IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.01.2023

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.12215 and 12216 of 2015

Mr.T.Muralidharan

... Petitioner in both W.Ps.

Vs

1. The Central Information Commission,
   Room No.308 II Floor,August Kranti Bhavan,
   Bhikaji Cama Place, New Delhi – 110 066.

2. The Central Public Information Officer (CPIO),
   O/o. The Chief Commissioner of Central Excise,
   Coimbatore Zone, No.6/7, ATD Street, Race Course Road,
   Coimbatore – 18.

... Respondents in both W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writs of Certiorarified Mandamus calling for the records comprised in File Nos.CIC/LS/A/2013/001726 and 001723/KYdated 24.09.2014 on the file of the first respondent, quash the same and direct the second respondent to provide the information and documents as requested by the petitioner in his applications dated 14.11.2012 and 04.02.2013 under the Right to Information Act, 2005.

In both W.Ps.
For Petitioner : Mr.S.Muthuvenkataraman
For Respondents : Mr.M.Karthikeyan

COMMON ORDER

The petitioner is the Managing Director of a company, by name Global Polybag Industries Pvt. Limited, assessed both under the provisions of the Central Excise Act, 1944 and the Customs Act, 1962. The petitioner had approached the Central Public Information Officer (CPIO), office of the Chief Commissioner of Central Excise/R2 by way of two applications on 14.11.2012.

2. While one application is addressed to the CPIO, office of the Chief Commissioner, Central Excise, the second, of even date, is addressed to the CPIO, office of the Chief Commissioner, Customs. The applications were consolidated and were brought within the ambit of the CPIO, Coimbatore.

3. The information sought for under the said applications is as follows:

1). Please give a photocopy of the back papers and file nothing of the order by reference C. No.V/39/15/6/MDU/2002.

2). Please provide a photocopy of all the information including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, relating to the order by reference C. No.V/39/15/6/MDU/2002.

4. In the written submission dated 04.02.2013, the petitioner has reiterated the request for the following information:

1. Please provide the back files, file noting and all the information regarding Review Order No. 1/2012 passed by the Committee of Chief Commissioners namely Shri V.S. Krishnan and Shri A.K. Kaushal, whereas, "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force according to the RTI Act.

5. The 2nd respondent has passed an order on 06.02.2013 rejecting the request on the ground that the bar set out in terms of Section 8(1)(h) of the Right to Information Act, 2005 (in short 'Act') would be applicable in the present case.

6. The aforesaid provision states that any information that would impede the process of investigation of a matter would stand exempted from being furnished under the Act. Thus, the authority states that since the appellate proceedings were on-going, the materials sought for by the petitioner were not liable to be furnished.

7. In this regard, he states that an appeal had been filed by the petitioner as against order-in-original dated 31.05.2012 arising out of a show cause notice No.1 of 2002 dated 26.03.2002 that was pending before the CESTAT and in light of the fact that proceedings were live, it would not be appropriatiate to supply the information sought for.

8. As against order dated 06.02.2013, the petitioner filed an appeal before the appellate authority citing certain decisions of that authority to the effect that the request of information should not be rejected merely on the ground that the matter was subjudice, and there was nothing to indicate that notwithstanding that the matter was subjudice, supply of information would prejudice the respondents in any way. There was no evidence brought on record to indicate that the denial of information was justified.

9. The appellate authority has passed an order on 24.09.2014 confirming the initial view, opining that the litigation qua the petitioner and Revenue authorities has not reached a logical conclusion and hence the information sought for would be exempt under the provisions of Section 8(1)(h) of the Act.

10. At the outset, it is my considered view that the scope of the information sought for is extremely wide and in effect what has been sought for by the petitioner is the entirety of the backpapers and the records of the respondents relating to reference in V/39/1/6/MDU 2002.

11. A perusal of the information sought reveals that the petitioner has merely extracted therein the definition of the term 'information' under Section 2(f) of the Act that reads as follows:

> *(f) 'information" means any material in any form, including records, documents, memos, e-rnails, opinions, advices, press releases, circulars, orders, logbooks. contracts, reports, papers, samples, models, data material held in any electronic form and*

information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

12. What the petitioner has sought for is the entirety of the official records of the respondents relating to the reference made and I find nothing untoward in the rejection of such a wide and roving request.

13. A query was put to the petitioner as to the specific material that is required by it, and in this regard, a copy of show cause notice dated 26.03.2002 is placed before the Court. The Superintendent of Central Excise, while issuing the show cause notice, states in conclusion that the notice has been issued with the prior approval of the Chief Commissioner of Central Excise, Chennai. It is the petitioner's case that such approval has not been obtained.

14. If at all this was the limited stand of the petitioner, then the request ought to have been specific to such prior approval alone. Seeing as the requirement of prior approval of the Commissioner of Central Excise is a statutory one, per the 3rd proviso to Section 28 of the Customs Act, 1962 analogous to Section 11A of the Central Excise Act, 1944, such a request would have to be complied with by the respondents.

15. However, seeing as the request of the petitioner is extremely wide, vague and extends beyond the scope of information that is required to be supplied by the respondents, I see nothing erroneous in the orders passed both at the original as well as at the appellate levels.

16. The petitioner is permitted to seek the prior approval as aforesaid and such approval be supplied to the petitioner within a period of two (2) weeks from date of such request. The petitioner is also at liberty to seek any other specific information and the respondents would be bound by the statutory provisions to comply with such a request, needless to state, in accordance with law.

17. Both parties have relied upon case law on the scope and ambit of Section 8(1)(h) of the Act. However, in light of the order passed as aforesaid, I see no necessity to delve upon the same. These Writ Petitions are dismissed, though with liberty as above. No costs.

04.01.2023

Index : Yes
Speaking Order
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To

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Dr.ANITA SUMANTH,J.

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