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**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. 195/173/15-RA / 9397

Date of Issue:

08.08.2022

ORDER NO. 752 /2022-CX (WZ) /ASRA/MUMBAI DATED 05.08.2022
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 K-Flex India Private Limited,
F-19,22,23,24 MIDC Ranjangaon, Village Karegaon,
Shirur, Pune - 412 210.

Respondent : Commissioner of Central Excise & CGST,
Pune - I, GST Bhavan, ICE House,
Opp. Wadia College, Pune - 411 001.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
PUN-SVTAX-000-APP-0065-14-15 dated 16.03.2015
passed by the Commissioner of Service Tax (Appeals),
Pune, Pune - 411 001.

ORDER

The subject Revision Application has been filed by M/s K-Flex India Private Limited, Pune (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 16.03.2015 passed by the Commissioner of Service Tax (Appeals), Pune. The said Order-in-Appeal disposed of appeals against the Order-in-Original No. P-VIII/224/Ref & Reb/CEX/14-45 dated 22.05.2014 passed by the Assistant Commissioner of Central Excise, erstwhile Pune-VIII Division, Pune III Commissionerate, which in turn had rejected rebate claims of the applicant amounting to Rs.1,00,890/-.

2. Brief facts of the case are that the applicant who held Central Excise registration filed a rebate claim in respect of the duty paid by them on goods manufactured and exported goods under Rule 18 of the Central Excise Rules, 2002 (CER) read with notification no.19/2004-NT dated 06.09.2004. The goods were cleared to a unit in the SEZ and the claim involved a total 10 ARE-1s, bearing nos.63,64,66,67,82,93,107,108,117 and 118. The original rebate sanctioning authority rejected the entire claim as it was found that the applicant had not fulfilled the conditions specified at para 3(b)(ii) of notification no.19/2004-CE(NT) dated 06.09.2004 inasmuch as they had failed to submit either the Original or Duplicate copy of the ARE-1s in all cases and other documents viz. Bill of Export, Lorry receipt etc. Aggrieved, the applicant preferred an appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 16.03.2015 held that the original authority had erred in rejecting the rebate with respect to four claims where the applicant had submitted the original copy of the ARE-1s, but had failed to submit the Duplicate copy of the same. The Commissioner (Appeals) held that the onus of sending the duplicate copy of the ARE-1 to the jurisdictional authority was on the Customs officer and the applicant could not be faulted for non-receipt of the same and held the applicant was eligible to the rebate claim with respect to the said four ARE-1s. However, with respect to the rest of the six cases involving a rebate amount of Rs.22,345/-, where the applicant failed to file the original ARE-1s, the Commissioner (Appeals)

upheld the order of original authority rejecting the rebate claim as he found that submission of the original copy of the ARE-1 was an essential requirement under notification no.19/2004-CE(NT) dated 06.09.2004 and that there were no other documents to support the claim of the applicant.

3. Aggrieved, the applicant has filed the subject Revision Applicant against the impugned Order-in-Appeal dated 16.03.2015 on the following grounds:-

(a) The Commissioner (Appeals) had erred on both facts and law and should have appreciated that it was established beyond doubt that the goods were manufactured and cleared on payment of duty and that the said goods had been delivered to the SEZ;

(b) In the case of supplies to a unit in the SEZ, para 8.3 of Chapter 8, Part -I of the CBEC Manual mandated submission of copies of the ARE-1 and Excise Invoice along with the letter requesting for the rebate;

(c) The Commissioner (Appeals) should have appreciated that there was no dispute as in every case they had filed the rebate claim in the prescribed form giving the correct and complete details of the export; that they had submitted either the original or the duplicate copy of ARE-1s in all cases which were duly stamped by the Customs authorities evidencing supply of goods to SEZ along with copies of Excise Invoice evidencing the payment of duty on the said consignments; that no doubt could be raised on the supply and delivery of goods to SEZ as in every case a copy of the ARE-1 duly signed and stamped by the Customs authorities was on record; and that the reliance placed on the decision in the case of Varindra Overseas (P) Ltd and Bajaj Electricals was misplaced and the said cases involved a merchant exporter as against their case wherein they were the manufacturer and exporter;

(d) The Commissioner (Appeals) should have considered the collateral evidence and that rebate should not be denied for want of compliance of procedure and sought to place reliance upon copies of ledger extracts supported by a certificate of a Chartered Accountant evidencing receipt of consideration from the SEZ to them towards supply of goods;

(e) That the Commissioner (Appeals) should have considered the Lorry Receipts as collateral evidences to establish transportation of goods from the factory to the SEZ;

(f) The Commissioner (Appeals) should have appreciated that it was a settled law that submission of Form ARE-1 was only procedural requirement under the notification issued under Rule 19 and that the procedure laid down therein was only to facilitate the processing of an application for rebate claim and to enable the authority to satisfy that the goods had been exported and its duty paid nature and that such procedure could not be raised to the level of a mandatory requirement;

(g) The Commissioner (Appeals) should have appreciated that if the rebate claim can be sanctioned in the absence of the duplicate of the ARE-1, as had been done in this case, then the rebate could also be safely sanctioned in the absence of original ARE-1 where the duplicate ARE-1 is available; that the Commissioner (Appeals) had passed the order without giving any proper reasons and hence the same was in violation of the principles of natural justice.

In light of the above, the applicant prayed that the impugned Order-in-Appeal be set aside to the extent of denial of the rebate claim amounting to Rs.22,345/- with consequential relief.

4. Personal hearing in the matter was granted to the applicant on 10.08.2021, 17.08.2021, 14.09.2021, 21.09.2021 and 16.12.2021. However, no one appeared for the same. Sufficient opportunity having being given to the applicant to be heard in person, the case is now taken up for decision.

5. Government has carefully gone through the relevant records, the written submissions and also perused the impugned Order-in-Original and the impugned Order-in-Appeal.

6. Government finds that the issue involved in the present case lies in a narrow compass and is limited to deciding whether the impugned Order-in-

Appeal was proper in upholding the rejection of the rebate claim of the applicant in those six cases where they failed to file the original copy of the ARE-1s. Government finds that the primary grounds on which the Commissioner (Appeals) has rejected the rebate claim was that the original copy of the ARE-1s was an essential requirement under the notification no.19/2004-CE(NT) dated 06.09.2004 and that the clearances being to an SEZ, there were no other documents like Shipping Bill, Bill of Lading, Mate Receipt, which could have otherwise could have been referred to in the absence of the original ARE-1s.

7. On examination of the Order dated 22.05.2014 passed by the original authority, Government finds that the same records that the applicant, apart from the Original or Duplicate copy of the ARE-1s, had submitted the following documents along with the rebate claim:-

- i. Triplicate copy of the ARE-1s in sealed cover from the Central Excise Range office with proper endorsement;
- ii. Copies of Central Excise Invoices issued under Rule 11 of the Rules; and
- iii. Duty Debit particulars duly verified by the Range Superintendent, NRR-II.

Government notes that in all the cases where the original ARE-1s were not submitted the applicant had submitted copy of the Duplicate copy of the ARE-1s. Government finds that in the absence of the original copy of ARE-1s, the duplicate copy of the ARE-1s which had been signed and stamped by the Customs authority indicating the receipt of goods in the SEZ, could have easily been verified vis-à-vis the corresponding Central Excise Invoices and the triplicate copies of the ARE-1s which provided the details of the goods cleared for export to the SEZ. The certificate from the Range Superintendent was proof enough that duty was debited on the said goods. Thus, these documents were good enough to establish that the goods cleared from the factory for export were the goods received in the SEZ and also the duty paid nature of the goods involved and hence Government observes that the

finding of the Commissioner (Appeals) that in the absence of the ARE-1 there were no other documents for carrying out the necessary verification, to be incorrect. There is no gainsaying the fact that it is a well settled principle that substantial benefit like rebate should not be denied on procedural grounds.

8. Government finds that the Hon'ble High Court of Madras in the case of Shree Ambika Sugars Limited vs Jt. Secretary Ministry of Finance, Department of Revenue, New Delhi [2019 (368) ELT 334 (Mad)] had held that rebate claimed cannot be rejected on the ground of procedural infractions. Government finds the non-submission of the original copy of the ARE-1s in this case is a merely procedural lapse and rebate cannot be denied when other documents establishing the export of the goods and its duty paid nature are available on record.

9. In view of the above, Government sets aside the impugned Order-in-Appeal dated 16.03.2015 and holds that the respondent is eligible to the rebate claimed by them. The Revision Application is allowed with consequential relief.


(SHRAWAN KUMAR)

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

ORDER No. 752/2022-CX (WZ) /ASRA/Mumbai dated 05-08.2022

To,

M/s K-Flex India Private Limited,
22,23,24 MIDC Ranjangaon,
Shirur, Pune - 412 210.

Copy to:

1. Commissioner of Central Excise & CGST, Pune - I, GST Bhavan, ICE House, Opp. Wadia College, Pune - 411 001.
2. The Commissioner of Service Tax (Appeals), Pune, Pune - 411 011.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.