IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2515 OF 2016

Shri Atul D. Pandya ..Petitioner
versus
Union of India & Ors. ..Respondents

Mr. R. V. Desai – Senior Counsel with Mr. R. B. Pardeshi, Mr. N. S. Patel, A. M. Khare and A. M. Sinha i/b. A. M. Khare for Petitioner.
Mr. Pradeep Jetly for Respondents.

CORAM: S. C. DHARMADHIKARI &
SMT. BHARATI HARISH DANGRE, JJ.

DATE : 5TH FEBRUARY, 2018

P. C. :

1] By this petition under Article 226 of the Constitution of India, which was earlier filed in an assumed name and later on the petitioner disclosed his identity, made a declaration on oath, he claims that he is entitled under a scheme of reward which is framed by the respondents to a reward for having disclosed vital information about evasion of tax / public revenue. We have heard Mr. R. V. Desai, learned senior counsel appearing for the petitioner and Mr. Jetly appearing on behalf of the respondents.

2] With their assistance, we have perused the memo of the writ petition, the annexures thereto and all the affidavits which have been filed on record by the Revenue as also the petitioner.

3] Briefly stated the case of the petitioner is that he has been instrumental in forwarding, at the risk of his life and that of the members of his family, information which is indeed valuable and crucial. The petitioner spent his own money and took great pains to gather such information. The petitioner has pointed out that there are e-commerce companies indulging in huge evasion of duties and violation of laws made by the Parliament. All the respondents before this Court are the Officers of a Directorate styled as Directorate of Revenue Intelligence ('DRI' for short). The petitioner kept a very close watch on the activities of these e-commerce companies. He found that one M/s. ICC Worldwide Pvt. Ltd. was the major tax evader. The petitioner then obtained certain information about its activities and the *modus operandi* evolved so as to evade the taxes. The petitioner contacted and met the 2nd respondent Mr. P. K. Dash then Additional Director General of Revenue and informed him so also explained the information regarding misuse of concessions given to such entities in the form of customs duty, how this major tax evader in the garb of obtaining such concessions has indulged in smuggling and anti national activities. It was assisted by some other courier companies. After discussion with the petitioner, Mr. Dash told him to send the gist of information developed by him on his whatsapp messenger on his specific mobile number as it was not possible to meet the petitioner in person at the relevant time. The petitioner claims to have forwarded this information on 21st January 2015 and also supplementary information on the same day but after a lapse of about 20 minutes of the first whatsapp message. The petitioner then obtained valuable and specific details. The same were forwarded in the hope that action would be taken against this major tax defaulter and reward would be forwarded to the petitioner.

4] In paragraph 2(d) of the petition, the petitioner provides the details of the registration obtained by M/s. ICC Worldwide Pvt. Ltd. as a courier company and involved in the business of clearance of express import and export cargo in courier mode. That facility was misused for clearance of imported goods under Form IV which is meant for the bonafide gifts to individual from friends and relatives from abroad below the value of Rupees Ten Thousand and free trade samples also under this value. The goods cleared under Form IV by M/s. ICC Worldwide Pvt. Ltd. are predominantly purchased by an Indian buyer on on-line e-commerce portals like eBay and amazon.com which are liable for import duty. They are not bonafide gifts. The petitioner provided copy of the show cause notice issued to M/s. ICC Worldwide Pvt. Ltd. in a previous case booked upon them by the Commissioner of Customs Preventive. In reply to this show cause notice, M/s. ICC Worldwide Pvt. Ltd. admitted that it was allegedly unaware of the customs rules, therefore declared almost all the imported shipments which were actually purchased by Indian residents and not bonafide gifts. This activity was carried out since the year 2010. Thus the petitioner had been consistently informing Mr. P. K. Dash about these violations of the Customs Act, and the king pin of the racket one Mr. Gopal Revankar. All these details are provided and the gist of that is set out in paragraph 2(e) of this petition.

5] Then a detailed report was prepared and as soon as that was provided Mr. Dash called the petitioner in his office and introduced him to the 3rd respondent Mr. Arjun Raghavendra. Mr. Dash is supposed to have told the petitioner that Mr. Raghavendra is assigned by him to look into this information and further investigations. Therefore, now the details and information should be provided in relation to the above entity to Mr. Raghavendra. Mr. Dash is supposed to have told the petitioner that he trusts Mr. Raghavendra and the petitioner should also trust him. The petitioner claims to have agreed to this advice and directions of Mr. Dash. The said Mr. Dash also added to the duties of Mr. Raghavendra as he was earlier posted at courier clearance cell at International Airport at Mumbai. The petitioner was introduced by Mr. Raghavendra to the 4th Respondent Mr. Sushil Chandra. The petitioner was informed that he should trust this gentleman as well. Thus the petitioner shared the information details with these persons. They seem to have been connected with each other on the whatsapp group. The petitioner relies upon the e-mail correspondence of January 2015 and the text of the confirmation receipt of these messages. Thus the 1st respondent commenced the investigation based on this information and raised the demand on the said M/s. ICC Worldwide Pvt. Ltd. in the sum of Rs.6 Crores.

6] Annexure 'A' to the petition is a copy of these messages and which are followed up by further messages for about one year, namely, between 23rd January 2015 to 25th January 2016.

7] The petitioner says that he was getting anxious in the hope of getting the reward from the department. The petitioner was pressing for an early action against M/s. ICC Worldwide Pvt. Ltd.. That is how the petitioner was following up the matter for about an year and more. The petitioner says that his information was found to be crucial and reliable else the department officials would not have engaged him or continued to entertain him. All this gives a hope to the petitioner that the reward was indeed due and payable.

8] The petitioner relies upon and very heavily on the paragraphs 2(p),

(q) and (r) to this petition. These paragraphs read as under:

“p. Petitioner says that when Petitioner asked Mr.Arjun Raghavendra about the progress of the case of M/s.ICC Worldwide Pvt. Ltd. upon his information and requested him to do the formalities in filing DRI-I (the information report and details of informant), he told Petitioner not to worry and that he would call and brief Petitioner about the progress after some time and Petitioner's Whatsapp message to Respondent no 1 is formatted as per the norms of DRI-1 and his Identity is also established due to his phone number and, because the investigation proceedings would take time and the progress of it has to be kept secret. Petitioner believed and trusted the representation made by the Top Officials of the DRI. Petitioner further says that since the information involved huge amount of duty over a period of several years and the process of investigation is on, it was dangerous for him to visit the DRI office frequently, hence Petitioner also communicated with the DRI Officers by E-mail, SMS Test messages, Whatsapp chat and by telephone.

q. Petitioner says that whatsapp message sent to Respondent No 2 dated 21st January 2015, on his whatsapp messenger on his mobile number 9820403454 (Respondent No.2) be treated as the DRI-I as per the norms of reward policy and all other additional information provided by the petitioner treated as supplementary information provided as per the norms of DRI-1 for the consideration of the quality of the information criteria.

r. Petitioner recently around mid of December 2015, came to know from reliable sources that the officers of DRI has successfully booked a case against M/s.ICC Worldwide Pvt. Ltd. on the basis of the information provided by him, for recovery of government revenue (Duty) to the tune of about Rs.6 Crores (Rupees Six Crores) (approximately). Petitioner was flabbergasted to hear this because, as per the intelligence and information gathered by the Petitioner, this amount should have been several times more than what has been demanded. Petitioner says that inspite of providing detailed and precise information to the department and the volume of evasion was so high, the investigation has not been conducted properly and the evasion of duty was too much high and the duty demand being made by the department from M/s. ICC Worldwide Pvt. Ltd. is on a far lower side than what it should have been as per the information. Petitioner strongly feels that some keys aspects must have been missed out in the investigation for the reason unknown to him. Petitioner in fact had also informed that M/s. ICC Worldwide Pvt. Ltd. and group had sold more than 1 lac expensive re-furbished mobile phones (which is restricted item for import) and around 30,000 I-pads on e-bay platform which is easily verifiable by the agency like DRI. These two items show the volumes being transacted and accordingly the duty demand being made is far less and it appears that the department has forgotten some points to be investigated in the matter the reasons best known to them. Petitioner says that the file of M/s. ICC Worldwide Pvt. Ltd. may be properly investigated as Petitioner expects the duty evaded to be far more and it would help the department to generate more Revenue for the Government and consequently bigger rewards for Petitioner."

9] On the basis of the above assertions, the petitioner says that his trust and faith in the departmental officials was belied by the change in stand and approach towards him. He was shocked and surprised to receive a letter dated 6th January 2016 in reply to his letter of 15th December 2015 wherein the respondents stated that no case of reward to the petitioner is made out. The petitioner was shocked because the three officials Mr. Dash, Mr. Raghavendra and Mr. Sushil Chandra are guilty of breach of trust.

10] The petitioner then directed his wrath and went after these officers by lodging complaints against them right up to the Prime Minister's office and copies of these complaints are annexures as 'H' and 'I”. The revenue officials and the department as a whole did not budge nor did it changed its stand as communicated to the petitioner vide its letter dated 6th January 2016 and maintained throughout.

11] Even the petitioner's complaint was dismissed.

12] Thus the grievance of the petitioner is that his reward which was allegedly due and payable is withheld on untenable grounds.

13] A copy of this petition along with all the annexures was served don the respondents and one Dr. Sumit Garg, Deputy Director of DRI, Mumbai Zonal Unit has filed reply. In this affidavit it is stated that the DRI investigated the case against M/s. ICC Worldwide Pvt. Ltd. for evasion of duty in courier consignments based on <u>institutional</u> <u>information</u> and there is no reward claiming informer on its record.

14] The Intelligence received and developed by the DRI indicated the activities of the group and in paragraph 4 of the affidavit in reply, the deponent says as to how the said group was operating. The affidavit in reply admits that the *modus operandi* of the assessee resulted in evasion of appropriate customs duty and in paragraphs 5 and 6 it is asserted that the record with the department would reveal that the information / intelligence was gathered by its own sources and particularly on the inputs by the agencies of the Government of India much prior to the claim of the petitioner having forwarded informally some information in the case to the officers of the DRI. Since the records pertain to the development of intelligence, it will not be appropriate or advisable to make the same public but they can be produced by the respondents for perusal of this court. Thus, the DRI did not act on the information provided by any informer. There is no record available of any informer interested in reward forwarding the details and inputs based on which the investigations were commenced by the DRI and the assessee was booked.

15] One person claiming to have some information on the activities of M/s. ICC Worldwide Pvt. Ltd. had met respondent no. 3 on being referred by respondent no.2 some time in the month of January 2015 for discussing the alleged irregularity in courier clearances. The respondent no. 3 had met the petitioner close to three times in the office of the DRI. The petitioner claimed clandestine removal of consignments and which are the goods imported by M/s. ICC Worldwide Pvt. Ltd.. These activities were taking place in the night at the Express Terminal in Mumbai which functions round the clock. Many of the consignments were not manifested. The 3rd respondent considered this information to be too vague. He had worked previously at this terminal and it appeared *prima facie* that large scale smuggling of such consignments without being manifested in the Import General Manifest (IGM) from Express Terminal, Mumbai was not feasible. The petitioner insisted that there was considerable clandestine removal of unmanifested consignments or manifested consignments were being removed without payment of duty.

16] The 3rd respondent was not happy and satisfied with the claim of the petitioner and desired that he should give further details in the form of IGMs of consignments under which the goods were claimed to be cleared without payment of duty. The petitioner provided some details to the 3rd respondent but on scrutiny of these IGMs, details of which were provided, revealed that the consignments therein were cleared from customs under Form V on payment of duty as per the procedure and contrary to the claim of the petitioner. Then, the petitioner sought to rely on some electronic record but that was also probed and the consignments were found to be cleared after payment of customs duty. Thus on discreet verification the claim of the petitioner was found to be incorrect.

17] The department's in-house intelligence revealed that some time in the month of April 2014 (much prior to the entry of the petitioner on the scene) the 4th respondent conducted a study on the prevalent e-commerce business model from the Customs perspective by the 2nd respondent. In addition certain study was carried out. There was further research and study and a report was submitted to the 2nd respondent and the Director General of Revenue Intelligence in the month of December 2014. The report was also shared with the office of the respondent no. 3 by email dated 19th February2015 and was later shared with the headquarters of DRI. This report was also presented in the Additional Directorate General level conference held in April 2015. Though the name of the importer M/s. ICC Worldwide Pvt. Ltd. figured in the records of the DRI and its activities were probed, they were proceeded against but nothing of that is by relying on the so-called information provided by the petitioner. It is in this background that the introduction of the officers to the petitioner may not be denied but the respondents asserted that they probed the deals and investigation was at fairly advanced stage. The petitioner did not provide any assistance based on which he could claim reward. For professional and ethical reasons the intelligence development was not shared with the petitioner. The requirement of secrecy and which overrides the personal interest of the petitioner demanded that the petitioner should not be revealed the information gathered by the revenue officials much less sharing its details with him.

18] In substantiating this assertion, the department in paragraph 11 of this affidavit in reply relies on the information obtained by the Central Bureau of Investigation (CBI) from an anonymous source about irregular activities of M/s. ICC Worldwide Pvt. Ltd. This information was forwarded to the DRI through the departmental route, for necessary action. This information was received by an agency of the Government of India without any claim of reward and long before the petitioner could contact the revenue officials and person named by him. Thus, the petitioner could not be considered for reward.

19] Then it is stated that DRI as an intelligence agency generally encourages informers to provide credible, specific and actionable intelligence. However, there is always certain information available with the DRI which does not as a matter of policy share that information. No information is acted upon unless it is scrutinized and verified for its credibility and accuracy. Thus each case has to be evaluated in the backdrop of its particular facts and circumstances. Therefore the petitioner may have continued to record the information in relation to which the department was working and gathering details, but if shared, it is not only impermissible but exposing the officers whose identity is revealed for further action. Such officers can be then departmentally prosecuted. They are also cautioned that they should not share their personal details with the informers much less giving their mobile numbers and e-mail contacts as this would endanger their life and pose a security risk to them. Thus the petitioner may go on claiming that he has assisted the department but he has lost sight of the fact that there is a difference between informing the department about smuggling activities and commercial frauds. The *modus operandi* in relation to both activities may be appearing to the petitioner to be similar but that does not absolve the department from collecting legally admissible evidence. If every single piece of information provided to it has to be made the basis for claiming reward, then the specific guidelines which are framed so as to grant sanction of rewards stand breached and violated. The department's circular dated 31st July 2015 dealing with Reward to Informers and Government Servants issued by the Central Board of Excise & Customs is therefore relied upon. All the averments in the writ petition and particularly those which were reproduced above are dealt with and the same are denied as against the specific stand of the respondents referred above.

20] The petitioner obviously is not happy with this stand of the respondents for it comes to him as a surprise. He therefore files a rejoinder affidavit.

21] In this rejoinder affidavit he says that he has been corresponding and also contacting these officials. It is surprising that though a show cause notice dated 22nd July 2016 is issued to the defaulter on the information provided by the petitioner in January 2015, now, it is conveniently denied. Surprisingly the petitioner seems to have been following up the matter and equally vigorously with the defaulter for the petitioner's information that the intermediate duty has been recovered from the year 2010. The tax evasion has been admitted by the tax defaulter and after making payment it has approached the Settlement Commission to settle the issue and avoid prosecution. This seems to be a pointer to the role of the petitioner and those befriended by him as such revelations are not forthcoming even from the respondents.

22] We have reproduced relevant statements in the affidavit in reply and the denials in rejoinder for the petitioner is now claiming to be more than a mere informer. He is claiming to be instrumental in bringing the guilty tax evader to book and it is only his information on the activities of the defaulter which has led to the issuance of the show cause notice and is thus the foundation for issuance of the same. If the foundation of the allegations in the show cause notice is this information provided by the petitioner then he is legitimately and rightly entitled to the reward is thus the main plank of his arguments.

23] We find that further details about the airway bills etc. are provided by the petitioner in the affidavit in rejoinder and particularly from pages 123 to 125 of the paper book.

24] Thus the petitioner has been denied the reward and it is alleged that such sources like the petitioner are contacted or continued to be engaged but the trust and faith reposed by the said informant in the department officials is subsequently betrayed. The affidavit in rejoinder is full of the petitioner's assertions and which have been noted above.

25] The petitioner's case goes as far as alleging that he is informer of the Department and based on his information more than 100 cases approximately have been investigated. Once the petitioner started making inquiries and gave reliable information, the respondent no. 2 demanded Rs. 6 crores approximately and recovered Rs.10.32 crores from M/s. ICC Worldwide Pvt. Ltd. After the present petition is filed, the petitioner is threatened with filthy language by a person against whom he lodged a written complaint at Malad Police Station, copy of which is at Exhibit 'B' to the affidavit in rejoinder.

26] Then the petitioner is served with the sur rejoinder by the DRI and it has dealt with only such of the statements in the affidavit in rejoinder which according to the DRI makes out a new case. The affidavit in sur rejoinder states that a case was booked by Air Preventive Unit, Rummaging and Intelligence, Mumbai Customs against M/s. ICC Worldwide Pvt. Ltd. for clandestine removal of goods and a show cause notice dated 14th August 2013 was issued to them. This show cause notice was adjudicated in April 2014 by the then Additional Commissioner of Customs, Airport, wherein the courier company and its employees were penalized and duty recovered from them. This is a known fact and the petitioner is aware of it. The mal practice adopted by M/s. ICC Worldwide Pvt. Ltd. in clearance of goods through courier mode was always in public domain. It cannot therefore be said that the petitioner supplied any new or pin-pointed information to the DRI. Even otherwise, as stated earlier, the department was in final stages of analysing and developing the information by CBI and intelligence formed by way of in-house study.

27] Based on the above material that we have heard Mr. R. V. Desai, learned senior counsel appearing for the petitioner.

28] Mr. Desai would submit that we must not allow the respondents to deny the petitioner the reward. Our attention has been invited to whatsapp messages by Mr. Desai, some of which he read out in great details. He submitted that every single piece of information provided by the petitioner is the sole basis for issuance of show cause notices or taking action against the tax evader. Now it is very convenient for the revenue officials to deprive the petitioner of a reward. Thus, this is contrary to the express terms of the reward policy.

29] It is stated that the petitioner's efforts should have been properly rewarded. If the department is now allowed to argue and contrary to its own reward scheme, that will be discouraging public spirited citizens and genuine persons like the petitioner who assist the departmental officials in unearthing frauds or evasion of taxes.

30] Mr. Desai has submitted that the impugned communication, copy of which is at page 81 of the paper book, is unreasoned and defeats the principles of natural justice. It is nothing but a non speaking order. The scheme of reward postulates that each case of this nature is forwarded to a duly constituted committee or such body of high ranking officials who apply their mind to the applications seeking reward and duly consider it. This is an encouragement provided to citizens and they should not be therefore compelled to institute writ petitions.

31] Mr. Desai has heavily relied upon the show cause notice dated 22nd July 2016 issued under section 28 read with 124 of the Customs Act, 1962 to M/s. ICC Worldwide Pvt. Ltd. He submits that every single paragraph of this show cause notice and the allegations is based on the information provided by the petitioner. There is nothing like an in-house search or intelligence based on which the show cause notice is issued.

32] Then Mr. Desai relies upon a circular dated 20th June 2001 issued by the Ministry of Finance (Department of Revenue) Central Board of Excise and Customs, New Delhi. It is stated that reward guidelines state that rewards to Informers and Government servants in respect of cases of seizures made and/or infringement or evasion of duty, etc. detected under the provisions of Customs Act, 1962, The Central Excise Act, 1944 and The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 would be applicable. The guidelines will also be applicable for grant of rewards in respect of cases of detection of drawback frauds or abuses of duty exemption schemes and such activity unearthed on the basis of specific prior information are also covered by this policy. Our attention is also invited by Mr. Desai to the improvements made to the reward scheme by issuance of further communications / circulars and he would submit that the circular dated 31st July 2015 would not be the applicable circular. Assuming without admitting that it can be applied, this circular lays down specific procedure and wherein there are competent authorities constituted for consideration of the claims of reward. Mr. Desai relies on Part II of this circular in support of his submissions.

33] Finally, he placed reliance on the judgment of the Division Bench of this Court reported in *2015 (321) E.L.T. 238 (XYZ vs. Union of India)* and submits that the present case is fully covered by this judgment.

34] On the other hand Mr. Jetly appearing on behalf of the respondents would rely upon the affidavits filed in reply and sur rejoinder and the orders which have been passed in writ petitions seeking reward and which have laid down the procedure. In countering Mr. Desai submissions, Mr. Jetly submits that the reward to informers is an absolute discretion of the competent authority. The reward cannot be claimed as a matter of right. Its grant is *ex-gratia* subject to guidelines. Therefore specific and accurate information, risk undertaken, extent and nature of help rendered by informer, difficulty in securing information are some of the relevant factors based on which a decision is taken to grant reward. Once merely correspondence with the department does not confer any right, then, the department cannot be directed to consider the case of the petitioner. It is also the submission of Mr. Jetly that in writ jurisdiction we cannot enter into a disputed territory and hold that the reward was due and payable or otherwise. Meaning thereby if the reward seeker has not been found to be forwarding specific and accurate information based on which any action is taken against the defaulter or evader, then, the department's assessment or judgment of this nature is not liable to be interfered with in writ jurisdiction. For all these reasons, he would submit that the petition be dismissed.

35] After a careful perusal of the above materials, we are of the opinion that the petitioner's claim for reward has been rightly negatived. Firstly, the petitioner establishes contact with Mr. P. K. Dash. What is apparent from page 38 onwards is that the petitioner seems to have established contact with him and acquaintances grew into a familiarity which by its nature is surprising. This Mr. P. K. Dash is supposed to have been treating the petitioner like a friend. He went on engaging him. Then on

21st January 2015, the petitioner gave a gist of information about misuse of courier facilities by courier companies M/s. ICC Worldwide Pvt. Ltd.. We have already referred to this gist in the foregoing paragraphs. Thereafter another message is forwarded by him and within a short span of time, following the earlier one. Then, Mr. Dash is contacted by the petitioner on a Sunday morning and when the petitioner says that it is always a curiosity in his mind regarding success of his information. Thereafter the petitioner sends whatsapp message on 23rd January 2015, 25th January 2015 and Mr. Dash is supposed to have been informing him not to worry, for the information provided is being analysed. Mr. Dash is supposed to be then stating that this a new type of case and the department needs to understand and plan properly and that should not make the petitioner anxious. Mr. Dash is then supposed to be informing the petitioner that he is on leave for a week following which the petitioner grew anxious and once again contacts him. This continues and from the whatsapp messages all that the petitioner is informed and very clearly that the agency for value added tax has probed many international companies for violation of value added tax duty. If any of them notice the irregularities, they may inform the concerned agency before even the petitioner could provide any information. Therefore he says that a separate case should be made for violation of service tax so also for a reward securing case the department has its own sources and agencies from which it gathers information and details. The revenue has its own intelligence wings and being a Government of India Department it can very well approach even the investigation agencies investigating crimes. The petitioner was anxious that before him the in-house agencies or the departmental agencies such as CBI would act swiftly thereby jeopardizing the interest of the petitioner. The case of the petitioner was only to seek a reward and in money. This generally does not seem to be a genuine and bonafide act to protect the larger public interest or block revenue leakages. Then the petitioner says that the clearing person of the company is going to clear the import and export cargo in the night of 28th January 2015 at about 2.30 a.m. he will let the department officials know as soon as he gets the signal from his source that the subject company has filed bill of entry in Form IV and the cargo is of e-Bay. He will let know the bill of entry number and the department should put it on hold. He requests not to do any enquiry in this regard till then as the tax evaders have their own settings. We do not know what does this mean. But the petitioner once again says that he has his own source which can be approached for the activities of the tax evader. He repeatedly says that do not make any clearance. This goes on in the entire month of January 2015 and February 2015 and with reference to Mr. Arjun Raghavendra's name in this whatsapp messages that the petitioner is supposed to have provided some details. On 5th February 2015 he says that he will provide more as and when he gets. In one such conversation the petitioner wrongly refers to Mr. Arjun Raghavendra as Mr. Arvindji Raghavendra. We do not know who is this Mr. Arvindji Raghavendra and how his name surfaces in this whatsapp wherein in prior and subsequent whatsapp the petitioner has never made any mistake. These whatsapp messages go on and on and what the petitioner claims as vital information is then relied upon. The petitioner says that his confirmation of the e-Bay order and details of which were forwarded from page 52 would reveal that the petitioner posed as a customer and shopping on e-Bay. He posed and projected himself to be interested in obtaining the products through e-route / e-Bays mode. That is how he is supposed to have informed even the bankers and officials and even alerted them about the nature of the transaction through this mode, namely, courier mode. These are then the details and what the petitioner relies upon to seek a reward is an email from Arjun Raghavendra dated 9th February 2015 which informs him that as suggested by the Additional Directorate General the process of ordering on-line would be studied with the customs clearance details and the documentation involved. The petitioner will be mailed requirements and is free to drop in the office to collect the amount for the purchase of the equipments. Thus, these are the details which the petitioner will be forwarding to Mr. Raghavendra which were in turn would be forwarded to Additional Directorate General. The petitioner therefore says in his communication that his efforts which are sincere led to the officials working on the same. As the case involved was evasion of huge revenue the petitioner supplied further inputs by way of emails, whatsapp, phone calls and personal visits. The petitioner imported one ipad as per the advice of Additional Director General of Revenue and both the Deputy Directors. In one of his conversation he requested the Deputy Director to file DRI-I also along with his information. After that they started working further on the information provided by him. Hence he is thrilled to know that the case had been booked by the DRI Mumbai Zonal Unit on the basis of elaborate information provided by him. He says that M/s. ICC Worldwide Pvt. Ltd. has deposited an amount of Rs.6 crores which is peanuts and it should have been much more. The amount to be recovered is huge and he says that he was hopeful that nothing has been missed in the investigation. The petitioner thus says that he should be given an advance reward at the earliest and he is still ready to provide further inputs to fetch more revenue in this case.

36] We do not know how therefore in the earlier paragraphs, the petitioner claims that a case has been booked on the basis of specific and elaborate information provided by him but the amount of deposit is just a peanut. The tax evader should have deposited much more and the petitioner hopes that the investigation has not missed out anything. Then he says that he is entitled to an advance reward but he will forward further emails to DRI to fetch more revenue in this case.

37] If the case was fully investigated, show cause notice was issued then we do not see how on 15th December 2015 the petitioner addressed a communication of this nature. He knows that the investigations were on. He knew that the investigations resulted in booking the concerned tax evader but at a later date. The petitioner complained to the Prime Minister's office on the impugned communication stating that he is a professional informer. He has been betrayed by the officials of the DRI. They took, understood and developed the information from him and booked a case successfully and are now denying the petitioner the reward. He has evidence to prove his claim. This assertion of the petitioner follows though he says that in terms of guidelines prescribed by the Board for grant of reward to the informers no case was made out for reward by the claimant. The decision was already taken and communicated to him. The petitioner thus knows the outcome of his complaint but insists that being a professional informer he should have been treated with the requisite respect and regard for his efforts. He says that his case was closed without even a hearing. He pursued his grievance again and in great hope but his request was refused in a one sided bureaucratic way. He is dissatisfied with the manner in which the grievance is looked into. He had urged the concerned Desk Officer on his email to hear him and to give him an opportunity to present his case before the deciding authority but it was not taken into consideration. He requests that his case would have to be judged from vigilance and anti corruption point of view and if given an opportunity he would provide his evidences for the appraisal of authority. His case for reward is a unique one and he should be heard in person. Pertinently he says that the bureaucrats have framed a policy and as he has a grievance against Additional Director General DRI level official hence his grievance should be considered by a senior level official.

38] He goes on and in January 2016 he was once again informed that in respect of the reward his claim was examined and it is reported that he may not be granted any reward in terms of the existing reward guidelines as no case has been made out by his letter. Thus the department has consistently stood by its version.

39] That is why we have repeatedly and during the course of hearing, insisted on Mr. Desai not inviting our interference in this disputed territory. It is therefore not a case as clear on facts as it is emerging from the orders passed in the writ petition of other informers. Pertinently each case has to be decided on its own merits and none can claim absolute right in seeking a reward. The circular relied upon by Mr. Desai itself says that the policies for reward are looked into, considered and reviewed from time to time. Though the essential scheme without fundamental changes, is the same in tune with the various recommendations and changing scenario of smuggling and commercial frauds, certain modifications have been considered necessary. Therefore specific guidelines / procedure have been evolved in dealing with reward. A eligible government servant is one part of the policy / guidelines. Then what we find is the stipulation and which is equally applicable to all, namely, the government servants and informers. Paragraph 5.1 of the guidelines reads as under:

> "5.1 Reward is purely an ex gratia payment which, subject

to guidelines, may be granted on the absolute discretion of the authority competent to grant rewards and cannot be claimed by anyone as a matter of right. In determining the reward which may be granted, the authority competent to grant reward will keep in mind the specificity and accuracy of the information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, whether information gives clues to persons involved in smuggling, or their associates etc, the risk involved for the Government servants in working out the case, the difficulty in securing the information, the extent to which the vigilance of the staff led to the seizure, special initiative, efforts and ingenuity displayed, etc. and whether, besides the seizure of contraband goods, the owners/organizers/financiers/ racketeers as well as the carriers have been apprehended or not."

Then paragraph 6 dealing with payment of advance / interim reward follows and in which the following stipulations are material :

"6.1 Advance/Interim reward may be paid to informers and Government servants up to 50% of the total admissible reward immediately on seizure in respect of the following categories of goods, namely :-

(a) gold/silver bullion;
(b) arms and ammunition, explosives; and
(c) opium and other narcotic drugs.

6.3 In all other cases, including Customs appraising cases, cases of town seizures and Central Excise duty evasion cases,

> normally, no advance/interim reward will be granted. However, in cases where the parties/persons involved have voluntarily paid the amount of duty evaded during the course of investigation, admitting their liability, 25% of the voluntary deposits may be considered for payment as advance/interim reward to the informers, after the issue of the show cause notice (SCN), provided the authority competent to sanction reward is satisfied that there is reasonable chance of confiscability/infringement/evasion, as the case may be, being established in adjudication and sustained in appeal/revisionary proceedings. However, in such cases, the Government servants will become eligible for payment of advance/interim reward only after adjudication of show cause notice resulting in confirmation of duty."

40] Then payment of final reward is governed by clause 7. The final rewards, both to officers as well as informers should be sanctioned and disbursed only after conclusion of adjudication / appeal / revision proceedings. The final reward will be determined on the basis of net sale proceeds of goods seized / confiscated (if any) and the recoveries made by the department of duty and interest etc. All this is subject to the instructions in paragraph 4.3. as regards rewards to government servants and what is then material is the monetary limits of reward informers and government servants.

41] In the case at hand there is a dispute as to whether the department indeed relied on the information or the details provided by the petitioner. It specifically denies that it has so relied on the same. It says that it has its own sources to obtain information and its own intelligence generated led to investigations being carried out much prior to the petitioner coming on the scene. The petitioner came on the scene on January 2015 and the department claims to have obtained the information in April 2014 and in relation to certain transactions by the courier mode. Thus the petitioner has occasion of obtaining these details of the information collected and generated by the department from his own sources and encashing upon the same. The petitioner is accused of having relied on this very piece of information available with the department but without its details and he commenced correspondence in January 2015. He commenced correspondence about those cases which were already under the scanner of the department. The department had an in-house investigation mechanism and which it resorted to. It did not rely on the information made available by the petitioner. The petitioner's emails did not gave the details as were necessary and that is why the respondents have raised a dispute on the petitioner's right or entitlement to reward.

42] We do not think that such matters should be probed in our writ jurisdiction for that would convert this jurisdiction into one conferred with all the powers to enquire into, investigate and try such claims and probe the specific materials which are obtained by the department. The secrecy and confidentiality maintained would then have to be compromised in proceedings before us. These details would have to be revealed to the parties like the petitioner and based on the petitioner's assertions, liberty to controvert them either by examining the maker or the author of these statements or the documents would have to be provided or an opportunity to the petitioner to step into the box and assert his own claim by producing his own documents would have to be afforded followed by other witnesses. Equal opportunities would have to be afforded to the revenue. We are clear in our mind that none of the judgments which have been rendered by this court earlier have taken note of such types of cases or disputes and thereafter issued a direction to reward the petitioner.

43] In the case before the Division Bench whose judgment is relied upon heavily by Mr. Desai, it was clear that the petitioner was treated as a genuine informant and he provided information to the Revenue which enabled the Revenue to collect huge amount for the treasury of the Government, he took such risk and compromised his own safety which ultimately led to the petitioner being considered for reward. That information provided culminated in issuance of a show cause notice by the 5th respondent to the importers and led to an order made on 31st March 2011. The goods were confiscated and penalty was imposed on the importer. The petitioner therein was paid advance reward of Rs.5 lakhs after the seizure of the goods as per the reward policy. The balance amount which was due and payable was not paid to him despite several representations.

44] Then an affidavit was filed in reply to such a claim and in paragraph 4 of the order of the Division Bench that affidavit was dealt with. That affidavit admitted that sum of Rs.5 lakhs was paid as an advance reward to the petitioner. Thus consistent with the scheme and strictly on its terms this amount was released but the reward committee found that it was not in favour of releasing the further sum. However the matter was left open because Directorate of Vigilance was conducting enquiry. Once that investigation was over, the meeting of the reward committee was convened for considering the final reward to the informer or otherwise. Once this balance amount was not released and the claim was rejected only on the principle that this is not an absolute right that the Division

Bench held and relying on the decision of the Supreme Court in the case of *Union of India vs. C. Krishna Reddy 2004 (163) E.L.T. 4* that the petitioner had provided a specific information pertaining to five containers which were lying in the Port and based on the information seizure was effected. The show cause notice also in unequivocal terms mentions about the specific information raised by the officers of the Central Intelligence Unit. The seizure was effected, the advance reward was released in the sum of Rs.5 lakhs and that is how this Court did not uphold the stand of the Revenue that the petitioner was disentitled to the reward or the balance amount. There was no dispute of the nature brought before us. In our case even the initial entitlement or an advance reward is disputed and that was not granted. The petitioner relies upon his e-mails but conveniently omits to give details of how the proceedings ended. The petitioner claims that it was his information which led to the investigations but the department says otherwise. From inception therefore there is a clear factual dispute and which is distinct from the nature considered by the Division Bench.

45] In the circumstances, the Division Bench judgment relied upon heavily by the petitioner is of no assistance.

46] As a result of the above discussion and there being a clear dispute of fact and the petitioner's entitlement being not consistent with the policy or guidelines as noted by the Revenue, in writ jurisdiction we are not inclined to consider it. As a consequence, this writ petition fails and it is dismissed. No costs.

(SMT. BHARATI H. DANGRE, J.) (S. C. DHARMADHIKARI, J.)

Chandka