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Supt (Gaya)
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REGISTERED SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

**ORDER OF THE FIRST APPELLATE AUTHORITY UNDER SECTION 19(1) OF
RIGHT TO INFORMATION ACT, 2005**

ORDER

The Brief facts of the Appeal are that Shri Rajiv Gupta (hereinafter referred to as 'Appellant') vide his application dated 27.08.2018 which was received by the CPIO & Superintendent, at the Office of the Principal Commissioner (RA) and Ex-Officio Additional Secretary to the Government of India on 4.09.18 sought the information under RTI Act to provide information about a case of rebate adjudicated by the Principal Commissioner & Ex-Officio Additional Secretary to the Government of India, Mumbai and also seek information on the Rectification of Mistake Application dated 2.07.2018 filed by M/s Hildose, Mumbai in respect of order no. 195/959/13-RA/523 dated 31.05.2018. M/s Hildose, Mumbai vide letter dated RG:HIL:21 dated 27.08.2018 to the office of the Principal Commissioner (RA) and Ex-Officio Additional Secretary to the Government of India informed that they have outsourced certain tasks including seeking information under RTI Act, and they have authorised Appellant to seek information under RTI Act.

2. The information to the applicant was denied by the CPIO vide letter dated 27.09.2018 on the ground that as per Section 6(1) of the RTI Act, applicant do not

fulfill the requirement of the definition of 'Person' and he was wrongfully and illegally delegated to a third party seeking information in respect of their company.

3. Being aggrieved, the appellant has filed this Appeal dated 17.10.18 received through Department of Posts ie from CPIO & Postmaster, Andheri H.P.O, Mumbai-400053 on **23.10.18** stating that CPIO may be directed to give complete information to the appellant and requested to give question by question reply on his RTI application.

4. In the present appeal, the main question falls for decisions are,

4.1 Whether the appellant, is covered under the definition of 'Person'?

4.2 Whether the authority of seeking information under the RTI Act can be outsourced by the individual or a company to other person or agency? And

4.3 Whether the individuals / company themselves has to file RTI application to seek information under RTI Act?

5. I have gone through the case records including the RTI application filed by Shri Rajiv Gupta who had been outsourced and authorised by M/s. Hildose seeking information in respect of the Rectification of Mistake Application filed by them on 2nd July, 2018 in respect of the Revision Order No.195/959/13-RA/523 dated 31.05.2018. This RTI application was received in this office on 04.09.2018. The CPIO vide letter No.IV/RTI/16-1/Pr.Commr(RA)/2017 dated 27.09.2018 had denied the information on the ground that as per Section 6(1) of the RTI Act a person who desires to obtain an information under this Act shall make request in writing or through electronic means. The CPIO had held that the Act does not provide delegation of such rights to be outsourced by such persons. Accordingly, the CPIO had held that since the appellant does not fall within the definition prescribed under Section 6(1) of the RTI Act, the information was accordingly denied and hence this appeal.

6. The applicant has filed the appeal under Section 19 of RTI interalia on the following grounds:

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- 6.1 Section 11 of the RTI provides that in case the third party is requesting the information, the CPIO will issue notice to the party to whom the information belongs to within 5 days from the receipt of the RTI request.
- 6.2 The CPIO was wrong in concluding that the appellant had been wrongly and illegally delegated the authority to receive the requested information.
- 6.3 The third party cannot be denied the information in case the party in respect of whom the application is sought has given NOC.
- 6.4 The appellant had appeared before the Principal Commissioner and Ex-officio Additional Secretary to the Government of India as an Authorised Representative therefore he cannot be treated as a third party.
- 6.5 The questions of fact and questions of law have been raised to elicit information from the department in the said RTI Application. Further, it has been pleaded that a public authority shall provide reasons for its administrative or quasi-judicial decisions under Section 4(d) of the RTI Act, 2005.
- 7.1 Right to Information has been defined under Section 2(j) of the Act to mean as follows:
“(j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-
(i) inspection of work, documents, records;
(ii) taking notes, extracts, or certified copies of documents or records;
(iii) taking certified samples of material;
(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

7.2 Right to Information has also been statutorily recognized under Section 3 of the Act as follows:

"3. Right to information. - Subject to the provisions of this Act, all citizens shall have the right to information."

7.3 Section 6 of 'The Right to Information Act, 2005' prescribes who can request for obtaining information. As per this section, **a person**, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Such request may be made to the Central Public Information Officer or State Public Information Officer, as the case may be, or to the Central Assistant Public Information Officer or State Assistant Public Information Officer. In making the said request the applicant is not required to give any reason for obtaining the information or any other personal details excepting those which are necessary for contacting him.

8. The appellant in his instant appeal has referred to Section 11 of the RTI for getting the third party information. But in the instant case, the issue at hand is whether a company which falls within the category of a person under Section 6 of the RTI Act can outsource their right to any other Authorised Representative or legal practitioner. I am of the considered opinion that the RTI is a sacred right invested and provided under the RTI Act to a person to instil and establish the process of complete transparency.

9. The appellant in the instant case has not sought information as individual but as outsourced authorised representative of M/s Hildose. Therefore, it is not a case where the appellant as individual has sought third party information of M/s Hildose. Therefore, his submissions in appeal on this count are not acceptable.

10. In the instant case, M/s. Hildose, Mumbai, through their letter RG: HIL: 21 dated 27.08.2018 written to the Office of the Principal Commissioner (RA) and Ex-officio Additional Secretary to the Government of India has categorically mentioned that they have outsourced certain task to the appellant and he has been authorised to appear for Personal Hearings in connection with any matters to submit and

retrieve documents. M/s. Hildose through the said letter have outsourced the activity of seeking information under the RTI Act from the Office of the Principal Commissioner (RA) and Ex-officio Additional Secretary to the Government of India.

11. The careful reading of Section 6 of the RTI Act provides for seeking information by a person which could also include a company. This Right to Information could be exercised by the company M/s Hildose, Mumbai in the capacity of a person through any of their management. But a person such as appellant who has been outsourced by a company for the purposes of seeking information does not fall within the category of a person who is authorised to receive the information under the RTI Act.

12. The appellant might have been authorised by M/s. Hildose, Mumbai to make oral and written submissions or to appear for Personal Hearing in connection with any matters pertaining to the Central Excise Act, 1944. The Central Excise Act provides for giving authorisation to appear for Personal Hearing. Therefore, when the company themselves can apply for seeking the information under Section 6 of the RTI Act, the act or omission on the part of such company to outsource the work of seeking information under RTI Act cannot authorise the appellant to receive the information.

13. If outsourced individual or company starts doing the work of RTI on behalf of other individual and / or companies, it will open a pandora's box in which new shops will open which will start the work of outsourcing or seeking information from various department and the solemn purpose of the Right to Information Act viz.; introducing transparency in the working of Government departments would be defeated.

14. It is observed that a similar matter had received the attention of the Madurai Bench of the High Court of Madras in W.P.(MD) No. 4336 of 2017. While passing order in that case, their Lordships while dismissing the Writ Petition, have made very categorical observations. The relevant text of the judgment is reproduced below.

"4. The first respondent dismissed the appeal on the premise that the petitioner being a practising advocate cannot seek information relating to the cases instituted by him on behalf of his client. As a citizen he can personally

ask for information but not as an advocate on behalf of his client. The reasoning given by the first respondent cannot be faulted at all. The second appeal filed by the petitioner has been rightly rejected, as otherwise, every practising advocate would invoke the provisions of the R.T.I. Act for getting information on behalf of his client, which situation does not advance the objects of the scheme of the R.T.I. Act. The laudable objects of the R.T.I. Act cannot be used for personal ends and should not become a tool in the hands of the advocate for seeking all kinds of information in order to promote his practise.

5. In such circumstances, the order of the 1st respondent, dismissing the Second Appeal filed by the petitioner does not suffer from infirmity and does not call for interference. Therefore, the Writ Petition is devoid of merits and substance and the same is dismissed. There shall be no order as to costs."

15. In the case cited hereinbefore, an Advocate had sought information on behalf of his client. The appellant in the present case is also similarly placed. He has been authorized by M/s Hildose, Mumbai to appear on their behalf as legal authorized representative in terms of the provisions of Section 35Q of the Central Excise Act, 1944. The appellant as a consultant was advocating the cause of his client in the Revision Application filed by M/s Hildose, Mumbai under the provisions of Section 35EE of the Central Excise Act, 1944 in terms of the said authorization. The appellant in his own application as well as appeal has admitted that he had represented and contested the legal case of M/s Hildose before the Revisionary Authority. Moreover, M/s Hildose in their authority letter have also admitted the appellant as their legal authorized representative. The RTI application filed by the appellant in the present case is beyond the scope and intent of the RTI Act, 2005. The RTI Act cannot be a device for a consultant to obtain information in the interest of his practice and the brief he holds for his client. In the circumstances, I have no hesitation in holding that the CPIO has correctly rejected the application for information.

16. The appellant has contended that a public authority under Section 4(d) of RTI Act shall provide the reasons for administrative or quasi-judicial decision to the

effected persons. I am in full agreement with the contention of the appellant that the public authority namely; the Principal Commissioner (RA) and Ex-officio Additional Secretary to the Government of India has to provide the reasons for quasi-judicial decision to the effected person. It may be seen that the effected person under Section 4 (d) is M/s. Hildose, Mumbai to whom the reasons for quasi-judicial decision have been given vide the O-I-O No.195/959/13-RA/523 dated 31.05.2018. Therefore, in so far as the requirement under Section 4(d) is concerned, the public authority has already discharged the function of passing well-reasoned order by virtue of power vested under Section 35 EE of Central Excise Act, 1944 and if the effected persons feel aggrieved against the said order, he/she/they can seek the legal remedy against such order.

17. To sum up and conclude, I accordingly hold that a person under Section 6 of the RTI Act cannot outsource its right to seek the information under Right to Information Act. Therefore, the appellant doesn't fall within the category of a Person who can seek the information under the RTI Act. Accordingly, I dismiss the appeal filed by the appellant holding that an outsourced and authorised person is not entitled to seek the information in respect of a Company.

18. The Appeal is accordingly dismissed.

3 *[Signature]*
22.11.18

(S.R.Hirulkar)
First Appellate Authority &
Assistant Commissioner (R.A)

F. NO. IV/RTI (Appeal) 16-2/Pr.Commr (RA)/2018/1999 Date: 22nd November, 2018

To,
Shri Rajiv Gupta, A-1, Divyajyot CHS Ltd., R.K.Singh Marg, Off Old Nagardas Road,
Andheri (east), Mumbai

✓ Copy to; Webmaster, DG Systems, CBEC, New Delhi, for uploading the reply of
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