

~~4307/CR/2016~~
~~19/12/2016~~

~~11-99 (A)/2016~~
~~CPIO~~

R. 1
20/12

~~20/12/16~~

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

~~46/VP/2016~~
~~20/12/2016~~

To

Shri V. Padmanabhan
Hon'ble 1st Appellate Authority & Member (T)
Customs, Excise & Service Tax Appellate Tribunal,
West Block 2, R.K.Puram,
New Delhi - 110066

Ref. No. : RTI/P-537/(9627/15)/Appeal/16644

Customs, Excise & Service Tax
Appellate Tribunal
Dated: 16-12-2016
19/12
West Block No. 2, R.K. Puram,
New Delhi-110066

19/12

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 & Asst. Registrar (2) Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) 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)	26-12-2015	
3.	Details of the order appealed against	ID No.10-242/15 dated 25-11-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	25-12-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI application dated 26-12-2015. (Annexure-1)	

2. Copy of CPIO's letter dated 22-1-2016. (Annexure-2)
3. Copy of Appellant's letter dated 28-1-2016. (Annexure-3)
4. Copy of 1st Appeal dated 8-2-2016 filed with the F.A.A. (Annexure-4)
5. Copy of Appellate Order dated 29-7-2016 passed by First Appellate Authority. (Annexure-5)
6. Copy of Appellant's letter dated 9-8-2016. (Annexure-6)
7. Copy of CPIO's letter dated 10-8-2016. (Annexure-7)
8. Copy of CPIO's letter dated 2-9-2016. (Annexure-8)
9. Copy of Appellant's letter dated 7-9-2016. (Annexure-9)
10. Copy of CPIO's letter dated 25-11-2016. (Annexure-10)

BRIEF FACTS OF THE CASE

- (1) That the appellant has filed an application dated 26-12-2015 (Annexure - 1) under Section 6 of the RTI Act, 2005 requesting for the information as specified in para 4 thereof.
- (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 & Asst. Registrar and Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Deemed CPIO, have deliberately and malafidely failed to provide complete and correct information as sought by the appellant within the specified period. Initially, they did not provide any information and the appellant has to file an Appeal No.16134 dated 08.02.2016 against the

deemed refusal. The Appellate Authority by decision dated 19-4-2016 directed for providing the information within six weeks. Despite such directions of the First Appellate Authority, the appellant did not provide complete and correct information and only provided part information on 25-11-2016 with a delay of 330 days, as the RTI Application is dated 22-12-2015. In relation to the information sought in Point (A) (vi) of the RTI Application, the CPIO and the Deemed CPIO have claimed that the records are missing. While in relation to Point (A) (iii) & (vii) of the RTI Application, the CPIO and the Deemed CPIO have claimed that the records have been transferred to CESTAT, Allahabad, but they have not forwarded / transferred the RTI Application to the holder of the information. The appellant being aggrieved by the said order of the CPIO / Deemed CPIO is filing the present appeal.

- (4) The CPIO and the 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 Shri V.P.Pandey, CPIO & Asst. Registrar and Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Deemed CPIO have failed to provide the following information as sought by the appellant as per seriatim of the RTI Application.
- (3) That Shri V.P.Pandey, CPIO & Asst. Registrar and Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Deemed CPIO has failed to appreciate that the information in question has been sought by the appellant in larger public interest, therefore it cannot be denied as per the provisions of Section 8(2) of the RTI Act.

- (4) That Shri V.P.Pandey, CPIO & Asst. Registrar and Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Deemed CPIO, have deliberately and malafidely failed to provide complete and correct information as sought by the appellant within the specified period. Initially, they did not provide any information and the appellant has to file an Appeal No.16134 dated 08.02.2016 against the deemed refusal. The Appellate Authority by decision dated 19-4-2016 directed for providing the information within six weeks. Despite such directions of the First Appellate Authority, the appellant did not provide complete and correct information and only provided part information on 25-11-2016 with a delay of 330 days, as the RTI Application is dated 22-12-2015. In relation to the information sought in Point (A) (vi) of the RTI Application, the CPIO and the Deemed CPIO have claimed that the records are missing. While in relation to Point (A) (iii) & (vii) of the RTI Application, the CPIO and the Deemed CPIO have claimed that the records have been transferred to CESTAT, Allahabad, but they have not forwarded / transferred the RTI Application to the holder of the information. Therefore, the order of the CPIO and Deemed CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame
- (5) That since the records in relation to which the information has been sought by the appellant in Point (A)(vi) are missing from the CESTAT, it is prayed that as per Delhi High Court decision in the case of Union of India v. Vishwas Bhamburkar – W.P. (C) 3660/2012 & CM 7664/2012 decided on 13.09.2013, an enquiry by an Office not below the rank of Jt. Secretary, may be instituted for tracing out the records and fixation of the responsibility for the missing records and in case the records are still not traceable, then a police complaint may be filed in the matter.
- (6) That the CPIO / Deemed CPIO may be directed to transfer the RTI Application in relation to which the information is held by the CPIO, CESTAT, Allahabad.

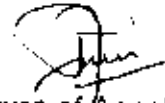
- (7) That the CPIO / Deemed CPIO have deliberately and malafidely first did not provide any information within 30 days and the appellant was compelled to file Appeal against deemed refusal as Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Deemed CPIO, did not respond to the direction given to him by the CPIO to provide information by 22-1-2016. Even despite the order of the First Appellate Authority, the information was not provided within the specified period of six weeks rather it was provided after 15 weeks and that too, the incomplete information was provided. The CPIO and the Deemed CPIO are therefore, liable for penal action for causing delay and obstruction to the information without any reasonable cause.
- (8) That the CPIO and the Deemed CPIO have deliberately and malafidely did not provide the complete and correct 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 CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (9) That as per proviso to Section 8(1) of the RTI Act, 2005, the information which cannot 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.
- (10) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (11) 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 / Deemed CPIO may be set aside to the extent it has been appealed against and CPIO/Deemed CPIO may be directed to provide the information in question within 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 : 16-12-2016

18/3/17

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK 2, R.K. PURAM, NEW DELHI 110 066

APPELLATE AUTHORITY

Date of Hearing/Decision : 08.03.2017

Appeal No. 11/99 (A)/2016

CPIO ID No. 10-242/2015

Shri R.K. Jain ... Appellants

Vs.

Shri V.P. Pandey, Asst. Registrar ... Respondent

Appearance

Rep. by - Shri R.K. Jain, the appellant

Rep. by - Shri V.P. Pandey, Asst. Registrar, CPIO for respondent.


Coram: Hon'ble Mr. V. Padmanabhan, Member (Technical)

Order No. 02/2017

Shri R.K. Jain submitted information sought have not been provided.

2. It is ordered that information at point 'A-IV', i.e. copy of order for the Larger Bench, if any, may be provided. Information at points A-III, A-VII, the application may be transferred to Allahabad bench as the information pertaining to Allahabad bench.

3. As regards the information at point A(vi), it is directed that serious efforts may be put in to trace the file and to submit the compliance report to the undersigned, within 06 weeks from receipt of the order.


(V. Padmanabhan)
Appellate Authority

Copy to :

1. Shri R.K. Jain, 1512, Bhisim Pitamah Marg
Wazir Nagar, New Delhi – 110 003
2. Shri V.P. Pandey, Assistant Registrar/ CPIO, CESTAT, New Delhi
3. Office Copy.