

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL Nos. (ST/56219/2013 & ST/50324/2014)-CU[DB]

Sr. No.	Appeal No.	Appellant	Respondent	Impugned Order
1.	ST/56219/2013- CU[DB]	M/s Jindal Steel & Power Ltd.	Commissioner, Customs & Central Excise, Noida	O-I-A No. 317/ST/APPL/NOIDA/2012 dated 27.09.2012 passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, Noida
2.	ST/50324/2014- CU[DB]	M/s Jindal Steel & Power Ltd	Commissioner, Customs & Central Excise, Noida	O-I-A No. 152/NOI/EXCUS/000/APPL/ 2013 dated 30.07.2013 passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, Noida

Appearance:

Ms. Shreya Dahiya (Advocate)
Shri Pawan Kumar Singh (Supdt.) AR

for Appellant(s)
for Respondent(s)

CORAM:

Hon’ble Mrs. Archana Wadhwa, Member (Judicial)
Hon’ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 19/06/2018
Date of Pronouncement : 22/06/2018

FINAL ORDER NOs **71170-71171 / 2018**

Per: Anil G. Shakkarwar

Above two appeals are taken together for decision because they are involving the same issue. Appeal No. ST/56219/2013-CU[DB] is arising out of Order-in-Appeal No. 317/ST/APPL/NOIDA/2012 dated 27.09.2012 passed by Commissioner (Appeals), Customs, Central Excise and Service

Tax, Noida. Appeal No. ST/50324/2014-CU[DB] is directed against Order-in-Appeal No.
152/NOI/EXCUS/000/APPL/2013 dated 30.07.2013 passed by Commissioner (Appeals) Customs, Central Excise and Service Tax, Noida.

2. Brief facts of the case are that the appellants are manufacturers of goods falling under Chapter 72 of schedule to Central Excise Tariff Act, 1985 and also have registration under Service Tax. They are having their manufacturing unit in the State Chhattisgarh. The appellant engaged M/s Dynacon Projects Private Limited, Greater Noida for construction of complex near their factory. On 14.10.2011 appellant submitted an application for refund of Service Tax of Rs.3,26,898/- before the Assistant Commissioner, Noida, claiming that the said amount was paid as service tax by M/s Dynacon Projects Private Limited under the service of works contract service and that said amount was reimbursed or borne by them through various invoices as recipient of said service and that the work that was assigned to M/s Dynacon Projects Private Limited was of construction of residential building and that the said residential buildings were for personal use of the appellant and that the said service tax borne by the appellant was credited to the exchequer by the M/s Dynacon Projects Private Limited and that construction of residential complex for personal use does not attract

service tax and, therefore, they were entitled for said refund. The said refund was rejected through Order-in-Original dated 22.02.2012. Appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) through impugned Order-in-Appeal dated 27.09.2012 did not interfere with the order of Original Authority. Aggrieved by the said order appellant is before this Tribunal through Appeal No. ST/56219/2013. In similar manner on similar grounds with similar contentions appellant submitted another application dated 06.06.2012 to the same authority claiming refund of service tax of Rs.1,98,015/-. The same was rejected through Order-in-Original dated 26.04.2013. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) through impugned Order-in-Appeal dated 30.07.2013 did not interfere with the order passed by the Original Authority. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel had contended that under Section 11B of Central Excise Act, 1944 any person who has borne the incidence of service tax can claim refund and also further contended that under Section 83 of Finance Act, 1994 provisions of said Section 11B are made applicable to the matters related to service tax. She has further contended that though the executer of works contract service who constructed civil

construction for them namely M/s Dynacon Projects Private Limited credited service tax under works contract service to the excchequer and they had borne the said service tax through the invoices and, therefore, they were entitled for the said refund. She has further contended that Lower Authorities did not give them opportunity to establish their case. On being asked by this Bench as to whether they had submitted alongwith their refund application such documents required to establish that the duty incidence borne by them was actually credited to the excchequer and whether alongwith application for refund they had submitted all the documents showing the flow of duty incidence upto the excchequer such as payments made to M/s Dynacon Projects Private Limited against the invoices raised by them and the inclusion of those invoices in the returns by M/s Dynacon Projects Private Limited and the service tax involved in those invoices being part of the service tax credited to the excchequer the learned counsel submitted that such information was not submitted before the Lower Authorities nor it was submitted alongwith application for refund, but given a chance they will be able to establish the same.

4. Heard the learned AR who has supported the impugned Orders-in-Appeal.

5. Having considered the rival contention and on perusal of copy of application for refund dated 14.10.2011 available at

page no. A-18 of the appeal paper book of Appeal No. ST/56219/2013 and similar copy of application dated 06.06.2012 available at page no. A-16 in appeal paper book of Appeal No. ST/50324/2014, we find that the applications were without any documents to establish that the amount claimed by appellant for refund was actually credited to exchequer. We find that Central Board of Excise and Customs has issued supplementary instructions under Chapter IX of supplementary instructions in Para 2.4 issued instruction in respect of Refund. The contents in said Para 2.4 are reproduced below:-

“It may not be possible to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Consequentially, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period.”

The Original and Appellate Authority are bound by the said instructions which also includes that the refund claims received without supporting documents should be rejected.

We, therefore, do not find any infirmity in the impugned orders. We also hold that the appellant could not make out a case for our inference. We, therefore, dismiss both the appeals filed by the appellant.

(Pronounced in Court on 22/06/2018)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ankit