

Customs Excise and Service Tax Appellate Tribunal
West Block No 2, R.K. Puram, New Delhi-110 066

16

FAA Section


Dated: 11.09.2018

Sub: Forwarding of Hon'ble FAA's Order - reg.

Sir,

I am directed to forward herewith the copies of the following Orders passed by Hon'ble First Appellate Authority, CESTAT, New Delhi.

1. 15/2018 in CPIO ID No. 12-54/2017 dt. 30.08.2018
2. 16/2018 in CPIO ID No. 13-49/2018 dt. 30.08.2018


SPS/PA to the Hon'ble FAA

Encl.

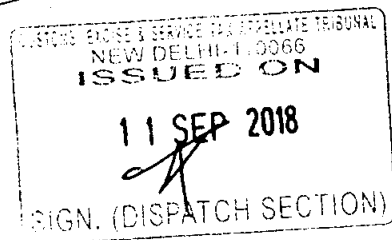
1. Copies of the Ld. FAA's orders.

To:

1. Shri R. K. Jain, 1512-B,
Bhishma Pitamaha Marg,
Wazir Nagar,
New Delhi- 110003

2. CPIO, CESTAT, New Delhi





Review
10/09/18
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APPELLATE AUTHORITY
UNDER RIGHT TO INFORMATION ACT, 2005
Customs, Excise & Service Tax Appellate Tribunal
West Block-2, R.K. Puram, New Delhi-110066.

Appeal No.13-01(A)/CESTAT/FAA-RG/2018
CPIO ID NO.13-49/CESTAT/CPIO-VPP/2018

Shri R.K. Jain

...Appellant

Vs.

**Shri V.P. Pandey, Asst. Registrar,
CPIO, CESTAT, New Delhi.**

...Respondent

Date of Hearing: 30.08.2018

ORDER 16/2018

In furtherance of notice dated 21.08.2018 Mr. R.K.Jain appeared for the appellant and Mr. V.P. Pandey, Asst. Registrar/CPIO alongwith Mr. Mahinder Singh, D.R. (In-charge, Central Registry) appeared for the Department.

2. Arguments heard.

3. The appellant has impressed upon that vide the impugned order dated 18th July, 2018 it has been informed that the registry does not maintain any record in the form applicant has sought information. It is submitted that the appellant has not required the information in any prescribe form. He only required the information of files which are pending registration for more than 30 days as on 1st June, 2018 alongwith the reasons for keeping those matters in abeyance. He also required the

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information about the matters where defect has not been cured during the last 2 months.

4. It is also submitted that the Registry has earlier provided the similar information. Copy of the letter of Central Registry dated 5th June, 2014 is placed on record.

5. The Department, on the other hand, has submitted that actually never any record was maintained for the matters lying in defect. These were registered only after the defects were removed and registration No. to the matter was assigned. However, recently the Registry has started preparing the digitized record of the matters received in defect that too in furtherance of the office order dated 28.08.2018.

6. After hearing both the parties and perusing the record as well as the Office Order dated 28.08.2018, I observe that the Central Registry of this Tribunal has been directed to maintain a Register for defected appeals with necessary entries with immediate effect. The dealing Assistant is directed to make upto date entries in the Register and keeping the matter alive with a gap of maximum 3 weeks until the defects are rectified or appropriate orders are passed by the Bench/ the competent authority. It becomes clear that prior to this office order there was no mandate upon the Registry to maintain the record for defective appeals.

7. No doubt the appellant has placed on record an order vide which the Registry has earlier given the details of pending defect memos to the appellant. But it is apparent from the submissions of the Department that the said information was given after too much wastage of official time. There is an observation of **Hon'ble Supreme Court on Right to Information Act, 2005 in Civil Appeal No.6454 of 2011 arising out of SLP[C] No.7526/2009 in the case titled as Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.** as follows:-

"At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information, that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such Information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to. an applicant, nor required to obtain and furnish any 'opinion' or



'advice' to an applicant. The reference to 'opinion' or "advice' in the definition of (information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

7. Keeping in view the same the wastage of public time is held not permissible for the meticulous exercise of physical verification for providing the impugned detail. However, since it has come as an admission that registry has maintained some record since 28.08.2018 in furtherance of the aforesaid office order, the Registry is hereby directed to provide the copy of the said record to the appellant. In the given circumstances the entire information as asked for is opined not feasible. However, the above record be given to the appellant **within 3 weeks** of receipt of this order. The appeal accordingly stands partly allowed.



(RACHNA GUPTA)

APPELLATE AUTHORITY

Copy to:-

1. Shri.R.K.Jain, 1512-B, Bhishm Pitamah Marg, Wazir Nagar, New Delhi-110003, w.r.t. letter No. RTI/P-537/ (10637/18) /Appeal/ **16806 dated 28.07.2018.**
2. Shri V.P. Pandey, Asst. Registrar / CPIO, CESTAT, New Delhi.
3. Office Copy

(11)

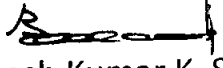
F.No. 01(05)/Circular/CESTAT/2017
Customs, Excise & Service Tax Appellate Tribunal
West Block No. 2, R.K. Puram, New Delhi-110066

Date 28.08.2018

OFFICE ORDER

The Central Registry shall maintain a register for defective appeals with necessary entries therein with immediate effect.

The officer in-charge of the Central Registry shall issue the defect memo in the first instance. The defective appeals are to be put up to the Registrar for rectification/further orders. The dealing assistant shall make upto date entries in the register and keep the matter alive with a gap of maximum 3 weeks until the defects are rectified or appropriate orders are passed by the Bench/competent authority.


(Bineesh Kumar K. S.)
Registrar

Copy to:-

1. SPS to Hon'ble HOD, CESTAT, New Delhi.
2. Deputy Registrar (Judicial), CESTAT, New Delhi.
3. Central Registry, CESTAT, New Delhi.
4. Office Copy/website/office copy/Guard file.

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-2 R.K.PURAM
New Delhi-110066

Dated: 21.08.2018

Notice for Hearing

The Hon'ble First Appellate Authority, Ms. Rachna Gupta, Member (Judicial), CESTAT, New Delhi, shall hear the following appeals on **30.08.2018 at 03.30 PM** filed by Shri R. K. Jain. under the provisions of RTI Act, 2005.

Sl. No.	CPIO Appeal No.	Against CPIO ID No.	Appeal No. of Appellant	Name of the Applicant
01.	Appeal No.12-39(A)/2017	12-54/2017	16780/2017	Sh. R.K. Jain
02	Appeal No. 13-01(A)/2018	13-49/2018	16806/2018	Sh. R.K. Jain

I am directed to inform all concerned to be present for hearing on **30.08.2018 at 03.30 PM** with relevant document in the Chamber of the First Appellate Authority, CESTAT, New Delhi.

It is made clear that in case of failure on the part of the appellant to appear before the Appellate Authority on scheduled date & time, it will be presumed that the appellant has nothing more to say and the appeal shall be disposed of based on available records.

Note:- 1. If the applicant has already filed 2nd appeal before the Hon'ble CIC, then this notice may be ignored and a copy of the same may be placed at the time of hearing in relation to that matter.


SPS/PA to Member (Judicial)
First Appellate Authority

To

1. Shri R. K. Jain,
1512-B, Bhishma Pitamaha Marg,
Wazir Nagar, New Delhi-110003
2. Dy. Registrar (Admin) **For Sl. No. 1**
3. In-Charge, C. R. Section/T. O. **For Sl. No. 2**
4. CPIO, CESTAT, New Delhi. **For both**
5. Guard file/office copy

Appeal No. 13-01(A)/2018

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

Ref. No. : RTI/P-537/(10637/18)/Appeal/16806

Dated : 28-07-2018

To

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

[Handwritten signature]
31/7

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	CPIO & Deemed CPIO/Technical Officer
		(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)	07-07-2018	
3.	Details of the order appealed against	Letter F. No. 13-49/CESTAT/CPIO-ND/VPP/2018, dated 18-7-2018, received on 23-7-2018	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	23-8-2018	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI Application dated 7-7-2018 (Annexure-1) 2. Copy of CPIO's Letter dated 10-7-2018 (Annexure-2) 3. Copy of CPIO's Letter dated 18-7-2018 (Annexure-3)	

2/RA/RTI/18
1/8/18



sought by the appellant is the one which is even otherwise maintained in normal course of functioning of any Tribunal as the defective appeals, applications and cross objections cannot be kept pending for indefinite period. The denial of information on wrong and non-existing ground establishes that there are number of appeals, applications and cross objections which are kept pending beyond a reasonable period which results in forum shopping, therefore, there is a larger public interest in disclosure of the information to contain the malfunctioning in this respect. Therefore, the order of the CPIO/Deemed CPIO is liable to be set aside with direction to provide complete and correct information to the appellant within time bound frame.

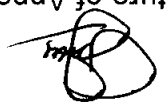
- (4) That the CPIO/Deemed CPIO has failed to appreciate that the information in question has been sought by the appellant in larger public interest, therefore it cannot be denied as per the provisions of Section 8(2) of the RTI Act.
- (5) That the CPIO has erred in not providing the complete and correct 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 is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (6) 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.
- (7) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (8) 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.

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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 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 : 28-07-2018

BRIEF FACTS OF THE CASE

- (1) That the appellant has filed an application dated 07-07-2018 (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 the CPIO and Deemed CPIO have failed to provide complete and correct information as sought by the appellant within the specified period. The appellant being aggrieved by the said order of the CPIO is filing the present appeal.

GROUND OFS 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 the Deemed CPIO/Technical officer has erred in not providing the information on the ground that the information sought is not maintained in the form as sought by the appellant. The appellant has not sought the information in any particular form. As per para 4.3 of the Judicial Manual of the CESTAT, the Technical Officer/Assistant Registrar concerned are required to number the defective appeals, applications and cross objections in a separate series and these numbers are also to be indicated in the defect memo or the notice of defect. Thus, there is a provision for maintenance of separate records for the defective appeals, applications and cross objections and claim of the CPIO/Deemed CPIO is incorrect. Therefore, the order of the CPIO/Deemed CPIO is liable to be set aside with direction to provide complete and correct information to the appellant within time bound frame.

- (3) That the CPIO/Deemed CPIO has failed to appreciate that information

