

**OFFICE OF THE
ASSAM INFORMATION COMMISSION
JONAKKEE COMPLEX, PANJABARI, GUWAHATI-781 037**

Case No. : KP(M).658 /2013

Complainant/ appellant : Shri Joydev Das

Respondent : Commissioner of Taxes, Govt. of Assam

Date of hearing : 29. 4.2016

Complaint/ Second : Shri H.S. Das, IAS (Retd)
Appeal heard by : Chief Information Commissioner, Assam

O R D E R
29.4.2016

1. The petitioner/appellant Shri Joydev Das is present. The Public Authority is represented by (a) Shri B.B. Hagjer, SPIO and Addl. Commissioner of Taxes in the office of the Commissioner of Taxes, (b) Shri P.K. Sinha, APIO & Asstt. commissioner of Taxes, Guwahati Unit-D, and (c) Shri Sandeep Chanda, Superintendent of Taxes, Guwahati Unit-D.
2. In pursuance of this Commission's order dtd 30.3.16, read with earlier orders dtd 12.10.15, 16.11.15, 19.11.15, 29.12.15 and 24.2.16, the Second Appeal petition dtd 30.9.13 of the appellant Shri Joydev Das is taken up for further hearing ex-parte in absence of the third party namely M/S All Assam Wholesale Fish Traders' Association (AAWFTA) although notice dtd 30.3.2016 was served on them through the Commissioner of Taxes, Government of Assam.
3. The appellant Shri Joydev Das filed an RTI petition dtd 12.8.13 before the SPIO of the office of the Commissioner of Taxes, Assam requesting for year-wise Entry Tax Assessment documents of M/S AAWFTA on raw fish under Assam Entry Tax Act. The applicant did not mention the period for which he wanted the information. The Joint Commissioner of Taxes, Assam and SPIO transferred his RTI petition to the Asstt. Commissioner of Taxes, Guwahati Unit –D u/s 6(3) of the RTI Act, 2005 asking him to examine the matter and take necessary steps.
4. After not getting any response within the stipulated time, the applicant filed a First Appeal petition dtd 16.9.13. Vide a letter dtd 21.9.13 the Superintendent of Taxes, Guwahati Unit-D informed the petitioner that the information sought for by him – “come within the provision of Section 102 of the Assam Value Added Tax Act, 2003. Accordingly it is confidential on the part of the Taxation Department and are saved as a privileged communication. Hence it is not possible to provide any assessment proceedings of the aforesaid dealer for any

year. On the other hand it is also found prejudicial as well as detrimental to the aforesaid dealer i.s. M/S AAWFTA.”

5. On denial of the sought for information, the applicant filed a Second Appeal petition dtd 30.9.13 before this Commission requesting for a direction to the Sales Tax Department to provide him the sought for information as early as possible. As mentioned above, this Commission had already heard the matter on 12.10.15, 16.11.15, 19.11.15, 29.12.15 and on 24.2.16.
6. In compliance of this Commission's order dtd 12.10.15 the Asstt. Commissioner of Taxes, Guwahati Unit-D filed a written statement dtd 9.11.15 giving reasons for withholding the information sought for by the petitioner quoting and referring to section 102 of the Assam VAT Act, 2003, section 8 of the RTI Act, 2005, section 11 of the RTI Act, 2005 which relates to third party information, and judgments of Hon'ble Supreme Court and the Delhi High Court. Similarly, the appellant Shri Joydev Das also submitted a written Statement dtd 12.11.15 informing this Commission, in compliance of its order dtd 12.10.15, that the period for which he wants the information is 1.10.01 to 31.5.10. In the WS he also mentioned that the information sought for by him involves public interest because he suspects evasion of tax by M/S AAWFTA in connivance with some officials of the Commissionerate of Taxes leading to loss of revenue to the State and unreasonable hike in price of fish, which are to be borne by the consumers.
7. The matter was heard again on 16.11.15 and 19.11.15 in presence of both the parties. In its order dtd 19.11.15 this Commission directed the SPIO of Commissionerate of Taxes to make a decision on whether or not to disclose the information sought for by following the procedure laid down u/s 11 of the RTI Act, 2005, as this procedure was not followed by the ST, Guwahati Unit-D in refusing to furnish the information to the petitioner vide his letter dtd 21.9.13. This Commission directed the appellant also to submit further justification with supporting document, if any, in support of his suspicion and allegations of irregularities in assessment of Entry Tax of M/S AAWFTA during 1.10.2001 to 31.5.2010, and to explain how non-disclosure of the information sought for by him will be detrimental to public interest.
8. The Assistant Commissioner of Taxes, Guwahati Unit-D filed a WS dtd 24.12.15 enclosing a copy of a letter dtd 23.11.15 signed by the President of M/S AAWFTA objecting to the disclosure of any document pertaining to their Association to any other party. The Assistant Commissioner of Taxes prayed for refixation of next date of hearing as both the Assistant Commissioner and Superintendent of Taxes, Guwahati Unit-D would be out of station on the next date fixed i.e. 29.12.15. The appellant Shri Joydev Das also submitted his WS in compliance with this Commission's order dtd 19.11.15 mentioned above.

9. After perusing the WSs of both the parties, this Commission passed an order on 29.12.15 directing the Assistant Commissioner of Taxes and SPIO to make a decision u/s 11 of the RTI Act, 2005 whether or not to disclose the information or record or part thereof to the RTI applicant after receipt of the objection of the third party.
10. The matter was again taken up for hearing on 24.2.16 when the Public Authority was represented by the ST, Guwahati Unit-D. The appellant Shri Joydev Das was absent without information.
11. This Commission considered the WS dtd 15.2.16 submitted by the Assistant Commissioner of Taxes. In the WS, the Assistant Commissioner of Taxes stated that the applicant Shri Joydev Das was given a notice on 2.2.16 inviting his written reply within 10.2.16 as to how public interest will be hampered if the information sought by him is not disclosed. The petitioner Shri Joydev Das failed to respond. On the other hand the third party i.e. M/S AAWFTA objected to disclosure of any document pertaining to their Association to the RTI applicant. The Asstt. Commissioner of Taxes also mentioned in his WS that Shri Joydev Das is also a fish trader. Therefore, business rivalry, and not public interest, may be the reason behind the RTI application. Since Shri Joydev Das failed to respond to the Asstt. Commissioner's notice, he decided not to disclose the information.
12. However, in view of the nature and subject of the RTI application and subsequent deposition including written submissions made by the appellant before this Commission, it was decided to give the appellant another opportunity of being heard before arriving at a final decision. Accordingly 18.3.16 was fixed as the next date of hearing vide this Commission's order dtd 24.2.16.
13. The matter was taken up for hearing again on 18/3/16. Meanwhile the Asstt. Commissioner of Taxes, Guwahati Unit-D and SPIO submitted a copy of its letter dtd 15.3.16 addressed to the appellant Shri Joydev Das stating that since the applicant did not inform the Asstt. Commissioner of Taxes and SPIO about the public interest involved and since the third party raised objection to disclosure of the sought for information, which involves business secrecy and confidentiality, the Asstt. Commissioner of Taxes has taken a decision not to disclose the third party information as sought for by the applicant. The appellant Shri Joydev Das also submitted another WS dtd 8.3.16 before this Commission highlighting the public interest involved in his RTI petition. At the time of hearing on 18.3.16 Shri Joydev Das, the petitioner was present but the ST, Guwahati Unit-D was absent although he signed the attendance sheet before the hearing

and appeared in the Commission after the appointed time for hearing. In absence of the respondent no formal hearing could take place.

14. After perusal of the document and WS made by the Public Authority and the appellant respectively, the Commission vide its order dtd 30.3.16 fixed 29.4.16 for further and final hearing of the matter, particularly of the third party i.e. M/S AAWFTA as is required u/s 19(4) of the RTI Act, 2005. As already mentioned, the third party was absent.

15. In today's hearing, the SPIO of the Commissionerate of Taxes submitted that the assessing authority i.e. Superintendent of Taxes, Guwahati Unit-D is not willing to disclose the information sought for by the petitioner on the following grounds:

(a) The information sought for is treated confidential u/s 9 of the Assam entry Tax Act, 2008 read with section 102 of the Assam Value Added Tax 2003 and section 8 (d) of the RTI Act, 2005. It was submitted that u/s 9 of the Assam Entry Tax act 2008, the provisions of section 102 of the Assam Value Added Tax Act 2003 shall apply, *mutatis mutandis*, to tax levied and payable under the Assam Entry tax Act 2008 also;

(b) That the petitioner Shri Joydev Das is also a fish trader and his RTI petition is motivated by the business rivalry with the third party i.e. All Assam Whole Sale Fish traders' Association, rather than by larger public interest.

16. The petitioner argued that he has already submitted before this Commission documents substantiating that various irregularities have been committed in making entry tax assessment of the third party viz. All Assam Wholesale Fish Traders' Association during the relevant period. Therefore, he wants the entry tax assessment documents of the third party to satisfy himself that the assessment has been done correctly by the Entry Tax assessment Authority. He further submitted that, for that reason, as a citizen of the country it is his right and duty to have the information in larger public interest.

17(a) The petitioner alleged by his written submission dtd 12.11.2015 that the third party viz. All Assam Wholesale Fish Traders' Association is actually a proprietarily concern, though it is projected as an Association.

17(b) From the written submission dtd 26.04.2016 of the Assistant Commissioner of taxes and the enclosed copy of certificate of Registration of All Assam Wholesale Fish Traders' Association, as well as by the deposition made by the representatives of the Public Authority in today's hearing, it is established that All Assam Wholesale Fish traders' Association is the name of the registered

dealer. It is not an "Association", registered as such with any authority, comprising other wholesale fish traders.

17 (c). From the certificate of registration issued by the Taxation Authority under Rule 3(3) of the Assam Entry Tax Rules 2008, it appears that one Jitu Barman of Paltanbazar, Solabilpar, Guwahati is the proprietor of the All Assam Wholesale Fish Traders' Association. From the para 7 of the written statement dtd 28.12.15 submitted by the petitioner Shri Joydev Das it is seen that the same Jitu Barman is the proprietor of another firm, viz J.B. Fish Traders. In para 8 of his WS dtd 08.03.2016, the petitioner has further stated that according to information furnished by the Superintendent of Taxes, Guwahati Unit-D by his letter dtd 18.8.2013 to the petitioner, the Trade License issued by Guwahati Municipal Corporation to Shri Jitu Barman as proprietor of M/S J.B. Fish Traders was used by Shri Jitu Barman to import fish in the name of M/S All Assam Wholesale Fish Traders' Association also. The petitioner, therefore, suspects some foul play. **These are, however, matters to be looked into by the Finance (Taxation) Department and Commissioner of Taxes.**

17(d). This Commission would like to confine its deliberation strictly to the information sought for by the petitioner by his RTI petition dtd 12.8.2013 taking into account the grounds on which the Public Authority wants to avoid disclosure of the sought for information and whether there is larger public interest involved which overrides the third party interest sought to be protected by the third party as well as the Public Authority under the relevant provisions of the Assam Value Added Tax 2003 and Assam Entry Tax Act 2008, and justified disclosure of the sought for information.

18. In paragraph 10 of his written submission dtd 28.12.15, the petitioner has submitted that information obtained from the Superintendent of Taxes, Guwahati Unit-D revealed that 135 numbers of delivery notes were issued to M/S All Assam Wholesale Fish Traders' Association by the Superintendent of Taxes, Guwahati Unit-D during the period 2002-03 to 2012-13. Similarly in paragraph 8 of the same written submission it is mentioned that as per information furnished by the Superintendent of Taxes, Guwahati Unit-D, M/S All Assam Wholesale Fish Traders' Association paid a total amount of Rs.24,68,057.00 as Entry Tax during the period 2002-03 to 2012-13. In paragraph 11 of the same written submission, the petitioner submitted that information provided by the Superintendent of Taxes Damra check-post, Srirampur that 960 numbers of raw fish laden trucks were imported to Assam and sold by M/S All Assam Wholesale Fish Traders' Association from 26.8.2005 till 15.7.2006.

19. In view of the difference between the number of delivery notes issued and the number of fish laden trucks imported to Assam during the relevant period, this Commission is of the view that it will be in consonance with larger public interest to know that the Taxation Authorities correctly assessed, levied and collected entry tax from the assessee M/S All Assam Wholesale Fish Traders' Association during the relevant period and that there was no loss of revenue to the State exchequer. This commission is also of the view that the larger public interest involved justifies disclosure of the copies of calculation sheets and entry tax assessment orders mentioning the quantity of fish imported, value of the fish imported and amount of entry tax assessed, levied and collected from M/S All Assam Wholesale Fish Traders' Association, financial year-wise during the period 1.10.2001 to 31.5.10 without disclosing the commercial papers like invoices, etc. and other personal information submitted by the third party to the Taxation Authorities.

20. This Commission is of the view that the above will amount to reasonable protection of the private interest of the third party while at the same time disclosing reasonable amount of information to the petitioner, which will meet the requirement of larger public interest.

21. This commission would also like to record that disclosure of the information in public interest as above will be in consonance with the proviso under section 8(1) of the RTI Act, 2005, i.e., information which cannot be denied to the State Legislature cannot be denied to any person.

22. In view of the above facts and circumstances of the matter, this Commission directs the SPIO of the office of the Commissioner of Taxes, Government of Assam to furnish copies of the calculation sheets and entry tax assessment order in respect of M/S All Assam Wholesale Fish Traders' Association mentioning quantity of raw fish imported, value of the fish imported and amounts of entry tax assessed, levied and collected from M/S All Assam Fish traders' Association for the period 1.10.2001 to 31.05.2010 to the petitioner Shri Joydev Das within 30 (thirty) days from the date of receipt of this order.

With the above direction, the Second Appeal petition dtd 30.9.2013 is disposed of.

Sd/-
(H. S. Das)
Chief Information Commissioner, Assam
Panjabari, Guwahati

Authenticated true copy.

Sd/-
Registrar
Assam Information Commission

- Copy to:
1. The Commissioner of Taxes, Govt. of Assam, Kar Bhawan, Dispur, Guwahati-6 for information and necessary action. He is requested to deliver copy of the above order to M/S All Assam Wholesale Fish Traders' Association, Guwhati.
 2. The SPIO of the office of the Commissioner of Taxes, Govt. of Assam, Kar Bhawan, Dispur, Guwahati -6 for information and necessary action.
 3. Shri Joydev Das, Ambari Fatasil, K.K. Road, Near Mayur Krishna Cinema Hall, House No.-16, Guwahati-25 for information.
 4. M/S All Assam Wholesale Fish Traders' Association, Guwahati for information. (Through Commissioner of Taxes, Assam)
 5. Computer Section for uploading in the Website.
 6. Office File.

Registrar
Assam Information Commission