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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5548/2017

R K JAIN

..... Petitioner

Through: Mr Dinesh C. Pandey and Mr Rajeev
Gurung, Advocates.

versus

CPIO, CUSTOMS EXCISE AND SERVICE TAX

APPELLATE TRIBUNAL & ORS

..... Respondents

Through: Mr Sanjeev Narula and Ms Kaanan
Gupta, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.07.2017

CM No.23334/2017

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning the order dated 23.02.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter the 'CIC').

3. The petitioner was aggrieved by non-provision/delay in provision of the information sought pursuant to his request made on 23.06.2015. The petitioner had, thereafter, appealed to the First Appellate Authority (hereafter the 'FAA'). By an order dated 22.09.2015, the FAA had directed the CPIO to collect the information from the concerned officials and forward

the same to the petitioner within a period of two weeks.

4. The petitioner claims that thereafter, 39 pages of the documents requested were provided to him on 06.10.2015; but the same did not constitute the complete information as sought by him.

5. Aggrieved by the inaction on the part of the CPIO, the petitioner preferred a complaint (which was admittedly incorrectly numbered as appeal no.CIC/SB/A/2016/000703-BJ) before the CIC. The CPIO contested the aforesaid proceedings and claimed that the suitable response had been provided to the appellant from time to time and there was no malafide intention to deny the information to him. The CPIO also sought to explain the delay in providing the information on the grounds that he was pre-occupied with other matters and also lacked the infrastructure facilities at his office. The CPIO also expressed his helplessness in coping with large number of RTI applications being received from the petitioner. The petitioner countered the aforesaid contention.

6. The CPIO further assured the CIC that if inspection of any files were sought by the petitioner, the same would be provided within a period of three days of such request.

7. The CIC finally disposed of the complaint by directing the CPIO to re-examine the information sought by the petitioner and furnish the same within a period of three weeks.

8. The final sentence of the impugned order reads as: "*the appeal stands disposed of with the above directions.*" This indicates that there is some confusion in the manner in which the CIC had approached the complaint. Concededly, the petitioner had filed a complaint under Section 18 of the Right to Information Act, 2005 and not an appeal against non-provision of

information. This was also noted by the CIC in the earlier part of the impugned order.

9. In the circumstances, the CIC was required to consider whether there were any reasonable grounds to inquire into the matter in terms of Section 18(2) of the Act. If the CIC was of the view that such inquiry was necessary, it was incumbent upon CIC to conduct the inquiry in such manner as the CIC considered expedient (even in a summary manner if appropriate) and determine whether any penalty was to be imposed under Section 20 of the Act. If the CIC was of the view that the CPIO has not furnished the information within the time as specified under Section 7(1) of the Act or malafiedly denied the request for information or knowingly given incorrect, incomplete or misleading information, it was incumbent upon the CIC to impose a penalty of ₹250/- till the information is furnished (subject to a maximum of ₹25,000/-). The proviso to Section 20(1) of the Act also indicates that such penalty could only be imposed after a reasonable opportunity of being heard was afforded to the CPIO.

10. It is not clear from the order whether as to CIC had decided to accept the submissions made by the CPIO or reject the same as no unequivocal decision in this regard has been expressed by the CIC.

11. In the circumstances, the impugned order is set aside and the matter is remanded to the CIC to decide the petitioner's complaint in accordance with law.

VIBHU BAKHRU, J

JULY 10, 2017
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