

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

**EXCISE Appeal No. 12588 of 2018-SM**

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-001-APP-015-2018-19 dated 04.07.2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

**Aia Engeneering Ltd**

**...Appellant**

115,Gvmm,Odhav  
AHMEDABAD  
GUJARAT-382410

*VERSUS*

**C.C.E.-Ahmedabad-i**

**...Respondent**

C. Ex Bhavan,  
Nr Panjrapole & Polytechnic, Ambavadi,  
Ahmedabad,  
Gujarat-380015

**APPEARANCE:**

Shri Amal Dave, Advocate for the Appellant  
Shri. P Ganesan, Superintendent (Authorized Representative) for the  
Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

**FINAL ORDER NO.A / 11318 /2023**

DATE OF HEARING: 22.06.2023  
DATE OF DECISION:22.06.2023

**SOMESH ARORA**

In the instant case, matter pertains to non-utilization of Cess due to transition provisions coming into force on implementation of GST from 1 July, 2017. The appellants are having unutilized accumulated Cess, because of lack of provision at the relevant time to migrate the accumulated Cess to the GST. However, the learned Advocate states that subsequently sufficient decisions have clarified the position in their favour. He particularly seeks to rely on 2023 (2) TMI 230 (CESTAT-Ahmd) decision in the case of M/s. USV P. Ltd Vs. CCE, Daman. As also on the decision of CESTAT-New Delhi as reported in 2022 (3) TMI 1254 in the matter of Emami Cement Ltd, Nu Vista Vs. CGST, Raipur. He

drew attention to para 4 & 5 of the decision of co-ordinate Bench of Ahmedabad to emphasize the refund cannot be denied because of particular situation as brought out in above decision due to which the assessee was unable to avail the higher education Cess on etc. On introduction of GST paras 4 & 5 are reproduced below:

*"4. I have carefully considered the submissions made by both the sides and perused the record. I find that the question to be decided is, first, whether the appellant is entitled for the refund of Cenvat credit of education cess and higher education cess and consequently entitled for cash refund in case if unable to utilize the said Cenvat credit under GST regime and second, whether the refund is time-barred. I find that the appellant have heavily relied upon various High Court decisions according to which refund was allowed considering Rule 5 of Cenvat Credit Rules, 2004. It is not disputed that the appellant are not in a position to utilize Cenvat credit of Education Cess and Secondary and Higher Education Cess due to introduction of GST with effect from 01.07.2017.*

*5. As regards the admissibility of Cenvat credit of Education Cess and Secondary and Higher Education Cess, Rule 3 clearly provides the Cenvat credit to be allowed in respect of Education Cess and Secondary and Higher Education Cess for ease of reference, Rule 3 of Cenvat Credit Rules is reproduced below:-*

**Rule 3. CENVAT credit. –**

*(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of –*

*(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;*

*(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;*

*(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 ( 40 of 1978);*

*(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ( 58 of 1957);*

*(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);*

*(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);*

*(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007); (vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);*

*(viiia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;*

*(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);*

*(ix) the service tax leviable under section 66 of the Finance Act;*

*(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and*

*(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and*

*(xi) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005 )*

*From the above Rule, under clause (vi) and (via), the credit of Education Cess and Secondary and Higher Education Cess is clearly allowed. Therefore, the appellant is legally entitled for Cenvat of Education Cess and 4 Excise Appeal Nos. 10345 of 2021-SM Secondary and Higher Education Cess. Hence, on this count refund cannot be denied."*

2. Learned AR confronted with the aforesaid decision fairly reiterates findings of the lower Authorities.

3. Considered. This Court is of the view, the matter stands covered not only by the above decisions cited (supra) by the learned Advocate, but also various other decisions relied upon in these two decisions.

4. Accordingly, the issue is no longer *res integra*, the appellants are entitled to cash refund as provided for in cases cited above. The appeal is consequently allowed.

*(Dictated & Pronounced in the open Court)*

**SOMESH ARORA  
MEMBER (JUDICIAL)**

PALAK