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F. No. 14-17/CESTAT/CPIO-ND/RP/2019
Customs, Excise and Service Tax Appellate Tribunal
West Block No. 2, R.K. Puram, New Delhi-110 066

CPIO ID No. 14-17/2019

Subject: Information sought under RTI Act, 2005.


Sir/Madam,

Please refer to RTI application of Shri/Smt. Harish Chand Katiyar (No. NIL dated 11.04.2019) **received**, in this office on 18.04.2019, under RTI Act 2005, the information received from **Dy. Registrar (Customs ST and AD Appeal Branch)** containing 08 page is enclosed herewith for your reference please.

Therefore, you are requested to please acknowledge the receipt and deposit Rs. 08 x 02=16 (@ 2/- per page) to this Tribunal by cash or DD in favour of Accounts Officer, CESTAT, New Delhi.

Note:

1. RTI application's replies which are related to outer benches may be gathered from there by filing RTI applications there directly, for facilitation, CPIOs are nominated at all outer benches separately.
2. If aggrieved, you may file an appeal under section 19 of RTI Act within thirty days before Hon'ble First Appellate Authority, CESTAT New Delhi.


CPIO
CESTAT, New Delhi
Date: 16.05.2019

To,

1. Sh. Harish Chand Katiyar
MPB-132, Mahavir Nagar-I
Kota (Rajasthan) PIN-324005

9c

ISSUED ON
14/05/19
SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI-110066

CUSTOMS, SERVICE TAX & ANTIDUMPING BRANCH

9


I.D.No.14-17/2019
Dated : 16/05/2019

Subject :- R.T.I. application No.Nil dated 11.04.2019 filed by Sh.
Harish Chand Katiyar(CPIO ID NO. 14-17/2019 dated 23/04/2019).

1. The information relate to this point copy of Final order No.C/205/1995-
2. B2 dated 16.06.1995 passed in Appeal No. C/1833/92-B2 consisting of Eight Pages (Pages No. 574 to 581) received from 1995(11) RLT(CEGAT-B2). Is enclosed.

CPIO is requested to transmit the same to the applicant.

Encl: 8 pages.

 16/05/19
Deputy Registrar
Customs Branch

To,
CPIO,CESTAT,
Delhi



CUSTOMS, SERVICE TAX & ANTIDUMPING BRANCH


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Subject :- R.T.I. application No.Nil dated 11.04.2019 filed by Sh.
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16. Further in this case we observe that the Ld. Advocate had earlier agreed for filing of affidavit which may facilitate recovery of the amount due during the pendency of the appeal, so that their prayer regarding waiver of pre-deposit simultaneously with an opportunity to the department to recover could be considered but the appellants have not agreed either to file such an affidavit or any letter from the bank authorities and due to hypothecation of the goods in question it will not be easy for the authorities to realise the amount and the situation has become complex. We also consider that the recovery of taxes in the normal course should take precedence over other dues or recoveries for other purposes. We also observe that the performance of the unit was also reviewed by the Board of Approvers in its meeting no. 78 on 18.5.95 resulting in the letter of Dy. Dev. Commissioner dt. 2.6.95 towards which the Ld. R. has drawn our attention and this also requires customs excise duties and other dues to be paid in the first instance.

17. In response to the queries from the bench, the Ld. counsel was not in a position to explain or clarify, for want of instructions, the position with minutes of the Board of Approvers except to draw our attention to the paragraphs showing that the appellants had not responded and the steps that authorities was also required to issue a show cause notice. It also came to my view that the appellants were unable to implement the orders.

18. The Ld. Counsel had further stated that the appellant firm does not come within the purview of BIFR, but was not in a position to say as to whether any litigation proceedings had been started and if not, why?

19. In the above circumstances we are not inclined to grant the prayer of the appellants as, inter alia, it will leave no room for safeguarding the interest of revenue. We therefore reject the Stay Application. However, we give as a measure of leniency, three months time to the appellants to deposit the amount in question in which their appeal will be liable to be dismissed without further notice.

2. To come up for reporting compliance on 17th February, 1996.

Dictated in OPEN COURT

1995 (11) RLT (CEGAT-B2)

(In the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi)

Present : Shri S.L. Peeran, Member (J)
Shri G.R. Sharma, Member (T)

Collector of Customs, Jaipur

Versus

J.K. Synthetics Ltd.

(Final Order No. C/205/1995-B2, dt. 16.6.95; in Appeal No. C/1833/92-B2)

Project import — whether some of the items imported can be treated as components and spare parts or whether the same constitute self-contained separate machines — position to be ascertained only by physical verification — matter remanded

"On perusal of the order passed by the Id adjudicating authority it has been stated that the number of parts used have been verified physically, however, it is not clear whether any physically verification was done in the premises of the respondents where the machines are installed or the verification was done on the basis of documents and statements furnished. As already indicated that it is a question of physical verification of the various parts components, spares and accessories. It is essentially a question of ascertaining the correct position by physical verification. No other method can be decisively used in arriving at the correct figure. In this view of the matter, we allow the appeal and remand the case to the collector, customs and Central Excise for verifying the facts in terms of bills of material and other issues raised in the memo of appeal filed by the department. (Para 9)

Appearances :

Shri K.K. Jha, SDR, for Appellant
Shri V. Lakshminumaran, Advocate with
Shri R. Nambirajan, Advocate, for Respondents

Per G.R. Sharma

The captioned appeal has been filed by the Collector, Central Excise Jaipur on the ground that the adjudicating authority did not adequately consider the following points:

1. The additional Gear End Assembly, Out End Assembly, Control Box, Motor base and motor cannot be treated as spare parts and these are, in fact, major components of the main/independent machine.
2. The parts catalogue does not include winding machines and Ring Clean Saker either as a part or as a standard accessory. Further the winding machines have neither been included in the quotation dated 2.9.85 nor in the contract for sale dated 24.10.86.

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3. The catalogue showing manual description and constituents of the components of the High Duty cabler machine does not indicate Ring Clean Soaker as a standard accessory. In the last page of the said catalogue it was indicated that Ring Clean Soaker can be supplied on special demand and the same is not to be supplied as a standard accessory of the Cabler Machine.

4. The discrepancies between the Drawings recovered at the time of examination by the department and parts catalogue surrendered by the importer as follows could not be explained by the importer:

- a) Drawing No. D79-3731 mentions the requirement of GE spindle, rail as 54 per machine, whereas the requirements as per catalogue is 74 nos. per machine.
- b) Drawing No. D79-1748 mentions the requirement of 1/4 inch for writing of 1/4 inch Switch as 20 nos. per machine, whereas the requirement as per the catalogue is 25.
- c) Drawing No. D79-2721 mentions the requirement of 1/4 inch for choice cap Hanger (G) as 14 nos. per machine, whereas the requirement as per the catalogue is 18.
- d) Drawing No. D79-752 mentions the requirement of Top Guide Holder Angle as 28 per machine whereas the requirement as per the catalogue is 35.
- e) Drawing No. D79-2375 mentions the requirement of Ring Rail Angle as 14 per machine, whereas the requirement as per catalogue is 18.
- f) Drawing No. D79-1660 mentions the requirement of Hopper Angle as 10 per machine, whereas the requirement as per catalogue is 20.

Briefly stated the facts of the case are that the respondents filed two bills of entry for warehousing for import of (1) 4 containers and 65 cases said to contain four sets Heavy Duty Direct Cabler machines valued at Rs.1,82,30,012.36 (CIF) (ii) four containers and 63 cases said to contain four sets of heavy duty direct cabling valued at Rs.2,07,02,505.11 (CIF) and claimed clearance against their project import licence dated 6.11.86. The bills of entry were assessed on the basis of documents produced and the goods were allowed to be shifted to CWC at Kota. In the meantime, Directorate of Revenue Intelligence received information that

importers had brought some unattested items not covered by their import licence and that the respondents would try to clear the goods clandestinely. Pursuant to this information, a team of officers including expert Appraisers were deputed to examine the goods thoroughly at CWC, Kota. On examination, the goods were found to agree with the packing list excepting some shortages or excess. The importers did not submit any catalogue for identification of the goods except the packing list and one copy of pamphlet of machine of model/type T.O.4 and T.O.5 where T.O.4 appeared to be typed out subsequently. The importers claimed that the goods are of T.O.4 model and accordingly they submitted the pamphlet. The machines appeared to be of T.O.4 model of Toray make. While the examination of the goods was in progress one envelop containing some drawings, literature and catalogues was found from one of the packages. The Customs was of the view that some of the papers including one catalogue were stealthily taken away by some workers of the importers leaving only a few drawings and literature. A few days later the importers submitted a catalogue claiming it to be parts catalogue however, the customs found that it was nothing but a descriptive literature of the machine without indicating corresponding drawing No. part wise drawing and requirement of each individual components.

Examination of the goods revealed that major/vital components, sections of the machines like gear end frame assembly, outer end frame assembly, motor, control box were imported in five numbers under each bill of entry and other components which were imported in CKD condition were imported/packed in sets whereas the packing list described the quantity in pieces. It was also noticed that some items looking alike were described differently in the packing list. Accordingly, a show cause notice was issued to the respondents asking them to explain as to why the components imported by them should not be treated as complete sets of 10 heavy duty cabling machine as against the 8 declared by them. In addition, various other allegations as set out in the show cause notice were made. In reply to the show cause notice, the respondents submitted that if the parts catalogue is properly scrutinised, it would appear that they had imported components only for 8 heavy duty cabling machines and not 10 as alleged in the show cause notice. The respondents also denied all allegations made in the show cause notice. After careful consideration, the Collector, Central Excise held that "having regard to the facts of the case and the correct legal position as discussed above, I find no merits in the various points raised against M/s J.K. Synthetics, New Delhi, M/s J.K. Tech, Kota, M/s Mitsubishi Corporation, New Delhi and various other individuals shown in the show cause notice dated 20.2.89. As such further proceedings in the said show cause notice are hereby dropped." The Central Board of Excise and Customs examined this order in exercise of the powers vested upon them under

Section 129 D(1) of Customs Act, 1962 and held that the order was not proper and legal and directed the Collector to file this appeal before the Tribunal for correct determination of the points enumerated above for confirmation of the demand of Rs.1,21,37,611/- and for fine and penalty on the importer.

4. Shri K. K. Jha the learned SDR appearing for the appellants reiterated the grounds set out in the appeal memo. and submitted that the adjudicating authority had not examined the points properly that the adjudicating authority had not given any cogent reason as to why the drawing which were found with the consignments at the time of examination which showed the parts/components of the machines should not be relied upon and why only the parts catalogue was relied upon; that there were a lot of variations in the number of parts used per machine; that there was no evidence on record whether any physical verification was done by the adjudicating authority herself; though some experts to support the findings of the adjudicating authority. The Id. Collector has held "the party has also submitted in reply to the show cause notice that for each cabler 16 spindle rails with 8 holes per rail and 2 spindle rails with 6 holes per rail are required. This contention of the party is not substantiated and found to be correct. Further, in respect of the caps, the findings have been rendered reading as "The items have been examined and found to be correct in nature and hence it is logical to hold that the remaining quantity of the items, possibly covers nothing but spares. Further, items held by the collector that "The contention in the show cause notice that each cabler requires 15 steel pillars only is not found to be correct on verification. Similarly on the requirement of number of rings per cabler machine, the adjudicating authority has rendered her findings that the number of rings required per cabler is 108 rings both physically verified as well as per part catalogue.

5. On the other items set out in the grounds of appeal, the learned SDR submitted that some of the items were major components which cannot be treated as spare parts or some of the items constitute self-contained separate machines; that some of the items were not included either in the quotation or in the contract; that the adjudicating authority had not given any reasonable explanation as to why the parts catalogue alone was accepted and as to why the drawings were not accepted as the documents containing correct number of parts per machine; that the Id. SDR prayed that appeal may be accepted.

6. Shri V. Lakshmi Kumaran with Shri R. Nambhajan, the learned Advocate appeared for the respondents and submitted that the earlier show cause notice was issued to nine parties whereas the present appeal has been filed only against the M/s J.K. Synthetics Ltd and no appeal has been filed against the others. He therefore submitted that it must be presumed that the department has no case against the

others and that the submissions made by the remaining parties in reply to the show cause notice which was accepted by the learned adjudicating authority have also been accepted by the department. He therefore, submitted that to that extent the case gets restricted to the points raised in the memo of appeal, that the evidence of the remaining parties who were issued show cause notice but have not been made respondents in the present appeal gets reduced to naught. Referring to the points raised in the grounds of appeal filed by the department, the learned Counsel submitted he would like to make observations only on these points alone as the scope of appeal cannot be extended beyond these points. Referring to the reply submitted by the respondents on the show cause notice, the Id. Counsel submitted each point raised in the show cause notice has been properly and adequately replied by the respondents by support of statements and clarifications; that the drawings filed upon by the department pertain to Kajji Iron Works; that the respondents had connected for the supply of modified TO4 cable machines; the TO4 machine is not standard line which uses some parts of TO4 line were manufactured by Kajji Iron Works; that the machine was substantially modified by M/s Toray for inclusion of other parts and sub-assemblies; that it is only TORAY part which is imported and the remaining parts are made by Kajji Iron Works. The respondents had imported more than 1000 items but the department has only 1000 items for works. The Kajji Iron Works' drawings remained in Kajji's possession where they had been put by Kajji only; that TO-4 machine was notified by Toray and obtained various parts from suppliers other than Kajji including Toshiba, Kajji, Torii, Lite, Nitta and Kobo; that the total value of the various parts, components and sub-assemblies obtained from all these suppliers other than Kajji came to a significant percentage of the total value of the modified TO-4 machines that a substantial modification had been effected by "Toray" to the machines supplied by the Kajji Iron Works a comparison between the parts catalogue of Toray and the drawing of the Kajji cannot meaningfully be made; that the part's catalogue is of Toray while the drawings are of Kajji Iron Works; that the two documents referred to by substantially different machines and they cannot be compared. Referring to the individuals items, the learned Counsel submitted that Ring Clean Soaker and four winding covered by the import licence which authorises to import 8 sets of

- (1) Heavy Duty Direct Cabler, double sided with 216 spindles for ply and 108 spindles for cable twisting. Spindle speed upto 6500 rpm. 180 mm size with 310 mm gauge and 14" lift suitable for plying and running of nylon yarn from 840 to

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Reminder

**F. No. 14-17/ CESTAT/CPIO-ND/RP/2019
Customs, Excise and Service Tax Appellate Tribunal
West Block No. 2, R.K. Puram, New Delhi-110 066**

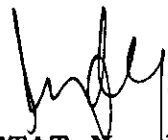
CPIO ID No. 14-17/2019

Subject: Information under Right to Information Act 2005.

Sir/Madam,

Please refer to RTI application of Shri/Smt. Harish Chand Katiyar (No. NIL dated 11.04.2019) **received**, in this office on 18.04.2019, under RTI Act 2005, and CPIO **ID No. 14-17/2019**. The requisite information was called for from you, but the same have not been provided by you till date despite of CPIO's letters 23.04.2019 issued to you as deemed CPIO.

You are again requested to please provide the information **immediately** failing which you will be responsible for any action or penal action imposed by the First Appellate Authority or the Central Information Commission.


CPIO
CESTAT, New Delhi
Date: 09.05.2019

For Compliance to:


1. Dy. Registrar (Customs, ST & AD Appeal Branch)

Copy to: (For Information)

1. Sh. Harish Chand Katiyar
MPB-132, Mahavir Nagar-I
Kota (Rajasthan) PIN-324005

*To Shri
H.C.
Customs
ref. a/c no. 111
required information
urgently
9/5/19*




ISSUED ON
SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI-110066

2

F. No. 14-17/CESTAT/CPIO-ND/RP/2019
Customs, Excise and Service Tax Appellate Tribunal
West Block No. 2, R.K. Puram, New Delhi-110 066

CPIO ID No. 14-17/2019

Subject: Information sought under RTI Act, 2005.

Sir/Madam,

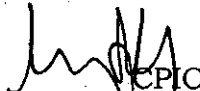
Please refer to RTI application of Shri/Smt. Harish Chand Katiyar (No. NIL dated 11.04.2019) **received**, in this office on 18.04.2019, under RTI Act 2005 (copy enclosed) wherein certain information are sought as mentioned therein is related to your section.

Therefore, in terms of the provisions of Section 6(3) & 5(4) read with Section 5(5) of RTI Act 2005 the RTI application CPIO ID No. **14-17/2019(CESTAT)** is forwarded herewith to you as **CPIO** under section 5(4), with request to provide the correct and para wise information/inspection on or before 03.05.2019 directly to the applicant as permissible under the RTI Act & DOP & T. O.Ms within the stipulated time, failing which, as CPIO under section 5(4), you will be responsible for delay/denial and penalty if any, under section 20 of RTI Act. Further requested to follow OM No.12/31/2013-IR dated; 12.02.2013 circulated on 23.05.2013 and O.M. No. 1/18/2011-IR dated 16.09.2011.

Note:-

1. If the information is not available with your section and you, if have knowledge, please reply from where it may be retrieved, without delay within 05 days.
2. RTI application's replies which are related to outer benches may be gathered form there by filing RTI applications there directly, for facilitation, CPIOs are nominated at all outer benches separately.
3. Provide the requisite information, directly to the applicant or to the RTI section, if not claiming any exemption, subject to the provisions of the Act and the rules made thereunder, under intimation to the undersigned.

Encl: As above.


CPIO
CESTAT New Delhi
Date: 23.04.2019

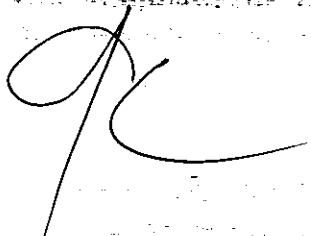
For Compliance to:

1. Dy. Registrar (Customs, ST & AD Appeal Branch)

Copy to: (For Information)

1. Sh. Harish Chand Katiyar
MPB-132, Mahavir Nagar-I
Kota (Rajasthan) PIN-324005

ISSUED ON
M 24/4/19
SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI-110066

24/4/19


ID - 14-17/2019

RTI Application form

To
The Public Information Officer,
Customs Excise and Service Tax Appellate Tribunal,
West Block 2, R.K. Puram, Sector-1, New Delhi-110066

Sh. Bhupendra
18/4/19

Sub: Request for information under RTI Act

Dear Sir,

With reference to the subject cited above, I request you to furnish the following information vide RTI Application

I, **Harish Chand Katiyar**, S/O Late Sh. **Mahraj Singh Katiyar** resident of **MPB-132, Mahavir Nagar-I, Kota (Rajasthan) PIN 324005**, Mobile No. **9829036932** wish to seek information under the RTI Act, 2005.

I, hereby, declare that I am a Citizen of India and information sought in this application will be used in the best of the Public Interest.


The particular/details of Information/Documents asked for is given below:-

Hon'ble CEGAT Final Order No. C/205/95/B2 dated 16.06. 1995 in the matter of J.K.Synthetics Ltd.

I have deposited the required RTI Fee amount of Rs.20/- (Rupees Twenty only) towards application fee Indian Postal Order Payable at Jaipur. Further, I also undertake to pay any additional fees/charges(if applicable) as prescribed under the RTI Act.

Kindly provide the information as soon as possible and within time frame as stipulated under RTI Act, 2005.

Dated: 11.04.2019


(Harish Chand Katiyar)
MPB-132, Mahavir Nargar-I
Kota (Rajasthan) PIN 324005

