



In the Tripura Information Commission
P. N. Complex: Gorkhabasti : Agartala

Appeal No TIC-16 of 2008-09.

Sri Sankar Prasad Chakraborty
S/O Late Basudev Chakraborty
Akhaura Road, P.O.- Ramnagar
Agartala : West Tripura
Cell Phone No- 9862219678.....Appellant

Vs.

1.Sri Dipak Ganguli, Chairman-cum-Managing Director, Tripura State Electricity Corporation Limited, Agartala, West Tripura (First Appellate Authority).
2.Sri Ratan Bhattacharjee, Deputy General Manager (Planning), Corporate Office, Tripura State Electricity Corporation Limited, , Agartala, West Tripura (State Public Information Officer).

..... Respondents

In the matter of a second appeal under section 19(3)
of the Right to Information Act, 2005.

PRESENT:

1. Sri B.K.Chakraborty
State Chief Information Commissioner

2. Sri D.K.Daschaudhuri
State Information Commissioner

For the Appellant: The appellant Sri Sankar Prasad Chakraborty himself.

For the Respondent No.1: Sri K.K.Ghosh, AGM, (CP&C), Tripura State Electricity Corporation Limited, Agartala (present First Appellate Authority) for on behalf of Sri Dipak Ganguli, Chairman-cum-Managing Director, Tripura State Electricity Corporation Limited, Agartala, West Tripura (former First Appellate Authority).

For the Respondent No.2 Sri Ratan Bhattacharjee, Deputy General Manager (Planning), Corporate Office, Tripura State Electricity Corporation Limited, Agartala, West Tripura (State Public Information Officer).

Date of lodging second appeal : 06.08.2008

Dates of hearing of second appeal: 08.09.2008 & 20.10.2008

Date of pronouncing judgment and order: 22.11.2008

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**JUDGMENT & ORDER****Facts:**

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of second appeal dated 06.08.2008 of Sri Sankar Prasad Chakraborty (here in after referred to as the appellant) received by this Commission on the same date. Facts leading to this second appeal are that in response to his written request dated 02.06.2008, the appellant was provided with the information by the State Public Information Officer (SPIO) in the corporate office of the Tripura State Electricity Corporation Limited (TSECL), Agartala, which according to the former was inadequate and, therefore, a first appeal was lodged on 28.06.2008 with the Chairman-cum-Managing Director (CMD), TSECL, Agartala being the First Appellate Authority (FAA). Sri Dipak Ganguli, CMD, TSECL, Agartala dismissed the said first appeal by an order dated 29.07.2008 holding that the concerned SPIO furnished correct and complete information. Being aggrieved with the above decision of the FAA, the appellant preferred this second appeal before this Commission seeking appropriate redress. Along with the memorandum of appeal, the appellant furnished photocopies of the written request, the information provided by the SPIO, the memorandum of first appeal and the order passed by the FAA.

2. On perusal of the memorandum of second appeal with enclosures, it was found in form and within time and accordingly, was registered as a second appeal under section 19(3) of the Act.

3. In response to the summons, Sri K.K. Ghosh, AGM (CP&C), TSECL, Agartala (present FAA) appeared for and on behalf of the Respondent 1 Sri Dipak Ganguli, CMD, TSECL, Agartala (former FAA) and submitted a written representation. The Respondent 2 Sri Ratan Bhattacharjee, Deputy General Manager (Planning), TSECL, Agartala and the SPIO appeared and submitted his written representation. In response to the queries made by this Commission, the Respondent 2 also submitted an additional written representation containing the replies to the queries made by this Commission.

4. Heard oral submissions placed by the appellant, Sri K.K. Ghosh, AGM (CP&C), TSECL, Agartala (present FAA) for and on behalf the Respondent 1 and the Respondent 2.

Issue for decision:

5. Issues before this Commission for decision are as follows:-

- (i) If the decisions dated 28.06.2008 of the Respondent 2 and that of dated 29.07.2008 to the Respondent 1 are maintainable?
- (ii) If the information provided to the appellant by the Respondent 2 being the SPIO are adequate? If not, to what further information the appellant is entitled to have access?



Reasons for decision:

6. For the sake of convenience, both the issues are taken together for discussion.

7. We have carefully gone through the memorandum of second appeal with enclosures, the written representation and the additional written representation of the Respondent 2 and the written representation submitted by Sri K.K.Ghosh, AGM, TSECL, Agartala and the present FAA representing the Respondent 1 (former FAA). We have also considered the oral submissions placed by both the parties.

8. The information sought for by the appellant vide his written request dated 02.06.2008 may be described as thus - copies of the documents towards payment of Excise Duty and other taxes by the (1) M/S Intrax Systems Pvt. Limited, Mumbai and (2) M/S Secure Meter Limited, Udaipur, Rajasthan), two actual bidders for supply of Portable Reference Sub- Standard Meters Capable of Testing three phase & single phase Energy Meters and Semi Automatic three phase Meter Testing Bench under NIT No- TSECL/Corporation Office/05-06/03 dated 02.09.2005. In response, the Respondent 2 being the SPIO provided the information to the appellant on 28.06.2008 as quoted below:-

"As per declaration of M/S Secure Meter Ltd., Udaipur, Rajasthan and M/S Intrax Systems Pvt. Ltd., Mumbai, they are exempted from payment of excise duty of their products manufactured in their units from where the materials had been supplied to TSECL through their respective marketing agents. Thus the said manufacturers had not provided any documents of excise duty to TSECL.

CST @ 4% against both the procurements had been charged to and paid by TSECL. Copies of the respective bills raised by the respective marketing agents of the above manufacturers are attached."

9. Being aggrieved with the above decision of the Respondent 2 being the SPIO, the appellant preferred a first appeal with the Respondent 1 on 04.07.2008, which was decided by the latter vide his order dated 29.07.2008, which runs as thus:-

" The appellant Sri Sankar Prasad Chakraborty appeared. He verbally submitted that he is not satisfied with the reply of SPIO. He stuck to his views that documents as sought for by him in his original application have not been provided to him.

2) The Respondent Sri Ratan Bhattacharjee, Dy. GM (Planning), Corporate Office, SPIO appeared. The written representation submitted by him has been accepted.

3) Heard oral submission made by both the parties. On examining the records, it appears that the Respondent Sri Ratan Bhattacharjee, Dy. GM (Planning), Corporate Office, SPIO had furnished correct and complete information against the query of the appellant.

The appeal is hereby dismissed."



10. Referring to the Purchase Policy of the TSECL, the appellant argued that the TSECL authority was under obligation to satisfy themselves about payment of the Excise Duty by the manufacturer before placing the supply orders to the agencies of the manufacturers. But, the TSECL authority has not obtained any such documentary proof towards payment of Excise Duty by such manufacturers, copies of which were sought for by him but, not provided by the concerned SPIO. He also alleged that although he sought for copies of the documents pertaining to the payment of taxes towards Central Sales Tax (CST) and Tripura Valued Added Tax (TVAT), which were also not provided to him. In reply to the allegations advanced by the appellant, it is submitted by the Respondent 2 that the payment of Excise Duty is made by the purchaser to the manufacturer/ supplier whenever or wherever the manufactured/supplied goods are excisable and the Excise Duty is claimed separately in the bidding document. Collection of Excise Duty is made by the Central Excise Department from the manufacturer and the manufacturer claims Excise Duty on such product when Excise Duty is paid by the purchaser against submission of Excise Duty Gate Pass. When a manufacturer/supplier quotes price stating that the Excise Duty is either not applicable or the said is inclusive for the reason either manufacturing unit being exempted from payment of such Excise Duty or they are not required to pay Excise Duty except some concession/stipulation in the State/Central Rules or Regulations and in such case, the purchaser does not pay the Excise Duty nor the same is claimed by the manufacturer/supplier as the same was not indicated as payable extra in the bidding document. In such circumstances, purchaser has no responsibility of collecting any document in regard to payment/non-payment of Excise Duty, since such Excise Duty not paid by the purchaser. Purchaser for its satisfaction may only take a declaration from the manufacturer/supplier that the products under supply is not excisable i.e. either exempted from payment of Excise Duty or not excisable at the point of time whatever the reason since the same was not indicated as payable extra in the bidding document. He added that in the instant case, the bidders on whose Agent orders were placed indicated in the bidding document that the Excise Duty was not payable by the purchaser i.e. the Corporation. They have given separate declarations that they were exempted from the payment of Excise Duty/ not required to pay Excise Duty at the point of time. The Corporation has no responsibility towards verification of details as to why the Excise Duty was not paid since, the Corporation has not paid any amount towards Excise Duty in either case and as such there is no financial transaction on account of Excise Duty by the Corporation, since the same was not shown/indicated as payable extra in their respective bidding documents.

11. We have carefully appreciated the submission placed by the Respondent 2. We have also perused the relevant Purchase Policy of the TSECL, copy of which is furnished before this Commission by the Respondent 2. We consider it pertinent to refer here the relevant portion of Article 1.4, which is re-produced below:-





"1.4 Procurement shall be made from the original manufacturers of the items. The orders will normally be placed only on the original bidder manufacturer except when the original equipment manufacturer (OEM) declares that the manufacturer sells the specified product in the specified area only through Agent/Agents. Parties/ Contractors who have been successfully supplying materials/equipment not manufactured by them but agreeable to the conditions as at (b) & (c) may also be entertained. In such cases, the order may be placed with the agents/parties subject to satisfaction of the following conditions:-

b. Original manufacturer agrees to submit the documents regarding payment of Excise Duty etc. as declared by the party at the time of offer/submitted tender."

Under the above Clauses of Purchase Policy, the TSECL authority was under obligation to satisfy themselves about the declarations of claiming exemption from payment of Excise Duty demanding production of proof of such declarations from the manufacturers before placing the order to the agents of the manufacturers for supply of goods. In the instant case, the TSECL authority satisfied themselves only with the declarations made by the manufacturers at the time of submitting the tender only and did not insist for production of proof of such claim of exemption from payment of Excise Duty. Albeit, it is revealed that the TSECL authority did not possess any such proof and, therefore, question of providing copies of the documents in support of the declarations made claiming exemption from payment of Excise Duty becomes impossible on the part of the Respondent 2 being the SPIO. However, the SPIO is under obligation to provide the appellant with the copies of the declarations submitted by both the manufacturers that they were exempted from payment of Excise Duty of their products manufactured in their units from where the materials supplied.

12. As regards payment of CST, the Respondent 2 submitted that the responsibility for collection of CST from the person making the sale and submitting claims lies with the CST Department. In the instant case, the bidders concerned included CST in the rate offered by the manufacturers in the tenders and accepted by the Corporation. So, the Corporation had no obligation to make payment of CST or demand such certificate from the suppliers. In this regard, we have consulted the relevant provisions of the CST Act, 1956 as contained in section 9 of the said Act, which envisaged that the tax payable by any dealer under the said Act on sale of goods affected by him in the course of inter-State trade and commerce, whether such sale falls within the Clauses (a) or (b) of section 3 shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with provisions of sub section (2), in the State from which the movement of the goods commenced. In the present case, the supply of goods commenced from Kolkata, a city of West Bengal and delivered to Agartala in the State of Tripura. So, it was an inter - State transaction and, therefore, liability of collection of CST lies with the Government of India in the State of West Bengal. The TSECL authority was under no obligation to verify the truth of claiming payment of CST by the suppliers, which was added with the price shown in the tender forms. Consequently, in absence of any record showing the payment of CST in the State of West Bengal in the custody of TSECL, the Respondent 2 being the SPIO

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was under no obligation to provide the copy of the same to the appellant on request.

13. As regards the demand for supply of copy of the documents towards payment of TVAT, it is the submission of the Respondent 2 that the product, which is sourced from outside the State, for which CST is paid and TVAT is not applicable because the product, which is sold once after payment of CST, local sales tax is not applicable if a second sale does not take place. The goods which are required to enter in the State of Tripura may do so when necessary road permits are issued by the Sales Tax Department of the State and produced at the State entry point. In the instant case, road permits were obtained in both the cases and copies of the road permits are also furnished by the Respondent 2 before this Commission. We, after careful appreciation of the submission placed by the Respondent 2, are satisfied that no extra TVAT was required to be paid in respect of the impugned transaction. However, since copies of the road permits under the TVAT were not provided to the appellant, we are of the considered view that copies of such documents should be provided to the appellant.

14. Having regard to the discussion made here in above, we find no impropriety in the decisions taken by the Respondents 2 & 1 except that the copies of road permits issued by the TST Department and the declarations submitted by both the manufacturers that they are exempted from payment of Excise Duty should have been provided to the appellant in response to his written request dated 02.06.2008 and with such modifications, the above decisions of the Respondents 1 & 2 are upheld.

Decision:

15. In fine, the appeal is partially allowed with the orders that the decisions dated 22.06.2008 of the Respondent 2 being the SPIO and that of dated 29.07.2007 of the Respondent 1 being the FAA be modified to the effect that the Respondent 2 being the SPIO shall provide to the appellant the photocopies of the road permits issued by the Sales Tax Department, Government of Tripura under TVAT Act, 2005 in respect of supply of the goods by the agents of the manufacturers M/S Intrax Systems Pvt. Limited, Mumbai and M/S Secure Meter Limited, Udaipur, Rajasthan under NIT No- TSECL/Corporation Office/05-06/03 dated 02.09.2005 and the declarations submitted by both the manufacturers that they were exempted from payment of Excise Duty of their products manufactured in their units from where the materials supplied, within a period of 7 days from the date of passing of this judgment and order free of charge.

16. Let copy of this order be sent to the appellant and the Respondents.

17. Pronounced.

Sd/-
(D.K.Daschadhuri)
State Information Commissioner

Sd/-
(B.K.Chakraborty)
(State Chief Information Commissione

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Authenticated

(S.C.Saha)
Secretary

Tripura Information Commission

Tripura Information Commission
P. N. Complex: Gorkhabasti : Agartala

Appeal No- 16 of 2008-09 | 1411-14

Dated, 22.11.2008

Copy to:-

1. Sri Sankar Prasad Chakraborty, S/O Late Basudev Chakraborty, Akhaura Road, P.O.- Ramnagar, Agartala : West Tripura (Appellant).
2. Sri Dipak Ganguli, Chairman-cum-Managing Director, Tripura State Electricity Corporation Limited, Agartala, West Tripura (former First Appellate Authority).
3. Sri K.K.Ghosh, Additional General Manager (CP&C), Corporate Office, Tripura State Electricity Corporation Limited, Agartala, West Tripura (present First Appellate Authority).
4. Sri Ratan Bhattacharjee, Deputy General Manager (Planning), Corporate Office, Tripura State Electricity Corporation Limited, , Agartala, West Tripura (State Public Information Officer).

(S.C.Saha)
Secretary

Tripura Information Commission