

CENTRAL INFORMATION COMMISSION

2nd Floor, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi-110066

Decision Nos.
CIC/SB/A/2016/000705
CIC/SB/C/2016/000165

Dated 13.10.2016

Appellant : ShriR.K. Jain,
1512-B, BhishmPitamah Marg,
Opp. ICICI Bank of Defence Colony,
Wazir Nagar, New Delhi-110 003.

Respondent : The First Appellate Authority,
C/o Central Public Information Officer,
Customs Excise & Service Tax
Appellate Tribunal, West Block,
2, R.K. Puram, New Delhi-110 066.

Date of Hearing : 09.06.2016/01.09.2016/13.10.2016

ORDER

1. ShriR.K. Jain filed an application dated 13.01.2016 with the Central Public Information Officer (CPIO), Customs Excise & Service Tax Appellate Tribunal (CESTAT) under the Right to Information Act, 2005 (RTI Act). According to the appellant, the CPIO has deliberately and malafidely not provided complete and correct information as sought by him necessitating filing of first appeal.

2. The appellant has alleged that the FAA is not deciding the first appeal within the statutory prescribed period of 45 days, which is illegal, incorrect, arbitrary, malafide and contrary to the spirit and provisions of the RTI Act and is also against public policy and public interest.

Hearing held on 09.06.2016:

3. The above mentioned casewas taken up for hearing along with case nos.CIC/SB/A/2016/000680, CIC/SB/A/2016/000681,CIC/SB/A/2016/000684, CIC/SB/A/2016/000685, CIC/SB/A/2016/000686, CIC/SB/A/2016/000688 and CIC/SB/A/2016/000707 and a common order dated 09.06.2016 was passed as the issues contained therein were identical.

4. The appellant Shri R.K. Jain and the respondent Shri Binesh Kumar K.S., Deputy Registrar, CESTAT, who was representing Shri S.K. Mohanty, FAA, CESTAT were present in person.

5. The appellant submitted in his written submissions, a copy of which was also provided to the respondent that if the FAA fails to pass an order on the first appeal of the appellant within the stipulated time period as prescribed in the RTI Act and the appellant files a second appeal before the Central Information Commission (CIC), the FAA cannot be allowed to pass orders on the first appeal as this may result in diverse orders being passed by the First and the Second Appellate Authority. In support of his submissions, the appellant cited Calcutta High Court order dated 12.01.2010 in WP No.1773 of 2008 which, inter-alia, observes as under (page 18 abid):-

“.....once sub-section (3) of section 19 provides that a second appeal against the decision under sub-section (1) thereof would lie “within ninety days from the date on which the decision should have been made”, the right to prefer a second appeal would have to be read in the statute as having accrued in a case where the FAA refuses to give his decision and in such case refusal to give the decision would have to be treated as the decision liable to be appealed against in terms of sub-section (3) of section 19. The second appeal filed by the ninth respondent cannot, therefore, be said to be not in order only because no decision was given by the FAA.”

The appellant also placed reliance on the decision dated 24.07.1981 of the Apex Court in *Santhoshi Tel Utpadak Kendra Vs Deputy Commission of Sales Tax and Anr* in Civil Appeal No.1968 of 1978 wherein it was held that when a supreme Appellate Authority is seized of the matter, it is inconceivable for a subordinate authority to claim exercise of jurisdiction to pass an order in appeal. The appellant also placed reliance on CIC decision dated 19.11.2008 in file no.CIC/WB/A/2007/00425 and dated 12.02.2009 in file no.CIC/WB/A/2007/00229.

6. The respondent submitted that the FAA is already seized of the matter and requested the Commission to allow him two months' time to enable him to pass speaking orders on the first appeals filed by the appellant pertaining to the above mentioned files.

7. The appellant further submitted that in his RTI application he had sought inspection of case records pertaining to different files which was allowed by the deemed CPIO vide note dated 12.08.2015. But when the appellant inspected the records on different dates and sought copies of the relevant documents, the CPIO directed him to file a fresh RTI application as in the original application he had sought only inspection of the records and not photo copies of the documents. The appellant submitted that mere inspection of the records without providing photo copies of the sought documents is meaningless as has been held by the Commission in decision dated 16.11.2009 in file no.CIC/AT/A/2009/000652, dated 02.01.2013 in file no.CIC/LS/A/2012/002478 and order passed by the Chhatisgarh High Court in WP(C) of 2009.

Interim Decision:

8. The Commission, after hearing the submissions of both the parties and perusing the records holds that providing photo copies of the documents required by the appellant after inspection on payment of additional fee is an integral part of the inspection allowed to him. The Commission took a serious

view of the CPIO not providing the photo copies of the documents identified by the appellant after inspections. The Commission finds that the CPIO is liable for imposition of penalty in terms of provision under Section 20(1) of the RTI Act, 2005. The Commission, therefore, directs the CPIO, CESTAT to submit a written statement before the Commission, explaining the lapse on his part, before 03.08.2016 both by post and through e-mail at do.icsb-cic@gov.in.

9. The CPIO, CESTAT is further directed to appear before the Commission on **10.08.2016 at 1.15 PM** along with a copy of his written explanation. (However, due to administrative reasons, **the hearing was adjourned to 01.09.2016**).

10. The Commission also directs the CPIO, CESTAT to provide to the appellant photo copies of the documents as identified by him after inspection in all the eight cases free of cost upto 50 pages in each file and, thereafter, on payment of additional fee as prescribed under the RTI Act, within a period of four weeks from the date of receipt of a copy of this decision.

11. The Commission would fail in its duty if it does not counsel the FAA, CESTAT to ensure that in future first appeals filed by the appellants are disposed of within the stipulated period of 30/45 days as laid down in the RTI Act.

12. The FAA, CESTAT is directed to ensure that a copy of this order is served on the CPIO, CESTAT concerned within one week from the date of receipt of a copy of this decision.

Hearing held on 01.09.2016:

13. The appellant Shri R.K. Jain and Shri V.P. Pandey, Asstt Registrar & CPIO were present in person.

14. The appellant submitted that the then CPIO had directed the deemed CPIO & Dy. Registrar, Shri Mohinder Singh and the deemed CPIO & AR, Shri

Kirpa Shankar to provide information. The deemed CPIO had given an opportunity to the appellant to inspect the records on 27.08.2015. But copies of the documents sought/identified by him after inspection were not provided to him. The appellant further submitted that he had requested the deemed CPIOs to do the needful but no action was taken by them on his letters. The appellant also made a request during the hearing that the following complaint file may be tagged with the abovementioned appeal case as this complaint is relating to the same RTI application:

S.No.	File under consideration	File to be tagged
1.	CIC/SB/A/2016/000705	CIC/SB/C/2016/000165

Interim Decision:

15. The Commission, after hearing both the parties and perusing the records, agrees to tag the complaint file with the appeal file. The Commission observes that the present CPIO had no role in denying copies of the documents to the appellant. Hence, show cause notice against the present CPIO & Assistant Registrar, CESTAT, Shri V.P. Pandey is hereby dropped. The Commission further observes that despite the directions of the CPIO, the deemed CPIO & DR, CESTAT Shri Mohinder Singh and the deemed CPIO & AR, CESTAT, Shri Kirpa Shankar did not provide the information sought by the appellant.

16. The Commission took a serious view of the above lapse on the part of deemed CPIO & DR, CESTAT, Shri Mohinder Singh and the deemed CPIO & AR, CESTAT, Shri Kirpa Shankar for not providing the photo copies of the documents identified by the appellant after inspection. The Commission finds that the deemed CPIOs are liable for imposition of penalty in terms of provision under Section 20(1) of the RTI Act, 2005. The Commission, therefore, directs the deemed CPIOs, CESTAT to submit written statements before the Commission, explaining the lapse on their part, before 06.10.2016 both by post and through e-mail at do.icsb-cic@gov.in.

17. The deemed CPIOs, CESTAT are further directed to appear before the Commission in person/through video conferencing from Delhi/Hyderabad on **13.10.2016 at 10.30 AM** along with a copy of their written explanations.

18. The FAA, CESTAT is directed to ensure that a copy of this order is served on the deemed CPIOs, CESTAT concerned within one week from the date of receipt of a copy of this decision.

Hearing held on 13.10.2016:

19. The appellant Shri R.K. Jain and the respondents Shri V.P. Pandey Assistant Registrar and CPIO, CESTAT and Shri Mohinder Singh, Deputy Registrar and CPIO, CESTAT were present in person.

20. The appellant submitted that he had inspected all the relevant files relating to his RTI applications on 27.08.2015 and had requested for certified copies of specified documents. He had also requested the CPIO to intimate him the fees for supply of the copies of documents requested. A reminder was also issued on 10.09.2015 regarding supply of documents referred to in the inspection note no. 706 dated 27.08.2015. The CPIO directed the Dealing Assistant to obtain information from the concerned officers. The CPIO vide letter dated 15.09.2015 had requested the deemed CPIO (AR, Customs, CESTAT) to provide the information sought for. A reminder dated 17.09.2015 was also sent to the respondent Shri Kripa Shankar, Assistant Registrar and deemed CPIO, CESTAT.

21. The respondent (Shri Mohinder Singh, Deputy Registrar and CPIO, CESTAT, Delhi) submitted that he had joined CESTAT, Delhi on 01.01.2016. He further stated that the appellant was informed vide letter 18.02.2016 in response to his letter dated 08.02.2016 that he had already inspected the relevant file on 27.08.2015. Further, in view of this, he had presumed that the desired information had already been provided to the appellant. The respondent further submitted that this was on the basis of the appellant's

inspection note dated 27.08.2015 as that was the only document to which he had access at that point of time. The respondent further stated that the matter of non-furnishing of information to the appellant was brought to his notice only on 17.06.2016 by the order of the CIC dated 09.06.2016, and in compliance with the directions of the Commission, the information was provided to the appellant vide letter dated 03.08.2016. The respondent stated that thus there was no mala fide intention on his part in not providing the information to the appellant. In view of this, the show cause notice issued against him may be dropped.

Decision:

22. The Commission, after hearing the submissions of both the parties and perusing the records, observes that there was a lapse on the part of the respondent in not providing the copies of the documents sought for by the appellant in response to his letter dated 08.02.2016. However, it cannot be said that the respondent obstructed the supply of the information deliberately in a manner so as to block the furnishing of information to the appellant. The Commission also observes that the respondent had provided due information to the appellant vide letter dated 03.08.2016. In view of this, there appears to be no malafide intent on the part of the respondent in denying information to the appellant/complainant. The Commission, therefore, drops the show cause notice issued against Shri Mohinder Singh, Deputy Registrar and CPIO, CESTAT, Delhi.

24. With the above observations, the appeal/complaint is disposed of.

25. The copy of the decision be provided free of cost to the parties.

(Sudhir Bhargava)

Information Commissioner

Authenticated true copy

(V.K. Sharma)
Designated Officer