|  |  |
| --- | --- |
| **R.K. JAIN** *M.Com., LL.B.***President, Excise and Customs Bar Association***Editor of***EXCISE LAW TIMES & SERVICE TAX REVIEW***and author of* | **1512-B, Bhishm Pitamah Marg,****Wazir Nagar,****NEW DELHI - 110 003.****PHONE : 24693001-3004****MOBILE : 9810077977****Fax No. 011-24635243** |
| Central Excise Law Guide; Central Excise Tariff of India;Central Excise Law Manual; Customs Tariff of India;Customs Law Manual; Excise & Customs Circulars& Clarifications; Excise & Customs Case Referencer;Service Tax Law Guide; Service Tax Handbook;Handbook of Duty Drawback on Goods &Services; Valuation under Central Excise; Hand-book of Foreign Trade Policy & Procedures |

**10th April, 2017**

**COMMENTS & SUGGESTIONS ON DRAFT RTI RULES, 2017**

**RULE-WISE COMMENTS AND SUGGESTIONS**

1. **Rule 4:-**
2. ***Clause (d)*:-** Now-a-days, diskette and floppies are no more in circulation, therefore, the expression ‘**diskette or floppy**’ in proposed Rule 4(d) may be substituted by the words “**CD / DVD**”. Since the cost of digital media has considerably been reduced like CD / DVD are available for Rs.10 to Rs.15, therefore, the copying fees for supply of information on CD/DVD may be **reduced from Rs.50/- to Rs.25/-** to encourage transmission of information in digital form and in this respect, attention is invited to following Rule 6(c)(i) of Uttrakhand Right to Information Rules, 2013, regarding the copying fee for supply of CD / DVD.

“Rs.20/- (Rupees Twenty only) per CD/DVD for information on CD/DVD”

On the above lines, proposed Clause (d) of Rule 4 of the RTI Rules, 2017 may suitably be modified.

1. ***Clause (f)*:-** On the analogy of providing free inspection for one hour, free copies of the information upto **5 pages may also be provided** by modifying Clause (f) of proposed Rule 4 as seeking payment for supply of 1 to 5 pages is expensive and it also increases the work load of the CPIO in attending to the avoidable correspondences and encashment of instruments for nominal amount of Rs.2 to Rs.10 is not cost effective. Such free supply will also help in speedy dissemination of information and closure of the application.
2. ***Addition of Clause (ff)*:-** The Prime Minister’s dream for **‘Digital India’** needs to be promoted by providing information free of charge **by e-mail** wherever the information is available in digital form, because no expenses are incurred in sending the information in digital form by e-mail. This is most convenient and economical mode of transmission of information. Even otherwise, as per Section 4 of the RTI Act, all records are required to be digitalised, thus, sending information by e-mail is in line with the spirit and provisions of Section 4 of the RTI Act.
3. **Rule 9:-**
4. The RTI Act provides timelines for transfer of RTI Applications in 5 days [(Section 6(3)], issue of third party notice in 5 days [Section 11], providing of information in 30 days [Section 7(1)] and disposal of 1st Appeal in 30 days [Section 19(6)]. Likewise, there should be a reasonable time limit for the return of defective Appeals/Complaints. In the normal course, an Appeal/Complaint should be registered within 3-7 days, therefore, **a proviso may be added to proposed Rule 9 providing for issue of defect memo within a maximum period of 15 days from the receipt of the appeal/complaint in the CIC**.
5. **Rule 10:-**
6. The words “**a period of 45 days**” in Clause (b) of sub-rule (2) of proposed Rule 10 is contrary to the provisions contained in Section 19(3) of the RTI Act. According to section 19(3) of the RTI Act, a 2nd Appeal is to be filed within 90 days from the date on which the decision should have been made in 1st Appeal. Section 19(6) provides that the 1st Appeal “**shall be disposed of within 30 days of the receipt of the Appeal**”, therefore, the statutory time limit for disposal of 1st Appeal is 30 days. The extended period up to 45 days is available only when reasons are recorded for availing extended period of another 15 days. But where the 1st Appeal is not disposed of, then there cannot be any question of automatic extension of time-limit for disposal of 1st Appeal up to 45 days. Thus, the words “**a period of 45 days”** in proposed Rule 10(2)(b) may be substituted by the words “**a period specified in Section 19(3) of the RTI Act**” to bring this Rule in conformity with the provisions of the RTI Act.
7. Proposed Rule 10 needs to be suitably modified to provide for direct filing of 2nd Appeal to the CIC, where the First Appellate Authority has not been appointed or the said post is lying vacant. In such cases, the remedy of 1st Appeal is ineffective and illusory and filing of complaint under Section 18 of the RTI Act is of no avail for obtaining the information because of Supreme Court decision in the case of *State of Manipur v. CIC* whereunder it was held that the information cannot be sought on a complaint under section 18 of the RTI Act.
8. Suitable provisions may also be made in proposed Rule 10 so as to make the F.A.A. a party to the 2nd appeal where the F.A.A. has failed to pass order despite filing of the 1st appeal. This will bring in seriousness and accountability of the institution of F.A.A.
9. **Rule 11:-**

Proposed Rule 11(iv) provides only for hearing of CPIO, F.A.A. or person against whose action the appeal is preferred but it does not provide for hearing the appellant. This sub rule needs to be suitably amended to recognise the right of the appellant to be heard on his appeal.

1. **Rule 12 :**
2. ***Rule 12(1)* :** The matter pertaining to withdrawal of appeal which has finally been heard but not decided may be left to the discretion of the concerned Commissioner as such matter is sub-judice before the Commissioner and he has full discretion in the matter till it is decided. Therefore, the words “**the matter has been finally heard or**” as appearing in proposed Rule 12(1) may be deleted.
3. ***Rule 12(2) - Abatement of appeal on the death of appellant* –** There are continuous media reports about the murder and attack on the information seekers. Many a time, the information sought is against the misdeeds of the mafias or those indulging in the activities against the society including white collar crimes, therefore, the provisions of proposed Rule 12(2) can provide incentive for elimination of the information seeker. In this respect, the CIC in full court meeting held on 13-9-2011, passed the following Resolution :

*“The Central Information Commission expresses regret and takes note of the reported killings of and assault on the RTI users across the country. The Commission underlines the need to take urgent steps by the respective Governments for the safety and protection of the RTI users. The Commission strongly believes that it is the duty and responsibility of the respective Governments to safeguard the life and liberty of the RTI users for which purpose they should invoke the relevant penal provisions for the prevention and detection of such heinous crimes.*

*2. This Commission, therefore, resolves that if it receives a complaint regarding assault or murder of an information seeker, it will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law.*

*3. This Commission also resolves that it will take proactive steps in ascertaining the status of investigations/prosecutions of the cases involving information seekers and endeavor to have these processes expedited.”*

The proposed Rule 12(2) thus needs to be suitably modified to provide that in the case of death of information seeker who has sought information in larger public interest or against the corrupt practices, such information may be directed to be placed on the website of the concerned Department despite the death of the appellant so that the purpose of silencing the information seeker is defeated.

1. **Rule 13**
2. **Rule 13(1)(i) –** A complaint under section 18(1)(a) can be made against the non appointment of a CPIO or non appointment of the First Appellate Authority. In such cases, the question of filing any RTI Application does not arise, therefore in proposed Rule 13(1)(i), the words “**,if any”** may be added at the end. This is necessary because the word “**shall**” has been used in sub-section (1) making the filing of specific documents including RTI Application as mandatory.
3. ***Rule 13(1)(iv) ultra vires the provisions of Section 18 of the RTI Act- Prescribing of time limit for filing complaint beyond rule making powers* -** There is no provisions under the RTI Act which prescribes any time-limit for filing complaint under section 18 of the RTI Act. Even the said section 18 does not have any inking about any time limit within which a complaint is required to be filed, therefore the provisions of clause (iv) of sub rule (1) of Rule 13 of proposed RTI Rules, 2017 insofar as they provide time limit for filing complaint, are *ultra vires* the provisions of the RTI Act. The Hon’ble Supreme Court in series of decisions on this issue has held that the Rules being subordinate to the parent Act, cannot prescribe for anything beyond the provisions of the Act. The Parliament in its wisdom has prescribed a time-limit of 90 days in section 19 for filing an appeal but no such time-limit is prescribed by the Parliament for filing a complaint under section 18 of the RTI Act. The Central Government in exercise of rule making power cannot prescribe a time limit which was deliberately not provided by the Parliament in section 18 of the RTI Act.

The provisions of proposed Rule 13(1)(iv) are also not practical since as per the provisions of section 5 of the RTI Act, every Public Authority has to appoint PIO/CPIO within 120 days of the enactment of the RTI Act i.e. 15-10-2005 and in case, any Public Authority has not appointed a PIO/CPIO within the said 120 days then the complaint under the proposed Rules, can only be filed by 16-5-2006 as the cause of action for filing a complaint against non appointment of CPIO in all cases had arisen on 15-2-2006. **The time-limit provided in the proposed Rule 13(1)(iv) is therefore beyond the rule making power and contrary to the provisions of the RTI Act, hence is *ultra vires* the RTI Act and cannot withstand the test of validity, thus needs to be dropped.**

1. ***Rule 13(3) is contradictory to the proviso thereto –*** The sub rule (3) of proposed Rule 13, talks about service of the copy of the complaint only on the CPIO whereas the proviso to the said sub-rule refers to the F.A.A besides the CPIO. The proposed Rule 13(3) thus needs to be modified by providing for serving a copy of the complaint on all the respondents specified in the complaint.
2. **Rule 14 – Defect Memo -** A suitable proviso may be added to the proposed Rule 14 laying down that the defect memo to the complaints shall be issued within 15 days of the receipt of the complaint and in case, the complainant disputes the defect raised by the registry, the matter shall be placed before the concerned Hon’ble Information Commissioner.
3. **Rule 15 –** ProposedRule 15 does not contains any provision for hearing the parties before deciding the complaint though there is a reference to “hearing” in clause (iv) of Rule 15 as well as in proposed Rule 18. Hearing of parties by an authority deciding a *lis* or dispute *qua* the parties is necessary for compliance to the principles of natural justice, particularly when the original records are not summoned by the CIC. Therefore this rule may be suitably modified.
4. **Rule 16 – Non Compliance cases -** The validity and reasonability of this rule is questionable on the face of the provisions of Section 18 of the RTI Act. The time-limit of three months for filing non-compliance provisions are without the authority of law and also not practicable. Further, no provision has been enacted for non-compliance of the orders of the F.A.A. as in such cases, the appellant with a favourable order in his hand, cannot file 2nd Appeal to the CIC. This rule may be redrafted so as to make it incumbent on the F.A.A. and CIC to specify in their orders, the time limit within which the information in question is to be provided.

The Punjab and Haryana State Information Commission in order to effectively deal with the problem of non-compliance of its orders, had devised the method of asking a compliance report after 30 days of the period given for complying with its orders. A similar provision needs to be incorporated in proposed RTI Rules making it obligatory on the part of the CPIO/respondents to submit a compliance report to the CIC within 30 days of the expiry of the time given for providing of the information.

1. **Rule 17 - *Transfer and Posting of appeals/complaints before ICs –*** The proposed rule 17 in its present form is not in consonance with the provisions of section 12(4) of the RTI Act. No doubt the Chief Information Commissioner has the discretion to distribute work amongst the Information Commissioner but such distribution has to be exercised judiciously on certain criteria & basis. **In this respect, the Full bench decision of the Gujarat High Court in the case of *Suo Motu v. Gujarat High Court Advocates’ Association* – 2015 (320) ELT 564 (Guj.) has held that even the Chief Justice of High Court in his administrative capacity cannot constitute Larger Bench and allocate case to it.**

The powers conferred on the Chief Information Commissioner under section 12(4) of the RTI Act are to be exercised with the assistance of the Information Commissioners. This provision of section 12(4) does not gives exclusive powers and discretion to the Chief Information Commissioner rather introduces a collegium type of management in the CIC.

There may be situations for shifting of cases from one Commissioner to another but discretion to transfer cases has to be exercised judiciously by Chief Information Commissioner by recording reasons. Once having made the allocation of work, the jurisdiction over the appeals/complaints is determined and thereafter the Chief Information Commissioner cannot tinker with such jurisdiction to shift individual cases from jurisdictional Information Commissioner unless there are compelling reasons/circumstances in the interest of justice and fairplay and such reasons are to be placed on records by the CIC.

The word “**suo motu**” as appearing in the proposed Rule 17, conferring unfettered powers on the Chief Information Commissioner to transfer cases, is beyond the provisions of the RTI Act. No doubt they may not be misused by the present setup but when rules are made, the authority should take care of all future possibilities of misuse so as to protect independence of the Information Commissioners and interest of the citizens because the Chief Information Commissioner would be an appointee of the Government under the present scheme of things and the larger public interest needs to be protected so as to upheld the autonomy of the CIC at any cost since it is dealing with disclosure of information concerning corruption and misuse of authority by the powerful and mighty persons in power.

**The proposed Rule 17 needs to be split up in three sub-rules, the first may provide for work distribution amongst the Information Commissioners, the second may provide for dealing with cases warranting shifting of individual cases in the eventualities such as recusal of Information Commissioners or allegation of bias by the parties or otherwise and the third sub-rule for recording reasons for shifting of assigned cases from one Information Commissioner to another.**

1. **Rule 18 –** In the erstwhile rule 12(1) of the RTI Rules 2012, a clear notice of hearing of 7 days was required to be issued to the parties, but under the proposed Rule 18, this provision has been withdrawn. The CIC has an All India jurisdiction where the parties have to make travel arrangements for attending the hearing and even for video conferencing where the NIC studio is not at their stations. Moreover, the CPIOs are also having their own working schedules and meetings, therefore, a clear notice of atleast 15 days should be provided in the proposed Rules to make the hearing effective. There are no justifiable reasons for omitting the period of notice of hearing from the Rules. It may therefore be reintroduced in the proposed rules.
2. **Rule 19 –** It is a welcoming provision which will add to the efficiency and quality of the proceedings and orders of the CIC as under the present system, in the absence of any reply/counter, the Information Commissioners have to records the stand of the respondents and this results in lengthy hearings because of the absence of the written say of the respondents and contradictory and confusing pleas taken by the CPIOs during hearings. **However, a time-limit of 4-6 weeks may be prescribed for filing reply/comments by the CPIO/respondents so as to make this rule effective and enforceable**.

**ADDITIONAL RULES**

1. **Function and duties of the Registrar** – The Registrar of the CIC plays an important role being the head of the registry. His powers, duties and functions should be enumerated in the RTI Rules to make it effective and to create accountability on the registry of the CIC. The Rules for most of the Tribunals outline the functions, powers and duties of the Registrar. Such pre-defined functions, powers and duties of the Registrar under the Rules are necessary for efficient functioning of the registry.
2. **Procedure for proceedings before F.A.A. may be prescribed in proposed RTI Rules –** The institution of First Appellate Authority plays an important role in the implementation of the RTI regime as most of thegrievances or irregularities in the handling of the RTI Applications by the CPIO can be taken care of at the local level of the F.A.A., therefore this institution needs to be strengthened by providing a set of rules in the proposed RTI Rules.

Non disposal of appeals and delayed disposal of the cases and confirmation of the CPIO’s order blindly without application of mind are the main shortcomings in the functioning of the F.A.A., they may be taken care of by laying down certain drills / timelines in the RTI Rules for processing of the appeal. A procedure for acknowledgement of the appeal from the office of the F.A.A. needs to be prescribed as in many of the cases, there are complaints about the denial of receipt of the appeal by the office of the F.A.A. even though such appeals were tendered by hand at the dak counter. Giving of hearing by the F.A.A. can be another method for bringing seriousness to the institution of the F.A.A. and timely disposal of 1st Appeals.

**The strengthening of the institution of F.A.A. will considerably reduce the workload in the CIC as in many of the cases, the CIC has to function primarily as a F.A.A.**

**\_\_\_\_\_\_\_**