

11.53(A)/2016

1388/CP-16
24/5/16

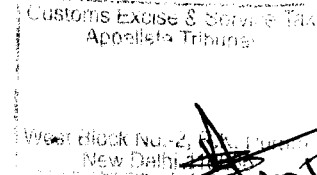
First Appeal under Section 19 of the Right to Information Act, 2005

Ref. No. : RTI/P-537/(9626/15)/Appeal/16301

Dated : 23-05-2016

212/SPS/RTI/14
24/5/16
To

1st Appellate Authority Under RTI Act, 2005,
Customs, Excise & Service Tax Appellate Tribunal,
West Block 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	Shri V.P. Pandey 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	Letter ID No. 11-62/2016 dated 10-5-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	10-6-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI Application dated 26-12-2015. (Annexure-1) 2. Copy of CPIO's letter dated 13-4-2016 (Annexure-2) 3. Copy of Appellant's letter dated 23-4-2016 addressed to Registrar. (Annexure-3) 4. Copy of Appellant's letter dated 23-4-2016 address to DR(A) (Annexure-4) 5. Copy of Appellant's letter dated 23-4-2016 addressed to SPS to Hon'ble	

		President. (Annexure-5) 6. Copy of CPIO's letter dated 10-5-2016. (Annexure-6) 7. Copy of Delhi High Court order dated 13-9-2013 in case of UOI v. Vishwas Bhamburkar. (Annexure-7)
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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 following information:

(A) *The Director, Department of Revenue, HQ, under the directions of the Finance Minister, has handed over a note on my complaint regarding changing of order by Member of the CESTAT to the President of the CESTAT on 29-10-2009 from File No. F.28-4/2009-Ad.IC. Please provide datewise details of the report/response/ correspondence received from the CESTAT in respect to the said note and also provide copies of all response and provide copies of the reply / correspondence received in this respect and also provide copies of the further correspondence.*

(B) *In case no response / reply has been received from the CESTAT against the aforesaid note delivered to the President, CESTAT on 29-10-2009, please provide details of the steps taken and reminders sent to the CESTAT in furtherance to my complaint and note delivered to the President, CESTAT on 29-10-2009.*

(C) *Please provide datewise details of the action taken on my complaints referred to in the said note given to the President, CESTAT on 29-10-2009 regarding change of orders by the CESTAT.*

(D) *Please provide certified copy of the note given to the President, CESTAT on 29-10-2009.*

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 the appellant filed an RTI application with the CPIO of Ad-IC section of the Deptt. of Revenue. The said application was transferred to the CPIO, CESTAT as per the directions given by the First Appellate Authority of Deptt of Revenue vide order dated 18-3-2016 (**Annexure-6**). Subsequently, the CPIO of the CESTAT by order dated 13-4-2016 ax2 forwarded the said application to Shri S.C. Das, deemed CPIO and SPS of the President, CESTAT, Shri A. Mohan Kumar, Registrar and Deemed CPIO and Shri Bineesh Kumar, Dy. Secretary (Admn.) & Deemed CPIO, These Deemed CPIOs 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 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 S.C. Das, deemed CPIO and SPS of the President, CESTAT, and Shri A. Mohan Kumar, Registrar and Deemed CPIO have deliberately and malafidely not provided complete and correct information as sought by the appellant on the ground that no information in this regard is available. 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.
- (4) That Shri Bineesh Kumar, Dy. Secretary (Admn.) & Deemed CPIO, has not responded to the RTI application. Therefore, he may be directed to

provide the information in question to the appellant within time bound frame.

- (5) That since the records in relation to which the information has been sought by the appellant, are missing from the Department of Revenue, 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 information sought by the appellant relates to the corrupt practices going on in CESTAT regarding change of orders in CESTAT on considerations other than legal. Therefore the information sought is in larger public interest and the file in question is sensitive where a note was personally delivered to the President CESTAT on a decision taken by the FM. 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.
- (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 is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (8) That the information sought is neither voluminous nor relate to older and larger period, thus could have easily been provided by the learned CPIO.
- (9) 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.
- (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 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 : 23-05-2016

Received
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.11-53(A)/CESTAT/FAA-SKM/2016
CPIO ID NO.11-62/CESTAT/CPIO-VP/2016

Shri R.K. Jain ...Appellant

Vs.

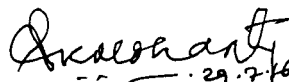
Shri V.P. Pandey, Asst. Registrar/CPIO ...Respondent

Date of Hearing/Decision: 11.07.2016

ORDER 10/2016

The concerned RTI Application involved in this appeal is dated 26.12.2015 which was addressed by the appellant to Shri S. Bhowmick, CPIO and Under Secretary, AD-IC Section, Ministry of Finance, Department of Revenue. Appeal against the said RTI Application was disposed of by the First Appellate Authority in the Ministry of Finance, Department of Revenue vide order dated 18.03.2016. In the said order, direction was given to CPIO, CESTAT to see whether information contained in the application is available therein. In response to the order passed by the FAA of Department of Revenue, the Registrar vide his letter dated 06.05.2016 has confirmed that no information in context with the subject is available in CESTAT.

2. In view of the fact that the Registrar, CESTAT has specifically denied that the information are available, I am of the view that there is no occasion /scope to produce the information sought for by the appellant in this appeal. Therefore, the appeal filed by the appellant is dismissed.


(S.K. MOHANTY)
APPELLATE AUTHORITY

Copy to:-

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

Anitha