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25/07/18

**FIRST APPELLATE AUTHORITY
UNDER RIGHT TO INFORMATION ACT, 2005
CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK-2 R.K. PURAM, NEW DELHI-110066**

Date of decision: 17.05.2018

**Appeal No. Appeal No.11-74(A)/2016
& 11-80(A)/2016
CPIO, ID No. 11-89/2016**

Sh. R.K. Jain

Appellant- Present

Vs.

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

Respondent- Present

ORDER 10/2018

Hard both sides and perused the record and found that whatever information was available on record has already been provided to the appellant.

Besides this, an enquiry also made by the undersigned on this issue on direction of the Ld. Information Commission which's report has also been forwarded to the Ld. Information Commission in this month of May 2018.

Hence, no further order is required here.


(V. Padmanabhan)

First Appellate Authority
(RTI)
Member (T)
CESTAT, New Delhi

1. Sh. R.K. Jain
1512-B, Bhishm Pitamah Marg,
Wazir Nagar, New Delhi-110003

2. Shri V. P. Pandey, CPIO, CESTAT, New Delhi.

3. Guard file/office copy



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11-79(11)/2016
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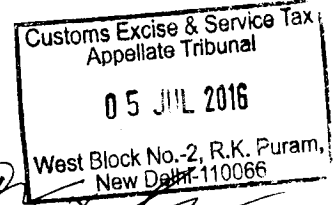
First Appeal under Section 19 of the Right to Information Act, 2005

Ref. No. : RTI/P-537/(9927/16)/Appeal/16383

Dated : 04-07-2016

To

Shri S.K. Mohanty
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 V.P. Pandey CPIO & Assistant Registrar (2) Shri Mohinder Singh, Dy. Registrar (Customs, Service Tax and Antidumping Branch) and Deemed CPIO (3) Shri Balwant Kumar Bharti, Assistant Registrar (SM) & 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	09-05-2016	
3.	Details of the order appealed against	Letter ID No. 11-89/2016 dated 30-6-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	30-7-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI Application dated 9-5-2016. (Annexure-1) 2. Copy of CPIO letter dated 30-6-2016. (Annexure-2)	

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BRIEF FACTS OF THE CASE

- (1) That the appellant has filed an application dated 09-05-2016 (**Annexure – 1**) under Section 6 of the RTI Act, 2005 requesting for the information specified therein.
- (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/Assistant Registrar has 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 the CPIOs and Deemed CPIOs have deliberately and malafidely denied the information on the ground that it is not maintained in the form it is sought by the appellant. Firstly, the appellant has not sought the information in any particular form, therefore, the claim of the CPIOs/Deemed CPIOs is wrong and misleading. Secondly, the appellant has sought information which is required to be maintained under the orders of the President/Registrar or under the rules. Therefore such information cannot be denied to the appellant in view of the Bombay High Court decision in case of Vivek Vishnupant Kulkarni. 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..
- (4) That the CPIO/Deemed CPIOs have deliberately and malafidely denied

the information on the ground that they are not being maintained. Since these records in question are required to be maintained as per orders of the President, their non maintenance amounts denial of information as per Bombay High Court decision in the case of Vivek Vishnupant Kulkarni v. State of Maharashtra - 2015 (2) ABR 629. 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..

- (5) That the CPIO has not provided the upto date information as sought in point (D) of the RTI Application. Merely because similar information was earlier provided on a given date does not absolved the CPIO for providing the upto date information as on the date of reply. 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 the CPIO/Deemed CPIOs are deliberately and malafidely denying the information on false pretext by claiming that the records held by them are only upto 4 months and thereafter the records are held by the O/o President. This shows that the records are maintained by the CPIOs/Deemed CPIOs and they are denying the supply of information on one pretext or other. 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.
- (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
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Fax No. 011-24635243

Place : New Delhi
Dated : 04-07-2016