated by the public authority that the information if disclosed would indeed “hamper” or “interfere” with the investigation, which in this case is the second enquiry.” 10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.”

In this connection, the AC, Vigilance Unit (AP&ACC) has forwarded parawise comments on the grounds of appeal vide letter dated 04.07.2024.

Parawise Comments on the Grounds of Appeal:-

Para (1)- The RTI application Registration No. CCUKL/R/E/24/00052 dated 09.04.2024 by Shri Sadhan Naskar is referred. In the said RTI application Shri Naskar has referred to the his letter dated 09.02.2024 vide which Shri Naskar had submitted his representation to the Pr. DG, DGoV, New Delhi and the Chief Commissioner of Customs, Kolkata Customs zone as per the direction of Hon'ble Chaiman, NCSC, New Delhi.

The Hon'ble Chairman, NCSC, New Delhi had directed Shri Sadhan Naskar (petitioner at NCSC, New Delhi) to submit the representation along with documents which he had presented before the Commission to the Pr. Chief Commissiosner of Customs, Kolkata Zone and DGoV, New Delhi.

The documents sought for by Shri Naskar in the RTI application Registration No. CCUKL/R/E/24/00052 dated 09.04.2024 are:-

- (i) Authenticated copies of note sheets marked as-I to LXXII of File No. S21(MISC)-01/2004 VIG.
- (ii) All the documents and correspondences mentioned containing 293 pages of File No. S21(MISC)-01/2004 VIG.

It is informed that the disciplinary proceedings were initiated against Shri Sadhan Naskar under the departmental file bearing F. No. S21(MISC)-01/2014 VIG. The details sought by Shri Sadhan Naskar is regarding the F. No. S21(MISC)-01/2004 VIG which is different from the file of his departmental proceedings although the same is considered by the CPIO to be a typo-graphical error from the RTI applicant. **It is evident from the above fact that there is no deliberate denial of information to the RTI applicant or delay tactics adopted by CPIO else the CPIO could have easily stated the fact that the file No. as mentioned in the RTI does not pertain to Shri Naskar and could have rejected the RTI application under Section 8(1)(j) of RTI Act 2005 as the file mentioned in the RTI application pertains to a third party and not related to Shri Naskar in any way. However, such a stand was neither taken by the CPIO to deny the information deliberately to Shri Naskar nor adopted a delaying tactics and considered the File number mismatch to be a genuine typo-graphical error from the RTI applicant.** Accordingly, in view of the above, the contention of Shri Naskar is denied and disputed.

Further, it is informed that these documents as sought in the said RTI, were submitted by Shri Sadhan Naskar in his representation to NCSC, New Delhi and later to the Chief Commissioner of Customs, Kolkata Zone and DGoV, New Delhi. **Hence it is clear that Shri Naskar in the said RTI, has requested for those documents that are already under his possession which appears to be a violation and misuse of the RTI Act 2005.**

Further these documents (note sheets marked as-I to LXXII and correspondences mentioned containing 293 pages of File No.S21(MISC)-01/2014 VIG.) submitted by Shri Naskar at NCSC and sought in the said RTI are related to the disciplinary proceedings initiated under Rule 14 of the CCS(CCA) Rules 1965 against Shri Sadhan Naskar. Here reference is drawn to the CBIC letter dated 19.08.2011 regarding **“Decisions of CIC relating to exemption from furnishing of information under the Right to Information Act, 2005 in certain given circumstances”**.

In the list of important CIC decisions, reference is drawn to **Sl. No. (1) Shri Sankar Sharma and M/s. First Global Stock broking Pvt. Ltd. and others Vs. Director of**

Income Tax (Inv.)-II & CPIO Dept. of Income Tax, Mumbai. In the said decision, CIC has clearly specified that “the term 'investigation' used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of 'investigation' one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In that sense, an investigation can be an extended investigation. In the case of the Income Tax Department investigation into tax evasion can be said to be over or complete, only after the final adjudication about the tax liability had been made after the matter has gone through all the stages of appeals and revisions as well as a final decision about prosecuting or not prosecuting that person has been taken by an appropriate competent authority.”

Further reference is drawn to list of important CIC decisions at **Sl. No. (11) Sarvesh Kaushal vs F.C.I and others**, In the said decision, CIC has clearly specified that “The CIC, rejecting the appeal, held that the departmental enquiry, which was in progress against him, was a pending investigation under law, and the same attracted the provisions of Section 8(1)(h). Therefore, there is no question of disclosing any information relating to his prosecution, the CIC noted.”

Hence in view of the discussions above, the CPIO has rightfully rejected the said RTI application under Section 8(1)(h) of the RTI Act 2005 which is based on the facts and earlier CIC decisions in cases of pending investigations.

Further it is also mentioned that the RTI applicant was provided with the RTI reply dated 06.05.2024 and further has also been provided with sufficient reasons for rejecting the RTI application under Registration No. CCUKL/R/E/24/00052 dated 09.04.2024 vide CPIO's letter dated 30.05.2024. Hence the contention of Shri Naskar that the CPIO has not provided any reason for rejecting the said RTI does not hold water.

Para (2)- As already stated in comments to Para(1), documents as sought in the said RTI, were submitted by Shri Sadhan Naskar in his representation to NCSC, New Delhi and later to the Chief Commissioner of Customs, Kolkata Zone and DGoV, New Delhi as per directions of Hon'ble Chairman NCSC, New Delhi. **Hence it is clear that Shri Naskar in the said RTI, has requested for those documents that are already under his possession which appears to be a violation and misuse of the RTI Act 2005.**

Further it can also be seen that Shri Sadhan Naskar had submitted these documents (as sought in RTI) to NCSC during the course of hearing at NCSC dated 05.02.2024. In the Minutes of the hearing dated 05.02.2024 at NCSC, it can be seen that NCSC has recommended that the Department may consider the candidature of the petitioner(Shri Sadhan Naskar) for granting him ad-hoc promotion as well as his due MACP subject to final outcome of his pending court case. Accordingly it appears that the documents (sought in RTI and submitted at NCSC) have been submitted at NCSC with a view of personal interest of promotion and granting of MACP instead of any public interest. Hence the contention of Shri Naskar is denied and disputed.

Para (3)- Same as comments to Para (2). Further it is also stated at that there has been no abuse of authority by the CPIO as the decisions to reject the RTI application under Section 8(1)(h) of RTI Act 2005 is based on extant rules and CIC guidelines.

Para (4)- This is mis-representation of facts by the RTI applicant. The RTI applicant has been provided with the reply to RTI dated 06.05.2024 and sufficient reasons for rejecting the RTI application under Registration No. CCUKL/R/E/24/00052 dated 09.04.2024 vide CPIO's letter dated 30.05.2024. Hence the contention of Shri Naskar that the CPIO has not

provided any reason for rejecting the said RTI, appears to be suppression of facts by the RTI applicant as the reasons for rejecting the RTI application had been provided to Shri Naskar by the CPIO and contention of Shri Naskar thus does not hold water.

Para (5)- Same as comments to Para (4) above.

Para (6)- These are mere allegations made by the RTI applicant which has no relation with the current RTI application and also has no relation with the rejection of RTI application by the CPIO. Further the documents as sought in the said RTI, were submitted by Shri Sadhan Naskar in his representation to NCSC, New Delhi and later to the Chief Commissioner of Customs, Kolkata Zone and DGoV, New Delhi as per directions of Hon'ble Chairman NCSC, New Delhi. **Hence it is clear that Shri Naskar in the said RTI, has requested for those documents that are already under his possession which appears to be a violation and misuse of the RTI Act 2005.** Accordingly, no further comment is being offered in this regard.

Para (7) - Here it is stated that the information sought has never been denied by the CPIO but has been rejected as the same is exempted under the provisions of Section 8(1)(h) of the RTI Act, 2005. Further the allegations made by Shri Naskar against the CPIO is denied and disputed. As per the CIC decision already discussed in comments to Para (1), the disciplinary proceeding is the matter of Shri Sadhan Naskar is pending and further the prosecution proceedings in relevant CBI Court is also pending and hence the information sought under the said RTI is exempted under Section 8(1)(h) of RTI Act 2005 and thus the contentions and allegations made by Shri Naskar is denied and disputed in all aspects.

Para (8)-

(A)- The appellant has referred to W.P.(C) 3616/2012 & W.P.(C) 405/2014 (UNION OF INDIA .. Petitioner versus SH. O.P.NAHAR (Delhi High Court)).

In this respect it is submitted that the circumstances of the W.P.(C) 3616/2012 & W.P.(C) 405/2014 are entirely different from the circumstances of the present RTI application by Shri Sadhan Naskar. In the present RTI application, the RTI applicant has sought various documents and file notings related to the F.No. S21(Misc)-01/2014-VIG under the custody of the CPIO which contains the case records related to the disciplinary proceeding initiated against the RTI Applicant Shri Sadhan Naskar. At para 13 of the said order dated 22.04.2015 of Hon'ble High Court, it is stated that "13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would "impede" the process of investigation or apprehension or prosecution of the offenders."

The present disciplinary proceedings were initiated against Shri Sadhan Naskar for alleged demanding of illegal gratification as per the case booked by CBI under CBI case No. RC0102014A0002. Departmental Charge sheet in the matter was issued against Shri Naskar on 25.05.2015 under Rule 14 of the CCS(CCA) Rules 1965.

It is mentioned here that the Charged Officer (i.e. Shri Sadhan Naskar) under the above said Charge Sheet dated 25.05.2015, informed that on 08/08/2019 he had lost all the original and duplicate copies of the correspondences between 25/05/2015 and 01/08/2019 while de-boarding a bus and produced a General Diary before Hare street Police Station. Later, the Presenting officer provided the authenticated copy of the Relied upon Documents by forwarding the same to the charged officer by Speed Post and the same was informed to the disciplinary authority by email dated 14.07.2020.

The case has remained pending till date as Shri Sadhan Naskar himself moved to CAT, Kolkata and filed OA 1025/2020 wherein CAT Kolkata has issued an interim order dated

06.06.2022 wherein it is stated that “Let no enquiry be proceeded without according any opportunity to the applicant to go through the RUDs & CD which have been used against him to frame the charges.” The last date of hearing in the matter was on 08.05.2024 (as per CAT, Kolkata website).

Further in regard to inspection of RUDs and CDs relied upon in the Charge Sheet dated 25.05.2015, it is mentioned that the Ld. CBI Court in its Order No. 76 dated 27.03.2023 stated that RUDs have already been supplied to Shri Sadhan Naskar but since direction has been given to Customs Department by Ld' CAT, Kolkata for supplying RUDs and CDs to Shri Sadhan Naskar, the Ld. CBI Court fixed the date of inspection/supply of RUDs and CDs on 04.05.2023. Further in Order No. 78 dated 04.05.2023 of Ld. 3rd Sp. CBI Court it has been stated that neither Shri Sadhan Naskar nor his advocate is ready and willing to inspect/take copy of those relied upon documents and he has refused to do so.

Here please refer to the High Court Order dated 08.06.2023 in the CRR 2033 of 2023 in the matter of Sadhan Naskar vs Central Bureau of Investigation and another. High Court in its order dated 08.06.2023 has stated that “According to the petitioner, the relied upon documents in the disciplinary proceedings and the CBI proceedings are not the same and the petitioner is being compelled to inspect the documents which are recorded in the CBI case, which have been utilised in the disciplinary proceedings. So far as the notice which has been issued on 28.04.2023, the petitioner is directed to get clarification from the Central Administrative Tribunal, Kolkata whether the petitioner can be asked to inspect the documents or not. The order passed by the 3rd special court, CBI Court, Calcutta was only for the purpose of inspection of the records by the customs airport authority. The petitioner would be at liberty to file an appropriate application before the CAT wherein the said tribunal would firstly clarify from the customs authorities regarding the nature of the relied upon documents for being used in the disciplinary proceedings and the customs authorities should first explain that both the documents relating to the disciplinary proceedings and the criminal proceedings are one and the same. No further orders are required to be passed for interference by this Court at present.”

Hence it can be seen that the disciplinary proceedings has remained pending and has impeded due to reasons directly attributable to the RTI applicant (i.e. Shri Sadhan Naskar, the charged officer under said charge sheet dated 25.05.2015) and hence providing documents and notesheets of the disciplinary case file would certainly cause to create further litigations and impede the disciplinary proceedings (investigation within the meaning of Section 8(1)(h) of RTI Act) and accordingly the CPIO has rightly rejected the information sought in the said RTI under Section 8(1)(h) of the RTI Act 2005.

8(B)- Same as comments to para 8(A). Providing documents and notesheets of the disciplinary case file would cause to create further litigations and impede the disciplinary proceedings (investigation within the meaning of Section 8(1)(h) of RTI Act) and accordingly the CPIO has rightly rejected the information sought in the said RTI under Section 8(1)(h) of the RTI Act 2005.

8(C)- Here again it is submitted that the disciplinary proceedings has remained pending and has impeded due to reasons directly attributable to the RTI applicant and accordingly providing documents and notesheets of the disciplinary case file would certainly cause to create further litigations and impede the disciplinary proceedings and thus rightfully rejected the information sought in the said RTI under Section 8(1)(h) of the RTI Act 2005.

Personal Hearing:

For the sake of natural justice PH was granted to the appellant on 16.07.2024 before the

FAA & Additional Commissioner of Customs. The appellant appeared for the PH on 16.07.2024 and explained his case to the FAA. He also submitted brief facts of his case details and stated that "Information" may be provided keeping in view the principles of Natural Justice.

DISCUSSION & FINDINGS

I have carefully gone through the records of the case and contents of the Appeal Application dated 11.06.2024. I have also gone through the reply provided by the CPIO & Assistant Commissioner of Customs, Vigilance Unit (AP & ACC), Custom House, Kolkata vide letter dated 06.05.2024. I find that the CPIO & Assistant Commissioner of Customs, Vigilance Unit (AP & ACC), Custom House, Kolkata has given the decision within the time frame.

It is on record that the subject Appeal has been filed by the appellant in connection with his RTI Application bearing Registration No. CCUKL/R/E/24/00052 dated 09.04.2024 as he was not satisfied with the reply provided by the CPIO & Assistant Commissioner of Customs, Vigilance Unit (AP&ACC).

I find that there is a delay of 06 days in filing appeal against the said reply without submitting sufficient reason for the delay. However, for the sake of natural justice I condone the delay and admitted the present appeal.

I have gone through the case laws submitted by the appellant in his grounds of appeal and also gone through the departmental comments on grounds of appeal submitted by the CPIO & AC, Vigilance Unit.

In the instant case, the information sought by Shri Sadhan Naskar vide his RTI Application has been rejected by the CPIO & Assistant Commissioner of Customs, Vigilance Unit vide letter dated 06.05.2024 as the same is exempted as per section 8(1)(h) of RTI Act, 2005 which states:

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

.....

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

I further find that that the RTI applicant has sought various documents and file notings related to the F.No. S21(Misc)-01/2014-VIG under the custody of the CPIO which contains the case records related to the disciplinary proceeding initiated against the RTI Applicant Shri Sadhan Naskar.

The present disciplinary proceedings were initiated against Shri Sadhan Naskar for alleged demanding of illegal gratification as per the case booked by CBI under CBI case No. RC0102014A0002. Departmental Charge sheet in the matter was issued against Shri Naskar on 25.05.2015 under Rule 14 of the CCS (CCA) Rules 1965.

It is mentioned here that the Charged Officer (i.e. Shri Sadhan Naskar) under the above said Charge Sheet dated 25.05.2015, informed that on 08/08/2019 he had lost all the original and duplicate copies of the correspondences between 25/05/2015 and 01/08/2019 while de-boarding a bus and produced a General Diary before Hare street Police Station. Later, the Presenting officer provided the authenticated copy of the Relied upon Documents by forwarding the same to the charged officer by Speed Post and the same was

informed to the disciplinary authority by email dated 14.07.2020.

The case has remained pending till date as Shri Sadhan Naskar himself moved to CAT, Kolkata and filed OA 1025/2020 wherein CAT Kolkata has issued an interim order dated 06.06.2022 wherein it is stated that "Let no enquiry be proceeded without according any opportunity to the applicant to go through the RUDs & CD which have been used against him to frame the charges." The last date of hearing in the matter was on 08.05.2024 (as per CAT, Kolkata website).

Further in regard to inspection of RUDs and CDs relied upon in the Charge Sheet dated 25.05.2015, it is mentioned that the Ld. CBI Court in its Order No. 76 dated 27.03.2023 stated that RUDs have already been supplied to Shri Sadhan Naskar but since direction has been given to Customs Department by Ld' CAT, Kolkata for supplying RUDs and CDs to Shri Sadhan Naskar, the Ld. CBI Court fixed the date of inspection/supply of RUDs and CDs on 04.05.2023. Further in Order No. 78 dated 04.05.2023 of Ld. 3rd Sp. CBI Court it has been stated that neither Shri Sadhan Naskar nor his advocate is ready and willing to inspect/take copy of those relied upon documents and he has refused to do so.

Hence, it can be seen that the disciplinary proceedings has remained pending and has impeded due to reasons directly attributable to the RTI applicant (i.e. Shri Sadhan Naskar, the charged officer under said charge sheet dated 25.05.2015) and hence providing documents and notesheets of the disciplinary case file may lead to creation of further litigations and impede the disciplinary proceedings (investigation within the meaning of Section 8(1)(h) of RTI Act).

In this connection, reference is drawn to the following decisions made by the Central Information Commission:

1. Shri Sankar Sharma and M/s. First Global Stock broking Pvt. Ltd. and others Vs. Director of Income Tax (Inv.)-II & CPIO Dept. of Income Tax, Mumbai.

In the said decision, CIC has clearly specified that "the term 'investigation' used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of 'investigation' one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In that sense, an investigation can be an extended investigation. In the case of the Income Tax Department investigation into tax evasion can be said to be over or complete, only after the final adjudication about the tax liability had been made after the matter has gone through all the stages of appeals and revisions as well as a final decision about prosecuting or not prosecuting that person has been taken by an appropriate competent authority."

2. Sarvesh Kaushal vs F.C.I and others.

In the said decision, CIC has clearly specified that "The CIC, rejecting the appeal, held that the departmental enquiry, which was in progress against him, was a pending investigation under law, and the same attracted the provisions of Section 8(1)(h). Therefore, there is no question of disclosing any information relating to his prosecution, the CIC noted."

ORDER

In view of the above findings and discussions, I pass the following order:

I find that the CPIO & Assistant Commissioner of Customs, Vigilance Unit (AP & ACC) has rightly rejected RTI Application bearing Registration No. CCUKL/R/E/24/00052 dated 09.04.2024 by not providing the information as sought for by the applicant. Therefore, no further intervention is required in the matter.

The appeal is disposed of in the above terms.

Signed by Shiv Pratap
Singh

Date: 02-09-2024 17:35:32

(SHIV PRATAP SINGH)
First Appellate Authority
& Additional Commissioner of Customs (AP&ACC),
Custom House, Kolkata-700001.

To
✓ **Shri Sadhan Naskar,**
Flat No. D-279, 2nd Floor, Customs & CGST Residential Complex,
179, Shanti Pally, Kolkata-700107.

Copy to:

- ✓ 1. The Central Information Commissioner, CIC Bhawan, Baba Gang Nath Marg,
Munirka, New Delhi - 110067
2. The CPIO & Asstt. Commissioner of Customs, Vigilance Unit (AP&ACC), Custom
House, Kolkata.
3. The CPIO & Asstt. Commissioner of Customs, (CCO), Custom House, Kolkata.
4. The Superintendent of Customs (P), Computer Cell (AP&ACC)- with a request
to upload the same in official website.
5. Office Copy.

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