

MINISTRY OF COMMERCE & INDUSTRY
MEPZ SPECIAL ECONOMIC ZONE
N.H.45, G.S.T.Road,
TAMBARAM,
CHENNAI – 600 045

F.No. RTI/MSEZH/A/E/20/00003 | 2959

Dated . 01.12.2020

Sub: First Appeal under Section 19(1) of the Right to Information Act, 2005 for non-receipt of submission of reply from CPIO, MEPZ Special Economic Zone, Chennai by the Appellant for his RTI application reference No.MSEZH/R/E/20/00009 dated 21.09.2020.

Ref: RTI Appeal Registration No.MSEZH/A/E/20/0001 dated 08.07.2020

DECISION OF THE FIRST APPELLATE AUTHORITY

An application under RTI Act, 2005 from Shri Himanshu Agarwal , resident of B-1-2002 Cherry County Plot No.5B, Techzone-IV, Greater Noida, hereinafter referred as the Appellant, has received vide Registration No. MSEZH/A/E/20/00003 dated 03.11.2020.

Following are the grounds for Appeal:-

"1. SEZ Act was framed at the time where GST Laws were not in place. Therefore the very purpose of endorsement mentioned under SEZ rules is only for the SEZ jurisdiction and not for the purpose of claiming refund of IGST paid by the supplier.

2. Section 51 of SEZ Act 2005 overrules the provisions of any other law that were in force at that time and not framed thereafter. It reads as "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act ." Therefore, Section 51 cannot be said to overrule CGST Act or rules. If this would have been the case the legislators would not have mentioned it specifically under the CGST Rules.

3. Without prejudice to above, even if Section 51 of SEZ Act 2005 overrules GST Laws why the Development Commissioner have delegated the powers to Authorized Officers. Therefore, somewhere it is accepted that SO is authorized to sign the endorsement.

4. It has been mentioned that power to issue endorsement has been delegated to Authorized Officers as per Para 6 of the MOM held on 30.08.2019. It is very surprising to see the copy of MOM annexed with the reply wherein it has been mentioned that endorsement by AO is sufficient and a Circular will be issued soon. In case, GST authorities insist for such endorsements by SO of the zone, appropriate decision can be taken then. As of now no circular has been issued by Development

Commissioner in this regard and hence not provided to me. The point is holding a meeting and delegating the power without issuance of any Circular is in itself unjust, arbitrary and void. There should have been one and single provision or guidance within MEPZ SEZ so that the suppliers of DTA do not face any challenge while claiming IGST refund as it is very time consuming to obtain endorsement in SEZ and processing of refund claim. Multiple contentions held in the reply (i) SEZ Act overrules CGST Act, (ii) DC has delegated the powers to AO in the meeting without issuance of Circular, (iii) If GST authorities insist it should be decided then should be removed and proper information should be provided whether AO or SO is authorized to sign endorsement for claiming refund of IGST paid by the DTA suppliers. If the answer is AO, proper authentic document should have been provided to the appellant."

I have gone through the submissions of the Appellant, it is seen that the CPIO vide letter No.MSEZH/R/E/20/0009/2573 dated 20.10.2020 had already submitted the required information sought by the Appellant. Also, the question asked by the applicant involves interpretation of the relevant Rules by the CPIO which is not within the purview of RTI Act, 2005, as per the definition of "Information" under Section 2(f) of the RTI Act, 2005.

The Hon'ble Central Information Commission in its Order dated 03.03.2017 in Appeal No. - CIC/SB/A/2016/001025/CBECE-BJ (in the case of Mr. Subrata Guha Ray Vs. CPIO) has stated the following:-

"At the outset the Commission observed that under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions. Similarly, redressal of grievance, reasons for non-compliance of rules/contesting the actions of the respondent public authority are outside the purview of the Act."

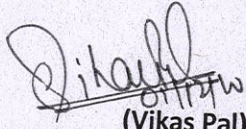
From the above Case Law, it is evident that the CPIO is not supposed to create information that is not part of the records.

Therefore, the information sought by the Applicant in the present case does not fall within the purview of Section 2(f) of the RTI Act, 2005.

However, it is to say that, it was specifically mentioned in the Minutes of the meeting held on 30.08.2019 viz Para '6' that for supply of Goods as well as Services endorsed by Authorised Officer is sufficient and the same will be put into practice in uniformity in all SEZs under the jurisdiction of Development Commissioner, MEPZ SEZ. In case GST Authorities insist for such endorsement by the

If the Appellant is not satisfied with this Order, he may prefer an appeal with the 2nd Appellate Authority whose address is given below, within 30 days of the date of this Order.

Central Information Commissioner,
II Floor, C Wing,
August Kranti Bhavan,
Bikaji Cama Place,
New Delhi – 110 006


(Vikas Pal)

First Appellate Authority &
Deputy Commissioner Of Customs

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