

In the Tripura Information Commission  
P. N. Complex: Gorkhabasti: Agartala



Appeal No 14 of 2006-07.

Smt Soma Pal,  
W/O Sri Nitai Krishan Paul,  
C/O Late Rehati Mohan Paul,  
Vill.- Jagaharimura, College Tilla,  
West Tripura, Phone No- 220-2431.....Appellant

Vs

1. The Commissioner of Taxes, Government of Tripura (First Appellate Authority).
2. Sri R. Bhattacharjee, Deputy Commissioner of Taxes, Government of Tripura (SPIO).....Respondents

In the matter of a second appeal under section 19(3)  
of the Right to Information Act, 2005.

PRESENT:

1. Sri B.K. Chakraborty  
State Chief Information Commissioner

2. Sri D.K.Daschaudhuri  
State Information Commissioner

For the Appellant: Sri Nitai Krishna Paul.

For the Respondents: 1. The Commissioner of Taxes, Government of Tripura.  
2. Sri R. Bhattacharjee, Deputy Commissioner of Taxes, Government of Tripura.

Date of lodging complaint: 01.02.2007

Dates of hearing argument: 05.03.2007; 19.03.2007 & 16.04.2007

Date of pronouncing judgment: 26.04.2007

JUDGMENT & ORDER

Facts

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arises out of a memorandum of appeal dated 01.02.2007 of Smt. Soma Pal (here in after referred to as the Appellant) received by this Commission on the same date.

f.



2. The facts leading to this second appeal are that the Appellant made a written request on 24.11.2006 to Sri R. Bhattacharjee, Deputy Commissioner of Taxes, Government of Tripura being the State Public Information Officer (SPIO) on payment of requisite application fee of Rs. 10/- in cash seeking the following items of information: -

- (i) What is the present rate of VAT for pure edible grade coconut oil?
- (ii) What was the rate of TST for pure edible grade coconut oil before encroachment of VAT?
- (iii) At present what rate VAT is collected in Tripura for pure edible grade Shalimar brand and Parachute brand coconut oil?
- (iv) Before encroachment of VAT in Tripura at what rate TST was collected for pure edible grade Shalimar brand and coconut brand oil?
- (v) What action had been taken against those dealers who cheated either the Government or the customers/consumers by not collecting tax at appropriate rate under TST or VAT and what was the statement of such dealers in defence?

3. In response to the above request of the Appellant, the SPIO (Respondent No.2) provided the information which are shown below against the items of information sought for by the Appellant in seriatim: -

- (i) In Tripura coconut oil is identified as hair oil and the rate of VAT for it is 12.5%.
- (ii) In Tripura coconut oil was identified as hair oil and its rate of TST was 12%.
- (iii) At present VAT for sale of all kinds of coconut oil is collected @ 12.5%.
- (iv) Before encroachment of VAT, TST was collected for all kinds of coconut oil @ 12%.
- (v) No such allegation was received.

4. Being dissatisfied with the information provided by the SPIO, the Appellant preferred the first appeal on 28.12.2006 with the Commissioner of Taxes, Government of Tripura being the First Appellate Authority (FAA)- Respondent No.1 seeking review of the decision of the SPIO and furnishing correct information. Having no response from the FAA within the statutory period, the Appellant preferred this second appeal before this Commission on 01.02.2006 for taking appropriate action against the concerned authority for disclosure of incorrect information suppressing the truth and also for giving direction to provide correct information. The Appellant also furnished some copies of cash memos and other documents along with the memorandum of appeal.

5. On perusal, the memorandum of appeal is found to be in form and within time. So, it is admitted as second appeal under section 19(3) of the Act.

6. In response to the summons, the Respondent No.1 Sri D.R.Datta, Commissioner of Taxes, Government of Tripura (FAA) and Respondent No.2 Sri R. Bhattacharjee, Deputy Commissioner of Taxes, Government of Tripura (SPIO)

Q



appeared before this Commission and submitted their respective written representations.

7. In consideration of the memorandum of appeal, papers submitted therewith and oral submission made by the parties, this Commission considered it expedient in the public interest to have an enquiry into the matter of realizing VAT at lower rate as appeared in the cash memos submitted by the Appellant along with the memorandum of appeal, to be conducted by the Respondent No.1 covering the following points and to submit the report of enquiry to this Commission: -

- (i) Reasons for realization of VAT at lower rate.
- (ii) Whether realisation of VAT at lower rate is permissible under the law. If not, what steps are being taken in such cases by the Commissioner of Taxes, Government of Tripura.
- (iii) Whether such realisation of VAT at lower rate would cause any revenue loss to the State Government.
- (iv) Whether such act would cause any difficulties/ inconvenience to the Consumers' and other stakeholders.

8. In compliance with the direction of this Commission, the report of enquiry conducted by Sri P.Banerjee, Assistant Commissioner of Taxes, Government of Tripura and accepted by the Respondent No.1 was submitted to this Commission on 24.02.2007.

9. The Appellant submitted a rejoinder to the memorandum of appeal on 19.03.2007. The Respondent No.1 also submitted a rejoinder on 13.04.2007 to his representation in reply to the rejoinder submitted by the Appellant.

10. In consideration of the memorandum of appeal along with the rejoinder submitted by the Appellant, the written representations of the Respondents and the report of enquiry conducted by Sri P.Banerjee, the following issues are to be decided: -

- (i) Has the SPIO (Respondent No.2) provided incorrect information to the Appellant in response to his written request dated 24.11.2006?
- (ii) Is the Appellant entitled to have the access to further information sought for vide his written request dated 24.11.2006?
- (iii) Has the Respondent No.1 being the FAA violated the provisions of the Act by not responding to the first appeal dated 28.12.2006 of the Appellant?

Reasons for decisions:

11. Issue No.(i) and (ii) : For the sake of convenience, both the issues are taken together for discussion. On examination of the memorandum of appeal with rejoinder, the representations of the Respondents and the report of enquiry submitted by the Respondent No.1 and on scrutiny of the information provided

→  
Csk



by the SPIO, it reveals that the first 4 items of information sought for by the Appellant are concentrated to the rates of tax of coconut oil used as edible oil and hair oil in Tripura as prescribed by the Tripura Sales Tax Act, 1976 (for short TST Act) and Tripura Value Added Tax, 2004 (for short TVAT Act). In response to the request of the Appellant, the Respondent No.2 being the SPIO provided information showing one rate of tax for coconut oil treating it to have been in use as hair oil in Tripura under both the TST Act and the TVAT Act. The agitation of the Appellant is that the dealers in Tripura have been charging different rates of tax for coconut oil in consideration of its use as edible oil and hair oil. In support of his contention, the Appellant furnished four cash memos and two bottles of coconut oil as exhibits and relying upon the aforesaid materials, he contended that the SPIO provided incorrect information and suppressed the truth.

«

12. On the contrary, the Respondent No.2 being the SPIO submitted that in Tripura considering its popular use in common and commercial parlance only one rate of tax is levied for coconut oil which is/was for coconut hair oil under both TST Act and TVAT Act. So he provided information according to the practice prevalent in the State of Tripura and there was no incorrectness and suppression of truth in providing the information.

13. The cash memos produced by the Appellant showed that some of the dealers charged Value Added Tax (VAT) at lower rate for coconut edible oil instead of higher rate prescribed for coconut hair oil from the customers. The contention of the Respondents in this respect is that for collection of tax at such lower rate by a dealer from the retailer, the dealer is responsible for violation of relevant provisions of law and the taxing authority uses to take appropriate penal action against the dealer for breach of law in due course. The taxing authority uses to collect tax from the dealer/ retailer only at one rate of tax prescribed for coconut hair oil.

14. At the very outset, it is required to be kept in mind that an SPIO is to provide information basing upon the current status of the materials pertaining to the information sought for and he is not expected to enter into any debate on the interpretation of any provision of law. This Commission is also not an appropriate forum to give verdict on the correctness of decisions of the taxing authority in regard to levy of tax on the sale of any goods. The fact established is that the Respondent No.2 being the SPIO had provided the information according to the prevailing practice correctly. The issue, whether or not the levying of such single rate of tax for coconut hair oil is in accordance with the relevant provisions of the tax laws, is absolutely a different matter, which cannot be agitated in this forum. The charging of tax at lower rate by a dealer has no connection with the information provided by the Respondent No.2 being the SPIO. Thus, the allegation of the Appellant that the SPIO provided incorrect information suppressing the truth, so far as the first four items of information are concerned, is not sustainable.

15. As regards the fifth item of information, the description of the information sought for by the Appellant is found to be wide and vague as no specific case and the period of time had been indicated. So, the information provided by the SPIO stating that "*no such allegation was received*" was not

Gen.



appropriate. As description of the information sought for was wide and vague, the SPIO should have either rejected it or got the vagueness removed by the Appellant. Since it was not done, the SPIO was under no obligation to provide any information against the fifth item of information sought for by the Appellant. So, the allegation of the Appellant against this fifth item of information is also not maintainable.

16. To conclude the discussion, we are to hold that the SPIO had provided information against the first four items of information correctly and that he was under no obligation to provide information against the fifth item of information for vagueness in the description of the information sought for. Consequently, the Appellant is not entitled to have the access to any further information sought for vide his written request dated 24.11.2006.

17. Issue No.(iii): It is admitted fact that the Appellant preferred the first appeal with the Commissioner of Taxes, Government of Tripura (FAA) on 28.11.2006 and that it was not responded to by the FAA till 27.01.2007. So the Appellant had rightly approached this Commission with this second appeal. The Respondent No.1 (FAA) pleaded that no regular Commissioner of Taxes (FAA) was posted during the period from 12.12.2006 to 17.01.2007. He took over as the Commissioner of Taxes only on 18.01.2007 and by virtue of holding the said post, he became the FAA. Thereafter, he attended to the appeal on 27.01.2007 and issued notice to the Appellant on the same day fixing date for hearing on the appeal on 20.02.2007. But in the meantime on 01.02.2007, the Appellant preferred this second appeal before this Commission leaving no scope for the Respondent No.1 to decide the first appeal. In appreciation of the plea of the Respondent No.1, we are of the view that the reasons and explanation advanced by him to justify the failure to respond to the first appeal of the Appellant within the statutory period was just and reasonable. There was no violation of relevant provisions of the Act on the part of the Respondent No.1 in responding to the first appeal. However, we are constrained to observe that the Public authority is required to be vigilant to see that the function of the FAA is not discontinued or suspended during the period of absence of the regular officer on transfer or proceeding on leave in order to avoid such type of situation in future.

18. Before parting with the judgment and order, we are to put it on record that it transpires from the report of the enquiry conducted by Sri P. Banerjee, Assistant Commissioner of Taxes, Government of Tripura and accepted by the Respondent No.1 and copies of cash memos for sale of coconut oil as produced by the Appellant that some of the dealers of coconut oil are in habit of realizing tax at lower rate not approved by the relevant laws, which is bound to cause the following adverse affects: -

- (i) Evasion in payment of due tax under the TVAT Act;
- (ii) Revenue losses to the State Government and;
- (iii) Loss to the retail sellers to the extent of 8.5%.

In order to prevent such malpractices involving revenue losses to the State Government and also to stop harassment of the retailers and the consumers in general, it is expected that the Commissioner of Taxes, Government of Tripura



shall be more vigilant and maintain regular surveillance over the activities of the unscrupulous dealers of coconut oil in Tripura in order to ensure collection of tax at prescribed rate for sale of coconut oil as larger public interest demands.

Decision:

19. In fine, the appeal is disallowed on contest.
20. Send copy of this judgment & order to the Appellant, Sri D.R.Datta, Commissioner of Taxes, Government of Tripura (First Appellate Authority) and Sri R. Bhattacharjee, Deputy Commissioner of Taxes, Government of Tripura (SPIO). Also send a copy of this judgment and order to the Commissioner & Secretary to the Government of Tripura, Finance Department (Head of the Public Authority).
21. Pronounced.

Sd/-  
(D.K. Daschaudhuri  
State Information Commissioner

Sd/-  
( B.K.Chakraborty )  
State Chief Information Commissioner

Authenticated.

(S.C. Saha)  
Secretary

Tripura Information Commission

TRIPURA INFORMATION COMMISSION  
P. N. Complex: Gorkhabasti : Agartala

Appeal No.14 of 2006-07/ 551-54

April 26, 2007

Copy to: -

1. Smt. Soma Pal, W/O Sri Nitai Krishna Paul, C/O Late Rebati Mohan Paul, Vill. Jagaharimura, College Tilla, Agartala, West Tripura (Appellant).
2. Sri D.R. Datta, Commissioner of Taxes, Government of Tripura -Respondent No.1 (First Appellate Authority).
3. Sri R. Bhattacharjee, Deputy Commissioner of Taxes, Government of Tripura, - Respondent No.2 (SPIO).
4. The Commissioner & Secretary to the Government of Tripura, Finance Department (Head of the Public Authority).

(S. C. Saha)  
Secretary

Tripura Information Commission