

## CENTRAL INFORMATION COMMISSION

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F.No.CIC/AT/A/2009/000231

Dated, the 12<sup>th</sup> June, 2009.

**Appellant** : Shri Nemi Chand Jain

**Respondents** : Central Excise Department

Pursuant to Commission's notice dated 05.05.2009, this matter came up for hearing on 04.06.2009. Appellant was absent when called. Respondents were present through Shri Ashok Kumar, Assistant Commissioner & CPIO. The third-party (M/s.Bajaj Health & Nutrition Pvt. Limited) was represented by its Counsel, Shri Ajay Singh.

2. The point for decision in this second-appeal is whether appellant's request filed in his RTI-application dated 07.11.2008 for monthly returns submitted by M/s.Bajaj Health & Nutrition Private Limited for the month of April 2000 to July 2006 be disclosed.

3. CPIO, through his communication dated 11.12.2008 and the Appellate Authority, in his order dated 04.02.2009, declined to disclose the requested information terming it as personal to the third-party given to the respondents in a fiduciary capacity besides being a matter of commercial confidence of that third-party whose disclosure would compromise the third-party's competitive interest vis-à-vis the other competitors. AA also noted that respondents had conducted RTI-Act-Section-11(1)-proceeding and consulted the third-party about disclosure of the requested information. The third-party, M/s.Bajaj Health & Nutrition Pvt. Ltd. strongly urged that this information should not be disclosed on the ground that the appellant was inimically disposed towards them and was attempting to access their commercial information in order to cause it detriment.

4. In the second-appeal petition filed before the Commission, the appellant has stated that the information requested by him was not in the nature of commercial confidence of the third-party nor was it likely to impair the third-party's competitive interests. Further elaborating, appellant has stated that information regarding a manufacturer — as is this third-party — details such as product quantity, quantity cleared for home consumption and export, assessable value, description of inputs and Cenvat availed / utilized, cannot cause it any competitive disadvantage in any way. It is the appellant's submission that the

third-party as a Private Limited Company was bound to disclose this very information in its Audited Balance Sheets filed before Registrar of Companies and this Audited Balance Sheet was a public document. According to him, the information put out in the Audited Balance Sheet by the third-party did not match the information filed in the monthly returns to Central Excise authorities which pointed to manipulation of records and evasion of taxes and duty by the third-party. He has pointed out that the third-party had shown its Annual production figures to the Registrar of Companies. But in actuality, no manufacturing activity took place in their factory, which can be verified from the details of electricity consumed. Appellant has furnished these figures as Annexes to his written-submission. He, therefore, concludes that these details confirm large-scale evasion of taxes and Excise Duty by the third-party not for one, but several years.

5. According to the appellant, an information relating to the Company engaged in manufacture of goods and services, which was statutorily supervised, could not be said to be personal information of such Firm / Company. Therefore, Section 8(1)(j) of the RTI Act was not attracted.

6. During the hearing before the Commission, the Counsel for the third-party described the request for information filed by the appellant as a gross interference in the bona-fide commercial activity of the third-party with a view to cause wrongful loss to the third-party by misuse of the information requested to be divulged. He stated that the monthly excise returns requested by the appellant included detailed information on all aspects of the manufacturing and commercial activity of the third-party Firm / Company such as the types of manufacturing activity, raw material used and its quantity, the names of suppliers and the quantity of supplies received, details about buyers and exports Cenvat benefits received, among others. These Returns are more elaborate than the information furnished even to the Income Tax Department through the Income Tax Returns filed by parties. Such information, if divulged, would irretrievably compromise the third-party's commercial interest and hence attracted Section 8(1)(d) of the RTI Act.

7. Third-party's Counsel pointed out that none of this information requested was a public information in any way. It was the third-party's personal information, which was given to the Department of Excise for the purposes of determination of taxes and duties to be paid by the third-party. The Department of Excise itself has an elaborate

machinery and procedure to determine and detect any evasion or leakage of taxes and duties.

8. Thus, according to the third-party's argument, the appellant cannot demand disclosure of admittedly personal information belonging to commercial entities on the specious plea that there might have been some tax or duty evasion. No information belonging to the private domain of a third-party can be allowed to be divulged to satisfy the curiosity or misplaced enthusiasm of a misguided party such as this appellant. He pointed out that if information of the commercial nature of parties be allowed to be divulged to requesters under the RTI Act, it would create a field for the misuse of the provisions of the Act and intimidation of and, pressure on, such parties by blackmailers.

**Decision:**

9. In overall consideration of the points brought before me in this case, I find that there is convergence in the submission of the respondents and the third-party that the information requested was intrinsically commercial in nature relating to the third-party, whose disclosure would cause commercial harm to the third-party and compromise its competitive interest vis-à-vis others. It is also found that if according to the appellant same or similar information is given to the Registrar of Companies by all manufacturers of goods within the country, it should be possible for the appellant to approach the Registrar of Companies for the disclosure of the information, who will then examine it on merit. For the purposes of the present appeal, I do not find merit in a submission, which cites possible evasion of taxes or duties by a party as reason for disclosure of information commercially critical to that party. Such information is doubtless barred under Section 8(1)(d) of the RTI Act and I see no reason why it should be allowed to be disclosed.

10. In view of the above, I uphold the decision of the Appellate Authority and direct that there shall be no disclosure of the third-party information.

11. Appeal disposed of with these directions.

12. Copy of this direction be sent to the parties.

( A.N. TIWARI )  
INFORMATION COMMISSIONER