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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.11-84(A)/2016
CPIO, ID No. 11-103/2016**

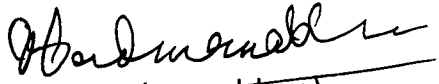
Sh. R.K. Jain Appellant- Present
Vs.
Sh. V.P. Pandey, CPIO/ Asst. Registrar Respondent- Present

ORDER 14/2018

Herd both sides and perused the record and found that in this RTI application all information except point no. 'F' has already been provided to the appellant.

On point 'F' exemption of confidentiality has been claimed by the deemed CPIO i.e. Sr. Private Secretary to the Hon'ble President CESTAT. And after going through the submission of the Sr. Private Secretary to the Hon'ble President CESTAT, I am of the view that exemption claimed is reasonable and justified.

Therefore, no further order is required in this matter.


(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.



25/9/CR/2016
02/09/2016

17/VP/CAA/16
14/09

11-84(A)/2016
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12/9/16

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

Ref. No. : RTI/P-537/(10005/16)/Appeal/16482
Dated : 30-08-2016

Shri V. Padmanabhan
1st Appellate Authority Under RTI Act, 2005,
Customs, Excise & Service Tax Appellate Tribunal,
West Block 2, R.K. Puram,
New Delhi - 110066

Customs Excise & Service Tax
Appellate Tribunal
02 SEP 2016
West Block No. 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 S.C. Das, Deemed CPIO and SPS of the President, CESTAT,
		(b) Address	Customs, Excise & Service Tax Appellate Tribunal, West Block 2, R.K. Puram, New Delhi - 110066
2.	Date of submission of application	16-06-2016	
3.	Details of the order appealed against	Letter ID No. 11-103/2016 dated 26-8-2016	
4.	Prayer or relief sought	See Prayer clause at the end	
5.	Last date for filing the appeal	26-9-2016	
6.	Whether Appeal in Time.	Appeal in time	
7.	Copies of documents relied upon by the applicant	1. Copy of RTI Application dated 16-6-2016. (Annexure-1) 2. Copy of CPIO letter dated 26-8-2016. (Annexure-2) 3. Copy of the relevant extracts of Delhi High Court decision in the case of Union of India v. CIC dated 30-11-2009 (Annexure-3)	

		<p>4. Copy of the relevant extracts of Supreme Court decision in the case of CBEC v. Aditya Bandopadhaya (Annexure-4)</p> <p>5. Copy of relevant extracts of Delhi High Court decision in the case DCP v. D.K. Sharma dated 15-12-2010 (Annexure-5)</p> <p>6. Copy of relevant extracts of Delhi High Court decision in the case UOI v. Col. V.K. Shad (Annexure-6)</p> <p>7. Copy of CIC decision in the Alok Singhai v. Delhi High Court dated 8-3-2010 (Annexure-7)</p> <p>8. Copy of CIC decision in the case of Subhash Chander Aggarwal v. Department of Legal Affairs dated 29-4-2013 (Annexure-8)</p>
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BRIEF FACTS OF THE CASE

- (1) That the appellant has filed an application dated 16-06-2016 (**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 Shri V.P. Pandey, CPIO & Assistant Registrar and Shri S.C. Das, deemed CPIO and SPS of the President, CESTAT, have failed to provide complete and correct information as sought by the appellant within the specified period. They have denied the information on a wrong pretext without claiming any exemption under the RTI Act. 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 Shri V.P. Pandey, CPIO & Assistant Registrar and Shri S.C. Das, deemed CPIO and SPS of the President, CESTAT, have deliberately and malafidely neither provided the information nor responded to the Point (C) & (D) of the RTI Application, therefore, they may be directed to provide the information in question.

(3) That Shri V.P. Pandey, CPIO & Assistant Registrar and Shri S.C. Das, deemed CPIO and SPS of the President, CESTAT, have erred in denying the information on the ground that the information sought relates to official matters and official communications, which have been made in "official confidence", therefore, it is not disclosable under Section 8 of the RTI Act, as per the commentary contained in para 25 & 26 in the publication of India Law House. The CPIOs have not indicated under which clause of Section 8 of the RTI Act, they are claiming exemption. Moreover, the contents of the commentary of a private publisher cannot be a basis for denial of information, particularly when the said commentary is based on the cases decided prior to the RTI regime i.e. 2005. 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 Shri V.P. Pandey, CPIO & Assistant Registrar and Shri S.C. Das, deemed CPIO and SPS of the President, CESTAT, have erred in denying the information on the basis of commentary based on Section 123 & 124 of the Evidence Act. The CPIOs have ignored the provisions of Section 22 of the RTI Act, which gives overriding effect to the RTI Act over all other enactment Rules & Regulations. In this regard, Hon'ble Delhi High Court in the case of UOI v. CIC – WP(C) No.8396 of 2009 decided on 30-11-2009 (**Annexure-3**) has held that the Section 22 of the RTI Act is a non-obstante provision, and, therefore, overrides the provisions of the Indian Evidence Act, in specific words, it held as under:

"Section 22 of the RTI Act is a non-obstante provision and therefore overrides Section 123 of the Evidence Act, 1872.

Protection under Section 123 of the Evidence Act, 1872 cannot be a ground to deny information under the RTI Act.”

x x x x x

“Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail.”

In view of the above decision of Delhi High Court, the information in question cannot be denied on the basis of Section 123 & 124 of the RTI Act. Therefore, the orders of the CPIOs are liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

- (5) That the Hon'ble Supreme Court of India in the case of **CBEC v. Aditya Bandopadhyay (Annexure-4)** has held that the provisions of Section 22 of the RTI Act is having overriding effect on all other acts, rules and regulations and the information cannot be denied on the basis of such other enactments unless it is shown that the information is exempted under any other provisions of the RTI Act. In specific words, the Hon'ble Supreme Court held as under:

“Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even

if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations.”

In view of the Hon'ble Supreme Court decision, the information cannot be denied by taking aid of any other enactment or ground unless the information is exempted under any other categories of Section 8 of the RTI Act. 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 Hon'ble Supreme Court of India in the case of Reserve Bank of India v. Jayantilal N. Mistry – Transferred Case (Civil) No. 91 of 2015 decided on 16-12-2015

“42. The RTI Act, 2005, as noted in its very preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information. The institution of the CIC and the SICs are part of that machinery. The preamble also inter-alia states "... democracy requires an informed citizenry and transparency of information which are to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.”

43. The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act, 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8.”

In view of the above latest Supreme Court decision, it is clear that the information cannot be denied taking help from any of other statutory provision because of overriding effect of Section 22 of the RTI Act and thus the exemption from disclosure of information are only those which are containing in Section 8 of the RTI Act. 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 Hon'ble Delhi High Court in the case of ***DCP v. D.K. Sharma*** - WP(C) No.12428 of 2009 (**Annexure-5**) has held that in view of Section 22 of the RTI Act, information cannot be denied invoking provisions of Section 172 of Cr.P.C. Similarly, in the case of *Union of India v. Col. V.K. Shad* (**Annexure-6**) has held that information cannot be denied under the Army Rules in view of the provisions of Section 22 of the RTI Act, which has overriding effect on other enactments. 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 CIC in the case of ***Alok Singhai v. Delhi High Court*** – CIC/WB/A/2009/0000153 dated 20-2-2009 (**Annexure-7**) has held that merely marking of a document as confidential does not make it exempted from disclosure. A similar decision is taken by the CIC in the case of ***Subhash Chander Aggarwal v. Department of Legal Affairs*** – CIC/SS/A/2012/000052 decided on 29-4-2013 (**Annexure-8**), wherein it was held that mere claiming that matter is confidential or sensitive does not absolve the Public Authority from disclosure of information unless it is exempted. 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.
- (9) That Shri V.P. Pandey, CPIO and Assistant Registrar (Excise) and Shri S.C. Das, deemed CPIO and SPS of the President, CESTAT, have wrongly denied the information on the ground that they are official communications and have been sent or received under official confidence. Such type of information is not exempted under Section 8 of the RTI Act and, therefore, is liable to be disclosed. 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.
- (10) 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.

- (11) That as per proviso to Section 8(1) of the RTI Act, 2005, the information which cannot 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.
- (12) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (13) 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 : 30-08-2016

