



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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F.No. 15/470/16-RA/932

Date of Issue: 26.09.2022

ORDER NO. 887 /2022-CE(WZ)/ASRA/Mumbai DATED 23 09.2022 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 Arihant Engineering Works,  
Plot No A-219, MIDC,  
Wagle Industrial Estate,  
Road No 16V, Thane 400 601

Respondent : Commissioner of Central Excise, Mumbai-III

Subject : Revision Applications filed under section 35EE of the  
Central Excise Act, 1944 against the Order in Appeal  
No. CD/362/M-III/2016 dated 16.05.2016 passed by  
Commissioner, Central Excise (Appeals), Mumbai - II

**ORDER**

This revision application has been filed by M/s Arihant Engineering Works, Plot No A-219, MIDC, Wagle Industrial Estate, Road No 16V, Thane 400 601 (hereinafter referred to as 'the applicant') against the Order in Appeal No. CD/362/M-III/2016 dated 16.05.2016 passed by the Commissioner, Central Excise (Appeals), Mumbai - II

2. The brief facts of the case are that the applicant had filed a refund claim for Rs. 1,36,942/- (Rupees One Lakh Thirty Six Thousand Nine Hundred and Forty Two Only) for cash deposited erroneously under the head Education Cess and Secondary and Higher Education Cess instead of making payment in Basic Excise Duty. After issuance of deficiency memo and show cause notice, the adjudicating authority rejected the claim on the grounds that the applicants contention that this was due to a typographical error was not correct and there was no provision under the Central Excise Act, 1944 and Rules made thereunder to grant refund or to utilize the said amount against Central Excise liability under the head of Basic Excise Duty.

4. Aggrieved by the aforesaid Order-in-Original, the applicant preferred an appeal before Commissioner, Central Excise (Appeals), Mumbai-II, who vide Order-in-Appeal No. CD/362/M-III/2016 dated 16.05.2016 rejected the appeal on the grounds that the applicant failed to prove that they had not passed on the duty element to any other person as they had not submitted any evidence to this effect.

5. On being aggrieved by the said Order-in-Appeal, the applicant preferred the present Revision Application mainly on the following grounds:

5.1. that the Adjudicating Officer erred in not appreciating that the said excess payment of Rs. 1,36,942/- lying unutilized in PLA which can be proven with the returns for the period Jan-15 to March-15 and the incident of Cess has not been passed to any other person;

5.2. that since the Cess is not payable on manufactured goods as per Notification No. 14 & 15 dated 01.03.2015, the said excess payment cannot be used for making the payment of Central Excise Duty;

5.3. that they were enclosing the statement of sales & Invoice Copies for the period January 2015 and February 2015 and on the basis of the same amount payable for the period can be ascertained;

5.4. that the adjudicating authority has erred in stating that there is no Provision under Section 11 B of Central Excise Act, 1944 to grant the refund;

5.5. that since the amount is lying unutilized in the PLA which can be seen from ER-1 Returns also, there was no question of recovery of cess from customers and it is not case of unjust enrichment;

5.6. that in support of their claim that the case does not fall in the ambit of unjust Enrichment, they submit certificate issued by Chartered Accountant stating that for F.Y 2014-15 the amount of Rs.1,36,942/- and for F.Y 2015-16 an amount of Rs. 1,44,015/- was shown as outstanding amount of Excise Payment in Current Asset.

6. Personal hearing was scheduled on 14.06.2022 or 28.06.2022. Shri Vinod, Accountant appeared online for the hearing on behalf of the applicant and reiterated the earlier submissions. He submitted that excess payment had occurred due to clerical error and requested to allow the benefit.

7. Government has carefully gone through the relevant records available in case file, written and oral submissions of the applicant and also perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that that the issue in question is that the applicant had erroneously deposited amounts under the head Education

Cess and Secondary and Higher Education Cess instead of depositing under Basic Excise Duty which was lying unutilized in the Personal Ledger Account and is seeking refund of the balance of the same.

8.2 Government finds that at this juncture it is pertinent to examine the relevant portion of Section 35B of the Finance Act, 1994 which deals with appeals to the Hon'ble Tribunal; the same is reproduced below:-

**"Section 35B. Appeals to the Appellate Tribunal. -**

*(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -*

*(a) a decision or order passed by the Principal Commissioner of Central Excise or Commissioner of Central Excise as an adjudicating authority;*

*(b) an order passed by the Commissioner (Appeals) under Section 35A;*

*(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Principal Commissioner of Central Excise or Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;*

*(d) an order passed by the Board or the Principal Commissioner of Central Excise or Commissioner of Central Excise, either before or after the appointed day, under Section 35A, as it stood immediately before that day :*

**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:*

..."

8.3 A plain reading of Section 35B of the Central Excise Act, 1944 indicates that the power for Revision of Orders of the Commissioner (Appeals), by the Central Government, as provided for by Section 35EE of the Central Excise Act, 1944, is limited to those matters as mandated as a first proviso to Section 35B of the Central Excise Act, 1944. As discussed above, the instant issue pertains to refund of unutilized balance of erroneously deposited amounts under the head Education Cess and

Secondary and Higher Education Cess instead Basic Excise Duty, which does not find mention in the first proviso to Section 35B of the Central Excise Act, 1944 and thus the Government does not have jurisdiction over any matter relating to the same.

9. In view of the above, Government dismisses the subject Revision Application as the same is non-maintainable due to lack of jurisdiction.

*Shrawan Kumar*  
23/9/22  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. <sup>887</sup> /2022-CE(WZ) /ASRA/Mumbai DATED 23.09.2022

To,

M/s Arihant Engineering Works,  
Plot No A-219, MIDC,  
Wagle Industrial Estate,  
Road No 16V, Thane 400 601.

Copy to:

- 1) The Commissioner of CGST, Thane Commissionerate, 3<sup>rd</sup> & 5<sup>th</sup> Floor, ACCEL House, Road No.22, Wagle Industrial Estate, Thane 400 604.
2. The Commissioner of CGST, Thane Appeals, 12<sup>th</sup> Floor, Lotus Info Centre, Near Parel Station (East), Mumbai 400 013.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.
5. Spare copy.