

D/MO. 435/CR-14
To, 4/2/14

9-01(A)/14

Date: 04/02/2014

Mrs. Archana Wadhwa,
Member (J),
The 1st Appellate Authority
Under Right to Information Act,
CESTAT
W.B. - 2, R.K. Puram,
New Delhi - 110066.

[Handwritten signature]
4/2/14

**Sub.: Filing of Appeal under section 19 of the
Right to Information Act, 2005.**

Sir, your Honour.

The Appellant had filed an application for providing the following information with the C.P.I.O., ~~Central Vigilance Commission, INA, New Delhi~~ ^{CESTAT} under Right to Information Act on 30/01/2014:-

1. Please provide the copies of correspondence between Department of Revenue, Ministry of Finance and CESTAT, on the matter of promotion of Mr. V.P. Pandey, Court Master to the post of Assistant Registrar, during last 6 months.

The Appellant had declared that the information sought did not fall within the restrictions contained in section 8 and 9 of the Act and to the best of my knowledge it pertains to your office.

The Appellant had declared that he is citizen of India, and was eligible to seek the information.

A Postal Order No. 14F 448480 dated 28/06/2013 for Rs. 10-00 was also sent as fee prescribed under Right to Information Act, 2005.

The Appellant has received a communication no. F. No. 09-18/CESTAT/CPIO-ND/RP/2014 with ID No. 09-18/2014 dated 30-01/2014 from the learned CPIO (Mr. Rajendra Prasad) seeking assistance under section 5(4) and 6(3) of the said RTI to the Assistant Registrar (Admn.), CESTAT read with section 5(5) of the RTI Act, requesting the Deemed CPIO to supply the information to the Appellant herein directly. This communication has been received by the Appellant herein on 30/01/2014.

Notice of -
hearing to be
issued for 7/2/14 as
both the parties are
present in tribunal
[Handwritten signature]
7/2/14
to be viewed
in proper file

The CPIO/Deemed CPIO illegally, malafidely and persistently are denying the information to prevent him to effectively contest the cases pending before the Hon'ble Central Administrative Tribunal which is violation of fundamental rights guaranteed to the Appellant.

The CPIO illegally, malafidely and persistently denying the information to prevent him to effectively contest the O.A. No. 3836/2013 filed the appellant before the Hon'ble Central Administrative Tribunal, New Delhi, which is contrary to the Section 6(2) and 7 of the RTI Act.

Aggrieved from the such deemed refusal by the CPIO/Deemed CPIO, the Appellant is filling the present appeal.

Prayer

Under the circumstances, the Appellant prays as under:-

- (a) that the original records to be summoned from the CPIO and;
- (b) that the CPIO may kindly be directed to provide the original information/present position to the Appellant immediately and;
- (c) that any other relief as the Appellate Authority deem fit and proper in the favor of the Appellant and;
- (d) an opportunity of personal hearing may kindly be granted to the Appellant before deciding the appeal.



(S.K. Verma)

Appellant

Assistant Registrar,

CESTAT,

West Block – 2, R.K. Puram,

New Delhi – 110066.

Phn. No. 9911127800.

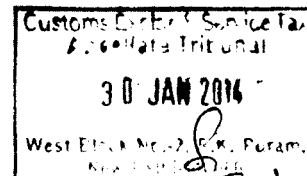
Place: New Delhi

Date: 04/02/2014.

**APPLICATION FOR SEEKING INFORMATION
UNDER THE RIGHT TO INFORMATION ACT-2005**

Application ID No. : _____
(For official use)

To
The Central Public Information Officer
CESTAT, NEW DELHI.



1. Name of the Applicant : S.K. VERMA
2. Address : CESTAT, WEST BLOCK NO. 2
R.K. PURAM, NEW DELHI - 110066.
3. Particulars of information
(a) Concerned Office/Department : CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
New Delhi./Ad.1C, Department of Revenue,
Ministry of Finance, North Block, New Delhi.
- (b) Particulars of information
required :

1. Please provide the copies of correspondence between Department of Revenue, Ministry of Finance and CESTAT, on the matter of promotion of Mr. V.P. Pandey, Court Master to the post of Assistant Registrar, during last 6 months.

4. Format in which information is required : As prescribed by the rules.
5. Mode of delivery expected (ordinary post, speed post, by courier, by hand, through internet or e-mail, by fax etc.). Additional fee may be charged to cover the cost of delivery. : As prescribed by the rules preferably by speed post/fax.


6. The information can be furnished, the information sought for concerns my life and liberty, as the abovementioned documents will be produced before Hon'ble Central Administrative Tribunal, New Delhi, in pending Original Application filed by the Information Seeker, **therefore the information may be furnished to me within 48 hours.**

Right to Information Act 2005.

10. A Postal Order No. 14F 448480 dated 28/06/2013 for Rs. 10-00 is enclosed for fee prescribed under Right to Information Act, 2005.

Place: New Delhi

Date : 30/01/2014.



(Name & Signature)
S.K. Verma

Postal Address: CESTAT, W.B. 2, R.K.Puram,
New Delhi -110066.

E-mail address: vermask2001@hotmail.com
9911127800

URGENT

F.No. 09/18/CESTAT/CPIO-ND/RP/2014,
Customs, Excise and Service Tax, Appellate Tribunal,
West block No.2, R.K.Puram, New Delhi-110066.

Dated 30-01-2014

ID No. 09-18/2014

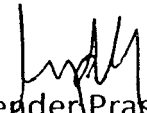
Subject: Information sought under RTI Act 2005.

Sir,

Please refer to RTI application of
Shri S.K. Verma
Under RTI Act 2005 vide No. dated
30/1/14 (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. dated 30/1/14 CPIO ID No 09-18/2014 is
forwarded herewith to the following officers as deemed CPIO with the
request to provide correct and para-wise information/inspection on or
before 18 hrs. ~~18 hrs.~~ 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 AR (Admin.)

2 _____

3 _____

✓ Copy to - Shri S.K. Verma, AR, CESTAT, New Delhi.


30/1

Shri S.K.Verma

Appellants

Vs.

Shri Rajender Prasad, CPIO

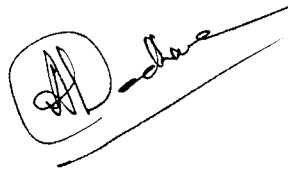
Respondent

ORDER NO. 01/2014

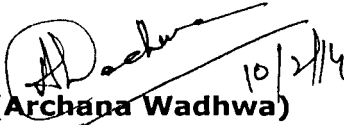
Per Archana Wadhwa:

Heard both the sides.

2. Dispute is as regard supply of requisite information asked by the applicant within a period of 48 hours.
3. The representative of the Tribunal Shri Kripa Shankar is not disputing the supply of the requisite information but submits that as the information sought was in the file lying with the Registrar, as per information given by the administration and matter was put up before the Registrar for return of the file, the information could not be supplied within 48 hours. He submits that a time limit to be fixed for supply of the same, as they are ready to give the information.
3. The applicant submit that the information is required as early as possible inasmuch as the same is required by him to be placed before the CAT, before whom the matter is coming up for disposal on 21st of February.

A handwritten signature in black ink, appearing to be 'Archana Wadhwa', is written over a horizontal line. To the left of the signature, the letter 'A' is circled in a hand-drawn circle.

4. In view of the above, I direct the CPIO to obtain the file from the Registrar and supply the asked for information by 14.02.2014.
5. Appeal is disposed of in above term.


(Archana Wadhwa)

Appellate Authority under the RTI Act

To

1. Shri S.K. Verma, AR CESTAT, West Blok-2, R.K. Puram, New Delhi- 110066
2. Guard filed/office copy.

09-02(A)/14

Date: 13.01.2014

14/AA/AA/14
16/1/14
SPSD/FAA

DA NO. 131/CR-14
15/1/14

To,
**The Registrar/Appellate Authority,
CESTAT, West Block No 2,
R.K. Puram,
New Delhi-66**

13/01

15 JAN 2014

my

Subject: Appeal u/s 19 of The Right to Information Act, 2005


1. Name & address of the appellant; : Sh. A. K. Jain,
"Abhinandan Farm", Behind Chiranjiv Bharti Secondary School, Palam Vihar, Across Railway Line, Gurgaon, Mobile:9810019781, Email:akjain2004@rediffmail.com
2. Name & address of the Central Public Information Officer against the decision of whom this appeal is being preferred; : The CPIO, CESTAT, West Block No. 2, R.K. Puram, New Delhi
3. Particulars of the order against which this appeal is being preferred; : N.A./ Please refer to the enclosed application containing all the details, as required.
4. Brief facts leading to the appeal; : For brief facts, please refer to the enclosed application filed u/s 6 of the Right to Information Act, 2005 by the appellant. The facts as well as other information contained therein are reiterated here for the purpose of this appeal, but the same are not being reproduced here for the sake of brevity.
Even much beyond the lapse of the statutory period of 30 days, no response/reply has been received from the PIO concerned till date.
5. If this appeal is being preferred against a deemed refusal, the particulars of the application, including its number and date and the name & address of the Central Public Information Officer to whom the application was made; : N.A./ Please refer to the enclosed application containing all the details, as required.
6. Prayer or relief sought here in this appeal:- : That the information solicited under section 6 of my application (31.10.2013) may please be ordered to be supplied to me.
That before deciding upon this appeal, I or my representative(s) may please be granted a personal hearing to place before your honour further submissions in this matter.

1638/CPIO
20/01/2014

That at the time of hearing before your honour, if possible, either the concerned PIO be asked to himself appear or through his representative.

7. Grounds for the prayer or relief;

1. Under the provisions of section 7(2) of the RTI Act, 2005, if any PIO fails to give his decision on the request for information within the period statutorily specified the same is deemed to have been refused and thus entitling the applicant to file an appeal to the first appellate authority.
2. The FAA may also like to consider as to whether a penalty should also be imposed on the PIO under section 20 of the RTI Act, 2005 for not providing the information and for not even replying to the application filed u/s 6 of the RTI Act, 2005 without any reasonable cause.



Verification

Verified on this 13th January, 2014 that the contents of the appeal are true and correct to the best of my knowledge & belief and nothing has been concealed therefrom.

Enclosures: -

1. Self-attested copy of the original application dated 31.10.2013
2. Proof of dispatch

Yours faithfully,



(A. K. Jain)

'Abhinandan Farm',
Behind Chiranjiv Bharti Secondary School,
Across Railway Line, Palam Vihar,
Gurgaon (Haryana)- 122 017
Email: akjain2004@rediffmail.com
Mobile No.: 9810019781

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

**Appeal No. 09-002(A)/2014
CPIO ID No. 08-211/2014**

Date of Hearing: 07.02.2014

Shri A.K. Jain

Appellants

Vs.

Shri Rajender Prasad, CPIO

Respondent

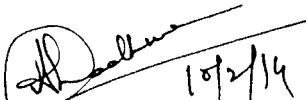
ORDER NO. 02/2014

Per Archana Wadhwa:

Heard the CPIO as also Shri Kripa Shankar.

2. The information asked by the appellant is as regard inspection of certain files where he himself is advocate on record. Shri Kripa Shankar submits that inspection could not be granted earlier as the files were not traceable. Now they have written to the applicant/appellant vide their order dated 07.02.2014 that the said inspection can be carried out by them 14.02.2014 between 3 p.m. to 4 p.m.

3. In view of the above, I dispose of the appeal as the appellant's grievances stand met by the CPIO's letter dated 7.2.2014.


(Archana Wadhwa)

Appellate Authority under the RTI Act

To

1. Shri A.K. Jain, "Abhinandan Farms". Behind Chiranjiv Bharti Public School, Palam Vihar, Gurgaon (Haryana)-122017.
2. Guard filed/office copy.

SPS/D/FAA,

Ans - 09-003(A)/2014

DO - 08-228/2012



WILLINGDON & ASSOCIATES

Advocate for Central Excise, Customs, Service Tax & Import-Export

Dy No. 226/CX-14
28/1/14
17 January 2014

To,

First Appellate Authority [RTI]
Customs, Excise & Service Tax
Appellate Tribunal,
West Block No.2,
R. K. Puram,
New Delhi.

23 JAN 2014

24/1

Wing

21/FAA/14
24/1

Dear Sir,


Sub : Appeal under Section 19(1) of the Right to Information Act, 2005.

In the above matter, we enclose Appeal Memorandum in duplicate duly numbered.

Kindly acknowledge the same.

Thanking You,

Yours faithfully,


(Willingdon C.)
Advocate

For on 21/2/14

APPEAL UNDER SECTION 19(1) OF THE
RIGHT TO INFORMATION ACT, 2005

I. D. NO.

(FOR OFFICIAL USE)

To,

First Appellate Authority
Customs, Excise & Service Tax
Appellate Tribunal,
West Block No.2,
R. K. Puram,
New Delhi.

01	Name and Address of the Appellant	:	Willingdon Christian, Advocate Trident, "C" Block, 3 rd Floor, Opp. GERI Compound, Race Course, Vadodara - 390 007.
02	Name and Address of the Central Public Information Officer against the decision of whom the appeal is preferred	:	The Accounts Officer/CPIO Customs, Excise & Service Tax Appellate Tribunal, West Block No.2, R. K. Puram, New Delhi.
03	Particulars of the order including number, if any, against which the appeal is preferred;	:	Order F. No.08-226/CESTAT/CPIO-ND/RP/2013 dated 8.1.2014 (copy enclosed & marked Exb-I)
04	Brief facts leading to the appeal	:	1) As per their RTI Application dated 9.12.2013 (copy enclosed & marked Exb-II), the Appellant

had requested for copies of Order-in-Original, Order-in-Appeal (if any) and Show Cause Notice in relation to the Tribunal's Order dated 12.8.2011 passed in Appeal No.C/791-792/2008-Cus as reported in 2012 (275) ELT 115 (T) in case of M/s Kanak Metal Industries (copy enclosed & marked **Exb-III**).

- 2) The learned CPIO, Shri Rajender Prasad, Accounts Officer/CPIO, CESTAT, New Delhi has passed the impugned Order dated 8.1.2014 whereby he has refused to supply the documents on the ground that "*the said Appeal in question is not related to you and hence in terms of RTI Rule 8(1)(d) the information called for is exempted from disclosure*".
- 3) The said Section 8 is reproduced herein below :-

"8. Exemption from disclosure of information.-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or

		<p>the disclosure of which may constitute contempt of court;</p> <p>(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;</p> <p>(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;</p> <p>(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;</p> <p>(f) information received in confidence from foreign Government;</p> <p>(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;</p> <p>(h) information which would impede the process of investigation or apprehension or prosecution of offenders;</p> <p>(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the</p>
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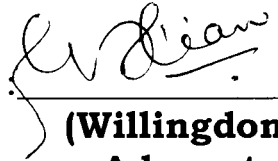
			<p><i>matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;</i></p> <p><i>(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”</i></p>
05	If the appeal is preferred against deemed refusal, the particulars of the Public Information Officer to whom the application was made.		N/A
06	Prayer or relief sought	:	It is respectfully prayed that the Hon’ble Appellate Authority may be pleased to set aside the impugned order and direct the learned CPIO to immediately furnish the required information and documents.
07	Grounds for Appeal	:	1) It is submitted that the impugned Order is passed in violation of principles of natural

		<p>justice and also without due authority of law and contrary to the statutory provisions applicable to the facts of the case.</p> <ol style="list-style-type: none">2) It is submitted that the learned CPIO has failed to appreciate that the required information is neither in the category of commercial confidence nor trade secrets nor intellectual property. Consequently, the said Section 8(1)(d) is not applicable.3) It is submitted that the learned CPIO has failed to appreciate that supply of copies of Order-in-Original, Order-in-Appeal and Show Cause Notice requested for by the Appellant cannot and would not harm in any manner competitive position of a third party.4) It is submitted that the learned CPIO has failed to appreciate that when the Tribunal's reported judgement is open to the public information at large, the related and connected documents such as the impugned orders, Show Cause Notice, etc. should also be made open for public information in the larger public interest.5) It is submitted that the learned CPIO has not given any reason or details as to how the disclosure of the required information would harm the competitive position of a third
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			party. He has neither identified such third party nor specified the so-called competitive position nor described the manner in which so called competitive position of a so called third party would suffer any harm.
08	Verification by the appellant; and		I, WILLINGDON CHRISTIAN , THE APPELLANT DO HEREBY DECLARE THAT WHAT IS STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.
09	Any other information which the Commission may deem necessary for deciding the appeal		-

Place : Vadodara
Date : 17.1.2014

Signature of Applicant :



**(Willingdon C.)
Advocate**

E-Mail address if any :

willingdon_associates@yahoo.co.in

Tel. No. (O) (0265) 2340591/2339003

Exb-I

F.No.- 08-226/CESTAT/CPIO-ND/RP/2013,
Customs, Excise and Service Tax,
Appellate Tribunal,
West Block No.2, R.K.Puram,
New Delhi-110066.

Dated : 08-01-2014.

To

Sh. Willingdon Christian, Advocate,
"Trident", C Block, 3rd floor,
Opp. GERI Compound,
Race Course,
Vadodara-390007.

Subject: Information under RTI Act.2005.

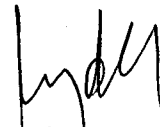
Sir,

I am to refer to your RTI application dated 09-12-2013, CPIO I D No.08-226/2013 seeking information as uner:-

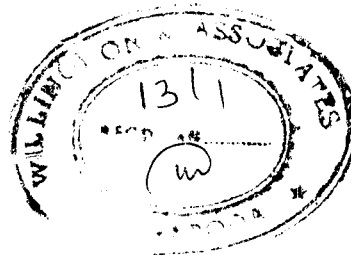
"copy of the order-in-original and Show Cause Notice in case of Tribunals order dated 12-8-2011 passed in appeal No.C/791-792/2008-Cus. Reported in 2012 (275)ELT 115(Tri-Del) in case of M/s Kanak Metal Industries."

As per the information received from concerned section that the said appeal in question is not related to you hence, in terms of RTI rule 8 (1) (d) the information called for is exempted from disclosure.

Yours faithfully,



(Rajender Prasad)
Accounts officer/CPIO



ADP 150

Exb-II



WILLINGDON & ASSOCIATES

Advocate for Central Excise, Customs, Service Tax & Import-Export

9 December 2013

RTI ACT Matter

To,

The Assistant Registrar
Customs, Excise & Service Tax
Appellate Tribunal,
West Block No.2,
R. K. Puram,
New Delhi.

Dear Sir,

Sub : Information under **RTI Act, 2005.**

We enclose the prescribed Form for information being sought under RTI Act, 2005. Necessary payment for Rs.100/- is being made by Postal Order No.24H 586717 dated 09.12.2013 enclosed herewith.

Thanking you,

Yours faithfully,
For **WILLINGDON & ASSOCIATES**

**(WILLINGDON C.)
ADVOCATE**

FORM 'A'
Form of application for seeking as information
(See Rule 3)

I. D. No.
(For Official use)

To,

09 December 2013

The Assistant Registrar
Customs, Excise & Service Tax
Appellate Tribunal,
West Block No.2,
R. K. Puram,
New Delhi.

- 1) Name of the Applicant : Willingdon Christian,
Advocate
- 2) Address : Trident, "C" Block, 3rd Floor,
Opp. GERI Compound,
Race Course,
Vadodara - 390 007.
- 3) Particulars of Information:**
- a) Concerned Department : CESTAT, New Delhi.
- b) Particulars of Information
required :
- i) Details of information reqd. : Copy of Order-in-Original and
Show Cause Notice in case of
Tribunal's Order dated
12.08.2011 passed in Appeal
Nos.C/791-792/2008-Cus.
reported in 2012 (275) ELT
115 (Tri.-Del.) in case of M/s
Kanak Metal Industries.

ii) Period for which info. : 2003-04 to 2004-05
asked for;

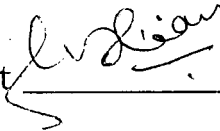
iii) Other details : -

4) I state that the information sought does not fall within the restrictions contained in Section 8 of the Act and to the best of my knowledge it pertains to your office.

5) A fee of Rs.100/- is being made by Postal Order No.24H 586717 dated 09.12.2013 enclosed herewith.

Place : Vadodara
Date : 09.12.2013

Signature of Applicant



E-Mail address if any :
willingdon_associates@yahoo.co.in
Tel. No. (Office) (0265) 2340591/
2339003



R.K. Jain's

ExCus

Electronic Library for Central Excise, Customs, Service Tax & Allied Laws

Exb-III

2012 (275) E.L.T. 115 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

[COURT NO. IV]

Ms. Archana Wadhwa, Member (J) and Shri Mathew John, Member (T)**KANAK METAL INDUSTRIES***Versus***COMMISSIONER OF CUSTOMS, JODHPUR***Final Order Nos. C/368-369/2011(PB), dated 12-8-2011 in Appeal Nos. C/791-792/2008-Cus.*

Export under DEPB Scheme - FOB value - Declaration of - Exporter is not bound to fix FOB value at PMV (Present Market Value) - Exporter is free to sell goods at a profit - Impugned order fixing FOB value to be equal to PMV being without any legal basis, hence, set aside - C.B.E. & C. Circular Nos. 69/97-Cus., dated 8-12-1997, 27/2000-Cus., dated 5-4-2000 and 77/2002-Cus., dated 27-11-2011. [para 18]

Confiscation, fine and penalty - Export under DEPB Scheme - Mis-declaration of value of export goods to claim higher DEPB benefit - Adjudicating officer also confused in understanding the expression, FOB and PMV (Present Market Value), hence, exporter cannot be penalised for such discrepancy in shipping bills - Exporter not benefited by misdeclaring of FOB - Goods not confiscable - Fine and penalty not imposable - Sections 113(d), 113(i), 114 and 125 of Customs Act, 1962. [paras 19, 20]

Appeals allowed**CASE CITED**Advance Exports v. Commissioner — 2007 (218) E.L.T. 39 (Tribunal) — *Referred*..... [Para 14]**DEPARTMENTAL CLARIFICATIONS CITED**

C.B.E. & C. Circular No. 69/97-Cus., dated 8-12-1997..... [Paras 3, 3.1, 14, 15]

C.B.E. & C. Circular No. 27/2000-Cus., dated 5-4-2000..... [Paras 3, 3.2, 14]

C.B.E. & C. Circular No. 77/2002-Cus., dated 27-11-2002..... [Paras 9, 10, 11]

D.G.F.T. Public Notice No. 10/97 (P.N.), 97-2002, dated 21-5-1997..... [Paras 2, 7, 10, 11]

REPRESENTED BY : S/Shri L.P. Asthana, Ms. Neha Gulati, Advocates and O.P. Agarwal, C.A., for the Appellant.

Shri K.K. Jaiswal, SDR, for the Respondent.

[Order per : Mathew John, Member (T)]. - The first appellant is a partnership firm. The second appellant is the Managing Partner of the firm. The first appellant is an exporter of stainless steel utensils. It claims DEPB benefit against such exports and such benefit is proportional to the FOB value of goods exported. Revenue has made out a case that during the periods 2002-03 to 2004-05 the FOB values and "Present Market values" for export goods were misdeclared by the appellants on the higher side to claim undue DEPB benefit.

2. Para 7.36A of Public Notice No. 10/97 (P.N.), 97-2002 dated 21-5-1997 provides that *the amount of Credit entitlement rate, in respect of export products whose DEPB rate is 15% or more, shall not exceed 50% of the PMV of the goods.*

3. The following Circulars of C.B.E. & C. are relevant :

(i) C.B.E.C.'s Circular 69/97-Cus., dated 8-12-1997;

(ii) C.B.E.C.'s Circular 27/2000-Cus., dated 5-4-2000.

3.1 Extracts from C.B.E.C.'s Circular 69/97-Cus., dated 8-12-1997 is reproduced below :

"1. As you are aware para 7.36A of Public Notice No. 10/97 (P.N.), 97-2002 dated 21-5-1997 provides that *the amount of Credit entitlement rate, in respect of export products whose DEPB rate is 15% or more, shall not exceed 50% of the PMV of the goods.*

2. Object of Limiting the amount of Credit Based on the Present Market Value (PMV) :

The condition of restricting the credit-amount under DEPB Scheme to 50% of the PMV was prescribed to prevent the exporters from obtaining excessive amount of credit by inflating the FOB price of the export product. It is stated that the FOB value may be higher, as per the contract between the exporter and foreign buyer, (depending on various factors) but the "*Present Market Value*" of the goods in an index of their local (wholesale/retail) price inclusive of excise duty, Sales tax and other local taxes plus cost of transportation. Accordingly the amount of credit is to be restricted with reference to the *domestic price of the product*, and not with reference to the FOB price declared on the GR Form/Shipping Bill.

3. Determination of PMV

(i) Manufacturers-Exporters

(a) As regards Manufacturers-Exporters who export under AR4 from, where the AR4 value is declared as the PMV, the same shall be accepted.

(b) Where the Manufacturer-Exporter declared PMV which is higher than the AR4 price, (as PMV is inclusive of transportation costs and domestic duties and taxes) the higher PMV declared may be accepted up to 150% of AR4 value (exclusive of excise duty). Market enquiry may be caused only if PMV is more than 150% of AR4 price, and exporter does not agree to lower the PMV below the 150% mark.

(c) Where the Maximum Retail Price (MRP) is required to be printed on the products as per the Weights & Measures Act, the MRP indicated on the products may also be accepted as PMV.

(d) For the products for which manufacturers have a Printed Price list, or a Catalogue indicating the local price of the products, the price indicated on the price list/catalogue shall be accepted as PMV."

3.2 During the relevant time DEPB benefit was granted on aluminium utensils subject to a value cap of Rs. 125 per Kg. So C.B.E.C.'s Circular 27/2000-Cus., dated 5-4-2000 also is relevant which is reproduced below;

"Subject : Revised guidelines for determination/verification of the Present Market Value (PMV) under DEPB Scheme - Regarding.

Attention is invited to Circular No. 69/97-Cus., dated 8-12-1997, as amended by Circular Nos. 79/98-Cus., dated 22-10-1998, No. 23/99-Cus., dated 11-5-1999 and No. 37/99-Cus., dated 24-6-1999.

2. As a result of the Annual Review of the Exim Policy 1997-2002, para 7.36A of the Handbook of Procedure, Vol. 1 has been amended with effect from 1-4-2000 to the effect that PMV declaration shall not be applicable for products for which value cap exist irrespective of the DEPB rate of the product.

3. In view of the above, it has been decided by the Board that for all products exported under DEPB Scheme, wherever FOB value cap has also been notified along with DEPB rate, PMV will not be verified by the Custom House. Circulars mentioned in the first para above shall also stand amended to this effect."

4. Revenue conducted investigations about the cost of the goods exported and also about sale price of similar goods in the local market, and also purchase price of some of the goods bought by them from local market and exported. They ascertained the present market value of the goods manufactured in the factory of the appellant at Rs. 65.80 per Kg. They also found that some of the exported goods were bought by them at a price of Rs. 70 per Kg but the goods were exported at a price of Rs. 123 per Kg. Based on such facts Revenue issued a Show Cause Notice proposing action as proposed in para 34 of SCN which is reproduced below :

"34. Now, therefore, M/s. Kanak Metal Industries, 8/2, Jodhana Industrial Estate, Road No. 8 Basni, Jodhpur and Shri Mohammad Hussain Gauri, Managing Partner of M/s. Kanak Metal Industries, Jodhpur are hereby called upon to show cause to the undersigned as to why :

(i) The goods having declared FOB value of Rs. 8.96 crores (correct value Rs. 4,74,22,493/-) exported vide shipping bills as detailed in Annexure-A should not be confiscated under Section 113(d)

& (i) of the Customs Act, 1962. Since the said goods have already been exported, why Redemption fine should not be imposed under Section 125 of the Customs Act, 1962.

(ii) Penalty should not be imposed under Section 114(i) and (iii) of the Customs Act, 1962 on M/s. Kanak Metal Industries, Jodhpur.

(iii) Penalty should not be imposed under Section 114(i) and (iii) of the Customs Act, 1962 on Shri Mohammad Hussain Gauri, Managing Partner of M/s. Kanak Metal Industries, Jodhpur.”

5. The Show Cause Notice was adjudicated by the impugned order. The operative part of the order is reproduced below :

- “1. I determine the PMV as Rs. 4,74,22,493/- in respect of 33 consignments of S.S. Utensils exported by M/s. Kanak Metal Industries, Jodhpur from ICD Concor, Jodhpur during the period from 2002-03 to 2004-05 in place of the FOB/PMV Rs. 8,96,21,671/- declared by the said exporter and accordingly the benefit claimed under DEPB scheme needs re-consideration.
2. I confiscate the 33 consignments of S.S. Utensils exported by M/s. Kanak Metal Industries, Jodhpur from ICD Concor, Jodhpur during the period from 2002-03 to 2004-05 valued at Rs. 4,74,22,493/- having declared FOB value Rs. 8,96,21,671/- under Section 113(d) and (i) of the Customs Act, 1962. Since the goods have already been exported. I impose Redemption fine of Rs. 1,00,00,000/- (Rs. One crore only) under Section 125 of the Customs Act, 1962.
3. I impose penalty of Rs. 8,96,21,671/- (Rs. Eight crore ninety six lac twenty one thousand six hundred seventy one only) under Section 114(i) and (iii) of the Customs Act, 1962 on M/s. Kanak Metal Industries, Jodhpur).
4. I impose penalty of Rs. 1,00,00,000/- (Rs. One crore only) under Section 114(i) and (iii) of the Customs Act, 1962 on Shri Mohammad Hussain Gauri, Managing Partner of M/s. Kanak Metal Industries, Jodhpur.”

6. Aggrieved by the order the appellants have filed this appeal.

7. For understanding the dispute and the confusion in the SCN and O-in-O a few points have to be noted. These are,-

- (i) FOB value and PMV are different. FOB is the value at which goods are sold to the buyer abroad. PMV is the value of the export goods in local market.
- (ii) DEPB benefit is to be granted by applying the rate prescribed for the commodity on the FOB value of goods exported.
- (iii) If such benefit is more than 50% of the PMV, it is to be restricted to 50% of PMV, Public Notice No. 10/97 (P.N.), 97-2002 dated 21-5-1997 does not say the DEPB rate is to be applied to PMV.

8. To illustrate let the DEPB rate be 20%. Let FOB value be Rs. 100. Exporter can get DEPB credit of Rs. 20. But if PMV is Rs. 30 only then DEPB credit will be Rs. 15 only. Annexure A to SCN is prepared with the understanding that DEPB benefit in such circumstances will be only Rs. 6 and therefore the entire matter is initiated on wrong understanding of the provisions.

9. The confusion in this matter appears to emanate from circular para 5 of C.B.E.C.'s Circular 77/2002-Cus., dated 27-11-2002. Extracts from the circular are given below :

“3. The issue had been examined in consultation with the Directorate General of Foreign Trade. It has been decided in modification of the instruction contained in the above referred circular *that as a general rule, FOB value of the exports shall remain the basis for extending the DEPB credit* since FOB value is recognised as the basis of export transactions both in the EXIM Policy as well as in the Customs Act, 1962.

4. However, in cases of specific intelligence that the FOB declared is inflated or there is evidence confirming such overvaluation, the field formations should resort to market verification to ascertain the correct market price of the goods. In addition to above, market verification can also be initiated on receipt of intelligence or where the intelligence is gathered in respect of consignments entered for export to sensitive destinations and/or where the goods are sub-standard and it appears that the acceptance of the declared value would result in accrual of substantial unintended DEPB benefits. *But all such cases should be taken up for investigation only with the express written approval of the Commissioner of Customs.*

5. *In those cases where it is conclusively proved through the investigations that the FOB value had been artificially inflated/manipulated by the exporter to avail of unintended higher DEPB benefits, the DEPB credit entitlement shall be worked out only on the PMV and not FOB value.”*

12. The interesting aspect of the O-in-O is that the revision in PMV ordered in the impugned order does not result in excess benefit to the exporter as may be seen from the following rough calculation.

1.	FOB Value declared	89621671
2.	DEPB benefit at 20% - (actual rate varied from 13% to 20% but for 28 out of 33 Shipping Bills). This is why calculation is stated to be rough.	17924334
3.	PMV decided in O-in-O	47422493
4.	Maximum DEPB that can be granted @ 50% PMV	23711246

Since amount at S. No. 2 above is less than amount at S. No. 4 above no case of excess DEPB benefit comes out even as per the adjudicated values. So it is obvious that the entire case is based on wrong understanding of facts and law especially the understanding that DEPB benefit is to be restricted to 20% (appr.) of Rs. 47422493 as seen from calculations in Annexure A to SCN. Here the submission of the Appellant that DGFT has so far not revised the DEPB benefit is taken note of.

13. Both the sides occasionally (not consistently) understand that both FOB and PMV are interchangeable. In the first place the appellant has declared the same value as FOB Value and PMV in many shipping bills. On the other hand the adjudicating officer has used the expression “FOB/PMV” is used in para 1 of the operative part of the impugned order. The order fixes PMV of Rs. 4,74,22,493/- in place of “FOB/PMV” of Rs. 8,96,21,671/-. FOB value cannot be ordered to be replaced by PMV value and this portion of the order is patently wrong.

14. The grounds raised on behalf of the appellant are the following :

- (a) The department has made this case based on C.B.E.C.’s circular 69/97-Cus., dated 8-12-1997 ignoring amendment to that circular made by circular 27/2000-Cus., dated 5-4-2000. Since DEPB credit was allowed for the goods in question subject to value cap the enquiry regarding PMV is irrelevant as per the latter circular;
- (b) The FOB value declared on the shipping Bills were realised. Therefore there is no case to question FOB price. They quoted a few decisions to support this argument;
- (c) Department has not produced any evidence of export of such goods at a lower price by any other party. They rely on the decision of the Larger Bench of Tribunal in *Advance Exports v. C.C. - 2007 (218) E.L.T. 39*;
- (d) Since FOB declared at the time of export was accepted by the assessing officer it cannot be revised without challenging the assessment order under Section 129D of the Customs Act. They have quoted a few decisions to support this argument;
- (e) *The Board’s circular permits DEPB credit based on 50% of PMV. The DEPB credit*

