

		<p>4. Copy of First Appeal No.16037 dated 31-10-2013 (Annexure-4)</p> <p>5. Copy of the order dated 5-11-2015 of the CPIO and the Deemed CPIO (Annexure-5)</p> <p>6. Copy of the CIC Order in the case of Nanak Chand Arora (Annexure-6)</p> <p>7. Copy of Delhi High Court decision in the case of MCD v. R.K. Jain (Annexure-7)</p> <p>8. Copies of orders of the CPIO / Deemed CPIOs providing similar information to the appellant (Annexure-8)</p>
--	--	--

BRIEF FACTS OF THE CASE

(1) That the appellant has filed an application dated 18-09-2015 (**Annexure – 1**) under Section 6 of the RTI Act, 2005 requesting for the following information:

(A) *Please provide the following information in relation to (i) Appeal Nos. C/544/2011 (Rochees Watches Pvt. Ltd.); (ii) C/105/2012(Pearl Impex); (iii) C/53161/2015(Ligare Aviation Ltd.); (iv) C/111/2011 (Mr. Chander Bhushan Mishra); (v) C/52138/2014 (Ess Kay International); (vi) C/53595(Sap India Pvt. Limited); (vii) C/53616/2014(Sap India Pvt. Ltd.); (viii) C/53866/2014 (Glaxy Impex); (ix) C/54061/2014 (Rajive Dube):-*

(i) *Please provide copies of direction / order for listing of C/ROM/50840/2015 out of turn as the other applications for the year 2013 and 2014 are being currently listed.*

(ii) *Copies of all Orders, Order Sheets / Record of Proceedings except Final Orders.*

(iii) *Copies of all the notes put up by the registry with orders thereon.*

(iv) *Copies of any order/directions for out of turn listing of the aforesaid matter*

- (v) *Details of the date on which the aforesaid mater was mentioned. Please also provide copies of the mention memo and directions thereon.*
- (vi) *Provide total Supplementary Cause List issued in relation to each of above case and also provide the date of issue of such supplementary cause list with a copy thereof. In case, no supplementary cause list is issued, kindly provide said information.*
- (vii) *Copies of all notice of hearing issued to parties.*
- (viii) *Copies of any Court directions/orders received in the aforesaid matter.*
- (ix) *Copy of compliance report ,if any and current status of the case with next Date of hearing.*
- (x) *Copies of all Vakalatnamas and no objections filed in case of change of lawyer. Please also intimate the date of filing of each Vakalatnama.*
- (2) That the appellant vide para 5 of his said application has also made a declaration that the information sought for is not exempted under Section 8 or 9 of the RTI Act, 2005 and also stated that to the best of the knowledge of the appellant, the information pertains to the Office of the CPIO in question.
- (3) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO, have deliberately and malafidely not provided the information despite Shri Rajendra Prasad, Former CPIO, CESTAT, New Delhi, having forwarded the RTI Application to Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO, vide his order dated 28-9-2015 (**Annexure-2**) and reminder letter dated 8-10-2015 (**Annexure-3**) of the Appellant. The appellant filed Appeal No. 16037 dated 31-10-2015 against the deemed refusal. The said appeal is pending decision. After the filing of the said appeal, the CPIO and the Deemed CPIO have deliberately and malafidely denied the information by claiming exemption under Section 8(1)(h) of the RTI Act contrary to the decisions of the CIC and Delhi High Court. The

appellant being aggrieved by the said order is filing the present appeal.

- (4) The Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO are deliberately and malafidely obstructing the information without any reasonable cause therefore they are liable for penal action. The First Appellate Authority is not empowered to take action under section 20 of the RTI Act, therefore the appellant reserves his right to move direct complaint to CIC u/s 18 of the RTI Act

GROUND OF APPEAL

- (1) That the order in question of the CPIO is incorrect and illegal and contrary to the provisions and spirit of the RTI Act, 2005 hence liable to be set aside.
- (2) That the information sought by the appellant is not exempted under Section 8 or 9 or any other provisions of the RTI Act, 2005, therefore, there was no valid cause or reason or ground for not providing the information.
- (3) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO, have deliberately and malafidely not provided the information despite Shri Rajendra Prasad, Former CPIO, CESTAT, New Delhi, having forwarded the RTI Application to Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO, vide his order dated 28-9-2015 (**Annexure-2**) and reminder letter dated 8-10-2015 (**Annexure-3**) of the Appellant. The appellant filed Appeal No. 16037 dated 31-10-2015 against the deemed refusal. The said appeal is pending decision. After the filing of the said appeal, the CPIO and the Deemed CPIO have deliberately and malafidely denied the information by claiming exemption under Section 8(1)(h) of the RTI Act contrary to the decisions of the CIC and Delhi High Court with a view to cause obstruction to the information. Therefore, the order of the CPIO and Deemed CPIO are liable to be set aside with direction to provide point-wise information to the appellant within time bound frame and he is liable for penalty under section 20(1) of the RTI Act and

recommendation for disciplinary action under section 20(2) of the RTI Act, for delaying and obstructing the information in question, without any reasonable cause

- (4) That Shri S.K. Verma, Asstt. Registrar/ CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have, by order dated 5-11-2015 (**Annexure-5**) denied information claiming exemption 8(1)(h) of the RTI Act. Therefore, the CPIO / Deemed CPIO illegally, malafidely and without any authority of law, reviewed the order dated 28-9-2015 of the Former CPIO on the ground that the matter is sub-judice. The CPIO has no power under the RTI Act, to review the order of the former CPIO. It is an established law that power of review unless conferred by a statute, it cannot be exercised by an Authority. In this regard, the Hon'ble Supreme Court in *Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya* – 1987 (32) ELT 8 (SC) held as under:

11. It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction.

In view of the above establish, position of law, the order of the CPIO reviewing his own order is incorrect, illegal, malafide and without authority of law, hence, it is liable to be set aside and the CPIO may be directed to provide the information in time bound frame.

- (5) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have deliberately and malafidely denied the information on the ground that the matter is sub-judice. In this regard, the Central Information Commission in the case of *Shri Nanak Chand Arora v. State Bank of India* – Case No. CIC/MA/A/2006/00018, decided on 30-6-2006 (**Annexure-6**), has held that the information cannot be denied on the ground that the matter is sub-judice because there is no provision in the RTI Act, which restricts the disclosure of information on the ground that the matter is sub-judice before

the Court. Further, the Hon'ble Delhi High Court in the case of *MCD V. R.K. Jain* — WP (C) No. 14120 of 2009, decided 23-9-2010 (**Annexure-7**), has held that merely because the matter is sub-judice before a Court, is not a ground for denial of information under the RTI Act. In specific words, the Hon'ble Court held as under:

“The matter being sub judice before a court is not one of the categories of information which is exempt from disclosure under any of the clauses of Section 8(1) of the RTI Act.”

In view of the above binding decisions, the CPIO cannot deny the information under RTI on the ground that the matter is sub-judice. Therefore, the order of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

(6) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have deliberately and malafidely denied the information as sought in the RTI application by wrongly applying section 8(1)(h) of the RTI Act. The said Section 8(1)(h) of the RTI Act, 2005 reads as under:

‘information which would impede the process of investigation or apprehension or prosecution of offenders’

A perusal of the above would show that disclosure of information is exempted when it would impede any of the following three:

- 1) Investigation
- 2) Apprehension of offenders
- 3) Prosecution of offenders

None of the above elements are involved in relation to the information as sought by the appellant under the present RTI application as Tribunal is neither an Investigating Agency nor Law Enforcing Agency nor a Prosecuting Authority, but is an Appellate Forum. The information sought relates to the orders passed by the quasi-judicial authority and records

created by the Registry in relation to the appeals before it, thus, section 8(1)(h) has no applicability. Therefore, the order of the CPIO and Deemed CPIO are liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

- (7) That the appellant has merely sought copies of the Orders, Record of Proceedings, Note Sheets of the Registry, directions for listing of the cases out of turn, date and copies of Mention Memo, copies of After Court Cause Lists, Notice of Hearings and Vakalatnamas and copy of the Compliance Report of CESTAT order and current status of the case, which are records of the quasi-judicial authority, therefore, are part of the 'public records' and are disclosable under the RTI Act and section 8(1)(h) has no applicability as there is no investigation that is pending in the matter. Moreover, these records are created by the Tribunal and not emanating from any third party, they are 'public records' created by public authorities. As per Section 74(1)(ii) of the Evidence Act, the documents confirming the records of the acts of official body or Tribunal, are treated as public documents. The section 74(1)(ii) of the Evidence Act, 1872, reads as under :

"74. Public documents. – The following documents are public documents :-

- Acts -
- (1) documents forming the acts or records of the
 - (i) of the sovereign authority;
 - (ii) **of official bodies and tribunals, and**
 - (iii) of public officers, legislative, judicial and executive [of any part of India or of the Commonwealth], or of a foreign country.
 - (2) public records kept in [any State] of private documents.

In view of the above provisions read with section 76 of the Evidence Act, the records of the Tribunal being public records and are disclosable to public. On the basis of these provisions, Allahabad High Court in the case of *Alla Buksh v. Ratan* – A.I.R. 1958 (All) 829, held, that an "assessment order" passed by Sales Tax Officer to be a public document. Similarly, the

Mysore High Court in the case of *Mahboob Mills Co. Ltd. v. Vittal* – A.I.R. 1959 Mys. 180 held that the records of the Labour Tribunal as public documents; likewise Patna High Court in the case of *Hira Lal v. Ramanand Chaudhury* – A.I.R. 1959 Patna 515 held that assessment order is a public documents. In these circumstances, the order of Shri S.K. Verma, Asstt. Registrar (SM) and CPIO claiming exemption under section 8(1)(h) of the RTI Act is bad in law and liable to be set aside and the CPIO / Deemed CPIO be directed to provide the information.

- (8) That the Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have wrongly claimed exemption u/s 8(1)(h) of the RTI Act, as the said section is applicable only when disclosure of the information would cause impediment to the on-going investigation. The information sought by the appellant does not relate to a case where any investigation is pending. Even if it is assumed that investigation in the matter is still pending, the key issue for consideration is that whether disclosure of information as sought by the appellant/complainant would, in any way, impede the process of said inquiry/investigation. The Hon'ble Delhi High Court in *Addl. Commissioner of Police (Crime) Vs CIC; W.P(C). No. 7930 of 2009* while dealing with the provision of this section had made following observations:

“85. Mere pendency of investigation, or apprehension or prosecution of offenders is not a good ground to deny information. Information, however, can be denied when furnishing of the same would impede process of investigation, apprehension or prosecution of offenders. The word —impedell indicates that furnishing of information can be denied when disclosure would jeopardize or would hamper investigation, apprehension or prosecution of offenders. In Law Lexicon, Ramanatha Aiyar 2nd Edition 1997 it is observed that —the word —impedell is not synonymous with obstruct’. An obstacle which renders access to an inclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. Obstruct’ means to prevent, to close up.”

86. The word —impede therefore does not mean total obstruction and compared to the word obstruction’ or prevention’, the word impede’ requires hindrance of a lesser degree. It is less injurious

than prevention or an absolute obstacle. Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the RTI Act is on the public authority. The Section does not provide for a blanket exemption covering all information relating to investigation process and even partial information wherever justified can be granted. Exemption under Section 8(1)(h) necessarily is for a limited period and has a end point i.e. when process of investigation is complete or offender has been apprehended and prosecution ends. Protection from disclosure will also come to an end when disclosure of information no longer causes impediment to prosecution of offenders, apprehension of offenders or further investigation.”

(9) In another matter of Bhagat Singh Vs CIC; W.P. (C) No. 3114/2007; dated 03.12.2007 the Hon'ble Delhi High Court had observed as follows:

“Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information”

The decision of Delhi High Court in Bhagat Singh's case has been approved by Division Bench in Addl. Commissioner of Income Tax Vs. UOI – LPA No. 1377/2007 decided on 17-12-2007

- (10) That Hon'ble Delhi High Court again in the case of B.S. Mathur v. Delhi High Court – W.P.(C) No. 295/2011 dated 3-6-2011 again held as under:-

“The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would ‘impede’ or even on a lesser threshold ‘hamper’ or ‘interfere with’ the investigation. This burden the Respondent has failed to discharge”

- (11) That as per the above judgments of Hon'ble Delhi High Court mere pendency of an investigation cannot be the ground for denial of information under section 8(1)(h) of the RTI Act, but the CPIO must show that the disclosure of such information would certainly impede the process of investigation. Hon'ble Court has further clarified that section 8(1)(h) does not provide for blanket exemption from providing information relating to investigation process. Even partial information wherever justified needs to be disclosed. Further, onus to prove that denial is justified is on the public authority. However, unfortunately in the present case, the CPIO has not properly examined the contents of the information in question, but just has denied the information by invoking section 8(1)(h) without giving any reason or ground. Therefore, the orders of the Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO are liable to be set aside with direction to provide point-wise information to the appellant within time bound frame..

- (12) That further, as observed by the Hon'ble Delhi High Court in the above quoted judgment, the onus to prove that a denial is justified shall be on the CPIO as per section 19(5) of the RTI Act. But, in the instant case, nowhere in the order of the CPIO denial of information has been justified. He did not even indicate a single reason which made him believe that disclosure of information would impede the process of investigation/examination. Shri S.K. Verma, Asstt. Registrar (SM) and CPIO did not give any such reason in support of denial of information.

Therefore, the order of the CPIO / Deemed CPIO is incorrect and illegal and liable to be set aside and the CPIO be directed to provide the information in time bound frame.

- (13) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have erred in not appreciating that the information sought relates to evasion of taxes and violation of the statutory provisions adversely affecting the public revenue, therefore the information sought is in larger public interest. Therefore the CPIO / Deemed CPIO should have applied section 8(2) of the RTI Act and provided the information.
- (14) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have not given any reasons or grounds as to how the information is exempted from disclosure under section 8(1)(h) of the RTI Act, therefore order of the CPIO / Deemed CPIO is a non-speaking order and passed in violation of the principles of natural justice, hence is liable to be set aside on this ground alone.
- (15) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have been providing copies of similar information to the appellant till now and as the appellant has made certain complaints to the authorities against irregularities and manipulations of Shri S.K. Verma, Asstt. Registrar, he is causing harassment and inconvenience to the appellant by denying the information which CESTAT has continuously been providing to the appellant as per the provisions of the RTI Act. Therefore, the order of the CPIO / Deemed CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (16) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar (Custom, ST & AD) and Deemed CPIO have deliberately and malafidely denied the copies of the documents as

sought by the appellant by wrongly applying section 8(1)(h) of the RTI Act, so as to cause delay and deny the information with malafide intent and purpose therefore, he is liable for penal action under Section 20 of the RTI Act, 2005 and the appellant is also entitled to compensation for the harassment and inconvenience caused to him. The appellant reserves his right to file a direct complaint to CIC, as the First Appellate Authority has no powers to take penal action under section 20 of the RTI Act.

- (17) That the CPIO and the Deemed CPIO in the past, had been providing the similar information as is evident from the copies of the earlier order collectively enclosed as **Annexure 8**. This clearly exhibits the deliberate and malafide act of the CPIO and the Deemed CPIO in obstructing the information without any reasonable cause. Therefore, he is liable for penalty under section 20(1) of the RTI Act and recommendation for disciplinary action under section 20(2) of the RTI Act, for delaying and obstructing the information in question, without any reasonable cause.
- (18) That the CPIO has erred in not providing the information to the appellant though as per the provisions of the RTI Act, the appellant is entitled to information as sought by him. Therefore, the order of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (19) That the information sought is neither voluminous nor relate to older and larger period, thus could have easily been provided by the learned CPIO.
- (20) That as per proviso to Section 8(1) of the RTI Act, 2005, the information which can not be denied to the Parliament or the State Legislatures shall not be denied to any person. The information sought by the appellant in the subject application is the one which cannot be denied to the Parliament or the State Legislatures and hence it cannot be denied or refused to the appellant.
- (21) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (22) This is without prejudice to the right of the appellant to add, alter or

modify any of the grounds of this appeal and adduce oral or written evidence at the time of hearing or till the appeal is disposed of.

PRAYER

Under the circumstances, the appellant prays as under:

- (a) That the Original Records may be summoned and perused.
- (b) That the order of the CPIO may be set aside to the extent it has been appealed against and CPIO/Deemed CPIOs may be directed to provide the information in question within time bound frame.
- (c) That imposition of penalty may also be recommended against the CPIO for not providing the complete and correct information.
- (d) That any other relief as the Appellate Authority deem fit and proper may also be ordered in favour of the appellant.
- (e) That a personal hearing may be granted to the appellant before deciding the appeal.



Signature of Appellant
Telephone No. : 9810077977
24651101
Fax No. 011-24635243

Place : New Delhi
Dated : 12-11-2015

ok

Annexure-1

14

Application under Section 6 of the Right to Information Act, 2005

Ref. No. :RTI/P-195/9484/15
Dated : 18-9-2015

To

Shri Rajender Prasad
CPIO & Accounts Officer
Customs Excise & Service Tax Appellate Tribunal,
West Block 2, R.K. Puram,
New Delhi - 110066

Customs Excise & Service Tax
Appellate Tribunal
18 SEP 2015
New Delhi-110066

1.	Name of the Applicant	R.K. Jain
2.	Address	1512-B, Bhishm Pitamah Marg Wazir Nagar New Delhi-110003
	(b) Phone Nos.	09810077977, 011-24651101, 011-24690707
	(c) Fax No.	011-24635243
3.	Whether a Citizen of India	Yes
4.	Particulars of Information	
	Details of information required	(A) Please provide the following information in relation to (i) Appeal Nos. C/544/2011 (Rochees Watches Pvt. Ltd.); (ii) C/105/2012 (Pearl Impex); (iii) C/53161/2015 (Ligare Aviation Ltd.); (iv) C/111/2011 (Mr. Chander Bhushan Mishra); (v) C/52138/2014 (Ess Kay International); (vi) C/53595 (Sap India Pvt. Limited); (vii) C/53616/2014 (Sap India Pvt. Ltd.); (viii) C/53866/2014 (Glaxy Impex); (ix) C/54061/2014 (Rajive Dube) :- (i) Please provide copies of direction / order for listing of C/ROM/50840/2015 out of turn as the other applications for the year 2013 and 2014 are being currently listed. (ii) Copies of all Orders, Order Sheets / Record of Proceedings except Final Orders. (iii) Copies of all the notes put up by the registry with orders thereon. (iv) Copies of any order/directions for out of turn listing of the aforesaid matter (v) Details of the date on which the aforesaid mater was mentioned. Please also provide copies of the mention memo and directions thereon. (vi) Provide total Supplementary Cause List issued in relation to each of above case and also provide the date of issue of such

TS

	<p>supplementary cause list with a copy thereof. In case, no supplementary cause list is issued, kindly provide said information.</p> <p>(vii) Copies of all notice of hearing issued to parties.</p> <p>(viii) Copies of any Court directions/orders received in the aforesaid matter.</p> <p>(ix) Copy of compliance report, if any and current status of the case with next Date of hearing.</p> <p>(x) Copies of all Vakalatnamas and no objections filed in case of change of lawyer. Please also intimate the date of filing of each Vakalatnama.</p> <p>Note:- Please provide point-wise information/ response for each of above points.</p>
5.	I state that the information sought is covered under RTI Act and does not fall within the exemptions contained in sections 8 or 9 or any other provisions of the Right to Information Act, 2005 and to the best of my knowledge it pertains to your office. Information is being sought in larger public interest.
6.	A Postal Order No. 32F 041060 for Rs. 10 towards payment of fee is enclosed herewith. You are requested to filling the name in which the Postal Order is payable.
7.	As per Section 7 of the RTI Act, 2005 information is to be provided within 30 days of the Application.

Signature of Applicant
Telephone No. : 9810077977
011-24651101, 24690707
Fax No. 011-24635243

Place : New Delhi
Encl. : as above
Hira/---
HR

Annexure-2 (10)

F.No. 10-167/...../CESTAT/CPIO-ND/RP/2015,
Customs, Excise and Service Tax, Appellate Tribunal,
West block No.2, R.K.Puram, New Delhi-110066.

Dated 28/9/15

ID No. 10-167/15

Subject: Information sought under RTI Act 2005.

Sir,

Please refer to RTI application of
Shri R.K. Jain
Under RTI Act 2005 vide No. 9484/15 dated
18/9/15 (copy enclosed) wherein certain information are sought
as mentioned therein is related to your section.

Therefore, in terms of the provisions of Section 6(3) and Section
5(4) read with Section 5(5) of RTI Act, 2005, the RTI application
No. 9484/15 dated 18/9/15 CPIO ID No 10-167/15 is
forwarded herewith to the following officers as deemed CPIO with the
request to provide correct and para-wise information/inspection on or
before 12/10/15 directly to the applicant and intimate the
undersigned within the stipulated time, failing which you are
personally responsible for delay and penalty if any, under section 20 of
RTI Act. You are, further requested to follow OM No.12/31/2013-IR
dated 12-02-2013 circulated on 23-05-2013

Encl: as above


(Rajender Prasad)
Accounts Officer/CPIO

To

1. AO, Customs, STAD, CESTAT, New Delhi.

2. _____

3. _____

4. AO/IT, Computer etc for uploading on website

Copy for information to:-

✓ Sh. R.K. Jain,
1512-B BHISHAM PITAMAH MARG,
WAZIR NAGAR
NEW DELHI - 110002

16488
General file

Customs Law Manual; Excise & Customs Circulars
& Clarifications; Excise & Customs Case Referencer;
Service Tax Law Guide; Service Tax Handbook;
Handbook of Duty Drawback on Goods &
Services; Valuation under Central Excise; Hand-
book of Foreign Trade Policy & Procedures

NEW DELHI - 110 003.
PHONE : 24693001-3004
MOBILE : 9810077977
Fax No. 011-24635243

RTI/P-195/9484/15/R16866
08-10-2015

AR, Customs, ST & AD
Customs Excise & Service Tax Appellate Tribunal,
West Block 2, R.K.Puram,
New Delhi- 110066

Sub: My RTI Application No. RTI/9484/15, dated 18/9/2015

Dear Sir,

This refers to the letter F.No. 10-167/CESTAT/CPIO-ND/2015 dated 28-9-2015 of Mr.Rajender Prasad, Accounts Officer/ CPIO, transferring my aforesaid RTI application to you under section 6(3) and section 5(4) read with section 5(5) of the RTI Act, 2005, for providing the information to me. You are requested to kindly provide the information at the earliest as under section 7(1) of the RTI Act, information is to be provided within 30 days of the RTI Application.

Thanking you,

Yours faithfully,



[R.K. Jain]

o/c

Annexure 4

18

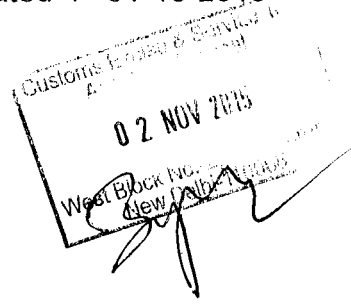
First Appeal under Section 19 of the Right to Information Act, 2005
against Deemed Refusal

Ref. No. : RTI/P-537/(9484/15)/Appeal/16037

Dated : 31-10-2015

To

Shri S.K.Mohanty
1st Appellate Authority Under RTI Act, 2005,
Customs, Excise & Service Tax Appellate Tribunal,
West Block 2, R.K.Puram,
New Delhi - 110066



A. Contact Details :

1.	Name of the Appellant	R.K. Jain
2.	Address	1512-B, Bhishm Pitamah Marg Wazir Nagar New Delhi-110003

B. Details About RTI Request :

1.	Particulars of the CPIO against whose order appeal is preferred	(a) Name	(1) Shri S.K.Verma CPIO & Asst. Registrar (2) Shri Kripa Shankar, Deemed CPIO & AR (Customs/ST/AD)
		(b) Address	Customs Excise & Service Tax Appellate Tribunal, West Block 2, R.K.Puram, New Delhi - 110066
2.	Date of submission of application (Copy of application attached)	18-09-2015	
3.	Details of the order appealed against	Deemed Refusal	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	18-11-2015	
6.	If appeal is being filed after 30 days, the reasons which prevented from filing appeal in time	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI application dated 18-9-2015.(Annexure-1) 2. Copy of CPIO's letter dated 28-9-2015.(Annexure-2) 3. Copy of Appellant's reminder letter dated 8-10-2015.(Annexure-3)	

BRIEF FACTS OF THE CASE

(1) That the appellant has filed an application dated 18-09-2015 (**Annexure – 1**) under Section 6 of the RTI Act, 2005 requesting for the following information:

(A) *Please provide the following information in relation to (i) Appeal Nos. C/544/2011 (Rochees Watches Pvt. Ltd.); (ii) C/105/2012(Pearl Impex); (iii) C/53161/2015(Ligare Aviation Ltd.); (iv) C/111/2011 (Mr. Chander Bhushan Mishra); (v) C/52138/2014 (Ess Kay International); (vi) C/53595(Sap India Pvt. Limited); (vii) C/53616/2014(Sap India Pvt. Ltd.); (viii) C/53866/2014 (Glaxy Impex); (ix) C/54061/2014 (Rajive Dube):-*

(i) Please provide copies of direction / order for listing of C/ROM/50840/2015 out of turn as the other applications for the year 2013 and 2014 are being currently listed.

(ii) Copies of all Orders, Order Sheets / Record of Proceedings except Final Orders.

(iii) Copies of all the notes put up by the registry with orders thereon.

(iv) Copies of any order/directions for out of turn listing of the aforesaid matter

(v) Details of the date on which the aforesaid mater was mentioned. Please also provide copies of the mention memo and directions thereon.

(vi) Provide total Supplementary Cause List issued in relation to each of above case and also provide the date of issue of such supplementary cause list with a copy thereof. In case, no supplementary cause list is issued, kindly provide said information.

(vii) Copies of all notice of hearing issued to parties.

(viii) Copies of any Court directions/orders received in the aforesaid matter.

(ix) Copy of compliance report, if any and current status of the case with next Date of hearing.



(x) *Copies of all Vakalatnamas and no objections filed in case of change of lawyer. Please also intimate the date of filing of each Vakalatnama.*

- (2) That the appellant vide para 5 of his said application has also made a declaration that the information sought for is not exempted under Section 8 or 9 of the RTI Act, 2005 and also stated that to the best of the knowledge of the appellant, the information pertains to the Office of the CPIO in question.
- (3) That the appellant received letter dated 28-9-2015 (**Annexure-2**) of CPIO to AR (Customs, ST & AD) The Appellant vide letter dated 8-10-2015 (**Annexure-3**) requested the said authority to provide the desired information within the period of 30 days as stipulated under Section 7(1) of the RTI Act, 2005. The Appellant has neither received any information nor any response from the said authority therefore, as per Section 7(2) of the RTI Act, 2005, the request for information shall be deemed to have been refused. Thus being aggrieved by such refusal, this Appeal..

GROUND OF APPEAL

- (1) That the action of the learned CPIO and the deemed CPIO in not providing the information to the appellant is illegal and contrary to the provisions and spirit of the RTI Act, 2005.
- (2) That the information sought by the appellant is not exempted under Section 8 or 9 or any other provisions of the RTI Act, 2005 and therefore, there was no valid cause or reason or ground for not providing the information.
- (3) That the inaction of Shri S.K. Verma, CPIO & Asst. Registrar & other Deemed CPIO is in violation of Sections 7(1) and 7(2) of the RTI Act, 2005 and is therefore, illegal. Such inaction is deemed to be a refusal to the request of the appellant without any reasonable cause or ground hence is illegal.
- (4) That the information sought is neither voluminous nor relate to older and larger period, thus could have easily been provided by the learned CPIO.
- (5) That the appellant is citizen of India and fulfilled all other requirements of the RTI Act and the Rules made thereunder and is entitled to the information in question.

91

- (6) That as per proviso to Section 8(1) of the RTI Act, 2005, the information which can not be denied to the Parliament or the State Legislatures shall not be denied to any person. The information sought by the appellant in the subject application is the one which cannot be denied to the Parliament or the State Legislatures and hence it cannot be denied or refused to the appellant.
- (7) This is without prejudice to the right of the appellant to add, alter or modify any of the grounds of this appeal and adduce oral or written evidence at the time of hearing.
- (8) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (9) This is without prejudice to the right of the appellant to add, alter or modify any of the grounds of this appeal and adduce oral or written evidence at the time of hearing or till the appeal is disposed of.

PRAYER

Under the circumstances, the appellant prays as under:

- (a) That the Original Records may be summoned and perused.
- (b) That the CPIO & Deemed CPIO may be directed to provide the information in question within a time bound frame.
- (c) That any other relief as the Appellate Authority deem fit and proper may also be ordered in favour of the appellant.
- (d) That a personal hearing may be granted to the appellant before deciding the appeal.



Signature of Appellant
Telephone No. : 9810077977
24651101
Fax No. 011-24635243

Place : New Delhi
Dated : 31-10-2015

92

F.No. 10-169/ CESTAT/CPIO-ND/RP/2015
Customs Excise and Service Tax Appellate Tribunal
West Block No 2, R.K.Puram, New Delhi-110 066

Dated- 05/11/15

ID No. 10-169/15

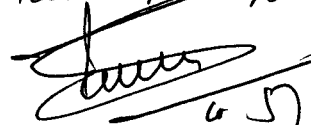
To,
Shri R.K. Jain
1512-B, Bhishma Pitamaha
Marg, Wazir Nager,
New Delhi - 110003.

Subject: Information under Right to Information Act 2005.

Sir,

Please refer to your RTI application No. 9484/15 Dt. 18.09.15
and our ID No. 10-169/15... the information received from AE Customs
containing 1 pages is enclosed herewith for your reference
please.

You are, Therefore, requested to please acknowledge the
receipt and deposit Rs. 2- (@2/- per page) to this Tribunal by
cash or DD in favour of Accounts Officer, CESTAT, New Delhi. If the
applicant is aggrieved by this order, he may file the appeal
u/s 19 of the RTI Act within 30 days, before Honble FA, CESTAT,
New Delhi.


05/11/15
(S.K. Verma)
Asstt. Registrar/CPIO

Encl:- As above

Copy to:- Computers Section for website

V-16923
Girdhar

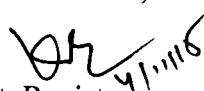
93

CUSTOMS, SERVICE TAX & ANTIDUMPING BRANCH

I.D.No.10-167/2015

With reference to I.D.No.10-167/2015 dated 28.9.2015 , the information sought by you, in the A.No.C/544/11,C/105/12,C/52138/2014C/53161/15,C/111/11,C/53595/15 ,C/53616,53866/14&C/54061/14.In this regard it is submitted that the above matters are sub-judice before the Hon'ble Tribunal.Therefore information sought by is exempted under section 8(1)(h) of the RTI Act, therefore the information can not be provided.

Dated:04.11.2015


Asstt. Registrar.

Copy to:-

1.CPIO.

2.O/c.

A.R.

Matter being Subjudice is no ground to reject RTI

191

Central Information Commission

Decision No. 80/IC(A)/2006
F.No.CIC/MA/A/2006/00018

Dated, the 30th June, 2006

Name of the Appellant : Shri Nanak Chand Arora, R/o 1111, Rani Bagh, New Delhi-110034.
Name of the Public Authority : State Bank of India, Shakur Basti, Delhi-110034.

(Complaint u/s 18 of Right to Information Act)

DECISION

Facts of the Case:

1. The complainant was sanctioned a loan of Rs. 3 lakhs in 1997 for purchase of Truck Chassis and fabrication of its body. He has alleged that due to the negligence of the Bank, the sanctioned loan was not disbursed. The respondent has however mentioned that for the release of loan amount he was required to deposit the required margin money, which he could not do. Therefore, on his request the Bank returned all the papers and the amount deposited by him. The Bank accordingly complied with his request.
2. The Complainant was however aggrieved by the manner in which his case was dealt with by the officials of Shakur Basti Branch of the State Bank of India. He lodged a complaint with the Head Office of the SBI, in which he stated that he was harassed and forced to withdraw his application for loan. As per the direction of the Chief General Manager, SBI, Sansad Marg, New Delhi, the matter was enquired by the Vigilance Department of the Bank.
3. In his complaint to the Commission, the appellant has mentioned that the Bank informed him that his complaint was investigated and on the basis of its findings the concerned officers have been cautioned. Subsequently, the appellant asked for 'a copy of the investigation report' under RTI Act on 21.10.2005. He also requested for inspection of records pertaining to investigations of his complaint. The Chief Manager, SBI, Shakur Basti Branch informed him on 31.12.2005 that:

"The matter is under consideration and we shall advise you accordingly very soon on the matter".

Subsequently, on 19.1.2006, he was informed as under:

25

"We advise that we are not in position to accede to your request for supply of copies under RTI Act, as the matter is su-judice. It is also informed that under the said Act there is no provision for inspection of the record".

4. On the petition received from the complainant, the respondent was asked by the Commission to furnish a detailed reply on the petition filed by the complainant.

5. The respondent has mentioned that there is a dispute between the Bank and the complainant and the matter is pending before the State Consumer Disputes Redressal Commission (SCDRC), New Delhi. The complainant has already filed an appeal before the SCDRC for redressal of his grievances and for providing access to the complete file.

6. The respondent Bank has also mentioned that the request for information by the complainant could not be accepted *"due to the exemptions provided under section 8(1) and not covered under section 8(2) of the Right to Information Act, 2005 and was informed accordingly that the matter being sub-judice at the time as well as now"*.

7. The case was heard on 29.6.2006. The complainant was represented by his Counsel, Shri Chandu Ram and the Bank was represented by its Counsel Shri S.N. Relan along with the official of the Bank.

8. Both the parties were heard. The complainant mentioned that under the RTI Act he has the right to acquire a copy of the Investigation Report, which was conducted on his complaint against the erring officials, who did not disburse him the sanctioned loan.

9. The respondent contended that the matter was sub-judice and, therefore, the report in question should not be disclosed till the SCDRC has finally adjudicated on the matter of appeal filed by the complainant. He has however not mentioned the specific section of the Act under which exemption from disclosure was sought.

Commission's Decision:

10. The CPIO and the Chief Manager of the Bank has not responded to the information seeker in the spirit in which the Act seeks to promote transparency in functioning of the Bank. He has mis-interpreted the provision of the Act and informed that there was no provision for inspection of the record in the Act. This is contrary to the provision u/s 2(f) (i). He has also not indicated as to why the report could not be disclosed, except that the matter was sub-judice. There is no provision in the Act which restricts the disclosure of information merely on the ground of the fact that matter is pending with the Consumer Court. In the instant case, the Court has not forbidden the disclosure of investigation report or inspection of record.

11. The CPIO has also not mentioned the name of the appellate authority of the Bank to whom the appellant would have filed his 1st appeal.

12. In view of the above, the CPIO and the Chief Manager is directed to furnish a certified copy of the information sought within 15 working days of issuance of this decision and provide access to the relevant file for inspection u/s 2(f) (i) of the Act.

13. The CPIO is also required to Show Cause as to why penalty u/s 20 (1) of the Act should not be imposed for not complying with provisions of the Act. He is therefore directed to appear before the Commission at 2.30 pm on July 14, 2006 to give his explanation in this regard.

14. The appeal is accordingly disposed of.

Sd/-
(Prof. M.M. Ansari)
Information Commissioner

Authenticated true copy :

(L.C. Singhi)
Additional Registrar

Cc:

1. Shri Nanak Chand Arora, R/o 1111, Rani Bagh, New Delhi-110034.
2. Shri R. S. Schrawat, Chief manager & CPIO, State Bank of India, Shakur Basti, Delhi-110034.
3. The Chief General Manager, State Bank of India, Sansad Marg, New Delhi.

C.C.

C.C.