

REGISTERED SPEED POST AD



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/380/2015-RA / 1222

Date of Issue: 28.03.2022

ORDER NO. 316 / 2022-CX(SZ)/ASRA/MUMBAI DATED 28.3.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Nissan Motor India Private Limited.

Respondent : The Commissioner of CGST & Central Tax, Chennai-IV

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. 186/2015(CXA-II) dated 03.08.2015 passed by the Commissioner of Central Excise (Appeals-II)-Chennai.

ORDER

The revision application has been filed M/s. Nissan Motor India Pvt. Ltd Chennai (hereinafter referred to as "the applicant") against Order-in-Appeal No. 186/2015(CXA-II) dated 03.08.2015 passed by the Commissioner of Central Excise (Appeals-II)-Chennai.

2. Brief facts are that the Applicants are manufacturers of Motor vehicles/Cars falling under the Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985. They had filed a refund claim on 31.03.2013 for an amount of Rs.4,00,99,243/- being the amount of re-credit granted to them during the period from June & July 2012 on sanction of 23 rebate claims filed in respect of exports made during the period from Nov 2011 to Mar 2012. As they had sold all their machineries and inventory to M/s. Renault Nissan Automotive India Pvt Ltd, during April 2012 and stopped their manufacturing activities, they were not in a position to utilise the cenvat credit re-credited to them on account of sanction of rebate. Hence they filed refund claim relying on the Circulars no. 510/06/2000 dt. 03.02.2000 and 687/3/2003-CX dt. 03.01.2003. After due process of law, the Original Authority vide Order-in-original No. 490/2013 dated 18.12.2013 sanctioned the refund of the said amount by way of cheque to the Applicant under Section 11B of the Act. Being aggrieved by the aforesaid order-in-original the Department filed appeal before the Commissioner of Central Excise (Appeals-II)-Chennai, who vide Order-in-Appeal No. 186/2015(CXA-II) dated 03.08.2015 allowed their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 35EE of the Central Excise Act, 1944 before the Government.

4. Personal hearing in this case was fixed for 14.09.2021, Shri Rajaram, authorised representative, Shri Ramani, authorised representative, Shri Nagarjan, authorised representative, appeared online on behalf of the applicant and reiterated their earlier submissions. They submitted that original authority has passed a fresh order and therefore, it is not revisiting of his earlier order.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal, the Order-in-Original, the revision application and the submissions filed by the applicant. It is observed that the Applicant has filed

the current revision application by ignoring the fact that the original adjudicating authority have allowed refunds in this matter under Section 11B of the Central Excise Act and not the rebate in accordance with Section 35B of Central Excise Act, 1944.

6. The powers for revision under the statute are limited to certain matters. The powers of revision in the Central Excise Act, 1944 in Section 35EE of the Act are exercisable in cases where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B of the CEA, 1944. Further, the relevant portion of the Section 35B of the Central Excise Act, 1944 is reproduced below:

“Appeals to the Appellate Tribunal. SECTION 35B. Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order — — (1)

(a);

(b);

(c);

(d) :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, —

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:”

7. Under Section 35EE of the Central Excise Act, 1944, the Government has been vested with the revisionary power for the order of the Commissioner (Appeals) involving the issue regarding the matters mentioned above. Government observes that the applicant had filed for a fresh refund claim and had not filed appeal against the rebate sanction order. The applicant, if aggrieved by the rebate sanction order, he

should have filed an appeal against that order itself. Accordingly, this office does not have any legal authority to deal with the Commissioner(Appeals)'s above referred Order which is clearly relating to refund and not the rebate as is envisaged in aforementioned Section 35EE of the Central Excise Act. Thus, the above stated Revision Application has been filed wrongly before the Government.

8. Government concludes that since the present case involves refund under Section 11B, the matter is beyond the scope of the revisionary powers vested in the Central Government under Section 35EE of the CEA, 1944. In the result, the revision application filed by the applicant is not maintainable under Section 35EE of the CEA, 1944.

9. The revision application filed by the applicant is dismissed as non-maintainable for lack of jurisdiction.

Shrawan
24/3/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 316 /2022-CX(SZ) /ASRA/Mumbai DATED 24.03.2022

To,
M/s Nissan Motor India Private Limited.,
Plot No. 1A, Sipcot Industrial Estate,
Oragamdum, Sireumbudur-602105.

Copy to:

- 1) The Commissioner of CGST & CX, Chennai Outer, No. 2054-I, II Avenue, a2 th Main Road, Newry Towers, Anna Nagar, Chennai-600040.
- 2) The Commissioner(Appeals-II) Central Revenue Building, 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai-600034.
- 3) The Deputy Commissioner of CGST & CX, Poonamallee Division-chennai-IV Commissionerate, C-48, THNB Building Anna Nagar, Chennai-600040.
- 4) Sr. P.S. to AS (RA), Mumbai
- 5) Guard file