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11-59(A)/2016

218/SKM/RTI/16  
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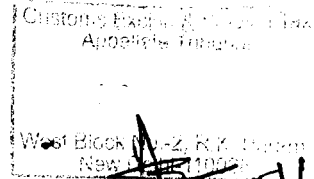
**First Appeal under Section 19 of the Right to Information Act, 2005**

Ref. No. : RTI/P-537/(9806/16)/Appeal/16323

Dated : 27-05-2016

To

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



30105116

**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 V.P. Pandey CPIO & Assistant Registrar (2) Shri A. Mohan Kumar, Registrar and Deemed CPIO (3) Shri Sunil Kumar, Technical Officer and Deemed CPIO
		(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)	31-03-2016	
3.	Details of the order appealed against	Letter ID No. 11-48/2016 dated 18-5-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	18-6-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI Application dated 31-3-2016. <b>(Annexure-1)</b> 2. Copy of CPIO letter dated 1-4-2016. <b>(Annexure-2)</b>	

	<ol style="list-style-type: none"><li>3. Copy of CPIO letter dated 12-4-2016. <b>(Annexure-3)</b></li><li>4. Copy of CPIO letter dated 18-5-2016. <b>(Annexure-4)</b></li><li>5. Copy of Delhi High Court decision in the case of Dinkar Khindria v. UOI – 2008 (231) ELT 47 (Del.) <b>(Annexure-5)</b></li><li>6. Copy of CIC Order dated 29-4-2016 in the case of Girish Mohan Gupta <b>(Annexure-6)</b></li><li>7. Copy of Delhi High Court decision in the case MCD v. R.K. Jain <b>(Annexure-7)</b></li><li>8. Copy of CIC Order in the case of Nanak Chand Arora <b>(Annexure-8)</b></li><li>9. Copy of decision dated 26-11-2015 of the F.A.A., CESTAT, New Delhi, in the case of R.K. Jain v. CPIO, CESTAT <b>(Annexure-9)</b></li><li>10. Copy of the order of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), providing copies of the judicial records under ID No.09-2002/14 <b>(Annexure-10)</b></li><li>11. Copy of the order of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), providing copies of the judicial records under ID No.10-09/15 <b>(Annexure-11)</b></li><li>12. Copy of the order of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), providing copies of the judicial records under ID No.09-154/14 <b>(Annexure-12)</b></li></ol>
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#### **BRIEF FACTS OF THE CASE**

- (1) That the appellant has filed an application dated 31-03-2016 **(Annexure – 1)** under Section 6 of the RTI Act, 2005 requesting for the information specified therein.

- (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 V.P. Pandey, CPIO, Shri A. Mohan Kumar, Registrar and Deemed CPIO and Shri Sunil Kumar, Technical Officer and Deemed CPIO, have deliberately and malafidely not provided complete and correct information as sought by the appellant. The appellant being aggrieved by the said order of the CPIO is filing the present appeal.

#### **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 Shri Sunil Kumar, Technical Officer and Deemed CPIO and Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), have deliberately and malafidely not provided the complete and correct information regarding the pro-active disclosure to be made by the CESTAT in compliance to the provisions of Section 4 of the RTI Act. They have provided incorrect and misleading information. The appellant had a meeting with the concerned officials of the NIC and was given to understand that the CESTAT is not cooperating and delaying the development of its new website. Therefore, the order of the CPIO and the Deemed CPIO are liable to be set aside with direction to provide point-wise information to the appellant within time bound frame and they are 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.
- (3) That the claim of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) that there is a compliance to the proactive disclosure under Section 4 is wrong and denied. The copies of the daily orders are not uploaded on the

website. All final orders & miscellaneous orders are not being uploaded on the website and even the list of pending appeals and applications are not displayed. The current status of the cases is not reflected on the CESTAT website though such facility is available on the websites of all Courts & Tribunals. Display board is also not uploaded on the website. The CPIO and the Public Authority are liable for non-compliance to the provisions of Section 4 of the RTI Act.

- (4) That Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) has deliberately and malafidely denied the information as sought in Point (A)(iii) of the RTI Application by claiming that they are part of judicial records, hence not disclosable, while for last so many years, copies of such records were made available by the CPIO himself, but the appellant got information that the daily orders are being changed in order to verify the same, he sought the information in question, which is being denied on no valid grounds. Denial of such information when the same used to be provided in the past, raises a suspicion about the change of orders, thus, there is a larger public interest. In this regard, Hon'ble Delhi High Court in the case of Dinkar Khindria v. Union of India – 2008 (231) ELT 47 (Del.) **(Annexure-5)** has passed severe strictures against the CESTAT for change of orders by the Members of the CESTAT and held that it amounts to tempering with judicial records. :Therefore, there is a larger public interest in disclosure of the information to contain corrupt practices in the CESTAT. Therefore, the order of the Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) is 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.
- (5) That Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, has erred in denying the information on the ground that the same forms part of "judicial proceeding". They have failed to appreciate that disclosure

of documents relating to “judicial proceeding” is not exempt under the RTI Act. The CIC in **Nanak Chand Arora v. SBI; F.No. CIC/MA/A/2006/00018; dated 30-06-2006** (Annexure 8) has held as under:

*“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...”*

(6) The Hon'ble Delhi High Court in **MCD v. R K Jain; W P (C) No. 14120/2009; date of decision 23-09-2010** (Annexure 7) has 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.”*

(7) Applying the ratio of above rulings, recently the First Appellate Authority of the CESTAT, New Delhi (functioning of which is no different from the present public authority) vide order No. 69/2015 dated 26-11-2015 (**Annexure 9**) allowed the disclosure of information held by CESTAT while observing as under:

*“7. In find from the above judgments of the judicial forum that the case matter which are sub judice before the court or Tribunal is not falling in the category of exempted information in terms of any of the clauses of section 8 (1) of the RTI Act, 2005.*

*8. In view of the foregoing, I do not find any sustenance in the submission of CPIO that information cannot be furnished by the Tribunal when a particular case matter is sub judice before it, in as much as, Tribunal is a judicial body, which decides the appeals in the open court....”*

Thus it is settled that a document which forms part of “judicial proceeding” is not exempt from disclosure under the RTI Act even during the period when such proceedings are pending (i.e. matter is sub-judice) and a third party is entitled to have such information from the Hon'ble Tribunal. Therefore, the order of the CPIO and the Deemed CPIO is liable to be set aside with direction to provide point-wise information to the appellant

within time bound frame and they are 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

- (8) That learned First Appellate Authority has directed the appellant to obtain information under the CESTAT (Procedure) Rules, 1982, but has not referred to any particular rule under which the appellant can obtain the information. It appears that there is no provision in the CESTAT (Procedure) Rules for providing information. Even otherwise, any such provision has to be in harmony to the provisions of the RTI Act, as in the case of any conflict, the provisions of RTI Act will prevail upon as per provisions of Section 22 of the RTI Act. In this situation, the CPIO / Deemed CPIO was under the statutory duty to provide the information since according to them such information was also providable under the provisions of CESTAT (Procedure) Rules, 1982. Therefore, Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, 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.
- (9) That Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, 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 orders of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (10) That there are large scale irregularities and infirmities in the working of the CESTAT due to the ongoing corrupt practices and the appellant is seeking information under RTI in order to bring in transparency and accountability in the working of the CESTAT and also to contain corrupt practices, the appellant has been moving RTI Applications in the CESTAT and the present application is one of them. The CPIOs and

the Deemed CPIOs of the CESTAT in connivance with other officials of the CESTAT are raising one or the other plea to delay and deny the information while the information sought in the present RTI Application is the one which is uploaded on the website of the Supreme Court, the High Courts and the Tribunals. The CAT website besides providing copies of the daily record of proceedings / order sheets also provides a daily report of such orders / proceedings. In order to cover-up the corrupt practices, the CESTAT is not fulfilling its statutory obligations under Section 4 of the RTI Act for making the daily order in public domain. Therefore, they are 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.

(11) That the malafide of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) is reflected from the fact that he had been providing such information to the appellant for number of years (See Annexures 10, 11 & 12) and it is only when the appellant sought information relating to serious irregularities and infirmities in the working of CESTAT, in larger public interest, they are taking the false plea that such information is not covered under RTI. This is only to cover-up the illegalities and irregularities in the working of the CESTAT. Therefore, orders of the CPIO and the 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

(12) That Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) deliberately and malafidely and with a view to delay and deny the information is taking false plea and claiming exemptions which are not applicable to the case. He is denying information despite the orders of the First Appellate Authority, orders of the CIC and decisions of the High Courts. Therefore, Shri V.P. Pandey, CPIO and Assistant Registrar

(Excise) 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.

- (13) 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.
- (14) That the information sought is neither voluminous nor relate to older and larger period, thus could have easily been provided by the learned CPIO.
- (15) 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.
- (16) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (17) 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 : 27-05-2016

received on  
03/08/2016

**APPELLATE AUTHORITY**  
**UNDER RIGHT TO INFORMATION ACT, 2005**  
Customs, Excise & Service Tax Appellate Tribunal  
West Block-2, R.K. Puram, New Delhi-66.

**Appeal No.11-59 (A)/CESTAT/FAA-SKM/2016**  
**CPIO ID NO.11-48/CESTAT/CPIO-VP/2016**

Shri R.K. Jain

...Appellant

Vs.

Shri V.P. Pandey, Asst. Registrar/CPIO

...Respondent

Date of Hearing/Decision: 11.07.2016

**ORDER** 102/2016

Pursuant to the appeal, the appellant has submitted the order dated 18.04.2016 passed by the Hon'ble CIC and the said order is taken into record. The Hon'ble Commission vide paragraph 5 has directed the CPIO to take up the matter with the NIC and to ensure compliance of OM dated 18.04.2016 for implementation of the pro-active disclosure of information within 3 months from the date of receipt of the copy of order.

2. Upon consideration of the facts involved in the case, since the Hon'ble Commission has taken the decision for submission of the information within the specific time frame, respectfully following the said order, I also direct the respondent to comply with the requirement of the appellant in line with the order dated 18.04.2016 passed by the Hon'ble Commission. The appeal is disposed of accordingly.

  
(S.K. MOHANTY)  
APPELLATE AUTHORITY

Copy to:-

1. Shri.R.K.Jain, 1512-B, Bhishm Pitamah Marg, Wazir Nagar, New Delhi-110003,
2. Shri V.P. Pandey, Asst. Registrar/ CPIO, CESTAT, New Delhi.
3. Office Copy

Anitha