

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12136 of 2018

(Arising out of OIA-CCESA-SRT-APPEALS-PS-842-2017-18 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Mathew Abraham

Manager, Rivaa Exports Ltd.,
Rivaa House, Udhna Darwaja, Ring Road,
Surat, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.- Surat-i

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

.....Respondent

APPEARANCE:

Sh. S. Suriyanarayanan, Advocate for the Appellant

Sh. Rakesh B. Bhashkar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/12205 / 2019

DATE OF HEARING: 11.11.2019

DATE OF DECISION: 11.11.2019

RAMESH NAIR

This appeal was filed by Sh. Mathew C. Abraham, who is a Manager Accounts of M/s. Rivaa Exports Ltd. A penalty of Rs. 10 Lakhs was imposed on the appellant under Rule 26 (1) of Central Excise Rules, 2002. The brief facts of the case is that M/s. Rivaa Exports Ltd. supplied polyester PET films to M/s. MGM Metalizers Ltd. for metalizing on job work basis under the cover of Job work challan. Since M/s. Rivaa Exports Ltd. did not carry out any excisable activity, they weren't registered with Central Excise. On the investigation it was found that M/s. MGM Metalizers Ltd. carrying out the metalizing process which amounts to manufacture and no excise duty was being paid by M/s. MGM Metalizers. Therefore, a Show Cause Notice issued to M/s. MGM Metalizers Ltd. for demanding Excise Duty and a penalty under Rule 26(1) of Central Excise Rules, 2002 was also imposed upon Sh. Mathew C. Abraham, who is the Accounts Manager of the Principle M/s. Rivaa Exports Ltd. from where the polyester PET films were sent for job work. The adjudicating authority confirmed the duty demand against M/s. MGM Metalizers Ltd. and imposed a penalty of Rs. 10 Lakhs upon Sh. Mathew C. Abraham, who is the appellant herein under Rule 26(1) of the Central Excise

Rules, 2002, on the ground that Sh. Mathew C. Abraham has not followed the procedure of Notification 214 86-CE and consequently held that appellant abetted for clearance of goods clandestinely, therefore, the present appeal filed by Sh. Mathew C. Abraham.

2. Sh.S.Suriyanarayanan Learned Counsel appearing on behalf of the appellant submits that M/s. Rivaa Export Ltd. wherein the present appellant was an employee as Accounts Manager had sent the PET films under the cover of job work of challan. The liability to pay Excise Duty is upon M/s. MGM Metalizers Ltd. Therefore, M/s. Rivaa Export Ltd. and/or Sh. Mathew C. Abraham has no role as regard non-payment of Duty by M/s. MGM Metalizers Ltd. He further submits that the issue whether the activity of metalizing of films is amount to manufacture or otherwise was under litigation in various cases. In the case of Metlex India Pvt. Ltd. Vs Commissioner of Central Excise, New Delhi, 2004 (165) E.L.T.129, it was held that metalizing of film is not amount to manufacture. Even department itself, in the case of Commissioner Vs. Paper Products Ltd. 2015(320) E.L.T. A200 (Bom.) claimed that metalizing is not amount to manufacture. Therefore, it is all along the stand of the department that the metalizing is not amount to manufacture. Therefore making a charge of clandestine removal on MGM itself is contrary to their own stand. He also submits that since there was a judgment of Hon'ble Supreme Court in the case of Metlex (supra) the job worker M/s. MGM following the said judgment paid the Service Tax of job work activity. This also show the bona fide of the job worker, therefore, penalty imposed on the present appellant is absolutely incorrect and illegal. He also submits that the appellant is an employee of Principle, there is no wrong doing on his part so long he supplied the goods under the cover of challan. Therefore, the penalty is not imposable under Rule 26.

3. Sh. Rakesh Kumar Bhashkar Learned Superintendant (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that Sh. Mathew C. Abraham has abated in evasion of duty committed by M/s. MGM. Therefore, the penalty was rightly imposed.

4. Heard both the sides and perused the record. I find that the Riva Exports Ltd. Wherein the present appellant is working as Accounts Manager has supplied the films for job work under the cover of job work challan. In my considered view this is more than sufficient compliance for transaction of the goods. Since Riva Exports Ltd. is not a manufacturer and not registered

under Central Excise there is no charge by the revenue that Rivaa Export Ltd. is required to be registered. The supply of goods for job work was admittedly made under challan is in order. As regard the charge that the Rivaa Export Ltd. has not followed the procedure of Notification 214/86-CE, I find that since M/s. Rivaa Export Ltd. is not registered and it is also a fact that they have not filed undertaking as required under Notification 214/86-CE, there is no obligation on M/s. Rivaa Export Ltd. to follow any procedure of notification 214/86-CE. In such case the entire responsibility to discharge Excise Duty if any leviable, is on M/s. MGM Metalizers Ltd. as has been held by Larger Bench of this tribunal in the case of Thermax Babcock & Wilcox Ltd. V/s C.C.E. Pune 2018 364 ELT 945 (Tri.-L.B.). Therefore, if there was any non-payment of duty by MGM neither M/s. Rivaa Export Ltd. nor its employee can be made responsible. It is also observed that the issue that whether metalizing is amount to manufacture has been decided in favour of the assessee in the case of Metlex (supra) by the Hon'ble Supreme Court and no contrary judgment of Hon'ble Supreme Court is available. Therefore, following the said judgment M/s. MGM Metalizers have paid the Service Tax which Prima Facie appears to be correct. This also show a bona fide on the part of M/s. MGM Metalizers Ltd. therefore, in these circumstances the charge of abatement for evasion of duty by MGM has no basis against the present appellant. It is also observed that once M/s. MGM Metalizers Ltd. has discharged Service Tax there is no intention of evasion of duty. Even the department was aware the fact that MGM Metalizers are paying Service Tax on their activity which claimed by the department as manufacture. For this reason also no mala fide is proved against anyone.

5. As per my above discussion penalty was wrongly imposed against the present appellant. Therefore I set aside the penalty and allow the appeal with consequential relief, if any arise, in accordance with law.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)