

11-60(A)/2016

1487/CR-16  
30/5/16

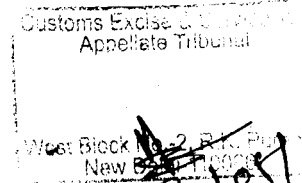
**First Appeal under Section 19 of the Right to Information Act, 2005**

Ref. No. : RTI/P-537/(9864/16)/Appeal/16321

Dated : 27-05-2016

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	(1) Shri Balwant Kumar Bharti Assistant Registrar (Single Member) (2) 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	18-04-2016	
3.	Details of the order appealed against	Letter ID No. 11-70/2016 dated 16-5-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	16-6-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI Application dated 18-4-2016. (Annexure-1) 2. Copy of CPIO letter dated 21-4-2016. (Annexure-2)	

		<ol style="list-style-type: none"><li>3. Copy of CPIO letter dated 16-5-2016. <b>(Annexure-3)</b></li><li>4. Copy of CIC Order dated 29-4-2016 in the case of Girish Mohan Gupta <b>(Annexure-4)</b></li><li>5. Copy of Delhi High Court decision in the case MCD v. R.K. Jain <b>(Annexure-5)</b></li><li>6. Copy of CIC Order in the case of Nanak Chand Arora <b>(Annexure-6)</b></li><li>7. Copy of decision dated 26-11-2015 of the F.A.A., CESTAT, New Delhi, in the case of R.K. Jain v. CPIO, CESTAT <b>(Annexure-7)</b></li><li>8. Copy of order of the Assistant Registrar (Single Member) and Deemed CPIO of CESTAT, New Delhi, providing copy of the judicial records under ID No.09-2002/14 <b>(Annexure-8)</b></li><li>9. Copy of order of the Assistant Registrar (Single Member) and Deemed CPIO of CESTAT, New Delhi, providing copy of the judicial records under ID No.10-09/15 <b>(Annexure-9)</b></li><li>10. Copy of order of the Assistant Registrar (Single Member) and Deemed CPIO of CESTAT, New Delhi, providing copy of the judicial records under ID No.09-154/14 <b>(Annexure-10)</b></li></ol>
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#### BRIEF FACTS OF THE CASE

(1) That the appellant has filed an application dated 18-04-2016 (**Annexure – 1**) under Section 6 of the RTI Act, 2005 requesting for the following information:

*(A) Please provide copies of all the record of proceedings / order sheets (daily orders) passed by all the Benches of the CESTAT from 11-4-2016 or from 18-4-2016 till the date of providing the information. The applicant is not interest in having final orders and miscellaneous orders which are numbered and placed CESTAT website.*

*NOTE: (1) The applicant is interested in having the record of proceedings / order sheets (daily orders) on continued basis till they are placed on the CESTAT website, therefore, they may be photocopies on daily basis before the files are distributed according to next date of hearing. This will save lot of time and energy and help in quick and easy dissemination of information. The applicant is ready to deposit the fee in advance or any other method or system devised by CESTAT. Even the scanned digital copies can also be provided to the applicant.*

*(2) The applicant is compel to make this application as the CESTAT has failed to make proactive disclosure of the above information on its website, as per the mandatory requirement of Section 4 of the RTI Act.*

**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 Balwant Kumar Bharti, Assistant Registrar (SM) & Deemed CPIO and Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, have deliberately and malafidely denied the information under RTI on the false pretext that information sought can only be obtained under the CESTAT Procedure Rules, 1982, while the CPIO and the Deemed CPIO have been supplying such information for years as the provisions of RTI Act are clear in this respect. The appellant being aggrieved by the said order of the CPIO is filing the present appeal.
- (4) The Shri Balwant Kumar Bharti, Assistant Registrar (SM) & Deemed CPIO and Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, 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 and the Deemed 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 Balwant Kumar Bharti, Assistant Registrar (SM) & Deemed CPIO and Shri V.P. Pandey, CPIO, have deliberately and malafidely denied the information under RTI on the false pretext that information sought being part of the judicial proceedings, can only be obtained under the CESTAT Procedure Rules, 1982. The malafide of the CPIO and the Deemed CPIO is reflected from the fact that had been providing such information to the appellant for number of years (See Annexures 8, 9 & 10) and it is only when the appellant sought information relating to serious irregularities and infirmities in the working of CESTAT, in larger public interest, they are taking the false plea that such information is not covered under RTI. This is only to cover-up the illegalities and irregularities in the working of the CESTAT. Therefore, orders of the CPIO and the Deemed CPIO are liable to be set aside with direction to provide point-wise information to the appellant within time bound frame and he is 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
- (3) That recently the CIC in the case of Girish Mohan Gupta v. NGT, by order dated 29-4-2016 (**Annexure-4**) has held that the RTI Act prevails over all other legislations as per Section 22 and Section 8(2) of the RTI Act and the CPIO and the Deemed CPIO cannot refuse the information or inspection on the pretext that the appellant is not a party to the case

before the Tribunal. The CIC taking serious view about the conduct of the CPIO and the Deemed CPIO in obstructing the information from the judicial records of NGT, recommended disciplinary action against the Assistant Registrar & Deemed CPIO and also issued Show Cause Notice to the CPIO for imposition of penalty. In view of this decision, the orders of Shri Balwant Kumar Bharti, Assistant Registrar (SM) & Deemed CPIO and Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, 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 Shri Balwant Kumar Bharti, Assistant Registrar (SM) & Deemed CPIO and Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, have erred in denying the information on the ground that the same forms part of "judicial proceeding". They have 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 (Annexure 6)*** 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..."*

- (5) The Hon'ble Delhi High Court in ***MCD v. R K Jain; W P (C) No. 14120/2009; date of decision 23-09-2010 (Annexure 5)*** 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."*

- (6) 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 (**Annexure 7**) 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...."*

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) and a third party is entitled to have such information from the Hon'ble Tribunal. Therefore, the order of the CPIO and the Deemed CPIO is 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 learned First Appellate Authority has directed the appellant to obtain information under the CESTAT (Procedure) Rules, 1982, but has not referred to any particular rule under which the appellant can obtain the information. It appears that there is no provision in the CESTAT (Procedure) Rules for providing information. Even otherwise, any such provision has to be in harmony to the provisions of the RTI Act, as in the case of any conflict, the provisions of RTI Act will prevail upon as per provisions of Section 22 of the RTI Act. In this situation, the CPIO / Deemed CPIO was under the statutory duty to provide the information

since according to them such information was also providable under the provisions of CESTAT (Procedure) Rules, 1982. Therefore, Shri Balwant Kumar Bharti, Assistant Registrar (SM) & Deemed CPIO and Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, 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.

- (8) That Shri Balwant Kumar Bharti, Assistant Registrar (SM) & Deemed CPIO and Shri V.P. Pandey, Assistant Registrar & CPIO, CESTAT, New Delhi, have 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 orders of the CPIO and the Deemed CPIO are liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.
- (9) That there are large scale irregularities and infirmities in the working of the CESTAT due to the ongoing corrupt practices and the appellant is seeking information under RTI in order to bring in transparency and accountability in the working of the CESTAT and also to contain corrupt practices, the appellant has been moving RTI Applications in the CESTAT and the present application is one of them. The CPIOs and the Deemed CPIOs of the CESTAT in connivance with other officials of the CESTAT are raising one or the other plea to delay and deny the information while the information sought in the present RTI Application is the one which is uploaded on the website of the Supreme Court, the High Courts and the Tribunals. The CAT website besides providing copies of the daily record of proceedings / order sheets also provides a daily report of such orders / proceedings. In order to cover-up the corrupt practices, the CESTAT is not fulfilling its statutory obligations under Section 4 of the RTI Act for making the daily order in public domain. Therefore, 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.

- (10) That CPIO and the Deemed CPIO may be directed to place the daily orders on the CESTAT website or otherwise to place them in the public domain by any other mode to fulfill its statutory duty under Section 4 of the RTI Act.
- (11) That the information sought is neither voluminous nor relate to older and larger period, thus could have easily been provided by the learned CPIO. Moreover, it is the information which is required to be placed in the public domain.
- (12) 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.
- (13) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (14) 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 : 27-05-2016

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

**Date of Hearing/decision: 23.09.2016**

**Appeal No.11-60 (A)/CESTAT/FAA/VP/2016**

**CPIO, I.D. No. 11-70/CESTAT/CPIO-VPP/2016**

Sh. R.K.Jain

Appellant

Vs.

Sh. V.P. Pandey, Asst. Registrar/CPIO

Respondent

**ORDER**     144/2016

The appellant appeared and reiterated the request for information raised on 18/4/16, however, when it was pointed out that other benches have been functioning during the said period the appellant agree to restrict the request for information to the Excise Bench which functions during the period 11/4/16 to 18/4/16. The CPIO agrees to provide the information. This may be complied with within four weeks from the receipt of the order.

2. The appeal is disposed of in above terms.

  
(V. Padmanabhan)  
Appellate Authority

Copy to :-

1. Sh. R.K.Jain, 1512, Bhishm Pitamah Marg  
Wazir Nagar, New Delhi-110 003.
2. Shri V.P. Pandey, Asst. Registrar/CPIO, CESTAT, New Delhi.
3. Office copy