F NO. 195/07/14-RA

REGISTERED SPEED POST

**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, Cuff Parade,
Mumbai- 400 005

F NO. 195/07/14-RA 2847 Date of Issue: 28/05/21

ORDER NO. 189 /2021-CX (WZ) /ASRA/MUMBAI DATED 29.04.2021 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 Renaissance Fashions, Mumbai.

Respondent : Commissioner of Central Excise, Mumbai-II.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.SK/249/M- II/2013-14 dated 25.09.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

**ORDER**

This revision application is filed by M/s Renaissance Fashions, Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. SK/249/M-II/2013-14 dated 25.09.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. Brief facts of the case are that the applicant, a manufacturer exporter, had exported garments under UT-1 during the month of July 2012 but failed to submit corresponding ARE-1 copies i.e. proof of export. Hence, a Show cause Notice dated 30.01.2013 was issued to the applicant for clearing goods without payment of duty of Rs.1,76,493/-.

3. The original authority, i.e. Assistant Commissioner, Central Excise, Chembur-II Division vide Order in Original No. HKT/Adj/01/Ch.II/2013-14 dated 09.05.2013 confirmed Central Excise duty amounting Rs.1,76,493/- on the excisable goods cleared without payment of Central Excise Duty, under Section 11 (A) of Central Excise Act, 1944 alongwith interest under Section 11AA of Central Excise Act, 1944 and imposed a penalty of Rs.5000/- under Rule 27 of Central Excise Rules, 2002.

4. Being aggrieved with the aforementioned Order in Original, the applicant filed appeal before Commissioner of Central Excise (Appeals-II), Mumbai, who vide Order-in-Appeal No. SK/249/M-II/2013-14 dated 25.09.2013 (impugned Order rejected the appeal filed by the applicant.

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government mainly on the following grounds that :-

5.1 The impugned order is erroneous, devoid of merit and bad in law. Commissioner (Appeals) has neither appreciated the facts nor the essence of relevant laws properly. The lower adjudicating authority nor the lower appellate authority has taken pains to find out whether the goods were actually exported. They have confirmed the demand casually without going into the merits of the case. The order is non-speaking in much as the lower appellate authority did not offer any findings on the documents such as Shipping Bill, Bill of Lading, Bank Remittance Certificate produced before him. He has simply ignored the same. Further, the adjudicating authority expanded the grounds of the notice at the adjudication stage and confirmed the demand on such grounds which were not taken in the show cause notice. The

detailed grounds, amongst others, are set out hereunder. They are without prejudice to one another.

5.2 They were new to C. Excise law: procedural lapses may be condoned: Goods were in fact exported; however procedural errors occurred due to ignorance of the procedure

The fact of export is proved from: -

- ARE-I duly endorsed by Customs Authorities –
- Shipping Bill - Export invoice •
- Bill of lading,
- Certificate of Foreign Inward Remittance

These documents cannot exist if the goods were not exported. The failure is in following the procedure and not in exporting the goods. Therefore, the duty should not be recovered on the goods.

5.3. For them C. Excise law was a new law. They did not have any prior experience. They understood that duty was payable when the goods were sold in the local market and that no duty was payable on exports. However, they were unaware of the detailed procedures involved. The removals made for export were appropriately reported in the ER-1 returns. Thus, their intentions were bona fide. When the range Superintendent called for the export documents, the applicant forwarded the documents to his best understanding. They submitted copies of ARE-1 s, shipping bills, certificate of foreign remittance, export invoices, bills of lading etc. to the jurisdictional Superintendent of Central Excise through courier.

5.4. It is not in dispute that the courier containing the documents was received by the Range Superintendent on 24.09.12. This fact has been confirmed by the lower adjudicating authority in paragraph 6.1 of the Order-in-Original. It is not the case of the department that the documents sent through courier were some other documents and not the documents under dispute. Therefore, the finding of the lower appellate authority (at Para 8 of his order) that it could not be ascertained as to what documents had been forwarded to the department through courier, is inappropriate.

5.5. ARE-I, duly endorsed by Customs, were filed: Commissioner (Appeal) did not appreciate findings of the lower authority in proper context. The findings of the lower authorities that the ARE-I s were not endorsed by Customs Authorities, is factually incorrect. The facts can be verified from the relevant ARE-I lying in custody of the adjudicating authority. The learned Commissioner (Appeals) has inferred this from order of the adjudicating authority. There is an error in drawing this inference. The adjudicating had not said that the ARE-Is sent to the range Superintendent by courier did not bear endorsement of Customs. His findings were in context of the applicants not submitting the documents in regular course; and the photocopies submitted in reply to the show cause notice. He has not denied that upon being called for by the range Superintendent, they did indeed file the ARE-I duly endorsed by Customs.

5.6 The lower adjudicating authority had in paragraph 11 of the Order-in-Original stated that

> *"Shipping Bills (Customs copy) and ARE-Is produced with their written submission to SCN were not endorsed by the custom authorities."*

They had already sent copies of ARE-1 s duly endorsed by the customs authorities through courier. These documents were duly received by the department. Thereafter, it was not possible to again submit the documents endorsed by the Customs, to the adjudicating authority while replying to the SCN. Only the original and the duplicate copies are endorsed by the Customs. Both of these were submitted to the department. No other copy endorsed by customs can be available. Therefore, it is incorrect to look for endorsement in the copies filed in reply to the SCN. These were photocopies of the documents in their possession and not of the copies already forwarded to the range office. Therefore, the conclusion drawn by the lower appellate authority is incorrect.

5.7 Proof filed within six months: The disputed goods were cleared for export in the month of July, 2012. The proof of export was submitted by them under the cover of their letter dated 20.09.12 i.e. well within six months of the date of export. The department did not take cognizance of the letter dated 20.09.12 sent by them through courier and issued a Show Cause Notice alleging removal of goods without payment of duty.

5.8 Non-Submission Of ARE-1 within 24 hrs is a condonable lapse : Fact of export is not denied 8.1.

In paragraph 11 of his impugned order, the Learned Commissioner (Appeals) has stated that non-submission of endorsed copies of ARE-1 cannot be considered as a technical lapse. They had sent endorsed copies of the ARE-1 to the jurisdictional Range Superintendent through courier. The said courier was received by the Range Superintendent. This fact is not disputed. Their plea was to consider non-submission of triplicate & quadruplicate copies of the ARE-1 within 24 hours of clearance as a technical lapse and not the non-submission of endorsed copies of ARE-1. They had submitted proof of export within the prescribed time of six months, no duty is recoverable from them. Hence, no interest is also recoverable.

5.9 There is no whisper either in the Show Cause Notice or in the Order-In-Original that the goods were not exported. The dispute is only regarding non-submission of ARE-1 within 24 hours. Both the authorities have conveniently ignored to comment upon this aspect. The goods cleared by them under Export Invoice No.23/12-13 dated 18.07.12 under the cover of ARE-1 No.11/12-13 dated 18.07.12 were in fact exported.

5.10 Both the authorities could have verified the fact that the disputed goods were in fact exported from their counterparts in Customs Department. It is well settled that substantial benefit cannot be denied for some technical lapses. They admit that their mistake of submitting the triplicate & quadruplicate copies of the ARE-1 before

clearance of the goods. However, this error cannot lead to the conclusion that the goods were not exported by the applicants and that they were cleared without payment of duty.

5.11 It's a case of ignorance of procedure and not a case of disregard to law: They were new to the C. Excise Law:

At paragraph 12, the Learned Commissioner (Appeals) has observed that the applicants had taken the export procedure for granted and had shown scant regard to the same. It is submitted that they were new to Central Excise and were not aware of the procedural issues. There was no intention behind non-submission of triplicate and quadruplicate copies of the ARE-1. There is no bar on sending the copies of ARE-1s etc. by courier. Both the authorities have erred in imposing penalty on the applicants. A simple warning would have been sufficient in the facts and circumstances of the case.

The lower authorities ought to have taken cognizance of the fact that:

a. In case of all removals for home consumption, the they have never erred or defaulted in payment of duty.

b. The removals for export were reported in the ER-1 returns

c. Various documents submitted to the department were sufficient to prove the fact of export.

d. Proof of export had been duly filed, within the prescribed time limit.

e. They did not have any experience in handling C. Excise procedure in past, and the error had occurred for the first time.

f. They could not have any intention to not follow the procedure. There was no benefit to them in not submitting the ARE-1 to the range Superintendent within 24 hrs of removal. They did not submit it because they didn't know that they were required to submit the same.

5.12 The lower appellate authority has placed reliance on the case-laws cited by him out of context. The ratios are not applicable to their case. The facts are clearly distinguishable. They had submitted copies of the ARE- 1s along with other relevant documents. There was only a procedural lapse that they did not submit copies of ARE-1s before the clearance of the goods.

5.13 EXPORT BENEFITS SHOULD NOT BE DENIED MERELY DUE TO PROCEDURAL & TECHNICAL LAPSES

The Govt. of India has consistently held that the export benefits should not be denied merely due to procedural & technical lapses. They draw attention to the following case laws :-

- Modern Process Printers 2006-(204)-ELT -0632 — GOI,
- Barot Exports [2006 (203) E. L. T. 321 (GOI]
- Harison Chemicals [2006 (200) E.L.T. 171 (GOI]
- Birla VXL Ltd. — 1998 (99) ELT 387 (T)
- Alpha Garments — 1996 (86) ELT 600 (T) –
- T. I. Cycles — 1993 (66) ELT 497 (T) –
- Atma Tube Products — 1998 (103) ELT 270 (T) –
- Creative Mobus — 2003 (58) RLT 111 (GOI) –
- Ikea Trading India Ltd. — 2003 (157) ELT 359 (GOI)
- Banaras Beads Ltd. 2011 (272) ELT 433 (GOI)
- Leighton Contractors (India) Pvt. Ltd. 2011 (267) ELT 422 (GOI)
- In Re: CCE, Bhopal 2006 (205) ELT 1093 (GOI).
- Cotfab Exports 2006 (205) ELT 1027 (GOI).

5.14 VALIDITY OF UT-1 WAS NOT A GROUND RAISED IN THE NOTICE:

The authorities have gone beyond the notice and raised a new ground in the orders viz. validity of the UT-1. The existing UT-1 had expired and the renewal was delayed. However, the show cause notice had never sought to demand duty on this ground. When the fact of export has been proved, then this aspect may be condoned.

In view of their aforesaid submissions, the applicant prayed that the Order-In-Appeal dated 25.09.13 and the Order-In-Original dated 09.05.13 may be set aside.

6. In response to Notice issued under Section 35EE of the Central Excise Act,1944, the respondent department vide reply dated 23.06.2014 filed the fo;;owing cross objections:-

6.1 The assessee's contention that the lower adjudicating authority expanded the grounds of notice at the adjudicating stage and confirmed the demands on such grounds which were not taken in the Show Cause Notice is false and baseless in view of the para 2 of the Show cause notice dated 30.01.2013 wherein it was alleged that:

> *WHEREAS, it appears from the ER-1 Returns filed online. In ACES System, that the assessee has cleared the excisable goods namely Ready Made Garments by Showing the clearances under Goods cleared for exports during the month July 2012 valuing Rs.14,27,936/- (Rupees Fourteen Lacs Twenty Seven Thousand Nine Hundred and Thirty Six only) from their factory premises without following the conditions under Rule 19 of Central Excise Rules, 2002, before the clearances.*
>
> *WHEREAS, it also appears that the assessee did not produce the copies of ARE-1 for the said period on being called for, vide letter No.C.Ex/R-02/Ch-II/Renaissance/12-13/202 dated 17.09.2012 by the Range Superinteendent.*

While confirming the Show Cause Notice the adjudicating authority in Para 12 has specifically mentioned/produced these grounds of Show Cause Notice while arriving at the conclusion for confirming the Show Cause Notice mentioned above. So

assessee can not say that order is confirmed on another ground which is not mentioned in the Show Cause Notice. Further appellate authority i.e. Commissioner Appeals in Para 11 has specifically pointed out that the contention of the assessee of non submission endorsed copies of ARE1 as technical laps is not correct on the contrary he observed that, it is not a technical laps, as the endorsement by Customs Authorities is an essential requirement, failing which it cannot be considered that, the goods have been exported. In support of his contention the Hon'ble Commissioner Appeals have relied / quoted judgment of Hon'ble Supreme Court in the case of "Sharif-ud-Din, Abdul Gani - AIR 1980 SC 3403 where in it was observed that "distinction between required forms and other declarations of compulsory nature and / or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences then it would be difficult to hold that requirement as non-mandatory".

As the assessee have taken the export procedure for granted and violated the same and on the other hand had blamed the department that, orders are non speaking, is not correct. In every order of adjudicating authority i.e. Order-in-Original dtd. 09.05.2013 and Order-in-Appeal dtd. 25.09.2013 grounds of rejection are discussed and found to be in order.

6.2 The assessee has contended that they were new to Central Excise Law, and procedural lapse may be condoned. He further contended that goods are exported, however a procedural errors occurred due to ignorance of the procedure. The assessee themselves admitted that the procedural errors occurred "due to ignorance of the procedure". The assessee have taken the export procedure for granted, and violated the provisions. It is only the department who pointed out the mistakes and demanded the duty and penalty. It cannot be concluded that the assessee have made the mistakes innocently, as they themselves had admitted that they have ignored the export procedures. So mistakes made by the assessee are deliberate, and with intension to avoid Central Excise Duty under the guise of export, by violating prescribed export procedure and their ignorance towards non submission of documents amounts to recovery of Central Excise Duty.

6.3 It is submitted by the assessee that, the goods are exported and the fact is proved from

1. ARE I duly endorsed by Customs Authority.
2. Shipping Bills.
3. Export Invoice.
4. Bill of lading.

In this regards it is submitted that the Shipping Bill (Customs copy) and ARE1s produced by the assessee were not duly endorsed by the Customs Authorities. Moreover, Bill of Lading, Mate Receipt, EP Copy of Shipping Bill as required under the Central Excise Rules/Notification confirming to prove the actual export of the consignment were not endorsed. As the endorsed copies are not on the records which

can not prove the ignorance / failure of the assessee towards following of export procedure.

6.4 The removals made for export were appropriately reported in the ER 1 return. The assessee had filed online monthly return for the month July 2012 on 05.08.2012. During R & C of July 2012 it was observed that the value shown against export clearance was Rs.14,27,926/-. This fact brought to the notice of the assessee vide this office letter No.C.Ex/R-02/Ch-11/Renaissance/12-13/202 dtd.17.09.2012. Assessee. did not submit triplicate and quadruplicate copies of ARE-1 for July 2012 till 17.09.2012. Therefore, assessee was asked to produce / submit triplicate and quadruplicate copies of ARE 1 for July 2012. The ARE-1 No. 11/12-13 dtd. 18.07.2013 was received by this office through courier on 24.09.2012 i.e. after issuance of letter. It proves that the assessee submitted ARE-1 after reminding them, which is in contravention of Rule 19 of Central Excise Rule 2002.

6.5 With reference to their contention they have submitted the documents through courier Hon'ble Commissioner Appeals himself in his Order-In-Appeal at Para- 8, has observed that when the assessee is new to the Central Excise procedure they should have taken the copies of the ARE-I personally, discussed the matter with the departmental officer and take action accordingly instead they have forwarded the concerned documents by courier. It only shows their Laissez-faire attitude towards legal formalities. So their contention / grounds of filing appeal in Para 8 itself not valid which shows their attitude of following Central Excise procedure.

6.6 The assesee's contention in Para 6 that Commissioner Appeals did not appreciate finding of the lower authorities in proper context is not correct. Commissioner Appeals has given grounds in detail at Para 10, 11 and 12 while rejecting the appeal filed by the assessee and confirming the order of lower authority. The Commissioner( Appeals) in Para 10 have observed / concluded that the appellants at the time of appeal, failed to submit the endorsed copies.

6.7 Lower Adjudicating authority at Para 11 of his order dtd. 09.05.2013 has observed that the assessee has submitted the copies of ARE 1 but not endorsed by the Customs authorities and the same cannot be taken as proof of export. Further the assessee have not at all submitted the endorsed copy with the appellate authority i.e. Commissioner (Appeals) also as mentioned in Para 10 of the appellate order and therefore grounds at Para 6, 6.1, 6.2 made by the assessee are totally baseless and improper.

6.8 The assessee have contended that benefits cannot be denied on the basis of technical lapses.

In this regards it is observed that, Para 13.6 of the said CBEC Manual provides that in case of non-export within six months or any discrepancy, the exporter shall himself deposit the excise duties involved alongwith interest on his own immediately on completion of statutory period or within ten days of memorandum given to him by the Range / Division office. Otherwise, necessary action can be initiated to recover the

excise duties alongwith interest and fine /penalty. It is further observed that the appellants have submitted copies of AREI but they were not endorsed by the Customs authorities at the same cannot be taken as proof of export. Further even at the time appeal, the assessee have failed submit endorsed copies.

The department have relied on the following judgment:-

1. GOI in the case of KLJ Organic Ltd. as reported in [2013 (291) E.L.T.138 (G.O.I.)] held that "Demand and penalty - Non-production of proof of export for goods exported under LUT-Original and duplicate copies of ARE-1, as required under Board's Circular No. 586/23/2001- CX., dated 12.09.2001 not produced- Contention that the said documents were lying with customs authority not supported with any evidence – ARE-Is not produced even after a lapse of five years, nor any effort made to procure the same, which are mandatory and vital documents to prove that the goods as per ARE-Is have been actually exported - Demand of duty and penalty upheld - Section 35EE of Central Excise Act, 1944, Rule 18 of Central Excise Rules, 2002 and Notification No. 42/200I-C.E.(N.T.)". Hence demand of duty and penalty confirmed by the Government of India.

2. GOI in the case of West Coast Pigment Corporation as reported in (2013(290) E.L.T. 135 (G.O.I)) held that "Export - Rebate of duty - ARE-1 being the basic essential document for export of goods under rebate claim, certification of original and duplicate copies of which by Customs proves the export of goods. On the basis of original/duplicate copies of ARE-1 duly endorsed by Customs, the export of duty paid goods can be established, which is fundamental and statutory requirement for sanctioning rebate claim under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.) — Non submission of same not being a procedural or technical lapse, rebate claim not admissible — Section 35EE of Central Excise Act, 1944 and Rule 18 of Central Excise Rules 2002". Hence, denied the rebate claim.

6.9 The assessee's contention that there is no bar on sending the copies of ARE 1 through courier etc. and for this violation, a simple warning is sufficient.

This assessee's contention is totally baseless in as much as on one hand assessee is saying / submitting that they were new to Central Excise Law and errors occurred due to ignorance of the procedure. When the assessee is not aware of the Excise / Export procedure he should have approached personally for necessary guidance and on the other hand he submitted unendorsed documents only after reminding him and i.e. through courier which clearly shows there negligence on their part while following the export procedure.

The judgments quoted by the assessee are not squarely applicable in the present case. Presuming that the goods are exported then why the assessee failed to produce endorsed documents which can be evident to show the goods have been exported.

In view of the above, duty and penalty is rightly recoverable from the assessee.

7. A Personal hearing in this case was held through video conferencing on 21.01.2021 and Shri Sanjay Dwivedi, Advocate and Shri Prashant Doshi, Partner, duly authorized by the applicant company appeared for hearing online and reiterated the submission filed through Revision Application. They submitted that both original adjudicating authority & Appellate Authority have not considered their proof of export. They were asked to submit the same. They requested one week's time to submit proof of export.

8. In compliance with the directions issued during the course of personal hearing, the applicant vide letter dated 02.02.2021 filed the following documents to show that the goods had been exported.

a. Export Invoice — attested by Customs deptt.
b. Shipping bill — attested by the Customs deptt.
c. Mates receipt
d. Bill of Lading
e. Foreign bank payment advice — Royal Bank of Scotland
f. Bank remittance advice net of bank charges —HDFC BANK limited.

The applicant further submitted that their Invoice as well as the EP Copy of the Shipping both bear signature of the Customs Authorities. This, coupled with other documents would show that the goods have indeed been exported, that they are however not in position to produce the original and the duplicate copy of the ARE-1 as the same are in the custody of the Central Excise Range Office and that they would be approaching the concerned range office with a request to provide the original and the duplicate copy of the ARE-1 to your office for verification.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

10. Government in the instant case observes that the applicant in its reply to show cause notice dated 30.01.2013 stated as under:

> *"We also export the said goods manufactured by us, to other countries. We follow the procedures as laid down under Rule 19 of Central Excise Rules 2002 for which we have executed undertaking ( Letter of Undertaking ) on the Bond paper of Rs. 100/-. Initially our letter of undertaking was accepted by your goodself vide F.No. V/CH-II/T-1/UT-1/20/RF/11/1490 dated 14 June 2011*

*(Annx.A). Inadvertently we could not file application for renewal of said UT-1 before 12.06.2012 as mentioned in acceptance letter. We have applied for renewal as soon as the error was noticed, and our request for renewal was accepted on 29.10.2012 vide F.No. V/Ch-11/T-1/20/RF/2011/12-13/2916 (Annx. B )".*

From their aforesaid reply itself it is evident that the LUT under which the exports were effected during the said period (July 2012) had expired and remained to be renewed by the applicant and therefore, the said exports cannot be said to have been effected under valid LUT . Hence, even though the applicant mentioned LUT on ARE-1s, these exports cannot be held to have been effected under Rule 19 of the Central Excise Rules, 2002 and the appropriate Central Excise duty was correctly demanded from them alongwith the interest in respect of Goods cleared for exports during the month July 2012 from their factory premises without following the conditions under Rule 19 of Central Excise Rules, 2002, before the clearances.

11. Government observes that in an identical case M/s Kaizen Plastomould Pvt. Ltd., Bhayander (E) had exported their goods under Bond without payment of duty. Show cause notices were issued to said M/s Kaizen Plastomould Pvt. Ltd. demanding duty in respect of export consignments cleared for which proof of exports was not submitted in time and in one of the cases excisable goods were removed without payment of duty under the cover of invalid Letter of Undertaking (LUT). The Original Authority subsequently confirmed the duty and imposed penalty on M/s Kaizen Plastomould Pvt. Ltd. The appeal filed against the Orders in Original confirming the duty and imposing penalty, by M/s Kaizen Plastomould Pvt. Ltd. were rejected by the Appellate Authority. Revision Applications filed against such Orders in Appeal were also rejected by GOI vide Revision Orders No.1396-1399/11-CX dated 14.10.2011. Subsequently, M/s Kaizen Plastomould Pvt. Ltd. challenged the said GOI Order in Writ Petition No. 152/2014 before Hon'ble Bombay High Court. The Hon'ble Bombay HighCourt vide judgment dated 03.03.2014 observed as under :-

**11.** While setting out this allegation in the show cause notice, the revisional authority on its own referred to the documents submitted vide letters dated 4-1-2005 and 6-1-2005. It is clear from the order that the commercial invoice, copy of Bill of Lading, copy of shipping Bill and triplicate copy of ARE-1, duplicate copy of AR-1 and such documents are on record of the department. The revisional authority therefore, was in obvious error in rejecting the Revision Application. The Revision Application is rejected only on the ground of non-submission of statutory documents namely customs endorsed ARE-1. That would result in duty demand being confirmed. The allegation in

the show cause notice is held to be proved only because of the failure of the exporter to produce these documents.

**12.** We see much substance in the argument of the learned counsel that insistence on the proof of exports is understood. However, the insistence on production of ARE's and terming it as a primary one has not been supported in law. Mr. Shah is therefore justified in criticizing the revisional authority on the ground that the authority was oblivious of execution of other documents and particularly in respect of the clearance of goods under bond/LUT. If there is adequate proof of exports then, non-production of ARE-1 would not result in the allegations being proved and the demand being confirmed. There is no question of penalty being imposed in such a case as well and without verification of the records. The penalty could have been imposed had there been absolutely no record or no proof of any export. The approach of the revisional authority therefore, is not in conformity with law as laid down in *UM Cables Limited* v. *Union of India*. In referring to a identical issue, the Division Bench in *UM Cables Limited* observed as under :

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**13.** In the order passed by the Division Bench (Mohit S. Shah, CJ and M.S. Sanklecha, J) of this Court in Writ Petition No. 582 of 2013 decided on 14-2-2014 (*Aarti Industries Limited* v. *Union of India & Ors.*) [2015 (305) E.L.T. 196 (Bom.)], the Division Bench has held that if there is a proof of the goods, having been exported, then, the claim for rebate of duty could not have been rejected. While we do not have a case of claim of rebate but demand of duty based on non-production of proof of export but the test is the same, namely, that there ought to be proof of exports. In the present case, this fundamental issue has not been examined and the order suffers from a patent error. It is also suffering from clear perversity and in not referring to the contents of the documents which are forming part of the two letters. If the two letters which are referred to at para 7.1 they point towards Bill of Lading and equally the commercial invoice, shipping bill. Mr. Shah would urge that the confirmation of payment by buyers is on record. Then, the Revisional authority should have expressed an opinion thereon and whether that has any impact on the claim made by the Department. That having not done, the Revisional authority failed to exercise its jurisdiction vested in it in law. The Revisional order deserves to be quashed and set aside.

**14.** As a result of the above discussion, the writ petition succeeds. The impugned order dated 14-10-2011 is quashed and set aside. The Revision Application is restored to the file of respondent No. 2 for a decision afresh on merits and in accordance with law.

**15.** The revisional authority will decide the matter afresh within a period of three months without being influenced by any of its earlier findings and conclusions. It should apply its mind independently and in accordance with the law laid down by this Court.

12. GOI while deciding the Revision Applications in remand vide Order No. 274-277/14-CX dated 20.06.2014 observed that in one of the cases though the proof of export was accepted, the penalty was imposed on M/s Kaizen Plastomould Pvt. Ltd. on the grounds that the applicant failed to export the goods under valid LUT. GOI in its

order further observed that the Hon'ble High Court has clearly stated that Court's writ jurisdiction has not been invoked with reference to cases where allegations of export under invalid LUT is involved and as such GOI upheld the Order in Original to the extent of imposition of penalty for exporting the goods under invalid LUT.

13. As regards proof of export submitted by M/s Kaizen Plastomould Pvt. Ltd., GOI in its aforementioned order observed that on the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export may be treated as completed, however, such verification has been done on the basis of copies of documents submitted by M/s Kaizen Plastomould Pvt. Ltd. and hence the original authority is required to carry out necessary verification on the basis of original documents either available with M/s Kaizen Plastomould Pvt. Ltd. or submitted to the department as claimed by M/s Kaizen Plastomould Pvt. Ltd.

14. In this case it is evident from the applicant's own admission (para 10 supra) that the goods were exported without payment of duty under Rule 19 of Central Excise Rules, in the month of July 2012 without valid LUT, thus not following the conditions prescribed under Notification No. 42/2001-C.E. (N.T.), dated 26-6-2001 before the clearances. Therefore following the ratio laid down by GOI vide its Order No. 274-277/14-CX dated 20.06.2014 in RE: M/s Kaizen Plastomould Pvt. Ltd. Government upholds Order-in-Appeal No. SK/249/M-II/2013-14 dated 25.09.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai to the extent it upheld imposition of penalty of Rs.5,000/- on the applicant by the original authority vide Order in Original No. HKT/Adj/01/Ch.II/2013-14 dated 09.05.2013.

15. The applicant has now produced the various export documents (mentioned at para 8 supra) including EP copy of the Shipping Bill. However, as the applicant has not produced excise documents before this authority, correlation between export and excise documents cannot be verified at this stage. As the applicant has contended that the courier containing the documents (ARE-1s) was received by the Range Superintendent on 24.09.2012 the said verification needs to be carried out by the original authority before accepting proof of export.

16. In view of above position, Government sets aside Order-in-Appeal No. SK/249/M-II/2013-14 dated 25.09.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai to the extent it upheld confirmation of demand of Central

Excise duty amounting Rs.1,76,493/- on the excisable goods cleared by the applicant without payment of Central Excise Duty, under Section 11 (A) of Central Excise Act, 1944 along with interest under Section 11AA of Central Excise Act, 1944 and directs the original authority to carry out necessary verification on the basis of documents submitted to the department as claimed by the applicant with the various export documents (mentioned at para 8 supra) including EP copy of the Shipping Bill now submitted by the applicant and also by verifying the documents relating to relevant export proceeds and decide the issue accordingly within four weeks from the receipt of this Order. Sufficient opportunity to be afforded to the applicant to present their case.

17, The Revision application is disposed off on the above terms.

Shrawan 29/4/21

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

ORDER No.189/2021-CX (WZ) /ASRA/Mumbai DATED 29.04.2021

To,
M/s Renaissance Fashions,
Unit No. 7, 1st Floor, Sai Kripa Industrial Estate,
Near Sai Baba Mandir, P.L. Lokhande Marg,
Chembur (West), Mumbai- 400 089.

Copy to:

1. The Commissioner of GST & CX, Mumbai East, 9th Floor, Lotus Infocentre,Parel East, Mumbai-400012.
2. The Commissioner of GST & CX (Appeals-II ) Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-KurlaComplex, Bandra( E ), Mumbai – 400 051.
3. The Assistant Commissioner, Division-II, GST & CX, Mumbai East, 110, Ganga House, LBS Marg, Vikhroli West Mumbai-400083.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.