

11-67(A)/2016

1555/CR-16
6/6/16

232/SIA/RTI
6/6/16

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

Ref. No. : RTI/P-537/(9870/16)/Appeal/16340

Dated : 03-06-2016

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

Customs Excise & Service Tax
Appellate Tribunal
9 6 JUN 2016
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	Shri V.P. Pandey CPIO & Assistant Registrar
		(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)	19-04-2016	
3.	Details of the order appealed against	Letter ID No. 11-73/2016 dated 30-5-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	30-6-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI Application dated 19-4-2016. (Annexure-1) 2. Copy of CPIO's letter dated 21-4-2016. (Annexure-2) 3. Copy of appellant's reminder dated 2-5-2016 to AR (SM) (Annexure-3) 4. Copy of appellant's reminder dated 2-5-	

		2016 to DR(AR) (SM) ax4 5. Copy of CPIO's letter dated 30-5-2015 (Annexure-5)
--	--	---

BRIEF FACTS OF THE CASE

- (1) That the appellant has filed an application dated 19-04-2016 (**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 and Assistant Registrar has 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 sprit of the RTI Act, 2005 hence liable to be set aside.
- (2) That the Assistant Registrar (SM) and Deemed CPIO and Dy. / Assistant Registrar (Customs, Service Tax & Anti Dumping Bench) and Deemed CPIO have not provided any information despite the RTI Application having been transferred to them. Therefore, they may be directed to provide the information within specified period.
- (3) That Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) has claimed that no information is maintained in his Registry for Point (B) & (D). In such situation, these points should have been transferred to the Hon'ble Members and their SPS, since such information is also held by them. 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.

(4) That the CPIO has deliberately and malafidely denied the information as sought in Point (C) of the RTI Application on the ground that it is part of the judicial records. The same CPIO has been providing such information for years to the appellant and now in order to obstruct the information, he is denying the information on the wrong and false pretext. 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.

(5) That learned First Appellate Authority has erred in denying the information on the ground that the same forms part of "judicial proceeding". He has 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** 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** 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 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...."

- (8) 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). Therefore, the impugned order is wholly incorrect and contrary to the settled position of law. Hence, it is liable to be set aside.
- (9) That the CPIO has failed to appreciate that the provision of RTI Act have the overriding effect over all other enactments in terms of Section 22 of the RTI Act. The Public Authority is, therefore, required to provide the information under the provisions of RTI Act. The impugned order is, therefore, liable to be set aside.
- (10) That it is important to mention herein that the CESTAT has been providing such information since the enactment of the RTI Act, but has now objected because in the present case the application in question was listed for hearing after 10 years. Therefore the denial of information is nothing but an attempt to cover up their wrongful actions. Therefore, the impugned order is liable to be set aside.
- (11) That Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) has wrongly denied the information as sought in Point (G) of the RTI Application on the ground that such information is contained in weekly statement of dispatch of all judicial orders, whereas the despatch list does not indicate the date of the order, therefore, the information sought is not available on the website. The CPIO has wrongly denied the information. 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.
- (12) 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.

- (13) That the information sought is neither voluminous nor relate to older and larger period, thus could have easily been provided by the learned CPIO.
- (14) 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.
- (15) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (16) 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 : 03-06-2016

Received 5th
4/08/16

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.11-067(A)/CESTAT/FAA- SKM/2016
Appeal No.10-052(A)/CESTAT/FAA- SKM/2016
CPIO ID NO. 10-73/2016

Shri R.K.Jain ...Appellant

Vs.

CPIO, CESTAT ...Respondent

Date of decision: 20.07.2016

ORDER 29/16

Pursuant to appeal filed by the appellant, the CPIO submits that the information with regard to Point No. 4A, concerning the copy of order reserve register has already been provided. With regard to Point Nos. 4B & 4D, the submission of the CPIO is that the list called for by the appellant are not maintained in the Registry. With regard to Point No. 4C, the CPIO has no objection in providing the information, but he submits that the appellant has to specifically state as to the appeal reference viz. Numbers, name of party etc. in advance. He further submits that with regard to Point No. 4E & 4F, the information have already been provided vide letter dated 30.05.2016 etc.

2. I accept the submissions of CPIO. Since the information in respect of Point Nos. 4A, 4E & 4F have already been provided to the appellant, the appeal filed by him is not maintainable, and thus, is dismissed.

3. With regard to Point No. 4B & 4D, since no specific lists are being maintained in the Registry, the same cannot be furnished. Accordingly, the appeal is dismissed.

4. As regards, Point NO. 4C, I direct the appellant to furnish the information regarding the appeal, specifying the number, name of party etc., for which the information is required. On receipt of specific request from the appellant with regard to the particulars of appeal, the same shall be furnished by the CPIO within 4 weeks from the date of receipt of the request letter.

5. The appeal is disposed of in above terms.

S.K. Mohanty
29.07.2016
(S.K. MOHANTY)
APPELLATE AUTHORITY

Copy to:-

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