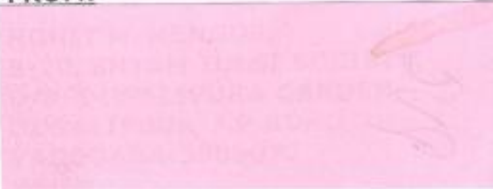


**1<sup>st</sup> APPEAL UNDER Proviso to Sec. 19(1) OF THE RTI ACT, 2005.**

FROM:



US(A.I.A &amp; B)

Vadodara, Dt. 14.06.2019.

TO,  
**SHRI ARVIND SARAN,**  
 DEPUTY SECRETARY (ADM) & THE 1<sup>st</sup> APPELLATE AUTHORITY  
 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,  
 MINISTRY OF FINANCE,  
 NORTH BLOCK,  
 NEW DELHI-110001.

Sir,

**SUBJECT:- 1<sup>st</sup> APPEAL UNDER Proviso to Sec. 19(1) OF THE RTI ACT, 2005  
 AGAINST CPIO's ORDER DATED 07.03.2019 : REGARDING.**

Kindly refer to the CPIO's order letter F.No:R-20011/24/2019-Ad.I.B. dated 15.05.2019 and received by the undersigned on 21.05.2019. (Zerox copy attached).

A] The Under signee sought the information vide RTI application dated 29.04.2019, addressed to NODAL OFFICER( zerox copy attached), under Section 3 & 6 OF RTI ACT, 2005, as under:

*"Kindly inform effective date of implementation of instructions of the Office Memorandum NO.:2/10/2010-CR, Dated 09.07.2010 & No: 2/10/2010-CR, dated 16.07.2010 issued by the DOP&T and its date of receipt by CBIC (former CBEC). The effective date of functioning of RTI CELL in the CBIC( former CBEC) may kindly be inform. I may be inform the name of the present Nodal Officer of the RTI Cell in CBIC (former CBEC).*

1. Enclosed the zerox of counterfoil of Speed post No EG499581905IN, Dated 01.02.2019 attached. I may be provided copy of the entry details of my above SPEED POST's into the "DAK/RTI Application INWARD REGISTER" alongwith the date of receipt thereof. Also kindly intimate me how many RTI applications were received under the said SPEED POST COVER.

2. Enclosed the zerox of counterfoil of Postal Order No: 39F 450668, Dt. 01.02.2019 Payable to CPIO, CBEC, NEW DELHI. I may be provided the statutory procedure of handling of the RTI fees from the incidence of receipt to till depositing the receipt of statutory fees received in form of Postal Order or in any other forms. Is there any procedure adopted for maintaining of register for receipt of statutory fees alongwith RTI Application. I may be provided the copy of documentary evidences of receipt, recording and disposal by depositing of my above postal order No: 39F 450668, Dt. 01.02.2019.

*[Signature]*  
 14/6/19

3. Enclosed herewith the copy of my RTI application dated 01.02.2019. I may be inform date on which my RTI Application attached with Postal Order No: **39F 450668, Dt. 01.02.2019 (Rs.10/-as statutory RTI fess)** been received by the CBIC and forwarded to the respective CPIO. Has any number been allotted to my RTI Application as per the procedure laid down in the OMs referred in Para-"A" above. I may be provided the copy of forwarding letter through which my RTI application been handed over to the concerned CPIO and it's date of acknowledgement by him."

**B]** The CPIO & US (As.IB), Shri Raghvendra Singh Kushwah, informed vide his order issued from file No: R-20011/24/2019-Ad.I.B, dated 15.05.2019 as under:

"Please refer to your RTI application dated 29<sup>th</sup> April, 2019 received in the Section on 3<sup>rd</sup> May, 2019 on the subject mentioned above. As far as the CPIO(Ad.I B Section) is concerned, the information may be treated as "NIL"."

**C] THE GROUND OF APPEAL:**

(1) The CPIO & US (AD.IB), Shri Raghvendra Singh Kushwah given "**NIL**" reply to my application dated 29.04.2019 is an absolute vague reply. An officer of the rank of **Under Secretary to the Govt. of India** who perused my application should have easily understand what information I have requested for. He is enough learned to understand the content what I have requested. But appears to have dodge to give correct information in guilt. The CPIO's order dated 15.05.2019 gives me NIL reply, indicates his clear intention to deny to give the proper information.

(2) I have applied for information under Sec.6 of the RTI Act, 2005, for information vide two separate applications both dated: 01.02.2019, posted/despached in the **one cover** by Speed post under Speed post No: **EG499581905IN**, Dated 01.02.2019. The speed post delivery indicated the delivery was made on 05.02.2019. (Zerox copies of both application attached as evidence)

(3) Both the applications were attached with statutory fees of Rs.10/-paid by one Postal Order (Postal Order referred as P.O.) of No: **39F 450668, Dt.01.02.2019** and another Postal order No: **39F 450666, Dt.01.02.2019** Payable to CPIO, CBEC, NEW DELHI. Both the P.O.s were crossed and are marked as A/c. payee. Can be evident from the copies of application.

(4) I have received the information in respect of the application attached with P.O. No: **39F 450666, Dt.01.02.2019**. The AD.IIA had received the application on 06.02.2019 in his section and provided the information vide letter dated: 07.03.2019 (copy attached for ready reference).

(5) However, the information has **not** been received **till date** to my application dated: 01.02.2019 attached Postal Order of No: **39F 450668, Dt.01.02.2019 (Copy of the RTI application attached for ready reference and perusal)**. The question of nondelivery of the RTI application does not arises as I have already received information in respect of one application (despatched in single cover) as discussed in para.2 above.



(6) In order to ascertain to which Section my RTI application dated 01.02.2019 has been forwarded by the Nodal Officer responsible Officer of the CBIC of the rank of **Under Secretary to the Govt. of India**, I have again applied vide RTI application dated 29.04.2019 under discussion. My impugned application was to the NODAL OFFICER. I have received the order from the CPIO **AD.IB** Section. I am unable to understand how reply from the **AD.IB** Section is issued when the application is to Nodal Officer of the CBIC.

(7) However, the issue of reply to my impugned RTI application dated 29.04.2019 from the **AD.IB** clearly denotes and points out the significant fact that the Nodal Officer responsible officer of the CBIC of the rank of **Under Secretary to the Govt. of India** must have forwarded my application dated 01.02.2019 attached P.O. No: 9F 450668, Dt.01.02.2019 to the **AD.IB** Section only for further necessary action at his end. In view of this fact it appears that the CPIO **AD.IB** who had received my application dated: 01.02.2019 failed to provide me information **till date under the RTI Act, 2005.**

(8) However, the CPIO, **AD.IB's "NIL"** reply to my RTI application dated 29.04.2019 is absolutely an ambiguous reply. **It does not clarify anything rather given to create confusion only. "NIL"** cannot be reply to the RTI application **Dated 29.04.2019**, as the issue is related to the statutory fees of Rs.10/- paid vide crossed & A/c payee Postal Order to the CPIO has undisputedly been received by the CPIO and its record must have been maintained by his Section only. As stated above his **"NIL"** reply does not clarify whether he received Postal Order 39F 450668, Dt.01.02.2019 along with application dated 01.02.2019 or otherwise. What he mean to say by **"NIL"** required to be explain by him only.

(9) If the RTI Application Dt.01.02.2019 attached with PO Postal Order 39F 450668, Dt.01.02.2019 had not been received by the **AD.IB** Section no right been specified to him under the provisions of the RTI Act, 2005 except to have transferred the impugned application under Section 6 of the RTI Act, 2005. Since he has not acted accordingly also denotes that he was in receipt of my application dated 01.02.2019 and denied me the information by not answering the same consciously, violating the provisions of the RTI Act, 2005.

(10) Also the information to my request on the under mentioned point been not provided.

**"Kindly inform effective date of implementation of instructions of the Office Memorandum NO.:2/10/2010-CR, Dated 09.07.2010 & No: 2/10/2010-CR, dated 16.07.2010 issued by the DOP&T and its date of receipt by CBIC (former CBEC). The effective date of functioning of RTI CELL in the CBIC( former CBEC) may kindly be inform. I may be inform the name of the present Nodal Officer of the RTI Cell in CBIC (former CBEC)."**

The CPIO be directed to provide the information on the above point also.

*[Signature]*  
14/6/19

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D] **PRAYER** : I hope being 1<sup>st</sup> Appellate Authority, you can understand my concerned regarding information I have requested for.

(1) In this appeal considering the CPIO's behaviour and intention, I rely upon the Para:4 of the **OM No: 10/23/2007-IR dated 09.07.2007** which is relevant and squarely applicable. The Para:4 of the OM is reproduced for ready reference as under :

4. If an appellate authority comes to a conclusion that the appellant should be supplied information in addition to what has been supplied to him by the CPIO, he may either (i) pass an order directing the CPIO to give such information to the appellant; or (ii) he himself may give information to the appellant while disposing off the appeal. In the first case the appellate authority should ensure that the information ordered by him to be supplied is supplied to the appellant immediately. It would, however, be better if the appellate authority chooses the second course of action and he himself furnishes the information along with the order passed by him in the matter.

From the act of Nodal Officer to forward my impugned application to the AD.IB Section is also a significant evidence that my RTI Application dated 01.02.2019 was forwarded to the AD.IB Section. The Nodal Officer is also a responsible Officer of the CBIC of the rank of **Under Secretary to the Govt. of India**. The order of AD.IB from F. No: R-20011/24/2019-Ad.I.B, dated 15.05.2019 in my case is clearly evidencing the fact that my RTI Application dated 01.02.2019 was received by AD.IB Section. However, AD.IB failed to provide the correct and relevant information against my RTI Application dated 01.02.2019 as well as in respect of impugned RTI Application. Therefore, the provisions in para: 4 of the **OM No: 10/23/2007-IR dated 09.07.2007** are squarely applicable in my case.

(2) In View of the above facts clearly gives the impression that the CPIO **AD.IB** is in fault for RTI Application dated 01.02.2019 & 29.04.2019. However, the Appellate Authority may like to point out the actual defaulting CPIO in his order.

As far as the **RTI application Dt.29.04.2019** is concern, the act on the part of **CPIO AD.IB** is as equivalent as explain under the **Section-20** of the RTI Act, 2005, in as much as denial of information "*without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information*". This act on the part of CPIO attracts, the penal provision of Section-20 *ibid*.

Similarly with respect to the RTI Application dated 01.02.2019, act of 'not providing information' is also gross violation and is also well covered as explained "*has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information*" under Section-20 *ibid*, also attract the Penal provisions of the section.

My Humble request to your Honour, to consider my appeal positively and I may be given justice. Thanking you,

ENCL.: AS ABOVE.

Yours faithfully,