

**ODISHA INFORMATION COMMISSION  
BHUBANESWAR**

**Present : Shri Tarun Kanti Mishra,  
State Chief Information Commissioner**

**Date 6<sup>th</sup> February, 2013**

**Second Appeal No. 1026 / 2012**

Sunil Kumar Patro,  
5<sup>th</sup> Lane, Gandhi Nagar, Spectrum Colony (East),  
Plot No.10, Upstairs, Berhampur, Ganjam ..... Appellant

**-Vrs-**

1. Public Information Officer,  
O/o The Deputy Commissioner,  
Commercial Taxes, Bhubaneswar-IV Circle.
2. First Appellate Authority,  
O/o The Deputy Commissioner,  
Commercial Taxes, Bhubaneswar-IV Circle..... Respondents


**Decision**

1. Appellant Sunil Kumar Patro is present. Manoranjan Mohanty, PIO-cum-Commercial Tax Officer in the office of the Deputy Commissioner, Commercial Taxes, Bhubaneswar-IV Circle is also present.
2. Appellant Sunil Kumar Patro on 28.11.2011 filed an application in form-A before the P.I.O. of the office of Joint Commissioner, Commercial Taxes, Bhubaneswar Range, Bhubaneswar, Odisha for information relating to details of status and other information pertaining to M/s Tirupati Enterprisers, Tirupati Electro Marketing Ltd., Rajpath Financial Service, Patriot Marketing Ltd. and Future Technologies, Bhubaneswar. The appellant sought for details of the business particulars of the aforesaid commercial establishments including their

registration number, sales tax particulars, details of partners, renewal of license, regarding audit and verification of bills and inspection reports prepared by the authority and also regarding turn-over, details of deposits of security money, business accounts statement, details of tax deposited by the above firm from the financial years 1994 to 1999 and many more. The P.I.O. rejected the application holding that the information sought for are confidential in nature and related to third party. Thereafter, the appellant preferred first appeal under section 19(1) of the RTI Act before the First Appellate Authority-cum-Deputy Commissioner of Commercial Taxes, Bhubaneswar-IV Circle, Bhubaneswar. The First Appellate Authority also rejected the appeal by invoking provisions of 8(1)(d) of RTI Act and section 89(1) of Odisha Value Added Tax Act holding that the information sought for is confidential and third party related. Aggrieved by the order of the First Appellate Authority, the appellant preferred this Second Appeal under Section 19(3) of the RTI Act.

**3.** The Commission heard both the appellant Sunil Kumar Patro and the P.I.O.-cum-Commercial Tax Officer of the office of the Deputy Commissioner, Commercial Taxes, Bhubaneswar-IV Circle on 17.12.2012. During such hearing while appellant asserted his right to information provided under the Act, the P.I.O. reaffirmed the stand that the information related to third party and is confidential in nature. In absence of existence of public interest, the confidential information concerning to the commercial establishments cannot be disclosed in view of Section 89(1) of the Odisha Value Added Tax Act, 2004.

**4.** Undisputedly, the information sought for in form-A application are related to third party which are commercial organizations. They are registered with the Commercial Tax Officer and thus not only are required to pay tax but are



required to submit statements and returns which relate to turnovers, particulars of the partners, employees and related matters and are subjected to statutory audits. The Public Authority keeps such information as confidential and exercises its statutory control over the commercial establishments under the provisions of Sales Tax Act and Commercial Act. The statements and business particulars submitted including particulars of registration, partnership, inspection, audit, payment of tax, turnover relating to the commercial establishments and business firms are confidential as its disclosure may harm their competitive position. Section-89 of Value Added Tax Act provides that such information shall not be disclosed.

**“89. Disclosure of information by public servant.-**

- (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the provisions of this Act and rules or in any record of evidence given in the course of any proceedings under this Act or the rules, other than proceedings before a Criminal Court, shall, save as provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no Court shall, save as aforesaid, be entitled to require any Government servant to produce before it any such statement, return, account, document or record or any part therefore, or to give evidence before it in respect thereof.
- (2) Save as provided in sub-section (3), if any Government servant discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine.

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5. Normally a third party related information is exempted under section 8(1)(j) of RTI Act, 2005 as the disclosure of such information has no relationship to any public activity or interest and would cause unwarranted invasion of the privacy of the individual. In the instant case, all information regarding the activities of different business firms have been sought for. These are undisputedly information related to a third party's commercial organisation and unless a greater public interest is shown or established, disclosure cannot be permitted. The appellant neither in the appeal memo nor during hearing submitted about the existence of any public interest. Public interest is something in which the public, community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected. The appellant never urged or placed any materials before the Commission during hearing that there exists an element of public interest in favour of disclosure of such information. Section 89(1) of the VAT Act expressly prohibits disclosure of similar information to any person. Section-89(2) of VAT Act prescribes penalty for such disclosure.

6. The information sought for relating to different commercial organizations includes the most confidential particulars. It includes the details of the partners, turnovers, inspection & audit reports, details of tax paid for several years, regarding bills & vouchers, merger of firms. Disclosure of such details of a commercial organization may amount to disclosure of its commercial confidence and may also harm its competitive position and such disclosure has been exempted under Section 8(1)(d) of the RTI Act.

7. In a case of similar nature, a Division Bench of Hon'ble High Court of Delhi in LPA 190/2012 in the case of Ashok Kumar Goel vrs. PIO VAT Ward No.46 and Anr. vide decision dated 07.3.2012 held that such information cannot

be released in view of the prohibition spelt out under Section-89(1) of the VAT Act and 8(1)(d) of the RTI Act. The Hon'ble Court observed -

*"It is not in dispute that the information in the form of returns filed by the respondent No.2's firm is in the nature of commercial confidence which is clearly inferable from Section 98 of the Act. Such information can be given only if larger public interest warrants the disclosure of this information. All the authorities below including the learned Single Judge has held and rightly so that no public interest is at all involved in seeking of this information by the appellant from the Sales Tax Commissioner. What to talk of public interest, the finding is that the information is sought with oblique motive to settle personal scores."*

8. In course of hearing, the PIO submitted a few documents which reveal that the appellant and the proprietors of the commercial organizations are in hostile animus as the appellant was convicted by a criminal court and has been sentenced to imprisonment and was directed to pay compensation of Rs.60,000/- on a complaint of the proprietor, Tirupati Electro Marketing Ltd. Thus, the argument of the P.I.O. that the appellant is seeking the details of information regarding the commercial establishments of third parties only to settle his personal score and animosity, cannot be brushed aside as without substance. In the decision referred to *supra*, the Hon'ble High Court of Delhi in similar situation not only dismissed the writ petition but also were pleased to impose heavy cost on the appellant.

9. The First Appellate Authority has taken the similar view and applying section 89(1) of VAT Act rejected the appeal and the Commission on a

