

11-71(A)/2016

1743/CR-16
29/6/16
24/6/16
36/6/16

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

Ref. No. :RTI/P-537/(9903/16)/Appeal/16375

Dated : 27-06-2016

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

West Block No.-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) V.P.Pandey, CPIO & Asst.Registrar (Excise) (2) Mohinder Singh, Dy. Registrar, Customs/ST Bench (3) Balwant Kumar Bharti, AR (SM) & Deemed CPIO
		(b) Address	Customs Excise & Service Tax Appellate Tribunal, West Block 2, R.K.Puram, New Delhi - 110066
2.	Date of application	25-04-2016	
3.	Details of the order appealed against	ID No.11-78/16 wrongly dated 16-5-2016 received on 17-6-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	17-7-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI application dated 25-4-2016.(Annexure-1) 2. Copy of CPIO's letter dated 29-4-2016.(Annexure-2) 3. Copy of CPIO's letter dated 16-5-2016 (wrongly dated since received on 17-6-2016) (Annexure-3) 4. Copy of letter dated 24-2-2016 of the	

	<p>CPIO (Annexure-4)</p> <p>5. Copy of Order No. 69 of 2015 of the F.A.A, CESTAT, New Delhi (Annexure-5)</p> <p>6. Copy of CIC Order in the case of G.M. Gupta v. NGT (Annexure-6)</p> <p>7. Copy of Full Bench (4 Commissioners) decision of the CIC in the case of C. Ramesh v. DoPT holding Section 22 of the RTI Act overrides all existing laws which were in existence on the date of its enactment (Annexure-7)</p> <p>8. Copy of Delhi High Court decision in the case of Dy. Commissioner of Police v. D.K. Sharma holding that provisions of RTI Act overrides the provisions of Cr.P.C., as per Section 22 of the RTI Act. (Annexure-8)</p> <p>9. Copy of Supreme Court decision in the case of RBI v. J.N. Mistry holding that provisions of RTI Act override all earlier practices and laws as per Section 22 of the RTI Act. (Annexure-9)</p> <p>10. Copy of Supreme Court decision in the case of CBEC v. Aditya Bandopadhyay holding that as per section 22 RTI Act overrides all contrary rules and regulations (Annexure-10)</p> <p>11. Copy of Delhi High Court decision in the case of UOI v. Col. P.P.Singh holding that as per Section 22, RTI Act overrules Army Rules (Annexure-11)</p> <p>12. Copy of Delhi High Court decision in the case of UOI v CIC holding that RTI Act overrides Indian Evidence Act as per section 22 of the RTI Act (Annexure-12)</p>
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BRIEF FACTS OF THE CASE

- (1) That the appellant has filed an application dated 25-04-2016 (**Annexure – 1**) under Section 6 of the RTI Act, 2005 requesting for the following information:

- (A) Please provide the copies of the following orders passed by CESTAT, New Delhi.
- (i) Order No.538-545/2007-EX, dated 31-10-2007 (UOI v. Hindustan Zinc Ltd.)
 - (ii) Order No.1749/2007-SM, dated 04-12-2007 (CCE, Jaipur v. Azad Body Builders Pvt. Ltd.)
 - (iii) S.Order No.466/2008-ST, dated 21-11-2008 (Banny Agencies v. CCE)
 - (iv) S.Order No.798/2010-EX, dated 25-10-2010 (Munjhal Plywood Industries Pvt. Ltd. v. CESTAT)
 - (v) Order No.370-371/2011-EX, dated 08-04-2011 (J.K. Cement Works v. CCE, Jaipur)
 - (vi) Order No.11/2012-SM, dated 02-01-2012 (Agarwal Colour Advanced Photo System v. CESTAT, New Delhi)
 - (vii) Order No.28-29/2012-EX, dated 17-01-2012 (CCE, Jaipur v. J.K. Cement Works)
 - (viii) S.Order No.57191/2013-EX, dated 19-03-2013 (Friends Auto Industries v. CESTAT, New Delhi)
 - (ix) Order No.57653/2013-CUS, dated 10-09-2013 (PEE GEE International v. CC, New Delhi)
 - (x) Order No.946/2005-NB (A) & CMWP No.1362/2005, dated 16-11-2005 & 07-10-2005 (Mukesh Kumar Gupta v. CC & CE & Anr.)
 - (xi) M.Order No.209-211/2006-NB (A), dated 8-9-2006 (Modern Time Industries & Ors. v. CC, Mumbai)
 - (xii) S.Order No.665/2012-Ex, dated 17-4-2012 (Haryana Steel & Alloys Ltd. v. CCE, Rohtak)

Note:-Please provide point-wise information/response for each of above points.

- (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 (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & Deemed CPIO have deliberately and malafidely denied the information on the false pretext that it is a part of the judicial record and is obtainable only under the provisions of CESTAT Procedures Rules, 1982 and even otherwise they have been supplied to the Excise Law Times of which the applicant is the Editor. The appellant being aggrieved by the said order of the CPIO is filing the present appeal.
- (4) The Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & 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.

GROUNDS OF APPEAL

- (1) That the orders in question of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & Deemed CPIO are 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 V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & Deemed CPIO have

deliberately and malafidely denied the copies of the CESTAT orders sought under the RTI Application on the false pretext that they are the part of judicial record and they can be obtained under CESTAT Procedures Rules, 1982. The malafide of the CPIOs is reflected from the fact that in the past they had been supplying such information under RTI to the appellant. Moreover, such orders are also placed on the CESTAT website, therefore, they are proactively disclosable under Section 4 of the RTI Act. The claim of the CPIO and Deemed CPIOs that orders sought for are part of judicial record is not correct, because these orders are kept in guard file, as is evident from **Annexure-4**. Therefore, the orders of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & 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.

- (4) That even if it is assumed that the copies of the orders sought by the appellant are part of judicial record of CESTAT, they are disclosable under the RTI as per order No. 69 of 2015 passed by the F.A.A. in the case of R.K. Jain v. CPIO, CESTAT (**Annexure-5**). Recently, CIC in the case of G.M Gupta v. NGT (**Annexure-6**) has held that the CPIO, NGT, is bound to provide copies of the judicial record under RTI. Thus, the CPIO and the Deemed CPIOs are deliberately and malafidely obstructing the information. Therefore, the orders of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & 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.

- (5) That as per the provisions of Section 22 of the RTI Act, all rules, regulations, orders and directions inconsistent with the provisions of the RTI Act shall be overridden by the RTI Act. Therefore, the provisions of CESTAT Procedure Rules, 1982 and the orders and instructions issued thereunder cannot be pressed into service for denying the information in question because of the overriding effect of the RTI Act. In this respect the appellant is **enclosing** herewith copies of the extract of Hon'ble Supreme Court decision in the case of RBI v. J.N. Mistry (**Annexure-9**) and CBEC v. Aditya Bandopadhyay (**Annexure-10**) and Delhi High Court decision in the case of Dy. Commissioner of Police v. D.K. Sharma (**Annexure-8**), UOI v. Col. P.P.Singh (**Annexure-11**) and UOI v. CIC, (**Annexure-12**) which clearly hold that the provisions of the RTI Act overrides all existing laws, rules & regulations. Even a four Member Bench of CIC in the case of C.Ramesh v. DoPT (**Annexure-7**) has taken a similar decision. The CPIO & Deemed CPIO are deliberately and malafidely denying the information by making a departure from the existing practice as well as ignoring the binding decision of the CIC, Delhi High Court and the Hon'ble Supreme Court so as to deliberately and malafidely deny the information to cover up the illegalities, irregularities and malpractices in the CESTAT. Therefore, the orders of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & 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
- (6) That merely because the copies of the orders of the CESTAT have been provided to a journal of which the applicant is the Editor is no ground to

deny the information when a specific RTI Application has been moved and proper RTI Fee has been paid. Moreover, this plea of the CPIO and the Deemed CPIOs establishes that the information is not confidential, secret banned or barred from disclosure. Once it is admitted that information has once been supplied to someone in the public, it cannot be denied to the appellant on any ground. Therefore, the orders of Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Shri Balwant Kumar Bharti, AR (SM) & 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

- (7) 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/Deemed CPIOs is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (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 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 Shri V.P. Pandey, CPIO and Assistant Registrar (Excise), Shri Mohinder Singh,

